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An instructional unit of negotiable instruments in business law.

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Thesis

AN INSTRUCTIONAL UNIT
ON
NEGOTIABLE INSTRUMENTS
IN
BUSINESS LAW

Submitted by

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CHAPTER I
INTRODUCTION

Statement of the Problem

The purpose of this study was to develop an instructional unit which will help the teacher in presenting the topic of negotiable instruments in an effective way to students of Grade XII. The unit organization is based on the plan advocated by Billett¹ in the Fundamentals of Secondary School Teaching.

Nature of the Problem

The primary objective of a course in business law is to help the student understand the legal principles affecting his daily life. By studying closely the major topics of business law, the student develops the proper attitudes toward the subject of law and realizes that law enters into the simplest forms of business transactions.

The increasing use of credit in the business world at

¹Billett, Roy O., Fundamentals of Secondary School Teaching, Houghton Mifflin Company, Boston, Massachusetts, 1940, p. 459.

the present time points out the need for students to know the legal principles of negotiable instruments as they apply to those practical situations that the student may encounter.

The unit plan gives an effective procedure of teaching a topic of business law. It also gives to the teacher a sound method to cope with individual differences. Sister Mary of Saint Jeanne Ita² enumerates the main outcomes of the unit method:

The unit method

1. provides for individual differences in an easy and natural manner
2. helps to develop student initiative and self-confidence
3. promotes a better teacher-pupil relationship
4. facilitates the checking of student progress
5. leaves the teacher free to circulate and devote more time to the students who need special help

With those advantages in the foreground, the writer has endeavored to prepare a unit on negotiable instruments.

Delimitation of the Problem

The topic of negotiable instruments covers an important

²Sister Mary of Saint Jeanne Ita (Vezeau), Unit Organization of Two Topics in Business Law: Agency and Insurance, Unpublished Master's Thesis, Boston University, Boston, Massachusetts, 1955, p. 2.

phase in the teaching of business law. The value of negotiable instruments cannot be overstressed; therefore, in teaching this unit the teacher must convince the student that these concepts of legal principles may serve him in the future. The list of basic facts and concepts of the unit, which is for the teacher's use only, serves as a basis for the procedure to be followed in the teaching process. This unit is organized to give the teacher a complete and detailed background on the topic.

Explanation of Terms

The explanations of terms pertaining to the organization of this unit were taken from Billett's book, Fundamentals of Secondary School Teaching, and adapted to the needs of the present report.

Optional related activities. Activities in which students engage solely because they want to are referred to as optional related activities. The activity would not be related if participation in it were not likely to produce an increment of educative growth, a definite horizontal or vertical extension of the main learning product which is the unit. Although these activities are optional, the student selects them with the advice and approval of the teacher, and studies under the guidance of the teacher.

Study and activity guide. The purpose of the study and activity guide is to give the student a definite plan which

will help him select the important points to be studied in the teaching-learning cycle. This study help gives the teacher the opportunity to direct and to guide the individual as the learning process progresses.

Unit Tests. Administering a pretest is an important step in the teaching unit. It is often necessary to know at the outset of the teaching-learning cycle what each pupil has already achieved in the area represented by the unit. Post-tests, also classified as achievement tests, are important because the teaching can be evaluated.

Student's references. The study and activity guide may include teaching materials, a list of readings, and equipment which pupils will need to use in connection with the unit assignment. If such lists have been prepared, it is unnecessary to repeat the names of authors, books, or articles throughout the mimeographed study and activity guide at points where the teacher judges such references might be helpful. Some simple code can be devised to take the place of the complete reference. For instance, 2:29-37 could be understood to mean that the student may get some help on a problem if he reads pages 29 to 37 inclusively of the second reference in the reading list.

Organization of the Study

This study is organized into four chapters. The first

chapter contains the statement and the nature of the problem. Chapter II gives a summary of the studies reviewed in this investigation. The third chapter outlines the procedures followed in constructing the unit. Chapter IV contains a general statement of the unit, an outline for the teaching of the topic, the basic facts and concepts in the unit, core activities, optional related activities, a list of student references and materials, and an achievement test.

CHAPTER II
REVIEW OF RELATED STUDIES

The review of related research in this chapter is discussed under the following topics: (1) Improvement of Teaching Methods, (2) Consideration of Individual Variance of Student Aptitude, (3) Practical Application of Legal Principles and the Correct Use of Legal Terminology in Everyday Life, and (4) Goals and Their Importance.

The opinions elaborated under the above headings are shared by a number of experienced educators. A study of several theses serves to support the assertions upheld by advocates of the unit method. All these studies are based on Billett's¹ unit method.

1. Improvement of Teaching Methods

A business teacher, dedicated to his role of educating youth, should keep pace with the times in improving his methods of teaching. Teaching covers too vast an area to afford restrictions. It calls for a continued ascent toward

¹Billett, Roy O., Fundamentals of Secondary School Teaching, Houghton Mifflin Company, Boston, Massachusetts, 1940, p. 459.

an increase of vocational knowledge; it includes everyday observations of student needs. "Methods must be constantly analyzed and improved," Warner² insists in his study.

Furthermore, to answer the implicit question pertaining to practical ideas in method improvement, Warner³ states:

Study the problem of the individual student, teach, write, talk, correct, and encourage for these are some of the daily routine studies characteristic of all teachers of law.

Another important way to add to one's teaching assets is to compare one's methods with other experienced co-workers. A constant alertness to modern attempts at experimentation can prove highly informative. In studying approved methods, the teacher may adopt them for self-improvement; looking forward to newer trends, he experiments enthusiastically. Sister Sainte-Marie-Claire⁴ believes that every teacher has the "professional obligation" of bettering himself through extensive research.

Research, therefore, leads to teacher improvement. But the purpose of teacher improvement inevitably promotes

²Warner, Wesley F., Two Source Units in Business Law on Contracts, and Torts and Crimes, Unpublished Master's Thesis, Boston University, Boston, Massachusetts, 1949, p. 12.

³Warner, loc. cit.

⁴Sister Sainte-Marie-Claire (Lamy), An Instructional Unit on the Distribution of the National Income for the Use in a College Economic Course, Unpublished Master's Thesis, Boston University, Boston, Massachusetts, 1952, p. 13.

student improvement; one is the outcome of the other. "The growth of the student," affirms Bell,⁵ "is the end result of all teaching; teaching methods is a means to an end, not an end in itself." A prepared teacher, who affects a successful transfer of his own knowledge, reaches the whole being in the potential learner. This vital factor is at stake if the teacher restricts knowledge to the bare essentials of specific subject matter. A determined advocate of this comprehensive method is Bell,⁶ who writes:

Teachers must think about their courses in terms of all the fundamental principles which should operate in a teaching-learning situation, and not merely in terms of a subject matter or a few pedagogical tricks. Every teacher must be concerned with teaching improvement.

2. Consideration of Student Aptitude

Assuming that a teacher has suitable background and that he entertains an alertness for professional improvement, one progressive way of tackling his subject matter is the unit method. This is a current approach to meet with individual differences in a class. It is meant to take care of a wide range of aptitudes; namely, the abilities of the

⁵Bell, Alexander, Jr., Two Instructional Units in Business Organization--How Business is Owned and the Relationship of Government and Business, Unpublished Master's Thesis, Boston University, Boston, Massachusetts, 1951, p. 12.

⁶Bell, loc. cit.

gifted as well as the less responsive. The role of the teacher is outlined by Sister Mary of Saint Jeanne Ita:⁷

The teacher's role in this unit method of teaching is to direct, to assist, and to check the work of the individual, to maintain a suitable atmosphere for study and to give tests on the work completed.

By creating an atmosphere of intellectual advancement through individual coaching, the student is made to feel that acquiring knowledge is gratifying. The student awakens to the fact that in the teacher he finds a staunch supporter.

Furthermore, since the student is visualized as an individual, the unit method appears to answer the needs of a real situation. It attempts to improve a specific student, whose contact with the teacher, as a consequence, becomes more significant since it is direct. Warner⁸ finds the unit method well suited for the problems of the day:

Unit teaching is definitely more realistic than many other methods of teaching. Closer understanding between the teacher and the student created at the proper time will help to promote greater interest and enthusiasm on the part of both.

A third aspect involved in the unit presentation is the variety of ways in which the teacher may increase the realm of subject-matter development, or diminish the scope of the assignment in accordance with individual responses. So, the slow students have new hopes of achievements because the goal

⁷Sister Mary of Saint Jeanne Ita (Vezeau), op. cit., p. 7.

⁸Warner, op. cit., p. 2.

becomes less exalted; while the gifted students find their creative talents challenged. Avritch⁹ praises the pliability of the unit method:

This method provides for an enriched presentation through its flexibility and provisions for individual differences. This vitalized presentation allows the instructor freedom to expand or limit the subject matter as well as freedom to create new pupil interests and to develop creative talents.

This form of teaching has captured the approval of a number of enthusiasts who support the venture both for its individual as well as its social results. "Unit planning is concerned with securing a happy balance of individualization and socialization," confirms Billett¹⁰ in his concise way of emphasizing the richness of a democratic approach to teaching.

3. Practical Applications of Terms and Principles

With a storage of ready-to-use knowledge and an interest in research, the teacher is well equipped to lead his students

⁹Avritch, Richard, Unit Organization of Two Topics in Salesmanship: Why Consumers Buy and Obtaining Customers, Unpublished Master's Major Project, Boston University, Boston, Massachusetts, 1958, p. 3.

¹⁰Billett, Roy O., "The Values of Unit Organization," Fifteenth Yearbook, Eastern Commercial Teacher Association, Somerville, 1942, p. 25.

from the theory expounded in class to a concrete application in personal life. Business law, as a high-school subject, incurs an altogether different meaning for the teen-ager than for a student who attends a specialized law school. The subject at high school level must, therefore, be limited to the principles that are likely to be used by the student who in his later life will seek the security inherent to legal advice. He studies the principles that explain his rights and obligations as a buyer engaged in simple transactions. If the student is a future businessman, the principles of law assimilated at school serve as a pattern for his dealings with other businessmen.

The teaching of business law endeavors to prepare the student to solicit legal advice at opportune times rather than take upon himself the responsibility of deciding cases that only courts can solve. But even though the student remains a citizen without specific legal activity, his compulsory contacts with the economic world will prove all the more successful if he has a background in business law.

The purpose of teaching business law to high school students is definitely not to make potential lawyers out of them. In his study, Saunders declares:

The instructor should keep in mind that the student of business law is not being trained to become an attorney. The instructor should, therefore, concentrate on the more general principles and note exceptions only when they

are pertinent to an understanding of the principles or where the exception occurs frequently enough to justify its discussion.¹¹

To convey the basic concepts of law, the teacher is generally forced to develop ideas through a language couched in technical terms. Terminology which is unfamiliar to the student causes aversion for the subject. On the contrary, a clear concept of the words used in this highly specialized language sponsors eagerness for learning. The truths formulated afford greater comprehension and spur curiosity for the novelty of the subject matter.

In her Doctoral Dissertation, Sister Mary Jeanne Ita¹² made a survey of the most common legal terms used by some 101 lawyers. The technical data are tabulated in order of frequency. Sister Mary Jeanne Ita states that, "Although the trend is toward simplification of legal terminology, the language of the law is, and may always remain, difficult and different." A study of this nature becomes a reliable source for the teacher of business law, a valuable compilation of legal terms for training legal secretaries, and a source for assisting those already in the field. Moreover, the

¹¹Saunders, Gerard, A Unit of Teaching Contracts on the College Level, Unpublished Master's Major Project, Boston University, Boston, Massachusetts, 1958, p. 116.

¹²Sister Mary Jeanne Ita (Vezeau), A Study of Legal Terminology Pertinent to the Educational Preparation of the Legal Secretary, Unpublished Doctoral Dissertation, Boston University, Boston, Massachusetts, 1960, p. 152.

proper presentation of legal terms unravels the misconceptions that may evolve from connotations associated with pupil interpretations.

4. Goals and Their Importance

No matter what the field of concentration may be, all teachers must plan objectives to attain specific goals. The twofold objectives include motivating the student's interest in the activities concerned and guiding the student in the realization of his highest potentialities.

Motivation, the strongest learning incentive, plays an important part in the intellectual growth of the student. When devices are applied to the learning process, they arouse in the student greater interest in the knowledge imparted. For instance, the teacher could launch activities enabling the student to master those related learnings that best suit his abilities. The realization of satisfactory accomplishments makes for self-confidence and compensates for encumbent difficulties.

If the student attempts the extensive research suggested for a comprehensive assignment, he broadens his background. Thus, the patience sustained and the culture acquired make

him ready to face actualities with more assurance. Bell¹³ supports a choice of specific means to reach worth-while goals:

Unit organization aids in creating situations whereby pupils find worthwhile goals toward which to work, pointing out direct routes to vital areas of experience, and providing for variety, flexibility, interest, individual differences, self-development, objective evaluation, and application to contemporary situations.

Fortin¹⁴ substantiates a positive way of reaching cultural aims when he states:

One of the great virtues of the unit plan is that definite learning goals are set up and a variety of assignments provided so that pupils of varying intelligence, aptitudes, and interest may all work toward the same goal in a manner best suited to their individual characteristics. This method forces the teacher to state these objectives in concrete declarative sentence forms.

Avritch¹⁵ observes that the unit method demands more preparation on the part of the teacher than if he strictly abided by the textbooks. Furthermore, the outcome is more rewarding even though more preparation is required.

When a teacher stresses only verbatim recitation, aims are not reached. Instead, he should train the student to make a supreme effort to attain specific goals. Students

¹³Bell, op. cit., p. 2.

¹⁴Fortin, Laurent, The Construction of Two Units in Occupational Information for Business Education Students at East Hampton, Connecticut High School, Unpublished Master's Major Project, Boston University, Boston, Massachusetts, 1950, p. 9.

¹⁵Avritch, op. cit., p. 3.

do not shun work when they are impressed with the teaching procedures. The amount of work exacted from a teacher certainly promotes the eagerness for attaining ends.

Sister Sainte-Marie-Claire¹⁶ upholds this idea of motivating and sustaining student interest throughout the teaching-learning process by stating that:

Experience shows that very often students are disappointed in their expectations because teachers have failed to maintain interest by placing too much emphasis on theoretical principles and too little on their application in real life situations.

In addition, the writer confirms Harron's¹⁷ thought that "unit teaching is both practical and realistic, thereby, encouraging pupil-teacher participation." Indeed, only teacher-pupil cooperation can insure a steady advance toward the goals jointly planned.

Saunders¹⁸ voices his approval of the unit method for reaching goals. He states that "the unit method in teaching business law is more effective than other methods which are sometimes used." It directs the student to accomplish conscientiously the task set before him; to persevere in his undertakings; and to overcome the obstacles encountered in the pursuit of an end. Such a solid preparation,

¹⁶Sister Sainte-Marie-Claire (Lamy), op. cit., p. 2.

¹⁷Harron, Norman J., The Development of an Instructional Unit in Salesmanship, Unpublished Master's Major Project, Boston University, Boston, Massachusetts, 1950, p. 2.

¹⁸Saunders, op. cit., p. 1.

originating in the classroom, is carried out of school into the student's personal life. Disciplining the student's mind, clarifying his insight with a purpose, molds him into an individual desired by society.

The analysis of these on unit planning encouraged the writer to proceed in the development of a unit on negotiable instruments. The advantages of the unit method reaffirmed the writer's belief that the basic legal principles of business law can be taught effectively and constructively. Through this approach the student will understand how these principles affect his personal as well as his vocational duties.

CHAPTER III

PROCEDURES

A systematic procedure was followed in constructing this instructional unit on negotiable instruments. The unit was organized in the following manner:

1. Several theses, college textbooks, magazine articles, and reference books dealing with methods of teaching business law were consulted in the preparation of this unit.

2. The objectives of the unit were formulated in order to select the proper material, problems, and activities to be included in the report.

3. After consulting the various high school textbooks, a tentative outline of the unit was prepared.

4. Six high school textbooks were chosen to serve as reference materials for the student.

5. The basic facts and concepts of the unit were prepared to provide background information for the teacher.

6. A tentative time allotment of five weeks was suggested for teaching the unit. The organization of each lesson was made flexible and the time required to teach the subject matter was left to the teacher.

7. The core activities were developed and organized

into a logical sequence. A study guide with special references was prepared to guide the student in completing activities. Cases and other exercises were also prepared.

8. The optional related activities were organized. These problems were compiled to meet the needs of the gifted as well as the slow learner. They were grouped to give the individual the satisfaction of achievement. In this way, individual differences were considered.

9. The pretests were developed so that the teacher may obtain an insight of the knowledge that the student possesses on the subject. This device may serve to arouse in the student a deeper interest in the topic to be studied. An achievement test was prepared for administration at the end of the unit. The purpose of the achievement test is to evaluate the knowledge acquired during the teaching-learning cycle.

CHAPTER IV
NEGOTIABLE INSTRUMENTS

General Statement of the Unit

With the rapid and intense development of credit in the business world, a knowledge of the proper use of negotiable instruments gives an individual a broader understanding of finance and a deeper appreciation of business procedures. Credit plays a vital role in household management as well as in business enterprises.

The teaching of credit instruments will prove to the student that this phase of business law is important in his everyday life. The major principles to be taught are those that will affect the student's contact with the business world. The unit stresses the essentials of negotiable instruments and the most common forms used in business such as checks, promissory notes, and drafts.

Outline of the Instructional Unit on Negotiable Instruments

- I. Historical Development of Negotiable Instruments
 - A. Origin of negotiable instruments: early historical background
 - B. Protective measures for circulation of negotiable instruments
 - 1. Law Merchant
 - 2. Uniform Negotiable Instruments Law
 - 3. Uniform Commercial Code
- II. Use of Negotiable Instruments
 - A. Definition of the term negotiable instrument
 - B. Characteristics of negotiable instruments
 - 1. Negotiability
 - 2. Assignability
 - C. Requirements of a negotiable instrument
 - 1. Unconditional promise or order to pay
 - 2. In writing and signature of maker or drawer
 - 3. Promise or order to pay a sum certain in money
 - 4. Payable on demand or at a fixed or determinable future time
 - 5. Payable to bearer or the order of a payee
 - 6. Reasonable certainty of the payee and the drawer; in drafts, indication of parties
 - D. Nonessentials of a negotiable instrument
 - 1. Date
 - 2. Consideration or value given by the maker or the drawer
 - 3. Location of instrument drawn
 - 4. Place to be paid
- III. Transfer of negotiable instruments
 - A. Provision from the Uniform Negotiable Instruments Law

- B. Methods of negotiation
 - 1. By delivery only
 - 2. By indorsement and delivery
 - a. Procedure
 - b. Parties of a negotiable instrument
- C. Forms or types of indorsements
 - 1. Blank indorsement
 - a. Definition
 - b. Duties of payee
 - c. Transfer
 - 2. Special indorsement
 - a. Definition
 - b. Liability of indorser and indorsee
 - c. Importance of this indorsement
 - 3. Restrictive indorsement
 - a. Definition
 - b. Obligation or indorser
 - c. Use and importance
 - 4. Qualified indorsement
 - a. Definition
 - b. Liability of indorser
 - c. Importance
 - 5. Conditional indorsement
 - a. Definition
 - b. Transfer
 - c. Use
- D. Special types of indorsements
 - 1. Irregular indorsement
 - a. Definition
 - b. Purpose
 - 2. Accommodation indorsement
 - a. Definition
 - b. Purpose

3. Waiver Indorsement: Definition
 4. Partial Payment Indorsement: Definition
- E. Obligations of an unqualified indorser
1. Proper presentment for payment
 2. Due notice of dishonor
 3. Foreign bill duly protested
- F. Warranties of unqualified indorsers
1. Instrument genuine
 2. Good title to the instrument
 3. All prior parties capable to contract
 4. Time of indorsed instrument valid
- G. Obligations of transferor by delivery or by a qualified indorsement
- H. Discharge of indorser's liability
1. Any act that discharges the instrument
 2. Discharge or release between prior party or principal party
 3. Holder's intentional cancellation of his signature
 4. Valid tender payment by prior party
 5. Agreement binding on the holder to extend time of payment or postpone the holder's right to indorse the instrument
- IV. Rights of holder
- A. Definition of terms
1. Holder
 2. Holder in due course
- B. Requirements for a holder in due course
1. Instrument complete and regular upon its face
 2. Instrument not overdue
 3. Acquiring the instrument in good faith, for value--no knowledge of defects existing in the instrument
 4. Negotiation of instrument at any time--no infirmity or defect in the title

C. Rights of a holder in due course

1. Personal defenses

a. Definition

b. Types of personal defenses

- (1) Lack or failure of consideration for the promise
- (2) Fraud, duress, or undue influence
- (3) Setoff and counterclaim
- (4) Previous payment of the obligation
- (5) Nondelivery of a complete instrument
- (6) Unauthorized completion of an incomplete instrument

2. Real defenses

a. Definition

b. Types of real defenses

- (1) Lack of capacity to contract
- (2) Forgery
- (3) Alteration
- (4) Illegality that renders a contract void
- (5) Nondelivery of an incomplete instrument
- (6) Mistake that renders agreement void

D. Steps taken by holder upon dishonor of instrument

1. Presentment for payment

2. Notice of dishonor

a. Instrument identified

b. Statement of dishonor

c. Payment

3. Protest

a. Definition

b. To whom made

c. Contents of protest

d. By whom practiced

V. Promissory notes

- A. Definition
- B. Requirements for a negotiable promissory note
 - 1. Unconditional promise
 - 2. In writing and signed by the maker
 - 3. Payment of a sum certain in money
 - 4. Payment on demand
 - 5. Payable to bearer
 - 6. Consideration with certainty for the payee
- C. Parties to a promissory note
 - 1. Specific parties
 - a. Maker
 - b. Payee
 - c. Indorser
 - d. Indorsee or holder
 - 2. General types of parties
 - a. Primary
 - b. Secondary
- D. Liabilities of maker
 - 1. Payment of note in accordance with its terms
 - 2. Payment of interest plus face amount for interest-bearing note
 - 3. Omission of rate of interest--payment of legal rate
 - 4. No interest--maker not liable for any amount but the face value
 - 5. Admittance of payee's existence and capacity to transfer
- E. Special forms of promissory notes
 - 1. Bonds
 - a. Definition
 - b. Kinds of bonds
 - (1) Registered bonds
 - (2) Debenture bonds
 - (3) Coupon bonds
 - (4) Collateral or mortgage note
 - (5) Judgment note

2. Individual or several notes
 3. Joint and several notes
- F. Necessity of presentment for payment
- G. Manner of presentment for payment
1. Person making presentment
 2. Manner of making presentment
 3. On whom made
 4. Place of making presentment
 5. Time of making presentment
- H. Interest on notes
1. Annual and compound interest
 2. Legal rate of interest
 3. Maximum contract rate of interest
 4. Usury
- I. Dishonor of note
1. Notice of dishonor
 - a. Notification of all parties concerned
 - b. Form--written or oral
 - c. Place of notice
 - d. Notification of other parties involved by the indorser
 2. Protest
 - a. Definition
 - b. Content of protest
 - c. By whom practiced
- VI. Drafts
- A. Definition
- B. Types of bills of exchange
1. Foreign bill of exchange
 2. Inland bill of exchange
- C. Requirements for a negotiable draft
1. Unconditional order to pay
 2. In writing and signed by the maker or drawer
 3. Promise or order to pay a sum certain in money
 4. Payable on demand or at a fixed or determinable future time

5. Payable to the bearer or to the order of a payee
 6. Reasonable certainty of the payee and the drawer; in drafts, indication of drawee
- D. Comparison of a draft with a promissory note
1. Promissory note: unconditional promise to pay
 2. Draft: unconditional order to pay
 3. Parties to a promissory note
 - a. Maker
 - b. Payee
 4. Parties to a draft
 - a. Drawer
 - b. Payee
 - c. Drawee
- E. Two classes of drafts
1. Demand or sight draft
 - a. Definition
 - b. Manner of presentment
 - c. Acceptance of draft by drawee
 - d. Types of sight drafts
 - (1) Three-party sight draft
 - (2) Two-party sight draft
 2. Time draft
 - a. Definition
 - b. Manner of accepting the time draft
 - c. Types of time drafts
 - (1) Time draft payable after sight
 - (2) Time draft payable after date
- F. Uses of drafts
1. Collect overdue accounts or ready existing accounts
 2. Attachment to bill of lading for C.O.D. freight shipment
- G. Liabilities of the drawee of a draft
1. Acceptance of draft

2. Payment not forced unless drawee shows responsibility
3. Tearing draft or forgetting to read instrument
4. Agreement to pay the holder according to terms of instrument

H. Kinds of acceptance

1. Absolute
2. General or unqualified

I. Rights of drawee in accepting draft

1. Proceed immediately against drawer and the indorsers
2. Give notice of dishonor
3. Dishonor of note upon presentment

J. Presentment for acceptance

1. Purpose of presentment and acceptance
2. Presentment necessary
3. Presentment optional

VII. Checks

A. Definition

B. Parties to a check

1. Drawer or maker
2. Payee
3. Drawee

C. Comparison of checks and drafts

D. Comparison of checks and promissory notes

E. Kinds of illegal checks

1. Bad checks
2. Forged checks
3. Raised checks
4. Postdated checks

F. Purpose of issuing checks

1. Convenient and safe payment of financial obligations
2. Duplicated if destroyed
3. Stop payment if lost or stolen
4. Written record of payment
5. Receipt--cancelled checks

6. Drafts--collect money from out-of-town debtors
 7. Drafts--C.O.D. freight payments
- G. Obligations of the parties to a check or a draft
1. Drawer
 - a. No liability unless negotiated by the payee
 - b. Acceptance and payment of drawee
 - c. Dishonor and negotiation--obliged to indorsers and holder in due course
 - (1) Proper presentment for payment or acceptance
 - (2) Prompt notification of dishonor
 2. Drawee
 - a. Not liable on draft addressed to him
 - b. Drawer's checks honored according to funds
 - c. Not liable to holder for refused acceptance for time draft or to pay sight draft or check
 - d. Promise to pay--acceptance
 3. Acceptor
 - a. Unconditional and absolute liability for payment according to terms of acceptance
 - b. Admittance to the
 - (1) existence of the payee
 - (2) capacity of the payee to transfer the instrument by indorser
 - (3) existence of the drawer
 - (4) drawer's authority and capacity to draw the instrument
 - (5) genuineness of the drawer's signature
- H. Presentment of check for payment
1. A reasonable time
 2. Failure of payment--holder's loss
 3. Act protecting depositors

- I. Notice of dishonor
 - 1. Indorser's or drawer's liability
 - a. Proper identification of the instrument
 - b. Statement of dishonor
 - c. Demand for payment
 - 2. Presentment of checks after first dishonor
- J. Liability of bank for improper payment of check
 - 1. Payment after payment has been stopped
 - 2. Payment of forged checks
 - 3. Payment after depositor's death
 - 4. Events that relieve the bank of its liability
- K. Special forms of checks and drafts
 - 1. Certified checks
 - 2. Bank drafts
 - 3. Cashier's checks
 - 4. Money orders
 - 5. Traveler's checks
 - 6. Trade acceptance
 - 7. Letters of credit
 - 8. Voucher check

Basic Facts and Concepts of the Unit

- I. Historical Development of Negotiable Instruments
 - A. Origin of negotiable instruments
 - 1. The early system of trade and the most common way of trading goods and services was bartering.
 - 2. Prevailing abuses of bartering influenced the development of a more efficient medium of exchange known as money. This monetary system, based on gold and silver coins,

developed into the first great advancement in economic progress because of its universal extent.

3. The use of money greatly increased the amount of trade.
 - a. Disputes arose over the amount of gold and silver contained in the coins. The sizes, the shapes, and the varied denominations caused many quarrels among the different people.
 - b. Transportation whether on land or at sea attracted bandits who robbed messengers and pirates who raided ships.
4. The use of coins did not suffice the demands of business enterprises; therefore, credit and credit instruments contributed to the development of a more competent business system. This transition proved to be the second great advancement in economic progress.

B. Protective measures for circulation of negotiable instruments

1. The Law Merchant was the first law enacted to regulate the free circulation of negotiable instruments. European merchants and mariners of the fourteenth and fifteenth centuries introduced this law to systematize existing customs.

2. The varied interpretations given to the decisions of the Law Merchant brought forth many controversies among the American merchants from the various states. Congress enacted the Uniform Negotiable Instruments Law which proved to be the only means of settling interstate trading disputes. Every state in the Union adopted this law.
3. The Uniform Commercial Code was set up within recent years. Its purpose is to revise many of the existing uniform acts with important legislative decisions. It is not a permanent law but it is a law in the making.

II. Use of negotiable instruments

A. Definition of negotiable instruments

1. Negotiable instruments are credit instruments that circulate as freely as money. They are used as substitutes for money and promises to pay money in the future.
2. Negotiable instruments may be transferred from one person to another by indorsement and delivery or delivery only.

B. Comparison of negotiable instruments with ordinary contracts

1. Inference of consideration
 - a. In negotiable instruments, consideration

may be assumed or understood because the law presupposes that the instrument was issued for value. In a pending law suit the party who tries to evade the payment must prove that no consideration existed.

- b. In an ordinary contract, the individual attempting to execute the promise in the contract must produce proof of consideration.

2. Negotiability and assignability

a. Negotiability

- (1) Negotiable instruments may be transferred so that the transferee becomes the legal holder of the instrument. The transferee may acquire a better title to the instrument than the one who previously held it.
- (2) Negotiable instruments must be in writing and are generally negotiated by delivery only or by indorsement and delivery.
- (3) In negotiable instruments no notice of negotiation needs to be given to the maker.

b. Assignability

- (1) Ordinary contracts may be assigned, that is, the rights of the assignor in a simple contract may be transferred to a third party.
- (2) The assignee acquires only the rights held by the assignor at the time the transfer occurs.
- (3) Notice of assignment must be given to the debtor after the transfer is performed.
- (4) Contracts in general may be oral or written and assigned in that manner.

C. Requirements of a negotiable instrument

1. A negotiable instrument must contain an unconditional promise or order to pay. A condition attached to a promise or order to pay makes the instrument nonnegotiable. A promise to pay if some future event is to take place does not include an unconditional promise. An IOU is not a promise to pay but a mere acknowledgment of a debt.
2. A negotiable instrument must be in writing and signed by the maker or drawer.
 - a. The writing exacted in negotiable

instruments may be either typewritten, printed, or handwritten with pencil or ink. The negotiable instrument may be signed with ink, pencil, or made with a rubber stamp.

- b. The person who signs the instrument is liable for it even though he uses a fictitious name or a trade name.
3. A negotiable instrument must provide for the payment of a definite sum of money.
- a. The note must be payable in money that is currently used in the place of payment. It may be payable in foreign money provided that money is a current medium of exchange.
 - b. If the holder or payee is given the option of selecting payment in money or in some other commodity, the instrument is still payable in money.
 - c. If the maker of the note were given the option of paying in money or some other commodity, the instrument would not be negotiable.
 - d. The amount to be paid must be stated and certain. It is generally written twice on every negotiable instrument--in words

and in figures. If the figures and the words differ, the amount expressed in words prevails. If the amount is written in figures only, that will suffice.

4. A negotiable instrument must be payable on demand or at a fixed or determinable future time.
 - a. A note payable on demand indicates that the instrument is due at once and becomes overdue after the time has expired.
 - b. Expressions such as "On demand, pay . . .," "At sight, pay . . .," or "On presentation, pay . . .," render the instrument payable on demand.
 - c. A note is payable at a fixed or determinable future time when it is payable on a specified date; at the end of a fixed period after date or sight; on or before a specified or ascertainable future time; at or before the end of a fixed period to happen although the time of happening may be unknown.
5. A negotiable instrument must contain the words of negotiability; that is, it must be payable to order or to bearer.

- a. An instrument is payable to bearer when
 - (1) it is payable to a specified party or bearer
 - (2) the description of the payee does not purport to designate any party
 - (3) the last or only indorsement is in blank; that is, the name of the transferor only.
 - b. Expressions employed to indicate the words of negotiability are: "To the order of," "Or order," or "To bearer."
 - c. An instrument is payable to order when it is made payable to the order of a specific person, or to a specific person.
 - d. If the instrument reads "Pay to J. C. Black," the instrument is not negotiable because it does not contain the words of negotiability.
6. A negotiable instrument must designate, name, or indicate the drawee with reasonable certainty.
- a. A draft, or bill of exchange is a written order signed by one person, instructing another to pay to a third person or to bearer, a certain sum of money.

b. The drawee, the party who is expected to pay the draft, must be named or in some other way indicated in the instrument so that his identity may be ascertained with reasonable certainty.

c. If the negotiable instrument is a check, the name of the drawee bank or the party who is called upon for the payment must be clearly indicated.

D. Nonessentials of a negotiable instrument

1. The instrument need not be numbered. The numbering of the instrument is a business device for keeping a record of the number of instruments issued and outstanding.
2. The place where the instrument was drawn, or the place where it is payable does not affect the negotiability of the form. The place where the instrument is drawn or where it will be payable if not stated in the note presumes to be paid in the maker's place of business or at his residence.
3. The date upon which the note is issued bears no importance on the negotiability of the instrument. In the absence of a date, the instrument is presumed to be dated as of the time of issue. If the place for the date is

blank, the holder may write the true date in the blank. The instrument may be antedated or postdated as long as it is not done with the intention of defrauding the person involved.

4. The sum in figures does not in any way affect the instrument. Confirmation of the written amount is necessary. When there is a difference between the two amounts, the written amount will be paid.
5. The words "Value Received" have no importance as to the negotiability of the instrument. In a negotiable instrument, it is understood to exist even though it is not specifically mentioned.
6. If the instrument bears a seal, the negotiability of the instrument is not affected.

III. Transfer of negotiable instruments

- A. According to the Uniform Negotiable Instruments Law, an instrument is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the legal holder of the instrument.
- B. Methods of negotiation
 1. By delivery alone

- a. This method of transferring negotiable instruments is transacted by delivery alone, especially when the negotiable paper becomes payable to "Bearer."
 - b. A person who negotiates a negotiable instrument by delivery only is not completely relieved of liability. He has the same liability as a qualified indorser.
2. By indorsement and delivery
- a. The term indorsement refers to any writing on the instrument that has for its primary purpose the transferring of a negotiable instrument to others. Although usually written in ink, an indorsement may also be made with a rubber stamp or it may be typewritten.
 - b. The parties to an indorsement are the indorser, the person who writes the indorsement, and the indorsee, the person to whom the instrument is transferred.
 - c. If the instrument passes into the hands of many holders, it may become filled with the signatures and indorsements of the different holders. In this case, a

separate paper known as an allonge may be attached to the original instrument and the indorsements are continued.

- d. If a question or dispute arises as to the liability of the several indorsers, the indorsements are taken in the order in which they appear on the back of the paper.
- e. When the payee of an instrument indorses it, he should spell his name just as it is spelled on the face of the instrument.

C. Forms or types of indorsements

1. Blank or regular indorsement

- a. A blank indorsement only shows the name of the payee or the holder who merely writes his name on the back of the instrument.
- b. This indorsement makes the instrument payable to bearer and is transferred by delivery only.
- c. A blank indorsement may be changed to a special indorsement by a subsequent holder who may write above the name of the indorser any words consistent with the character of the transfer.

d. A finder or a thief cannot himself collect upon the note from the maker or the indorser because there was no delivery of the instrument, but if the instrument gets into the hands of an innocent holder for value, the new holder may recover on it and enforce payment from the maker.

2. Full or special indorsement

- a. A special indorsement makes the instrument payable to a particular party by using the expression, "Pay to the order of"
- b. The indorser in the full or special indorsement is liable only to the person named or to the subsequent parties who take the title through that person. For further negotiation, the indorsee must also indorse the instrument.
- c. A finder or a thief cannot transfer title to a note that has a special or full indorsement. If the instrument were payable on its face to bearer, it would remain a bearer instrument.

3. Restrictive indorsement

- a. A restrictive indorsement prohibits further negotiation and makes the transferee an agent of the indorser for the purpose stated in the indorsement.

- b. The indorser notifies the holder that he is entitled to dispose of the instrument only for the purpose to which it is restricted.
- c. This indorsement is used in making deposits in banks especially if the deposit is mailed or is sent to the bank by a messenger.
- d. Expressions used for restrictive indorsements are: "For collections only," "Pay to (person's name), only," "For deposit only."
- e. A person should never indorse a check in blank except at the time of negotiation. The party runs the risk of losing out completely on the deal because a finder or a thief could negotiate the instrument.

4. Qualified indorsement

- a. In the qualified indorsement, the indorser merely passes his title to the instrument by writing the words, "Without recourse" over the signature of the indorser.
- b. An unqualified indorser not only agrees that the instrument is genuine and

constitutes a good claim but he also goes further and agrees that if the holder takes the proper steps he (the indorser) will pay the instrument if the maker or the drawee fails to pay.

c. A qualified indorser makes the following warranties even though the party responsible for payment refuses to do so

(1) A qualified indorser warrants that the instrument is genuine.

(2) At the time of his indorsement, a qualified indorser had no knowledge of any facts that would make the instrument void.

(3) The indorser has good title to the instrument.

(4) All prior parties have capacity to contract.

d. This form of indorsement is often used when the business paper is backed by a mortgage security.

5. Conditional indorsement

a. In this indorsement, the indorser transfers possession of the instrument but retains the title to it until some

condition has been fulfilled. The indorser directs and controls the future use of the instruments.

- b. An indorsement may be made subject to any condition written on the back of the instrument along with the indorsement but the condition does not change the obligations of the original or primary parties.

D. Special types of indorsement

1. Irregular indorsement is an indorsement in which the instrument is indorsed by a party before the payee indorses it. The purpose is to lend the credit of the indorser to the maker although it may be to lend the indorser's credit to the payee.
2. Accommodation indorsement is an indorsement made by one party for the purpose of lending credit to another party to the instrument.
 - a. If the accommodation indorser's signature appears before that of the person he had accommodated, the accommodation indorser is also called an irregular indorser.
 - b. The accommodation indorser merely loans his name to the accommodation party for the purpose of giving credit to the instrument so that he cannot be held

liable to the accommodated party but he is responsible to all the subsequent holders as a regular indorser.

3. Waiver indorsement is an indorsement in which the indorser signifies his willingness to be bound by his obligation even though some of the usual formalities, such as a notice of nonpayment, are denied him.
4. Partial payment indorsement occurs when a promissory note is paid in installments whereby the maker should see to it that each payment is noted on the back of the note by the payee followed by his signature.

E. Obligations of an unqualified indorser

1. An unqualified indorser must be certain that the instrument is properly presented to the acceptor or maker for payment or if payable after sight to the drawee for acceptance.
2. If the instrument is dishonored, the unqualified indorser must be certain that the previous indorser be given due notice of dishonor.
3. If the instrument is a foreign bill, the unqualified indorser must be certain that it is duly protested.

F. Warranties of unqualified indorsers

Unqualified indorsers of a negotiable instrument

who transfer the instrument impliedly warrant to the transferee that

1. the instrument is genuine and is in all respects what it appears to be
2. prior parties had the capacity to enter a legally binding contract. If the maker or a prior indorser refuses to pay because he is an incompetent party to contract, the holder can collect from any indorser whose name follows that of the incompetent party
3. the unqualified indorser has good title to the instrument
4. at the time of his indorsement the instrument is a valid and existing obligation

G. Obligations of transferor by delivery or by a qualified indorsement

1. The transferor who transfers a negotiable instrument by delivery or by a qualified indorsement transfers only the rights that he has in the instrument. He does not undertake to pay the amount of the instrument in case the maker of the indorser does not or cannot pay the instrument or cannot do so because he has become insolvent.
2. The person who negotiates an instrument by delivery or by a qualified indorsement is not, however, entirely free from responsibility.

3. The transferor makes the same warranties that are made by a person who transfers a negotiable instrument by an unqualified indorsement the difference being that he does not warrant the instrument's validity at the time he indorses the instrument.
4. The transferor does warrant that he is innocent of anything that might impair the validity of the instrument or render it valueless.

H. Discharge of indorser's liability

An indorser of a negotiable instrument is discharged from his liability by

1. any act that discharges the instrument
2. the discharge of a prior party or by the release of the principal party or debtor
3. the intentional cancellation of his signature by the holder
4. a valid tender of payment made by a prior party
5. an agreement binding on the holder to extend the time or payment or to postpone the holder's right to indorse the instrument

IV. Rights of holder

A. Definition of terms

1. The payee, indorsee, or bearer who has possession of a negotiable instrument or

who obtains the negotiable instrument by indorsement is known as a holder.

2. One who takes a negotiable instrument in good faith and for value, before maturity and without notice of any defects in the instrument is known as a holder in due course. The expression "bona fide holder for value without notice" serves to identify the holder in due course.

B. Requirements for a holder in due course

1. The instrument must be complete and regular upon its face. A holder of a negotiable instrument who is aware of any blank, erasure, or irregularity indicating defects in the form forfeits his rights as a holder in due course.
2. The instrument must not be overdue. A paper that was not paid at maturity should caution the holder in due course to investigate the reason for the delay. If a holder accepts the negotiable paper that is overdue, he is no longer a holder in due course.
 - a. If an instrument is payable on demand, it matures within a reasonable time after it is issued. A reasonable time is a question of fact dependent upon the

circumstances of each case, the nature of the instrument, and the customs of trade.

b. An instrument payable in installments is overdue if a single installment has not been paid when due.

3. The holder must take the instrument in good faith, for value, and without knowledge of dishonor.

a. A party takes a negotiable instrument "in good faith" when he receives the paper and is not aware nor suspects any condition or circumstance which would furnish evidence for refusal by the maker or drawer.

b. A party takes a note or draft for value, if he gives anything of reasonable value for the instrument.

4. At the time the instrument is negotiated, the holder must be without notice of any infirmity or defect in the title.

C. Rights of a holder in due course

1. Personal defenses

a. Personal defenses to the payment of a negotiable instrument are those which may be used by the maker of the

instrument against the one to whom he transferred it except the holder in due course.

b. Types of personal defenses

- (1) The lack or failure of consideration for the promise is a personal defense which may be used by the maker against the payee but he could not avoid liability to a holder in due course.
- (2) Fraudulently inducing a party to enter into a contract by duress and undue influence is a personal defense. When a person knows that he is executing a negotiable instrument but is persuaded and induced to do so by false statements or representations, he cannot defend against a holder in due course.
- (3) In the personal defense known as setoff or counterclaim, the maker of a promissory note may not sue a holder in due course with this type of defense.

A setoff is a counterclaim growing out of some other transaction

which a defendant sets up against the claim of the plaintiff.

A counterclaim is a claim to set up or to offset another claim.

- (4) Payment before the date of maturity is a personal defense which cannot legally be claimed against a holder in due course. If the maker has neglected to take the instrument from the holder in due course for cancellation, the holder may demand a second payment of the negotiable instrument even though the maker paid the instrument on or before the date of maturity.
- (5) The nondelivery of a completed instrument is also a personal defense. The legal principle states that if the completed instrument is lost, stolen, or otherwise wrongfully taken from the signer and comes into the possession of a holder in due course, the holder can collect on the instrument.

(6) The unauthorized completion of an incomplete instrument cannot be used as a claim against a holder in due course.

2. Real or absolute defenses

a. Real or absolute defenses are defenses which may be used against anyone, even against a holder in due course.

b. Types of real or absolute defenses

(1) The lack of capacity of an incompetent person to contract as in cases of infancy, insanity, lunacy, or habitual drunkards, and minors cannot hold the party liable for the payment of the note even if it is in the hands of a holder in due course.

(2) A negotiable instrument becomes void when it is given in payment for a gambling debt. No collection may be made on the note even by a holder in due course.

(3) The execution of an instrument in the name of a person without that person's express or implied consent is known as forgery. A

holder in due course could not collect payment on a forged check from the supposed drawer. One who indorses a forged instrument cannot be relieved of his liability because he certifies that

- (a) the instrument was genuine
- (b) he has good title to it
- (c) all prior parties to it had the capacity to contract

(4) Material alteration is any change made in an instrument which affects the rights or parties under it. This change or alteration may affect

- (a) the date of maturity
- (b) the face of the instrument
- (c) the rate of interest
- (d) the place of payment

The one who makes the alteration cannot legally claim the original amount.

(5) Nondelivery of an incomplete instrument is an absolute or real defense. If a note is incomplete and is not delivered by the maker, no contract evolves; and the holder in due course cannot claim the note.

(6) Fraud in the execution of a negotiable instrument is an absolute defense which may be used by the maker against anyone, even a holder in due course.

D. Steps taken by holder upon dishonor of instrument

1. Presentment for payment of an instrument must be made to the maker or other parties liable for the instrument when it is due.

a. A negotiable instrument must be presented within a reasonable time. If a check is presented for payment after a year, the time limit is considered to be reasonable. Unless there are uncontrollable factors preventing the holder to perform, the failure to present the instrument discharges the indorsers.

b. A negotiable instrument must be presented at a reasonable hour on the date on which it is due provided the date of presentation is a legal business day. If the due date is on a Saturday, Sunday, or a holiday, the instrument is due the following business day.

- c. A negotiable instrument is payable at the place stated. But, if the place is not stated, the usual business place or home of the individual becomes the lieu of presentment for payment. If neither place can be found, the instrument may be presented at any place where the one to make payment is to be found.
- d. A negotiable instrument must be shown to the person from whom payment is demanded, and after payment, it must be delivered to the person paying it.

2. Notice of dishonor

- a. The form for a notice of dishonor in most states may be written or oral; the instrument must be identified; it must show that the paper has been dishonored, and it requires the payment to be made.
- b. The notice of dishonor must be given within a certain period of time so that the indorsers and drawee will know ahead of time that the notice has been given.
- c. When the interested parties live in the same town or city, the notice should be delivered personally or put into the mail on the following day.

- d. When the interested parties live in a different city or town, the notice should be mailed no later than the day following the dishonor.
- e. In other circumstances, notice must be given within the time taken by a proper notice made by mail. The proper mailing of the notice is considered a proper notice even though the notice may be lost in the transit.

3. Notice of protest

- a. The notice of protest is a formal written declaration stating that the instrument was properly presented and that it was dishonored.
- b. The declaration is made on behalf of the holder of the instrument and given notice that any loss arising from non-payment of the instrument shall be borne not by the holder but by the drawer or indorsers to whom such notices are sent.
- c. The certificate of protest must contain the time and place of presentment; the fact that presentment was made and the manner in which it was made; the demand

made, the answer given or the fact that the parties could not be found; and the reason for protesting the instrument.

- d. The practice of protesting a dishonored instrument is followed by banks and many other business firms unless protest is waived or the amount is a trifling.
- e. A protest may be made in the case of a draft or check in one state and payable in another. If the protest is not made nor executed, the drawer and the indorsers cannot be charged with liability for payment.
- f. The expression "No Protest" or the initials "N. P." appearing on a check means that the indorser, generally a bank, waives the right to demand protest of the instrument if it is dishonored.

V. Promissory notes

- A. A negotiable promissory note is an unconditional promise in writing and signed by the promisor to pay a sum certain in money on demand or at a fixed or determinable future time to the bearer or to the order of a specified payee.
- B. Requirements for a negotiable promissory note
 - 1. The promissory note must contain an unconditional promise.

2. The promissory note must be in writing and signed by the maker.
3. The promise or order to pay must be a sum certain in money.
4. The promise is to pay on demand.
5. The promissory note must be payable to the bearer.
6. The payee must be designated with certainty since the instrument is payable to bearer.

C. Parties to a promissory note

1. Specific parties

- a. The person, who executes, makes, or creates a promissory note, is called the maker.
- b. The person to whom the maker promises to pay the money is called the payee.
- c. When the payee sells the note to someone else, the payee signs his name on the back. He is now called the indorser.
- d. The person to whom the payee transfers or negotiates the promissory note is known as the indorsee or the holder.

2. General types of parties

- a. Primary parties are those that assume the first or absolute liability for the payment of the instrument when it is due.

The maker of a note and the acceptor or drawee of the draft are primary parties.

- b. Secondary parties are those who are held responsible if the primary parties fail to fulfill their obligations to pay the instrument. The drawer of a check or a draft and indorser on an instrument are secondary parties.

D. Liabilities of maker

1. The maker agrees to make the payment on a note in accordance with its terms.

Consideration must have been received for the promise made by the maker.

2. On an interest-bearing note, the maker promises to pay the interest plus the face of the note.
3. The interest to be paid is the legal rate unless otherwise specified.
4. If no interest is made known, the maker is liable for the face value of the note only.
5. The maker of a note admits the existence of the payee and his capacity to transfer the instrument by indorsement.

E. Special forms of promissory notes

1. Bonds

- a. Bonds are long-term notes issued in return for money borrowed. They are issued

by government agencies such as cities, school districts, the Federal Government, and by private corporations.

b. Kinds of bonds

- (1) Bonds that are payable to a particular individual are known as registered bonds. These bonds are not negotiable because they may be transferred only by registering the change in ownership with the issuer of the bond.
- (2) Bonds that have no security except the promise of the organization which issued the bonds are called debenture bonds.
- (3) Bonds with interest coupons attached are known as coupon bonds. These bonds are payable to bearer, are negotiable, and may be transferred by delivery for the amount and pledged as security. The attached coupons are negotiable and each coupon states that the maker promises to pay interest on the dates given.
- (4) When property is mortgaged to

secure the performance of a note and the description of the property is given in the face of the note, the note is known as a collateral or mortgage note.

- (5) When a note contains a statement that the maker is in default and authorizes the holder to have judgment entered against him in a court, the note is known as a judgment note. A judgment note is sometimes called a cognovit (he confesses) note which means that the maker "confesses" that a judgment should be granted against him without further legal processes.

2. Individual or Several Notes

A note issued and signed by one person reading, "I promise to pay" is considered to be an individual or several note. In this type of note the maker is individually liable for the amount stated on the instrument.

3. Joint and Several Notes

- a. A note upon which two signatures appear, the first is designated as the maker and

the other as the surety, is known as a joint and several note.

- b. The expressions used for this type of note are "We or Either of us promise to pay" or "We jointly and severally promise to pay."
- c. According to the law, a suit may be brought against one or all signers.
- d. The holder may collect the face of the note from one of the makers or from all.
- e. If the holder cannot collect the full amount from one of the makers then the other makers may be forced to divide the proceeds of the note proportionately.

F. Necessity of presentment for payment

If the holder fails to present the note to the maker for payment at maturity, the indorsers on instrument are discharged from their liability. It is important that proper presentment of the instrument be made to the maker on the day the instrument falls due.

G. Manner of presentment for payment

1. Presentment of payment must be made by the holder of the instrument or by one authorized to act and receive payment for him.

2. The purpose of presentment for payment is to require the person liable on an instrument, the maker and the acceptor of a bill, to pay the instrument when it is due.
 - a. Presentment must be made to the person primarily liable or to someone acting for him.
 - b. When presentment for payment is made, the promissory note must be shown.
 - c. Demand for payment by telephone is not the proper way for presentment. If this is done, the party secondarily liable will be discharged.
3. Presentment must be made at the place specified
 - a. If no place is designated, the presentment must be made at the maker's place of business or at his residence.
 - b. If neither the place of business nor the residence of the maker can be found, the instrument may be presented wherever the maker or the person who is making the payment can be found or at his last place or known residence or place of business.
 - c. If the address of the person to make payment is given, presentment for payment must be made at his address.

- d. Failure to make presentment under these circumstances discharges all parties secondarily liable.
4. Presentment must be made at a reasonable hour on the day the note is due unless that day is a Saturday, Sunday, or a legal holiday in which case the note is payable on the next succeeding business day.
 - a. If a note is payable on demand, presentment must be made within a reasonable time after the note is issued. Failure to present it within a reasonable time will release the indorsers from liability.
 - b. If no definite hour is mentioned, the presentment must be made during business hours at the maker's place of business.
 - c. If it is payable at a bank, the note should be paid during banking hours.
 - d. If a note falls due on Saturday and is payable on demand, it may be presented for payment before 12 noon on that day.
 - e. If presentment is to be made at a person's home, the instrument must be presented before the usual hours of rest.

H. Interest on notes

1. Interest paid on the original principal is known as annual interest or simple interest. Interest paid on the principal and on the interest plus the principal during a previous period and added to it is known as compound interest.
2. Interest that is set by law is known as the legal rate of interest.
3. The maximum rate of interest allowed by law varies in the different states. It is sometimes called the lawful rate. It is the highest rate that may be agreed on by the parties and stated in a contract.
4. If interest charged is greater than that allowed by law, the provision for this high rate of interest is known as usury.

I. Dishonor of note

1. Notice of dishonor
 - a. When a note is dishonored, the holder must notify all parties concerned that proper presentment of the note was made but payment was refused. The indorsers are relieved of their liability if the holder fails to give this notice immediately. Indorsers are liable for

the payment of the instrument in the order in which their names appear in the indorsements.

- b. The notice of dishonor may be either written or oral. It is preferable that the notice of dishonor be given in writing in order to furnish proof that the notice has been given. The liable parties must have a sufficient description of the instrument. The notice must contain the information that the instrument has been properly presented for payment and that payment has been refused.
- c. If the holder of the instrument and the parties notified live in the same locality, notice must be given so that the notice will be received on the day following the day of dishonor.
- d. If the parties resided in different places, the notice of dishonor must be mailed in time to go out on the day after the day of dishonor or otherwise sent to arrive no later than if sent by mail.
- e. Each indorser must notify the parties prior to himself within the due time

after he receives the notice. An indorser may waive presentment and notice of dishonor by indicating this fact above his signature.

2. Protest

a. A formal written declaration stating that the instrument was properly presented and dishonored is known as a notice of protest.

b. Content of protest

(1) The declaration of loss arising from non-payment of the instrument will be borne not by the holder but by the drawer or indorsers to whom such notices are sent.

(2) The certificate of protest must contain the

(a) the time and place of presentment

(b) the fact that presentment was made

(c) the manner in which presentment was made

(d) the demand made and the answer given

- (e) the fact that the parties could not be found
 - (f) the reason for protesting the instrument
- c. The practice of protesting a dishonored instrument is followed by banks and many other business firms unless protest is waived or the amount is a trifling.
 - d. A protest may be made in the case of a draft or check in one state and payable in another. If the protest is not made nor executed, the drawer and the indorsers cannot be charged with liability for payment.
 - e. The expression "No Protest" or the initials "N. P." appearing on a note means that the indorser, generally a bank, waives the right to demand protest if the instrument is dishonored.

VI. Drafts or Bills of Exchange

- A. An unconditional order in writing, signed by the drawer, directing another person to pay a sum certain in money on demand or at a stated or determinable future time to the bearer or to the order of a specified person is known as a negotiable draft or a bill of exchange.

B. Types of bills of exchange

1. The foreign bill of exchange is an instrument used by merchants to pay debts contracted in other countries without the risk of losing their money.
2. The inland bill of exchange as the name implies was brought into existence for use between different parts of the same country. In the United States this type is used and drawn in one state and paid in the same state; but, if the bill is drawn in one state and payable in a different state, the instrument would be considered as a foreign bill of exchange.

C. Requirements for a negotiable draft

1. The draft or bill of exchange must contain an unconditional order to pay.
2. The instrument must be in writing and signed by the maker or drawer.
3. The instrument must contain an order to pay a sum certain in money.
4. The draft must be payable on demand or at a fixed or determinable future time.
5. The draft must be payable to the bearer or to the order of a payee.

6. The draft must specifically identify and designate with certainty the drawee of the draft.

D. Comparison of a draft with a promissory note

1. The promissory notes contain an unconditional promise to pay while the drafts contain an unconditional order to pay.
2. In a promissory note, there are two parties; namely,
 - a. the maker who is the party that creates the promissory note
 - b. the payee who is the party to whom the maker promises to pay the money
3. In a draft, there are three parties; namely,
 - a. the drawer who signs and issues the draft
 - b. the payee is the party to whom payment is ordered
 - c. the drawee is the party who is ordered to pay the draft

E. Classes of drafts

1. Demand or sight draft
 - a. If a draft is payable on demand or at sight, the draft is known as a demand or sight draft.

- b. A demand or sight draft is presented to the drawee by the holder. If the drawee accepts the draft, he pays it immediately.
- c. Sight drafts may be classified as
 - (1) three-party sight draft which is used by a person who wishes to transfer to a third party a sum of money owed to him by another
 - (2) two-party sight draft is used frequently as an instrument for the collection of money due from a purchaser to a seller as a result of the sale of goods or to collect a debt that is due or overdue.

2. Time draft

- a. If a draft is payable at a specified time or at the end of a specified period after sight or after the date of the draft, it is known as a time draft.
- b. The drawee accepts the draft by writing words indicating acceptance, and by signing his name on the draft, he then becomes known as the acceptor. The draft has the same force as the promissory note given by the acceptor and is payable at a fixed time after the date of acceptance.

c. A time draft may be classified as

(1) a time draft payable after sight

(a) the draft is payable in so many days or months after sight

(b) the draft must be presented to the drawee for acceptance in order to start the run of the stated time

The date of the draft is of no significance in a time draft payable after sight.

(2) a time draft payable after date means

(a) that the time starts running immediately from the date of the instrument

(b) that an acceptance is not necessary to start the time running

The holder may wait until the due date and then present the draft for payment.

F. Uses of drafts

1. Drafts are used by sellers of goods to collect overdue accounts or existing accounts from purchasers.
2. A seller of goods uses a sight draft attached

to an order bill of lading in making a C.O.D. freight shipment. Both forms are sent by the seller's bank to a corresponding bank in the buyer's city. The latter bank notifies the buyer who must pay the sight draft before he can obtain the bill of lading and the merchandise.

G. Liabilities of the drawee of a draft

1. The drawee must accept the draft in order to become liable.
2. A drawee cannot be forced to pay a draft when it is presented to him unless he shows that he is willing to accept the responsibility. He shows his acceptance by writing across the face of the note the most commonly used expression, "Accepted," with his signature and the date. His liability is the same as the maker of a promissory note.
3. If the drawee tears the draft or forgets to return it to the drawer within 24 hours from the time it is presented to him, he is said to have accepted the draft.
4. Through his acceptance of the draft, the drawee agrees to pay the holder according to those terms of his acceptance. He also admits that the drawer's signature is genuine.

H. Kinds of acceptance

1. The contract of the acceptor of a bill of exchange is absolute. This means that he cannot accept the bill then change his contract.
2. An acceptance by the drawee may be general or unqualified. An acceptance is general or unqualified when the acceptor agrees unconditionally to pay the instrument according to the terms.
3. After the drawee has dishonored the instrument by nonacceptance and it has been duly protested, a third person may accept the bill for the honor of the drawer. This is called supra protest.

I. Rights of drawee in accepting a draft

1. If the drawee refuses to accept a draft when it is presented to him, the holder may proceed immediately against the drawer and the indorsers. He need not wait until the date of maturity.
2. The rights of collection for the holder of a draft are the same as those of a dishonored promissory note, that is, he must give notice of dishonor to the parties involved immediately.

3. A draft may be dishonored when presented to the drawee for payment. The holder in this case must give proof that due notice of dishonor was given to the drawer or indorsers so that these parties may assume the liability.

J. Presentment for acceptance

1. The purpose of presentment for acceptance by a holder of a bill of exchange or draft is to ascertain whether or not the drawee named in the instrument intends to pay the bill when it is due.
2. When a bill is payable after sight, it must be presented for acceptance in order to fix the date when it is due. Failure to present the instrument to the drawee for acceptance within a reasonable time after it is issued or after its last negotiation will discharge the drawer and the indorsers.
3. A bill payable on a certain day need not be presented for acceptance. It is enough to present it for payment when the day arrives. Such a bill may be presented before the date of maturity if the holder wishes to do so. The drawee is allowed 24 hours to decide

whether to accept the bill. If he fails to return the bill after 24 hours, he is deemed to have accepted the instrument.

VII. Checks

A. A check is a special form of draft in which a depositor orders his bank to pay out of funds on deposit in the bank a designated sum of money to the payee.

B. Parties to a check

1. The person who draws, signs, or makes the check is known as the drawer or maker.
2. The person to whom the check is made payable is known as the payee.
3. The bank ordered by the maker to pay the amount of the check of the payee or his order is known as the drawee.

C. Comparison of checks and drafts

1. A bank is always the drawee of a check.
2. A check is drawn on the assumption that the bank has on deposit in the drawer's account an amount sufficient to pay the check.
3. In the case of a draft there is no assumption that the drawee has any of the drawer's money with which to pay the bill. The rights of the parties are not affected by the fact that the depositor does not have funds sufficient to pay the check.

4. If a check is drawn with intent to defraud the person to whom it is delivered, the drawer is subject to criminal prosecution. State laws provide that if the check is not made good within a stated period, such as ten days, it is presumed that the check was originally issued with the intent to defraud.
 5. If a draft is dishonored, the drawer is civilly liable.
 6. A check is payable on demand at any time after its date. When a check is postdated, the check is not payable until that date arrives.
 7. A draft may be payable either on demand or at a future time.
 8. Checks are issued for the purpose of paying bills or withdrawing money from the bank.
 9. Drafts are issued to collect bills.
- D. Comparison of checks and promissory notes
1. The check is an order to pay while a promissory note is a promise to pay.
 2. A check has three parties: the drawer, the drawee, and the payee.
 3. The promissory note has two parties: the maker and the payee.

E. Kinds of illegal checks

1. A bad check is a check drawn against a bank balance that is insufficient to pay the check or on a bank in which the drawer has no funds.
2. A forged check is issued by a person who fraudulently makes or alters a check to the injury of another.
 - a. The intention to defraud and the creation of a liability are the factors involved in forgery.
 - b. The most common forms of forgery are the signing another's name to an instrument and raising the amount of the check.
 - c. Precautions taken by banks to prevent forged checks are
 - (1) Upon opening a checking account the depositor must fill out a signature card that is left in the files at the bank.
 - (2) The signature helps the bank to recognize the signature of the maker in case a forged check would appear.
 - (3) The depositor must notify the bank

of a forgery within a reasonable time after receiving his monthly statement. If he should fail to notify the bank, the depositor must bear the loss.

3. The raised check is another kind of bad check that may cause difficulty. The bank is liable for the payment of a check. If the drawer, through negligence writes a check so that it could be easily changed or altered, the bank is not responsible.
4. If the date on a check is later than the date on which it is drawn, the check is said to be postdated. It is a promise to pay in the future the amount specified in the check.

F. Purpose of issuing checks

1. Checks are convenient and safe ways of payment for financial obligations. They are used widely as a substitute for money.
2. Checks are safe means of sending payment through mail instead of sending cash.
3. Checks may be duplicated in case they might be lost or destroyed.
4. The bank, if notified not to cash a check, will stop payment on a check if it lost or stolen.

5. Checks serve as written records of a payment. If the check is indorsed, this proves that the payee has received it.
 6. Canceled checks if properly indorsed may serve as receipts and the written purpose for which they were made out.
 7. Drafts are used to collect money from out-of-town debtors for accounts that are past due or accounts that are current.
 8. Drafts are used also with many C.O.D. freight shipments. A draft is attached to a bill of lading.
- G. Obligations of the parties to a check or a draft
1. The obligations of the drawer are
 - a. he does not incur any liability unless the draft is negotiated by the payee or if it is paid or accepted by the drawee
 - b. in a check the drawer is discharged of his liability if the check is paid by the drawee bank from the drawer's funds after the payee has negotiated the check
 - c. if the check or draft has not been negotiated or dishonored by the drawee, the drawee assumes responsibility to the indorsers and holder in due course provided that

- (1) there was proper presentment for payment or acceptance
 - (2) the drawer has received prompt notification of dishonor
2. The obligations of a drawee for a check and a draft are
- a. the drawee does not incur any liability if the draft is addressed to him
 - b. the bank as the drawee must honor the drawer's checks if the latter has sufficient funds in his account
 - c. if the holder refuses to accept a time draft or to pay a sight draft or check, the drawee of this check or draft is not liable to the third party
 - d. when the drawee states that he will assume the obligation of a draft, he becomes the acceptor of the draft
 - e. if the drawee destroys the draft or refuses to return it within 24 hours, the law considers his action as an acceptance of the draft.
3. The unconditional and absolute liability of the acceptor of the draft. He recognizes
- a. the existence of the payee
 - b. the capacity of the payee to transfer

the instrument by the indorser

- c. the existence of the drawer
- d. the drawer's authority and capacity to draw the instrument
- e. the genuineness of the drawer's signature

H. Presentment of check for payment

1. The presentment of a check for payment should be made within a reasonable time; that is, usually within 24 hours, or not later than the next morning or next business day, if the payee and the maker live in the same city or town.
 - a. If the check is not presented for payment within a reasonable time, the drawer and the indorsers will be released from liability.
 - b. Should a check be drawn on a bank that fails before presentment, the holder must bear the loss if he unreasonably delayed presentment of the instrument.
2. In 1933 Congress enacted a law to protect the funds of depositors. The Federal Deposit Insurance Corporation provides for the safety of deposits up to \$10,000 in banks that are insured by this Corporation.

I. Dishonor of a check

1. To fix the liability of the indorsers or drawer when dishonoring a check, proper presentment of the check must be made and a notice of dishonor must be forwarded to the indorsers and drawer showing that
 - a. the proper identification of the instrument
 - b. the statement that the note has been dishonored
 - c. the demand for payment
2. Although checks are dishonored, they may be presented again for payment at a later date
 - a. If the holder intends to present the check a second time, he is obliged to admit that the check was previously dishonored.
 - b. If proper notice of dishonor is not given and the presentment of the check for a second time is performed, the drawer of a check and the indorsers of a check or draft or note are relieved of liability.

J. Liability of bank for improper payment of check

1. If the bank makes payment of a check after it has received a notice from the depositor to stop payment, it is liable to the depositor for the payment of the check.

2. If the signature of the depositor has been forged, the bank is liable for the payment of the check. The bank should have a record of all the signatures of its depositors; therefore, great care must be exercised in identifying signatures. If the depositor proves that he did not sign the check nor did he authorize anyone to sign his name, the bank is liable without regard to the care which it exercised.
3. If the amount of the check has been increased, the bank is liable to drawer for the increased amount when a payment is made. Upon the receipt of the check for payment, the bank should examine the check and if it does not find any signs of alterations, the bank will be responsible for the loss.
4. Exceptions releasing the liability of the bank for improper payment of checks
 - a. If alterations are due to the negligence or carelessness of the drawer, the drawer suffers the loss.
 - b. The writing of checks in pencil should be discouraged.
 - c. As a general rule, the payment of a check becomes ineffective after the depositor's death.

K. Special forms of checks and drafts

1. A certified check is a regular check drawn on a bank by a depositor and accepted by the bank in advance of payment.
2. A bank draft is a draft drawn by a bank on funds that it has on deposit with other banks.
3. A cashier's check is a check that a bank draws on its own funds.
4. Money orders are forms issued by the Post Office and express companies and used to pay goods ordered by mail.
 - a. A postal money order is drawn by the postmaster in one city on the postmaster in another city and is made payable to particular individual or company.
 - b. An express money order is drawn by the express agent in one city upon an express agent in another city and is also payable to a specified payee.
 - c. An express money order may be transferred by unlimited indorsements while the postal money order may be transferred only once.
5. A traveler's check is a special form issued by banks and express companies. The safety

of this check is that the drawer must write his name on each check when he pays it and he must write his name each time when the check is cashed.

6. A trade acceptance is a special form of draft that is supposed to be drawn only at the time a sale of merchandise is made.
7. Letters of credit are instruments issued by a bank and addressed to its correspondent banks promising to accept order for money up to an amount stated in the particular letter of credit.
8. A voucher check is one to which is added a memorandum of the transaction for which the check is to pay. These checks are generally used by large business houses.

Student's Bibliography

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3. Goodman, Kennard E., Moore, William L., Today's Business Law, Pitman Publishing Corporation, New York, New York, 1956.
4. Lavine, A. Lincoln, Mandel, Morris, Business Law for Everyday Use, The John C. Winston Company, Philadelphia, Pennsylvania, 1947.
5. Rosenberg, R. Robert, Essentials of American Business Law, Second edition, Gregg Publishing Division, McGraw-Hill Book Co., Inc., New York, New York, 1955.
6. Schneider, Arnold E., Smith, Edward A., Whitcraft, John E., Personal Business Law, Second edition, Gregg Publishing Division, McGraw-Hill Book Co., Inc., New York, New York, 1957.

Study and Activity Guide

Instructions to the students. In the study and activity guide that will be given you for this unit you will find questions to be answered and problems to be solved. Use pen and ink. Answer all questions and problems with complete statements. The answers to these questions and the principles needed for the problems will be found in the reference books placed on the book stand in back of the class. Each question is coded and the numbers correspond to the reference books chosen for this study. After completing the required work for the unit, you may proceed to the list of Optional Related Activities which is posted on the bulletin board. You may do all or only those learnings that are most appealing to you. At the end of the unit an achievement test will be given.

1. Give a brief description of how people in the early times carried on trade.

4:129 6:383

2. Show how the free circulation of negotiable instruments has been regulated and protected by statute from the fourteenth century up to the present time.

1:308 3:259 4:130 5:196 6:387

3. What are the two general functions of negotiable instruments?

1:308 2:220 3:258

4. PROBLEM: Joyce owns a department store in Boston, Massachusetts. He orders goods from Speigel's Mail-Order House in Chicago, Illinois. The amount of the goods is \$250. Joyce decides to pay in full for the goods by sending cash through mail. Do you think he proceeded wisely? If not, how would you explain to Joyce the advantages or disadvantages of his way of doing?
5. What are the essentials of a negotiable instrument?
1:317 2:227 3:260 4:144 5:199 6:393
6. PROBLEM: Tell whether the following instruments are negotiable or nonnegotiable and why.
- a. Johnson gives Rice a paper which reads, "I.O.U. thirty dollars."
 - b. Manchester, N. H., March 17, 1960. Thirty days after date I promise to send to Robert Long or order \$150 in groceries. John Rice.
 - c. I promise to pay to the order of Percival Archibald all the profit made from the sale of Easter cards.
 - d. On or before March 17, I promise to pay to the order of James Brown three hundred dollars. Joseph Wiseman.
 - e. When John Hermann reaches twenty-one, he promises to pay to the order of his uncle \$500.
 - f. Within one year after my death, I promise to pay to the order of Harry Smith one hundred dollars. Samuel Brown.
 - g. I promise to pay Andrew Gray forty dollars.
 - h. I promise to pay Andrew Gray, or order, forty dollars.
 - i. I promise to pay to the order Jane Black five hundred dollars when she graduates from college.
 - j. I promise to pay the bearer forty dollars.
7. Identify the parties for the following negotiable instruments: check, promissory note, and draft. Define each party.
2:220 3:374 3:378 5:203 5:209 5:214

8. When is a negotiable instrument payable to bearer? to order?
1:323 3:263
9. What are the non-essentials of a note?
1:324 2:226 3:265 4:152 6:395
10. PROBLEM: Which of the following is a negotiable instrument, which is a contract? What is the difference between the two?
- a. "Denver, Colorado. February 29, 1960. On June 6 next, I promise to pay to the order of John Owens, two hundred dollars. James Hoyt."
- b. "On September 1 next, I promise to deliver to John Owens one hundred bushels of corn. James Hoyt."
11. Name and explain the methods of negotiation.
1:328 2:254 6:405
12. How is an instrument that is payable to order negotiable? Payable to bearer?
1:323 3:263 4:157 6:405
13. PROBLEM: Upon receiving his pay check, Jones went to the bank to cash it. What must Jones do before the bank makes payment of the check?
14. If the instrument has been indorsed by several indorsers what is the liability of each party in case a dispute arises?
3:285 5:224
15. What are the obligations of an unqualified indorser? Illustrate.
1:333 4:179 5:227
16. What are the warranties of an unqualified indorser in transferring a negotiable instrument?
1:333 4:179 5:227
17. How is an indorser discharged from his liability?
5:228

18. PROBLEM: The indorsers of a note are as follows: Clay, Webster, Holt, and Damsel. Webster is the payee of the note. What is Clay's position as an indorser on the note?

If the note is not paid at maturity, may the holder collect from the indorsers if he notifies them of the non-payment?

19. What are the warranties of a qualified indorser?

2:257 3:386 6:407

20. Name and define the most common forms of indorsements. Illustrate.

1:329 2:254 3:285 4:159 5:225 6:405

21. PROBLEM: The word "indorse" defined means "to give support to." In what ways do you think that indorsements give support to a note, a check, or a draft?

22. Under what conditions may holder of a negotiable instrument become a holder in due course? Give an example of each condition.

1:339 2:261 3:306 4:162 5:229 6:396

23. How do personal defenses and real, or absolute defenses differ? Give four examples of each.

1:340 2:264 3:307 4:163 5:232 6:391

24. PROBLEM: Wells transferred to Byron, an innocent purchaser for value, the following five notes obtained by him under the conditions described below. It is assumed that Byron must sue in each case in an effort to collect. How will the courts decide in the following cases and give the reason.

- a. Wells had stolen the note.
- b. He made changes or altered the note.
- c. He obtained the note by fraud.
- d. He filled in blanks contrary to authority.
- e. He obtained the note by duress.

25. Why cannot one who indorses a forged check be relieved of his liability? Illustrate.

5:234

26. PROBLEM: McDonald wished to make a deposit at his bank with checks. His messenger boy would be making the deposit for him. In order to avoid a possible loss, how should McDonald indorse the checks? Name the form of indorsement he would use.
27. When are parties discharged from liability in a negotiable instrument?
3:312 4:199
28. Under what conditions may a holder of negotiable instrument become a holder in due course?
1:339 2:261 3:306 4:162 5:229 6:396
29. What may a holder in due course collect when the maker of the instrument claims absolute defense of material alteration?
1:334 2:265 3:310 4:173 5:234
30. What legal principle is in force for the nondelivery of an incomplete instrument? Illustrate.
2:265 5:234
31. What steps may be taken by a holder in due course against the indorsers and the drawer if the instrument is dishonored?
1:347 5:234
32. PROBLEM: Rumford loaned money to Lyden and received a 60-day note dated November 1, in Syracuse, New York, payable to the order of Rumford and signed by Lyden. Harrison's signature also appeared on the note as an accommodation indorser. The note was due December 31.
- Give a reason why Rumford wanted Harrison's signature on the note.
 - Rumford presented the note to Lyden on January 9 and demanded payment. Payment was refused because presentment was made after the due date. Was Lyden discharged from paying the note? Give your answer why or why not.
 - Was Harrison liable under the circumstances given in part b? Explain why or why not.
33. How do the notice of dishonor and the certificate of protest differ?
1:346 4:196 6:410

34. What are the liabilities of the maker of a note?
1:354 4:177 5:210
35. Who are the primary and secondary parties to a promissory note?
3:294 4:177
36. Name the special forms of notes and define each.
1:355 2:230 3:276 4:140
37. PROBLEM: Identify each of the following notes.
- A note issued and signed by two persons and reading:
"We promise to pay . . ."
 - A note to which a person signs his name after the name of the maker as a privilege to the maker in order to make his credit standing good.
 - A note to which is added a description of the property which has been pledged by the maker as security that the note will be paid at maturity.
 - A note that is so worded that at the time of issuance the maker admits that he has no defense to offer against paying the instrument.
 - A note under seal issued by a corporation, government, or governmental political division such as a city or county.
38. Give the following information concerning proper presentment for payment of a negotiable instrument.
- When must presentment be made?
 - To whom must presentment be made?
 - Where must presentment be made?
 - How must presentment be made?
 - By whom must presentment be made?
- 1:356 2:232-4 3:296-7 4:190-2
39. PROBLEM: An instrument is indorsed when the holder has placed his name on it.
- Does a valid indorsement exist
 - if the holder prints his name on the instrument?

39. a. Does a valid indorsement exist
- (2) if the indorsement is made with a rubber stamp?
 - (3) if the indorsement is written in part of the amount stated on the instrument?
- b. Must the holder of a negotiable paper always indorse the instrument in order to transfer or negotiate it to another? Explain.
40. PROBLEM: The following factors were not written on several papers. Explain whether these omissions affected the negotiability of the instrument.
- a. The number of the instrument was omitted from a note.
 - b. The sum in figures was omitted on a draft.
 - c. The date of the instrument was omitted on a check.
 - d. The acceptance of the drawee was omitted on a sight draft.
 - e. The words "Pay to the order of" were omitted from a note.
41. What effect does the failure of presenting a note at the proper place and time have on the parties involved?
- 2:233 4:190
42. What course of action would a holder take if the maker refuses payment on the instrument?
- 3:300
43. PROBLEM: A note is made payable at the First National Bank. The holder presents the instrument for payment at the maker's place of business. Has a proper presentment been made? What is the principle of law involved?
44. When is a note considered to be dishonored?
- 1:357 2:234 3:300 4:195
45. What procedure must the indorsers follow upon notice of dishonor of the promissory note?
- 1:357 4:197
46. What are the requirements of a notice of dishonor?
- 3:300 2:235
47. PROBLEM: A note was dishonored on June 12. Notice of dishonor was mailed June 19. Has a proper notice of dishonor been given? What is the principle of law involved?

48. When should notice of dishonor be given to the indorser within the same locality? In different cities?

2:235 3:301 4:198

49. When is presentment for payment excused? Notice of dishonor excused?

1:233 3:298 4:192

50. PROBLEM: Walters, a holder of a note, could not present the note for payment on the date of maturity because he was seriously ill. As soon as he was well enough to go out, he presented the note for payment ten days after the note was due. The maker refused payment and Walters now seeks to hold the indorsers for the payment. Can he do so?

51. What is the effect of not giving notice of dishonor? Delaying in presentment? Delay in giving notice of dishonor?

2:233 3:301 4:192

52. Name and define the two classes into which ordinary drafts fall.

1:362 2:238 3:279 5:215 6:432

53. When does the drawee become the acceptor of a draft?

1:362 2:240 3:281 6:422

54. In what types of drafts may a time draft be divided? Sight draft?

2:238 5:216 6:432

55. PROBLEM: "On demand pay to the order of Frank Fox \$200 and charge the amount to the account of William Frates. C. Jones."

a. Is the instrument given above a negotiable sight draft? Why or why not?

b. When will the draft be due?

c. Is the drawee liable for immediate payment when the draft is presented to him?

d. Supposed the draft had read, "at 30 days' sight," when would the draft be payable?

56. When is a draft considered to be dishonored?
 1:369 2:240 4:195
57. PROBLEM: Identify each of the following instruments as a check, promissory note, draft, or a nonnegotiable instrument.
- "The First National Bank, Boston, Massachusetts. Pay to the order of Casey Brown \$100. H. Wedges."
 - "Sixty days after date pay to Herbert Mason, \$500. T. James."
 - "Due Samuel Long or order in thirty days \$150. Francis Michaels."
 - "At sight pay to Fulton Jay or his brother, R. V. Jay, \$100. T. Cassidy."
 - "Pay to the order of Maurice Wells \$100. Charge the same to my account. R. T. Plunkett. To A. B. Daniels, Lincoln, Nebraska."
58. What precautions are taken by banks in order to prevent forged checks?
 5:208 6:418
59. What are the obligations of the drawer and drawee of a check or a draft?
 1:366 2:247
60. What course of action should the drawer take if the check or draft has been dishonored by the drawee?
 1:369 4:197 6:410
61. According to the law what does the destruction of a draft or the refusal of returning it imply?
 1:366 2:240
62. What effect does the neglect of presenting the check for payment within a reasonable length of time have on the parties involved?
 1:368 2:247 5:205 6:419

63. What happens if a bank fails before presentment of the check is made?
2:247 3:271
64. What protective measures has the Government taken to safeguard the depositors? Explain fully.
2:248 3:269
65. What liabilities does a bank acquire by making improper payment of checks?
2:249 5:208
66. Name and define the special forms of checks.
1:370 2:241 3:272 4:136 5:206 6:431
67. What are the kinds of checks that may cause a check to be illegal? Explain and illustrate each kind.
3:271 5:206
68. PROBLEM: A stranger enters a jewelry store and purchases a very expensive watch. He writes out a check for the price of the watch. The jeweler accepts the check and later presents it to the bank on which the check is drawn for payment. The bank refuses to pay because they have no customer by that name. Who will suffer the loss? Why?
69. What procedure must the drawer follow in order to obtain certification of a check? The payee or holder?
2:251 6:431
70. Define the following terms:
- | | | | |
|-----------------------------|-------|-------|-------|
| a. Negotiable instrument | 1:307 | 3:258 | 6:385 |
| b. Allonge | 3:284 | 4:157 | |
| c. Transferee | 5:224 | 3:259 | |
| d. Transferor | 3:259 | | |
| e. Holder | 1:338 | 3:305 | |
| f. Holder in due course | 1:339 | 3:205 | 5:229 |
| | | 4:162 | 6:396 |
| g. Foreign bill of exchange | 3:280 | | |
| h. Inland bill of exchange | 3:280 | | |

Optional Related Activities

Instructions to the student: In the following related learnings, choose the ones that appeal to you the most. The problems are to be completed in ink and returned to the teacher for credit.

1. Read one of the following topics. Write a report of at least 500 words on the chosen topic. The reference books for this exercise will be placed on a reserved shelf in the classroom. Sign your name to the card and place it in the box beside the books. Other sources than those mentioned may be used. Give a list of the references used for the report.
 - a. "Development of the Banking System in the United States."
 - b. "Show how the Government has control of Credit."
 - c. "Give the development of the monetary system in the United States."
 - d. "Show how the Federal Reserve System protects the circulation of negotiable instruments."
 - e. "Discuss the history and nature of the present monetary standard of the United States."

2. During the depression of 1930-1935, many banks were forced to close. Many people lost a great deal of money because the banks failed. Inquire of your parents or close friends if they had money in some of those banks that failed. What was done in paying off the depositors? Report on your findings and the measures taken by the government since that time in order to protect all depositors.

3. You are requested to represent the members of your class by visiting a local bank and holding an interview with one of the executives regarding the usual procedure followed when a forged or altered negotiable instrument is found. Who must be notified? Who suffers the loss? Who has the responsibility of notifying the public authorities once the crime is discovered? Report to the class the information you have obtained through this interview. Be sure to get permission before visiting the bank.
4. Make arrangements with your teacher to obtain a film concerning some phase of the use of negotiable instruments.
5. Inquire of your parents, other relatives, or friends whether they have had any experiences in using checks and drafts. Using assumed names, report on one of the most important or unusual cases.
6. Some types of United States Treasury Bonds are not negotiable; other are. Inquire of your local banker as to which of these bonds are negotiable and which are not. Try to obtain a display of these bonds.
7. Make arrangements with your teacher to invite a local bank official or attorney to come to give a talk on negotiable instruments. Ask the students the points they would like discussed and give the official a list. You are to be chairman and preside at the meeting.

8. From the topics given below, construct a chart showing how the ordinary contract differs from the negotiable instrument:
- | | |
|------------------------------------|-------------------------------------|
| a. Definition | h. Required form |
| b. Types | i. Acceptance |
| c. Parties | j. Relation of third parties |
| d. Elements | k. Termination |
| e. Manifestations of mutual assent | l. Laws protecting parties involved |
| f. Legal form | m. Transfer |
| g. Consideration | |
9. From the book entitled Colorful Teaching of Business Law by Fickett and Cordell, select one of the skits given and prepare the dramatization to be presented before the class:
- "Creation of Negotiable Instruments" p. 117 No. 10
 - "Negotiable Instruments Rights and Liabilities of Parties" p. 119-121 No. 11-12
 - "Negotiable Instruments, Banks and Banking" p. 124 No. 13
10. From the subject matter covered in the study of negotiable instruments, compose a skit applying the legal principles studied from one of the topics. Prepare the skit for a mock trial.
11. Find the date of maturity for the following notes:
- | | |
|---------------------------|----------------------------------|
| a. January 15 for 60 days | d. July 8 for 75 days |
| b. April 1 for 3 months | e. September 1, 1960 for 3 years |
| c. May 21 for 120 days | |

12. Using the bankers' 60-day interest method, find the interest of the following notes:
- \$720 at 6% for 120 days
 - \$867 at 5% for 60 days
 - \$250 at 7% for 86 days
13. Using the formula $i = prt$, find the interest on the following loans:
- \$500 at 4% for 3 years
 - \$900 at 6% for 8 months
 - \$1,000 at 7% for 150 days
14. Samuel Strauss needed \$2,000 for 60 days.
- If he borrowed this money from the bank at a discount rate of 6% what would the charge be?
 - How much actual cash would he receive from the bank?
 - How much would he have to pay the bank on the date of maturity?
 - What kind of note would this be?
15. George of Adams, Massachusetts owed Thomas in Buffalo, New York, \$500. Price of Buffalo, New York owed George \$600. Write a draft that will enable George to order Price to pay the amount owed to Thomas.
16. Harold Small of Tampa, Florida ordered from Sung Lee in Hong Kong, China, some Oriental products to the amount of \$60. Write out a proper negotiable instrument that will facilitate the payment of the bill.

17. Compare the check with the note and the draft by completing the chart below.

FORM	PARTIES	USE	CHARACTERISTICS
a. Check			
b. Note			
c. Draft			

18. a. Draw the form for a draft. Supply the necessary information to complete a time draft. You are the drawer. State the problem.
- b. Draw the form for a draft. Supply the necessary information for completing a sight draft. Your father is the drawer. State the problem.
19. Prepare a bulletin board display of the various forms used as negotiable instruments. Contact the local banks for the necessary forms needed.
20. Illustrate through the use of cartoons various principles studied in the unit on negotiable instruments.
21. You bought a portable Magnavox Television set today for \$175 from the Nichols Radio Shop, located in your own city on the following terms; Down payment \$25 and 6 monthly payments of \$25, with interest at 5 per cent per annum after maturity. Draw and fill in with the proper information.

22. On (using the current date), you and your class president gave the principal (name of your principal) a 60-day noninterest-bearing note for \$400 and payable at a local bank, signed by you and your class president. Draw the note and write it so as to show that you are both liable for the instrument.
23. Tell whether the expressions given affect the negotiability of the instrument and give your reasons.
- a. An instrument containing no date.
 - b. An instrument is "payable in 20 bushels of corn."
 - c. Due Herbert White twenty dollars.
 - d. On demand, I, Mary Smith, promise to pay to the order of Julia Brown, one hundred dollars.
 - e. Promissory note payable three months after the maker reaches the age of 55.
 - f. Promissory note payable six months after the death of the maker.
 - g. Pay to R. V. Woods.
 - h. I promise to pay \$200 for your outfit from the proceeds of the penny sale.
 - i. I promise to pay to the order of (Student's name) or to pay part of her traveling expenses on an educational tour.
 - j. Pay bearer 60 dollars.

Problems and Cases

Directions: Solve the following problems and cases by applying the legal principles affecting the decisions. State the legal principles clearly and concisely.

1. R. B. Black executed and delivered a promissory note for \$7,100, payable to the order of his son, T. D. Black. The note was payable six months after the death of the maker. The holder of the instrument brought action against the estate of the maker to enforce the payment of the note. The instrument was declared nonnegotiable because it was not payable on demand or at a fixed determinable future time. Do you agree?
2. Johnson borrowed \$500 from Wilk on January 15 which was to be paid in sixty days at 4 per cent interest. Johnson made out the note payable to Wilk but he failed to fill in the due date or the interest rate. Wilk later wanted some cash so he filled out the missing information as agreed upon, so that he could negotiate the note at the bank. Is this note negotiable?
3. A man who had been declared insane by a court decision made out a promissory note for \$100 payable to Jackson. Jackson indorsed the note to Lee who transferred it to Reynolds. None of these parties knew of the maker's mental state. Reynolds presented the note to the bank. Payment of the note was refused. Jackson was insolvent. From whom may Reynolds collect? Why?

4. Martin gave Lewis a check for \$50. It was indorsed by Lewis, Marseni, McCall, Lynn, and Murphy. The check was presented to the bank for payment by Holdern. The bank refused to pay the check because of insufficient funds to Martin's credit. No notice of dishonor was sent to the indorsers. May Murphy collect the amount of the check \$50 from Lewis?
5. A bookkeeper of a well-known business concern forged his employer's signature on a promissory note and delivered the instrument to Logan. Upon receiving the note, Logan indorsed without qualification and delivered it to Barnard. Could Barnard hold Logan on a warranty?
6. Luke strongly encouraged Johnson, a blind man, to sign a paper that Luke represented to be a contract to lease land for building purposes. The paper signed, however, was a promissory note. Luke transferred the note to Jordan, a holder in due course. Does Jordan have a legal right to collect from Johnson?
7. Byron borrowed \$800 from Hayes and signed a three-month promissory note. Hayes sold the note to his bank. Later Byron did repair work on Hayes' garage which amounted to \$90. When the note became due, the bank presented the note to Byron for payment but Byron refused and claimed that he owed the bank \$710. Was the bank entitled to collect \$800 from Byron or only \$710?

8. Cardinal makes a 60-day note for \$1,000 payable at Carter's order. On the date of maturity, Carter does nothing to enforce collection of the note but three months later he presents it to Cardinal for payment. Must Cardinal pay the note? Give your reason for your decision.
9. Boyd wrote out a draft to Ford for \$70 payable at the South Adams National Bank. Ford wrote \$700 thereby altering the amount of the draft. The bank accepted the draft for the amount of \$700. After acceptance Ford transferred the draft to Lewis. When Lewis presented the draft to the bank for payment, the bank refused to make payment. What rights will Lewis have?
10. Roland's bookkeeper wrote out checks to fictitious persons and Roland signed the checks thinking they were checks made out to the different creditors of the firm. The bookkeeper indorsed these checks, received the money and then disappeared to unknown destinations. The bank charged the checks to Roland's account. Roland states that the bank should suffer the loss and that the checks should not be charged to his account. Whom do you think is right? Why?

Answers to Problems and Cases

1. No. Death was bound to occur; therefore, the instrument was payable at a determinable future time.
2. Yes. A holder has the implied authority to fill in missing information previously agreed on in the negotiable instrument.
3. Reynolds may collect from Lee because when Lee indorsed the check he warranted that all prior parties to the instrument had the capacity to enter into a regular binding contract.
4. No. An indorser is released unless prompt notification of nonpayment is given to him.
5. Yes. An unqualified indorser warrants that he has a good title to the instrument.
6. No. Fraud in the execution is a real defense.
7. Yes. The bank is a holder in due course and may collect the full amount free of all personal defenses.
8. Yes. It is Cardinal's obligation at maturity of the note to seek out the holder and pay him. His failure to do this will not really release him from payment because if it did the law would be placing a premium on a person's failure to carry out his obligation.
9. Lewis may bring action at law against the bank for the \$700. The contract of the acceptor of a draft is absolute; therefore, he cannot accept a draft and then change his contract.

10. Roland is right. A check drawn to a fictitious name is not payable to bearer unless the maker of the note knows that the names have been assumed. The bank should investigate to find out if such persons existed and try to prove that the signatures are fraudulent.

Achievement Test

Part I Section A Matching Test

Directions: The legal terms in Column I are arranged alphabetically. Match Column I with Column II by placing the number that corresponds with each statement. The first item is given as a sample.

-
- | | | | |
|----|--------------------|----|---|
| 0. | 7. Bearer | 0. | (7) An instrument transferred by delivery alone |
| | 8. Cashier's Check | | |
| | 9. Certified Check | | |
-

- | COLUMN I | COLUMN II |
|---------------------|---|
| 1. Acceptance | a. () To refuse or neglect to accept a bill of exchange or to pay a note or bill of exchange at maturity |
| 2. Acceptor | |
| 3. Allonge | b. () The process used to transfer an instrument to a person having a better title than the one who previously held the instrument |
| 4. Alteration | |
| 5. Assignment | c. () The party who writes his name on the back of the instrument and delivers it to someone else |
| 6. Bank Draft | |
| 7. Bearer | d. () The party who promises to pay the amount due on the note |
| 8. Cashier's Check | |
| 9. Certified Check | e. () The party to a check or draft who orders that payment be made |
| 10. Check | |
| 11. Collateral Note | f. () The party ordered to pay a draft or check |
| 12. Days of Grace | |
| 13. Dishonor | g. () The party to whom any negotiable instrument is payable |
| 14. Draft | |
| 15. Drawee | |

- | | | |
|------------------------------|--------|---|
| 16. Drawer | h. () | The party to whom the instrument is transferred |
| 17. Foreign Bill of Exchange | i. () | The party who takes a negotiable instrument under certain conditions |
| 18. Holder | j. () | An unconditional promise in writing and signed by the promisor to pay a sum certain in money |
| 19. Holder in due course | k. () | An unconditional order in writing directing another to pay a sum certain money on demand to the order of a specified person |
| 20. Indorsee | l. () | A draft that is payable on demand |
| 21. Indorsement in Blank | m. () | A draft that is payable at the end of a specified period |
| 22. Indorser | n. () | The party who acquiesces to pay the amount of money on the face of the draft |
| 23. Inland Bill of Exchange | o. () | A paper attached to the instrument for additional indorsements |
| 24. Maker | p. () | A note accompanied by security given to the payee by the borrower |
| 25. Negotiation | q. () | A check drawn by one bank upon another bank in which the first bank has money on deposit |
| 26. Payee | r. () | The assent of the drawee to the order of the drawee |
| 27. Promissory note | s. () | A bill of exchange drawn on a bank payable on demand |
| 28. Sight Draft | | |
| 29. Time draft | | |

- t. () A draft drawn and payable in the same state
- u. () The process by which the rights held by one person in an ordinary contract are transferred to a third party
- v. () The party who has possession of a negotiable instrument
- w. () A draft made in one state or nation and payable in another
- x. () A check that a bank draws on its own funds
- y. () An intentional material change in a negotiable instrument

Section B Multiple-Choice Test

Directions: In the statements that follow underline the correct answer and place the letter in the space provided at the right. Only one possible answer can be given. The first item is given as a sample.

0. "R. V. Woods" is an example of a 0. (d)
 (a) qualified indorsement (b) special
 indorsement (c) restrictive indorsement
 (d) blank indorsement.

1. The liability of the maker is 1. ()
 (a) conditional (b) optional (c) primary
 (d) secondary.
2. An example of a real defense is 2. ()
 (a) duress (b) counterclaim (c) payment
 before maturity (d) alteration.

3. An order instrument can be transferred by (a) delivery alone (b) indorsement and delivery (c) indorsement only (d) restrictive indorsement. 3. ()
4. Presentment of a draft for acceptance is unnecessary when it is payable (a) on demand (b) 90 days after sight (c) at a determinable future time (d) within a reasonable time. 4. ()
5. The maker's signature on a negotiable instrument must appear (a) at the top (b) on the back (c) in the lower right-hand corner (d) on the side. 5. ()
6. "Pay to the order of John Smith when he becomes of age. R. B. Wise." is an example of a (a) qualified indorsement (b) restrictive indorsement (c) special indorsement (d) conditional indorsement. 6. ()
7. A person, who writes his name on the back of a negotiable instrument before passing it to another party, is said to (a) transfer the instrument (b) accept the instrument (c) indorse the instrument (d) refuse the instrument. 7. ()
8. If a party refuses to pay a note when it is properly presented, the note is said to be (a) waived of liability (b) dishonored (c) protested (d) illegal. 8. ()
9. The omission of the words "Value received" on a check (a) does not affect the negotiability of the check (b) makes the check voidable (c) makes the check void (d) prevents the payment of the check. 9. ()
10. Stopping payment on a check remains a right of the (a) the drawer (b) the payee (c) the indorser (d) the acceptor. 10. ()
11. "Pay to the order of U. C. Brown. B. T. Wright," is an example of a (a) special indorsement (b) qualified indorsement (c) conditional indorsement (d) restrictive indorsement. 11. ()

12. Should a difference exist between the amount in figures and the amount in words (a) the amount in figures is payable (b) the larger amount prevails (c) the smaller amount suffices (d) the amount in words is payable. 12. ()
13. An example of a personal defense is (a) lack of capacity to contract (b) alteration (c) lack of consideration (d) forgery. 13. ()
14. A proper indorsement by R. B. Black on a check incorrectly made payable to R. B. Blake is (a) "R. B. Blake" (b) R. B. Blake, R. B. Black" (c) "R. B. Black (d) Richard B. Blake. 14. ()
15. The drawee of a draft is absolutely liable for its payment (a) the payee receives it (b) the drawer executes it (c) the holder indorses it (d) he accepts it. 15. ()
16. "For Deposit only, M. V. Jones" is an example of a (a) qualified indorsement (b) conditional indorsement (c) restrictive indorsement (d) special indorsement. 16. ()
17. If the amount of a check has been changed or altered from \$180 to \$1800, the holder in due course may collect from the maker (a) \$18 (b) \$180 (c) \$900 (d) \$1800. 17. ()
18. An illustration of an unconditional promise to pay is (a) I.O.U. \$10 (b) "A year after my death, I promise" (c) "I will pay you from the proceeds of the sale" (d) "I will pay you after my son's graduation." 18. ()
19. A negotiable instrument is discharged when (a) the holder intentionally destroys the instrument (b) the instrument is cancelled by a person other than the holder (c) the holder gives up in writing his right against the primary party to the instrument (d) the holder acquired the note by fraud. 19. ()
20. A note dated May 23 and payable in 30 days is due on (a) June 21 (b) June 22 (c) June 23 (d) June 24. 20. ()

21. "Without recourse. James White" is an illustration of (a) blank indorsement (b) conditional indorsement (c) restrictive indorsement (d) qualified indorsement. 21. ()
22. A personal defense is valid against (a) a holder in due course (b) a holder through a holder in due course (c) an original holder (d) none of the parties. 22. ()
23. An express money order may be transferred by indorsement from one person to another (a) once (b) twice (c) three times (d) an unlimited number of times. 23. ()
24. An accommodation party is liable (a) to all holders of the instrument who gave value for it (b) to the party he accommodate (c) to no one because there was no consideration (d) to all parties secondarily liable. 24. ()
25. A form whose use is greatly encouraged for traveling in foreign countries due to the large amounts of money needed is known as a (a) traveler's check (b) letter of credit (c) trade acceptance (d) certified check. 25. ()

Section C True and False Test

Directions: If the statement is "True," place a plus sign (+) in the space provided at the right of the statement; if false, place a zero (0) in the space provided at the right of the statement. The first items are given as sample.

0. A check payable to "Cash" is payable to order. 0. 0
- A refusal to accept or pay a negotiable instrument is called dishonor. +
-
1. Negotiability is a term applied to negotiable instruments to designate their capability of being transferred to a legal holder. 1.

2. A negotiable instrument that has been created by two liable parties must be presented to both parties for payment. 2. _____
3. Defenses that can bar recovery from anyone except the holder in due course are called personal defenses. 3. _____
4. An instrument indorsed in blank is payable to bearer. 4. _____
5. An instrument payable on a legal holiday may be presented on the next business day for payment. 5. _____
6. When the indorser makes the indorsee an agent or trustee of paper, the indorsement is known as a full indorsement. 6. _____
7. One who buys a negotiable instrument from a holder in due course is a holder in due course even if he is aware of a personal defense. 7. _____
8. Payment of an instrument before the date of maturity discharges the maker of all liabilities to the person to whom the payment is made. 8. _____
9. If a note that is paid before the due date is lost, the maker would not be liable if the note gets into the hands of a holder in due course. 9. _____
10. A party who lacks the capacity to contract, and signs a negotiable instrument, cannot be held liable if the instrument gets into the hands of a holder in due course. 10. _____
11. If the drawee of a bill of exchange does not accept the draft, he is said to have protested the instrument. 11. _____
12. A statement by a notary public that shows an instrument has been refused payment at maturity is known as a protest. 12. _____
13. The statute of a state declared that negotiable papers given for gambling debts are voidable. 13. _____

14. A purchaser of an overdue negotiable instrument may not be a holder in due course. 14. _____
15. When a check is certified, the bank becomes liable to the drawer for the amount of the check. 15. _____
16. "Pay to the Union Savings Company for collection" is a qualified indorsement. 16. _____
17. Proper presentment of negotiable instruments cannot be made over the telephone. 17. _____
18. A person who has written a qualified indorsement on an instrument ascertains that he pay it if the maker does not pay it at maturity. 18. _____
19. An irregular indorser is one who indorses an instrument before the payee indorses it. 19. _____
20. The drawer's contract on a draft is conditional. 20. _____
21. A judgment note is sometimes called a cognovit note. 21. _____
22. Debenture bonds are transferable only by registering the name of the transferee in the books. 22. _____
23. The law considers a postdated check as a promissory note. 23. _____
24. Payment of a negotiable instrument within a reasonable time depends on the circumstances of the case. 24. _____
25. Presentment for acceptance of a negotiable instrument is made to the primary party. 25. _____
-
-

Section D Completion Test

Directions: In the answer column at the right, write the word or words that will make the statement complete and correct. The first item is given as a sample.

- | | |
|---|--|
| 0. xxx is the meeting of the minds of the contracting parties. | 0. <u>Mutual assent</u> |
| 1. Insanity is a xxx defense. | 1. _____ |
| 2. One who indorses a negotiable instrument before the xxx is called an accommodation indorser. | 2. _____ |
| 3. The xxx strictly regulates and provides a greater uniformity in the free circulation of negotiable instruments as substitutes for money. | 3. _____ |
| 4. The expressions "Pay to the order of" or "To bearer" are referred to as xxx. | 4. _____ |
| 5. Negotiable instruments are ordinarily discharged by xxx. | 5. _____ |
| 6. An instrument payable to "order" may be transferred by xxx. | 6. _____ |
| 7. The essentials of a negotiable instrument are: xxx, xxx, xxx, xxx, xxx, and xxx. | 7. _____

_____ |
| 8. An unqualified indorser of a negotiable instrument makes the following warranties: xxx, xxx, xxx, and xxx. | 8. _____

_____ |

9. A party who transfers a negotiable instrument by xxx or by xxx merely transfers the rights that he has in the instrument. 9. _____

10. To be a holder in due course, a person takes a negotiable instrument under certain conditions: xxx, xxx, xxx, and xxx. 10. _____

11. xxx and xxx are not necessary to hold the maker but both are necessary to hold an indorser. 11. _____

12. The liabilities that the acceptor incurs are the same as the liabilities of the xxx of a note. 12. _____

Part II Problems and Cases

Directions: Examine each of the following cases then give your decision and the reason for your decisions.

1. Willett drew a draft on Ryan, who accepted the draft as drawn. When the draft became due, Ryan refused to pay on the grounds that Willett had no right to draw on him for the amount. Is Ryan liable? Explain.

Decision: _____

Reason for decision: _____

2. If you were a merchant and a stranger offered you, in payment of a bill, a traveler's check already signed, would you accept the check if the signatures on it seemed alike? Explain.

Decision: _____

Reason for decision: _____

3. Clifford made out a note to Wells in payment of a pedigreed dog from Wilks. Clifford had, through error, neglected to include the date. Before the note became due, the dog died. Clifford refused to pay the note when it was presented by Wells, claiming that it was not executed properly. Was he correct? Explain.

Decision: _____

Reason for decision: _____

4. Lawson asked Jones, a friend, to lend him a few hundred dollars. Jones signed and delivered to Lawson a check with the amount left blank. He told Lawson that he might fill in any sum on the check up to \$400. Lawson completed the check for \$600 and cashed it at the bank. What recourse if any does Jones have against the bank? Against Lawson? Explain.

Decision: _____

Reason for decision: _____

5. Richards received a \$200 note from Roy, a charge customer. The note did not contain the words that indicate the presence of consideration, was not dated, did not state the place where drawn or payable, and read in part, "Sixty days after date I promise to pay to Albert Richards on demand" What effect did each of these omissions have on the validity and negotiability of the instrument?

Decision and reason: _____

6. Dawson, a minor, gave Jewett a promissory note in payment for clothing and other necessities. Jewett negotiated the note to a holder in due course, who sued Dawson, for nonpayment. Judgment for whom? Why?

Decision: _____
Reason for decision: _____

7. Doctor Boone gave Russell, a plumber, a \$500 note in payment for work that Russell did at Doctor Boone's summer cottage. Russell agreed at the time that he would apply as a payment on the note any fees due Dr. Boone for medical attention. Dr. Boone submitted a bill for \$200 for services rendered and requested that the amount be applied as a credit on the note. Russell,

however, refused to do this and demanded payment of the full amount of the note. Discuss the rights of the parties.

Decision and reason: _____

8. White, the purchasing agent for the Hills Shoe Company, in the course of a business transaction for the firm gave a creditor a note that he signed "James White, Purchasing Agent." When the note became due the Hills Shoe Company refused to make payment. What remedy does the creditor have? Explain.

Decision and reason: _____

9. Wales gave Johnson his check for \$50. It was indorsed by Wales, Carr, Downey, and Newton. The check was presented to the bank for payment by Newton. The bank refused to pay the check because of insufficient funds to Wales' credit. No notice of dishonor was sent to the indorsers or Wales. May Newton collect the \$50 from Johnson?

Decision: _____

Reason for decision: _____

10. Haley gives Bayles a note for \$200 payable in 90 days.

Before the 90 days are up Haley pays the note and gets a receipt but does not get the note from Bayles. Bayles transfers the note to Kelly, who takes the note in good faith, before maturity. At maturity the note is not paid and Kelly sues Haley. May Kelly recover from Haley?

Decision: _____

Reason for decision: _____

Key to Achievement Test

Part I Section A Matching Test

a. (13)	f. (15)	k. (14)	p. (11)	u. (5)
b. (25)	g. (26)	l. (28)	q. (6)	v. (18)
c. (22)	h. (20)	m. (29)	r. (1)	w. (8)
d. (24)	i. (19)	n. (2)	s. (10)	x. (4)
e. (16)	j. (27)	o. (3)	t. (23)	y. (17)

Section B Multiple-Choice Test

1. (c)	6. (d)	11. (a)	16. (c)	21. (d)
2. (d)	7. (c)	12. (d)	17. (b)	22. (c)
3. (b)	8. (b)	13. (c)	18. (b)	23. (d)
4. (a)	9. (a)	14. (b)	19. (c)	24. (a)
5. (c)	10. (a)	15. (d)	20. (b)	25. (b)

Section C True and False Test

1. +	6. 0	11. 0	16. 0	21. +
2. 0	7. +	12. +	17. +	22. 0
3. +	8. +	13. 0	18. 0	23. +
4. +	9. 0	14. +	19. +	24. +
5. +	10. +	15. 0	20. +	25. 0

Section D Completion Test

1. real or absolute
2. indorser
3. Uniform Negotiable Instruments Law

4. words of negotiability
5. payment
6. indorsement and delivery
7. The negotiable instrument must
 - a. be in writing and signed by the maker or drawer
 - b. contain an unconditional promise or order to pay
 - c. provide for the payment of a definite sum of money
 - d. be payable on demand or at a fixed or determinable future time
 - e. contain the words of negotiability; that is, the instrument must be payable to order or to bearer
 - f. designate, name, or indicate the drawee with reasonable certainty
8. An unqualified indorser of a negotiable instrument makes the following warranties
 - a. that the instrument is genuine and is in all respects what it purports to be
 - b. that he has a good title to the instrument
 - c. that all prior parties to the instrument had capacity to contract
 - d. that at the time of the indorsement the instrument is valid
9.
 - a. delivery
 - b. qualified indorsement
10. To be a holder in due course, a person takes a negotiable instrument under certain conditions
 - a. the instrument must be complete and regular upon its face
 - b. the instrument must not be overdue
 - c. the holder must take the instrument in good faith, for value, and without knowledge of dishonor

- d. at the time the instrument is negotiated, the holder must be without notice of any infirmity or defect in the title
 11. presentment and payment
 12. maker
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Part II Problems and Cases

1. Yes. Upon accepting the draft, Ryan was bound by its terms.
2. No. The holder of a traveler's check must sign it in the presence of the person who is accepting it and who is converting it into cash.
3. No. Clifford was wrong. The date of delivery is considered the date of a note if the note was not dated by the maker.
4. Jones has no recourse against the bank. He may sue Lawson for the money. The law holds that a person who gives out an instrument that is not filled out completely should suffer any loss resulting from his carelessness.
5. The fact that the words, "For value received," the date and the place where the instrument was drawn or payable were omitted did not affect the validity or negotiability of the note. The omission of the words "to the order of," however, makes the instrument nonnegotiable.
6. Judgment for Dawson. A minor is not liable on any note that he signs even if it is given in payment for necessities of life.
7. Dr. Boone may set off his counterclaim against the amount due on the note. A counterclaim is a good defense as between the immediate parties to an instrument.
8. The creditor may hold White liable. To avoid liability White should have signed the note with his principal's name preceding his own name with the word, "by." The words "Purchasing Agent" as written are merely descriptive and have no effect on the validity of the instrument.

9. No. Some of the indorsers of the instrument were irregular indorsers.
10. Yes. The note transferred before maturity makes the person receiving the instrument in good faith a holder in due course.

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