**Indorsements**

Welcome to this podcast on Indorsements brought to you by CALI. I am Professor Jennifer S. Martin. The topic of this podcast is what an indorsement is, the different types of indorsements and why they can be important. My suspicion is that most of you have signed the back of a check, that is, you’ve indorsed it, perhaps without necessarily understanding the significance. I will try to shed some light on all of this. I realize that the use of paper checks is in decline and many of you rarely write them. Despite this, there are still a substantial number of checks written and financial fraud remains a problem for attorneys who might be the victim of it themselves. Not only is it a practice issue, but indorsements are covered in Article 3 of the Uniform Commercial Code, which is tested by a number of states on the bar examination. Indorsements in particular sometimes comes up on bar examinations. It is important to try and use the correct terminology so be on the lookout for the following: indorsement; indorser; special indorsement; blank indorsement; anomalous indorsement; restrictive indorsement; holder; and person entitled to enforce (sometimes called PETE).

For purposes of this discussion, we will presume that we have a negotiable instrument governed by Article 3 of the UCC. Typically, we are talking about a check or a promissory note. You are most likely familiar with indorsements in the context of checks, so my examples will focus on checks. Don’t forget, though, that indorsements are important for promissory notes, if they are negotiable. While I suspect that you have some idea about what an indorsement is, UCC §3-204 tells us that it is simply a signature made on the instrument, typically on the reverse side. It is done for the purpose of negotiating an instrument, restricting payment on instrument or, perhaps, incurring indorser liability on an instrument under §3-415. Of note, indorsements do not include signatures by the maker of a promissory note or the drawer of a check, as those types of signatures are used to issue an instrument, or a signature by an accepting bank that is going to pay on an item. While we normally indorse a check on the reverse side of the check, it could be made elsewhere on the instrument and still be an indorsement or even on a paper affixed to the instrument. We will call the person making the indorsement an indorser.

I find that an example is usually helpful. Let’s presume that my parents send me a check for $100 for my birthday. If I sign the back of the check so that I can deposit the check, my signature is an indorsement. Moreover, we call this type of indorsement a blank indorsement according to §3-205, which makes the instrument payable to bearer and it can be transferred by possession alone until specially indorsed. This means that if I indorse the check prior to taking it to the bank and then I lose the check, I will have transferred it to the person with possession, even if that possession is not rightful. I guess I should be more careful.

Perhaps there are other types of indorsements that might help me out here. As it turns out, there is an indorsement under §3-206 called a restrictive indorsement. Perhaps you have used this one yourself. One of the permissible restrictive indorsements is to sign your name on the reverse side of the instrument but add the words *for deposit only* or *for collection*. These are permissible restrictive indorsements that require compliance with the indorsement by later takers of the instrument. Those who do not act in accordance with the restrictive indorsement will find themselves having converted the item. So with respect to my birthday check, if I indorse the check on the reverse side and add the words for deposit only at my account at First Bank I will be protected from thieves who try to take the instrument if I lose it and obtain payment due to the restriction on the indorsement. Now I’m being more careful.

Before we move on, though, there are some types of restrictive indorsements that the Code does not enforce. For instance, if the indorsement limits payment to a particular person. An example of this would be if the indorser signs, but adds the words pay only Sarah. I’ve seen this type of language used in bar examination questions. This type of restriction would not be enforceable and would be disregarded. The bar examiner is looking for you to recognize that the restriction in this type of restrictive indorsement is not effective. Similarly, if the indorsement attempted to prevent further transfer of the instrument. Another favorite of bar exams is an unenforceable restrictive indorsement where the indorser signs but adds a condition to the right of the indorsee to receive payment. An example of this might be a signature which adds the words pay to Sarah if she gets the CALI award in Payment Systems. A person paying the instrument or taking it for value can disregard that condition. On the bar exam you should be clear that conditions added to indorsements are not enforced.

So it seems that I cannot indorse the check and write pay only Sarah and have that be enforced, but are there other ways to make sure that Sarah gets the money? It is possible to use what is called a special indorsement under 3-205. A special indorsement identifies the person to whom it makes the instrument payable. Once specially indorsed the instrument is payable to that person and only that person’s indorsement will suffice. So now, if I want to transfer my check to Sarah I would write pay to Sarah and then sign my name on the reverse side of the instrument. This is an effective special indorsement. At this point in time, Sarah can enforce the instrument or perhaps she can indorse it to someone else. One more thing about special indorsements, a holder of an instrument that has a blank indorsement can make that indorsement into a special indorsement even after the fact by adding the identification of the person to whom the instrument is payable above the indorsement.

There’s one last type of indorsement to cover. It is an anomalous indorsement. An anomalous indorsement is simply an indorsement made by a person who is not the holder of the instrument. As such, it does not affect the manner in which the instrument can be negotiated. It could, however, make the signer liable on the instrument as an indorser for purposes of indorsement liability under §3-415. An example of this would be if a thief steals my birthday check before I indorse it and then the thief signs the reverse side in an attempt to negotiate it, that signature would be an anomalous indorsement.

At this point, you might be able to guess why indorsements are important. Let’s make sure that we know how this all comes together. Indorsements are important in the process of negotiation of an instrument. Negotiation is simply the transfer of possession of an instrument to a person who becomes its holder and is thereby a person entitled to enforce the instrument. We sometimes call the person entitled to enforce the instrument a PETE. When an instrument is payable to an identified person, the process of negotiation requires not only transfer of possession of the instrument, but also the indorsement. Most checks are written out to an identified person, such as my case of the birthday check written out to me by my parents. Sometimes, though, checks are written out not to an identified person, but rather to cash or something similar. In those cases, the instrument is called bearer paper and not written out to an identified person. So, in the case of a bearer instrument the indorsement is not needed.

At this point, you should be able to identify the different types of indorsements and describe how to use them, as well as the reason why indorsements are important.

I hope you’ve enjoyed this podcast on Indorsements.

Lawdibles are produced and distributed by CALI, The Center for Computer-Assisted Legal Instruction. Find more Lawdibles at www.cali.org/lawdibles. Send your questions and feedback to lawdibles@cali.org. The Lawdibles theme music is “Ask Me No Question” by [Learning Music](http://freemusicarchive.org/music/Learning_Music/). Lawdibles are for educational purposes only. Please seek an attorney if you need legal advice.

CREDIT: Ask Me No Question by Learning Music is licensed under an [Attribution-Noncommercial-Share Alike 3.0 United States License.](http://creativecommons.org/licenses/by-nc-sa/3.0/us/)