

NEGOTIABLE INSTRUMENTS LAW

MEMORY AID

BASED ON THE OUTLINE OF THE 1994 EDITION OF CAMPOS & CAMPOS

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DEFINITIONS

NEGOTIABLE INSTRUMENT

- Written contract for the payment of money, by its form intended as substitute for money and intended to pass from hand to hand to give the holder in due course the right to hold the same and collect the sum due

PROMISSORY NOTE

- unconditional promise in writing made by one person to another signed by the maker
- engaging to pay on demand, or at a fixed or determinable future time a sum certain in money to order or to bearer
- where a note is drawn to the maker's own order, it is not complete until indorsed by him

BILL OF EXCHANGE

- unconditional order in writing addressed by one person to another signed by the person giving it
- requiring the person to whom it's addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer
- **check:** bill of exchange drawn on a bank payable on demand. Kinds of checks:
 1. personal check
 2. manager's/cashier's check – drawn by a bank on itself. Issuance has the effect of acceptance
 3. memorandum check – "memo" is written across its face, signifying that drawer will pay holder absolutely without need of presentment
 4. crossed check –
 - effects:
 - a. check may not be encashed but only deposited in bank
 - b. may be negotiated only once, to one who has an acct. with a bank

- c. warning to holder that check has been issued for a definite purpose so that he must inquire if he received check pursuant to such purpose, otherwise not HDC

- kinds:
 - a. general (no word between lines, or "co" between lines)
 - b. special (name of bank appearing between parallel lines)

BEARER

Person in possession of a bill/note payable to bearer

HOLDER

Payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

THE LIFE OF A NEGOTIABLE INSTRUMENT:

1. issue
2. negotiation
3. presentment for acceptance in certain bills
4. acceptance
5. dishonor by on acceptance
6. presentment for payment
7. dishonor by nonpayment
8. notice of dishonor
9. protest in certain cases
10. discharge

NEGOTIABILITY

REQUISITES

1. in writing and signed by maker or drawer

- no person liable on the instrument whose signature does not appear thereon (subject to exceptions)
- one who signs in a trade or assumed name liable to the same extent as if he had signed in his own name
- signature of any party may be made by a duly authorized agent, no particular form of appt. necessary

2. unconditional promise or order to pay

- unqualified order or promise to pay is unconditional though coupled with
 - a. an indication of a particular fund out of which reimbursement to be made, or a particular account to be debited with amount, or
 - b. a statement of the transaction which gives rise to the instrument
- an order or promise to pay out of a particular fund is not unconditional

a sum certain in money

- even if stipulated to be paid---
 - a. with interest, or
 - b. by stated installments, or

- c. by stated installments with a provision that upon default in payment of any installment/interest, the whole shall become due, or
- d. with exchange, whether at a fixed rate or at the current rate, or
- e. with costs of collection or an attorney's fee, in case payment not made at maturity

3. payable on demand,

- when expressed to be payable on demand, or at sight, or on presentation;
- when no time for payment expressed, or
- where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand

or at a fixed or determinable future time

- when it's expressed to be payable at a fixed period after date or sight, or
- on or before a fixed or determinable future time fixed therein, or
- on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain
- an instrument payable upon a contingency not negotiable, and happening of event doesn't cure it

* relate to sec. 11 (presumption as to date) and sec. 17 (construction where instrument ambiguous)

* note effect of acceleration provisions, p. 30 Campos

* note effect of provisions extending time of payment, p. 40 Campos

4. payable to order

- where it is drawn payable to the order of a specified person or to him or his order. May be drawn payable to order of ---
 - a. a payee not the maker/drawer/drawee, or
 - b. drawer or maker, or
 - c. drawee, or
 - d. two or more payees jointly, or
 - e. holder of an office for time being
- when the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty

or bearer,

- when expressed to be so payable
- when payable to person named therein or bearer

- when payable to order or fictitious/non-existent person, and such fact known to the person making it so payable, or
 - when name of payee doesn't purport to be the name of any person, or
 - when the only/last indorsement is in blank
5. where addressed to drawee: such **drawee named/ indicated therein with reasonable certainty**
- bill may be addressed to two or more drawees jointly, whether partners or not, but not to two or more drawees in the alternative or in succession
 - bill may be treated as a PN, at option of holder, where
 - a. drawer and drawee are same person
 - b. drawee is fictitious/incapacitated

EFFECT OF ADDITIONAL PROVISIONS

Gen. Rule: order/promise to do any act in addition to the payment of money renders instrument non-negotiable.

Exception: negotiability not affected by provisions w/c

1. authorize sale of collateral security if instrument not paid at maturity
2. authorize confession of judgment...
3. waives benefit of any law intended for advantage/protection of obligor
4. give holder election to require something to be done in lieu of money

CONTINUATION OF NEGOTIABLE CHARACTER

Until

1. restrictively indorsed
2. discharged by payment or otherwise

TRANSFER

DELIVERY

- NI incomplete and revocable until delivery for the purpose of giving effect thereto
- as between
 - a. immediate parties
 - b. a remote party other than holder in due coursedelivery, to be effectual, must be made by or under the authority of the party making/drawing/accepting/indorsing
- in such case delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument

PRESUMPTION OF DELIVERY

Where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved (**if in the hands of a HDC, presumption conclusive*)

NEGOTIATION

- When an instrument is transferred from one person to another as to constitute the transferee the holder thereof.
- If payable to BEARER, negotiated by delivery; if payable to ORDER, negotiated by indorsement of holder + delivery

INDORSEMENT

- Indorser generally enters into two contracts:
 1. sale or assignment of instrument
 2. to pay instrument in case of default of maker
- Sec. 31 (how indorsement made)
- Sec. 41 (where payable to two or more)
- Sec. 43 (indorsement where name misspelled)
- Sec. 48 (cancellation of indorsement)
- Sec. 45, 46 (presumptions)
- Indorsement must be of entire instrument. (can't be indorsement of only part of amount payable, nor can it be to two or more indorseees severally. But okay to indorse residue of partially paid instrument)
- Sec. 67 (liability of indorser where paper negotiable by delivery)
- Sec. 63 (when person deemed indorser)

KINDS OF INDORSEMENT

- A. as to manner of future method of negotiation
1. special – specifies the person to whom/to whose order the instrument is to be payable; indorsement of such indorsee is necessary to further negotiation.
 2. Blank – specifies no indorsee, instrument so indorsed is payable to bearer, and may be negotiated by delivery
- the holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement
- B. as to kind of title transferred
1. restrictive
 - prohibits further negotiation of instrument,
 - constitutes indorsee as agent of indorser, or
 - vests title in indorsee in trust for another
 - rights of indorsee in restrictive ind.:
 - receive payment of inst.
 - Bring any action thereon that indorser could bring

- Transfer his rights as such indorsee, but all subsequent indorseees acquire only title of first indorsee under restrictive indorsement
2. non-restrictive
- C. as to kind of liability assumed by indorser
1. qualified-constitutes indorser as mere assignor of title (eg. "without recourse")
 2. unqualified
- D. as to presence/absence of express limitations put by indorser upon primary obligor's privileges of paying the holder
1. conditional – additional condition annexed to indorser's liability.
 - Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether condition has been fulfilled or not
 - Any person to whom an instrument so indorsed is negotiated will hold the same/proceeds subject to rights of person indorsing conditionally
 2. unconditional

INDORSEMENT OF BEARER INST.

- Where an instrument payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery
- Person indorsing specially liable as indorser to only such holders as make title through his indorsement

UNINDORSED INSTRUMENTS

- Where holder of instrument payable to his order transfers it for value without indorsing, transfer vests in transferee
 1. such title as transferor had therein
 2. right of tranferee to have indorsement of transferor
- for purposes of determining HDC negotiation effective upon actual indorsement

HOLDER IN DUE COURSE

HOLDER

Sec. 191

RIGHTS OF HOLDER

1. sue thereon in his own name
2. payment to him in due course discharges instrument

HOLDER IN DUE COURSE: REQUISITIES

1. complete and regular upon its face
 - sec. 124 (effect of alteration)
 - sec. 125 (what constitute material alterations)

2. holder became such before it was overdue, without notice of any previous dishonor
 - sec. 53 (demand inst. nego after unreasonable length of time: not HDC)
 - sec. 12 (effect antedating/postdating)
3. taken in good faith and for value
 - sec. 24 (presumption of consideration)
 - sec 25 (definition. of value)
 - sec. 26 (definition. holder for value)
 - sec. 27 (lien as value)
4. at time negotiated to him, he had no notice (sec. 56-def; 54-notice before full amt. paid) of ---
 - a. infirmity in instrument
 - b. defect in title of person negotiating
 1. instrument/signature obtained through fraud, etc., illegal consideration/means, or
 2. instrument negotiated in breach of faith, or fraudulent circumstances

RIGHTS OF HOLDER IN DUE COURSE

1. holds instrument free of any defect of title of prior parties
2. free from defenses available to prior parties among themselves
3. may enforce payment of instrument for full amount, against all parties liable

* if in the hand of any holder (note definition of holder) other than a HDC, vulnerable to same defenses as if non-negotiable

RIGHTS OF PURCHASER FROM HOLDER IN DUE COURSE

General Rule: in the hands of any holder other than a HDC, NI is subject to same defenses as if it were non-negotiable.

Exception: holder who derives title through HDC and who is not himself a party to any fraud or illegality has all rights of such former holder in respect to all parties prior to the latter.

WHO DEEMED HDC

- prima facie presumption in favor of holder
- but when shown that title of any person who has negotiated instrument was defective (sec. 55—when title defective): burden reversed (now with holder)
- but no reversal if party being made liable became bound prior to acquisition of defective title (i.e., where defense is not his own)

DEFENSES AND EQUITIES

KINDS OF DEFENSES

1. real defense – attaches to instrument; on the principle that the right sought to be enforced never existed/there was no contract at all
2. personal defense – growing out of agreement; renders it inequitable to be enforced vs. defendant

DEFENSES

1. **INCAPACITY:** real; indorsement/assign by corp/infant: passes property but corp/infant no liability
2. **ILLEGALITY:** personal, even if no K because void under CC 1409
3. **FORGERY:** real (lack of consent):
 - a. forged
 - b. made without authority of person whose signature it purports to be

General Rule:

- a. wholly inoperative
- b. no right to retain instrument, or give discharge, or enforce payment vs. any party, can be acquired through or under such signature (unless forged signature unnecessary to holder's title)

Exception:

unless the party against whom it is sought to enforce such right is precluded from setting up forgery/want of authority precluded:

- a. parties who make certain warranties, like a general indorser or acceptor
- b. estopped/negligent parties

* *note rules on Acceptance/Payment Under Mistake as applied to:*

1. *overdraft*
2. *stop payment order*
3. *forged indorsements*

4. MATERIAL ALTERATION

- Where NI materially altered w/o assent of all parties liable thereon, avoided, except as vs. a
 1. party who has himself made, authorized or assented to alteration
 2. and subsequent indorsers.
- But when an instrument has been materially altered and is in the hands of a HDC not a party to the alteration, HDC may enforce payment thereof according to orig. tenor
- Material Alteration
 1. change date
 2. sum payable, either for principal or interest
 3. time of payment
 4. number/relations of parties

5. medium/currency of payment, adds place of payment where none specified, other change/addition altering effect of instrument in any respect

**material alteration a personal defense when used to deny liability according to org. tenor of instrument, but real defense when relied on to deny liability according to altered terms.*

6. FRAUD

- a. fraud in execution: real defense (didn't know it was NI)
- b. fraud in inducement: personal defense (knows it's NI but deceived as to value/terms)

7. DURESS

- Personal, unless so serious as to give rise to a real defense for lack of contractual intent

8. COMPLETE, UNDELIVERED INSTRUMENT

- Personal defense (sec. 16)
- If instrument not in poss. Of party who signed, delivery prima facie presumed
- If holder is HDC, delivery conclusively presumed

9. INCOMPLETE, UNDELIVERED INSTRUMENT

- Real defense (sec. 15)
- Instrument will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery

10. INCOMPLETE, DELIVERED

- Personal defense (sec. 14)
- 2 Kinds of Writings:
 1. Where instrument is wanting in any material particular: person in possession has prima facie authority to complete it by filing up blanks therein
 2. Signature on blank paper delivered by person making the signature in order that the paper may be converted into a NI: prima facie authority to fill up as such for any amount
- In order that any such instrument, when completed, may be enforced vs. any person who became a party thereto prior to its completion:
 1. must be filled up strictly in accordance w/ authority given
 2. within a reasonable time
- but if any such instrument after completion is negotiated to HDC, it's valid for all purposes in his hands, he

may enforce it as if it had been filled up properly

LIABILITIES OF PARTIES

A. PRIMARY PARTIES

- Person primarily liable: person who by the terms of the instrument is absolutely required to pay the same.
- Sec. 70 (effect of want of demand on principal debtor)

1. Liability of Maker

- a. Promises to pay it according to its tenor
- b. admits existence of payee and his then capacity to indorse

2. Status of drawee prior to acceptance or payment

- sec. 127 (bill not an assignment of funds in hands of drawee)
- sec. 189 (when check operates as assignment)

3. Liability of Acceptor

- Promises to pay inst according to its tenor
- Admits the following:
 - a. existence of drawer
 - b. genuineness of his signature
 - c. his capacity and authority to draw the instrument
 - d. existence of payee and his then capacity to endorse
- sec. 191, 132, 133, 138 --- formal requisites of acceptance
- sec. 136, 137, 150 --- constructive acceptance
- sec. 134, 135 --- acceptance on a separate instrument
- Kinds of Acceptance:
 1. general
 2. qualified
 - a. conditional
 - b. partial
 - c. local
 - d. qualified as to time
 - e. not all drawees

* sec. 142 (rights of parties as to qualified acceptance)

• Certification: Principles

1. when check certified by bank on which it's drawn, equivalent to acceptance
2. where holder of check procures it to be accepted/certified, drawer and all indorsers discharged from all liability
3. check not operate as assignment of any part of funds to credit of drawer with bank, and bank is not liable to holder, unless and until it accepts or certifies check

4. certification obtained at request of drawer: secondary parties not released
5. bank which certifies liable as an acceptor
6. checks cannot be certified before payable

B. SECONDARY PARTIES

1. Liability of Drawer

- a. Admits existence of payee and his then capacity to endorse
 - b. Engages that on due presentment instrument will be accepted, or paid, or both, according to its tenor and that
 - c. If it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to an subsequent indorser who may be compelled to pay it
- drawer may insert in the instrument an express stipulation negating / limiting his own liability to holder

2. Liability of Indorsers:

- **Qualified Indorser and one Negotiating by Delivery**

- a. Instrument genuine, in all respects what it purports to be
- b. good title
- c. all prior parties had capacity to contract
- d. he had no knowledge of any fact w/c would impair validity of instrument or render it valueless
 - in case of negotiation by delivery only, warranty only extends in favor of immediate transferee

- **Liability of a General or Unqualified Indorser**

- a. instrument genuine, good title, capacity of prior parties
- b. instrument is at time of indorsement valid and subsisting
- c. on due presentment, it shall be accepted or paid, or both, according to tenor
- d. if it be dishonored, and necessary proceedings on dishonor be duly taken, he will pay the amt. To holder, or to any subsequent indorser who may be compelled to pay it

- **Order of Liability among Indorsers**

1. among themselves: liable prima facie in the order they indorse, but proof of another agreement admissible
2. but holder may sue any of the indorsers, regardless of order of indorsement
3. joint payees/indorsees deemed to indorse jointly and severally

4. Liability of Accomodation Party

- Definition: one who signed instrument as maker/drawer/acceptor/ indorser w/o receiving value thereof, for the purpose of lending his name to some other person
- AP liable on the instrument to holder for value even if holder, at time of taking instrument, knew he was only an AP
- Liability of **Irregular Indorser**

- Where a person not otherwise a party to an instrument, places thereon his signature in blank before delivery, he's liable as an indorser, in accordance w/ these rules:

1. Instrument payable to order of 3rd person: liable to payee and to all subsequent parties
2. Instrument payable to the order of maker/drawer, or payable to bearer: liable to all parties subsequent to maker/drawer
3. Signs for accommodation of payee, liable to all parties subsequent to payee

- Sadaya v Sevilla Rules:

1. a joint and several accommodation maker of a negotiable promissory note may demand from the principal debtor reimbursement for the amt. That he paid to the payee
2. a joint and several accommodation maker who pays on the said promissory note may directly demand reimbursement from his co-accommodation maker without first directing his action vs. the principal debtor provided:
 - a. he made the payment by virtue of a judicial demand
 - b. or the principal debtor is insolvent

4. Liability of an Agent

- Signature of any party may be made by duly authorized agent, establish as in ordinary agency
- Where instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, he is not liable on the instrument if he was duly authorized, but the mere addition of words describing him as an agent without disclosing his principal, does not exempt from personal liability.
- Signature per procuracy operates as notice that the agent has but a limited authority to sign, and the principal is bound on ly in case the agent in so signing acted within the actual limits of his authority
- Where a broker or agent negotiates an instrument without indorsement, he incurs all liabilities in Sec. 65, unless he discloses name of principal and fact that he's only acting as agent

I. Presentment For Acceptance

When presentment for acceptance must be made

1. bill payable after sight, or in other cases where presentment for acceptance necessary to fix maturity
2. where bill expressly stipulates that it shall be presented for acceptance
3. where bill is drawn payable elsewhere than at residence / place of business of drawee

When failure to present releases drawer/indorser

Failure to present for acceptance of negotiate bill of exchange within reasonable time

Reasonable Time

Must consider

1. nature of instrument
2. usage of trade or business with respect to instrument
3. facts of each case

How and When Made Sec. 145, 146, 147

When Excused Sec. 148

Dishonor and Effects

- sec. 149 (when dishonored by non-acceptance)
- sec. 150 (duty of holder where bill not accepted)
- sec. 151 (rights of holder where bill not accepted)
- sec. 89 (to whom notice of dishonor must be given)
- sec. 117 (effect of omission to give notice of non-acceptance)

II. For Payment

Where necessary Sec. 70

Where not necessary Sec. 79, 80, 82, 151, 111

Date and time of presentment of instrument bearing fixed maturity Sec. 71, 85, 86, 194

Date of presentment

- Where instrument not payable on demand: presentment must be made on date it falls due
- Where payable on demand: presentment must be made within reasonable time after issue, except that in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after last negotiation (*but note: though reasonable time from last negotiation, it may be unreasonable time from issuance thus holder may not be HDC under sec. 71*)

- Check must be presented for payment within reasonable time after its issue or drawer will be discharged from liability thereon to extent of loss caused by delay

Delay excused Sec. 81

Manner Sec. 74, 72, 75

Place Sec. 73

To Whom Sec. 72, 76, 77, 78

Dishonor by nonpayment Sec. 83, 84

Notice of Dishonor

General rule: to drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged

Form, Contents, Time Sec. 95, 96, 102, 103, 104, 105, 106, 108, 113

By Whom Given

- By or on behalf of the holder or any party to the instrument who may be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given
- Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not
 - Where instrument has been dishonored in hands of agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal (as if agent an independent holder)

In whose favor notice operates

1. when given by/on behalf of holder: insures to benefit of
 - a. all subsequent holders and
 - b. all prior parties who have a right of recourse vs. the party to whom it's given
2. where notice given by/on behalf of a party entitled to give notice: insures for benefit of
 - a. holder, and
 - b. all parties subsequent to party to whom notice given

Waiver Sec. 109, 110

Where not necessary to charge drawer

1. drawer/drawee same person
2. drawee fictitious, incapacitated
3. drawer is person to whom instrument is presented for payment
4. drawer has no right to expect/require that drawee/acceptor will honor instrument
5. drawer countermanded payment

Where not necessary to charge indorser

1. drawee fictitious, incapacitated, and indorser aware of the fact at time of indorsement

2. indorser is person to whom instrument presented for payment
3. instrument made/accepted for his accommodation

Protest

Definition: testimony of some proper person that the regular legal steps to fix the liability of drawer and indorsers have been taken

When necessary: sec. 152,
Form and contents: sec. 153
By whom made: sec. 154
Time and Place: sec. 155, 156
For better security: sec. 158
Excused: sec. 159
Waiver: sec. 111

Acceptance for Honor

Sec. 161, 131, 171

Bills in Set: 178-183

DISCHARGE

A. Of the Instrument

1. payment in due course by or on behalf of principal debtor
 - Payment in due course:
 1. made at or after maturity
 2. to the holder thereof
 3. in good faith and without notice that his title is defective
2. payment in due course by party accommodated where party is made/accepted for accommodation
3. intentional cancellation by holder
 - if unintentional or under mistake or without authority of holder, inoperative. Burden of proof on party which alleges it was unintentional, etc.
4. any other act which discharges a simple contract
5. principal debtor becomes holder of instrument at or after maturity in his own right
6. renunciation of holder:
 - holder may expressly renounce his rights vs. any party to the instrument, before or after its maturity
 - absolute and unconditional renunciation of his rights vs. principal debtor made at or after maturity discharges the instrument
 - renunciation does not affect rights of HDC w/o notice.
 - Renunciation must be in writing unless instrument delivered up to person primarily liable thereon
7. material alteration (sec. 124: material alteration w/o assent of all parties liable avoids instrument except as against

party to alteration and subsequent indorsers)

B. Of secondary parties

1. any act which discharges the instrument
2. intentional cancellation of signature by holder
3. discharge of prior party
4. valid tender of payment made by prior party
5. release of principal debtor, unless holder's right of recourse vs. 2ndary party reserved
6. any agreement binding upon holder to extend time of payment, or to postpone holder's right to enforce instrument, unless made with assent of party secondarily liable, or unless right of recourse reserved.
8. Failure to make due presentment (sec. 70, 144)
9. failure to give notice of dishonor
10. certification of check at instance of holder
11. reacquisition by prior party
 - where instrument negotiated back to a prior party, such party may reissue and further negotiate, but not entitled to enforce payment vs. any intervening party to whom he was personally liable
 - where instrument is paid by party secondarily liable, it's not discharged, but
 - a. the party so paying it is remitted to his former rights as regard to all prior parties
 - b. and he may strike out his own and all subsequent indorsements, and again negotiate instrument, except
 - where it's payable to order of 3rd party and has been paid by drawer
 - where it's made/accepted for accommodation and has been paid by party accommodated