

NEGOTIABLE INSTRUMENTS

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 contract.**

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

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**.

on back of instrument

indorsements
qualified
restrictive

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

Defenses

personal
voidable
good against holder, but not HDC

universal (or real)
void
good against HDC

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

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

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

WARRANTIES
transfer

presentment

discharge

check collection process

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

COLLECTION PROCESS

depository bank
intermediary bank
payor bank
collecting bank

H D C = Holder in Due Course
for value
in good faith
without notice of claims or defenses

deferred posting
midnight of next business day

LENDER LIABILITY

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
- UCC good faith requirement

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

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

SECURED TRANSACTIONS

CREDITOR - DEBTOR RELATIONS

STATE LAWS

Mechanic's Lien	real property
Artisan's Lien	personal property
Attachment	prejudgment
Garnishment	
Foreclosure	
Suretyship (primary)	
Guaranty (secondary)	
defenses	
rights:	subrogation
	reimbursement
	contribution

State Protection of Debtors

Homestead exemption

Truth in Lending Act: disclosure

UCC

far fewer States than UCC
usury
disclosure
cap garnishment,
3 day revocation of in home sales
FTC rule delaying attainment of
HDC status on consumer note

SECURED TRANSACTIONS

Security Interest

written agreement or possession
debtor sign
describe collateral
to grant and
to allocate ownership interests
debtor has rights to collateral

PMSI: Purchase Money Security Interest

Perfection

possession
necessary for some collateral
e.g., bearer instruments

filing
necessary for some collateral
e.g., general intangibles
e.g., patent

Perfection

Financing Statement
written

signature of debtor

description of collateral
to put world on notice
of potential claims to ownership

name and addresses
debtor
creditor

Perfection

automatic

PMSI in consumer goods

proceeds

Perfection

scope of security interest

proceeds
after acquired
floating lien

PRIORITY

first to perfect
then
first to secure

buyers in the ordinary course of business
good faith

consumer sale to consumer

SECURED TRANSACTIONS

duties

- information to creditors**
- release**
- reasonable care**

remedies

- retention**
- satisfaction**
- notice**
- consumer PMSI pre-60% paid**
- deficiency**

BANKRUPTCY

BANKRUPTCY

**CHAPTER 7
LIQUIDATION**

**CHAPTER 11
BUSINESS REORGANIZATION
business future income**

**CHAPTER 13
INDIVIDUAL REPAYMENT PLANS
consumer future income**

CHAPTER 7: LIQUIDATION

Most of the rules of Chapter 7 apply to the other chapters.

Major differences between 7, 11, & 13
who may use
and
which debts are discharged

CHAPTER 7: LIQUIDATION

Voluntary

Involuntary
may not force a farmer

CHAPTER 7: LIQUIDATION

Involuntary

use if:

12 or more creditors,
with 3 or more creditors owed
\$10,000 unsecured debts

or if

less than 12 creditors,
with 1 or more creditors owed
\$10,000 unsecured debts

but also if

not paying debts as due
or
custodian appointed

AUTOMATIC STAY

Trustee

powers
collect estate, preserve, account

General Powers
Assumption Rights

Preferences
Fraudulent Transfers
may be reversed, Trustee's discretion

Creditors' Meeting
debtor MUST attend or denied discharge

Property Distribution

administration

ordinary course of business

unpaid wages
unsecured employee benefits

farmers
consumer deposits

taxes

general unsecured creditors

DISCHARGE under CHAPTER 7
deficiencies on disclosed debts after liquidation

Exceptions

3 years back taxes
false pretenses
creditors not notified
fraud as a fiduciary
alimony & child support
willful or malicious
fines
student loans
consumer luxury goods
cash advances
DWI

Objections to discharge

concealment
refusal to obey
not explain loss of assets
six years since last bankruptcy
written waiver approved by the court

Reaffirmation of Debt
prior court approval

CHAPTER 11: BUSINESS REORGANIZATION

business future income

continue in business after filing: workouts

debtor in possession

Creditor Committee
The Plan

Cram down

CHAPTER 13: INDIVIDUAL WORKOUT

consumer future income

individuals only

broader, Super Discharge
in exchange for claim on future income

only voluntary,
may convert some 7's and 11's into 13's

automatic stay limited to individual's debts,
not to business'

CHAPTER 13: INDIVIDUAL WORKOUT

**Creditor can object to Plan,
but do not approve the Plan like in 11**

Court approval over objection

**only if
distributed property equals claims,
and only if
all "disposable" income for 3 years**

creditors must be as well of as in 7

CHAPTER 13: INDIVIDUAL WORKOUT

Super Discharge

**after completion of all payments
discharge all debts covered in Plan**

No discharge of alimony & child support.

**Discharge of a Student Loan requires a
judicial finding of undue hardship
or
second bankruptcy.**
