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# Miscellaneous—Banking—Illegal Discounts

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the court, an attorney is held to a higher standard of conduct than are his fellow citizens, and once his conduct becomes a matter of reasonable doubt, it is up to him to come forward and satisfy the court of his general fitness for his profession. The dividing line seems not to be ultimate conviction or acquittal on appeal, but rather intitial conviction or acquittal at the trial level.[5]

The dissent seems to confuse the difference in considerations between rights and privileges. In effect it states that an illegal conviction is a nullity[6] and of no effect and therefore the respondent stands in the shoes of a man waiting trial for the first time. This is undoubtedly true in any case concerning a person's legal rights.[7] However, the privilege of practicing law calls for conduct about which there is no reasonable doubt—the legality of which there is no need for a jury to decide. This, it seems, is implicit in the statute when it calls for summary disbarment upon a conviction for a felony[8] and then provides that upon a reversal of such conviction, an application for reinstatement must be made.[9]

## Banking—Illegal Discounts

There is in New York a clear policy to prohibit corporations not subject to the supervision of the banking department from engaging in any form of banking.[10] An instance of this is the provision in section 18 of the General Corporation Law and section 131 of the Banking Law which prohibit non-banking corporations from discounting notes and make such discounted notes void.[11]

5. See note 4, *supra.*
6. *People ex rel Sloane v. Lawes,* 255 N. Y. 112, 174 N. E. 80 (1930).
7. See note 6, *supra.*
8. N. Y. JUDICIARY LAW §90(4), *supra,* note 2.
9. N. Y. JUDICIARY LAW §90(5). Upon a reversal of the conviction for felony of an attorney and counsellor-at-law . . . the appellate division shall have power to vacate or modify such order or debarment. *In Re Stein,* 249 App. Div. 382, 292 N. Y. Supp. 828 (1st Dep't 1937).
10. *New York Trust and Loan Co. v. Helmer,* 77 N. Y. 64 (1879); *Meserole Securities Co. v. Cosman,* 253 N. Y. 130, 170 N. E. 519 (1930); *But see Pratt v. Short,* 79 N. Y. 437, 35 Am. Rep. 531 (1880) terming the intent of the legislature in enacting the early counterpart of §131 N. Y. BANKING LAW merely an interest to protect the chartered banks in the monopoly of banking.
11. N. Y. STOCK CORPORATION LAW §18: No corporation, domestic or foreign, other than a corporation formed under or subject to the banking laws of this state or the United States, and except as therein provided shall by any implication or construction be deemed to possess the power of carrying on the business of *discounting bills, notes or other evidences of debt* . . . or engaging in any other form of banking . . . (emphasis added). N. Y. BANKING LAW §131: . . . No corporation, domestic or foreign, other than a national bank or a federal reserve bank, unless expressly authorized by the laws of this state, shall employ any part of its property, or be in any way interested in any fund which shall be employed for the purpose of receiving deposits, *making discounts* . . . . All notes and other securities for the payment of any money or the delivery of any property, made or given to any such association, institution or company, or made or given to secure the payment of any money loaned or discounted by any corporation or its officers, contrary to the provisions of this section shall be *void.* (emphasis added).

*Meserole Securities Co. v. Cosman,*[12] the leading case dealing with the meaning and intent of these statutes, held that the notes "discounted" by the plaintiff were not void under the provisions of these sections because there was not the kind of discounting that the legislature meant to forbid. What was meant to be included in the prohibition were discounts such as are carried on by a bank of discount; that is, where the note is discounted in order to accomplish a *loan* and not a "discount" which is an integral part of a transaction which is in form and fact a *purchase* or trading bargain. Only the former is prohibited.

In the recent case of *Miller v. Discount Factors,*[13] notes for $15,000 with interest at 6% were made by a corporation payable to its president and endorsed both by the president and his brother-in-law, the plaintiff (apparently as an accommodation[14]), to the defendant, a corporation organized under the Stock Corporation Law, who deducted and retained a $675 "bonus charge" and paid the remainder directly to the *maker.* Subsequently the maker defaulted and the plaintiff, after paying part of the notes, brought an action to recover such payments as having been made under mistake of law,[15] thus bringing into issue the validity of the notes under the preceeding sections. The court *held* (5-2) that the notes were void.[16] The transaction was found to be a clear discount, a deduction of compensation for the loan in advance. Labeling it a bonus does not make it different.[17]

The situation here is not that in *Meserole,* which involved previously existing and valid notes,[18] but is instead a creation of the discounted notes as security for the loan. The apparent distinction drawn by the instant case between valid and void notes depends upon whether the discount was of prior notes or notes created specifically as an incident to the discounting transaction; the former transaction is a "purchase" and not within the prohibition, while the latter is a "loan" and clearly within it.

12. 253 N. Y. 130, 170 N. E. 519 (1930).
13. 1 N. Y. 2d 275, 135 N. E. 2d 33 (1956).
14. The practical effect of these sections which make the prohibited notes void is to release *accommodation* endorsers or makers because there can be an action for unjust enrichment against persons who received value. *See Pratt v. Short,* 79 N. Y. 437, 39 Am. Rep. 531 (1880).
15. The plaintiff's action was consolidated with a suit by the holder on the unpaid notes.
16. The decision in favor of the defendant was affirmed, however, on the ground that the jury found that the payments were not made under mistake.
17. The Appellate Division held in favor of validity of the notes in part upon the reasoning that a "bonus" was not interest and bore no relation to it, and therefor no discount resulted, apparently ignoring the fact that the bonus plus the 6% called for in the notes exactly totaled 2% per month or 24% a year. 285 App. Div. 772, 141 N. Y. S. 2d 140 (1st Dep't 1955).
18. The notes in *Meserole* were made and endorsed by persons other than the "seller", and were valid and in existence before the time of the "discounting" transaction with the plaintiff, and were made by a maker to a payee both of whom were apparently unconnected with the plaintiff and in a transaction apparently divorced from the "discounting" in question.

A relatistic approach, apparent in the language of *Meserole,* would involve an exception from the prohibition of the statutes, of discounts which are part of a commercial transaction, as, for instance, the practice of factors who for over 130 years have been discounting the notes of their consignors, in conjunction with the consignment transaction.[19] The *Meserole* holding, however, went beyond this and excepted also preexisting notes given for what practically was a loan. The instant case refuses to carry this extension to notes created for the purposes of the loan.

Under the present test, then, it appears that if the transaction in *Discount Factors* were carried on with prior notes of the maker, and the loan were made not directly to the maker but to the plaintiff, the latter would be a "seller" and although the loan would go through him to the maker, so that the net effect would be the same as that which did result, the notes would have been valid. Although the line between purchase and loan has been recognized as sometimes difficult to draw,[20] an attempt such as this might be pierced by the court. The line, however, is apparently that only of the court, and will continue to be drawn on a case by case basis until the legislature sees fit to finally clarify the applications of these sections.

## Contracts—Interpretation

When the words of a contract are unequivocal, a court should give them their full effect.[21] Extrinsic evidence will not be allowed to change the meaning, where the words are plain and clear, and convey a distinct idea.[22] Such contracts leave little room for interpretation and the courts construe the contracts accordingly. The question then arises as to what should be done with ambiguous terms in a contract. The answer lies in a well known rule of construction that is applicable to instruments of doubtful meaning. A construction should be given to a contract that will consider all the words and phrases rather than a construction that will render some terms nugatory.[23] Words should not be ignored or considered surplusage unless they clearly conflict with the intention and purpose of the contract.[24] Thus the interpretation that gives effect to all the words and terms in the contract, should be preferred over an interpretation that ignores some words in the contract.[25]

19. *Meserole Securities Co. v. Cosman,* 253 N. Y. 130, 136, 170 N. E. 519, 521 (1930).
20. *Meserole Securities Co. v. Cosman, supra* at 147, 170 N. E. at 525.
21. *Rockcliffe Realty Corp. v. Mutual Life Ins. Co. of N. Y.,* 50 N. Y. S. 2d 851 (Sup. Ct. 1944).
22. *Matter of Western Union Tel. Co.* 299 N. Y. 177, 86 N. E. 2d 162 (1949).
23. 2 CLARK, NEW YORK LAW OF CONTRACTS §808 (1922); *Fleischman v. Furgueson,* 223 N. Y. 235, 119 N. E. 400 (1918).
24. *Gail v. Gail,* 127 App. Div. 892, 112 N. Y. Supp. 96 (4th Dep't 1908).
25. *Buffalo East Side R.R. Co. v. Buffalo Street R.R. Co.,* 111 N. Y. 132, 19 N. E. 63 (1888).