



KATEDRA OBCHODNÍHO PRÁVA

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Právní úprava směnek a šeků v anglo-americkém prostředí

- VB
 - BEA, 1882
- USA:
 - Uniform Negotiable Instruments Law (1897)
 - Aktuálně: Art 3 UCC (od 1952)
 - Relativní sjednocení?
 - Common Law, Equity
 - Permanent Editorial Board
 - National Conference of Commissioners on Uniform State Laws, American Law Institut

<http://www.law.cornell.edu/ucc/ucc.table.html>

Typy cenných papírů

"Instrument" means a negotiable instrument:

Check

Cashier's check

Teller's check.

Traveler's check

Note

Bill of exchange

Vylučeny Securities podle čl. 8 a speciální papíry emitované bankami dle čl. 4

Bill of Exchange and Note

Order – Drawer, Drawee (Acceptor), Payee

Promise – Maker, Payee



- negotiable v. non-negotiable v. not-negotiable
- Navazující koncept HDC – Holder in due course
- § 3-104

Writing

"Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

"Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

Zfalšované, padělené a obdobné podpisy:

"Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

§ 3-403. UNAUTHORIZED SIGNATURE.

(a) Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

Bezpodmínečnost slibu či příkazu

- a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another record, or (iii) that rights or obligations with respect to the promise or order are stated in another record.
- A reference to another record does not of itself make the promise or order conditional.
- další výjimky § 3-106 (b). UNCONDITIONAL PROMISE OR ORDER

Povoleno splátkování

Povoleno i sofistikovanější určení směnečné sumy

„the computation must be one which can be made from the instrument itself without reference to any outside source“

§ 3-112. INTEREST.

(a) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues.

§ 3-107. INSTRUMENT PAYABLE IN FOREIGN MONEY.

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

§ 3-108. PAYABLE ON DEMAND OR AT DEFINITE TIME.

(a) A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued

§ 3-109. PAYABLE TO BEARER OR TO ORDER

(a) A promise or order is payable to bearer if it:

(1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) does not state a payee; or

(3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

Jazyk směnky nerozhodný...

§ 3-111. PLACE OF PAYMENT.

Except as otherwise provided for items in Article 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

§ 3-113. DATE OF INSTRUMENT

- (a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in Section 4-401(c), an instrument payable on demand is not payable before the date of the instrument.
- (b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

§ 3-114. CONTRADICTIONARY TERMS OF INSTRUMENT

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

HOLDER IN DUE COURSE

„Holder in due course" means the holder of an [instrument](#) if:

- (1) the [instrument](#) when [issued](#) or negotiated to the holder does not bear such apparent evidence of forgery or [alteration](#) or is not otherwise so irregular or incomplete as to call into question its authenticity; and
- (2) the holder took the [instrument](#)
 - (i) for value,
 - (ii) in [good faith](#),
 - (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument [issued](#) as part of the same series,
 - (iv) without notice that the instrument contains an unauthorized signature or has been altered,
 - (v) without notice of any claim to the instrument described in Section [3-306](#) (právo na vydání listiny vlastníkem), and
 - (vi) without notice that any [party](#) has a defense or claim in recoupment described in Section [3-305\(a\)](#).

NOTICE

"notice" of a fact if the person: (1) has actual knowledge of it; (2) has received a notice or notification of it; or (3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge.

SHELTER DOCTRINE

Shelter doctrine is a principle of commercial law that any person or any later transferee to whom a holder in due course transfers commercial paper will succeed to the rights of the holder in due course. Therefore, generally the transferees of holders in due course are not subject to defenses against the payment of an instrument. The principle is named 'shelter doctrine' as the transferees 'take shelter' in the rights of the holder in due course. This doctrine ensures the free transferability of commercial paper.

"Indorser" means a person who makes an indorsement.

§ 3-205. SPECIAL INDORSEMENT; BLANK INDORSEMENT; ANOMALOUS INDORSEMENT.

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

§ 3-206. RESTRICTIVE INDORSEMENT

(a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.