

Snazzlefrag's Business Law II Study Notes

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UCC:

1. General Provisions.
2. Sale of Goods (except Louisiana) (not services or real estate)
 - 2A. Leases
3. Commercial Paper
4. Bank Deposits and Collections
 - 4A. Fund Transfers
5. Letters of Credit
6. Bulk Transfers
7. Documents of Title
8. Investment Securities
9. Secured Transactions

Sales of goods: UCC 2 (Sales) & 2A (Lease).

Contract for Sale: Present or Future. Buyer and a seller (merchant or nonmerchant)

Goods (chattels): Moveable, tangible, (also, unborn animals, growing crops) NOT services or securities.

Lease: Transfer of right to possession and use, named good, set term, in return for consideration.

Merchant: Dealer, expert or employs an expert. Act in 'good faith' in 'commercially reasonable manner'.

Mixed Sale: Provision of a service and a good in the same transaction.

Nonmerchant: Act in good faith in 'Reasonably Prudent Person' standard.

Sale of Goods: Passing of title from seller to buyer for a price.

Contract formation: Offer, acceptance, Consideration, Capacity/Legality, Genuine Assent, Writing/Form.

Accommodation: Offer of replacement if original shipment cannot be filled.

Additional Terms Rule (merchants): Reasonable Addition/Different terms upon acceptance ok, unless forbidden by Mutual Assent clause

Firm Offer Rule (merchants): If written assurance held open, cannot revoke for time stated or 'reasonable time'. 90 days max.

Gap-filling Rule: Price, payment, delivery, time, assortment of goods.

Modification of a Contract (merchants): Common Law=New consideration required, UCC=No new consideration required.

Parol Evidence Rule: If written contract is a complete and final statement, no oral/written statements allowed.

Statute of Frauds: Sales +\$500, Lease +\$1000 in writing. Except: Specially Manufactured Goods, Court Rule, Part Acceptance.

Unconscionable Contract: Court may refuse to enforce, or limit the application of it.
Written Confirmation Rule: If merchants oral agrmnt, St of Frauds satisfied if one=written conf and other doesn't object in 10dys.

Risk of loss and passage of title: UCC=this issue must be dealt with beforehand by contract provisions.

Shipment Contracts: Risk of loss goes to buyer when the seller delivers the goods to the carrier (ie, UPS=agent of the BUYER).

FOB-Point of Origin (free on board), FAS (free alongside ship), CIF (Cost,insurance,freight), C&F (cost and freight).

Destination Contracts: Risk of loss goes to buyer only when the goods are actually delivered to the specified destination.

FOB-Destination, Ex-ship, No Arrival No Sale (= no contract unless seller is responsible for non-arrival).

If no contract: UCC says, Merchant=seller bears risk of loss until delivery, Non-merchant=seller bears risk until at UPS.

Non-conforming Goods: If damaged, risk reverts back to seller.

On Consignment: Buyer bears risk of loss upon delivery of items.

On Approval: Seller bears risk of loss.

Performance: Common Law=Substantial Performance ok. UCC=**Perfect Tender Rule.**

Perfect Tender Rule: Goods must conform exactly to the contract. If not, buyer may: Reject all, Accept all, Reject non-conforming.

Buyer's Tender: Buyer must tender payment before taking possession (unless otherwise agreed).

Buyer's Right of Inspection: Buyer can inspect goods before payment or inspection. COD does NOT include right to inspect.

Void Title: Stolen goods are resold. Original owner can reclaim goods from GFPV.

Voidable Title: Goods paid with bad check/fraud are resold: Original owner cannot reclaim goods from GFPV.

No Title: Entrustment items are resold. Original Owner cannot reclaim goods from Buyer in Ordinary Course of Business.

Good Title: Items subject to creditors. Creditor cannot reclaim goods from Buyer in Ordinary Course of Business.

Rights of Bona Fide purchasers for value: Real owner CANNOT reclaim goods.

Damages for Breach of Warranty: Compensatory (difference in value), Consequential (foreseeable damages).

Express Warranty: Seller affirms Quality, Description, Performance, Condition. (Written, oral, or inferred by conduct).

Full Warranty: Guaranteed Free repair or replacement.

Implied Warranty of Merchantability:

Fit for ordinary purpose for which they are sold.

Adequately contained, packaged, labeled.

Same kind, quality, quantity within each unit.

Conform to any promise or affirmation of fact made on container or label.

Quality of goods must pass without objection

Fungible goods must meet a fair average or middle range of quality.

Implied Warranty of Fitness for Human Consumption: Food/drink, on or off premises
Restaurants, stores, fast food, vending.

Implied Warranty of Fitness for a Particular Purpose: Seller warrants goods will meet buyer's expressed needs.

Inconsistent Warranties: Express over Implied, Specific language over general,
Product sample over description.

Limited Warranty: Scope of warranty is limited in some way.

Magnuson-Moss Warranty Act (consumer goods): Must be Written. Doesn't cover
Implied Warranties. Full/Limited Warranty.

Warranty Disclaimers:

Must be reasonable.

"as is" or "with all faults" etc. = no implied warranties.

If "as is" not used, disclaimer must mention the term "merchantability".

"Particular Purpose" may be disclaimed with general language such as "fitness".

If buyer examines (or refuses to examine) = no implied warranties for defects the
exam would have found.

Warranty of Good Title: Seller has valid title to goods, transfer is rightful.
(merchant=automatic assumed warranty)

Entrustment: Bailment: Holder of goods who is not a seller or buyer (repair, storage,
delivery, cleaning etc.)

Product liability:

Defect in Manufacture: Failure to properly assemble, test, check quality, of a product.

Defect in Design: Improperly designed product.

Defect in Packaging: Insufficiently tamperproof packaging.

Failure to Warn: No/insufficient warning label.

Failure to provide adequate instructions: For safe assembly, safe use.

Negligence: Tort related to defective products. Breach of duty of due care, caused
harm.

Misrepresentation: Tort where seller/lessor fraudulently misrepresents the quality of
product.

Market Share Liability: Fungible Items (identical products). Proportional liability to
market share.

Strict Liability: Irrespective of fault.(entire chain of distribution - manuf, distrib,
wholesaler, retailer)

Defenses:

Assumption of Risk: Defendant must prove plaintiff knew & appreciated risk, and
voluntarily assumed it.

Contributory Negligence: Plaintiff contributed to own injuries by being negligent.

Comparative Negligence: (in strict liability case) If Plaintiff = Contrib Neg = Proportional
share of damages.

Generally Known Dangers: Inherently dangerous product. General Population knows.

Government Contractor: If provided specifications by govt. Not liable for defect as a

result of specs.

Misuse of Product: Abnormal misuse. But products must be designed to protect against foreseeable misuse.

Statute of Limitations: Time limit has expired. **4yrs** from date of breach for sales contracts (minimum 1yr if in contract).

Statute of Repose: Limits seller's liability to certain number of years after product is sold.

Supervening Event: (alteration of product by party in chain of distribution). Absolves prior seller from strict liability.

Remedies:

Make Whole Principle: Remedies "liberally administered" as good a position as if contract had been fully performed.

Liquidated Damages: Specified in the contract (unless unconscionable, penal, or excessive).

Seller's Remedies: Cancel contract, delay delivery, resell goods, recover damages for difference in price.

Buyer's Remedies: Buy 'covering' goods to replace, recover damages for difference in price.

Debtor and Creditor Relations

UCC Article 9: Secured Transactions in Personal Property.

Floating-lien: Security interest not in possession of debtor when security agreement was enacted.

After-acquired property, sale proceeds of collateral, future advances

Priority of Claims:

Perfect Claim = Possession, control, attachment (written agrmnt/value given to debtor/debtor has rights in collateral),
and filing a Financing Statement.

Secured over Unsecured, Perfected over Unperfected,
Unperfected security claims...first to attach has priority.

Perfected security claims....first to perfect has priority.

Fungible or Co-mingled Goods: Security interests are ranked equally by the ratio to the product or mass.

Remedies for secured creditors: Repossession, Relinquish security interest & pursue underlying debt in court.

Secured Party: A seller, lender, or other party in whose favor there is a security interest.

Security interest: An interest in personal property or fixtures that secures payment or performance of an obligation.

Perfection of a security interest by filing a financing statement.

Perfection of a security interest by taking possession of the collateral. No financing statement needs to be filed.

Purchase Money Security Interest. Creditor who extends credit under a written security agreement automatically obtains this.

Security agreement: The agreement between the debtor and secured party that creates or provides for a security interest.

Must be a Written Security Agreement unless creditor has possession of the collateral.

Clearly describe the collateral so that it can be readily identified

Contain the debtor's promise to repay the creditor, including terms of repayment

Set forth the creditor's rights upon the default of the debtor

Be signed by the debtor

Bankruptcy: US Constitution Article 1. Exclusively Federal Law.

Protect debtors from abusive activities by creditors in collecting debts.

Prevent certain creditors from obtaining an unfair advantage over other creditors.

Protect creditors from actions of the debtor that would diminish the value of the bankruptcy estate.

Provide for the speedy, efficient, and equitable distribution of the debtor's nonexempt property to claim holders.

Preserve existing business relations.

Chapter 7: "Individual", Liquidation, straight bankruptcy. Either Voluntary or Involuntary Petition filed w/ Bankruptcy Court.

Petition (automatic stay) --> Order for Relief --> Meeting of Creditors (Permanent Trustee is Elected)

Unsecured creditors: Must file a Proof of Claim.

Automatic Stay: Suspends action by creditors against debtor's property.

Creditors cannot institute or maintain legal actions to collect pre-petition debts.

Creditors cannot enforce judgements obtained against the debtor.

Creditors cannot use debt owed TO the debtor to offset creditor's claim in bankruptcy court.

Creditors cannot institute nonjudicial collection efforts.

Voidable Transfers and **Preferential Payments** (by debtor just before declaring bankruptcy are NOT allowed):

Preferential Transfers within 90 Days: Debtor transfers property to creditor before filing.

Preferential Liens within 90 Days: Debtor gives an unsecured creditor a secured interest in property before filing.

Fraudulent Transfer to Insiders within One Year: Debtor transfers property for 'safekeeping'.

Non-dischargeable Debts: Tax, Alimony, Child Support, Maintenance, Student Loans.

Chapter 11: "Corporations", Reorganization under supervision of Bankruptcy court.

Debtor operates the business during reorganization --> 7 Largest Creditors form Creditor's Committee --> Plan of Reorg.

Acceptance Method: Court must accept a Plan of Re-organization if:

1) In best interest of each class 2) Feasible 3) At least one class votes to accept
4) No class's claims are impaired.

Bankruptcy Act (1994): Company with less than \$2million in debt can "fast track" and conclude within 160 days.

Executory Contracts: Can be avoided or assumed by debtor-in-possession(trustee). Used against Union Contracts.

Chapter 13: "Consumer Debt Adjustment", Rehabilitation, Court supervises

installments.

Less Stigma than Chapter 7. Debtor retains more property that is exempt, and spends less.

Suretyship: Subject to Statute of Frauds (must be in writing). Insurance Companies, Bond/Bail.

Surety Arrangement: 3rd party promises to be primarily liable with the borrower for the payment of the borrower's debt.

Guaranty Arrangement: 3rd party promises to be secondarily liable for the payment of another's debt.

Subrogation: Right of surety to recover cost of payments on principal's behalf. Even in absence of express prior agreement.

Exoneration: Release of surety obligation, without payment, when principal fails to act.

Forfeiture Bond: Surety promises to pay the penal sum of the bond in the event of the principal's default. Eg, bail bond.

Business Organizations

Agencies:

Principal: Party who employs another person to act on his or her behalf.

Duties to Agent: Compensation, Reimbursement, Indemnity, Cooperation, Safe Working Conditions.

Agent: Party who agrees to act on behalf of another.

Duties to Principal: Performance (reasonable care), Notification, Loyalty, Obedience, Accountability.

Agency: The principal/agent relationship

Express: Agency agreement (Eg, Power of Attorney)

Implied: Inferred from conduct of the parties

Apparent: Principal creates appearance of Agency (doesn't exist). **Principal's actions (not agent) create the agency.**

Agency By Ratification: Agent misrepresents himself as an Agent...and the Principal ratifies the agency/action.

Agency Liability: Fully Disclosed(P), Partially Disclosed(P/A), Undisclosed(P/A), Nonexistent(A-Implied Wrrnty of Authority)

P and A are BOTH liable for their own Torts. P is liable for A's Torts if acting within scope of their authority.

P is liable for intentional AND innocent misrepresentations by A within scope of authority.

3rd Party: Can either recind the contract and recover fees paid, or Affirm the contract and recover damages.

Negligent Conduct of Agent: Frolic & Detour(Own Interests-No), Coming & Going to work(No), On Errand for P(Both)

Intentional Torts of Agent: Motivation Test(Promote Interests of P-Yes), Work-related Test(Yes)

Torts of Independent Contractor: Not liable. **Except:** Special Risk (explosives), Negligence in Selection of IC.

Employer/employee: An employer hires an employee to perform some form of physical service.

Principal/agent: An employer gives an employee authority to act and enter into contracts on his or her behalf.

Principal/independent contractor: A person that is not an employee is employed to perform a certain task on his or her behalf.

Degree of control, Distinct occupation, independent business, supplies own tools/equipment, paid per job.

Liability: Employer(liable)/employee. Principal(liable IF substantial control)/Independent Contractor.

Termination of Agency by Parties: Mutual Agreement, Lapse of Time, Purpose Achieved, Specified Event Occurs.

Termination of Agency by Law: Death, Insanity, Bankruptcy(P), Impossibility of Perf, Chnge of Circum, War between countries.

Wrongful Termination of Agency: In violation of Agency Contract. Breached party may recover damages.

Partnerships: Uniform Partnership Act, Revised Uniform Limited Partnership Act (RULPA-1974)

Co-operative: A voluntary joining together of businesses that provides services to its members.

General Partnership: Voluntary association of two or more persons as coowners for profit.

Formation: Verbal, written (express), implied by conduct, partnership by estoppel (misrep but affirmed by other party).

Agreement: Name,Address,HQ,Scope,Duration,Capital Contribs,Division of Profits,Salaries,Duties,Provision for ending.

Property: Brought in at formation, or bought during = Partnership Property. Vests to remaining partner(s) if on dies.

Dissolution By Acts: End of Purpose, Withdrawal of one P, Expulsion, Admission of new P, Mutual Consent.

Dissolution By Law: Death of one P, Bankruptcy of any P, Illegality.

Dissolution By Judicial Decree: Insane, Incapable of perf, Improper conduct, Operating at ongoing loss.

Notification of Dissolution: 3rd Parties with dealings (actual notice), 3rd Parties with knowledge (constructive notice).

Winding Up After Dissolution: Liquidate Assets, Distribute Proceeds: Creditors, Creditor-partners, Capital, Profits.

Joint venture: Natural persons, partnerships, corporations to conduct a single or isolated project with a limited duration.

Limited Partnership: Has both limited and general partners. Limited=invest capital but don't manage day to day.

Formation: Written/signed Cert of Ltd Partnership.

Certificate: Names,Addresses,Scope,HQ,Dissolution Date,Capital Contribs.

Rights of Ltd Partners: Share profits/losses, information, voting.

Liability Upon Withdrawal: Withdrawing partner is liable for damages caused by

withdrawal.

Dissolution: End of Purpose, Mutual written consent, Withdrawal of general partner, Judicial Decree.

Limited Liability Company: Unincorporated. Hybrid business has the attributes of both partnerships and corporations.

Formation: Articles of Organization (filed with Sec of State)

Limited Liability Partnership: Has only limited partners. (see Limited Partnership for liability etc.)

Subsidiary: A separate corporation established in a foreign country, usually wholly owned by the parent corporation.

Syndicate: A group of individuals who join together to finance a project or transaction.

Trust: Person (trustor) transfers title to property to another person (trustee) for the benefit of named persons (beneficiaries).

Liability: Sole Proprietor (all), General Partners (all-jointly and severally), Limited Partners (No, beyond contribs).

Corporations: A fictitious legal entity that is created according to statutory requirements.

Characteristics:

Limited Liability of Shareholders: Only liable to extent of capital contributions.

Transfer of Shares: Freely transferable by sale, assignment, pledge, gift.

Perpetual Existence: Unless duration is specified in Articles of Corporation.

Centralized Management: Board of Directors make policy decisions about operations.

Formation: Articles of Corporation, "Revised Model Business Corporation Act"

Dissolution: Voluntary (directors and maj vote of SH), Administrative (Sec of State), Judicial Decree.

Types of Corporation:

Alien Corp: Formed and Operated in another country.

Closely Held Corp: One or a few shareholders.

For Profit Corp: Distribute profits to shareholders (dividends)

Foreign Corp: Formed in one place, but operates in another jurisdiction.

Nonprofit Corp: Charitable institutions, colleges, universities, churches, ministries etc.

Private Corp: Privately owned business.

Professional Corp: formed by lawyers, doctors, etc.

Public Corp: Government or political purpose.

Publicly Held Corp: Shareholders, securities traded on national stock exchanges.

S Corp: No fed tax at corporate level. Income is declared on shareholders own tax returns.

Debenture: Long-term unsecured instrument.

Bond: Long-term debt, secured by collateral.

Note: Short-term debt security, maturity of 5yrs or less.

Consolidation: Two or more corps combine to form an entirely new corporation.

Directors: Make policy decisions, employ major officers of the corp, issue dividends.

Merger: One corp is absorbed into another and ceases to exist.

Officers: Day-to-day operation, agents for the corp. Pres, VP, Sec, Treas, Assistants.
Promoter: organize start of corp. Negotiate, contracts, find investors. Personal Liability.
Shareholders: Own the corporation, but are not agents of the corp.
Ultra Vires Act: An action by a corp that is beyond its express or implied powers.

Property: "Chattels"

Personal Property: **Tangible:** Cars, furniture, jewelry. **Intangible:** Securities, patents, copyrights.

Acquiring: Possession, Purchase, Gift, Will/inheritance, Accession (increase value), Confusion (co-mingle), Divorce.

Gift Inter Vivost: Made during person's lifetime. Irrevocable present transfer of ownership.

Gift Causa Mortis: Made in contemplation of death.

Mislaid Property: Owner voluntarily places it somewhere, then forgets it.

Lost Property: Owner leaves it somewhere due to negligence, carelessness, inadvertance.

Abandoned Property: Owner discards with intent to relinquish rights to it.

Bailment: Owner transfers personal property to another to be held, valet, storage, delivery, cleaning. Title remains w/ owner.

Bailee: Holder of goods who is not a seller or buyer. (NOT PAWN SHOPS)

Bailor: Owner of the property held in bailment.

Liabilities of Bailee:

Sole Benefit of Bailor: Slight Duty of Care, Gross Negligence.

Sole Benefit of Bailee: Great Duty of Care, Slight Negligence.

Mutual Benefit of Bailor & Bailee: Ordinary Duty of Care, Ordinary Negligence.

Special Bailees:

Common Carrier (UPS): Strict Liability.

Warehouse Company: Ordinary Negligence.

Innkeeper: Strict Liability.

Documents of Title: Warehouse Receipt, Bill of Lading (UPS).

Fixtures: Chattels that have become incorporated or affixed to the real property.

Treated same as Real Property.

Real Property: Land itself, buildings, trees, soil, minerals, timber, plants, other things permanently affixed to the land.

Adverse Possession: Eg, Squatters gain ownership if statute of limitations and other statutory requirements are met.

Air Rights: Right to air space above the land.

Community Property: Only married couples. One half.

Easement: Right to limited use of someone else's land w/out owning or leasing it.

Non-possessory.

Easement Appurtenant: Owner given easement right over an adjacent piece of land.

Easement in Gross: Right to use another's land (not adjacent).

License: Right to enter another's property for a specified and short period of time.

Profit: right to remove something from another's property.

Fee Simple Absolute: Fullest ownership rights possible in real property.

Infinite duration (fee), Unlimited inheritability (simple), Doesn't end upon any event (absolute)

Fee Simple Defeasible: Same rights as Absolute, but may be taken away if a specified condition or event occurs.

Future Interest: Giver of land chooses to also retain certain interest for himself or a third party.

Life Estates: Ownership of land for lifetime. Upon death, ownership transfers to another party.

Reversion: Possession returns to grantor after expiration of a limited or contingent estate.

Remainder: Possession returns to a third party after expiration of a limited or contingency estate.

Surface Rights: Right to Land itself

Subsurface Rights: Right to earth located beneath the land.

Tenancy: Joint: Includes survivorship. **Common:** Passes to deceased estate, not cotenant. **Entirety:** Only for married.

Wills, trusts, estates: Capacity (legal age, sound mind), In Writing, Signed. Uniform Probate Code (UPC).

Ademption: Testator leaves property, but property is no longer in estate upon death, beneficiary receives nothing.

Abatement: Insufficient estate to satisfy named beneficiaries, residuary bequests are paid last (ie, abated first).

Codicil: Amending document to a Will. Same formalities required as for a Will.

Devise: Gift of Real Estate by Will.

Holographic Will: Entirely written and signed by the testator himself.

Noncupative Will: Oral will made before witness during last illness.

Per Stirpes Distribution: "Per Branch". 3 kids get equal amount. If one is dead, his share goes to grandchildren.

Per Capita Distribution: "Per Head". Each child and grandchild gets the same amount.

Probate (settlement): Process of managing and distributing estate upon death.

Revocation: By Testator (burn, tear, obliterate, destroy). By Operation of Law

Simultaneous Death of Married Couple: Each person's property is distributed as if they had survived the other.

Trust: Transfer of title to another person to be held and used for benefit of a third person. Irrevocable.

Beneficiary: Person for whom the Trust is created.

Trustor (settlor): Person who creates the Trust.

Trustee: Person who holds legal title to the Trust Corpus, manages the Trust on behalf of beneficiary.

Trust Corpus: actual property/money etc. held in Trust.

Types:

Express: Inter Vivos (alive), Testamentary (by Will)

Implied (by law or conduct): Constructive: Equitable trust imposed by law.

Resulting: Created by conduct.

Special: Charitable, Spendthrift (protects against creditors), Totten: Puts money in bank and holds as trustee.

Commercial Paper: UCC: Article 3. "Documents used to facilitate transfer of money or credit"

Types of Negotiable Instruments: Drafts, Checks, Promissory Notes, Certificates of Deposit (CD).

Substitute for Money: (Draft/Check) Merchants don't want to carry cash for fear of theft or loss.

Credit Service: (Prom Note) Some forms of negotiable instruments extend credit from one party to another.

Recordkeeping Device: (Cert of Deposit) Used for financial statements, tax returns, etc.

Draft: "Order to Pay" 3-party instrument. Unconditional written order. Drawer orders Drawee to pay Payee.

Check: "Order to Pay". Form of a Draft in which (A) orders a BANK (B) to pay (C) on demand.

"On Them": (Midnight Deadline). Depository Bank and Payor's Bank are different.

"On Us": Depository Bank and Payor's Bank are the same bank.

Promissory Note: "Promise to Pay". 2-party instrument. Unconditional written promise. Maker promises to pay Payee

Time Note: Payable at a specific time.

Demand Note: Payable upon demand.

Certificate of Deposit (CD): "Promise to Pay". Form of PromNote, promise by BANK (A) to pay (B) holder of cert.

Parties:

Check/Draft: Drawer: Owner of the account who writes (draws) the check.

Drawee (Acceptor): Bank where the drawer has their account.

Payee: Party to whom the check is written.

Promissory Note: Maker: Makes the promise to pay (ie, the borrower)

Payee: To whom the promise to pay is made (ie, the lender)

Certificate of Deposit (CD): Maker: The BANK (ie, the borrower)

Payee: The person depositing the money (ie, the lender)

Elements of Negotiability: If meets Article 3 it is negotiable. If not, is subject to Contract Law instead.

Must be in writing.

Signed by maker (Note or CD) or drawer (Check or Draft).

Be an unconditional promise or order to pay.

State a fixed amount of money.

Not require any undertaking in addition to the payment of money. Money only.

Be payable on demand or at a definite time.

Be payable to order (specified person) or bearer (physical possession).

Be permanent and portable.

Transfer of paper: Endorser transfers all rights possessed by the transferor (HIDC) to the transferee.

Transfer Warranties: Made when transfer is made for consideration/value. Applies to

maker/acceptor/drawer

Transferor (HIDC) has good title, or is authorized by owner of good title.

Signatures are genuine and authorized

Instrument has not been altered.

Transferor has no knowledge of any insolvency proceedings against the maker/drawer/acceptor.

Presentment Warranties: Applies to payor/acceptor.

Presenter has good title, or is authorized by owner of good title.

Instrument has not been altered.

Presenter has no knowledge that the signature of the maker/drawer is unauthorized.

Real Defenses (universal) to payment CAN be asserted against a HIDC:

Minor, Duress, Mental Capacity, Illegality, Bankruptcy, Fraud, Forgery, Alteration, Discharge.

Personal Defenses (limited) to payment which CANNOT be asserted against a HIDC (unless they dealt with them).

Breach, Unperf Serv, Inducement, Mental Illness, Illegality, Duress, Stolen, Discharge, Unauthorized Completion.

Discharge of Liability: Payment of the instrument, Cancellation, Impairment of right of recourse, alteration.

Assignment: (open to liability because assumes all rights and personal defenses, unlike a NI/HIDC)

Assignee: (person who receives the instrument).

Obligor: (Person required to pay the instrument)

Negotiation: If "Bearer"=presentment. If "order"=presentment PLUS indorsement/authorization.

Blank Indorsement: No specified person (indorsee). Creates Bearer Paper (ie, Cash or Blank).

Special Indorsement: Specified person (indorsee). Creates Order Paper.

Qualified Indorsement: Indorser promises to pay the holder if maker/drawer, or acceptor defaults.

Unqualified Indorsement: "Without Recourse". Disclaims liability of the indorser.

Restrictive Indorsement: Contains some kind of additional instructions.

Liability of parties: (requires a signature).

Holder in Due Course (HIDC): One who takes a NegInst for value, in good faith, without notice of defect/irreg.

Fictitious Payee Rule: Drawer/maker is liable on forged/unauthorized indorsement of a fictitious payee.

Imposter Rule: If imposter forges signature, drawer/maker is liable and bears the loss.

Negligence Rule: If the writer/drawer's negligence makes it easy for alteration or forgery, they are liable.

Primary Liability: Absolute liability to pay a NegInst. (ie, The drawer/writer of the check)

Secondary Liability: When person with primary liability defaults and fails to pay instrument when due. (indorsers)

Liability can be avoided by writing "without recourse" when indorsing a check.
Instrument must be properly presented for payment.

Instrument is dishonored

Timely notice of the dishonor must be given to the Secondarily Liable person.

Bank deposits and collections: UCC Article 4.

Altered Check: Bank can charge original amount (tenor), but not the altered amount.

Forged Check: Bank must recredit customer's account.

Midnight Deadline: "On Them" checks must be processed by midnight of the next business day after receipt.

Postdated Checks: Article 4 "drawer must give separate written notice to bank" (description/order not to pay).

Stale Checks: >6 months. Bank has no obligation to pay.

Wrongful Dishonor: Sufficient fund, but bank doesn't pay. Bank is liable to drawer for damages caused.

Rightful Dishonor: NSF, improper/missing indorsement, unauthorized signature, stale check (>6mnths).