

Chapter 25: The Function and Creation of Negotiable Instruments

Evelyn Gaspar and Stephannie Obioha
Law 1 Jordan



What are negotiable instruments?

- “A negotiable instrument is a signed writing (or electronic record) that contains an unconditional promise or order to pay an exact amount, either on demand or at a specified future time.
- Also known as “commercial paper”

Types:

- Drafts
- Checks
- Notes
- Certificates of deposit

Demand v. Time Instrument

- A demand instrument is payable immediately after it is issued and thereafter a reasonable period of time while a time instrument is payable to a future date



Requirements for Negotiability

To be considered “negotiable”, an instrument must be:

- In writing
- Signed by the maker, drafter or drawer
- An unconditional promise or order to pay
- State a fixed amount of money
- Payable on demand or at a definite time
- Payable to order or to bearer



Drafts and Checks (Orders to Pay)

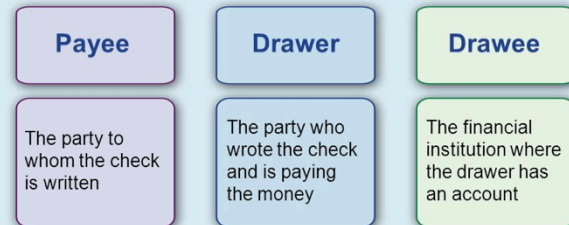
- A **draft** is an unconditional written order that involves three parties
- The party creating the draft (**the drawer**) orders another party (**the drawee**) to pay money, usually to a third party (**the payee**)

Time Drafts and Sight Drafts

- **Acceptance** is the drawee's written promise to pay the draft when it comes due

The Parts of a Check

There are three parties named on a check.



Trade Acceptances



- A **trade acceptance** is a type of draft that is frequently used in the sale of goods
- In a trade acceptance, the seller of the goods is both the drawer and the payee
- When a draft orders the buyer's bank to pay, it is called a **banker's acceptance**
- Banker's acceptances are commonly used in international trade

Checks

- The most commonly used type of draft is a **check**

Promissory Note:

Tender in terms of the Bills of Exchange Act 34 of 1964 as amended up to Bills of Exchange Amendment Act 56 of 2000. AND Settlement in terms of High Court Rule 45(8)(a)

This Promissory NOTE was issued at:

(Place)

Date: _____

AMOUNT: _____ (in numbers)
AMOUNT: _____ (written)

This certifies that
I, _____, ID Number: _____

Hereby promise to pay _____ (HOLDER) the full amount specified,
on this NOTE, for value received.

Terms & Conditions

Date _____ Signature _____

Promissory Notes (Promises to Pay)

- A **promissory note** is a written promise made by one person (the **maker** of the promise) to pay another (usually a payee) a specified sum

Used As A Credit Device

- A note that may be secured by personal property and is referred to as a collateral note
- Property pledged as security for the satisfaction of a debt is called collateral
- A note payable in installments is called an installment note

Certificates of Deposit (Promises to Pay)

- A **certificate of deposit (CD)** is a type of note issued when a party deposits funds with a bank, and the bank promises to repay the funds, with interest, on a certain date

What happens when a negotiable instrument is lost?

Silicon Valley Bank v. Miracle Faith World Outreach, Inc.

Court held: “A bill or note is not a debt; it is only primary evidence of a debt; and where this is lost, impaired or destroyed bona fide, it may be supplied by secondary evidence.” Copy was in fact accurate and sufficient to evident the terms of the note.



THE END