

FOLLOW THE INSTRUMENT — FOLLOW THE VALUE

ELEMENTARY, MY DEAR WATSON

*An Elementary Guide to Promissory Notes, Indorsement, Transfer,
Rescission, Accounting, Restoration and Equity*

Prepared as an educational study guide for the Collective Souls

THE STARTING QUESTION

WHO GAVE WHAT TO WHOM — AND WHAT HAPPENED TO IT AFTERWARD?

1. Begin With the Instrument

Imagine three people: Chris, Amy and Bob. Chris is the maker, Amy is the original payee/lender, and Bob is a later purchaser or transferee. Chris signs a promissory note. Under Article 3 terminology, his signature is the signature of the maker. Amy's later signature may serve a different function: an indorsement.

The first lesson is simple: the borrower's signature and a later corporate indorsement can appear on the same paper while performing different legal jobs.

2. The Transaction Has Two Directions

Do not study only the movement of the promissory note. Study the corresponding consideration and funding side as well.

INSTRUMENT / RIGHTS	CONSIDERATION / FUNDING
Chris → signed note → Amy	Funding source → closing transaction
Amy → indorsement / delivery → Bob	Bob / purchaser → consideration → Amy

3. Indorsement and Transfer

UCC § 3-204 addresses indorsements. UCC § 3-205 distinguishes special and blank indorsements. UCC § 3-203 addresses transfer by delivery for the purpose of giving the recipient the right to enforce the instrument.

When a note bears language such as “PAY TO THE ORDER OF” followed by “WITHOUT RECOURSE” and a corporate signature, the document should be examined for the precise identity of the indorsee, the nature of the indorsement, delivery, and possession.

- Special indorsement: identifies the person to whom the instrument is payable.
- Blank indorsement: does not identify that person; when the statutory requirements are met, the instrument becomes payable to bearer until specially indorsed.
- “Without recourse”: generally limits indorser liability; it is not, by itself, proof that the maker's obligation was paid or discharged.

4. Follow Delivery and Possession

An indorsement is not the entire factual history. Ask who received the original, when delivery occurred, who possessed it afterward, whether another indorsement was added, and where the original is presently located. This converts a signature analysis into an instrument-chain analysis.

5. The Two-Highway Model

The easiest teaching model is two highways running beside one another.

HIGHWAY ONE — DOCUMENTS & RIGHTS	HIGHWAY TWO — MONEY, CREDIT & ACCOUNTING
Chris	Funding Source
↓	↓
Promissory Note	Closing / Settlement
↓	↓
Amy	Accounting Entries
↓	Later sale:
Indorsement / Delivery	Purchaser
↓	↓
Bob	Settlement System
↓	↓
Custodian / Later Holder	Seller / Receiving Institution

6. Where Fedwire May Enter

Fedwire belongs on the payment-and-settlement highway, not automatically on the instrument highway. If a mortgage loan or pool is sold, settlement for that sale could potentially use Fedwire or another settlement mechanism. An indorsement alone does not prove which system was used.

To establish Fedwire involvement, look for the corresponding payment and settlement evidence: transaction identifiers, sending and receiving institutions, amount, date, and related accounting records.

7. Tender, Payment and Discharge Are Separate Concepts

UCC § 3-603 addresses tender of payment. Making an instrument, transferring an instrument, tendering payment, actual payment, and discharge should not be treated as interchangeable words. Each question should be tested under the rule that actually governs it.

8. The Estate's Asserted Rescission and Reconciliation Theory

In the estate framework being studied, the asserted sequence is: execution of the instrument; later discovery of facts concerning its treatment or transfer; prompt notice of rescission; and a demand to identify, account for, trace, restore and reconcile the transaction.

For educational accuracy, allegations such as nondisclosure, the source of loan funding, the effectiveness of rescission, or the ownership of particular credits must be established from the transaction documents, accounting records and governing law rather than assumed from labels alone.

9. Pomeroy and the Equity Sequence

Traditional equity supplies a vocabulary for analyzing what happens when a transaction is challenged. The concepts are related, but they are not synonyms.

RESCISSION	Should the transaction be unwound?
ACCOUNTING	What did each side actually give and receive?
TRACING	Where did the instrument, property or value go?
RESTORATION / RESTITUTION	What must be returned, credited or restored?
SURRENDER	Who possesses the disputed instrument, and must it be returned?
CANCELLATION / DISCHARGE	Should the instrument remain legally operative?
QUIA TIMET	Is preventive equitable relief available against a threatened injury?
MERGER / SATISFACTION / EXTINGUISHMENT	After reconciliation, what interests or obligations actually remain?

10. Gibson: Complete Justice, Not Justice by Halves

The chancery principle associated with Gibson is useful as a teaching rule: examine the whole controversy rather than one isolated fragment. The note, mortgage or deed of trust, indorsements, possession, consideration, funding, settlement, transfers, rescission notices and accounting records should be examined together where they bear on the same controversy.

11. The Watson Audit

- Who made the instrument?
- Who received it?
- What did the receiving party furnish in exchange?
- How was the closing funded?
- Was the note indorsed, and if so, how?
- Who received possession of the original?
- Was it sold, pledged, deposited with a custodian, or transferred again?
- What consideration accompanied each later transfer?
- How was each transfer settled?
- Do the records actually establish Fedwire or another payment system?
- Was rescission asserted, and on what legal or contractual basis?
- When and to whom was notice delivered?
- What happened to the instrument before and after that notice?
- What does each party presently claim?
- What must be accounted for, restored, credited, surrendered or cancelled under the governing law?

12. Illustration — Show the Whole Transaction

This illustration condenses the final lesson into one audit trail. Each box is a question to prove with records, not a conclusion to assume.

1. SHOW THE INSTRUMENT Original note, allonge, signatures, dates and terms. ↓

2. SHOW THE SIGNATURES Identify maker, payee, indorser and authorized signatory capacities. ↓
3. SHOW THE TRANSFER Indorsement + delivery + possession + subsequent holder/custodian history. ↓
4. SHOW THE CONSIDERATION Identify what each side furnished at origination and at each later transfer. ↓
5. SHOW THE SETTLEMENT Trace actual funding/payment records; identify Fedwire only if the records establish it. ↓
6. SHOW THE RESCISSION Establish basis, timing, delivery, recipient and claimed legal effect. ↓
7. SHOW WHAT HAPPENED NEXT Trace the instrument and related interests after notice. ↓
8. ACCOUNT & RESTORE Determine debits, credits, receipts, offsets, restitution and restoration required by law. ↓
9. RECONCILE THE WHOLE TRANSACTION Determine what remains enforceable, what must be surrendered/cancelled, and whether merger, satisfaction or extinguishment applies.

13. The Collective Souls' Rule

FOLLOW THE INSTRUMENT.
FOLLOW THE VALUE.
FOLLOW THE CONSIDERATION.
FOLLOW THE SIGNATURES AND INDORSEMENTS.
FOLLOW DELIVERY AND POSSESSION.
FOLLOW THE TRANSFERS.
FOLLOW THE MONEY, CREDITS AND ACCOUNTING.
FOLLOW THE RESCISSION.
TRACE. ACCOUNT. RESTORE. RECONCILE.

Final Lesson — Elementary, My Dear Watson

A promissory note should not be studied merely as paper bearing a borrower's signature. Study the maker, payee, holder, indorser, transferee, delivery, possession, consideration, payment, settlement and any later equitable remedies.

An indorsement does not by itself prove payment, discharge or Fedwire settlement. But neither should it be ignored: it may be important evidence concerning negotiation or transfer, which leads to the next questions — where did the instrument go, who acquired it, what did that party give for it, how was the transaction settled, and how was everything accounted for?

When rescission and equity are asserted, ask what each party received, what can legally be restored, what must be accounted for, where the outstanding instrument is located, whether surrender or cancellation is warranted, and what rights remain after reconciliation.

**SHOW THE BOOKS. SHOW THE INSTRUMENT. SHOW THE TRANSFER.
SHOW THE CONSIDERATION. SHOW THE SETTLEMENT.
THEN RECONCILE THE WHOLE TRANSACTION.**

Selected Primary Study References

- **UCC § 3-203 — Transfer of Instrument; Rights Acquired by Transfer**
<https://www.law.cornell.edu/ucc/3/3-203>
- **UCC § 3-204 — Indorsement**
<https://www.law.cornell.edu/ucc/3/3-204>
- **UCC § 3-205 — Special Indorsement; Blank Indorsement**
<https://www.law.cornell.edu/ucc/3/3-205>
- **UCC § 3-603 — Tender of Payment**
<https://www.law.cornell.edu/ucc/3/3-603>
- **Federal Reserve — Fedwire Funds Service**
https://www.federalreserve.gov/paymentsystems/fedfunds_about.htm

Educational note: This guide explains commercial-law and equity concepts for study. Application to a particular mortgage requires the complete transaction documents, jurisdiction-specific law, and evidence of the actual funding, transfer, possession and accounting history.