TYPES OF NEGOTIABLE INSTRUMENTS

- **Draft:** An unconditional order to pay by which the party creating the draft (the *drawer*) orders another party (the *drawee*), typically a bank, to pay money to a third party (the *payee*) -- e.g., a check.

- **Check:** A draft ordering a drawee bank and payable on demand.

- **Time Draft:** A draft payable at a time certain.

- **Sight Draft:** A draft payable on presentment.

- **Trade Acceptance:** A draft that is drawn by a seller of goods ordering the buyer to pay a specified sum of money to the seller, usually at a specified future time. The buyer *accepts* the draft by signing and returning it to the seller.

- **Promissory Note:** A written promise made by one person (the *maker*) to pay a fixed sum of money to another person (the *payee*) on demand or at a specified future time.

- **Certificate of Deposit:** A note by which a bank or similar financial institution acknowledges the receipt of money from a party and promises to repay the money, plus interest, to the party on a certain date.
NEGOTIABLE INSTRUMENTS: AN OVERVIEW

A Negotiable Instrument is a:

(1) written instrument,

(2) signed by the maker or drawer of the instrument,

(3) that contains an unconditional promise or order to pay

(4) an exact sum of money (with or without interest in a specified amount or at a specified rate)

(5) on demand or at an exact future time

(6) to a specific person, or to order, or to its bearer.
NEGOTIABILITY: SIGNATURES

- For an instrument to be negotiable, it must be signed by the maker/drawer.

- A signature may be any symbol made by the maker or drawer with the present intention to be a signature.
NEGOTIABILITY: UNCONDITIONALITY

- **Promise or Order:** A negotiable instrument must contain an **express order or promise** to pay.

- A mere acknowledgment of a debt is **not** sufficient without evidence of an affirmative undertaking on the part of the debtor to repay the debt.

- The exception to this rule is a Certificate of Deposit.

- **Unconditionality of Promise or Order:** A promise or order is conditional (and, therefore, not negotiable) if it states:

  1. an **express condition** to payment,

  2. that the promise or order is **subject to or governed by** another writing, or

  3. that the rights or obligations with respect to the promise or order are **stated in** another writing.
NEGOTIABILITY: A FIXED AMOUNT

- The fourth requirement of negotiability is that negotiable instruments must state a **fixed amount** of **money**.

- **Fixed amount** means an amount that can be determined from the face of the instrument.

- This requirement applies only to the principal amount of money.

- The instrument can reference an outside source to determine the rate of interest.

- **Payable in Money** means the medium of exchange authorized or adopted by the United States or foreign government as part of its currency.
NEGOTIABILITY: TIME FOR PAYMENT

- **Payment On Demand:** An instrument is payable on demand, “at sight,” or “upon [*presentment*]” if it is subject to payment immediately upon being presented to the payor or drawee.

- If no time for payment is specified, a negotiable instrument is [*presumed*] to be payable on demand.

- **Payment at a Definite Time:** An instrument is payable at a definite time if it states that it is payable (i) on a [*specified date*], (ii) within a [*definite period*] of time, or (iii) on a date or at a time [*readily ascertainable*] at the time the promise or order is made.

  Such instruments are frequently referred to as [*time instruments*].

- **Acceleration Clause:** A clause that permits a payee or other holder of a time instrument to [*demand payment of the entire amount or balance due*], with interest, if a certain event occurs, such as default in the payment of an installment when due.

- **Extension Clause:** A clause in a time instrument that permits the [*date of maturity*] to be extended.
NEGOTIABILITY: PAYMENT TO WHOM

- **Order Instrument:** A negotiable instrument that is payable “to the order of” an identified person or “to” an identifiable person “or order.”

- **Bearer Instrument:** A negotiable instrument payable “to bearer” or to “cash,” rather than to an identifiable payee.

- **Bearer:** The person possessing a bearer instrument.

- Any instrument payable to the following is a bearer instrument:

  (i) “Payable to the order of bearer”;

  (ii) “Payable to Jane Smith or bearer”;

  (iii) “Payable to bearer”;

  (iv) “Pay cash”; or

  (v) “Pay to the order of cash.”
FACTORS NOT AFFECTING NEGOTIABILITY

- Certain ambiguities or omissions, resolvable by applicable U.C.C. provisions and/or rules, will not make an instrument non-negotiable. For example:

  (1) The fact that an instrument is **undated** does not affect its negotiability, unless the date of the instrument is necessary to understand the payment term;

  (2) **Postdating** or **antedating** an instrument does not affect its negotiability;

  (3) **Interlineation** and other written or typewritten **alterations** need not affect negotiability;

  - As with other contract terms, handwritten terms “trump” typewritten terms, and typewritten terms “trump” printed terms.

  (4) **Words “trump” figures**, unless the words are ambiguous in and of themselves; and

  (5) If the instrument fails to specify the applicable interest rate, the **judgment rate of interest** (defined by state statute) becomes the interest rate on the instrument.
TRANSFER OF INSTRUMENTS

■ Assignment: Under general contract principles, a negotiable instrument may be transferred to an assignee, who then holds the instrument with all the rights of the assignor.

■ Negotiation: Transfer of an instrument in such a form that the transferee becomes a holder, who has at least the same rights in the instrument as the transferor, and may have more rights than the transferor.

■ Negotiating Order Instruments: An order instrument may be negotiated by delivery with any necessary indorsements.

■ Negotiating Bearer Instruments: Unlike an order instrument, a bearer instrument need not be indorsed to transfer the payee’s rights to the transferee. All that is required is delivery to the new bearer.
**INDORSEMENTS**

- **Indorsement:** A signature, with or without additional words or statements (e.g., “for deposit only,” “payable to Jane Smith,” “payable from acct. # 000001,” etc.), made by the *indorser* in order to transfer his or her rights to the *indorsee*.

- **Blank Indorsement:** An indorsement that specifies no particular *indorsee* and can consist of a mere signature.

- **Special Indorsement:** An indorsement that indicates the specific person to whom the indorser intends to make the instrument payable -- i.e., the *indorsee*.

- **Qualified Indorsement:** An indorsement which disclaims any contract liability on the instrument (e.g., “without recourse”).

- **Restrictive Indorsement:** Any indorsement on a negotiable instrument that requires the *indorsee* to comply with certain instructions regarding the funds involved.

- **Indorsement for Deposit or Collection:** “*For deposit only.*”