

1983

Franchise Law—Third-party Assignee of Franchisor Subject to All Defenses Available to Franchisee—Chase Manhattan Bank v. Clusiau Sales & Rental, Inc., 308 N.W.2d 490 (Minn. 1981)

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**Recommended Citation**

(1983) "Franchise Law—Third-party Assignee of Franchisor Subject to All Defenses Available to Franchisee—Chase Manhattan Bank v. Clusiau Sales & Rental, Inc., 308 N.W.2d 490 (Minn. 1981)," *William Mitchell Law Review*: Vol. 9: Iss. 2, Article 12.  
Available at: <http://open.mitchellhamline.edu/wmlr/vol9/iss2/12>

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The main thrust of Justice Wahl's dissent is that the policy considerations, which led to the formulation of the *Robinson* standard requiring clear and compelling evidence that the substantial welfare of the child necessitates the name change, should not be applicable when a parent seeks to change the child's surname so that no natural parent's name would be eliminated but rather both names would form the child's surname.<sup>37</sup> Thus, Justice Wahl contended that the *Robinson* standard imposes an undue burden on the petitioner when the proposed name change adds a natural parent's name rather than eliminates a natural parent's name.<sup>38</sup>

The *Saxton* decision is important for its elucidation of the factors which a trial court may consider in granting or denying a minor's name change.<sup>39</sup> The ultimate test for the name change of a minor is still the best interests of the child.<sup>40</sup> Nonetheless, where all of the policy interests may be harmonized, for example by allowing a change of the minor's name to a hyphenated combination of both natural parents' surnames, the burden of proof should be easier for the petitioning parent. The majority of the court, however, still maintains that a child's name will not be changed over the objection of a natural parent unless clear and compelling evidence that the substantial welfare of the child necessitates the change.<sup>41</sup>

**Franchise Law—THIRD-PARTY ASSIGNEE OF FRANCHISOR SUBJECT TO ALL DEFENSES AVAILABLE TO FRANCHISEE—*Chase Manhattan Bank v. Chusiau Sales & Rental, Inc.*, 308 N.W.2d 490 (Minn. 1981).**

Franchising is a twentieth century phenomenon.<sup>1</sup> Except for some recently enacted state statutes,<sup>2</sup> there is little common law or statutory law

37. 309 N.W.2d at 302.

38. *See id.* Justice Wahl continues:

In this situation, instead of being required to show that the name change is necessary for the substantial welfare of the child, the petitioner should be required to show only that the name change promotes the child's best interests. Thus, a change of the minor's surname would be appropriate where the change is beneficial for the child, even though the given name is not detrimental to the child's well-being.

*Id.* at 302-03.

39. *See supra* note 26 and accompanying text.

40. *See supra* notes 20-27 and accompanying text.

41. 309 N.W.2d at 301.

1. *See generally* C. ROSENFELD, *THE LAW OF FRANCHISE* (1970) (discussion of history of franchise law). The years from 1910 to 1940 witnessed the growth of franchise systems, especially in the automobile industry and soft drink bottling industry. *Id.* at 37.

2. *See* MINN. STAT. §§ 80C.01-.22 (1982); *see also* ARK. STAT. ANN. §§ 70-807 to -826 (1979); CAL. CORP. CODE §§ 31000-31516 (West 1971 & Supp. 1977); CONN. GEN. STAT. ANN. §§ 42-133 to -133n (West Supp. 1981); DEL. CODE ANN. tit. 6, §§ 2551-53 (Supp. 1980); FLA. STAT. ANN. § 817.416 (West Supp. 1975); HAWAII REV. STAT. §§ 482E-1 to

dealing with the special problems of the franchise relationship.<sup>3</sup> In *Chase Manhattan Bank v. Clusiau Sales & Rental, Inc.*,<sup>4</sup> the Minnesota Supreme Court held that an exclusive dealership agreement was a franchise within the meaning of the Minnesota Franchise Act,<sup>5</sup> and that the overtures made to defendant's president were an offer of an unregistered franchise entitling<sup>6</sup> the defendant to remedies provided by the Act.<sup>7</sup> The court also held that a lease executed contemporaneously with the franchise was part of the franchise agreement<sup>8</sup> and refused to enforce a clause in the lease waiving any defenses against an assignee that the franchisee might have against the franchisor.<sup>9</sup>

Defendant, Clusiau Sales & Rental, Inc., executed an exclusive dealership agreement with Scotti Muffler Company to operate a Scotti Muffler center for the sale and installation of mufflers and pipes.<sup>10</sup> The agreement was a franchise as defined by the Minnesota Franchise Act.<sup>11</sup> It was undisputed that Scotti did not comply with the registration require-

-12 (1974 & Supp. 1981); ILL. ANN. STAT. ch. 121-1/2, §§ 701-40 (Smith-Hurd Supp. 1979); N.J. STAT. ANN. §§ 56:10-1 to -15 (West Supp. 1981); N.D. CENT. CODE §§ 51-19-01 to -17 (Supp. 1981); OR. REV. STAT. §§ 650.005-.170 (1981); R.I. GEN. LAWS ANN. §§ 19-28-1 to -15 (Supp. 1981); S.D. COMP. LAWS ANN. §§ 37-5A-1 to -87 (1974 & Supp. 1981); VA. CODE ANN. §§ 13.1-557 to -574 (Supp. 1981); WASH. REV. CODE ANN. §§ 19.100.010 to -.940 (1971 & Supp. 1981); WIS. STAT. ANN. §§ 553.01-.78 (West 1974 & Supp. 1981).

3. Note, *Regulation of Franchising*, 59 MINN. L. REV. 1027, 1028-29 (1975).

4. 308 N.W.2d 490 (Minn. 1981).

5. *Id.* at 492.

6. *Id.* at 493. The statute states that "[n]o person may offer or sell any franchise in this state unless there is an effective registration statement on file in accordance with the provisions of sections 80C.01 to 80C.22 or unless the franchise or transaction is exempted under section 80C.03." MINN. STAT. § 80C.02 (1982); see also *Martin Investors, Inc. v. Vander Bie*, 269 N.W.2d 868, 875 (Minn. 1978) (construing "offer").

7. "A person who violates any provisions of sections 80C.01 to 80C.13 and 80C.15 to 80C.22 or any rule thereunder shall be liable to the franchisee or sub-franchisor who may sue for damages caused thereby, for rescission, or other relief as the court may deem appropriate." See MINN. STAT. § 80C.17, subd. 1 (1982).

8. 308 N.W.2d at 493.

9. *Id.* at 494.

10. *Id.* at 492. The agreement granted Clusiau the right to operate a Scotti Muffler Center, employing the "Scotti System" and utilizing trade secrets, special signs, equipment, advertising, and other business procedures. See *id.*

11. MINN. STAT. § 80C.01, subd. 4 (1982). A franchise is defined by MINN. STAT. § 80C.01, subd. 4 (1982) which provides in part:

"Franchise" means a contract or agreement, either express or implied, whether oral or written, for a definite or indefinite period, between two or more persons:

(1) by which a franchisee is granted the right to engage in the business of offering or distributing goods or services using the franchisor's trade name, trademark, service mark, logotype, advertising, or other commercial symbol or related characteristics;

(2) in which the franchisor and franchisee have a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise; and

(3) for which the franchisee pays, directly or indirectly, a franchise fee.

ments of Minnesota Statute sections 80C.04-.05,<sup>12</sup> but plaintiff, Chase Manhattan Bank, contended that Clusiau failed to prove that Scotti had offered or sold a franchise in Minnesota.<sup>13</sup>

The court noted that an offer in the strictest sense of contract law need not be shown under the Minnesota Franchise Act.<sup>14</sup> Under the Act, offer is defined as “every attempt to offer to dispose of, and every solicitation of an offer to buy a franchise or interest in a franchise for value.”<sup>15</sup> Thus Scotti’s telephone call from its Miami office to Minnesota asking defendant to consider becoming a Scotti dealer was an offer.<sup>16</sup>

Clusiau signed a lease contemporaneously with the franchise agreement<sup>17</sup> for rental of pipebending equipment.<sup>18</sup> The lease contained a provision waiving all claims or defenses against any assignee of the lessor.<sup>19</sup> Subsequently, Scotti assigned the lease to Chase Manhattan Bank, which brought suit to recover amounts due under the lease.<sup>20</sup> The bank argued that its position was similar to a holder in due course because of the waiver provision, and Clusiau could only assert those defenses available against a holder in due course.<sup>21</sup> The trial court

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The *Clusiau* court held that the dealership agreement “clearly [met] the criteria specified in the statute.” 308 N.W.2d at 492.

12. 308 N.W.2d at 493. Most states which have enacted franchise legislation have a registration requirement compelling disclosure of information to protect prospective franchisees. See CAL. CORP. CODE § 31110 (West Supp. 1975); HAWAII REV. STAT. § 482E-3 (Supp. 1981); ILL. ANN. STAT. ch. 121-1/2, § 705 (Smith-Hurd Supp. 1979); MINN. STAT. § 80C.02 (1982); N.D. CENT. CODE § 51-19-03 (Supp. 1981); OR. REV. STAT. § 650-010 (1981); R.I. GEN. LAWS § 19-28-5 (Supp. 1981); S.D. COMP. LAWS ANN. § 37-5A-16 (Supp. 1981); VA. CODE ANN. § 13.1-560 (Supp. 1981); WASH. REV. CODE ANN. § 19.100.140 (Supp. 1981); WIS. STAT. ANN. § 553.21 (West Supp. 1981). Violations of disclosure provisions give a franchisee a cause of action for damages in California, Hawaii, Illinois, Minnesota, North Dakota, Rhode Island, South Dakota, Washington, and Wisconsin. See CAL. CORP. CODE § 31300 (West Supp. 1977); HAWAII REV. STAT. § 482E-9 (Supp. 1981); ILL. ANN. STAT. ch. 121-1/2, § 721(1) (Smith-Hurd Supp. 1979); MINN. STAT. § 80C.17 (1982); N.D. CENT. CODE § 51-19-12 (Supp. 1981); R.I. COMP. LAWS § 19-28-9 (Supp. 1981); S.D. COMP. LAWS ANN. § 37-5A-85 (Supp. 1981); WASH. REV. CODE ANN. § 19.100.210 (Supp. 1981); WIS. STAT. ANN. § 553.26 (West Supp. 1981).

13. 308 N.W.2d at 493; see MINN. STAT. § 80C.19, subd. 2 (1982). The franchise must be offered or sold in Minnesota for the protections of the act to be available. For the purposes of §§ 80C.01 to 80C.22 “an offer to sell . . . is made in this state . . . when the offer originates from this state or is directed by the offeror to this state and received by the offeree in this state.” MINN. STAT. § 80C.19, subd. 2 (1982) (emphasis added).

14. See 308 N.W.2d at 493. The court had previously rejected a strict contractual reading of the statute in an earlier case. See *Martin Investors, Inc. v. Vander Bie*, 269 N.W.2d at 873-74.

15. MINN. STAT. § 80C.01, subd. 16 (1982).

16. 308 N.W.2d at 493.

17. *Id.* at 493; see *infra* note 28.

18. *Id.* at 490.

19. *Id.* at 493.

20. *Id.* at 490.

21. *Id.* at 494. The defenses a party may assert against a holder in due course are

determined that Clusiau was entitled to rescind the lease because Scotti violated the registration requirements of the Minnesota Franchise Act. Chase Manhattan Bank appealed.<sup>22</sup>

The Minnesota Supreme Court affirmed the trial court, holding that to allow the bank to enforce the waiver of defenses clause would circumvent the registration requirement in the Franchise Act and would adversely affect the remedial reach of the statute.<sup>23</sup>

The bank's contentions that it had commercially recognized rights as a holder in due course and that waiver of defense provisions are commercially recognized under the Uniform Commercial Code (UCC) are not without merit in the proper context.<sup>24</sup> But within the context of franchising, public policy protects franchisees who, typically, have less commercial sophistication and bargaining power.<sup>25</sup> Although the bank relied heavily upon the UCC to define its interests as a holder in due course and to support the general respectability of waivers of defenses, the court based its decision on the policies underlying the franchise statute.<sup>26</sup>

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limited to infancy, other incapacity, duress, or illegality of the transaction. *See* MINN. STAT. § 336.3-305, subd. 2(b) (1982).

22. 308 N.W.2d at 490-91.

23. *Id.* at 494.

24. *See* Holt v. First Nat'l Bank, 297 Minn. 457, 460-61, 214 N.W.2d 698, 700 (1973). With respect to UCC public policy, where two equally innocent parties are involved and the party bearing a loss is aware of a well-known risk, harsh applications of the UCC need not be mitigated, although harsh results are not favored.

25. *See* H. BROWN, FRANCHISING REALITIES AND REMEDIES 34 (2d ed. 1978); Note, *supra* note 3, at 1035-36. Typically, a franchisor will take on a franchisee with absolutely no prior experience in exchange for the franchisee's agreement to run the franchise "by the book." If the franchisee fails to run his shop according to every letter detail, he may be subject to at least a partial forfeiture of his investment, regardless if going by the book makes no business sense and causes the franchisee to lose his own money.

26. Other jurisdictions have enforced waiver of defense clauses protecting the assignee. The South Dakota Supreme Court concluded in *J.I. Case Credit Corp. v. Skjoldal*, 296 N.W.2d 514 (S.D. 1980), that "[c]ourts have generally held waiver of defense clauses enforceable in commercial transactions involving sale of equipment when there is no showing of financier involvement in the sale sufficient to constitute lack of good faith or establish that the financier had notice of a claim or defense." *Id.* at 517. The Wisconsin case which the plaintiff in *Clusiau* relied on to enforce the waiver of defense clause is distinguishable from the Minnesota court's decision because the Wisconsin court found no evidence of a dealership agreement similar to the one determined in the Minnesota case. *See* Chase Manhattan Bank v. Foster Pontiac, Inc., 94 Wis. 2d 694, 289 N.W.2d 372 (1976). In *National Bank of North America v. Deluxe Poster Co.*, 51 A.D.2d 582, 378 N.Y.S.2d 462 (1976), the New York Supreme Court relied on the UCC's enforcement of waiver of defense clauses in § 9-206 and appeared to grant the assignee of a lease the status of a holder in due course. In *ITT Indus. Credit v. Milo Concrete Co.*, 31 N.C. App. 450, 229 S.E.2d 814 (1976), the North Carolina Court of Appeals did not grant the assignee of a retail installment contract the status of holder in due course, but nevertheless held the assignee free of all defenses because he took the assignment for value, in good faith, and without notice of claims or defenses. *See also* Westinghouse Credit Corp. v. Chapman, 129 Ga. App. 830, 201 S.E.2d 686 (1973).

After establishing that the dealership agreement was a franchise agreement,<sup>27</sup> and that the lease, executed contemporaneously with the dealership agreement, was part of that agreement,<sup>28</sup> the court held that the assignee of the franchisor, Chase Manhattan Bank, was in no better position than the franchisor, Scotti.<sup>29</sup> A franchisee, stated the court, is afforded by the Act the right to have the entire agreement declared void *ab initio* if the agreement was issued in violation of the Act's registration requirements.<sup>30</sup> Thus, because a franchisor who has violated the statute cannot avoid the franchisee's right of rescission,<sup>31</sup> neither can the assignee avoid that right.<sup>32</sup> The court reasoned that to allow an assignee to assert the waiver of defense clause and thus avoid the remedies provided for in the statute is "contrary to public policy."<sup>33</sup> A contrary decision would unreasonably narrow the remedial reach of the franchise statute.<sup>34</sup>

There is a disqualification provision within the franchise statute barring attempts by a franchisor to evade requirements set out by the Act.<sup>35</sup> If Scotti had attempted to evade the statute directly by resorting to provisions making the statute inapplicable to its Clusiau dealership, the statute itself would thwart such a maneuver. The disqualification provision supports the holding in *Clusiau* in that the franchisor used the lease as-

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27. See *supra* note 11 and accompanying text.

28. 308 N.W.2d at 493. "The parties' obligation to enter the lease was set forth in the dealership agreement." *Id.*; see *Koch v. Han-Shire Invs., Inc.*, 273 Minn. 155, 165, 140 N.W.2d 55, 62 (1966). The *Koch* court stated "that where instruments relating to the same transaction are executed at the same time and for the same purpose, they will be read together and each will be construed with relation to the other unless the parties stipulate otherwise." *Id.* at 161, 140 N.W.2d at 62; see also, *First & Lumbermen's Nat'l Bank of Chippewa Falls v. Buchholz*, 220 Minn. 97, 102-03, 18 N.W.2d 771, 774 (1945).

29. See 308 N.W.2d at 494.

30. *Id.*

31. See MINN. STAT. § 80C.17, subd. 1 (1982); cf. *Peck of Chehalis, Inc. v. C.K. of W. Am., Inc.*, 304 N.W.2d 91 (N.D. 1981). Three months prior to the *Clusiau* decision the Supreme Court of North Dakota held that failure to register a franchise offer in violation of franchise law (N.D. CENT. CODE § 51-19-03 (Supp. 1981)) did not automatically entitle the franchisee to rescission of the agreement. North Dakota's franchise legislation is substantially the same as Minnesota's. Both give broad equitable powers to the court to grant rescission or other relief which the court may deem appropriate. Compare N.D. CENT. CODE § 51-19-12 (Supp. 1981) with MINN. STAT. § 80C.17 (1982). In *Peck*, however, the North Dakota court determined that simply because rescission appears in a statute as a remedy available to the franchisee, more than a mere showing of a violation of the franchise law is necessary to consider the agreement unlawful at its inception. 304 N.W.2d at 98. The *Peck* court concluded that, at a minimum, the franchisee must overcome equitable defenses of the franchisor to be entitled to the rescission remedy. *Id.* at 101.

32. See 308 N.W.2d at 493-94.

33. *Id.* at 494.

34. *Id.*

35. See MINN. STAT. § 80C.21 (1982). The statute reads: "Any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of sections 80C.01 to 80C.22 or any rule or order thereunder is void." *Id.*

signment and waiver of defenses to indirectly skirt local liability. The provision against evasion of the statute thus justifies the court's nonrecognition of the franchise assignment and waiver of defenses.<sup>36</sup>

Chase Manhattan Bank also suggested that it could be a qualified holder in due course<sup>37</sup> as an assignee whose interest in the lease would not be nullified by a collapse of the primary agreement between the original parties.<sup>38</sup> But the court disposed of this prospect on the ground that the effect of the remedy of rescission is to extinguish a rescinded contract so effectively that in contemplation of law it never existed.<sup>39</sup> Here, Scotti's power to assign the lease itself would have been a nullity, giving the bank no rights against Clusiau. The court could find an exception to the effects of franchise rescission only if there were no evidence of a dealership subject to Minnesota's franchise statutes.<sup>40</sup>

The court's holding in *Clusiau* breaks new ground in interpreting the scope of the Minnesota Franchise Act, but is essentially consistent with prior holdings in which courts have protected franchisees from abuses by the franchise industry.<sup>41</sup> Tension created by the case, if any, comes from its possible impact upon unsuspecting third parties. Nothing in the case, however, indicates that third parties would not also have a cause of action, like a franchisee, against a franchisor acting in violation of the statute.<sup>42</sup>

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36. See also 308 N.W.2d at 494. The court also noted that the Commissioner of Securities and Real Estate had recently promulgated a regulation proscribing the use of waiver of defense clauses. *Id.* at 494 n.2.

37. 308 N.W.2d at 494; see MINN. STAT. § 336.3-305 (1982). Section 336.3-305 sets out the rights of a holder in due course. To be a holder in due course, the person or entity must be: (1) a holder (2) of a negotiable instrument who took it (3) for value (4) in good faith (5) without notice of any defense. See MINN. STAT. § 336.3-302 (1982). See generally J. WHITE & R. SUMMERS, HANDBOOK OF THE LAW UNDER THE UNIFORM COMMERCIAL CODE § 14-2 (2d ed. 1980).

38. Several other jurisdictions have allowed a qualified holder in due course status. See cases cited *supra* note 26.

39. See *Koch v. Han-Shire Invs., Inc.*, 273 Minn. 155, 167, 140 N.W.2d 55, 63 (1966).

40. See 308 N.W.2d at 494 (citing *Chase Manhattan Bank v. Foster Pontiac, Inc.*, 94 Wis. 2d 694, 289 N.W.2d 372 (1979)). In *Foster Pontiac*, the Wisconsin Supreme Court held that the waiver of defense clause in a similar lease between the same franchisor and the bank was valid. The case was distinguished in that there was no evidence of a dealership agreement subject to Wisconsin's franchise statute. See 308 N.W.2d at 494.

41. See, e.g., *Principe v. McDonald's Corp.*, 463 F. Supp. 1149, 1152 (E.D. Va. 1979). Failure to comply with provisions of state regulation makes a franchisor subject to statutory remedies, notwithstanding remedies that may have been available outside the statute. See also *Martin Investors, Inc. v. Vander Bie*, 269 N.W.2d 868, 869 & 876 (Minn. 1978). Typically, rescission and equitable relief have been applied through Minnesota's Franchise Act, but penalties and civil damages are acceptable alternatives. See MINN. STAT. §§ 80C.16 & 80C.17, subd. 1 (1982). The applied goals of the Act have been deterrence and restoration of an abused franchisee to a position similar to that which he occupied before any franchise agreement was entered.

42. See MINN. STAT. §§ 80C.17, subd. 1, 80C.18, 80C.19 (1982). The scope of the remedies provided by the Act is broadly defined, and expandable via regulations.

By focusing upon remedies and public policy to construe the Minnesota Franchise Act and apply it to the facts of *Clusiau*, the court has provided adequate relief without unduly controlling commercial law. It has refined the public policy scope of the Minnesota Franchise Act without limiting it to a tortured construction of the UCC.<sup>43</sup> As long as the dealership agreement between the contracting parties can be shown to fit within the definitional parameters of a franchise,<sup>44</sup> the policy behind the Minnesota Franchise Act covers every part of the agreement and those responsibilities and duties integral or ancillary to it.<sup>45</sup>

Notwithstanding other decisions to the contrary,<sup>46</sup> the holding in *Clusiau*<sup>47</sup> reflects the trend of limiting assignee rights,<sup>48</sup> and increasing judicial skepticism of the validity of waiver of defense clauses.<sup>49</sup> The decision is also in accord with the basic legislative intent to protect the franchisee in situations of unequal bargaining power.<sup>50</sup>

**Hearsay Evidence**—ADMISSIBILITY AT CRIMINAL TRIALS OF *EX PARTE* STATEMENTS WHERE DECLARANT IS UNAVAILABLE—*State v. Hansen*, 312 N.W.2d 96 (Minn. 1980).

Hearsay evidence<sup>1</sup> is generally inadmissible in court.<sup>2</sup> To be admissible at trial, testimony usually must meet three requirements: the declarant must be under oath,<sup>3</sup> the declarant must be present at trial,<sup>4</sup> and the

43. See *supra* note 39 and accompanying text. The UCC supplements local rules without necessarily replacing them. Chase Manhattan did not qualify itself as a holder in due course by a formal application of the definitional criteria.

44. See MINN. STAT. § 80C.01, subd. 4 (1982).

45. See generally H. BROWN, *supra* note 25, at 32-51.

46. See cases cited *supra* note 26.

47. 308 N.W.2d at 490.

48. Comment, *Sales: Minnesota Statute Regulates Consumer Notes and Limits Rights of Assignee*—Minn. Stat. § 325.940-.941 (1971), 56 MINN. L. REV. 510 (1972).

49. Comment, *Uniform Commercial Code—Assignments—Conditional Sales Contracts—Waiver of Defense Clauses*, 58 KY. L.J. 850, 856-57 (1970). For a contrary argument, see Gilmore, *The Assignee of Contract Rights and His Precarious Security*, 74 YALE L.J. 217, 231-33 (1964).

50. Note, *supra* note 3.

1. Hearsay is defined in MINN. R. EVID. 801(c) as “[a] statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” See also C. MCCORMICK, *HANDBOOK OF THE LAW OF EVIDENCE* § 246 (2d ed. 1972 & Supp. 1978).

2. For an indepth analysis of the hearsay rule, see 5 J. WIGMORE, *EVIDENCE IN TRIAL AT COMMON LAW* § 1364 (Chadbourn rev. ed. 1974).

3. See C. MCCORMICK, *supra* note 1, § 245, at 582.

The oath may be important in two aspects. As a ceremonial and religious symbol it may induce in the witness a feeling of special obligation to speak the truth, and also it may impress upon the witness the danger of criminal punishment for perjury, to which the judicial oath or equivalent solemn affirmation would be a prerequisite condition.