

USA COMMERCIAL LAW

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<p>COMMERCIAL PAPER ANALYTICAL FRAMEWORK</p>

A. IDENTIFY THE TYPE OF PAPER INVOLVED

- 1. Promissory Note (including certificates of deposit)**
- 2. Draft (including checks)**

B. IDENTIFY THE PARTIES INVOLVED WITH THE PAPER AND THE TRANSACTION

C. IS THE INSTRUMENT NEGOTIABLE? (FORM)

- 1. In Writing**
- 2. Signed by the Maker or Drawer**
- 3. Unconditional Promise or Order to Pay**
- 4. Fixed Amount**

5. **Of Money**
 6. **No Other Undertaking or Instruction**
 7. **Payable on Demand or at Definite Time**
 8. **Words of Negotiability (Order or Bearer Language)**
- D. WAS THE INSTRUMENT PROPERLY NEGOTIATED?
(TRANSFERRED)**
1. **Bearer Paper — Possession Alone is Sufficient**
 2. **Order Paper — Possession Plus Necessary Indorsements**
 3. **Types of Indorsements**
 - a. *Blank Indorsements*
 - b. *Special Indorsements*
 - c. *Restrictive Indorsements*
- E. IS THE TRANSFEREE A HOLDER IN DUE COURSE?**
1. **Requirements**
 - a. *Negotiable Instrument*
 - b. *Holder*
 - c. *Authenticity Not Apparently Questioned*
 - d. *For Value*

e. In Good Faith

f. Without Notice of:

- (1) **Overdue**
- (2) **Dishonored**
- (3) **Uncured Default in Same Series**
- (4) **Unauthorized Signature**
- (5) **Alteration**
- (6) **Claim**
- (7) **Defense or Claim in Recoupment**

2. Shelter Rule

3. Position of Holder In Due Course

a. Takes Subject to Real Defenses

- (1) **Infancy**
- (2) **Duress which voids the obligation**
- (3) **Lack of legal capacity making the obligation void**
- (4) **Illegality making the obligation void**
- (5) **Fraud in the execution**
- (6) **Discharge in insolvency (bankruptcy)**
- (7) **Omission of required consumer protection language**
- (8) **Statute of limitations**
- (9) **Payment by obligor without notice to former holder**

(10) Alteration

(11) Unauthorized signatures and forgeries

b. Takes Free of Personal Defenses

c. Takes Free of All Claims

F. LIABILITY OF PARTIES — GENERAL APPROACH

- 1. Who is Attempting to Recover (the Plaintiff)?**
- 2. Who is Allegedly Liable (the Defendant)?**
- 3. What is the Cause of Action Asserted by Plaintiff?**
- 4. What Defenses to Liability May be Raised by Defendant?**
- 5. If Defendant is Held Liable, to Whom May Liability Be Passed?**

G. CONTRACT LIABILITY

- 1. Signatures by Agents**
- 2. Maker's Contract — Primary Liability — No Conditions Precedent**
- 3. Drawer's Contract — Secondary Liability — Presentment and Dishonor**
- 4. Indorser's Contract — Secondary Liability — Presentment, Dishonor, and Notice of Dishonor**
- 5. Drawee's Contract (Acceptance and Certification)**
- 6. Accommodation Parties**

H. WARRANTY LIABILITY

1. Transfer Warranties

- a. Warrantor Entitled to Enforce Instrument*
- b. All Signatures Authentic and Authorized*
- c. No Alteration*
- d. No Defense Good Against Transferor*
- e. No Knowledge of Insolvency Proceeding Against Maker, Drawer, or Acceptor*
- f. If remotely-created item, the person identified as the drawer authorized the item.*

2. Presentment Warranties — unaccepted drafts to drawee

- a. Warrantor Entitled to Enforce Draft or Obtain Payment*
- b. No Alteration*
- c. No Knowledge of Unauthorized Drawer's Signature*
- d. If remotely-created item, the person identified as the drawer authorized the item.*

3. Presentment Warranty — Dishonored Drafts; Notes

Warrantor entitled to enforce draft or obtain payment.

I. FORGERY

1. Forgery of Maker's Signature

2. Forgery of Drawer's Signature

3. Forged Indorsements

4. Validation of Forgery

a. Ratification

b. Impostor Rule

c. Negligence Rule

d. Bank Statement Rule

J. ALTERATION

1. Effect on HDC Plaintiff

2. Effect on non-HDC Plaintiff

K. OTHER ISSUES

1. Discharge by Holder

2. Effect of Instrument on Underlying Obligation

3. Failure to Produce Original Instrument

4. Overdrafts

5. Postdated "Check"

6. Stop Payment Orders

7. Wrongful Dishonor

8. Payment in Full Check

9. Documents of Title

a. Bill of Lading

b. Warehouse receipt