

# NEGOTIABLE INSTRUMENTS

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Common Law of Contracts: reasonable expectations

**Old Common Law**

all assignments and delegations  
violate the parties reasonable expectations.

**New Common Law: freedom of assignment**

Most delegations  
violate reasonable expectations

Most assignments  
do **not** violate reasonable expectations

However, each party is material  
in a personal services contracts.

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**INSTRUMENTS**

specialized contract that accepts all third parties

requirements of an instrument

must be **on the face** of the instrument

writing

signed by maker or drawer

any mark

with the current intent to

authenticate the document

unconditional promise or order to pay

payable to order or bear

fixed amount of money

on demand or a definite time

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**TRANSFER**

assignment per general contract  
negotiation  
transferee becomes a holder

Unlike an assignment,  
a holder **may** have more rights than prior owner  
if the holder becomes a **Holder in Due Course**.

To **ISSUE** (first delivery) an instrument is  
**not** a **NEGOTIATION**, but recipient may be a holder.

Negotiation of Order Paper by **indorsement**.  
Negotiation of Bearer Paper by delivery.

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**on back of instrument**

**indorsements**  
qualified  
restrictive

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**HDC: Holder in Due Course**

**holder**  
for **value**  
not = consideration

**in good faith**  
recall three types  
use merchant's for instruments

**and**  
**without notice**  
overdue  
dishonor  
claims **or**  
defenses

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**Defenses**  
**personal**  
voidable  
good against holder  
see page 471  
**universal** (or real)  
good against HDC  
void  
see page 470

**H t HDC:** **Holder through a HDC**  
may sell HDC status  
but **not** reacquisition  
notice ok, but not fraud

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**FTC 3-day rule**  
if consumer and if in home,  
then no HDC status until after 3 days  
during which time consumer may revoke

**consumer** = natural person

**SIGNATURE LIABILITY**  
**primary**  
no one is primarily liable on a check  
**secondary**  
drawer and indorsers  
**accommodation**

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**authorized agents**  
whose signature is it?  
**disclosed?**  
full  
partial  
undisclosed

ratify  
estoppel due to negligence

**unauthorized indorsements**  
**imposter**  
induced = authorized to make/draft  
**fictitious payee**  
employer liable

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**WARRANTIES**

transfer

see page 484

presentment

see page 485

discharge

check collection process

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**CHECKS AND THE BANKING SYSTEM**

Commercial paper: draft v. check  
cashier's check

**BANK (debtor) - CUSTOMER (creditor)  
RELATIONSHIP**

honor checks

wrongful dishonor

missing indorsements

stop-payment orders

oral = 14 days

written = 6 months stale

stale checks 6 months

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**COLLECTION PROCESS**

depository bank

intermediary bank

payor bank

collecting bank

**HDC = Holder in Due Course**

for value

in good faith

without notice of claims or defenses

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**deferred posting**

midnight of next business day

**Expedited Funds Availability Act of 1987**

bank places a hold on deposited checks

within one business day first \$100

if local,  
then within two business days next \$400

ATMs holds are different  
if nonproprietary,  
then 6 days OK on all deposits

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**ELECTRONIC FUND TRANSFERS = EFTS**

Automatic Teller Machines: ATM

Point of Sale Systems: POTS

Direct Deposit and Withdrawals

Pay by Telephone Systems

**Consumer Transfers:** Electronic Fund Transfer  
Act of 1978

a **disclosure law** to benefit consumers

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**liability**

unauthorized transfer:

\$ 50 if **notify** within two days

\$500 if **not notify** within two days

how to report loss

charges

**right to see**

error correction

if bank fails to investigate in good faith,  
then treble damages

preauthorized transfers at regular intervals,  
automatic

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**EFTA**  
stop payment,  
but not reverse payment  
  
does not address commercial transactions  
  
applies to EFTS by financial institutions  
  
liability for all damages proximately caused

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**EFTA EXCEPTIONS**  
  
insufficient funds  
legal process  
credit limit  
ATM out of cash  
beyond institution's control  
  
Actual damages  
and  
punitive damages of \$100 to \$1,000  
  
Federal Reserve Regulation E implements EFTA

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**LENDER LIABILITY**  
a dynamic area of law  
  
**POTENTIAL COMMON LAW LIABILITY**  
  
Breach of Contract  
loan applications and negotiations  
loan commitments  
terminating loan agreements  
acceleration clauses  
UCR good faith requirement

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**LENDER LIABILITY** a dynamic area of law  
**POTENTIAL COMMON LAW LIABILITY**

**Tort**

- Negligence
- Wrongful Interference
- Excessive Control

**Fraud**

- if seek rescission,  
then may not have an "injury"
- if fiduciary relationship,  
then innocent misrepresentations

**Duress**

**Breach of the Duty of Good Faith**

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**POTENTIAL STATUTORY LIABILITY**  
state and federal environmental laws

**CERCLA**

Comprehensive Environmental Response,  
Compensation and Liability Act of 1980.

if partake in management,  
then liable

exercise **actual management authority**  
that results in the discharge of hazardous waste

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