Negotiable Instruments

Applicable law is the Bills of Exchange Ordinanace No.25 of 1927

Negotiable Instruments &Transferable Instruments

Characteristics of negotiable instruments are

- ✓ Title to it passes on delivery or endorsement with delivery
- ✓ The holder for the time being can sue or be sued in his own name
- ✓ Bona fide holder is free from any defects of title of his predecessor.

- All negotiable instruments are transferable

eg: promissory notes, BOE, cheques, share warrants

- However, all transferable instruments are not negotiable.

Eg. Deeds, voyage charters

Negotiable Instrument

- Bills of exchange
- Promissory Notes
- Bank Drafts
- Treasury bills

Non-negotiable Instruments

- Money Orders
- Postal Orders
- Certificates of Deposit
- Share certificate
- Letter of Credit

Negotiability v Transferability

- Negotiability-quality of the title
- Transferability-process of passing tittle

What is a Bill of Exchange

- Sec 3(1) of the BOE Ord.-

1. An unconditional order in writing

   Baving Junior and Sims v. London & South western Bank

1. Addressed by one person to another
2. Signed by the person giving it
3. Requiring the person to whom it is addressed To pay On demand or at a fixed or determinable future time

   Demand Bill, Term Bill (Pearson v. Garret)

6. To a specific person or the bearer

   Sec 8- *Order Bill, Bearer Bill*

7. A sum certain in money

   Smith v. Nightingale

- Demand Bill

A bill is a demand bill if it is written to pay

-on demand

-On presentation

-At sight

Eg: On demand pay Rs. Fifty thousand to Thushara or order for value received.

- Term Bill

A bill is a term bill if it is written to pay at a fixed (specified) time or at a determinable future time.

Pearson v. Garret

Eg. Three months after the date pay Rs. Fifty thousand to Thushara or order for value received.

- **Order Bill**

If the bill is written to pay to a specified person or specified person's order it is called 'an order bill'.

Eg. On demand pay Rs. Fifty thousand to Thushara for value received.

Three months after the date pay Thushara or order for value received

- **Bearer Bill**

A bill is a bearer bill if it is written to pay to

- A bearer
- A fictitious payee (non existing person)
- a person holding the bill with only or last endorsement is blank endorsement

Eg. One month after the date pay Rs. Fifty thousand to Thushara or bearer for the value received.

One month after the date pay Rs. Fifty thousand to Ranasinghe Premadasa or bearer for the value received.

Cheques

- Cheque is a bill of exchange drawn on a banker payable on demand – Sec 73
- Therefore law relating to Bills of Exchange will apply

- Advantages of a cheque as a means of payment-

✓ Dispenses with the need to keep cash
✓ Can be drawn for the exact amount required.
✓ Less risk of loss and inconvenience.
✓ Simple and authentic record of the payment of the debt

- Dual aspects of a cheque-

It is a negotiable instrument.

From the banker’s stand point it is mandate issued by the bank’s customer requiring the bank to pay a stated amount to a stated party on or after the date of the cheque.

- Differences between a cheque and a Bill of Exchange

“Crossing” on Cheques

1. General crossing – Sec 76(1)

Two parallel lines are drawn across the face of a cheque with or without the following words,

i. And company
ii. Not negotiable - *Wilson and Meeson v. Pickering*
iii. Account payee / account payee only - *House Property Company v. London County Westminister Bank*

- Legal effect of a general crossing – Mercantile Bank of India v. Ratnam

2. Special crossing – Sec 76(2)

If the name of a banker is written on the face of a cheque with orwithout two parallel lines and the wordings such as ‘& company, Not negotiable, Ac payee/ only it is called special crossing.

- Legal effect of a special crossing

Dating of Cheques

There are 3 categories of cheques according to the dates.

(1) cheques with the date on which they are drawn. This is the normal practice.

(2) cheques which are ante-dated (a date earlier than the adte on which is drawn)

(3)Post-dated cheques the date on the cheque is later than the date on which it is drawn.

- What is the **legal validity of ante-dated or post-dated cheques**?

  Sec 13(2)

  Krishnappa Chetty v Carpen Chetty

- **Undated cheques**

  Griffith v Dalton

- What is a **Stale cheque**?

The Holder of a Bill

- The holder of a bill can be -
- of a <u>bearer</u> bill – person in possession of the bill
- of an order bill- original <u>payee</u> or the <u>indorsee</u>

- When the rights of Holders are concerned there are 3 types-

1. Mere Holder
2. Holder for Value
3. Holder in due Course

- To be holder in due course the following has to be fulfilled: - Sec.29(1)

i. the bill should be complete and regular on the face of it.

Arab bank Ltd. v Ross

ii. not overdue

iii. Without knowledge that it has been dishonoured previously

iv. for value

v. must hold it in good faith

vi. at the time bill was negotiated to him, he didn’t have notice of any defect in the title of the person who negotiated it.

Exception

- Forged Signature - Sec 24
- “not negotiable’’

- Rights & Powers of the Holder in due course – Section 38

- He can sue on the bill on his own name
- Holder in due course is free from any defects in tile of prior parties and from defences available to them
- Obtains payment of the bill – person who pays him gets valid discharge for the bill

Presentment for Acceptance/ Acceptance

- After a bill has been issued, the holder should present it to the drawee for acceptance to find out whether the drawee is willing to carry out the order of the drawer.

- Sec 17(1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer,
- After acceptance drawee → acceptor

- Sec 17(2) requirements of valid acceptance-

(a) It must be written on the bill and be signed by the drawee.

(b) It must not express that the drawee will perform his promise by any other means than the payment of money.

(c) Further it has to be **<u>duly presented</u>** for acceptance.

If the Drawee or unauthorized person refuse to accept the bill
It is dishonoured by a Non Acceptance.

Presentment for payment

- A bill must be **duly** presented for payment. If it be not so presented the drawer and indorsers should be discharged. (Sec 45)

Dishonoured Bill

- Sec 43- There are two ways a bill can be dishonoured by non-acceptance –

1. When the bill is refused by the drawee
2. Where the presentment for payment is excused and the bill is overdue.

When a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

- **Notice of dishonour** must be given to the drawer and the each endorser should be given a notice of it. Under Sec 48 all the persons who do not receive such notice of the dishonoured are discharged from liability.

Negotiation of A Bill

- A bill is negotiated when it is given from one person to anothet in such a menner as to constitute the transferee of the bill becom ethe holder of the bill.

- Mere delivery- bearer bill
- indorsement- order bill

- There are **several requisites** of valid indorsement which must be fulfilled.

- Types of indorsement

1. Blank indorsement – **Sec 34**
2. Special indorsement - **Sec 34**
3. Conditional indorsement – Sec 33
4. Restrictive indorsement – **Sec 35**

Discharge of a Bill

- A bill can be discharged by-
- Payment
- Merger
- Waiver
- Cancellation
- Alteration – Sec 64