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From His Opinions as a Justice on the West
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Contract Law

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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).

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. Chambers*³¹⁴ 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.

³¹⁴ 464 S.E.2d 741 (W. Va. 1995).