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## The Uniform Stock Transfer Act

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## THE UNIFORM STOCK TRANSFER ACT

On account of the comparative recency of its enactment the Uniform Stock Transfer Act has undergone but slight and inadequate interpretation, in those jurisdictions where it has been adopted. This fact, coupled with the general difficulty of code construction, has rendered it extremely doubtful how far this act modifies, changes or supersedes the common law.

It is a prevalent saying that lawyers, as a body, do not take kindly to the codification of the law. They do not believe in petrification and ultra-standardization, but in the elastic, evolutionary development so well characterized by that great body of rules known as the unwritten or the common law. History tells us that the English, unlike the Continental lawyer, has not joyfully embraced the Roman system of jurisprudence. His aversion for it is due primarily to its aspect of codified permanency and stifling (to the Anglo-Saxon love of individual liberty) inelasticity. In America this aversion has been accentuated by the superabundance of conflicting jurisdictions, which makes codification almost impossible because of the lack of uniformity in construction.

Notwithstanding these obstacles, the agitation for the passage of uniform state laws has steadily increased, and some twenty-five or thirty "acts" have received the sanction of a varying number of states. The Uniform Stock Transfer Act has been made the law in the following jurisdictions: Conn. (1917), Ill. (1917), La. (1910), Md. (1910), Mass. (1910), Mich. (1913), N. J. (1916), N. Y. (1913), Ohio (1911), Pa. (1911), R. I. (1912), Tenn. (1917), Wis. (1913), Alaska (1913).

When we reflect upon the volume of business done in these states, and upon the high rank most of them hold in the commercial world, we must realize the importance of the passage of a uniform law governing the transfer of corporate stock. It is common knowledge that the great bulk of modern business is carried on by corporations, and that most of these corporations possess stock, which in the natural trend of business, passes from hand to hand. It becomes important and vitally necessary to the financial well-being of an enormous number of persons, what the rules controlling stock transfers are, and how they affect one's rights and liabilities. It is true, of course, that such rules already exist in the common law, and that the advent of a uniform act gov-

erning the same subject may have little effect upon any one, if it fails to change materially some existing rules of law. It is essential, therefore, and our primary purpose, to discover discrepancies between the old law and the new, and to trace the outlines of the changes wrought.

Generally speaking, the Uniform Stock Transfer Act (like all other uniform acts) confirms the common law in all matters not specifically provided for or against, therein. Also, no clause in the uniform act can be said to overrule the common law unless its provisions are clearly antagonistic, or judicial construction has pronounced them inconsistent with and in derogation of the common law. At this point, it is well to note the section common to all uniform acts, which provides for such construction as to make uniform the laws of the states which enact them. The ordinary rule, therefore, that cases cited from a foreign jurisdiction possess but persuasive authority, must fall before the necessity for uniformity in construing uniform state laws. A citation from a sister state, construing some particular section of the act, common to both, is not merely of persuasive, but of imperative authority. If that is not the law, then that is what the law should be, or else the passage of uniform state laws is frivolous and purposeless, and we may as well content ourselves with a slavish adherence to local policy and home-made precedent.

#### *RIGHT TO TRANSFER*

The logical place to begin with an exposition of the act, would be the matter of the right to transfer shares, but this right obtains so surely and universally, both at common law and under the statutes, that there is little need for discussion or explanation. The only difficulty lies in the exercise of that right, and in the effects thereof, and in the degree to which the right to transfer stock may be curtailed and restricted, either by the general law, or by the articles of organization or by-laws of a corporation. It is well settled that any restriction, to be valid, must be reasonable and just, and must not permanently abridge the absolute power to transfer stock. (Authorities on this point are profuse—see generally Fletcher on Corporations, Secs. 3758ff, Cyc, C. J. or R. C. L.) Moreover, some notice must be given the transferrer and transferee of such restriction, the manner and the nature of such notice not being entirely settled at common law. The Uniform Stock Transfer Act provides that all restrictions placed

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upon stock represented by certificates, in order to be valid, *must appear upon the face of the certificate*. (Sec. 14.) And by the provisions of section 17 of the act, which reads as follows: "In any case not provided for by this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern"—the retention of the common law requirement of reasonability is impliedly confirmed.

### EFFECT OF TRANSFER

As in the question of the primary right of transfer, so in the matter of the immediate effects on such transfer upon the status of the parties involved, the common law has been carried over into the statutes, by the act, there being no provision therein which is contrary to pre-existing law. Thus, the rules that a completed transfer works a novation of parties, and the transferee steps into the shoes of his transferor; that, where the transfer has been registered on the books of the company (as is usually required), a transferee of shares, not issued as full paid, is liable on implied contract for all future calls thereon, both to the corporation and to its creditors, but is not liable on calls made prior to the transfer, although not payable until afterwards, and that the transferor is liable for calls made prior to the transfer, but not for calls made afterwards, etc. (specific cases are not cited because the numerous authorities are easily accessible in any standard treatise, encyclopedia or digest system) are all impliedly retained because of the absence of express rejection, and because of the provisions of section 17, quoted above.

### CHARACTER OF STOCK CERTIFICATE

One of the striking changes brought about by the act, is in the matter of the negotiability of stock certificates. The question as to whether or not a stock certificate is a negotiable instrument is one that has puzzled many courts and many minds of the highest calibre, with conflicting and unsatisfactory results. The common law upon the subject is in a chaotic condition.

The general rule, at common law, is that a certificate of stock is not a negotiable instrument in the same sense that ordinary commercial paper is negotiable, and this is true, even when it is

endorsed in blank, and it is well settled that in the absence of estoppel, a bona fide purchaser of such certificate acquires no better title to the shares than his transferrer had, and that he takes the same subject to equities existing against the transferrer in favor of the corporation or of third persons. Thus, if a certificate of stock, endorsed in blank by the owner, is lost or stolen, or an assignment thereof is forged, a bona fide purchaser acquires no title to it as against the owner, unless the latter is estopped from asserting his title. Nor can any custom or usage of trade bestow upon certificates of stock the character of negotiability, though such custom or usage has been taken into consideration by some courts in the working out of the theory of equitable estoppel in order to diminish the harshness of the practical application of the strict common law rule. The more recent decisions exhibit the struggle progressive courts have had in this respect, some straining the theory of equitable estoppel in their attempts to prevent injustice, others investing such certificates with a mystic veil of quasi-negotiability, making distinctions without differences, and involving themselves in inconsistencies, in their simultaneous retention of common law technicalities and unbending to the inevitable demands of modern business. Thus it has been repeatedly decided that a bona fide purchaser cannot be bound by *secret liens*, and in *some* cases, may acquire even a better title than his transferrer had. Mr. Justice Davis of the U. S. Sup. Ct., sums up the modern trend of authority in these words: "such certificates, although neither in form nor character, negotiable paper, approximate to it as nearly as practicable". (*First Nat. Bk. of South Bend vs. Lanier*, 11 Wall. 369, 377.)

This brief résumé should sufficiently indicate the unsettled condition of the common law on this point. In a La. case, *Succession of Desina* (123 La. 468, 49 So. 23), the court held that stock certificates are made negotiable instruments by a statute making them transferable against the world by delivery with a written transfer of the certificate or a written power to sell, assign and transfer the same (the provisions of which statute are substantially the same as our former sec. 1751, see post). An analysis of the Uniform Stock Transfer Act would seem to render a like conclusion inevitable.

(1) Section 1 of the act provides substantially for the method of transfer of a stock certificate, viz., by delivery of the certificate endorsed by the apparent owner or by delivery of the certificate

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together with a separate document containing a written assignment of the certificate or a power of attorney to sell, or transfer the same, signed by the apparent owner of the shares. Subsec. 2 of this section provides that *no registration on the corporate books, etc., is necessary to create a valid transfer (except as against the corporation).*

(2) Section 4 provides that the title of a transferee of a certificate under a power of attorney or assignment not written on the certificate, or of any person claiming under him, *shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value, in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing thereby to be the owner thereof, etc.*

(3) Section 5 provides that the delivery of a certificate to transfer title in accordance with section 1, *shall be effectual, except as provided in section 7, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.*

(4) Section 6 provides that the indorsement of the certificate by the person appearing by the certificate to be the owner of the shares represented thereby, *shall be effectual, except as provided in section 7, though the indorser or transferrer was induced by fraud, duress or mistake, to make the indorsement or delivery, or has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or has received no consideration.*

(5) Section 7 provides that the possession of the certificate may be reclaimed under these circumstances, *"unless the certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful."*

(6) Section 8 provides that although the transfer of a certificate has been rescinded or set aside, nevertheless, if the transferee, has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a *subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.*

(7) Section 16 provides that, where a certificate has been *lost or destroyed*, the issue of a new certificate under an order of the court as provided therein, *shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice* of the proceedings, etc.

(8) Various other statutes of Wisconsin require all restrictions, conditions, terms, etc., to be placed on the face of the certificate, in order to bind innocent holders. (cf. sec. on preferred stock, stock non par value, and sec. 14 of the act on liens and restrictions on right of transfer.)

To all intents and purposes, therefore, it seems the act has endowed the stock certificate with the essential qualities of a negotiable instrument. Under the act it is readily seen, a bona fide purchaser for value of a stock certificate, properly indorsed, has as many privileges, practically, as a like holder of a negotiable instrument.

It is well to note, also the provision of the act as to what constitutes value and good faith. Subsec. 1 (10) of section 21, reads: "Value' is any consideration sufficient to support a simple contract." Subsec. 2 of the same section is as follows: "An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor." The last three words merit particular attention, as, at common law, there was great doubt as to the validity of a stock transfer, where the certificate is merely taken as security for an antecedent obligation. Thus a Mo. case holds that "one who takes transfer as security for a pre-existing debt is not a bona fide purchaser for value." (*Watson vs. Sidney F. Woody Printing Co.*, 56 Mo. App. 145.) The act defines good faith as including "all acts done honestly, whether done negligently or not."

#### MODE OF TRANSFER

Taking up the subject in a little more detail, we come first to the mode or manner of transfer. In this respect, the common law has not been modified, but merely confirmed by the act. At common law, the delivery of a stock certificate with a written transfer of the same to the purchaser is sufficient to transfer the title to the shares represented thereby. Ordinarily the transfer may be made by indorsing on the certificate of stock, or by putting on a separate paper an assignment and power of attorney to a speci-

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fied person, or the assignment and power of attorney may be executed in blank. The Uniform Stock Transfer Act provides substantially the same. (See section 1, supra.) A late Ohio case, construing this particular part of the act, holds: "In so far as the act provides that title to shares of stock shall be transferred by delivery of the certificate indorsed in blank or to a specified person, it merely carries into statute law, the legal principle theretofore prevailing". (*Davis Laundry & Cleaning Co. vs. Whitmore*, 92 Ohio St. 44, 110 N. E. 518.)

### NECESSITY FOR DELIVERY

At common law, delivery is essential to a valid transfer. A mere agreement to assign shares, where the owner retains control is not a transfer and does not divest his title. (See Fletcher, Cyc, C. J., R. C. L., etc., as noted above for these well established common law rules.) Delivery is defined by the act to be a "voluntary transfer of possession from one person to another." Both acceptance and receipt and therefore delivery, as between the parties, may be inferred from the circumstances. Under the blanket provision embodied by section 17, the same and kindred rules doubtless prevail under the act. Furthermore, at common law, in the absence of a provision to the contrary, stock may be transferred by delivery of a separate written transfer without the delivery of any certificate, especially where no certificate has ever been issued, or where it is not in the possession of the transferrer. But by statute in some states, delivery is expressly required, and it has been held that the mere placing of the name of the vendee of stock on the corporate books without a delivery of the certificates is insufficient to warrant a recovery of the purchase price. The same is true under the act, as is further brought out by the provision therein, that an attempted transfer without a delivery of the certificate shall have the effect of a promise to transfer, and that the obligation, if any imposed by such promise, shall be determined by the law governing the formation and performance of contracts. (Sec. 10.)

### DELIVERY WITHOUT INDORSEMENT OR ASSIGNMENT

The rulings on this point are in conflict. Some courts hold that certificates of stock will not pass from hand to hand by mere delivery without indorsement or assignment. Other courts lay



down the contrary, holding that the mere delivery of the certificate with intent to transfer the shares represented thereby, is a sufficient transfer as between the parties without any indorsement or written assignment. So the Uniform Stock Transfer Act provides that the delivery of a certificate by the person appearing by the certificate to be the owner thereof, without the indorsement requisite for the transfer of the certificate, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering to complete the transfer by making the necessary indorsement; that the transfer shall take effect as of the time when the indorsement is actually made; and that this obligation may be specifically enforced. (Sec. 9.)

#### *EFFECT OF UNREGISTERED TRANSFERS*

As between the parties, the following is the rule that obtains both at common law and under the act: an unregistered transfer is valid, even where the charter or by-laws of a corporation or the general law under which it is organized, provides that its stock shall be transferable only on the books. The title passes by contract and not by record. The provision of the act in point, is that part of section 1, which reads: "The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent." (Sec. 1-2.)

As against the corporation, registration of the transfer by the transferee is necessary, before he can acquire any rights (in the absence of waiver or estoppel) or incur any liabilities, and before the transferrer can be relieved from liability to the corporation. In all matters of internal management, the corporation, at common law, is entitled to treat the person appearing by its books to be the owner, as the real owner of the stock. Thus registration or demand for registration of transfers, is necessary to entitle the transferee to vote at meetings, and to deprive the transferrer of the right to vote. The act provides that "nothing in this act shall be construed as forbidding a corporation to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or to hold such person liable for calls

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and assessments". In this respect the act expressly confirms the common law.

Before a lien of the corporation can be cut off, registration or at least notice of the transfer to the corporation is necessary. This rule should be read with the provisions of section 14 of the act, quoted above, which provides that all corporate liens in order to be valid must be stated upon the face of the stock certificate.

In this connection it should be noted that the subject of refusal to register a transfer of stock, and the remedies of a transferee in such cases are governed entirely by section 1752 of the statutes, and are not within the scope of the Uniform Stock Transfer Act, proper, and therefore not pertinent here.

### RIGHTS OF ATTACHING CREDITORS

The authorities are in irreconcilable conflict upon the question of the right to priority as between attaching creditors of the transferor and the holder of an unrecorded transfer of shares. The conflict, it is said, results from the different views taken by the courts of the nature and purposes of the requirement of a transfer upon the books of a corporation. Practically all the leading text-writers take the position that the purchaser at the execution sale under such an attachment gets no title as against those who have acquired equities under an unrecorded transfer of the shares. (Morawetz Priv. Corp. p. 196; Cook Priv. Corp. p. 381; Pomeroy Eq. Jur. p. 700.) Cook says that "as a general rule it may be said that a purchaser of a certificate of stock is usually protected as fully without a registry on the corporate books as he would be by a registry, so far as subsequent attachments are concerned." This rule is unquestionably settled by the weight of authority, although possibly not by the number of decisions. (Mr. I. H. Hatfield, in 30 *Am. Law Rev.* p223.)

However this may be, it is sufficient for our purposes to know that there is a sharp conflict of authority on this point at common law. The majority rule was sustained in Mass. in construing a statute providing that the delivery of the stock certificate with a written transfer, of, or power of attorney to transfer, the same, shall be a sufficient delivery to transfer the title as against all persons. (222 Mass. 27, 109 N. E. 733, also 89 N. E. 632.) Such a statute (sec. 1751, stats., 1898) was so construed in Wisconsin, it being held that an assignee whose assignment had not been recorded took title superior to the claim of a creditor of the as-

signor under a subsequent attachment. (*Schwab vs. Smith*, 143 Wis. 427.) It is significant that Louisiana, Massachusetts and Wisconsin, having had practically identical statutes, were amongst the first to adopt the Uniform Stock Transfer Act, and affords good authority for saying that under the act, the majority rule is undoubtedly still the law, i. e., that the rights of a transferee of an unrecorded transfer of stock are superior to those of an attaching creditor of the transferrer. Under section 1 of the act, particularly subsec. 2, it is impossible to hold otherwise.

#### RIGHTS OF PURCHASERS FROM APPARENT OWNER

Another point upon which the common law was in great confusion is the effect of unregistered transfers as against purchasers or pledgees from the apparent owner. Some courts hold that a bona fide purchaser of shares at a sale under an execution against one who appears as owner on the books of the corporation acquires a good title as against a prior unregistered transfer of which he has no notice. On the other hand, there are numerous decisions to the effect that the rights of an unregistered transferee are superior to those of a purchaser at an execution or attachment sale even though the latter has no notice of the transfer; in other jurisdictions, the rights of such a purchaser are superior even though he has notice of the prior unregistered transfer. The history of the Wisconsin rule on this point is interesting. The first step is illustrated by the case of *In re Murphy* (51 Wis. 519), which was decided under a former statute providing that no transfer should be valid except as between the parties until entered on the corporate books, and which held that an unregistered transfer was invalid as against subsequent bona fide purchasers from the transferrer. The second step is embodied in the passage of section 1751 (stats. 1898), which provided that the delivery of a stock certificate to a bona fide purchaser for value, together with a written transfer of the same signed by the owner of the certificate, his attorney or legal representative, should be a sufficient delivery to transfer the title as against all persons. Under this statute registration was unnecessary, except perhaps as against the corporation itself. The third step is found in the enactment of the Uniform Stock Transfer Act, particularly sections 1 and 4, which while providing that registration is not necessary (except as against corporation), makes a further provision in section 4 in favor of subsequent bona fide purchasers, the effect of that

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section being to divest the title of a transferee, before the surrender of the certificate to the corporation, by a subsequent transfer to a bona fide purchaser for value, without notice of the prior transfer. A distinction must be made between this case (of a subsequent bona fide purchaser or pledgee) and that of the one immediately preceding (attaching creditor of transferrer), for in the latter case, the creditor fails on attachment, because there is nothing to attach, so far as the stock transferred by the transferrer is concerned, the transfer, by the act, without registration, immediately upon delivery, vesting the legal title in the transferee. While in the former case, the act by express provision safeguards the rights of a subsequent innocent purchaser for value and without notice.

### *FRAUDULENT TRANSFERS*

In every case where the transfer has been caused by fraud, or duress, mistake, or breach of trust, the common law rule that a bona fide purchaser for value without notice, gets no title as against the owner, is obviated, as said before, by the express provisions of the uniform act.

### *PERSONS UNDER LEGAL DISABILITY*

On the other hand, the common law is expressly confirmed in the case of transfers by persons under legal disability, or persons holding some fiduciary position. On this point, the act provides that nothing therein "shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator or other fiduciary, to make a valid indorsement, assignment or power of attorney". And, in general, the substantive law of contracts governing the sale, pledges, mortgages, leases and gifts of stock, are adopted by implication as part of the present law of stock transfers. Such matters as the formation and validity of the contract, consideration and mutuality, statute of frauds, effect of fraudulent representations, admissibility of evidence, conditions, performance, payment, rescission, breach and remedies for breach of contract, are beyond the purview of the act, and not properly within the scope of a discussion upon its effects.

### *CONCLUSION*

In conclusion, it may be said, that the chief result of the passage of the Uniform Stock Transfer Act has been to make stock cer-

tificates practically the exclusive representatives of shares of stock, and to endow such certificates with the characteristic features and qualities of a negotiable instrument. Several striking changes have been made in the status of a bona fide holder for value of a stock certificate, and various more or less important changes have been made, here and there, throughout the act. But by far the greater portion of the common law rules on the subject, is neither modified, nor superseded, but impliedly confirmed. The uniform act, owing to its brevity is but a skeleton of the law, and while it is important to know all that it contains, yet the sparseness of its contents makes it equally important to know the more copious body of rules existing at common law. In fact, this holds true of any act, and as one writer has it, it will always be necessary, in construing codes to resort to the great "superstructure" or "supersoil" of adjudicated case law. "A rich layer of case material already covers the more important codes, and the layer will soon be deep enough to permit students (and practitioners) to work in it with great profit." His caustic comment on the method of looking up statutory law merits repetition: "Whereas the older lawyer, in running down the law, leaves his statute book to the last moment to be consulted, 'just to make sure that they haven't gone and changed the law on us,' younger men are forming the habit of beginning their search in the annotated compiled statute book, and sometimes they don't have to go much further." (Dr. Isaacs, Vol. 4, No. 10, *Am. Law Sch. Review*.) While the quotation has undoubtedly fallen into error, by reason of its universality, yet its moral does seem strong enough to point the way to the proper handling of a proposition involving the construction and application of all codes and uniform state laws.

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