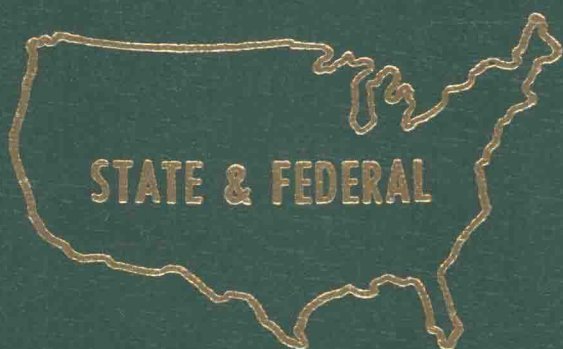


AMERICAN JURISPRUDENCE 2d



ALTERATION OF INSTRUMENTS

APPEAL AND ERROR §§ 1—544

AMERICAN JURISPRUDENCE

SECOND EDITION

A MODERN COMPREHENSIVE TEXT STATEMENT
OF AMERICAN LAW

STATE AND FEDERAL

COMPLETELY REVISED AND REWRITTEN
IN THE LIGHT OF MODERN AUTHORITIES AND DEVELOPMENTS
BY THE EDITORIAL STAFF OF THE PUBLISHERS

VOLUME 4

ALTERATION OF INSTRUMENTS
TO
APPEAL AND ERROR, §§ 1-544

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AMERICAN JURISPRUDENCE

SECOND EDITION

Volume 4

ALTERATION OF INSTRUMENTS

Scope of Topic: This article deals with the physical act of altering written instruments, including a discussion of the materiality and effect of such alterations; particular kinds of alterations, and alterations as to particular matters; the ratification or waiver of, or the estoppel to assert, an alteration; and remedies, practice, and procedure concerning the alteration of instruments.

Treated elsewhere are the alteration or modification of contracts independently of any physical change of the written instrument evidencing the contract (see **BILLS AND NOTES**; **CONTRACTS**; **NOVATION**; **SURETYSHIP**); the authority of the holder of an instrument to fill in blanks intentionally left in the instrument at the time of its execution and delivery (see **BILLS AND NOTES**; **DEEDS**; **MORTGAGES**; **SURETYSHIP**); the alteration of bills of lading (see **CARRIERS**), warehouse receipts (see **WAREHOUSES**), records (see **RECORDS AND RECORDING LAWS**), and wills (see **WILLS**); the recovery back of payments on forged or altered negotiable instruments (see **BANKS**; **BILLS AND NOTES**); and the crimes of forgery (see **FORGERY**) and counterfeiting (see **COUNTERFEITING**).

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I. INTRODUCTORY

§ 1. Definitions and distinctions.

In the ordinary acceptance of the word, an "alteration" is a change of a thing from one form or state to another—that is, making a thing different from what it was, but without destroying its identity;¹ and, as applied to written instruments, the legal meaning of "alteration" is restricted to that particular kind of a change in the sense or language which is effected by an act purposely done on an instrument by the party entitled to it,² and does not include such an act done by one who is a stranger to the instrument.³

1. *Selligman v Von Allmen Bros.* 297 Ky 121, 179 SW2d 207 (structural alteration); *Smith v Barnes*, 51 Mont 202, 149 P 963; *Davenport v Magoon*, 13 Or 7, 4 P 299 (stipulation in lease as to alteration of leased building); *Linney v State*, 6 Tex 2 (alteration of cattle brand).

2. *Francis v Hughes*, 217 Miss 377, 64 So 2d 351; *Smith v Barnes*, 51 Mont 202, 149 P 963; *Wicker v Jones*, 159 NC 102, 74 SE 801; *James Employees Credit Union v Hawley*, 2 Wis 2d 490, 87 NW2d 299.

3. § 14, *infra*.

An alteration of a written instrument, in the legal sense, is distinguished from a spoliation thereof in that a spoliation is a change made accidentally or unintentionally,⁴ or by one having no beneficial interest in the instrument,⁵ which does not invalidate it or change the rights or liabilities of the parties in interest, so long as the original writing remains legible.⁶

§ 2. What law governs.

A question of conflict of laws, where involved in the determination of a question of materiality and effect of an alteration in a written instrument, must be determined by the general principles governing conflict of laws as applied to contracts. In this regard, while it may be said generally that the validity of a contract is governed by the law of the place where made,⁷ this question becomes complicated when the contract is made in one jurisdiction and is to be performed in another, and many conflicting rules and theories have been applied by the courts.⁸ Furthermore, in applying these rules to negotiable instruments a distinction must be made between the contract of the primary obligor and that of the secondary obligor—that is, between the contract of the maker of a note or the acceptor of a bill of exchange and that of the drawer of a bill of exchange or the indorser of a negotiable instrument.⁹

Specifically, with regard to the alteration of instruments, it has been held that the law of the state in which a note is dated, made payable, and subsequently discounted applies to the validity of the note, but that the law of the state in which a note is indorsed and altered applies with regard to the contingent liability of the indorser as affected by a subsequent alteration of the instrument.¹⁰ A federal court, in passing upon the question of liability on an altered instrument under the terms of a local statute, will follow the decisions of the state courts, where the instrument was executed and negotiated within the state, although drawn on a bank in another state.¹¹

Under the provisions of the Uniform Commercial Code, the parties to a multistate transaction may agree upon the state whose law is to govern their rights and duties; and in the absence of such an agreement, the Uniform Commercial Code applies to transactions bearing an appropriate relation to the state in which it is enacted.¹²

4. § 19, *infra*.

5. §§ 14, et seq., *infra*.

6. *Bridges v Winters*, 42 Miss 135; *Smith v Barnes*, 51 Mont 202, 149 P 963.

Practice Aids.—Instruction to jury as to what constitutes, and effect of, spoliation. 1 AM JUR PL & PR FORMS 1:1015.

7. See CONFLICT OF LAWS (1st ed § 117).

Conveyances of real estate, however, are governed exclusively by the laws of the state where the land is situated. See CONFLICT OF LAWS (1st ed § 31).

8. See CONFLICT OF LAWS (1st ed §§ 116-119).

9. See BILLS AND NOTES (1st ed, CONFLICT OF LAWS §§ 144 et seq.).

10. *Colonial Nat. Bank v Duerr*, 108 App Div 215, 95 NYS 810.

11. *Savings Bank v National Bank* (CA4) 3 F2d 970, 39 ALR 1374.

12. Uniform Commercial Code § 1-105(1).

Generally as to provisions of Uniform Commercial Code governing the alteration of negotiable instruments, see §§ 6, 12, 28, *infra*.

For a table of jurisdictions which have adopted the Uniform Commercial Code, see AM JUR 2d DESK BOOK, Document 130 (and Supp.).

For table of prior uniform acts showing relevant sections in Uniform Commercial Code, see AM JUR 2d DESK BOOK, Document 131.

II. EFFECT OF ALTERATION; FACTORS CONSIDERED

A. IN GENERAL

§ 3. Generally; kinds of instruments.

The general rules as to the effect of unauthorized alterations in written instruments were originally applied only to deeds, and appear to have been founded on the solemn character of sealed instruments as evidence. The doctrine was later extended to bills of exchange, and was finally held to apply indiscriminately to all written instruments conveying title to property or evidencing legal rights or obligations.¹³

§ 4. Materiality of alteration, generally.

It is now¹⁴ the settled general rule that an alteration of an instrument, in order to have a vitiating effect, must be material;¹⁵ or, stated conversely, that an immaterial alteration of an instrument does not affect its validity.¹⁶ This general rule is recognized under both the Uniform Negotiable Instruments Act and the Uniform Commercial Code.¹⁷

§ 5. — What constitutes material alteration.¹⁸

Generally speaking, any alteration of an instrument is material which destroys the identity of the instrument or of the contract evidenced thereby, or which so changes its terms as to give it a different legal effect from that which

13. *Vanauken v Hornbeck*, 14 NJL 182; *Newell v Mayberry*, 30 Va (3 Leigh) 250.

The same rule as to alteration applies to negotiable promissory notes as to other instruments. *Wilson v Hayes*, 40 Minn 531, 42 NW 467.

As to alteration of wills, see WILLS (1st ed §§ 508 et seq.).

14. According to the early English doctrine, any alteration of an instrument, however immaterial, if made by the payee or obligee of such instrument, would avoid it. *Lewis v Payn*, 8 Cow (NY) 71; *Wicker v Jones*, 159 NC 102, 74 SE 801. In some jurisdictions in the United States in early cases it was sought to hold rigidly to this doctrine. But these cases either have been expressly or impliedly overruled, or have not been followed, or have been superseded by statute. (As to the present law, see the discussion following in this and the next succeeding sections.)

15. *Fordyce v Kosminski*, 49 Ark 40, 3 SW 892; *Harris v Jacksonville Bank*, 22 Fla 501, 1 So 140; *Vogle v Ripper*, 34 Ill 100; *Cypress Creek Coal Co. v Boonville Min. Co.* 194 Ind 187, 142 NE 645; *Cushing v Field*, 70 Me 50; *Mitchell v Ringgold*, 3 Harr & J (Md) 159; *White Sewing Mach. Co. v Dakin*, 86 Mich 581, 49 NW 583; *Herrick v Baldwin*, 17 Minn 209; *Bridges v Winters*, 42 Miss 135; *Bank of Moberly v Meals*, 316 Mo 1158, 295 SW 73; *Gleason v Hamilton*, 138 NY 353, 34 NE 283; *Wicker v Jones*, 159 NC 102, 74 SE 801; *Newman v King*, 54 Ohio St 273, 43 NE 683; *Manufacturers' & M. Bank v Follett*, 11 RI 92; *Sawyer v National F. Ins. Co.* 53 SD 228, 220 NW 503, 61

ALR 306; *Bank of Tennessee v Funding Board*, 84 Tenn (16 Lea) 46; *Reed v Roark*, 14 Tex 329; *McClure v Little*, 15 Utah 379, 49 P 298; *Newell v Mayberry*, 30 Va (3 Leigh) 250; *James Employees Credit Union v Hawley*, 2 Wis 2d 490, 87 NW2d 299.

The early English doctrine was modified, even in the time of Lord Coke, to the extent that the alteration must be material, and that the question as to the time when made should be submitted to a jury. In 2 Co Litt 225b, it is said that "of ancient time, if the deed appeared to be rased or interlined in places material, the judges adjudged upon their view the deed to be void; but of latter time the judges have left that to the jurors to try whether the rasing or interlining were before the delivery." *Wicker v Jones*, 159 NC 102, 74 SE 801.

Practice Aids.—Instructions to jury as to materiality of alteration and as to effect of material alteration. 1 AM JUR PL & PR FORMS 1:1008-1:1010.

16. *Van Horn v Bell*, 11 Iowa 465; *Bridges v Winters*, 42 Miss 135; *Reed v Roark*, 14 Tex 329.

If a negotiable instrument is altered in some immaterial particular, the liability of the parties on the instrument is not affected. *Palmer v Largent*, 5 Neb 223.

17. Uniform Negotiable Instruments Act §§ 124, 125; Uniform Commercial Code § 3-407.

18. As to negotiable instruments generally, see § 6, *infra*.