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*A Compendium of Essential Legal Principles
From His Opinions as a Justice on the West
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Negotiable Instrument Law

Robin Jean Davis

West Virginia Supreme Court of Appeals

Louis J. Palmer Jr.

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specific prohibitions so that the general prohibitions in Canons 1, 2, and 3 of the Judicial Code of Ethics (and now the Code of Judicial Conduct) may not be used to punish judges for their public remarks that do not concern a pending or impending matter and that do not violate either a specific prohibition or some other law.²⁹⁷

XI. NEGOTIABLE INSTRUMENT LAW

In *Painter v. Peavy*,²⁹⁸ Justice Cleckley addressed the issue of accepting or rejecting a check for payment of a debt:

If a check is tendered bearing the words ‘payment in full’ or some other words of similar purport, the payee may either accept the check and acknowledge the accord and satisfaction, or return the check to the payor. If the payee chooses the latter course of action he may continue to dispute the underlying claim.²⁹⁹

Several principles of law were enunciated by Justice Cleckley in *Public Citizen, Inc. v. First National Bank in Fairmont*.³⁰⁰ The opinion held that

[u]nder W. Va. Code § 46-3-116 (1963), a check made out to two parties may be endorsed and negotiated by either of them only when the check clearly indicates that it is to be paid in the alternative. When a check is ambiguous as to whether payees are joint or alternative, it will be construed as payable jointly.³⁰¹

Justice Cleckley noted that “[u]nder W. Va. Code § 46-3-406 (1963), it is commercially unreasonable for a bank to accept for deposit in an individual account a check made payable to a corporation, without first ascertaining, or at least

²⁹⁷ *Id.* at Syl. Pt. 3.

²⁹⁸ 451 S.E.2d 755 (W. Va. 1994).

²⁹⁹ *Id.* at Syl. Pt. 6.

³⁰⁰ 480 S.E.2d 538 (W. Va. 1996).

³⁰¹ *Id.* at Syl. Pt. 4.

inquiring as to, the authority of the depositor/endorser.”³⁰²

The case opined, “[t]he transfer and presentment warranties in W. Va. Code § 46-4-207 (1963) do not extend to the payee of a check paid on a forged, missing, or unauthorized endorsement.”³⁰³ Finally, the opinion stated that “[u]nder W. Va. Code § 46-3-406 (1963), a bank may not assert the affirmative defense of negligence in a claim involving a transaction unless it first establishes that in that transaction, it acted in accordance with the reasonable commercial standards of the banking business.”³⁰⁴

XII. CONTRACT LAW

Factors to be examined when there is a dispute as to whether a contract was altered were set out in *Painter v. Peavy*:³⁰⁵

Whether the parties altered their original contract or entered a transaction or compromise depends on whether there was mutual consent. It is necessary to examine the evidence and determine whether the parties arrived at a new agreement or acted under the existing one.³⁰⁶

In *Fraternal Order of Police, Lodge No. 69 v. City of Fairmont*,³⁰⁷ Justice Cleckley was called upon to rule that “[t]he phrase ‘per year’ in a contract is equivalent to the word ‘annually.’”³⁰⁸

It was said in *State ex rel. Hoover v. Berger*³⁰⁹ that

[t]he legal duty of an unofficial, privately retained certified court

302 *Id.* at Syl. Pt. 5.

303 *Id.* at Syl. Pt. 6,

304 *Id.* at Syl. Pt. 3.

305 451 S.E.2d 755 (W. Va. 1994).

306 *Id.* at Syl. Pt. 7.

307 468 S.E.2d 712 (W. Va. 1996).

308 *Id.* at Syl. Pt. 2.

309 483 S.E.2d 12 (W. Va. 1996).