Elements of Negotiable Instruments

A check is a negotiable instrument involving three parties: the person writing the check (the drawer), the person to whom the check is written (the payee), and the bank that holds the checking account (the drawee) (see exhibit 4.2).

For drawers, the check is a convenient way to pay for goods, services, or other obligations. For payees, the expectation is that checks will be exchanged for cash at a teller window or credited to their bank accounts. Both parties take for granted the collection process and the governing laws.

As negotiable instruments, checks are governed by the legal requirements of UCC Article 3. To satisfy the requirements of negotiability, checks must be:

- Payable to bearer or to order
- An unconditional order or promise to pay
- For a fixed amount of money
- Payable on demand or at a definite time
- Written and signed

Payable to Bearer or to Order

A negotiable instrument is payable to bearer or to order if the word “bearer” or “cash” is used or if it otherwise indicates that the person in possession of the instrument is entitled to payment. A check can be payable to an identifiable person and, once it is endorsed by that person, becomes a bearer instrument (see (1) of exhibit 4.3 on the following page). Thus, any person in possession of an instrument payable to bearer is the holder of the instrument and may present it for payment.

Unconditional Order or Promise to Pay

A negotiable instrument is an unconditional order or promise to pay. Checks contain a written order to the bank to pay the amount of the check to the payee. This order cannot depend on any conditions—it must be unconditional (see (2) of exhibit 4.3). For example, a check may not contain the statement: “If he paints the house, pay to the order of Leonard.” An instrument that carries a condition to payment is not a negotiable instrument.
Elements of Negotiable Instruments

Fixed Amount of Money

The unconditional order or promise to pay must be for a fixed amount of money (see (3) of exhibit 4.3). The amount, which can be in U.S. dollars or a foreign currency, must be specified clearly in monetary terms on the face of the instrument. It may not be stated in terms of something of value that could be converted to money, such as one ounce of gold, even though the value of one ounce of gold can be easily determined. In cases where the written amount does not coincide with the numeric amount, UCC Article 3 stipulates that the words control numerals unless the words are ambiguous, in which case the numerals control.

Payable on Demand or at a Definite Time

The date stated on the check determines when it is payable (see (4) of exhibit 4.3). A check may be postdated (date is in the future) or antedated (date is prior to when the check is written). If a check is not dated (either intentionally or unintentionally), the date of the check is considered to be the date it is presented for payment—in other words, the check is payable on demand.

Written and Signed

To be a negotiable instrument, the check must be in writing and signed by the drawer (see (5) of exhibit 4.3). A negotiable instrument signed by a signature machine or stamped with an individual’s signature is considered valid, as are “identifying marks” like Xs. Some banks may have specific procedures for these signature types and may arrange for solutions ahead of time, often calling on the services of a notary public to witness the drawer putting the identifying mark on the check.

Elements of a Negotiable Check

| 1 | payable to order of or bearer                  | 4 | payable on demand or at a definite time       |
| 2 | unconditional order to pay                    | 5 | written and signed                            |
| 3 | fixed amount of money                         | 6 |                                             |

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