3. Negotiable Instruments

The law relating to Cheques
The cheque is the most popular and common negotiable instrument known today.

Definition and Essentials of a cheque
“A cheque is a bill of exchange drawn on a banker payable on demand” Section 73 Bills of Exchange Ordinance. Accordingly, the same requirements that are essential to constitute a bill of exchange are required to constitute a cheque.

There is one major difference. To constitute a cheque, the instrument must be drawn on a banker. Thus no commercial or financial institution other than a bank can pay or collect cheques. This is a major advantage and privilege that banks enjoy.

Dual aspect of a cheque
In practice, a cheque plays a dual role. On the other hand, it is subject to the Bills of Exchange Ordinance and is considered as a negotiable instrument. On the other hand, from a banker’s standpoint, it is a mandate (the cheque) 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.

Advantages of a cheque as a means of payment
i. The cheque dispenses with the need to keep cash with the attendant risks of theft and loss.
ii. It can be drawn for the exact amount required.
iii. It can be dispatched by the debtor to the creditor cheaply and safely without the risks of loss and inconvenience which can occur when settling debts in cash.
iv. Payment by cheque also provides a simple and authentic record of the payment of the debt. Banks retain paid cheques for over six years so that you can always get the bank to produce a cheque to prove your payment.
v. Payment by cheque is generally equated to payment by cash. The cheque, when given, is a conditional payment, when honoured (by the bank) it is actual payment. D & C Builders v Rees [1966] 2 QB 617.
vi. English common law also treats a cheque as an item of property with value equal to the amount for which it is drawn.

“Crossings” on cheques
Crossings on cheques originated by the practice of bankers. Crossings were originally placed on cheques only by bankers in the process of clearing. This tradition was continued in the English Bills of Exchange Act of 1882 and is also found in the Sri Lanka Bills of Exchange Ordinance of 1927 (sections 76 and 77)
Crossings on cheques are part of a drawer’s mandate to his or her banker. They must, consequently, be clearly indicated.

**Effect of crossing a cheque**

The crossing on a cheque is a direction to the paying bank that the cheque should be paid only to another bank. A bank can ignore the crossing and pay a crossed cheque over the counter. However, if it later turns out that the person paid was not entitled to receive that payment, the paying bank will be liable to the true owner and will also forfeit the statutory protection given by the Ordinance. This is because payment of a cheque in contravention of a crossing would be regarded as negligence by the bank.

**Types of Crossings**

Under Section 76 (1) of the Ordinance, there are several types of recognized crossings as follows:

1) **General Crossing**
   - Where a cheque bears across its face an addition of -
     a) The words “and company” or any abbreviation thereof between two parallel transverse lines, either with or without the words “not negotiable”; or
     b) Two parallel lines simple, either with or without the words “not negotiable”.
   - That addition constitutes a crossing and the cheque is generally crossed. Section 76 (1)

2) **Special Crossing**
   - 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 the banker. Section 76 (2)

3) **“Not negotiable” crossing**
   - Where a person takes a crossed cheque which bears on it the words “not negotiable”, he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had. Section 81. These words do not restrict transferability, but transfers only the title that the transferor has. For instance, a person who has taken such a cheque from a thief cannot retain it against the true owner. This is a popular crossing commonly used by those drawing cheques.

4) **“Account Payee” Crossing**
   - This crossing operates as notice to the banker that only the account of the payee is to be credited. The Bills of Exchange Ordinance does not refer to this type of crossing. It is a practice recognized by the banking community but any payee of a cheque who has no bank account will not accept such a cheque.
Who may cross a cheque
A drawer, payee of the cheque or a subsequent holder of the cheque can cross it. Section 77

Stale Cheques
A “stale” cheque is a special term well-known to bankers. In Sri Lanka, it means a cheque that is more than six months old after the date on which it was drawn.

Example: If a cheque was drawn (written) on 1 January 2009 it would be ‘stale’ on any day after 2 June 2009, that is because, six months have elapsed after its date.

A customer can further limit or restrict the validity of a cheque by writing on the cheque the words, “Validity of cheque limited by thirty days etc.” Many corporate customers do this. This is a good precaution to take because cheques can get lost or get into wrong hands. When you limit the duration of a cheque’s validity there is less time for the cheque to be lost or get into wrong hands. The drawer can therefore limit the period of six months when a cheque automatically becomes stale.

Post dated cheques
Normally, the person who draws a cheque will put on the cheque the date on which it is drawn. Secondly, he can put the date, a date earlier to the date on which it is drawn. Such cheques are called ante-dated cheques. Thirdly, the person drawing a cheque can place on the cheque a future date and not the date on which it is drawn.

The issue is the egal validity of ante-dated or post dated cheques. Section 13(2) of the Bills of Exchange Ordinance states;

“A bill is not invalid by reason only that it is ante-dated or post-dated”

This statutory provision will apply to cheques as well. Thus, both ante-dated and post dated cheques are not invalid.

Countermanding payment of cheques
A customer is entitled to stop payment of a cheque that he has issued before the bank pays it. The drawing of a cheque and the stopping of a cheque are both instructions to a banker that the bank must not disregard. Section 75

The customer’s instructions to stop payment should be clear, unambiguous, unequivocal and unmistakable. It should be in writing signed by the customer giving the cheque number, the date, the amount and name of the payee.