

Lessons on
Negotiable Instrument
According to The Egyptian Commercial
Law No. 17 of 1999
For Fourth Year Students
2024

Introduction

Exchange of goods and services is the basis of every business activity. Goods are bought and sold for cash as well as on credit. All these transactions require flow of cash either immediately or after a certain time. In modern business large number of transactions involving huge sums of money take place every day. It is quite inconvenient as well as risky for either party to make and receive payments in cash. Therefore, it is a common practice for businessmen to make use of certain documents as means of making payment. Some of these documents are called negotiable instruments.

There are many kinds of the negotiable instruments we can classify them into three main sorts as follow:-

- 1- Bill of exchange.
- 2- Promissory notes.
- 3- Checks.

In the light of aforementioned we will address this part in three chapters, devoted one chapter to each sort of the negotiable instruments.

Chapter one

Bills of Exchange

As a financing mechanism the bill of exchange is extensively used in international trade where the buyer's desire for credit, coupled with the long transit times involved in sea transport, so the bill is usually used as a documentary credit transaction. If the buyer, according to the request of the seller, opens with a bank a documentary credit under which the bank will undertake to accept bills of exchange, its value can be increased by the banks acceptance.

Before turning to the substantive law relating to bills of exchange, it is worth making a brief examination of their history.

In the history of bills of exchange, it is remarkable that the bankers of Lombardy, who carried on business all over Europe impacted upon development of the bill of exchange in the thirteenth century by using it in international trade. Medieval merchants from different countries engaged in international trade would attend the great merchant fairs to do business. So the special statutes were established for the benefit of merchant community. A merchant selling goods at such a fair would normally prefer to be paid in his own currency and, to satisfy that

desire, the fairs were serviced by money exchangers who would carry out the business of currency exchange. But, carrying large amounts of cash was both cumbersome and dangerous, and therefore the money exchangers created another way of paying by giving the merchant a document addressed to a money exchanger in his own country and, instructing him to pay the merchant the required sum. This was the original form of the bill of exchange; it was acceptable to merchants because of its convenience and because of the commercial reputation of the money exchangers.

Definition

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 certain in money to or to the order of a specified person, or to bearer.

An instrument which fails to comply with requirement of this definition, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

This definition, determines precisely the essential requirement for a valid bills of exchange which we shall

examine more closely when looking at the structure of a bill. A bill of exchange created unconditional payment obligation toward a named person or to the bearer of the bill, the form which is used will affect the way in which the bill can be transferred. It is important for a bill of exchange to fulfill its mercantile function, the amount and time of payment must be clear and unqualified, the instrument must speak for itself as a complete and integrated writing and the rights and duties of the parties must be clear and not made uncertain by the inclusion of non-monetary obligations. The bill must be in the form of unconditional order to pay a certain sum of money in cash. The payment order shall be in the form of command or direction to the drawee to pay, not a mere invitation or expression of desire which the drawee is to be free to refuse or ignore.

The obligation must be expressed in money not goods, stock or other money's worth. So the amount to be paid must be certain, any order to pay money and do some other act is not a valid bill of exchange. The order must not direct payment out of a particular fund; this prevents the order from being unconditional as required by the definition. The time of payment must be fixed or ascertainable. In other words, the bill shall be paid at affixed date, or at fixed period after date or sight. In

addition it may be payable on or at fixed period after the occurrence of specified event which is certain to happen. But a bill expressed to be payable on contingency is not a bill of exchange even though the event may be happening later.

Requirement for Valid Bills of Exchange

Based on the above said and the definition of the bills of exchange and the article 379 of the Egyptian law of commerce No 17 of 1999, it will be seen that the requirements for a valid bills of exchange are

1. The bill of exchange must be in writing form. 2. This instrument must be an order to pay money. 3. The order to pay must be unconditional. 4. The instrument must contain the name of parties (drawee payee and drawer with his signature). 5. The instrument shall contain the date of maturity place of payment, date and place of making the instrument.

1-The Instrument (Bill of Exchange) must be in writing:

According to Article (379) paragraph 1of .the Law of Commerce No 17 of 1999 which requires that a bill of exchange shall contain the term bill of exchange written in the text of instrument etc, so the bill must be in writing form. In general the bill is normally drawn on printed form, minimizing the difficulties caused by the formal

requirements of the law, but difficulties can still arise, especially where the printed form is altered.

What is more seriously is that the requirement of formal writing can create many kinds of difficulties to the development of electronic commerce. According to the general rules the, parties may make a contract instantaneously by sending electronic messages between their computers, but even though they must use a written instrument if they want the advantages of paying by a bill of exchange.

2. The Instrument (Bill) must be an Order to Pay Money

A bill must order the payment of a sum of a certain amount in money, and not in goods or services, etc. Thus, a bill of exchange which orders any act to be done, in addition to the payment of money is not a bill of exchange.

So the order must be to pay just a sum certain in money. An order to pay money and do some other act is not a valid bill. The payable amount is usually expressed both in figures and in words the latter prevailing in the case of inconsistency.

However, if the words and figures differ, the amount payable is that expressed in words Where the sum is

expressed several times in words and also in figures, and if there a discrepancy between them, the lesser amount denoted shall be payable.

The words "value received" is usually inserted, but there is no necessity for this as value is presumed until contradicted.

According to Article (383 paragraph 3), if the bill is payable at sight or at period after sight the drawer may set down the condition for payment of interest, which shall run from the date of making the bill, provided that any other date for interest is not stated.

3. Unconditional Order

Subject to the provisions of the Law of Commerce in Egypt a bill of exchange must be duly an unconditional order in writing, so if the bill orders any act to be done in addition to the payment of money it is not a bill of exchange.

A bill must order payment; a document which does not order the drawee to make a payment cannot be a bill of exchange. More significantly, the order to pay must be unconditional .

However, the bill must be positive to pay, not a mere request or authorization, the usual wording is "pay

though" please pay Mr. J..." is also regarded as unconditional.

An Order is Conditional if:-

A. It gives the drawee discretion whether to pay or not.

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B. It orders payment from a particular fund e.g. "pay F out of my current account". C. It requires the drawee to do something more than to pay money e.g. pay N and notify me in writing!.

4. Parties to a Bill of Exchange

In general there are three parties to any bill of exchange who are styled respectively in the case form 1. The person who draws the bill in this case, E.F. is termed the drawer. He is the person who directs the intended paymaster, A.B. to make payment in six months' time to CD. A.B., the person on whom the bill is drawn, is at this stage called the drawee. The party in whose favor the bill is drawn, i.e. CD. is known as the payee. When the bill is delivered to him, he becomes the first holder.

Delivery of the instrument to CD. by the drawer(E.F.) who puts it in issue as a bill. But at that stage, despite (drawee's) name A. B. on the bill, there are only two

parties to it, (drawer) E.F. who by reason of his signature is liable as drawer, and (payee) CD. who as holder will be entitled to payment of the bill on its maturity A.B. (drawee) has not yet become a party, for he has not accepted the bill, that is, signed it to denote his willingness to comply with the payment instruction given by (drawer) E.F., and until he signs it he cannot be liable for it. It is thus necessary for the payee CD to present the bill to drawee (A.B.) for his acceptance. By signing it as acceptor, A.B. undertakes to pay the amount of the bill on maturity to CD. (payee) or whoever else the holder is.

In addition to the above, it seems that the bills are negotiated and discounted on the basis of their appearance, the marketability of bills of exchange depending on the credit worthiness of the persons against whom it may be enforced. A holder should therefore be able to enforce the bill against an apparent unless the bill makes clear that person signed only as an agent.

However, the general parties to any bill of exchange are the drawer, the payee and the drawee.

□ The drawer is the person who first issued (E.F in the case of form 1). □ The Payee is the person to whom the bill is issued (CD. in the form 1). □ The drawee is the person to whom the bill is addressed .

Signature

The essential basis of liability is signature of the bill of exchange. Generally, however, a document cannot be a bill of exchange unless it carries the signature of the drawer. In other words, no action lies on the bill against a drawer until the bill is signed by him so no title can be derived from a forged signature or unsigned bill. Subject to the provisions of the commercial Law the forged or unauthorized signature is wholly inoperative and no right to retain the bill or to give discharge therefore or to enforce payment against any party can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment is precluded from setting up the forgery or want of authority. However, there is no requirement that a person signs personally. A person may sign as agent for another .e.g. a director may sign on behalf of his company-but care is needed to ensure that his representative capacity is made clear and that the statement of the intended principal's name is not to be read as merely descriptive of the signatory himself, for if it is, then he will be treated as principal and will be liable to the bill accordingly.

Generally, a person signing a bill assumes liability for its payment, but if a person signs adding words

indicating that he does so on behalf of a principal or in a representative character, the principle and not the agent is liable to the bill.

Since liability on a bill is contractual, no person can be made liable to a bill of exchange unless he has capacity to incur contractual liability .

The Egyptian Law of Commerce provides that all obligations arising from the signatures of incompetent person who is not trader and the persons who lack capacity as drawers, endorsers, and acceptors shall be null and void with regard to themselves only. They may invoke such nullity against any holder of such bill of exchange .

According to Egyptian law of commerce where the bill of exchange is signed by a person who has no capacity or where the signature does not bind the signatory by any reason or the persons purported to have signed it, the bill remains fully valid and enforceable against other signatories.

Liability Depends on Signature

So far, we have remarked that no action lies on the bill against a person who has not signed it, and no title can be derived from a forged signature.

The general "rule is that signature is the basis of liability on a bill". Thus a person is liable as drawer, acceptor or endorser of a bill only if he has signed it as such; and a person who has not signed a bill, such as a transferor of a bearer bill by delivery, can not be liable to it, although such a person may incur other liabilities.

A person may sign a bill, so as to incur liability on it, through an agent. An agent may sign on the bill in his principal's name so as to bind his principal, in this case he is not personally liable, but if he adds to his signature describing himself as an agent or as representative; he is responsible and- can not exempt himself from personal liability. However if the agent acts outside the bounds of his actual authority, the Principal may not be bound by the agent's signature, but he will be only liable within the actual limits of the agents authority. However, as we have noted, a forged or unauthorized signature is wholly ineffective. It gives no right to retain the bill or enforce payment, and a person incurs no liability through a forged or unauthorized signature unless he is stopped from setting up the forgery or lack of authority. According to the general law of agency, an unauthorized signature can be ratified and, if ratified, is wholly effective. It is therefore necessary to distinguish forgeries from unauthorized signatures. (1)

A. Forgery

The Law of Commerce No (17) of 1999 did not define the forgery, therefore; it shall be interpreted according to the criminal Law.

In general, "forgery" is the making of a false instrument with the intent that [the maker] or someone else shall use it to induce somebody to accept it as genuine and by reason of so accepting it to do or not to do some... act to his own or any other person's prejudice', and an instrument is false if it purports to be made on the authority of a person by a person who did not in fact authorize its making or to be made in the name of a person who did not make it.

The Law provides that the forged or unauthorized signature is inoperative, so if the drawer's signature is forged, the bill is wholly ineffective. It would appear, therefore, that a fraudulent, unauthorized signature amounts to a forgery and cannot be ratified. Now it may be said that, if the drawee's signature is forged, the drawee is not liable but the bill is valid and the drawer is liable to it. However, the person whose signature is forged is not liable to it, and the signature is inoperative and no title can be derived from the bill. In other words, no one who takes the bill after the forgery can enforce it against any person who becomes party to it before the forgery.

However, it is clear that a forged signature has not legal effect, therefore the bill cannot be enforced against whose signature on a bill is forged.

Suppose that B draws a bill on A, payable to himself, and A accepts. B then endorses it to C; the bill is stolen by D, who forges C's signature to endorse it to E. The position is shown by the following diagram.

E has no title to the bill and cannot enforce it against A, B or C. C is the- true owner of the bill, and if he recovers it he is entitled to enforce it against A or B. However, an endorser is stopped from denying the validity of prior signatures. Thus E can enforce the bill against D, if he can be found, and if E endorses the bill to F, F can enforce it against E and D; but he cannot enforce it against A, B or C. Since C's signature is forged, he can never 'be liable to the bill. The only exception is where C is aware of the bill's loss or discovered that a stolen bill had been forged, but he did not notify the drawer, drawee / acceptor or any other prior parties.

B. Unauthorized Signatures

Subject to the provisions of the Law, where a signature on bill is forged or placed on it without the authority of the person whose signature it purports , the forged or

unauthorized signature is wholly inoperative, and no title can be derived from it.

However, where a bill is signed by an agent it may be necessary to consider the liability of both the principal and the agent. There appears to be sound basis for distinction when the agent may either sign his own name, or sign the principal's name on his behalf, and these two situations must be distinguished.

The principal will be liable in either case, provided that the agent acts within the scope of his authority in signing the bill. Even if the agent acts outside his actual authority, the principal will be liable if the agent has apparent authority the principal is then stopped from setting up the lack of authority. However, the Act provides that a "procreation signature" operates as notice that the agent's authority is limited; where a bill is signed by procreation, the principal will therefore only be liable to a signature within the scope of the agent's actual authority.

It has been noted that the holder of an order bill bearing a forged or unauthorized signature has no right to enforce it against any person who becomes a party to the bill prior to the forgery. However, if after the forged or unauthorized endorsement, the bill is subsequently endorsed, the subsequent endorses will be precluded from

denying to a holder in due course the genuineness and regularity in all respects of the previous endorsements. (1) In all cases, an unauthorized signature and a forged signature have exactly the same effect. An important distinction between the two, however, is that an unauthorized signature can be ratified, but forgery is a criminal offence and it's defined in the criminal Law.

5. The bill of exchange shall contain the date of maturity, place of payment, date and place of making the instrument.

Time of payment

The bill is payable on demand or at a fixed or determined future time.

The bill of exchange is payable on demand in the following cases:

A. If it is expressed to be payable on demand, or at sight, or on presentation. B. If there is no time for payment expressed.

On the other hand, the bill must be payable at a fixed or determinable future time if it expressed to be payable at a fixed period after date or sight, or 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. But an instrument does not fulfill the statutory

requirements, for it leaves the acceptor the option to pay at an earlier unspecified date; and an instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect. (1)

Place of Payment

Where a bill is payable after sight, or where it is expressly stipulates that it shall be presented for acceptance, in this case it must be presented for acceptance in order to fix maturity of the bill .

It is usual for the bill to be presented and paid at the drawee's place if the place of payment or the domicile of the drawee is not stated. The place stated next to the drawee is the name shall be deemed as the place to payment, and for this reason the name and address of drawee is the bank is not essential. The address of drawee indicates that the bill must be presented at that address if the holder wishes to make the drawer or an endorser liable to it, but the acceptor, as the principal debtor, remains under a duty to seek out his creditor, and the address in question is not sufficient to qualify the acceptance so as to impose on the holder the duty vis-as-vis the acceptor to present the bill for payment. To do this it would be necessary to make it clear in words that payment was to be made only at the stated address and not elsewhere.

Date of Issue

The bills of exchange are normally dated, it is necessary to know the date of the issue to establish the maturity date. In other? words, if the bill is payable on the expiry of a fixed period after date of issuance of the bill, it is obviously significant to know the date of issue in order to fix the time for payment. Similarly, if it is payable 'six months after sight', so a date is required to fix the date for payment. But even in these cases omission of the date is not fatal, for any holder may insert the true date, and if he acts in good faith the date he inserts will be taken as the true date even if erroneous. In addition, to what is mentioned above the dating of the bill is, of course, necessary to determine if a drawer, had capacity where the bill is issued, to determine his finance position and to determine the commencement of prescription. (1)

Finally a bill may be effective even though, as drawn, it omits the requirements of dating. So if the bill expressed to payable at fixed period after date is issued undated, any holder may insert the true date of issue provided he acts in good faith, and so the bill shall be payable accordingly.

If the holder in good faith by mistake inserts a wrong date and the bill comes into the hands of a holder in due course

the bill shall not be avoided, but shall be payable as of the date inserted had been the true date.

Place of Drawing

It is usual that the bill of exchange may include the place where it is drawn, and the place of drawing is customarily shown in the right-hand corner of the bill . In case the drawer's full address is given, it is not so essential to show the place of drawing of a bill but in the practice it is vital, for it helps to show whether the bill is an internal or a foreign bill . In other words, if the bill of exchange does not contain the place where it is established, it should be considered made in the place shown against the drawer's name.

Incomplete Bills

A bill may still be effective even though, as drawn, it omits one or more of the statutory requirements. , any person in possession of a bill has prima facie authority to complete the missing item.

Article 380/a,b,c of the Egyptian Commerce Law provides that the bill of exchange which does not contain any one of the particulars detailed in the Article 379 shall not be deemed as a bill of exchange, except in the following cases: (2)If the date of maturity is not stated

therein, the bill of exchange shall be deemed to be payable at sight.

(1) If the place of payment or the domicile of the drawee is not stated therein, the place stated next to the drawee's name shall be deemed as .the place of payment and also the drawee's domicile. A bill of exchange shall be payable at the drawee is domicile if no other place has been stipulated. (2) If the place of making the bill is not stated, it shall be deemed to have been made at the place indicated next to the name of the drawer.

In addition to the above article, it seems that an omission of some of the particulars is not normally fatal, for it can usually be cured by the holder. Thus, where the maturity of a bill is to be determined by reference to the date of its issue or acceptance, any holder may insert the true date, and incorrect date inserted by the holder in good faith and by mistake is to be treated as the true date. Again, the person in possession of an in choate instrument has a prima facie authority to fill it up as a complete bill and to rectify the omission of any material particular. But he can do this only if the person delivering the document has signed it. An unsigned document cannot be a bill of exchange; and a forged or unauthorized signature cannot transfer title to the bill itself, though a party may incur a

liability for having implicitly warranted, or through being stopped from disputing, the genuineness of the signature.

However, persons who become parties to the bill of exchange after its completion are fully liable to it and, moreover if the bill comes into the hands of a holder in due course, it is conclusively presumed that the bill was completed within a reasonable time and in accordance with the signor's instructions.

Advantages of a bill of exchange

It is commonly asserted that the bill mechanism avoids the risks and expenses involved in the physical transportation of money. Based on the following advantages of the bill of exchange, man can assess why this instrument is extensively used in international trade.

1-Ease of Transfer

The essential characteristic of a bill of exchange is that it can be transferred by endorsement without need for any separate assignment. In other words, it can be transferred without notice to the person liable to it, since he knows that his duty is to pay the holder when the bill is presented to him for payment.

In general, the transferee may take the bill free of any defects in title of, or defenses available against, the transferor.

2-Insulation from the Underlying Transaction

The bill of exchange gives rise to a series of promises which can be enforced as contracts. The contracts are largely independent of the underlying transaction in connection with which the bill is given. In other words, the bill can be enforced regardless of any alleged breach of underlying transaction in connection with which it is drawn.

So the holder will usually be entitled to exact payment even if he or a prior party has committed a breach of the underlying contract in respect of which the bill was given. The bill transaction is thus wholly or partially insulated from the associated trading contract.

3-Relaxation of Ordinary Contract Rules

As it has already been noted, the liability created by a bill of exchange is essentially contractual. Besides, the bill has been accorded special privileges now embodied in the bills of exchange rules. It should be noted that, the holder of a bill is entitled to enforce it against all prior parties without having want of privities raised against him. In addition, an accommodation party is liable to a bill to a holder for value even though he himself received no value for lending his name to the bill.

4-Ready Addition of Obligors

Payment of a bill of exchange may be guaranteed in whole or in part by standby guarantor; the guarantee shall be given by any person even though he is one of the person's signatories to the bill. Practically, a contracting party wishes to have to the other party's undertaking reinforced by guarantee from a third party. Alternatively, he may want to have a third party added as co principal with the other. The most advantage of a bill of exchange is that the obligation of the acceptor can be reinforced, and by the addition of other names to the bill by way of endorsement. The standing of the bill can be improved, on the facts the evidence shows that the bill may be drawn on and accepted by a good "name" e.g. an established merchant bank, which thus becomes the part primarily liable to the bill , with the original obligor coming in as a party in some other capacity, e.g. as drawer or endorser.

5-Negotiability

As we have noted that the most essential characteristic of a bill of exchange is that it is negotiable, so it can be transferred, and the transferee may take the bill free of any defects in title , so like any negotiable instrument, the bill in the possession of a holder in due course is enforceable despite a defect in the title of any

prior holder. So the transferor who negotiates a bill to a holder in due course can pass a better title than he himself possesses.

6-Marketability

The latter features have emphasized that the bills of exchange are negotiated and discounted on the basis of their appearance, the marketability of a bill depending on the credit worthiness of the persons against whom it may be enforced. Marketability of the bill enables the seller or other holder to convert the bill into cash without holding it to maturity.

In practical for an exporter it is much easier to discount a bill of exchange drawn for the price of the goods sold than to discount the sale contract itself.

7-Speed of Enforcement

In addition to features previously described, the provisions of the Law aims to protect the marketable status of bills of exchange, and therefore the courts are extremely reluctant to allow defenses to be raised to an action on a bill, so that the great majority of cases summary judgment will be given within a matter of weeks of the commencement of proceedings. This is in contrast to an action on an ordinary contract.

Endorsement

So far, we have been concerned that the essential characteristic of a bill is that it is negotiable, that means it can be transferred to the person liable to it if certain conditions are fulfilled. The Law of Commerce in Egypt uses the words negotiate to refer simply to transfer. In other words, the bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee. The holder of the bill, or the payee may, for instance, not wish to wait for six months for his money, he may prefer to get it in cash by discounting the bill, i.e. selling it at a discount. A bill can, be transferred by assignment too with notice of assignment to the acceptor, but since the acceptor is not obliged to make payment to anyone other than the holder, he can safely disregard a notice of assignment. So the bill loses one of the main advantages as a negotiable instrument, i.e. that it can be transferred from one hand so as to pass legal title to the sum payable under it. This process of transfer is termed negotiation. When a bill contains words prohibiting transfer that means it should not be negotiated. (1)

A negotiable bill may be payable either to order or to bearer. It is payable to order which is expressed to by so payable, or which is expressed to be payable to a

particular person and does not contain words prohibiting transfer. A bill is payable to bearer which expressed to be so payable, or on which the only or last endorsement is an endorsement in blank.

It is significant to mention that a payable bill to bearer is negotiated by delivery. Meanwhile, a bill payable to order is negotiated by the endorsement. So if the bill made payable to bearer the first holder can transfer it by mere delivery without endorsement. But the risks involved in issuing a bearer bill will be obvious. That means anyone into whose hands the bill comes (whether lawfully or otherwise) is the holder and as such is able to present the bill for payment to the acceptor on its maturity; and provided that the acceptor acts in good faith and without notice of a defect in the holder's title.

This means that the requirement of endorsement for the transfer of an order bill makes it more secure against theft than a bearer bill. However, the bearer bill is rarely in practice, and it is in general drawn to a named payee as in our illustration, it is drawn to CD. or order'. This means that payment is required to be made either to CD. himself or to any transferee to whom he might direct payment to be made.

So the endorsement means that the payee make his direction to the acceptor to pay a third party by placing his signature on the back of the bill, and the signature although it may be written on a slip of paper attached to the bill , and this may be done where the bill is endorsed several times. The payee then becomes the first endorser and the transferee is the first endorsee. An endorsement may be special or general. If the endorser's names the endorsee, or any other party to whom the bill is endorsed) the acceptor must pay that endorsee or any other party to whom the bill is endorsed by putting his own signature on the bill, directs payment to be made. Such endorsement is termed a special endorsement and preserves the character of a bill as an order bill. Thus if a bill is drawn to CD (the payee) can endorse the bill to KM by writing pay K.M and sign it, K.M can endorse the bill in the same way.

In addition to the preceding, a special endorsement specifies the person to whom, or to whose order the bill is to be payable. Meanwhile a general endorsement specifies no endorsee, so this endorsement, is a direction to the acceptor to pay whosoever currently is in possession of the bill, i.e. the bearer. In short, an endorsement in blank converts the bill into a bearer bill, which thereafter transferred by manual delivery, without the need for any endorsement.

Moreover the essential effect of the endorsement is that a person who endorses a bill becomes liable to it and may have to pay the holder if it is dishonored by the acceptor. However, an endorser can exclude his own liability by indorsing the bill without recourse. Meanwhile, the drawer of a bill of exchange may stipulate to be relieved from the guarantee of acceptance, but not from the guarantee of payment.

The Commercial Law in Egypt provides that the bill of exchange is negotiable by endorsement even when it does not contain an express stipulation that it is drawn 'to order'

A bill of exchange is not a subject for negotiation if the drawer stipulates therein that it is not *eto orderi* or any other words including the same meaning, save in accordance with the provisions of the assignment of a right and the ensuing effects thereof.

Endorsement may be made to the drawee regardless of the fact that if he accepted the bill of exchange or not. Endorsement may also be made to the drawer or to any other obligor. All the above persons may re-endorse the bill of exchange.

In general, the endorsement may not be subject to a condition, and every condition applicable to the endorsement shall be null and void .

A Blank Endorsement

An endorsement in blank specifies no endorsee, and a bill so endorsed becomes payable to bearer.

Article 393(2) of the Law of Commerce 1999 provides that an endorsement for the bearer shall be deemed as an endorsement in blank. In other words, the payee as endorser puts his signature on the back of the bill without naming an endorsee, and therefore the bill becomes payable to bearer so that it can be further negotiated by mere delivery.

The holder always has option to convert a blank endorsement into a special endorsement by writing a direction to pay the bill, to or the order of himself or to some other person. In case of a blank endorsement, the holder may:

(a) Fill in the blank by writing his name or another person's name (b) Re-endorse the bill of exchange in blank or to another person. (c) Deliver the bill of exchange to another person without filling in the blanks and without endorsing it.

General Provisions

Based on the Law of Commerce, the following rules shall be applied:

(1) One of the essential effects of endorsement is that it shall carry all the rights arising from a bill of exchange to endorsee. (2) Endorsement shall be total. In other words, a partial endorsement shall be void. (3) The endorser shall write the endorsement on the bill of exchange itself or on a piece of paper attached thereto and signed by the endorser. It is allowed that the endorsement may not contain the name of the beneficiary. An endorsement may also be by the endorser's signature (blank endorsement), in which case it shall be written on the back of the bill of exchange or on the attached piece of paper. (4) The endorser shall be held liable for the acceptance and payment of a bill of exchange, unless otherwise provided. (5) The endorser may prohibit re-endorsing the bill, in which case he shall not be liable to any person holding the bill of exchange by subsequent endorsement. (6) The possessor of a bill of exchange shall be deemed to be its lawful holder when he proves that he is entitled thereto by successive endorsements, even when the last was a "blank endorsement" .

A 'crossed endorsement shall be null and void in this regard.

(7) If a person loses possession of a bill of exchange, the holder shall not be bound to remit it if he proves that his right is obtained by successive endorsement, otherwise he is bound to surrender the bill to the lawful holder if he has acquired it in bad faith or has committed a gross fault to acquire it. (8) If endorsement has taken place after the date of maturity it shall have the same effects of an endorsement previous thereto. Meanwhile, if endorsement occurred after pleading for non-payment or after the expiry of the legally prescribed period for the protest, it shall only have the effects of the transfer of rights. (9) An undated endorsement shall be deemed to have taken place before the expiry of the time for making the protest unless the opposite is proved (Article 400/2)

Liabilities of Parties to the Bill

The provisions of the bill of exchange which deals with the liabilities of the various parties to a bill emphasizes that the liability on the bill is confined to signatories.

In other words, no one is liable as drawer, endorser or acceptor of a bill who has not signed it as such so the signature of a bill gives rise to certain estoppels particularly against a holder in due course, from disputing the existence, capacity and authority of a prior party.

(a) Acceptor's Liability

As we have noted that a person incurs no liability to a bill until he has signed it. So once the acceptor signs a bill, he incurs to subsequent parties the liability for its payment and is precluded from denying to a holder in due course the genuineness of the signature of prior parties. In other words, the acceptor by accepting the bill undertakes that he will pay the bill at maturity in accordance with the terms of the acceptance. In addition, the acceptor is stopped as against a holder in due course from denying the drawer's existence, capacity and authority to draw the bill, the genuineness of the drawer's signature and the existence and capacity to endorse the payee.

(b) Drawer's Liability

According to Article 359 of the Law of Commerce the drawer of a bill by drawing it engages that on due presentation it shall be accepted and paid, and if it is dishonored he will compensate the holder or any endorser who is compelled to pay it. So the drawer shall undertake that the bill will be honored by being accepted according to its tenor and, if not, that he will compensate the holder, or an endorser who pays the bill, provided that the necessary dishonor proceedings are taken. (2)

The drawer's liability is to guarantee the acceptance of the bill of exchange and payment thereof, and every condition exempting him from guaranteeing payment shall be null and void . The compensation will normally include the value of the bill plus interest and the costs of enforcement. In addition, the drawer is precluded from denying to a holder in due course the existence of the payee and his capacity to endorse the bill.

(c) Endorser's Liability

According to Article (395/1), the endorser of a bill of exchange by signing it shall be held liable for the acceptance and payment of a bill of exchange, unless otherwise provided. In other words, the endorser by signing the bill becomes a party to it and gives the same undertaking as the drawer, like the drawer, his liability depends on appropriate dishonor proceedings being taken. And like the drawer he can not exclude his liability for the acceptance and payment of the bill of exchange, unless otherwise provided. The endorser may restrict further endorsement, in which case he shall not be liable towards any person holding the bill of exchange by a subsequent endorsement. An endorser is stopped, from denying to holder in due course the genuineness and regularity of the drawer's signature and all prior endorsements .In general, the endorser is engaged that the bill shall be accepted and

paid according to its tenor, and if the bill is dishonored he will compensate the holder or a subsequent endorser who is compelled to pay it provided that the request proceedings on dishonor be duly taken. One effect of this provision is to make the thief of a bill liable to it to subsequent endorsees. (1)

(D) Other Signatories

The function of an endorsement is to transfer title to an order bill, and such an endorsement can be made only by the holder. But usually a person signs his name on the back of a bill to guarantee payment by the prior parties. So any person who signs a bill other than a drawer or acceptor he thereby incurs the liabilities of an endorser, Suppose that S sells goods to B, a company, and B accepts a bill drawn on it for the price. S may require the directors of B to sign the bill in order to improve its marketability. If the directors do sign, they become liable as if they were endorsers

In practice, a person may sign a bill as a drawer, acceptor, or endorser in order to increase its marketability, for instance, if A wishes to borrow money, he can do so by drawing a bill on B, a person of good financial standing, and obtaining B's acceptance and then discounting the bill for cash. B's position is an 'accommodation party', a person who has signed a bill

without receiving value and for the purposes of lending his name to the bill. An accommodation party is liable to the bill to holder for value even though known by the holder to be on accommodation party. However, as against a holder for-value, an accommodation party cannot avoid liability on the basis that he did not receive consideration for his signature, but he can raise any other defenses, such as fraud or duress, unless the bill is held by a holder in due course. The position of an accommodation party is rather like that of a guarantor of the bill of subsequent parties .

In general the contract of accommodation is not a contract of guarantee. In most other legal systems, included under the

American Uniform Commercial Code and the Uniform Law on Bills of Exchange and Promissory Notes, a similar result is produced by a person signing an 'avail'; however, an avail acts as a guarantee for the drawer's liability to all parties to the bill , including those prior to the signor of the avail.

(E) The Transferor of a Bearer Bill

As we have seen, a bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill

.According to the provisions of commercial Law, a bearer bill is transferable by delivery, so the holder of a bearer bill does not need to endorse it. In other words, a bearer bill can be transferred without endorsement. If the holder of a bearer bill signs it, he becomes a party to the bill and incurs the same liability as if he were an endorser. If he simply transfers by delivery, he does not become a party to it. However, the act of transfer gives rise to certain warranties in favor of the immediate transferee. Provided the transferee is a holder for value, the transferor warrants that :

(i) The bill is what it purports to be i.e. that it is a genuine bill or cheque; there is thus a breach if (say) the drawer's signature is forged; (ii) That he has a right to transfer the bill ; there is thus a breach if the transferor is a thief, or if the bill has previously been stolen and the transferor is not a holder in due course; and

(iii) That he does not know of any facts which make the bill worthless i.e., that it has been stopped.

However, since the bearer bill can be transferred without endorsement, the holder is not liable even though he merely delivers the bill, but may be sued for damages for any breach of the warranty mentioned above. Normally damages will be based on the value of the bill.

F. The Holder of the Bill of Exchange

The holder of the bill may be the bearer of a bearer bill, or the payee or endorsee in possession of an order bill. In other words, to be a holder a person must be in possession of the bill, and this is almost necessary where the bill has become a bearer bill.

According to the concept of a holder any thief can be a holder of a bearer bill and transfer it to a third party who may qualify as a holder in due course and takes a perfect title, even though the thief has no title to the bill, but if the theft is known, in this case payment to him can be refused.

The rights of a holder depend upon whether he is a 'mere holder', a holder for value' or a 'holder in due course.

A 'mere holder' takes the bill subject to any defect in the title of prior parties and most personal defenses available against such parties. In addition, the mere holder does not give value for the bill; therefore he can be met by the defense of absence of failure of consideration.

However, the mere holder of bill has the followings rights

1. Transfer the bill of exchange by endorsement or delivery, as necessary. 2. Insert the date of issue of the bill if it is omitted and then present it for payment

G- Holder for Value

The 'value' in the bills of exchange has exactly the same meaning as in the case of an ordinary contract, so where value has at any time been given for the bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who become parties prior to such time .

However, the holder can only enforce payment by showing that he provided consideration, and there is not requirement that the holder for value shall himself have given value, it suffices that value was given by some party in the chain between the holder and his intended defendant.

D- Holder in Due Course

As we have seen, every holder is prima-facie presumed to be a holder in due course, so that it will normally be for the person resisting payment to show that the plaintiff is not a holder in due course, but if it is shown that the bill was drawn, accepted or negotiated as a result of fraud etc, the holder must establish his status by

showing that the bill has since been transferred for value in good faith.

In general, the holder in due course is in a powerful position. He can acquire a good title from or through a thief. In other words, he is not subject to personal defenses that might be raised by prior parties. But if the signature has been forged, he has no right against those who were parties to the bill prior to the ineffective signature. (1)

Finally a holder in due course is a holder who has taken a bill, complete and regular on the face of it under the following conditions:

a- He becomes the holder of the bill before it was overdue, and without notice that it had been previously dishonored, if such was the fact. b- He took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

Considerations for Payment

The drawer of the bill shall make available with the drawee sufficient funds to pay the value thereof. Consideration for payment is deemed to be available, when the drawee, on the maturity of the bill is indebted to the drawer or to who ordered the drawing in a certain sum

of money payable and at least equal to the sum of the bill of exchange.

General Provisions for Consideration of Payment

1. The acceptance of the bill of exchange presupposes the availability with the acceptor of provision for payment .
(2) 2. The drawer shall prove in case of denial (regardless whether the bill has been accepted or not) that the drawee had sufficient funds on the date of maturity of the bill; otherwise he shall be liable for payment. 3. According to the provisions of the law the title of the payment consideration shall pass to the consecutive holders of the bill of exchange. 4. Where the drawer is declared bankrupt, before the maturity date of the bill of exchange, the holder has priority over the drawer's other creditors and shall receive his rights from the payment consideration which was validly made with the drawer. 5. If the drawee is adjudicated bankrupt and the payment consideration was a debt due from him all his assets including amount of payment! consideration shall be included in the assets of the bankruptcy . 6. In case of several bills of exchange have been drawn on a consideration insufficient to pay all of them, regard shall be made to the dates of their drawing for payment. The holder of the bill of exchange with a date preceding those of the other bill of exchange shall have priority over the

others. 7. Where the bill of exchange has been drawn on the same date, the bill bearing the drawee's acceptance shall have priority . 8. Where none of the bills of exchange bears the drawee's acceptance, priority shall be for the bill for the payment of which the consideration was allocated 9. Bills of exchange containing a provision of non-acceptance shall rank last in the order of priority .

Acceptance

The bill of exchange must however be presented for acceptance when its term so requires or when presentation is necessary to fix the maturity of the bill, i.e. because it is payable at designated time after sight.

It is always advisable to present the bill of exchange for acceptance, for if it is refused, the parties other than the drawee, become immediately liable, though the bill has not yet matured and it is sometimes necessary, e.g. where a bill is payable after sight, presentation is necessary to fix the maturity of the instrument.

Presentation is also necessary where the bill is drawn payable elsewhere than at the drawee's residence or place of business.

According to Article (383) of Law of Commerce in case the bill of exchange is due for payment after a certain specified period from sight or must be presented for acceptance according to a specific condition within a specified time limit the date acceptance shall be stated on the same day of acceptance unless the holder requires that the date of acceptance should be shown on the day that the instrument was presented. When the date of acceptance is not stated the holder may in order to safeguard his rights of recourse against the endorsers and the drawer prove such lack of dating by a protest in due course. (1) In accordance with Article 410, the drawer shall comply with the following rules:

(1) The drawer of a bill of exchange may provide that the bill shall be presented for acceptance at a specified date or he may not specify a date for presentation of the bill.

(2) The drawer may stipulate that the bill of exchange shall not be presented for acceptance. However, this provision may not be stipulated if the bill of exchange is payable by another person other than the drawee (drawee's Bank) or at another place other than the domicile of the drawee or if the bill of exchange was payable after a specified date after sight. (3) In addition, the drawer may provide that the bill of exchange shall not be presented for payment before a stated date. (4) Every

endorser may stipulate that the bill of exchange shall be presented for acceptance on a specified date or he may not specify a date, for presentation unless the drawer has stipulated that the bill of exchange must not be presented for payment.

It might seem obvious that there is no presentation for Acceptance in the case of a sight bill .

However, in practice most bills other than cheques will be presented for acceptance, since acceptance increases the marketability and value of the bill of exchange.

However, if a bill of exchange is due for payment on a certain specified date after sight it shall be presented for acceptance within one year from its date, but this period may be reduced or extended by the drawer and every endorser (Article 411/2,3).

A drawee may require that the bill of exchange be presented to him a second time for acceptance on the day following the first presentation.

The holder of a bill of exchange presented for acceptance shall not be bound to surrender the bill and deliver it to the drawee.

As we have previously remarked the acceptance shall be unconditional. However, the drawee may restrict

his acceptance to part of the value of the bill of exchange.
(1)

In case the form of acceptance contains a change in any of the other particulars of the instrument; it shall be deemed to be a refusal of acceptance. Nevertheless, the acceptor remains bound by the terms of his acceptance.

According to the provision of Law of Commerce the drawee who accepts the Bill of Exchange shall be liable for payment of the value thereof on the date of maturity.
(2)

Finally, if it supposed that the payment is not made, the holder, even though he is the drawer, may commence direct legal action against the drawee/acceptor claiming recovery of all amounts which are recoverable .

Maturity of the Bill of Exchange

As we have noted a bill of exchange may be made payable in any of the following forms.

(a) At sight. (b) Following a certain specified period after sight. (c) After the elapse of certain specified period from the date of making the bill exchange. (d) On certain specified date.

A bill of exchange which stipulates other or successive dates of maturity shall be null and void.

It will be observed that the bill of exchange which is due for payment at sight shall be paid on presentation and shall be presented for payment within one year of its date. The drawer may reduce or extend the said time limited, while the endorsers may reduce it only. (1)

As we have remarked the drawer of a bill by drawing it engages that on due presentation for payment it shall be paid otherwise, he will compensate the holder or any endorser who is compelled to pay it.

The presentation for payment is necessary to establish dishonor by non-payment and to hold the drawer and endorsers liable for payment of the bill.

So presentation for payment, unless waived or excused is necessary in order to charge the drawer or an endorser on a bill where the bill is dishonored by the drawee. If the bill is not duly presented for payment these parties are discharged from liability on the bill. Indeed the drawer may stipulate that a bill of exchange due for payment at sight shall not be presented for payment before the expiry of a certain specified term, in which case the time for presentation is calculated from the date which the time limit begins to run.

When the bill of exchange is payable at a fixed period after sight, the date of payment shall begin to run from the date of acceptance or from the date of protesting.

In the case that the bill is not subject for protest, the undated acceptance shall be deemed towards the acceptor to have taken place on the last date stipulated for acceptance

Based on the Law of Commerce of 1999, the following rules shall be applied to maturity of the bill of exchange:

(1) Where the bill of exchange is payable at sight or after the elapse of one month or more from the date of making the bill, it shall be paid on the corresponding date of the month during which it must be paid, otherwise it shall be paid on the last day of such month.

(2) Where a bill of exchange is payable after one and a half months or after several months and a half month from the date of making it or from the date of sight, the calculation shall be made in terms of complete months. In case the bill of exchange is payable at the beginning, middle or end of the month, it shall mean the first, fifteenth or last day of such month. The expression 'eight days' or 'fifteen days' shall mean eight days or fifteen days. The expression 'half a month' shall mean fifteen

days .In accordance with the law of commerce the following requirements may be fulfilled. Where the calendar of the place of payment of the bill is different from the place of making the bill, the date of maturity shall be determined according to the calendar of the place of payment. The date of presentation of the bill of exchange shall be determined according to the foregoing paragraph. The foregoing provisions shall be applied, unless the bill of exchange provides other different provisions.

Notice of Dishonor

The refusal of acceptance or payment of the bill shall be proved by protest for non - acceptance or protest of non-payment .

In general, where a bill has been dishonored by none acceptance or non-payment, the holder may seek payment from any other party, and in order to do that he must within a reasonable time give notice to every other party to be held liable. According to Article (438/a) the Law of Commerce in Egypt the holder of a bill of exchange shall notify his endorser and its drawer of the non-acceptance or non-payment within the following four business days after the protest or the date of presentation for acceptance or payment.

The Law of Commerce contains detailed rules specifying the timing and content of a notice of dishonor. Any person not notified of dishonor according to the rules is released from liability, unless the bill is subsequently negotiated to a holder in due course. (1)

It is notable to say that the time of notice of dishonor is strict time. In other words, the notice of non-acceptance or nonpayment within so short a time means that where the person giving and the person to receive notice reside in the same place. The notice must be given or sent off in time to reach it on the time after the dishonor of the bill and where they reside in different places the notice must be sent off on the day after dishonor of the bill, if there is a post at a convenient hour of that day. The consequence of failure to give due notice of dishonor by a party who is required to send a notice shall not forfeit his rights but he shall pay for damages resulting from his negligence, providing that the amount of damages does not exceed the amount of the bill of exchange .

Notice is dispensed with in various cases. As against a drawer, there are two typical situations in which notice of dishonor is excused. The first is where the drawee or acceptor of the bill is under no obligation to the drawer to pay the bill of exchange. Second where a bank fails to pay where the drawer has countermanded payment. It is

necessary to say that care should be taken to plead the facts excusing notice of dishonor of the bill where such notice has not yet been duly given.

Protest

The refusal of acceptance or payment of the bill of exchange shall be proved by protest for non-acceptance or protest for nonpayment. (1)

By 'protesting' a bill means formally establishing its dishonor by a notaries act. According to the general provisions, protesting is carried out in two stages. First, the bill is represented by a notary public to the acceptor for payment, and if it is again dishonored, the notary public must note the fact on the bill and draw up a formal protest.

Article (439/2 , 409) of the Law of Commerce No 17 of 1999 provides the following:

(1) The protest for non-acceptance of the bill of exchange shall be made within the time limits set down for presentation of the bill of exchange for acceptance. (2) The protest for non-payment of the Bill of exchange payable on a certain day or after certain period from the date of making it or from the date of sight on one of the four business days following the date of maturing. (3) The non- acceptance protest shall replace the need for

presentation of the bill for payment and for making the non-payment protest.

Payment of Bills of Exchange

If the bill of exchange is not payable on demand it must be presented for payment on the due date. In other word, the holder of a bill of exchange due for payment on a certain date and after a certain period from the date of making it or from the date of sight, shall present it for payment on the date of maturity.

Presentation for payment is necessary and without it there is no right to enforce payment against the drawer and endorsers of the bill.

The presentation must be made by holder or by some person authorized to receive payment on his behalf at a reasonable hour on a business day. It must be made to the person designated by the bill as payee or to some person authorized by him to pay or to refuse payment if such can be found. If there are several designated payers and no place of payment is specified then it will be made to all of them unless they are partners.

As we have mentioned the bill must be presented on the davit falls due, but under certain circumstances one or more days must be added to the time of payment. When the last day is Friday the bill is payable on Saturday and if

Saturday is a holiday the bill is payable on the day after the last day of grace. Presentation of a bill of exchange to any of the legally recognized clearing houses shall be tantamount to presentation for payment.

If the bill of exchange is not presented for payment on the date of maturity, every debtor there under may deposit the amount thereof with the court Treasury and the deposit shall be for the account of the holder and at his risk .

It is notable to say that not every payment by the acceptor that will discharge the bill. His payment must be lawful in the sense of being a payment, which gives him a good discharge. It must be made to the person apparently entitled to receive it and it must not be made before maturity of the bill. So a party to a bill is discharged from liability if the amount due on the bill is paid by him or by a prior party.

In general, a person who pays a bill of exchange on the date of its maturity without any objection is discharged of liability thereon, unless he has committed an act of fraud or gross error.

The holder shall not be enforced to receive the value of the bill of exchange before its maturity. But if the

drawee pays the value of a bill prior to maturity, he shall bear the relevant consequences.

In general if the drawee pays the amount of the Bill of Exchange he may be able to require the holder to surrender it with discharge thereon duly signed .

According to (Article 342) the lawful holder may accept a partial payment, and in this case the drawee may require that such payment to be entered on the bill itself and a receipt for the sum be issued.

A Lost Bill of Exchange

A lawful holder who has lost unaccepted bill of exchange which is drawn in a set may claim payment on the strength of one of its other copies.

If the value of the lost bill is refused to be paid, the owner shall, in order to safeguard his rights, prove the refusal to pay by making a protest document on the day following the date of maturity and shall notify the drawer and endorsers within the following four days after the protest.

Finally by the virtue of the law, the owner of a lost bill of exchange may obtain a copy from his preceding endorser, who shall be bound to assist him and allow him to use his name to claim the previous endorser and so on up to the drawer.

Every endorser is bound to write his endorsement on the copy of the bill of exchange he received from the drawer after noting that it is a replacement of the original.

Recourse

Since liability on a bill is contractual, the holder is entitled to enforce it by presenting it for payment on the maturity date. So a holder of the bill of exchange shall have the right of recourse on the maturity date against the endorsers, the drawer and other obligors thereof.

As we have seen, since a demand bill matures immediately, the payee or other holder simply presents it to the drawee for payment. On the other hand the holder may have recourse against, the drawer and any prior endorser without waiting for the bill to mature. However, the holder is entitled to use this right in the following events:

(a) Total or partial non-acceptance. (1) (b) In case the drawee is declared bankrupt whether he has accepted the bill or not, or when he ceases to make payment even his cessation is not proved by a judgment or by placing an attachment on his properties. (2) (c) If the drawer of the bill is declared bankrupt. (3) The holder of a bill of exchange may claim the following from any person against whom he has right of recourse . (a) The original

sum of a non-accepted or non-paid bill of exchange, plus interest, where there is a stipulation to that effect. (b) Interest calculated at the legal rate from the date of maturity. (c) The costs of the notice and protest as well as such other costs.

Several copies

According to Article (459/1) of the Law of Commerce, if a bill of exchange is drawn in a set of several identical copies, the following rules shall be applied.

(1) In case a bill of exchange has been drawn in a set of several identical copies, each part of the set shall be numbered, otherwise; each copy shall be deemed to be a separate bill. (1) (2) Where a bill of exchange which does not stipulate that it is the only copy every lawful holder is able to ask for copies thereof at his expense. In this case he shall refer to his endorser who shall assist him to refer to the previous endorser and so on up to the drawer. (3) A party to a bill of exchange is discharged from liability if the amount due on the bill is paid on the strength of any of its copy, even when this is not stipulated therein. However, the drawer shall remain liable to pay the amount of any part accepted by him but he failed to recover. (4) Where any copy of the bill of exchange has been sent for acceptance, the sender shall write on the

other copies the name of the person who has possession of such copy. The latter shall submit it to the lawful holder of any other copy. If he refuses to submit it to him, the holder shall have no right of recourse unless he proves by a protest that. 1- He did not receive the copy which was sent to him for acceptance, though he requested that .

2- Acceptance or payment was not made according to another copy of the bill of exchange.

Standby Guarantee

The payment of a Bill of Exchange may be guaranteed in whole or in part by a standby guarantor, and such guarantee shall be given by any person even if he may be a signatory of the bill.

This guarantee shall be written on the Bill of exchange itself or an attached piece of paper, and it shall be expressed in the words "Accepted as a standby Guarantor" or any other words having the same meaning and shall be signed by the guarantor on the face of the bill of exchange. (2)

The name of the guaranteed person shall be mentioned in the guarantee, otherwise it shall be considered for the drawer. In other words, the standby guarantee shall be considered as signed by the guarantor, unless such signature is issued from the drawee or the drawer. (3)

Based on the law of commerce the following rules shall be applied:

1. The guarantor shall be bound in the same manner as the guaranteed.
2. The obligation of the guarantor shall be valid even though person the obligation under which he is bound is null for and reason, save a defect in form. (1)
3. Where the guarantor pays the bill of exchange, he shall acquire all the rights arising from the bill of exchange towards the guaranteed person and towards every obligor under the bill of exchange against the said guaranteed person.

Prescription

Prescription means,-none acquiring a right or exercising a right over a period of time Based on the commercial Law, the rules of prescription are:

- (1) Legal action which arises from the bill of exchange against the acceptor (the drawee)shall not be heard after three years from the date of maturity .
- (2) Where the Bill of exchange contains a stipulation recourse without cost or recourse without protest, any legal action by the holder

against the endorsers or the drawer shall lapse after one year from the date of maturity.

(3) An action against an endorser or the drawer by another endorser shall lapse, after six months from the date on which the endorser paid the bill of exchange or from the date on which action is brought against him . (4) The prescription time shall not apply if the judgment confirmed the debt or when the debtor admits his liability on a separate document which entails renewal of the debts . (5) The interruption of the prescription shall not have effect except against the person to whom the interruption action has been taken. (6) Though the lapse of the prescription the defendants shall under oath confirm their discharge of liability for the debt if they are required to do so. Their heirs and successor shall take the oath that they were not aware that their testator died when he was liable for the debt .

Chapter Two

Cheques

Definitions and Distinguishing Characteristics

A cheque is defined as 'a Bill of exchange drawn on a banker, payable on demand'. In other words, a cheque represents an order from the customer to the bank to pay money in accordance with the term of the Cheque. HSB
Date 24 April 2018 HSBC Bank Middle East P.O.Box:

State of Egypt Pay Baiyoumy Abo Sennah Or bearer
Against this cheque Egyptian pound (S) nine hundred
only 900/- A/C No. 001-2003-12-001 Nail Taok
P.O.Box Cairo Egypt “ 6851
07.0.0:0001200312001” In general, cheques may be used
by the customer both to withdraw cash and to make
payment to a third party .The bank makes the payment out
of its own funds and recoups the sum paid out by debiting
the customer's account and so reducing the amount if its
debt to the customer.

Unlike other bills of exchange, a cheque is not
presented to the drawee (the bank) for acceptance. So, in
other words, the cheque can be presented to the drawee
only for payment in cash.

A cheque is not subject to acceptance and an acceptance
written on the cheque shall be deemed null and void.

In general, the bank is not legally obliged to the
payee to honor the cheque. In other words, when the
payee presented the cheque for payment the drawee
(bank) either pays or refuses to pay. It will refuse to pay if
its customer has countermined payment or if the account
is not sufficient in funds or within the limits of an agreed
overdraft facility or if the bank decides to exercise a right
to set off a debt balance existing on another account.

However, the bank on which a cheque is drawn must not pay other than in accordance with the customer's mandate and, provided there are sufficient funds credited to the account to meet them, and as we have noted earlier the bank has a legal duty to its customer to honor cheques drawn on the account, unless the order to pay is countermanded before payment is complete or the bank prevented from making payment by some legal compulsion such as a garnishee order or freezing injunction.

The basis of the relationship between the bill of exchange and the cheque is that the provisions of the bills of exchange shall be applicable to a cheque as far as they are not inconsistent with its nature .But even though the cheques were developed from the model of the bill of exchange in truth a cheque is still a very different kind of instrument. The cheques in many ways are used very differently from other types of bills of exchange, the cheque is payment direction and by its nature is intended to be presented and paid almost immediately, not negotiated to a third party. It forms an integral part of the banking mechanism and is thus deeply rooted in the banker-customer relationship. So it is clear that a bank is its customer's debtor, and is obliged to obey

the customer's order to repay money or to make payments to third parties.

Millions of cheques are issued every day and most of these have to be collected and paid through the clearing system. As we have previously seen that the holder will give the cheque to his bank to clear it for him, the bank receives the cheque as agent of its customer for the purpose of collecting it on the customer's behalf. In addition, the bank may collect the cheque in principal by buying them at a discount or by lending on the security. In these cases, the bank collects the cheques on its own behalf. In other words, the bank receives the cheques as a purchaser for value.

In general the bank has no rights to debit its customer account if it pays a cheque in any of the following cases :

- 1- If the drawer's signature is forged or unauthorized.
- 2- If it pays an order cheque to a person whose title depends on a forged endorsement.
- 3- If it pays after effective countermand by the customer.
- 4- If it pays to anyone other than the true owner.

Requirements for a Valid Cheque

In accordance with the Law of Commerce No 17 of 1999 a cheque shall contain the following particulars:

(1) The word 'cheque' written in the text of the instrument in the language in which it is written. (2) An unconditional order to pay a certain sum of money . (3) The name of the person who should pay as the drawee (should be a bank). (4) Place of payment. (5) The date and place of making the cheque. Signature of the maker (drawer) of the cheque. (6) The name of the person to whom or to whose order payment shall be made.

Incomplete Cheques

A cheque which fails to comply with the requirements set down in Article 473 shall not be deemed to be a cheque but a cheque may still be effective even though, it omits one or more of the statutory requirements. According to Article 474 the cheque shall be considered as a valid cheque in the following cases:

(1) If the place of payment is not stated, in the cheque it shall be payable at the head office of the drawee. (2) If the place of making the cheque is not stated therein, the cheque shall be deemed to have been made at the place mentioned next to the name of drawer.

Finally a cheque which does not contain the date of its making shall not be deemed to be a cheque, even though it may still be effective as instrument of evidence.

Form of a Cheque

The previous Figure is a typical form of cheque. The address in the top left-hand corner is the address of the bank. The number in magnetic characters at the bottom left is the cheque number (cheques in a book being numbered in sequence). The customer's account number with the branch is printed next to the bank number in order to avoid confusion between two customers of the same name. The cheque must carry the drawer's signature, and there is no need that the signature must be handwritten and that a stamped facsimile suffices. The cheque may be formed as order cheque (payable to order of named person), or as nominal cheque (payable to named person with statement not for order) or as bearer cheque (payable to the holder of the cheque). The order cheque is in practice used more than the bearer cheque. A cheque like any other bill of exchange can be transferred by endorsement and delivery, but since it is payable on demand, and except in cases where a cheque is endorsed by an agent to his principal or in part payment by the payee to the endorsee. The cheque is in practice a payment direction and are not accredit instruments and

intended to be presented and paid almost immediately, not negotiated to third party.

So where the cheque is an order cheque, it can thus be paid only to the named payee or his endorsee.

In particular even though the cheque is a negotiable instrument, it is not usually discounted, though sometimes the payee will endorse it over to a third party either for collection (where the payee himself has no a bank account) or in part payment of a debt. The general provisions provided that the crossing cheque is not endorsed except to the holder's bank for the purpose of collection, and even then it is no longer a banking practice to require endorsement where the cheque is being collected for the account of the ostensible payee.

The bearers of cheques, as the case of other bearer bills, involve the risk of loss or theft. Yet, no protection is given to a bank which pays a stolen, forged and unauthorized cheque. So the drawee bank is entitled to pay anyone who presents the cheque, provided that in making the payment it acts in good faith and without notice of any defect in the title of the holder.

A Crossed Cheque

Grossing shall be made by drawing two transverse parallel lines on the face of the cheque. So the drawers of

cheques may cross it with the name of the payee's bank to signify that payment had to be made to that bank and not to payee himself or any other party. Crossing on a cheque may be used to restrict the transfer, or method of presentation of a cheque, and thus as a protection against fraud or theft. In other words, crossing is thus an additional safeguard against fraud. The effect of crossing will depend on the form of the crossing. If the drawer does not know the name of the payee's bank, he will simply insert the words & Co in the crossing, leaving the name to be completed by the payee himself.

Who may Cross a Cheque

As noted above, the aims of crossing a cheque is to protect it against fraud or theft. According to the Law of Commerce, a cheque may be crossed generally or specially by the drawer. The simplest form of crossing is a general crossing, the crossing shall be general where no writing is made between the lines and the word 'and company' or any abbreviation such as & company may be added between the lines. Where the name of specific bank is inserted within the lines, the crossing is special. Thus, the holder of an uncrossed cheque can cross it. The holder of a cheque crossed generally may cross specially, and the holder of any crossed cheque may add the words 'not negotiable'. The effect of such a crossing is to prevent the

negotiation of the cheque. Every one who takes a cheque marked 'not negotiable' takes it at his own risk. A banker to whom an uncrossed or generally crossed cheque is sent for collection may cross it specially for himself. A special crossing shall not be changed into a general crossing, and the cancellation of the crossing or the deletion of the name of the bank inserted therein shall be null and void. On the other hand, only the drawer himself can uncross a crossed cheque or make a crossing less restrictive than originally drawn.

Effect of Crossing

As we have noted, a crossing on a cheque is used to restrict a method of presentation of a cheque to protect it against fraud or theft. A general crossed cheque may be paid only to a banker, and a specially crossed cheque may be paid only to the banker to whom it is crossed. In other words, a general crossed cheque must be presented for payment through a bank account, so the holder can not present it in person for cash. Meanwhile, the effect of a special crossing is that the cheque may only be presented for payment through the bank named in the crossing. A cheque crossed specially to more than one banker may not be paid at all except when it has two crossings; one crossing to an agent for collection being a banker. If the banker upon whom the cheque is drawn pays it in breach

of these restrictions, he is liable for payment to the true owner of the cheque for any loss the latter may sustain.

Any person taking a crossed cheque bears the words not negotiable can transfer it, but he can not transfer a better title than he himself possesses. In other words, the making of a crossed cheque not negotiable' thus prevents a subsequent holder from enjoying 'holder in due course' status, though he will enjoy similar benefits if he took it from one who qualified as a holder in due course.

A general crossing is the simplest form of crossing. A cheque may be crossed generally by drawing two parallel lines across its face, the words any company or any abbreviation such as & co may be added between the lines. If the cheque is crossed generally it must be presented for payment through a bank account; the holder can not present it in person for cash.

Figure 7 shows a crossed cheque which the name of a particular bank is added between the crossing lines. If the cheque is crossed specially it can only be presented for payment through the bank named in the cheque.

General Provisions

In addition to the preceding provisions, the following general rules shall be applied according to the Law of Commerce

(1) A generally crossed cheque may be paid by a drawee only to one of his customers or to a bank to whom it is crossed. (2) A drawee is not able to pay a cheque specially crossed except to the bank whose name is written within the lines. However,

Solana Branch West Bank Date 02-01-2005 London

Pay Avin Al-Salihi £100 One hundred pound only
Cheque No Branch code 000095 60.19.36 Account
No N.M.Taok 89009298.02 Midland Bank

the bank whose name is written within the lines may authorize another bank to receive the value of the cheque.

(3) A crossed cheque may not be accepted by the bank except if it is from his customers or from another bank, and the value may not be received by the bank except on behalf of the foregoing parties (4) A cheque crossed specially to more than one party may not be paid except when it has two crossings one of which is for collection through a clearing house. (5) If the banker upon whom the cheque is drawn pays it in breach of these stipulations, he shall be liable for payment of damages to the extent not exceeding the value of the cheque, to the true owner of the cheque. (6) The word 'customer' in this Article shall be every person having an account with the drawee and has obtained there from a cheque book or has the right to obtain such a book

Consideration for Payment

The bank (drawee) owes a duty to its customer (drawer) to honor his cheques if properly drawn upon an account in credit or within an agreed overdraft facility and duly presented by the holder. So the drawer shall make available with the drawee sufficient funds to pay the value of the cheque. However, a cheque may not be issued unless the drawee has at the time of drawing the cheque with the drawee, money which he can dispose of by a cheque. Thus the drawer of a cheque or person ordering another to draw a cheque on his behalf shall deliver sufficient funds to pay such cheque. Just as the bank must honor its customer's cheque when it has no lawful reason to return it, so also it must refuse payment where the drawer's fund is not sufficient. In these cases, the drawer alone shall prove that the drawee of the cheque had at the time of its making enough funds to pay it, otherwise he shall secure the payment of the cheque .

The court of cassation in France emphasized this criterion. The court ruled "that the onus of proof rests solely with the drawer that he had with the drawee on the date of drawing the cheque sufficient funds.

Payment

Based on the Law of Commerce which provides that the cheque may be expressed to be payable to the following:

(1) A named person with an express provision 'to order' or without it. (2) A named person with the stipulation 'not to order' or any other expression to this effect. (3) The bearer of the cheque.

Where a cheque drawn to a named person with the stipulation 'or to bearer' or any other expression to the same effect it shall be deemed to be a cheque 'to bearer'. Where the name of the beneficiary is not stated the cheque shall be deemed 'to bearer'.

General Provisions

It must be mentioned that according to Egyptian Law of Commerce NO (17) for 1999 the following rules shall be applied relating to the payment of a cheque:

(1) In principle, a cheque is payable on the date of its issue and any breach to these provisions shall be deemed null and void. (2) A cheque may not be presented for payment before the date stated thereon as the date of its issue. (3) A cheque issued in Bahrain or abroad and payable in Bahrain must be presented for payment within four months. (4) In case a cheque is drawn between two

places using different calendars, the date of issue shall be adjusted to the corresponding date in the calendar of the place of payment. (5) Where the cheque is presented to a legally recognized clearing house, it shall be deemed equal to presentation for payment. (6) The drawee is bound to pay the value of the cheque even after the lapse of the time stated for presentation.

The Legal Position of Banks Involved in Payment of Cheques. The paying bank owes a duty to observe the customer's mandate in regard to the payment of the cheque. The nature of the banker-customer relationship requires that the bank shall exercise reasonable care and skill in dealing with customers' affairs.

So a cheque drawn must not pay other than in accordance with the customer's mandate, and must pay exactly in accordance with the mandate.

However, in paying cheques the bank acts as its customer's agent, and it must comply with the literal terms of the mandate by ensuring that the cheque is drawn by an authorized signatory. In addition the bank shall also exercise reasonable care to see that the payment is not to an improper person. If the payment by the bank is in conformity with the mandate, the bank then reduces its indebtedness to its customer. So the bank has no right to debit his customer's account if the payment is not in

accordance with the mandate. In other words, the bank cannot in general debit the customer's account, for it has acted without his authority. If the bank paid in accordance with the language of the mandate but was in fraud of the customer or otherwise improper, so that the customer suffers loss, the bank may incur liability to the customer. In principle the bank is liable to damages for breach of contract in failing to perform its duty as agent with reasonable care and skill.

In view of the responsibilities undertaken by banks when operating accounts for their customers, it is indeed remarkable that they have traditionally not required any formal agreement regulating the terms of business but rely entirely on terms implied from bank custom and practice and from the course of dealing established with the customer.

Finally where the bank pays someone other than the true owner, its liability will depend on whether the cheque was payable to bearer or to order. If the cheque was a bearer cheque, in this case the bank will be liable to the true owner, but entitled to debit the customer's account. Meanwhile in the case of order cheque, the bank may only debit the customer's account, provided it is paid in due course, otherwise if the payment in this case is not

deemed to be in due course, the bank will incur no liability to the true owner.

As we have seen the relationship between the bank and his customer is based on contract, and like any other contractual relationship, the bank must honor his customer's cheque when it has no lawful reason to return it, so the bank is entitled to refuse payment under certain conditions, as in the case where the customer has given instructions to stop payment, or where the bank has not received satisfactory confirmation of the instructions or under other situations as we shall see. Thus where the terms of the mandate are broken by the bank the exercise of reasonable care is no defense, and the bank is not entitled to debit his customer's account.

The Paying Bank

The greatest risk to paying bank is of liability to his customer for payment contrary to the mandate, so a bank on which a cheque is drawn must not pay other than in accordance with the customer's mandate and must only pay exactly in accordance with the mandate.

The bank should incur liability if it pays a cheque in any of the following situations:

(a) If the drawer's signature is forged, or unauthorized; (b) If the cheque has been materially altered without the

drawer's authority; (c) If it pays an order cheque to a person whose title depends on a forged endorsement; (d) If it pays after an effective countermand by the customer; or (e) If it pays to anyone other than the true owner, for instance if the cheque is stolen from the true owner.

In the cases mentioned above, the bank may be held liable to the true owner, and not entitled to debit the customer's account.

As we have noted, the bank owes a duty to its customer to exercise reasonable care and skill in dealing with the customer's affairs in that manner which complies with the terms of the customer's mandate.

In addition, the bank has a duty toward its customer to honor his cheques if properly drawn upon an account in credit or within an agreed overdraft facility and duly presented by the holder. Breach of this duty renders the bank liable in damages to its customer. It is sometimes said that a bank may incur double liability in such cases, by being liable to the true owner in conversion and unable to debit the customer's account. However, it seems that the bank which dishonors a cheque may also incur liability to his customer in defamation. Dishonored cheques are normally returned to the payee with an

indication of the reason for dishonor written or stamped on the face of the cheque.

In principle, the paying bank must comply with the payments terms so, the bank which pays a cheque after payment has countermanded acts in breach of its mandate; similarly if the bank pays out on a forged signature, it is not entitled to debit his customer's account. A payment to the holder or the bearer cheque is a payment in due course. In this case, since the cheque is paid to the holder, the bank's payment is a payment in due course and discharges the drawer from liability to the holder. The bank should therefore be entitled to debit the drawer's account, since otherwise he would be unjustly enriched.

Payment to a person, whose title must rest on a forged endorsement, will not be payment in due course; the cheque will therefore remain enforceable by the true owner. Provisions conferring protection on the paying banker who pays out against a forged or unauthorized endorsement do not extend to cases where it is the drawers' signature that has been forged or made without his authority. Indeed this instrument shall not be considered a cheque at all. However, if the bank makes such a payment to a person whose title depends on a forged or unauthorized endorsement, it shall be solely responsible for the damages arising from this payment,

unless it is not possible to attribute such action to the fault of the drawer. The drawer shall be deemed specially at fault if he does not exercise common diligence to safeguard the cheque book delivered to him.

In principle, the customer will be in certain cases stopped from relying on the forgery

1- If he draws a cheque in such a way as to facilitate forgery or fraud as by drawing it in blank or leaving space which allows an alteration to the amount of the cheque. 2- If he discovers that his signature is being forged and neglects to inform the bank.

In most cases, therefore, the greatest risk to a paying bank is of liability to its customer for payment contrary to the mandate.

Liability both for breach of mandate and for the tort of conversion is strict; however the paying bankers duty to honor his mandate is contractual duty, and where the terms of mandate are broken the exercise of reasonable care is no defense. So a banker paying out on a forged signature is not entitled to debit his customer's account, and a bank which pays a cheque after payment has been countermanded acts in breach of its mandate and is not entitled to debit his customers account.

Finally, as the bank has legal duty to honor his customer's cheque, the bank as well is entitled to refuse payment where the customer has given instructions to stop payment and these must reach the bank in sufficient time.

Endorsement

If the cheque is an order cheque it can be paid only to the named payee or his endorser. Being demand instruments, cheques are not usually discounted, though sometimes the payee will endorse them to a third party either for collection (where the payee does not himself have a bank account) or in part payment of a debt.

A cheque made payable to a named person shall be negotiable by endorsement regardless of whether it is expressly made to order or not the endorsement must be written on the cheque, and signed by the endorser. (1)

In general, the signature alone is placed on the back, or if there is not sufficient room on the cheque, then on an annexed paper and this is sufficient.

An endorsement made in blank or special. A blank endorsement specifies no endorsee, and therefore the bill becomes payable to bearer so that it can be further negotiated by mere delivery.

An endorsement may be made to the drawer or to any other obligor. The latter may re-endorse the cheque.

A person who endorses a cheque becomes liable to it and may have to pay the holder if it is dishonored by the acceptor.

The possessor of an endorsable cheque shall be deemed as the legal holder if he proves that he has a right thereto by consecutive endorsements , even though the last endorsement was in blank. Crossed endorsements shall be null and void in this regard. When a blank endorsement is followed by another endorsement, the new endorser shall be deemed to have acquired the right to the cheque through the blank endorsement .

According to the Law of Commerce the following rules shall be applied to the endorsement of a cheque

(1) An endorsement made after a protest or after the lapse of the period fixed for presentation of the cheque shall have only the effects of the assignment of a right. (2) An undated endorsement shall be deemed to have been made before making the protest or before the lapse of the time fixed for presentation of the cheque, unless the contrary is proved. (3) Endorsement may not be predated. Otherwise the predating endorsements shall be deemed as a forgery.

Effect of customer's death or insolvency

Where the drawer dies or becomes legally disqualified or if he declared bankrupt after the making of the cheque, these events shall not create excessive effectiveness towards the judgments passed as a consequence .

1. Death

In the event of death of the drawer after the issue of the cheque, the right accruing under the cheque shall not be affected. In other words, the bank's authority to pay a drawn by his customer before his death is not affected by the death of drawer, so the bank is able to pay a cheque drawn by his customer before his death but once the bank has a notice of the death it ceases to be entitled to honor the deceased's cheque.

2. Bankruptcy

Any merchant, who is financially embarrassed and consequently stops the payment of his commercial debts, may be declared bankrupt.

It must be observed at this point that where the customer is declared bankrupt, all his assets, including amounts on deposit with bankers, automatically become vested in another person, known as a trustee in bankruptcy, who is empowered to realize them to satisfy

the debts owed by the bankrupt debtor. However, any disposition of property made by the bankrupt in the period between the presentation of the bankruptcy petition (which is not advertised) and the making of the bankruptcy order is void except to the extent that it was made with the consent of the court or was subsequently ratified by the court. It should be noted that the Law of Bankruptcy constitutes a further species to protect the bank. In other words, the bank is protected as to any property or payment received before the commencement of the bankruptcy in good faith for value and without notice of the presentation of the petition or in respect of any interest in property which derives from such a protected interest.

3. Winding Up

A company's life can be brought to an end by a process known as winding up, and there are three methods of winding up.

1- Compulsory winding up by the court.

2- Voluntary winding up, where the company itself decides it must close down. 3- A winding up petition in which an application is submitted to a court for an order that a company is to be put into liquidation

Any disposition of the property of a company made after the commencement of its winding up is void unless the court otherwise orders.

Where it is proposed to wind up a company in any other case (that is, where a winding-up order is made without there having been a prior resolution for voluntary winding up) the winding up is deemed to commence at the time of presentation of the winding-up petition. It seems reasonably clear that some time may elapse between presentation and advertisement of the petition, and the winding-up order itself may not be made for several months. The court has power to protect bona fide payments and transfers made by the company after the commencement of a compulsory winding up, but will not normally exercise this where result would be to diminish the assets available for the general body of creditors.(59)

In addition to observing that the winding up is followed by the following effects:

- 1- All actions against the company are stopped.
- 2- The company ceases to carry on business except with a view to beneficial winding up.
- 3- The powers of the directors cease.
- 4- Employees are automatically dismissed.

Lost or destroyed cheque

In the case of lost or destroyed cheques the following rules are applicable.

(1) When a cheque to bearer is lost or destroyed, the owner may oppose to the drawee against payment of its value . The opposition shall contain the number of the cheque, amount, name of its drawer and every other particular enabling the identification thereof and the circumstances surrounding its loss or destruction. In case of impossibility to submit the drawee with some of these particulars, the reasons shall be stated.

If the opponent party has no domicile in the State of Egypt, he shall specify a selected domicile therein.

(2) When the drawee receives the objection he shall be bound to refrain from payment of the amount of the cheque to the possessor and he shall put aside the payment of the cheque, through the resolution of the matter.

(3) At the request and expense of the objecting party, the drawee shall publish the number of the lost or destroyed cheque, its amount, name of drawer and objecting part...etc in a daily news paper. After the date of

publication every disposal of the cheque shall be deemed null and void .

Prescription

Based on the Law of Commerce, one can deduce that the following provisions shall be applied to prescription of a cheque

(1) The holder of a cheque is not able to conduct a legal action for recourse against the drawee, drawer, endorser and other obligors after six month from the date of lapse the time of presentation of the cheque. (2) The right of recourse by other obligors against each other shall lapse after six months from the date on which the obligor has made payment or from the date of filing a claim in court.

(3) The defendants shall under oath confirm their discharge of liability for the debt if they are asked to take the oath. Their heirs and other successors shall testify under oath that they are not aware that their testator died when he was liable for the debt .

(4) The aforesaid prescription shall not be applicable if a judgment has been passed confirming the debt or if it is admitted by the debtor by an independent instrument, so that such admission results in renewing the debt .

Forged signature

In all cases an unauthorized signature and a forged signature have exactly the same effect. An important distinction between them is that an unauthorized signature can be ratified, but the forgery is a criminal offence and defined in the criminal law.

The bank's main risk of liability arises from the collection of a cheque for the wrong party, usually because the drawer's signature has been forged or the signatory is an agent or employee who signed the cheque without authority. The bank acts as its customer's agent and must comply with the literal term of the mandated by ensuring that the cheque is drawn by an authorized signatory, and also exercise reasonable care to see that it is no privy to improper payment otherwise the bank ((drawee)) shall be responsible for the damage arising from payment of the cheque . Every provision to contrary shall be deemed as null and void.

The drawer is bound to preserve the cheque book delivered to him and he shall perform this duty with reasonable care and skill.

Chapter Three

Promissory notes

There are many classes of negotiable or non negotiable instruments, but they all fall into two categories.

Instruments taking the form of an express or implied undertaking to pay a sum of money promissory notes, bank notes, Treasury bills, bearer bounds etc.

Instruments taking the form of an order to pay cheques and other bills of exchange, traveler's cheque, money order, banker's draft's etc.

In this chapter, we are concerned only with the promissory note.

Definition

A promissory note is an unconditional promise made in writing by one person to another signed by the maker,

engaging to pay on demand or at a fixed or determinable future time, a certain sum in money, to, or to the order of, a specified person.

A promissory note is not a bill of exchange but shares most of the characteristics of a bill and is governed by parallel provisions of the bills of Exchange.

A promissory note is widely used in both international trade and in domestic trade. In the first one, they are mainly used in forfeiting transactions where the importer will make a promissory note (supported by bank guarantees) which the exporter will endorse (without recourse) to a forfeiter at a discount . In domestic trade promissory notes serve two functions. First they provide added security if they are made by a debtor or hirer. They give the creditor or lesser the advantage of being able to bring an action by summary procedure and prevent the maker of the note raising certain defense, which would be available if an action was brought on the underlying transaction. Secondly, as with international trade, they facilitate the refinancing of transaction in that the notes may be discounted to a financial institution. The negotiation of promissory note can pass a title free from any defects in the title of previous parties.

Six months after date I promise to pay Barhoma the sum of five thousand Egyptian pound.

A typical promissory note looks like figure 6. It will be observed that since the note is a promise to pay, not an order to pay, there is no drawee (and thus, of course, no acceptor). The promissory, Ahmed Mahmoud is termed the maker of the note and is for the most part deemed to correspond with the acceptor of a bill. The payee, Barhoma, can negotiate the note by endorsement and delivery in the same way as if he were the payee of the bill, and as first endorser he is deemed to correspond with the drawer of an accepted bill payable to the drawer's order. The provisions of the bills of exchange regarding endorsement, maturity, payment, protest copies... etc apply to promissory notes as far as they are not inconsistent with the nature of the promissory note. The modifications derive mainly from the fact that there is no acceptor, so the provisions of presentation for acceptance and acceptance itself obviously do not apply. The rules of presentation for payment broadly follow those applicable to bills but are simpler. The same is true of the liabilities and estoppels of the maker.

According to Article (471) of the Law of Commerce No (17) of 1999 a promissory note shall contain the following particulars:

- (1) A stipulation of order or the expression 'promissory note' written in the text of the note in the language in which it is made.
- (2) Unconditional undertaking to pay a certain sum of money.
- (3) Date of maturity.
- (4) Place of payment.
- (5) Name of the party to whom payment shall be made or to his order.
- (6) Date and place of making the promissory note.
- (7) Signature of the maker of the note.

Incomplete Promissory Notes

An instrument which fails to comply with the requirements set down in the preceding article (471) shall not be deemed to be a promissory note. But an omission is not normally fatal, for it can usually be cured. Thus the person in possession of an inchoate instrument has a prima-facie authority to fill it up as a complete promissory note and to rectify the omission of the material particular in accordance with article 469.

Remedies for incomplete promissory notes

In case a promissory note does not contain any of the particular set down in Article (471). Article (469) provides the following rules to remedy incomplete promissory note:

(1) It is to be noted that the same provisions applicable to the bill of exchange regarding this matter shall apply to the promissory note (2) See Mokhtar Briry, op cit p.452.

(1) When the maturing date is not stated in the note, it shall be deemed to be payable at sight. (2) When the place of payment or domicile of the maker is not stated in the note, the place of making it shall be deemed as the place of payment and domicile of its maker. (3) When the place of making is not stated in the note, it shall be deemed to have been made at the place shown next to the issuer's name.

As mentioned before, the many of the observations made in chapter one are not confined to bills of exchange but apply, in varying degrees to other instruments. However, the promissory note is not a bill of exchange but shares most of the characteristics of a Bill of Exchange and is governed by parallel provisions of the bills of exchange . In other words, the provisions related to bills of exchange shall apply to promissory not as, endorsement, maturity, payment, protest, prescription, copies, recourse for non payment etc.

In addition the provisions relating to a Bill of exchange as stipulation of interest, difference in particulars relating to the amount payable, consequences

resulting from forged signature or signature of unauthorized person etc. shall apply to a promissory note.

Finally a promissory note payable after a certain period from sight shall be presented to the issuer within one year for making an entry that it has been sighted. Such entry shall be dated and signed by the issuer of the promissory note, should the maker of the promissory note refuse to make such entry, in this case the refusal shall be proved by a protest. The date of protest shall constitute the commencement of the time limit for sight.