

Banks Can't Own Property

CASE LAW

Official source for United States laws is the Statute at Large and the United States Code is only *prima facie* evidence of such laws. Royer's Inc. v United States

Statute at Large are "Legal evidence" of laws contained therein and are accepted proof of these laws in any court of the United States. Bear v United States (1985 DC Neb) 611

Unless Congress affirmatively enacts title of United States Code into law, title is only prima facie evidence of law. Preston v Heckler (1984 CA9 Alaska) 734 F2d, 1359, 34CCH FPD34433, later proceeding (1984 DC Alaska) 596 F Supp 1158

Where title has not been enacted into positive law, title is only prima facie or rebuttable evidence of law, and if construction is necessary, recourse may be had to original statute

National banking corporations are agencies or instruments of the general government, designed to aid in the administration of an important branch of the public service, and are an appropriate constitutional means to that end. Pollard v State, Ala 1880, 65 Ala 628
See, also, Tarrant v. Bessemer Nat Bank 1913, 61 So 47, 7 Ala App 285

A national bank cannot lend its credit or become the guarantor of the obligation of another unless it owns or has an interest in the obligation guaranteed especially where it receives no benefits therefrom. Citizens' Nat Bank of Cameron v Good Roads Gravel Co. Tex Civ App. 1921 236 SW 153 dismissed w.o.j

A national bank has no power to guarantee the performance of a contract made for the sole benefit of another. First National Bank v Crespi & Co. Tex Civ App 1920 217 SW 705

National banks have no power to negotiate loans for others. Pollock v Lumberman's Nat Bank of Portland Or 1917 168 P 616 86 Or 324

A national bank cannot act as a broker in lending its depositors' money to third persons. Byron v First Nat Bank of Roseburg, Or 195 146 P 516 75 Or 296

A national bank is not authorized to act as a broker in loaning the money of others. Grow v Cockrill, Ark. 1897, 39 S W 60, 63 Ark 418. See, also, Keyser v Hitz Dist of Col 1883 2 Mackey 513

Officers of a national bank in handling its funds are acting in a **fiduciary capacity**, and cannot make loans and furnish money contrary to law or in such improvident manner as to imperil its funds. First Nat Bank v Humphreys Okla 1917 168 P 410, 66 Okla 186

Representations made by bank president to proposed surety as to borrower's assets, in connection with proposed loan by bank, held binding on the bank. Young v Goetting, CCA. 5 (Tex) 1926, 16 F 2d 248

Bank is liable for its vice president's participation in scheme to defraud depositor by facilitating prompt withdrawal of his money. National City Bank v Carter CCA6 (Tenn) 1926 F2d 940

Wheeler v Sohmer, Comptroller of the State of New York
Promissory notes are only evidences of debt not debt themselves!
12 USC 3754

59 CJS § 2 Mortgages Definitions

"The literal meaning of the word "mortgage" is "dead pledge" a mortuum vadium. The term mortgage may be employed as meaning the debt secured by the mortgage, but in its true sense an ordinary mortgage is not a debt as the debt is the principle obligation, and the mortgage is generally regarded as merely an incident or accessory to the debt. A mortgage is an interest in the land created by a written instrument providing security for the performance of a duty or payment of debt and is usually evidenced by a note.

Where did the money come from that they say is owed?
How does the bank have a right to say that there's an obligation?

References:

Caddy v Cortide NY
Testy v Collons
Baker v Citizen State Bank of Louis Park
US v Stanley
Corbin on Contracts (void contracts)
Statue of Frauds

Contract Cases

Nothing can be more material to the obligation than the means of enforcement, without the remedy the contract may indeed, in the sense of law may be said to not

exist. And its obligation to fall within the class of those moral and social duties which depend for their fulfillment wholly upon the will of the individual the ideas of validity and remedy are inseparable and both are parts of the obligation which is guaranteed by the Constitution against invasion. The obligation of a contract “is the law which binds the parties to perform their agreement”Red Cross Line v Atlantic Fruit Company 264 US 109 L Ed 582, 44 S. Ct. February 18, 1924

It is essential to the creation of a contract that there be a mutual or reciprocal assent. Sanford v Abrams (1888) 24 Fl 181, So. 373. Ross v Savage (1913) 66 Fl 106, 63 So. 148; Mc Cay v Sever (1929) 98 Fla 710, 24 So. 44; United State Rubber Products, Inc. v Clark (1941) 145 Fla 631, 200 So. 385, Mann v Thompson (1958) Fla. App D1 100 So. 2d 634

That the assent be to a certain and definite proposition. Fincher v Belk-Sawyer Co. (1961) Fla App D3 127 So. 2d 130. Goff v Indian Lake Estates, Inv. (1965 Fla. App D2) 178 So.2d 910, Hewitt v Price (1969, Fla App D3) 222 So. 2d 247

Without a meeting of the minds of the parties on an essential element, there can be no enforceable contract Hettenbaugh v Keyes Ozon – Fincher Ins. Inc. 1962 Fla App D3) 147 So. 2d 328, Goff v Indian Lake Estates, Inc. (1965 Fla App D2) 178 So. 2d 910

What are the elements? What is it? What does it do? How does it perform? What’s going to happen later? Can it be used later? Was that fully disclosed? Each and every element there has to be a meeting of the minds! UCC

In order to form a contract, the parties must have a distinct understanding, common to both, and without doubt or difference. Unless all understand alike, there can be no assent, and therefore no contract. Webster Lumber Co v Lincoln (1927) 94 Fla1097, 115 So. 498, Minsky’s Follies of Florida, Inc. v Sennes (1953 206 F2d 1 O’neil Corporate Trustees, Inc. (1967) 376 F2d 818.

Until the terms of the agreement have received the assent of both parties, the negotiation is open and imposes no obligation on either. Goff v Indian lake Estates Inc. (1965 Fla App D2) 178 So. 2d 910. Car v Duvall (1840) 39 US 77, 10 L. Ed 361

The assent of each party must be freely given; a contract entered into as a result of the exercise of duress or undue influence by the other party, or procured by the fraud of one of the parties, lacks the essential element of real assent and maybe avoided by the injured party. Wall v Bureau of Lathing and Plastering (1960 Fla App D3) 117 So. 2d 767.

An actual assent by the parties upon exactly the same matters is indispensable to the formation of the contract. *Bullock v Hardwick* (1947) 158 Fla 834, 30 So. 2d 539; *Hettenbaugh v. Keyes Ozon-Fincher Ins. Inc.* 1962 Fla App D3) 147 So 2d 328
General Finance Corp v Stratton 1963 Fla App D1, 156 So 2d 884

Title 12 Chap 17§1841 and §1813
CFR 6000 FDIC-Bank Holding Company Act
12 CFR 25,12 BANKS AND BANKING, Sec. 25.12 Definitions
12 USC Chap 3 Subchap 1 Sec. 222; 1811 and 501a; 21

Title 62 Revised Statues

Title 12> Chapter 17> Sec. 1841

Sec. 1841 – Definitions

(c) Bank Defined –

For purposes of this chapter – In general-

(A)

An insured bank as defined in section 3(h) of the Federal Deposit Insurance Act
12 USC 1813 (h)

(B)

An institution organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, the American Samoas, or the Virgin Islands which **both-**

(i) accepts demand deposits or deposits that the depositor may withdraw by checks or similar means for payment to third parties or others and –

(ii) is engaged in the business of making commercial loans

Title 12> Chapter 17> Sec. 1813 – Definitions

As used in this chapter –

(a) Definition of Bank and Related Terms –

(1) Bank –

The term “bank”

(A) means any national bank, State, and District bank, any Federal branch and insured branch;

(B) includes any former saving association that –

(i) has converted from saving association charter; and

(ii) is a Savings Association Insurance Fund member

(Smell test)

1. USC matches what I’m thinking

2. Make sure the courts agree on what I'm thinking
3. UCC matches
4. Also want to make sure that it matches with the intent of Congress

CFR – 6000 BANK HOLDING COMPANY ACT

c) BANK DEFINED – FOR PURPOSES OF THIS Act-

- 1, IN GENERAL - Except as provided in paragraph (2), the term “**bank**” means **any** of the following:
 - (A) **An insured bank** as defined in section 3***h**) of the Federal Deposit Insurance Act.
 - (B) **An insured organization** under the laws of the United States any State of the United States, the District of Columbia any territory of the United States, Puerto Rico, Guam, the American Samoa, or the Virgin Islands which both –
 - (i) **Accepts demand deposits or deposits that the depositor may withdraw** by checks or similar means for payment to third parties or others and –
 - (ii) **Is engaged in the business of making commercial loans**

12 CFR 25.12 BANKS AND BANKING , Sec. 23.12 Definitions

(e) Banks means national bank (including a federal branch as defined in part 28 of this chapter) with Federally insured deposits, except as provided in Sec. 25.11(C)

12 CFR Sec. 25.11

(c) Scope – (1) General, This part applies to all banks, **except** as provided in paragraphs (c)(2) and (c)(3) of this section.

(c)(2) Federal branches and agencies. (1) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from acquisition described in section 5 (a)(8) of the International Banking Act of 1978 12USC3103(a)(8)
(c)(3) (3) Certain special purpose banks. This part does not apply to special purpose banks that **do not perform commercial or retail banking services by granting credit to the public** in the ordinary course of business, other than as incident to their specialized operations. These banks include banker’s bank, as defined in 12USC24(Seventh), and the banks engage only in one or more of the following activities: **providing cash management controlled Disbursements services or serving as correspondent banks, trust companies, or clearing agents.**

**12 USC Chapter 3 Subchapter 1 Sec 222
 Federal reserve districts; membership of national banks**

The continental United States, excluding Alaska, shall be divide into not less than eight no more than twelve districts. Such districts may be readjusted and new districts from time to time be created by the Board of Governors of the Federal Reserve System, not to exceed twelve in all: Provided that the districts shall be apportioned with due regard to the convenience and customary course of business and shall not necessarily coterminous with any State or States.