**Negotiable Instruments Vocabulary**

Welcome to this podcast on Negotiable Instruments Vocabulary brought to you by CALI. I am Professor Jennifer S. Martin. The topic of this podcast is the different basic vocabulary and parties you may see when considering a negotiable instrument under Article 3 of the Uniform Commercial Code. Article 3 is tested on a number of bar examinations. It is always important to correctly identify the transaction and its parties when considering an instrument. An understanding of the basic vocabulary and parties will help you not only use the correct terminology, but also to understand the role of the parties. This podcast will introduce the following terminology: instrument, draft, order, note, promise, check, promissory note, cashier’s check, teller’s check, money order, drawer, drawee, payee, issuer, remitter, maker, instrument, bearer, holder, indorser, and negotiate.

Let’s begin with the term instrument. Article 3 only applies to the extent that we have a negotiable instrument. Any non-negotiable instruments are not governed by Article 3. As such, the only instruments governed by Article 3 are the negotiable ones. For that reason, Article 3 uses the word instrument and negotiable instrument interchangeably. The elements of negotiability are beyond the scope of this podcast, but are set forth in section 3-104.

Let’s move on to drafts and notes. An instrument is a draft if it is made out to order. Order simply means a written instruction to pay money signed by the person giving the instruction. An example of this would be a check where you may have noticed the “pay to the order of” language preprinted on checks. Compare this to a note. An instrument is a note if it is a promise to pay. In this context, promise means a written undertaking to pay money signed by the person undertaking to pay. A promissory note is a note because it typically includes language to the effect of “I promise to pay.”

Let’s take a closer look at checks and check transactions. Again, a check is a draft payable on demand and drawn on a bank, but could also be a cashier’s check, teller’s check, or even a money order. There are three parties to a check. The payee is the party to whom a check is written. The drawee is the bank whose name is printed on the check and where the account is held. The drawer is the account holder, typically the person who writes the check. By the way, the drawer who writes the check is also called an issuer. For instance, if I write a check on my account at Bank of America to Sarah for $35 for my son’s clarinet lessons, I would be the drawer and an issuer, so long as I delivered the check to Sarah, Bank of America would be the drawee, and Sarah would be the payee.

A cashier’s check, though, is still a check but it is one where the drawer and drawee are the same bank or branches of the same bank. An example of this might be if I go to Bank of America and request a cashier’s check to pay Sarah. With a cashier’s check, Bank of America would be the drawer, drawee, and issuer of the cashier’s check and Sarah would still be the payee.

Sometimes people use a teller’s check, which is still a check but is one drawn by a bank on another bank or payable through a bank, and is signed by the teller at the first institution. An example of this would be if the teller at Bank of America issued a check drawn on its account at London Bank payable to Sarah. Here, Bank of America would be the drawer, London Bank would be the drawee, and Sarah would still be the payee. If I purchase this instrument in order to pay Sarah I would be called a remitter because the instrument will be payable to an identified person, Sarah, who is not the purchaser, me.

While many negotiable instruments are drafts, most often checks, many are also notes. A maker is a person who signs or is identified in a note as a person undertaking to pay. The payee on a note is the person to whom payment is made. For instance, I might sign a promissory note promising to pay Bank of America $700 each month for sixty months at 4% interest when I buy a new car. I would be the maker on the note, as well as its issuer, and Bank of America would be the payee.

A word about issuers. A maker of a note and a drawer of a check is typically an issuer, but that is not always the case. An instrument is only issued when the first delivery by the maker or drawer is made for the purpose of giving rights on the instrument to any person. For instance, if I write a check to Sarah for $35 on my account at Bank of America but never delivered the check to her, it has not been issued even though I have written it.

Now we have the fundamentals about checks and notes, let’s turn to other vocabulary that you might encounter using these instruments. In particular, bearer, holder, indorse, and negotiate.

An instrument that is made out to bearer is simply one that states “is payable to bearer” or “to the order of bearer” or otherwise indicates that the person in possession is entitled to payment. An example of this would be if I wrote a check out to cash. Any person in possession would be entitled to payment.

A holder is a person in possession of an instrument that is payable either to bearer or to an identified person that is in possession of the instrument. For example, if I wrote a check for $35 to Sarah and gave it to her, Sarah would be a holder of the check because she is the identified person and she would be in possession of the instrument. She will be a holder so long as she is in possession of the instrument, but will cease to be a holder if she transfers possession to someone else.

An indorsement is a signature made on an instrument, except that of maker, drawer or an accepting bank most often, for the purpose of negotiating the instrument. If Sarah takes my check and places her signature on the reverse side of the check so that she can take it to the bank and deposit it, her signature would be called an indorsement. There are actually several kinds of indorsements, including special, blank, and anomalous, but the particulars of each of these are governed in section 3-205.

Lastly, you will certainly hear the term negotiate or negotiation. The word negotiate has a different meaning under Article 3 than it does in other contexts. Under Article 3, negotiation is a transfer of possession whether voluntary or involuntary of an instrument by a person other than the issuer to a person who thereby becomes its holder. It is important to note that the first transfer of an instrument is not a negotiation, it is an issuance of the instrument. However, when we transfer possession to a person who becomes a holder, those transfers are negotiations. When an instrument is payable to an identified person, negotiation requires both a transfer of possession of the instrument and its indorsement by the holder.

Let’s go back to my promissory note issued to Bank of America for my car loan. Suppose Bank of America decides to transfer the loan to Chase Bank. Bank of America would indorse the reverse side of the instrument and transfer possession of the instrument to Chase Bank. We would say that Bank of America negotiated the note to Chase Bank.

At this point, you should be able to identify some of the vocabulary ordinarily associated with instruments under Article 3 as well as how they may come up in transactions.

I hope you’ve enjoyed this podcast on Negotiable Instruments Vocabulary.

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/)