

ACT 55
BILLS OF EXCHANGE ACT, 1961

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ACT 55 BILLS OF EXCHANGE ACT, 1961(1)

AN ACT to re-enact, with minor modifications, the law relating to Bills of Exchange, and to provide for related matters.

PART ONE

Bills of Exchange

Form and Interpretation

1. Bill of exchange defined

(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum of money to or to the order of a specified person or to bearer.

(2) An instrument which does not comply with subsection (1) or which orders an act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of subsection (1); but an unqualified order to pay is unconditional if coupled with

- (a) an indication of a particular fund out of which the drawee is to reimburse the drawee, or a particular account to be debited with the amount, or
- (b) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid because

- (a) it is not dated,
- (b) it does not specify the value given, or
- (c) it does not specify the place where it is drawn or the place where it is payable.

2. Inland and foreign bills

(1) An inland bill is a bill which is or on the face of it purports to be

- (a) both drawn and payable within the Republic, or
- (b) drawn within the Republic on a person resident in the Republic.

(2) Any other bill is a foreign bill.

(3) Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.

3. Same person as different parties to a bill

(1) A bill may be drawn payable to, or to the order of, the drawer, or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill the drawer and the drawee are the same person, or where the drawee is a fictitious person or a person who does not have capacity to contract, the holder may treat the instrument, at the option of the holder, as a bill of exchange or as a promissory note.

4. Address to drawee

(1) The drawee shall be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees, whether they are partners or not, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

5. Certainty required as to payee

(1) Where a bill is not payable to bearer, the payee shall be named or otherwise indicated with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

(3) A bill may be made payable to the holder of an office.

(4) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

6. What bills are negotiable

(1) Where a bill contains words prohibiting transfer or indicating an intention that it is not transferable, it is valid as between the parties, but is not negotiable.

(2) A negotiable bill may be payable to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

(4) A bill is payable to order which is expressed to be so payable or on which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it is not transferable.

(5) Where a bill, originally or by endorsement, is expressed to be payable to the order of a specified person, and not to that person or to the order of that person, it is nevertheless payable to, or to the order of, or at the option of, that person.

7. Sum of money payable

(1) The sum of money payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid

- (a) with interest,
- (b) by stated instalments,
- (c) by stated instalments, with a provision, that on default in payment of an instalment the whole shall become due, or
- (d) according to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum of money payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the date of issue.

8. Bill payable on demand

(1) A bill is payable on demand

- (a) which is expressed to be payable on demand or at sight or on presentation, or
- (b) in which a time for payment is not expressed.

(2) Where a bill is accepted or endorsed when it is overdue it shall, as regards the acceptor who so accepts or an endorser who so endorses it, be deemed a bill payable on demand.

9. Bill payable at a future time

(1) A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable

- (a) at a fixed period after date or sight, or
- (b) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

(2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

10. Omission of date in bill payable after date

(1) Where a bill expressed to be payable at a fixed period date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, a holder may insert in the bill the true date of issue or acceptance, and the bill shall be payable accordingly.

(2) For the purposes of subsection (1),

- (a) where the holder in good faith and by mistake inserts a wrong date, and
- (b) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course,

the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

11. Ante-dating and post-dating

(1) Where a bill or an acceptance or an endorsement on a bill is dated the date shall, unless the contrary is proved, be deemed to be the date of the drawing, acceptance, or endorsement.

(2) A bill is not invalid because it is ante-dated or post-dated, or that it bears date on a Sunday.

12. Computation of time of payment

Where a bill is not payable on demand, the day on which it falls due is determined as follows:

- (a) three days, called days of grace are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: but
 - (i) when the last day of grace falls on a Sunday, Christmas Day, or Good Friday, the bill is, except in case otherwise provided for in this section, due and payable on the preceding business day;
 - (ii) when the last day of grace falls on any other non-business day, or when the last day of grace is a Sunday and the second day of grace is also a non-business day, the bill is due and payable on the succeeding business day;
- (b) where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment;
- (c) where a bill is payable at a fixed period after sight, time begins to run from the date of the acceptance if the bill is accepted and from the date of noting or protest if the bill is noted or protested for non-acceptance or for non-delivery;
- (d) the term “**month**” in a bill means a calendar month.

13. Case of need

(1) The drawer of a bill and an endorser may insert in the bill the name of a person to whom the holder may resort in case the bill is dishonoured by non-acceptance or non-payment.

(2) That person is called the referee in case of need.

(3) The holder may resort to the referee in case of need.

14. Optional stipulations by drawer or endorser

The drawer of and an endorser may insert in the bill an express stipulation

- (a) negating or limiting the liability of the drawer to the holder;
- (b) waving as regards the drawer some or all of the holder’s duties.

15. Definition and requisites of acceptance

(1) The acceptance of a bill is the signification by the drawee of the assent of the drawee to the order of the drawer.

(2) An acceptance is invalid unless

- (a) it is written on the bill and is signed by the drawee; but the mere signature of the drawee without additional words is sufficient;

- (b) it does not express that the drawee will perform the drawee's promise by any other means than the payment of money.

16. Time for acceptance

(1) A bill may be accepted

- (a) before it has been signed by the drawer or while otherwise incomplete, or
- (b) when it is overdue or after it has been dishonoured by a previous refusal to accept or by non-payment.

(2) Where a bill payable after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder in the absence of a different agreement is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

17. General and qualified acceptance

(1) An acceptance is general or qualified.

(2) A general acceptance assents without qualification to the order of the drawer.

(3) A qualified acceptance in express terms varies the effect of the bill as drawn.

(4) In particular an acceptance is qualified which is

- (a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition stated in the acceptance, or
- (b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn, or
- (c) local, that is to say, an acceptance to pay only at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere, or
- (d) qualified as to time, or
- (e) the acceptance of some one or more of the drawees, but not of all.

18. Inchoate instrument

(1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a prima facie authority to fill it up as a complete bill for an amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an endorser; and, in like manner, when a bill is wanting in a material particular, the person in possession of it has a prima facie authority to fill up the omission in any way that person thinks fit.

(2) In order that an instrument when completed may be enforceable against a person who became a party to the instrument prior to its completion, it shall be filled up within a reasonable time, and strictly in accordance with the authority given.

(3) Reasonable time for this purpose is a question of fact.

(4) Where the instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in the hands of the holder who may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

19. Delivery

(1) A contract on a bill, whether it is the drawer's, the acceptor's or an endorser's is incomplete and revocable until delivery of the instrument in order to give effect to it.

(2) Where an acceptance is written on a bill, and the drawee gives notice of acceptance to or according to the directions of the person entitled to the bill, the acceptance then becomes complete and irrevocable.

(3) As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery,

- (a) in order to be effectual, shall be made by or under the authority of the party drawing, accepting or endorsing, and
- (b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill; but if the bill is in the hands of a holder in due course a valid delivery of the bill by all parties prior to the holder so as to make them liable to the holder is conclusively presumed.

(4) Where a bill is not in the possession of a party who has signed it as drawer, acceptor or endorser, a valid and unconditional delivery by that party is presumed until the contrary is proved.

Capacity and Authority of Parties

20. Capacity of parties

(1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

(2) Subsection (1) does not enable a corporation to make itself liable as a drawer, acceptor or endorser of a bill unless it is competent for it so to do under the law relating to corporations.

(3) Where a bill is drawn or endorsed by an infant or a corporation which does not have the capacity or power to incur liability on a bill, drawing or endorsement entitles the holder to receive payment of the bill and to enforce it against any other party to the bill.

21. Signature essential to liability

A person is not liable as drawer, endorser or acceptor of a bill who has not signed it, but

- (a) where a person signs a bill in a trade or assumed name, that person is liable on the bill as if that person had signed it in that person's own name, and
- (b) the signature of the name of a firm is equivalent to the signature by the person so signing of the names of the persons liable as partners in that firm.

22. Forged or unauthorised signature

(1) Subject to this Act, where a signature on a bill is forged or placed on the bill without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and a right to retain the bill or to give a discharge for the bill or to enforce payment of the bill against a party to the bill cannot be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

(2) Subsection (1) shall not affect the ratification of an unauthorised signature not amounting to a forgery.

23. Procuration signature

A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by that signature if the agent in so signing was acting within the actual limits of the agent's authority.

24. Person signing as agent or in representative capacity

Where a person signs a bill as drawer, endorser or acceptor, and adds words to the signature indicating that it is signed for or on behalf of a principal, or in a representative character, that person is not personally liable on the bill; but the mere addition to the signature of words describing that person as an agent, or as filling a representative character, does not exempt that person from personal liability.

Consideration for a Bill

25. Value and holder for value

(1) Valuable consideration for a bill may be constituted

- (a) by a consideration sufficient to support a simple contract, or
- (b) by an antecedent debt or liability which debt or liability is, for the purposes of this Act, valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill, the holder is a holder for value as regards the acceptor and the parties to the bill who become parties prior to that time.

(3) Where the holder of a bill has a lien on it arising from contract or by implication of law, the holder is a holder for value to the extent of the sum of money for which that holder has a lien.

26. Accommodation bill or party

(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or endorser, without receiving value for the bill and for the purpose of lending the person's name to some other person.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether or not when the holder took the bill the holder knew that party to be an accommodation party.

27. Holder in due course

(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the conditions that the holder

- (a) became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if that was the fact; and
- (b) took the bill in good faith and for value, and that at the time the bill was negotiated the holder did not have notice of a defect in the title of the person who negotiated it.

(2) The title of a person who negotiates a bill is defective within the meaning of this Act when that

person obtains the bill, or the acceptance of the bill, by fraud, duress, or force and fear, or any other unlawful means, or for an illegal consideration, or when that person negotiates it in breach of faith, or under circumstances which amount to a fraud.

(3) A holder, whether for value or not, who derives title to a bill through a holder in due course and who is not personally a party to fraud or an illegality affecting it, has the rights of that holder in due course as regards the acceptor and the parties to the bill prior to that holder.

28. Presumption of value and good faith

(1) A party whose signature appears on a bill is prima facie deemed to have become a party to the bill for value.

(2) A holder of a bill is prima facie deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress, or force and fear or illegality, the burden of proof is shifted unless the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bill

29. Negotiation of bill

(1) A bill is negotiated when it is transferred from one person to another in a manner that constitutes the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the endorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to the order of the holder transfers it of value without endorsing it, the transfer gives the transferee the title which the transferor had in the bill, and the transferee in addition acquires the right to have the endorsement of the transferor.

(5) Where a person is under an obligation to endorse a bill in a representative capacity, that person may endorse the bill in terms which negative personal liability.

30. Requisites of a valid endorsement

(1) An endorsement operates as a negotiation if it complies with this section and if

(a) the endorsement is written on the bill itself and is signed by the endorser, and the simple signature of the endorser on the bill, without additional words, is sufficient; and for the purposes of this paragraph, an endorsement written on an allonge, or on a “copy” of a bill issued or negotiated in a country where “copies” are recognised, is deemed to be written on the bill itself;

(b) it is an endorsement of the entire bill since a partial endorsement, that is to say, an endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the bill to two or more endorsees severally does not operate as a negotiation of the bill;

(c) as a bill payable to the order of two or more payees or endorsees who are not partners, all of them endorse the bill unless the one endorsing has authority to endorse for the others.

(2) Where in a bill payable to order, the payee or endorsee is wrongly designated or the name is

misspelt, the payee or endorsee may endorse the bill as described in the bill adding, appropriately, the proper signature of the payee or endorsee.

(3) Where there are two or more endorsements on a bill each endorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(4) An endorsement may be made in blank or special, and may also contain terms making it restrictive.

31. Conditional endorsement

Where a bill purports to be endorsed conditionally the condition may be disregarded by the payer, and payment to the endorsee is valid whether the condition has been fulfilled or not.

32. Endorsement in blank and special endorsement

(1) An endorsement in blank does not specify an endorsee, and a bill so endorsed becomes payable to bearer.

(2) A special endorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an endorsee under a special endorsement.

(4) When a bill is endorsed in blank, the holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction to pay the bill to or to the order of the holder or some other person.

33. Restrictive endorsement

(1) An endorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as directed, and not a transfer of the ownership of the bill, as for example, if a bill is endorsed, "Pay D. Only" or "Pay D. for the account of X", or "Pay D or order for collection".

(2) A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue a party to the bill that the endorser could have sued, but does not give the endorsee a power to transfer the rights as endorsee unless it expressly authorises the endorsee to do so.

(3) Where a restrictive endorsement authorises further transfer, the subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement.

34. Negotiation of overdue or dishonoured bill

(1) Where a bill is negotiable in its origin it continues to be negotiable until it has been

(a) restrictively endorsed, or

(b) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to a defect of title affecting it at its maturity, and a person who takes it cannot acquire or give a better title than that which the person from whom that person took it had.

(3) A bill payable on demand is overdue within the meaning and for the purposes of this section when

it appears on the face of it to have been in circulation for an unreasonable length of time.

(4) For the purposes of subsection (3), what is an unreasonable length of time is a question of fact.

(5) Except where an endorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill was overdue.

(6) Where a bill which is not overdue is dishonoured, a person who takes it with notice of the dishonour takes it subject to the defect of title attaching to the bill at the time of dishonour, but this subsection does not affect the rights of a holder in due course.

35. Negotiation of bill to party already liable

Where a bill is negotiated back to the drawer, or to a prior endorser, or to the acceptor, that party may, subject to this Act, re-issue and further negotiate the bill, but is not entitled to enforce payment of the bill against an intervening party to whom that party was previously liable.

36. Rights of the holder

The rights and powers of the holder of a bill are

- (a) that the holder may sue on the bill in the holder's own name;
- (b) that where the holder is a holder in due course, the holder holds the bill free from a defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against the parties liable on the bill; and
- (c) that where the title of the holder is defective
 - (i) and the holder negotiates the bill to a holder in due course, that holder in due course obtains a good and complete title to the bill, and
 - (ii) if the holder obtains payment of the bill, the person who pays the holder gets a valid discharge for the bill.

General Duties of the Holder

37. When presentment for acceptance is necessary

(1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it shall be presented for acceptance before it can be presented for payment.

(3) In any other case presentment is not necessary for acceptance in order to render liable a party to the bill.

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, does not have the time with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and the endorsers.

38. Time for presenting bill payable after sight

(1) Subject to this Act, when a bill payable after sight is negotiated, the holder shall present it for acceptance or negotiate it within a reasonable time.

(2) If the holder does not do so, the drawer and the endorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, the nature of the bill, the usage of trade with respect to similar bills and the facts of the particular case, shall be taken into consideration.

39. Rules as to presentment for acceptance

(1) A bill is duly presented for acceptance if it complies with this section and where the presentment is made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on behalf of the drawee at a reasonable hour on a business day and before the bill is overdue.

(2) Where a bill is addressed to two or more drawees who are not partners, the presentment shall be made to them all, unless one has authority to accept for all, then presentment may be made to that one only.

(3) Where the drawee is dead, the presentment may be made to the personal representative.

(4) Where the drawee is insolvent, the presentment may be made to, or to the trustee of, the drawee.

(5) Where authorised by agreement or usage, a presentment through the post office is sufficient.

(6) Presentment in accordance with subsection (1) is excused, and a bill may be treated as dishonoured by non-acceptance,

(a) where the drawee is dead or insolvent, or is a fictitious person, or a person who does not have capacity to contract by bill;

(b) where after the exercise of reasonable diligence, the presentment cannot be effected;

(c) where although the presentment has been irregular acceptance has been refused on any other grounds.

(7) The fact that the holder has reason to believe that the bill on presentment will be dishonoured does not excuse presentment.

40. Non-acceptance

(1) When a bill is duly presented for acceptance and it is not accepted within the customary time, the person presenting it shall treat it as dishonoured by non-acceptance.

(2) If that person does not comply with subsection (1), the holder shall lose the holder's right of recourse against the drawer and endorsers.

41. Dishonour by non-acceptance and its consequences

(1) A bill is dishonoured by non-acceptance

(a) when it is duly presented for acceptance, and the acceptance as is prescribed by this Act is refused or cannot be obtained, or

(b) when presentment of acceptance is excused and the bill is not accepted.

(2) Subject to this Act, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and endorsers accrues to the holder, and a presentment for payment is not necessary.

42. Duties as to qualified acceptances

(1) The holder of a bill may refuse to take a qualified acceptance, and if the holder does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an endorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent to it, the drawer or endorser is discharged from liability on the bill.

(3) Subsection (2) does not apply to a partial acceptance, of which due notice had been given.

(4) Where a foreign bill is accepted as to a part, it shall be protested as to the balance.

(5) When the drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express dissent to the holder, the drawer shall be deemed to have assented to the bill.

43. Rules as to presentment for payment

(1) Subject to this Act, a bill shall be duly presented for payment.

(2) If the bill is not so presented the drawer and the endorsers are discharged.

(3) A bill is duly presented for payment, which is presented in accordance with the following rules:

(a) where the bill is payable on demand, presentment shall be made on the day it falls due;

(b) where the bill is payable on demand, then subject to this Act, presentment shall be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its endorsement, in order to render the endorser liable; but in determining what is a reasonable time, the nature of the bill, the usage of trade with regard to similar bills and the facts of the particular case shall be taken into consideration;

(c) presentment shall be made by the holder or by any other person authorised to receive payment on behalf of the holder at a reasonable hour on a business day, at the proper place as defined in paragraph (d), to the person designated by the bill as payer, or to any other person authorised to pay or refuse payment on behalf of that person if with the exercise of reasonable diligence that person can there be found;

(d) a bill is presented at the proper place

(i) where a place of payment is specified in the bill and the bill is there presented;

(ii) where a place of payment is not specified but the address of drawee or acceptor is given in the bill, and the bill is there presented;

(iii) where a place of payment is not specified and an address is not given, and the bill is presented at the drawee's or acceptor's place of business if known, and, if not, at the ordinary residence if known;

(iv) in any other case if presented to the drawee or acceptor wherever the drawer or acceptor can be found, or if presented at the last known place of business or residence of the drawee or acceptor;

- (e) where a bill is presented at the proper place, and after the exercise of reasonable diligence a person authorised to pay or refuse payment cannot be found there, a further presentment to the drawee or acceptor is not required;
- (f) where a bill is drawn on, or accepted by two or more persons who are not partners, and a place of payment is not specified, presentment shall be made to them all;
- (g) where the drawee or acceptor of a bill is dead, and a place of payment is not specified, presentment shall be made to a personal representative, who with the exercise of reasonable diligence can be found;
- (h) where authorised by agreement or usage, a presentment through the post office is sufficient.

44. Excuses for delay or non-presentment for payment

(1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to the default, misconduct or negligence of the holder.

(2) When the cause of delay ceases to operate, presentment shall be made with reasonable diligence.

(3) Presentment for payment is dispensed with

- (a) where after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected; and the fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment;
- (b) where the drawee is a fictitious person;
- (c) as regards the drawer, where the drawee or acceptor is not bound, as between the drawee or acceptor and the drawer, to accept or pay the bill, and the drawer does not have a reason to believe that the bill would be paid if presented;
- (d) as regards an endorser, where the bill was accepted or made for the accommodation of that endorser, and the endorser does not have a reason to expect that the bill would be paid if presented;
- (e) by waiver of presentment, express or implied.

45. Dishonour by non-payment

(1) A bill is dishonoured by non-payment

- (a) when it is duly presented for payment and payment is refused or cannot be obtained, or
- (b) when the presentment is excused and the bill is overdue and unpaid.

(2) Subject to this Act, when a bill is dishonoured by non-payment, an immediate right or recourse against the drawer and endorsers accrues to the holder.

46. Notice of dishonour and effect of non-notice

(1) Subject to this Act, when a bill is dishonoured by non-acceptance or by non-payment, notice of dishonour shall be given to the drawer and each endorser, and a drawer or an endorser to whom the notice is not given is discharged.

(2) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, is not prejudiced by the omission.

(3) Where a bill is dishonoured by non-acceptance, and notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill is accepted in the meantime.

47. Rules as to notice of dishonour

Notice of dishonour in order to be valid and effectual shall be given in accordance with the following rules:

- (a) the notice shall be given by or on behalf of the holder, or by or on behalf of an endorser who, at the time of giving it, is personally liable on the bill;
- (b) the notice may be given by an agent in the agent's own name or in the name of the party entitled to give notice whether or not that party is the principal;
- (c) where the notice is given by or on behalf of the holder, it enures for the benefit of the subsequent holders and the prior endorsers who have a right of recourse against the party to whom it is given;
- (d) where notice is given by or on behalf of an endorser entitled to give notice as provided in this Act, it enures to the benefit of the holder and the endorsers subsequent to the party to whom notice is given;
- (e) the notice may be given in writing or by personal communication, and may be given in the terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment;
- (f) the return of a dishonoured bill to the drawer or an endorser is, in point of form, deemed a sufficient notice of dishonour;
- (g) a written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication, but mis-description of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled by the notice;
- (h) where notice of dishonour is required to be given to a person, it may be given to the party personally or to an agent of that party;
- (i) where the drawer or endorser is dead, and the party giving notice knows it, the notice shall be given to a personal representative if there is one and with the exercise of reasonable diligence can be found;
- (j) where the drawer or endorser is insolvent, notice may be given to the party personally or to the trustee;
- (k) where there are two or more drawers or endorsers who are not partners, notice shall be given to each of them, unless one of them has authority to receive the notice for the others;
- (l) the notice may be given as soon as the bill is dishonoured and shall be given within a reasonable time after the dishonour, but in the absence of special circumstances notice is not given within a reasonable time unless,
 - (i) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill, or
 - (ii) where the person giving and the person to receive the notice reside in different places,

the notice is sent off on the day after the dishonour of the bill, if there is a post at a convenient hour on the day, otherwise by the next post;

- (m) where a bill when dishonoured is in the hands of an agent, if the agent may personally give notice to the parties liable on the bill or give notice to the principal, and where notice is to be given to the principal, it shall be given within the same time as if the agent were the holder, and the principal on receipt of the notice has personally the same time for giving notice as if the agent had been an independent holder;
- (n) where a party to a bill receives due notice of dishonour, that party has after the receipt of the notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour;
- (o) where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, despite a miscarriage by the post office.

48. Excuse for non-notice and delay

(1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to the default, misconduct or negligence of that party.

(2) Where the cause of delay ceases to operate, the notice shall be given with reasonable diligence.

(3) Notice of dishonour is dispensed with

- (a) when, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or endorser sought to be charged;
- (b) by waiver, express or implied, but a notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice;
- (c) as regards the drawer,
 - (i) where the drawer and the drawee are the same person;
 - (ii) where the drawee is a fictitious person or a person who does not have capacity to contract;
 - (iii) where the drawer is the person to whom the bill is presented for payment;
 - (iv) where the drawee or acceptor is not, as between the drawee or acceptor and the drawer, under an obligation to accept or pay the bill;
 - (v) where the drawer has countermanded payment;
- (d) as regards the endorser,
 - (i) where the drawee is a fictitious person or a person who does not have capacity to contract and the endorser was aware of the fact at the time the endorser endorsed the bill;
 - (ii) where the endorser is the person to whom the bill is presented for payment;
 - (iii) where the bill was accepted or made for the accommodation of the endorser.

49. Noting or protest of bill

(1) Where an inland bill is dishonoured, it may, if the holder thinks fit, be noted for non-acceptance,

or non-payment; but it shall not be necessary to note or protest the order to preserve the recourse against the drawer or endorser.

(2) Where a foreign bill, appearing on the face of it to be a foreign bill, is dishonoured by non-acceptance, it shall be duly protested for non-acceptance, and where the bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it shall be duly protested for non-payment.

(3) Where it is not protested under subsection (2), the drawer and endorser are discharged.

(4) Where a bill does not appear on the face of it to be a foreign bill, protest in case of dishonour is not necessary.

(5) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(6) Subject to this Act, when a bill is noted or protested, it may be noted on the day of its dishonour and shall be noted not later than the next succeeding business day.

(7) When a bill is duly noted, the protest may be subsequently extended for better security against the drawer and endorsers.

(8) Where the acceptor of a bill becomes insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers.

(9) A bill shall be protested at the place where it is dishonoured; but

- (a) when a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day;
- (b) when a bill drawn payable at the place of business or residence of a person other than the drawee, is dishonoured by non-acceptance it shall be protested for non-payment at the place where it is expressed to be payable, and a further presentment for payment to, or demand on, the drawee is not necessary.

(10) A protest shall contain a copy of the bill, shall be signed by the notary making it, and shall specify

- (a) the person at whose request the bill is protested, and
- (b) the place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, or the fact that the drawee or acceptor could not be found.

(11) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars of the bill.

(12) Protest may be dispensed with by a circumstance, which would dispense with notice of dishonour.

(13) Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to the default, misconduct or negligence of the holder.

(14) When the cause of delay ceases to operate, the bill shall be noted or protested with reasonable diligence.

50. Duties of holder as regards acceptor

(1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day it matures.

(3) In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to the acceptor.

(4) Where the holder of a bill presents it for payment, the holder shall exhibit the bill to the person from whom the holder demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties

51. Funds in hands of drawee

A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

52. Liability of acceptor

The acceptor of a bill, by accepting the bill,

- (a) engages that the acceptor will pay it according to the tenor of the acceptance;
- (b) is precluded from denying to a holder in due course
 - (i) the existence of the drawer, the genuineness of the signature, and the capacity and authority to draw the bill;
 - (ii) in the case of a bill payable to drawer's order, the capacity of the drawer to endorse, but not the genuineness or validity of the endorsement;
 - (iii) in the case of a bill payable to the order of a third person, the existence of the payee and the capacity to endorse, but not the genuineness or validity of the endorsement.

53. Liability of drawer or endorser

(1) The drawer of a bill, by drawing the bill,

- (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured the drawer will compensate the holder or an endorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken;
- (b) is precluded from denying to a holder in due course the existence of the payee and the capacity to endorse.

(2) The endorser of a bill, by endorsing the bill,

- (a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured the drawer will compensate the holder or a subsequent endorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken;

- (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements;
- (c) is precluded from denying to the immediate or a subsequent endorsee that the bill was at the time of the endorsement a valid and subsisting bill, and that the endorser had then a good title to the bill.

54. Stranger signing bill liable as endorser

Where a person signs a bill otherwise than as drawer or acceptor, that person incurs the liabilities of an endorser to a holder in due course.

55. Measure of damages against parties to dishonoured bill

Where a bill is dishonoured, the measure of damages, which are, for the purposes of this Act, liquidated damages are as follows:

- (a) holder may recover from a party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser,
 - (i) the amount of the bill,
 - (ii) interest on that amount from the time of presentment for payment if the bill is payable on demand and from the maturity of the bill in any other case, and
 - (iii) the expenses of noting, or when protest is necessary and the protest has been extended, the expenses of protest;
- (b) in the case of a bill which is dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from a party liable to the holder the amount of that re-exchange with the relevant interest until the time of payment;
- (c) where by this Act interest may be recovered as damages, the interest may, if justice requires it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

56. Transfer or by delivery and transferee

(1) Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, the holder is called a "transferor by delivery".

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill warrants to the immediate transferee who is a holder for a value that the bill is what it purports to be, that the transferor has a right to transfer it, and that at the time of transfer the transferor was not aware of a fact which renders it valueless.

Discharge of Bill

57. Payment in due course

(1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

(2) For the purposes of subsection (1), “**payment in due course**” means payment made at or after the maturity of the bill to the holder of the bill in good faith and without notice that the title to the bill is defective.

(3) Where a bill is paid by the drawer or an endorser it is not discharged; but

- (a) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment of the bill against the acceptor, but may not re-issue the bill;
- (b) where a bill is paid by an endorser, or where a bill payable to drawer’s order is paid by the drawer, the party paying it is remitted to the former rights as regards the acceptor or antecedent parties, and that party may strike out that party’s own and subsequent endorsements, and again negotiate the bill.

(4) Where an accommodation bill paid in due course by the party accommodated the bill is discharged.

58. Authority to pay draft without proof of endorsement

Where a bill payable to order or on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the endorsement of the payee or a subsequent endorsement was made by or under the authority of the person whose endorsement it purports to be and the banker is deemed to have paid the bill in due course, although the endorsement is forged or made without authority.

59. Banker paying demand draft on forged endorsement

A draft or an order drawn whether in or out of the Republic on a banker whether in or out of the Republic for a sum of money payable to order on demand or at some other time which shall, when presented for payment, purport to be endorsed by the person to whom the same is drawn payable, is a sufficient authority to the banker to pay the amount of the draft or order to the bearer of the draft or order; and it shall not be incumbent on the banker to prove that the endorsement or a subsequent endorsement was made by or under the direction of the person to whom the draft or order was or is made payable by the drawer or an endorser of the draft or order.

60. Acceptor the holder at maturity

When the acceptor of a bill is or becomes the holder of it at or after its maturity, in the acceptor’s own right, the bill is discharged.

61. Express waiver

(1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces the holder’s rights against the acceptor, the bill is discharged.

(2) The renunciation shall be in writing, unless the bill is delivered up to the acceptor.

(3) The liabilities of a party to a bill may, in like manner be renounced by the holder before, at, or after its maturity, but this section shall not affect the rights of a holder in due course without notice of the renunciation.

62. Cancellation

(1) Where a bill is intentionally cancelled by the holder or the agent of the holder, and the cancellation is apparent, the bill is discharged.

(2) In like manner, a party liable on a bill may be discharged by the intentional cancellation of the signature by the holder or the agent of the holder, and an endorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3) A cancellation made unintentionally, or under a mistake or without the authority of the holder is inoperative; but where a bill or a signature on the bill appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

63. Alteration of bill

(1) Where a bill or acceptance is materially altered without the assent of the parties liable on the bill, the bill is avoided except as against a party who has personally made, authorised, or assented to the alteration, and subsequent endorsers.

(2) Where a bill is materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, the holder may profit by the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(3) For the purposes of this section, an alteration of the date, the sum of money payable, the time of payment, the place of payment, and, where a bill is accepted generally, the addition of a place of payment without the acceptor's assent, are material alterations.

Acceptance and Payment for Honour

64. Acceptance for honour *supra protest*

(1) Where a bill of exchange is protested for dishonour by non-acceptance, or protested for better security, and is not overdue a person, who is not a party already liable on the bill may, with the consent of the holder, intervene and accept the bill *supra protest*, for the honour of a party liable on the bill or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum of money for which it is drawn.

(3) An acceptance for honour *supra protest* in order to be valid

(a) shall be written on the bill, and indicate that it is an acceptance for honour, and

(b) shall be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

65. Liability of acceptor for honour

The acceptor for honour of the bill by accepting it engages

(a) that the acceptor will on due presentment, pay the bill according to the tenor of the acceptance, if it is not paid by the drawee, provided it has been duly presented for payment,

and protested for non-payment, and

(b) that the acceptor receives notice of these facts.

66. Presentment to acceptor for honour

(1) Where a dishonoured bill is accepted for honour *supra protest*, or contains a reference in case of need, it shall be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill shall be presented to the acceptor not later than the day following its maturity, and where the address of the acceptor for honour is in a place other than the place where it was protested for non-payment, the bill shall be forwarded not later than the day following its maturity for presentment to the acceptor.

(3) Delay in presentment or non-presentment is excused by a circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4) Where a bill of exchange is dishonoured by the acceptor for honour it shall be protested for non-payment by the acceptor.

67. Payment for honour *supra protest*

(1) Where a bill is protested for non-payment, a person may intervene and pay it *supra protest* for the honour of a party liable on the bill or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour *supra protest*, in order to operate by itself and not as a mere voluntary payment, shall be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour shall be founded on a declaration made by the payer for honour, or the agent of the payer in that behalf, declaring the intention to pay the bill for honour, and for whose honour it is paid.

(5) Where a bill is paid for honour, the parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour the holder pays, and the parties liable to that party.

(6) The payer for honour on paying to the holder the amount of money of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest.

(7) If the holders not on demand deliver up that amount the holder is liable in damages to the payer for honour.

(8) Where the holder of a bill refuses to receive payment *supra protest* the holder loses the right of recourse against a party who would have been discharged by the payment.

Lost Instruments

68. Holder's right to duplicate of lost bill

(1) Where a bill is lost before it is overdue, the person who was the holder of it may apply for the drawer to give the holder another bill of the same tenor, giving security to the drawer if required to indemnify the drawer against all persons in case the bill alleged to have been lost is found again.

(2) If the drawer on request refuses to give the duplicate bill the drawer may be compelled to do so.

69. Action on lost bill

In an action or a proceeding on a bill, the Court may order that the loss of the instrument shall not be set up, where an indemnity is given to the satisfaction of the Court, against the claims of any other person on the instrument in question.

Bill in a Set

70. Rules as to sets

(1) Where a bill is drawn in a set and each part of the set is numbered, and the bill contains a reference to the other parts, the whole of the parts constitutes one bill.

(2) Where the holder of a set endorses two or more parts to different persons, the holder is liable on every part, and every endorser subsequent to the holder is liable on the part the endorser has personally endorsed as if the parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is deemed the true owner of the bill, as between all the holders, but this subsection shall not affect the rights of a person who in due course accepts or pays the part first presented to that person.

(4) The acceptance may be written on a part, and it shall be written on one part only; but if the drawee accepts more than one part, and the accepted parts get in to the hands of different holders in due course, the drawee is liable on every part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing the acceptance to be delivered up to the acceptor, and that part at maturity is outstanding in the hands of a holder in due course, the acceptor is liable to the holder of the bill.

(6) Subject to this section, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws

71. Rules where laws conflict

Where a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties to the bill are determined as follows:

(a) the validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or endorsement, or acceptance *supra protest*, is determined by the law of the place where the contract was made; but

(i) where a bill is issued out of the Republic it is not invalid because it is not stamped in accordance with the law of the place of issue;

- (ii) where a bill issued out of the Republic conforms, as regards requisites in form, to the law of the Republic, it may for the purpose of enforcing payment there, be treated as valid as between the persons who negotiate, hold or become parties to it in the Republic;
- (b) subject to this Act, the interpretation of the drawing, endorsement, acceptance or acceptance *supra protest* of a bill, is determined by the law of the place where the contract is made; but where an inland bill is endorsed in a foreign country the endorsement shall as regards the payer be interpreted according to the law of the Republic;
- (c) the duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured;
- (d) where a bill is drawn out of, but payable in, the Republic and the sum of money payable is not expressed in the currency of the Republic, the amount shall be calculated in the absence of an expressed stipulation, according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable;
- (e) where a bill is drawn in one country and is payable in another, the due date of the bill is determined according to the law of the place where it is payable.

PART TWO

Cheques and Similar Instruments

Cheques on a Banker

72. Cheques defined

- (1) A cheque is a bill of exchange drawn on a banker payable on demand.
- (2) Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

73. Presentment of cheque for payment

- (1) Subject to this Act, where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of the presentment as between any of the persons and the banker to have the cheque paid and suffers actual damage through the delay, any of those persons is discharged to the extent of the damages, that is to say, to the extent to which the drawer or that person is a creditor of the banker to a larger amount than the drawer or that person would have been had the cheque been paid.
- (2) In determining what is a reasonable time, the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case shall be taken into consideration.
- (3) The holder of the cheque as to which the drawer or that person is discharged is a creditor, in lieu of the drawer or that person, of the banker to the extent of the discharge, and entitled to recover the amount from the drawer or that person.

74. Revocation of banker's authority

The duty and authority of a banker to pay a cheque drawn on the banker by the customer are determined by

- (a) countermand of payment, or
- (b) notice of the customer's death.

Crossed Cheques

75. General and special crossing defined

(1) Where a cheque bears across its face an addition of

- (a) the words "and company" or an abbreviation of those words, between two parallel transverse lines, with or without the words "not negotiable", or
- (b) two parallel transverse lines simply, with or without the words "not negotiable",

that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, with or without the words "not negotiable", that addition constitutes a crossing, and the cheque is crossed specially, and to that banker.

76. Crossing by drawer or after issue

(1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is not crossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

(5) Where a cheque is crossed specially the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where a cheque which is not crossed, or a cheque crossed generally is sent to a banker for collection, the banker may cross it specially to the banker.

77. Crossing a material part of cheque

A crossing authorised by this Act is a material part of the cheque, and it is illegal for a person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

78. Duties of banker as to crossed cheques

(1) Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection which is a banker, the banker on whom it is drawn shall refuse payment of the cheque.

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the cheque, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or the agent of that banker for collection which is itself a banker, that banker is liable to the true owner of the cheque for the loss that that banker may sustain owing to the cheque having been so paid.

(3) For the purposes of subsection (2), where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence is not responsible and does not incur a liability.

(4) The payment under subsection (3) shall not be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated, or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to the agent for collection which is itself a banker.

79. Protection to banker and drawer of crossed cheque

Where the banker on whom a crossed cheque is drawn in good faith and without negligence pays it, if crossed generally, to a banker and if crossed specially, to the banker to whom it is crossed or the agent of that banker for collection which is itself a banker, the banker paying the cheque, and if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner of the cheque.

80. Effect of crossing on holder

Where a person takes a crossed cheque which bears on it the words “not negotiable”, that person does not have, and is not capable of giving, a better title to the cheque than that which the person from whom it was taken had.

Protection to Collecting Banker

81. Protection to collecting banker

Where a banker in good faith and without negligence

- (a) receives payment for a customer of a cheque, whether crossed or uncrossed, or
- (b) having credited a customer’s account with the amount of the cheque, receives payment of the cheque for the banker,

and the customer does not have a title or has a defective title, to the cheque, the banker does not incur a liability to the true owner of the cheque by reason only of having received payment of the cheque.

Other Instruments

82. Application of sections 75 to 81 to other instruments

As they have effect in relation to a cheque, sections 75 to 81 shall, so far as applicable, have effect in relation to

- (a) a document issued by a customer of a banker which, though not a cheque, is intended to enable a person to obtain payment from the banker of the sum of money mentioned in the document;
- (b) a draft payable on demand drawn by a banker on that banker whether payable at the head office or some other office of that bank;
- (c) warrants for the payment of dividends.

PART THREE

Promissory Notes

83. Promissory note defined

(1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay on demand or at a fixed or determinable future time, a sum certain in money, to or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of subsection (1) unless it is endorsed by the maker.

(3) A note is not invalid because it contains also a pledge of collateral security with authority to sell or dispose of the note.

(4) A note which is, or on the face of it purports to be, both made and payable within the Republic is an inland note and any other note is a foreign note.

84. Delivery necessary

A promissory note is inchoate and incomplete until delivery of the note to the payee or bearer.

85. Joint and several notes

(1) A promissory note may be made by two or more makers and they may be liable on the note jointly, or jointly and severally, according to its tenor.

(2) Where a note runs, "I promise to pay", and is signed by two or more persons it is deemed to be their joint and several note.

86. Note payable on demand

(1) Where a note payable on demand is endorsed, it shall be presented for payment within a reasonable time of endorsement and if it is not so presented the endorser is discharged.

(2) In determining what is a reasonable time the nature of the instrument, the usage of trade, and the facts of the particular case shall be taken into consideration.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which the holder did not have notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

87. Presentment of note for payment

(1) Where a promissory note is in the body of it made payable at a particular place, it shall be presented for payment at that place in order to render the maker liable; but in any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the endorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an endorser liable; but when a place of payment is indicated by way of

memorandum only, presentment at that place is sufficient to render the endorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

88. Liability of maker

The maker of a promissory note by making it

- (a) engages that the maker will pay it according to its tenor, and
- (b) is precluded from denying to a holder in due course the existence of the payee, and the capacity to endorse.

89. Application of Part to notes

(1) Subject to this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note is in the same position as the acceptor of a bill, and the endorser of a note corresponds with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes:

- (a) presentment for acceptance,
- (b) acceptance,
- (c) acceptance *supra protest*, and
- (d) bills in a set.

(4) Where a foreign note is dishonoured, protest of the note is unnecessary.

PART FOUR

Supplementary

90. Good faith

A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

91. Signature

(1) Where, by this Act, an instrument or a writing is required to be signed by a person, the personal signature of that person is not necessary but it is sufficient if the signature is written on the instrument by any other person by or under the authority of that person.

(2) In the case of a corporation, where by this Act, an instrument or a writing is required to be signed, it is sufficient if the instrument or writing is sealed with the corporate seal, but this section shall not be construed as requiring the bill or note of a corporation to be under seal.

92. Computation of time

Where by this Act the time limited for doing an act or a thing is less than three days, in reckoning time non-business day are excluded.

93. Business and non-business days

(1) For the purposes of this Act, Sundays, Good Friday, Christmas Day, public holidays and days prescribed under subsection (2) are non-business days, but any other day is a business day.

(2) The President may, by legislative instrument, prescribe a particular day as a non-business day.

94. When noting equivalent to protest

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before a further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time after the specified time as of the date of noting.

95. Protest when notary not accessible

(1) Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, a householder, substantial resident, and merchant, or mercantile agent of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall operate as if it were a formal protest of the bill.

(2) The form set out in the First Schedule may be used with necessary modification, and if used is sufficient.

96. Savings

(1) The rules of the common law, including the law merchant, except where they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes and cheques.

(2) This Act does not affect

- (a) an enactment relating to the revenue, or
- (b) the validity of a usage relating to dividend warrants, or the endorsements of those warrants.

97. Interpretation

In this Act, unless the context otherwise requires,

“acceptance” means an acceptance completed by delivery or notification;

“action” includes counter-claim and set-off;

“banker” includes a body of persons, whether incorporated or not, who carry on the business of banking;

“bearer” means the person in possession of a bill or note which is payable to bearer;

“bill” means bill of exchange;

“delivery” means transfer of possession, actual or constructive from one person to another;

“endorsement” means an endorsement completed by delivery;

“holder” means the payee or endorsee of a bill or note who is in possession of it, or the bearer of

the bill;

“insolvent” includes a person whose estate is vested in a trustee under the law in force relating to insolvency;

“issue” means the first delivery of a bill or note, complete in form to a person who takes it as a holder;

“note” means promissory note;

“value” means valuable consideration.

98. Statutes ceasing to apply

The statutes and provisions of statutes, mentioned in the Second Schedule shall, in so far as they apply in the Republic, cease to apply.

99. Repeal

Spent.3(3)



First Schedule

FORM OF PROTEST WHICH MAY BE USED WHEN THE SERVICES OF NOTARY CANNOT BE OBTAINED

[Section 95]

KNOW ALL MEN that I, A.B. (householder, of) at the request of C.D., there being no notary public available, did on the, day of, 20 at, demand payment (or acceptance) of the bill of exchange hereunder written from E.F., to which demand he made answer (state answer, if any) wherefore I now, in the presence of G.H. and J.K., do protest the said bill of exchange.

.....
G.H. } A.B.
} *Witnesses* } *Signed*
J.K. }

NB:—The bill itself should be annexed or a copy of the bill and all that is written thereon should be underwritten.



Second Schedule

STATUTES CEASING TO APPLY

[Section 98]

| <i>Session and Chapter</i> | <i>Subject-matter</i> |
|---|-----------------------------|
| 9 Will. 3, c. 17 (1697) | Bills of Exchange |
| 3 and 4 Ann., c. 8 (sometimes know as c.9) (1704) | Bills of Exchange |
| 17 Geo. 3, c. 30 (1776) | Bills of Exchange |
| 39 and 40 Geo. 3, c. 42 (1799) | Bills of Exchange |
| 48 Geo. 3, c. 88 (1808) | Bills of Exchange |
| 1 and 2 Geo. 4, c. 78 (1820) | Bills of Exchange |
| 7 and 8 Geo. 4, c. 15 (1826) | Bills of Exchange |
| 2 and 3 Will. 4, c. 98 (1832) | Bills of Exchange |
| 6 and 7 Will. 4, c. 58 (1836) | Bills of Exchange |
| 18 and 19 Vict., c. 67 (1854) | Bills of Exchange |
| 19 and 20 Vict., c. 25 (1856) | Drafts on Bankers |
| Sections 6 and 7 of 19 and 20 Vict., c. 97 (1856) | Mercantile Law Amendment |
| 34 and 35 Vict., c. 74 (1871) | Bills of Exchange |

Endnotes

1 (Popup - Footnote)

1. This Act was assented to on 24th May, 1961.

2 (Popup - Footnote)

2. The word, “or” was deleted by the Bills of Exchange (Amendment) Decree, 1966 (N.L.C.D. 120). Since it is the intendment of the section that [paragraphs \(a\)](#) and [\(b\)](#) are communicative, the word, “and” has been added after [paragraph \(a\)](#) and before [paragraph \(b\)](#).

3 (Popup - Footnote)

3. The section provides for the repeal of the Bill of Exchange Ordinance, (Cap. 195).