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Contract Law

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West Virginia Supreme Court of Appeals

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inquiring as to, the authority of the depositor/endorser."  

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."  

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."

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:  

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.  

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

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

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

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302 Id. at Syl. Pt. 5.
303 Id. at Syl. Pt. 6.
304 Id. at Syl. Pt. 3.
306 Id. at Syl. Pt. 7.
308 Id. at Syl. Pt. 2.
reporter who had been hired by a private medical physician to transcribe an informal administrative meeting for use by the physician in connection with a disciplinary action is governed by contract law, and absent a specifically enforceable contract, the reporter is not obligated to perform the work involved in preparing the transcript. 310

XIII. CIVIL RIGHTS

A. Litigating Discrimination Outside Human Rights Act

In the case of Vest v. Board of Education of County of Nicholas,311 Justice Cleckley opened the door for unlawful discrimination to be remedied by the education and state employees grievance board:

The West Virginia Education and State Employees Grievance Board does not have authority to determine liability under the West Virginia Human Rights Act, W. Va. Code, Sec. 5-11-1, et seq.; nevertheless, the Grievance Board’s authority to provide relief to employees for “discrimination,” “favoritism,” and “harassment,” as those terms are defined in W. Va. Code, 18-29-2 (1992), includes jurisdiction to remedy discrimination that also would violate the Human Rights Act.312

Justice Cleckley held that “[a] civil action filed under the West Virginia Human Rights Act, W. Va. Code, 5-11-1, et seq., is not precluded by a prior grievance decided by the West Virginia Education and State Employees Grievance Board arising out of the same facts and circumstances.”313

B. Prima Facie Case of Discrimination

In Hanlon v. Chambers314 Justice Cleckley clarified the standard for making

310 Id. at Syl. Pt. 2.

311 455 S.E.2d 781 (W. Va. 1995).

312 Id. at Syl. Pt. 1.

313 Id. at Syl. Pt. 3.