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BILLS AND NOTES-THE MEANING OF "NEXT BUSINESS DAY"

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BILLS AND NOTES—THE MEANING OF “NEXT BUSINESS DAY”—Two checks, payable to the plaintiff, were forwarded to the defendant drawee for payment on February 13, 1949. After the close of banking hours on February 14, the defendant telegraphed the presenting bank advising that it would not pay the checks. The applicable Illinois statute¹ allowed banks until the end of the “next business day” following the day of presentation to decide whether or not they would pay checks. The plaintiff argued that “business” qualified “day” and that defendant therefore should have indicated its decision within business hours on the day following the day of presentation, and that since it had not done so there was an implied acceptance. A summary judgment was entered in favor of defendant. On appeal, *held*, affirmed. The phrase “business day” is

¹ Ill. Ann. Stat. (Smith-Hurd, 1935) c. 98, §207a. This provision has since been amended and now provides: “. . . the bank may have until midnight of its next business day after receipt within which to dishonor or refuse payment of such instrument.”

not limited to business hours but contemplates a full twenty-four hour period other than a Sunday or holiday. *Rock Finance Co. v. Central National Bank of Sterling*, (Ill. App. 1950) 89 N.E. (2d) 828.

The phrase "next business day" appears in the Uniform Negotiable Instruments law only in section 194 which provides that if the last day for doing an act falls on a Sunday or holiday it may be done on the next succeeding business day. The principal case accepts the distinction here suggested and makes no attempt to deal with the problem in terms of fractions of days.² However, the concept of a "business day" enters the field of negotiable instruments in more than this limited aspect. Under both the law merchant and the N.I.L. it is a general rule that a check must be presented for payment on the business day next following the day on which the payee received it if he wishes to avoid any loss occasioned by a more retarded presentment.³ This is a judicial construction of the requirement that a check be presented for payment within a reasonable time after its issue.⁴ The day on which presentment is actually made must be limited to banking hours, for presentment generally cannot be made during other hours.⁵ When determining the day on which presentment must be made, the problem of defining "next business day" becomes more acute. When dealing with a payee's duty to present, some courts have held that a business day is concluded at the end of regular business hours. Thus where a check is received by the payee after banking hours it has been held that presentment may be postponed until two days thereafter.⁶ The "next business day" rule, according to these courts, contemplates a prior day on which there was an opportunity to transact business.⁷ A few courts take a more absolute view of the requirement and insist on presentment on the day following the day of issuance.⁸ Where drawee and payee are in the same locale the weight of authority permits the payee to deposit the check with his bank for collection so long as that bank presents it for payment on the following day.⁹ Where payee and drawee are

² This definition is also the one given in 38 WORDS AND PHRASES 455.

³ *Ritchie v. Bradshaw*, 5 Cal. 228 (1855); *Blair v. Wilson*, 28 Gratt (Va.) 165 (1877); *Viles v. S. D. Warren Co.*, 132 Me. 277, 170 A. 501 (1934).

⁴ N.I.L. §186.

⁵ N.I.L. §75 provides: "Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient."

⁶ *Clark v. Davis*, 48 Idaho 214, 281 P. 3 (1929); *Federal Land Bank v. Goodman*, 17 Ark., 489, 292 S.W. 659 (1927); *Zaloom v. Ganin*, 72 Misc. 36, 129 N.Y.S. 85 (1911); *Loux v. Fox*, 171 Pa. 68, 33 A. 190 (1895).

⁷ In *Bistline v. Benting*, 39 Idaho 534, 228 P. 309 (1924), the court said at p. 538: "Since no deposit or presentment can be made after banking hours, the day the check is received should not be counted, if it is received after banking hours."

⁸ *Missouri P. R. Co., v. H. M. Brown Coal Co.*, 226 Mo. App. 1038, 48 S.W. (2d) 86 (1932). This case held that a check issued on a holiday must be presented on the day following the holiday.

⁹ 8 AM. JUR., Bills and Notes §666 et seq. A few jurisdictions cling to the absolute requirement of "next business day" even in this area. See *Rosenblatt v. Haberman*, 8 Mo. App. 486 (1880); *Edminster v. Herpolsheimer*, 66 Neb. 94, 92 N.W. 138 (1901); *Dorchester v. Merchants National Bank*, 106 Tex. 201, 163 S.W. 5 (1914).

distant from each other payee must initiate the process of collection on the day following his receipt of the check.¹⁰ These rules illustrate the elasticity of the "next business day" requirement; this judicially developed elasticity is based on section 193 of the N.I.L. which permits courts to consider the circumstances in determining what constitutes a reasonable time for presentment. Thus, though the phrase "next business day" imports an absolute requirement, courts have used it as merely a convenient yardstick and are quite willing to extend or limit its definition in view of particular fact situations, most of which have received quite thorough exposition by the courts.

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¹⁰ See annotation in 91 A.L.R. 1181 (1934).