

Negotiable Instruments: Holder in Due Course

Holder in Due Course

- Holder
- Gives Value
- Takes in Good Faith
- Without Notice
 - Takes free of personal defenses

Holder

- Party who Takes by Negotiation
 - Delivery
 - Indorsement, if necessary

Value I

- Executory Promises Not Value. Except
 - Exchange of one negotiable instrument for another
 - Irrevocable promise to a third party
- Acquiring a Security Interest
- Past Performance

Value II

- Taking Negotiable Instrument to Extinguish a Pre-Existing Debt
- Gift-Not Value
- Face Value vs. Agreed Upon Value
 - Value may be less than the face value

Good Faith

- Honesty in Fact
- Observance of Reasonable Commercial Standards of Fair Dealing

Lack of Notice

- A HDC must take without notice that
 - instrument is overdue
 - it has been dishonored, or
 - there are defenses to endorsement
- Objective Standard (Reason to Know)
- Relevant Time
 - Is time that value was given

Overdue

- Instrument with Due Date
- Demand Instruments
 - Know that demand has been made
 - Unreasonable length of time
 - Checks-90 days

Dishonor

- Person cannot be holder in due course if they knew, or should have known, that the instrument had been dishonored
- Defenses
 - Incomplete Paper
 - Irregular Paper
 - Disproportionate Discount
 - Negotiation by Fiduciary

Payee as HDC

- Usually Payee will have Notice of any Defense which will Defeat Status as HDC
 - But, possible for payee to be HDC

Shelter Rule

- If Party Takes from HDC, they have Rights of HDC, though not one themselves
 - Exception when holder was party to any fraud or illegality that affected the instrument

Consumer Protection

- FTC Rule effectively Abolishes HDC Rule in Consumer transactions

Real Defenses

- Minority
- Duress if Action Illegal
- Illegality of Original Transaction
- Fraud in Execution
- Bankruptcy
- Forgery of Signature
- Material Alteration

Personal Defenses

- Misrepresentation
- Mistake
- Lack of Consideration
- Breach of Contract or Breach of Warranty
- Lack of Authority of Signing Party
