

Publisher's Note 2019 — Release 1

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Law of Cheques and Promissory Notes

The release features updates to the case law and commentary in Chapters 1 (Bills of Exchange), 2 (Cheques), 3 (Promissory Note - Specific Issues), 5 (Constitutionality), 6 (Interpretation of the *Bills of Exchange Act*), 10 (Holder), 14 (Acceptance), 19 (Dishonour), 20 (Evidence), 22 (Forgery and Fraud), 23 (Criminal Code), 28 (Negotiation), and 31 (Recourses). In addition, this release includes excerpts from Regulation 45-106 Respecting Prospectus Exemptions at Appendix 23.

HIGHLIGHTS

Bills of Exchange: Contract and Property — The notation on the memo line of a cheque to the effect that it constitutes payment for discharge of a mortgage constitutes evidence of the purpose of the payment: the parties cannot argue that what was meant in the transaction was an assignment of mortgage, not its discharge. *M Handelman Investments Limited v. Christine Drotos*, 2018 ONSC 7124 (Ont. S.C.J. [Commercial List]).

Interpretation of the Bills of Exchange Act: Constructive Notice not Applicable — Unforeseeability — The defense of unforeseeability has not been applied to cheques and notes. The unforeseeability rule holds that parties can be required to renegotiate a contract if, as a result of

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unforeseen events, performance of the obligations stipulated in the contract would be excessively onerous for one of them. Unforeseeability cannot be relied on where it is clear that the party who was disadvantaged by the change in circumstances had accepted the risk that such changes would occur, and it applies only where the new situation makes the contract less beneficial for one of the parties, and not simply more beneficial for the other. It does not apply where the parties receive the benefits that are provided for or are allocated to them in the contract. The rule is not universally recognized, notably in Quebec civil law. To hold that a change in the circumstances of the parties to a contract will always justify its being renegotiated in the name of equity would conflict sharply with the legislature's intent. Equity is not so malleable that it can be detached from the will of the parties and their common intention. *Churchill Falls (Labrador) Corp. v. Hydro-Québec*, 2018 CSC 46, 2018 SCC 46 (S.C.C.).