Negotiable and nonnegotiable instrument

Food & Diet

ASSIGN BUSTER

Question 1: Distinguish between a negotiable and nonnegotiable instrument. Be explicit.

Negotiable instruments such as contracts are usually commercial in nature. These forms of negotiable instruments have requirements which abide with the provisions of the revised Article 3 of the Uniform Commercial Code (UCC). Under such provisions, the transferee of such contract from the original bearer, given that he or she was able to pass the necessary requirements of the said law, will carry on theresponsibilityof previous bearer as the new holder of the contract.

The contract which was produced by the said transaction will then be subject to the existing contract law that will guide the implementation of the contract's contents. These negotiable contracts are then classified into four types: the draft, checks, promissory notes, and the certificates of deposit. These negotiable forms of contracts serve as a substitute formoneyespecially for businessmen as well as a credit device for their creditors or as a record-keeping device to ensure that the bearer will pay his accountabilities (Lewis, 1997).

What is a non negotiable instrument?

On the other hand, the nonnegotiable contracts are simply put as any transaction in which the promise made by the bearer of the contract or the pay order does not go with the provisions of the and implied necessary requirements of the revised Article 3 of the Uniform Commercial Code. In other words, negotiable instruments involve instruments that are written.

Otherwise, such instruments not done in writing such as verbal agreements are classified then as a nonnegotiable instrument. Also, this kind of instruments does not meet any requirement of a typical negotiable instrument such as the one mentioned above.

Furthermore, the contract produced in nonnegotiable instruments still fall under the jurisdiction of normal contract law except that, unlike negotiable instruments, there is not necessary that there are no negotiations involved since the standards used are already known and agreed upon by both parties involved. Add to that the fact that negotiable instruments are in writing whereas nonnegotiable instruments are mostly verbal.

Question 2: Describe drafts, checks, promissory notes, and certificates of deposit, and identify the parties to these instruments.

As previously stated under negotiable instruments, there are four kinds of which it is classified into. These are the drafts, bank checks, promissory notes, as well as contracts of deposit. Under these four types, any negotiable transactions transpire.

First is the draft. Drafts are a negotiable instrument that involves three parties that are necessary for the completion of the transactions. These are the drawer of the draft which is the primary party that orders the payment or accomplishment of the contract. Next is the bank of the draft or the party assigned to carry out payments as ordered by the drawer of the draft. The payee of the draft on the other hand is the third party involved which serves as the primary proponent of the transaction. The payee is the one who

receives payment from the drawer of the draft through the bank (Lewis, 1997).

The checks come in next as probably one of the most used negotiable instruments. It is also a distinctive kind of draft which involves also three parties. Checks are issued by financial institutions such as banks. By using the check, the parties involved agrees that the drawer or the owner of the check could demand where it is drawn, which is the bank, to release finances on demand by the payee.

Promissory notes, unlike the first two kinds of negotiable instruments, involve only a couple of parties throughout the duration of the transaction. But like the first two, it is still an unconditional written promise that would ensure that the maker of the note will pay through an agreed upon amount the payee in a given p of time. Likewise, promissory notes are then classified still under two types: the time note and the demand note.

Last of the four types of negotiable instruments are the certificates of deposits which are usually issued by financial institutions to a depositor that the amount deposited by the depositor will be compensated by the financial institution in an agreed upon p of time plus an agreed upon rate of interest.

Question 3: List and discuss the formal requirements of a negotiable instrument.

According to the provisions of the revised Uniform Commercial Code or the UCC, under Article 3 section 104 paragraph A, the necessary requirements for a negotiable instrument are the following. First, the contract instrument must be written in form and otherwise, it would be considered as a

nonnegotiable instrument. Second is that the contract must be signed by the maker or the drawer of the contract. Third, the negotiable instrument must be an unconditional promise and the payment must be made upon the agreed upon date indicated.

Fourth is that there must be an amount stated in the contract which the maker will pay the payee at the end or due of the instrument. Fifth, there must not be any other concerns other than the payment of the money due to the payee. Sixth, the contract made must be payable upon demand or at a definite p of time indicated in the contract. Last is that the amount due ought to be paid to the bearer of the contract (Marsh & Soulsby, 2002).

Non compliance to these provisions of the UCC could invalidate the negotiable transaction or the transaction will then be classified as a nonnegotiable instrument. Furthermore, upon the invalidation of the contract, the payee can file the necessary legal actions towards the drawer or maker of the negotiable instrument for breach the agreed upon contract which will then supported by the signature of both parties prior to the implementation of the negotiable instrument.

Question 4: List and discuss the various types of endorsements used. Explain which one you would prefer to use when indorsing your personal instrument.

There are six types of endorsements used in negotiable instruments. These types follow the necessary notions of implementation whenever the endorsement is made. The different kinds of endorsements usually differentiate the roles of the endorser as well as the endorsee in the duration of the negotiable instrument used. For instance, the blank type of

endorsement follows that there is no particular endorsee being endorsed. This set-up then implies that whoever the bearer of the negotiable instrument is, he is the one being endorsed by the endorser.

This type of set-up is difficult as the bearer could be anyone who has the contract. It is also known as the bearer paper which practically explains its nature. Personally, I would not follow an endorsement under such set-up.

Next is the special type of endorsement wherein there is an affixed name of the person being endorsed. This type of endorsement is also called the order paper as it is being implemented readily because of the presence of the name of the endorser and the endorsee as well as the other requirements necessary for the instrument to be valid (Marsh & Soulsby, 2002).

Another form of endorsement is the unqualified type whereas the endorser does not disclaim or limit his liability in the duration of the contract he or she is endorsing. This means that the endorser agrees that if in case the endorsee fails to comply with the provisions of the instrument he endorsed, he or she will agree to shoulder the liability of that endorsee. This type of endorsement is practically borne out of trust of the endorser to the ability of the endorsee to pay or comply with the contract.

It therefore implies that the endorser knows the endorsee very well. However, this type of endorsement does not really guarantee that safety of the endorser. This type of endorsement is also one of the major causes of breach cases wherein the endorsee runs away from his liability and the endorser is left to burden the liabilities. Hence, this type of set-up may not always be healthy to follow given the mentioned circumstances.

An additional is the qualified type of endorsement wherein the limitations of the endorser's liability to the contract is practically limited and not as grave as that of the unqualified type of endorsement.

Question 5: Distinguish between nonrestrictive and restrictive endorsements.

There appears a deficiency of separation of contractual obligations in that a consistent individual obtains, consigns, and takes account of returns, and carry out the appeasements. Such procedure does not offer sufficient inner manipulation over proceeds. An important person who does not control or have admittance to the total admission money should settle the documentation of gathered costs such as to credits for each Ledger management pieces (Lawson, 1998).

The endorsement on bills is not restraining as much as necessary. A more off-putting support would not only safeguard the invoice until payment but would in addition smooth the progress of report on potential restored bills at an institution (University of Wisconsin Board of Regents, 2006). This endorsement should proper title of accounts which would more noticeably hold back the invoice for accretion. If one employs a reservoir deposit piece of paper, his approval should also take account of the depository tab digit from his accretion paper.

A limiting backing is appropriated to accounts at the instance that the deposit piece is arranged. This is employed with the purpose of safeguarding the account in anticipation of deposit. To make available improved safekeeping, the preventive approval should be functional as soon as the invoices are obtained as discussed by the University of Wisconsin Board of

Regents in 2006. This will further lessen the hazard of loss by forming the alteration more intricate.

Question 6: Discuss the legal implications of a forged instrument from the perspective of the payer and payee.

The essentials of falsification under Article 123 in 1994 are the subsequent factors. One would be that the indicted individual deceptively created or modified a particular mark or inscription. Another would be that the signature was of a description which would, if authentic, ostensibly inflict a officially permitted legal responsibility on another or alter another person’s civil liberties or accountabilities to that individual’s prejudgment. And lastly, that the fake creation or modification was with the purpose to swindle as stated by the U. S. Department of State's Bureau of International Information Program (2004).

The preponderance has asserted its supposition on the idea that an individual brought upon a clear officially authorized charge for the reason that under the rule of the authority where the accounts were conferred, the endorser is compelled to disburse an account’s sum in the occasion of discredit. Moreover, consistent with the mainstream, the jeopardy that such a compulsion will take place is predominantly elevated where an account carries a counterfeited copier’s mark, hence imparting a foundation for its degradation. Conversely, it is not convincing that a person would have acquired a clear above-board legal responsibility if her endorsement on these accounts was indisputable and a person was not complicit in the falsification system.

According to the U. S. Department of State's Bureau of International Information Program in 2004, an endorsement is characterized with a sign mark, excluding that of the drawer or acceptor, which is prepared on a tool or piece of equipment for the intention of conferring the mechanism, constraining the imbursement of the it, or gaining the acceptor’s legal responsibility on the channel.

Beneath the segment of inscriptions, an individual is not legally responsible on an instrument unless the he put his signature on the instrument. The remark to this portion articulates that the compulsion on an instrument is nonnegotiable unless the word " negotiable" is printed on it. Relies on a sign mark that is required on the one who compels the person and the sign mark consists of approval. Additionally, unless otherwise granted in the article, an unconstitutional sign is useless aside from the sign mark of the unofficial person who signed in support of the individual who in favorably disburses the instrument or procures it for worth.

Reference:

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