



# THE NEGOTIABLE INSTRUMENTS ACT, 1881



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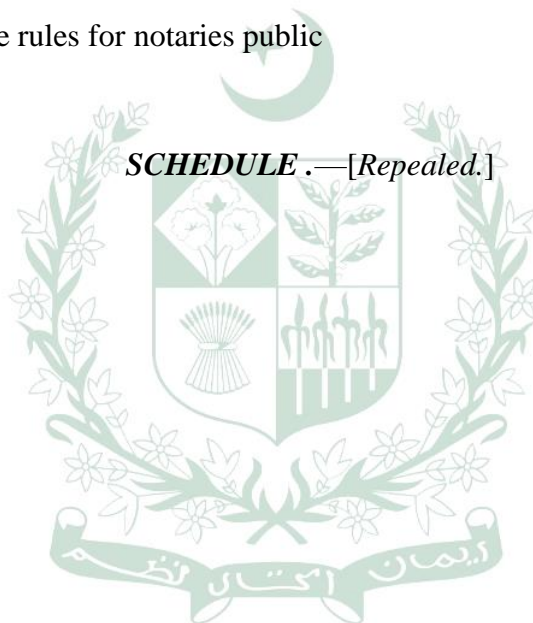
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**THE PAKISTAN CODE**



# THE NEGOTIABLE INSTRUMENTS ACT, 1881

## <sup>1</sup>ACT NO XXVI OF 1881

[9th December, 1881]

*An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques*

### Preamble.

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows: —

### CHAPTER I PRELIMINARY

**1. Short title.** This Act may be called the Negotiable Instruments Act, 1881.

**Local extent. Saving of usages relating to hundis, etc. Commencement.** <sup>2</sup>[It extends to the whole of Pakistan]; but nothing herein contained affects <sup>3</sup>[the provisions of sections 24 and 35 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956)]; and it shall come into force on the first day of March, 1882.

<sup>4</sup>**[1A. Application of the Act.** Every negotiable instrument shall be governed by the provisions of this Act, and no usage or custom at variance with any such provision shall apply to any such instrument.]

**2. [Repeal of enactments.]** *Rep. by the Amending Act, 1891 (XII of 1891).*

<sup>5</sup>**[3. Interpretation-clause.—** In this Act, unless there is anything repugnant in the subject or context,—

- (a) “accommodation party” means a person who has signed a negotiable instrument as a maker, drawer, acceptor or indorser without receiving the value thereof and for the purpose of lending his name to some other person;

<sup>1</sup>For Statement of Objects and Reasons, *see* Gazette of India, 1876, p. 1836 ; for the Reports of the Select Committee, *see ibid.*, 1877, Pt. V, p. 321, 1878, Pt. V, p. 145 ; 1879, Pt. V, p. 75 ; 1881, Pt. V, p. 85 ; for discussions in Council, *see ibid.*, 1876, Supplement, p. 1081 ; and *ibid.*, 1881, Supplement, p. 1409.

This Act has been declared to be in force in Balochistan by the British Balochistan Laws Regulation, 1913 (2 of 1913), s. 3.

For summary procedure on negotiable instruments, *see* the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XXXVII.

This Act has been extended to—

(a) the Leased Areas of Balochistan, *see* the Leased Areas (Laws) Order, 1950 (G. G. O. 3 of 1950); and applied in the Federated Areas of Balochistan, *see* Gaz. of India, 1937, Pt. I, p. 1499 ;

(b) the Balochistan States Union, *see* the Balochistan States Union (Federal Laws) (Extension) Order, 1953 (G. G. O. 4 of 1953), as amended by the Balochistan States Union (Federal Laws) (Extension) (Second Amendment) Order, 1953 (G. G. O. 19 of 1953); and

(c) the State of Bahawalpur, *see* the Bahawalpur (Extension of Federal Laws) Order, 1953 (G. G. O. 11 of 1953), as amended.

The Act has been and shall be deemed to have been brought into force in Gwadur with effect from the 8th September, 1958 by the Gwadur (Application of Central Laws) Ordinance, 1960 (37 of 1960), s. 2.

The Act, as in force in the North-West Frontier Province immediately before the commencement of N.W.F.P. Regulation No. II of 1974, has been applied to the Provincially Administered Tribal Areas of Chitral, Dir, Kalam, Swat and Malakand Protected Area, by N.W.F.P. Regulation, No. II of 1974, s.3.

The Act and the rules, notifications and order made thereunder, as in force in N.W.F.P. before the 15th July, 1975, have been applied to the Districts of Chitral, Dir, Swat and Malakand Protected Area of the N.W.F.P., by Regulation No. III of 1975, s. 2 and Sch.

<sup>2</sup>Subs. by the Negotiable Instruments (Amdt.) Act, 1957 (5 of 1958), s.2 (with effect from the 14th October, 1955), for “It extends to [all the Provinces and the Capital of the Federation]”. The words in crotchets were subs. by A. O., 1949, Arts. 3(2) and 4, for “the whole of British India”.

<sup>3</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 2, for certain original words. .

<sup>4</sup>S.1A, *ins. ibid.*, s.3.

<sup>5</sup>Subs. *ibid.*, s. 4, for the original section as amended by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I, A. O., 1937 and the Negotiable Instruments (Amdt.) Act, 1957 (5 of 1958), s. 3.

- (b) “banker” means a person transacting the business of accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, and includes any Post Office Savings Bank;
- (c) “bearer” means a person who by negotiation comes into possession of a negotiable instrument, which is payable to bearer;
- (d) “delivery” means transfer of possession, actual or constructive, from one person to another;
- (e) “issue” means the first delivery of a promissory note, bill of exchange or cheque complete in form to a person who takes it as a holder;
- (f) “material alteration” in relation to a promissory note, bill of exchange or cheque includes any alteration of the date, the sum payable, the time of payment, the place of payment, and, where any such instrument has been accepted generally, the addition of a place of payment without the acceptor’s assent; and
- (g) “notary public” includes any person appointed by the <sup>1</sup>[Federal Government] to perform the functions of notary public under this Act and a notary appointed under the Notaries Ordinance, 1961 (XIX of 1961)]

## CHAPTER II OF NOTES, BILLS AND CHEQUES

**4. “Promissory note.”** A “promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay <sup>2</sup>[on demand or at a fixed or determinable future time] a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

### *Illustrations*

A signs instruments in the following terms:

- (a) “I promise to pay B or order Rs. 500.”
- (b) “I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received.”
- (c) “Mr. B, I O U Rs. 1,000.”
- (d) “I promise to pay B Rs. 500 and all other sums which shall be due to him.”
- (e) “I promise to pay B Rs. 500, first deducting thereout any money which he may owe me.”

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<sup>1</sup> Subs. by F.A.O., 1975, Art, 2 and Table, for “Central Government”.

<sup>2</sup> Certain words ins. by Ord. 49 of 1962, s. 5.

- (f) “I promise to pay B Rs. 500 seven days after my marriage with C.”
- (g) “I promise to pay B Rs. 500 on D’s death, provided D leaves me enough to pay that sum.”
- (h) “I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.”

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

**5. “Bill of exchange”.** A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay <sup>1</sup>[on demand or at a fixed or determinable future time] a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not “conditional,” within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be “certain,” within the meaning of this section and section 4, although it includes future interest <sup>2</sup>[or return in any other form] or is payable at an indicated rate of exchange, or is <sup>3</sup>[payable at the current rate of exchange, and although it is to be paid in stated instalments and contains a provision that on default of payment of one or more instalments or interest <sup>2</sup>[or return in any other form], the whole or the unpaid balance shall become due].

<sup>4</sup>[A promise or order to pay is not ‘conditional’ nor is the sum payable ‘uncertain’ within the meaning of this section or section 4 by reason of the sum payable being subject to adjustment for profit or loss, as the case may be, of the business of the maker.]

<sup>5</sup>[Where the person intended can reasonably be ascertained from the promissory note or the bill of exchange, he is a “certain person” within the meaning of this section and section 4, although he is misnamed or designated by description only.]

An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with—

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

<sup>1</sup> Ins. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 6.

<sup>2</sup> Ins. by the Negotiable Instrument (Amdt.) Ordinance, 1980 (61 of 1980), s. 2.

<sup>3</sup> Subs. by Ord. 49 of 1962, s. 6, for “according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due”.

<sup>4</sup> New paragraph ins. by Ord. 61 of 1980, s. 2.

<sup>5</sup> Subs. by Ord. 49 of 1962, s. 6, for the original paragraph.

Where the payee is a fictitious or non-existing person the bill of exchange may be treated as payable to bearer.].

**6. “Cheque”.** A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

**7. “Drawer.” “Drawee”.** The maker of a bill of exchange or cheque is called the “drawer;” the person thereby directed to pay is called the “drawee.”

**“Drawee in case of need.”** When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a “drawee in case of need.”

**“Acceptor”.** After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor.”

**“Acceptor for honour”.** <sup>1</sup>[When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour.”

**“Payee”.** The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the “payee.”

<sup>2</sup>[**8. “Holder”.** The “holder” of a promissory note, bill of exchange or cheque means the payee or indorsee who is in possession of it or the bearer thereof but does not include a beneficial owner claiming through a *benamidar*.

*Explanation.*— Where the note, bill or cheque is lost and not found again, or is destroyed, the person in possession of it or the bearer thereof at the time of such loss or destruction shall be deemed to continue to be its holder.]

<sup>3</sup>[**9. “Holder in due course”.** “Holder in due course” means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before it became overdue, without notice that the title of the person from whom he derived his own title was defective.

*Explanation.*— For the purposes of this section the title of a person to a promissory note, bill of exchange or cheque is defective when he is not entitled to receive the amount due thereon by reason of the provisions of section 58.]

**10. “Payment in due course”.** “Payment in due course” means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

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<sup>1</sup>Subs. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 2, for “When acceptance is refused and the bill is protested for non-acceptance.”

<sup>2</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 7, for the original section.

<sup>3</sup>Subs. *ibid.*, s. 8, for the original section, as amended by the Negotiable Instruments (Amdt.) Act, 1919 (8 of 1919), s. 2.



**11. Inland instrument.** A promissory note, bill of exchange or cheque drawn or made in <sup>1</sup>[Pakistan], and made payable in, or drawn upon any person resident in, <sup>1</sup>[Pakistan] shall be deemed to be an inland instrument.

**12. Foreign instrument.** Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

**13. “Negotiable instrument”.** <sup>2</sup>[(1) A “negotiable instrument” means a promissory note, bill of exchange or cheque payable either to order or to bearer.

*Explanation (i).*— A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

*Explanation (ii).*— A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

*Explanation (iii).*—Where a promissory note, bill of exchange or cheque, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

<sup>3</sup>[(2) A negotiable instrument may be made payable to two or more payees jointly or it may be made payable in the alternative to one of two, or one or some of several payees.]

**14. Negotiation.** When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

**15. Indorsement.** When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the “indorser.”

**16. “Indorsement in blank” and “in full”.**—<sup>4</sup>[(1)] If the indorser signs his name only, the indorsement is said to be “in blank,” and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be “in full,” and the person so specified is called the “indorsee” of the instrument.

**“Indorsee.”** <sup>4</sup>[(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.]

**17. Ambiguous instruments.** Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

**18. Where amount is stated differently in figures and words.** If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid <sup>5</sup>[ : ]

<sup>1</sup>Subs. by the Negotiable Instruments (Amdt.) Act, 1957 (5 of 1958), s. 4 (with effect from the 14th October, 1955), for “the Provinces and the Capital of the Federation” which had been subs. by A. O., 1949, Arts. 3 (2) and 4, for “British India”.

<sup>2</sup>Subs. by the Negotiable Instruments (Amdt.) Act, 1919 (8 of 1919), s. 3, for the original sub-section.

<sup>3</sup>Ins. by the Negotiable Instruments (Amdt.) Act, 1914 (5 of 1914), s. 2.

<sup>4</sup>Ins. *Ibid.*, s. 3.

<sup>5</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 9, for the full-stop.

<sup>1</sup>[Provided that if the words, are ambiguous or uncertain, the amount may be ascertained by referring to the figures.]

<sup>2</sup>**[19. Instruments payable on demand.** A promissory note or bill of exchange is payable on demand,—

- (a) where it is expressed to be so, or to be payable at sight or on presentment; or
- (b) where no time for payment is specified in it ; or
- (c) where the note or bill accepted or indorsed after it is overdue, as regards the person accepting or indorsing it.]

<sup>3</sup>**[20. Inchoate stamped instruments.—**(1) Where one person signs and delivers to another a paper stamped in accordance with the law relating to stamp duty chargeable on negotiable instruments, either wholly blank or having written thereon an incomplete negotiable instrument, in order that it may be made, or completed into a negotiable instrument he thereby gives *prima facie* authority to the person who receives that paper to make or complete it, as the case may be, into a negotiable instrument for the amount, if any, specified therein, or, where no amount is specified, for any amount, not exceeding, in either case, the amount covered by the stamp.

(2) The person so signing shall, subject to the provisions of sub-section (3), be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course, for the amount specified in the instrument or filled up therein:

Provided that no person other than a holder in due course shall receive from the person so signing the paper anything in excess of the amount intended by him to be paid thereunder.

(3) In order that any such instrument may on completion be enforceable against any person who became a party thereto before such completion, it must be filled up within a reasonable time and strictly in accordance with the authority given:

Provided that if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.]

**21. “At sight”. “On presentment.” “After sight”.** <sup>4</sup>\* \* \* The expression “after sight” means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

<sup>5</sup>**[21A. When note or bill payable on demand is overdue.** A promissory note or bill of exchange payable on demand shall be deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length of time.

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<sup>1</sup>Proviso added by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 9.

<sup>2</sup>Subs. *ibid.*, s. 10, for the original section.

<sup>3</sup>Subs. *ibid.*, s.11, for the original section, as amended by A.O., 1949, Arts. 3(2) and 4 and the Negotiable Instruments (Amdt.) Act, 1957 (5 of 1958), s.4 (with effect from the 14th October, 1955).

<sup>4</sup>The words “In a promissory note or bill of exchange the expression ‘at sight’ and ‘on presentment’ mean on demand” , omitted by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 12.

<sup>5</sup>Ss. 21A, 21B and 21 C, ins. *ibid.*, s. 13.

**21B. A note or bill payable at a determinable future time.** A promissory note or bill of exchange is payable at a determinable future time within the meaning of this Act if it is expressed to be payable—

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

**21C. Anti-dating and post-dating.** A promissory note, bill of exchange or cheque is not invalid by reason only that it is anti-dated or post-dated:

Provided that the anti-dating or post-dating does not involve any illegal or fraudulent purpose or transaction.]

**22. “Maturity”.** The maturity of a promissory note or bill of exchange is the date at which it falls due.

**Days of grace.** Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

**23. Calculating maturity of bill or note payable so many months after date or sight.** In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

*Illustrations*

- (a) A negotiable instrument, dated 29th January 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February 1878.
- (b) A negotiable instrument, dated 30th August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.
- (c) A promissory note or bill of exchange, dated 31st August 1878, is made payable three months after date. The instrument is at maturity on the 3rd December 1878.

**24. Calculating maturity of bill or note payable so many days after date or sight.** In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

**25. When day of maturity is a holiday.** When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.



<sup>1</sup>[*Explanation*— The expression “public holiday” shall mean the day or days declared by the Federal Government, by notification in the official Gazette, to be public holidays.]

### CHAPTER III PARTIES TO NOTES, BILL AND CHEQUES

**26. Capacity to make, etc., promissory notes, etc.** Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

**Minor.** <sup>2</sup>[Where such an instrument is made, drawn or negotiated by a minor, the making, drawing or negotiation entitles the holder to receive payment of such instrument and to enforce it against any party thereto other than the minor.]

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

**27. Agency.** Every person capable of binding himself or of being bound, <sup>3</sup>[by the making, drawing, acceptance or negotiation of a negotiable instrument], may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

<sup>4</sup>**[27A. Authority of partners.** A partner acting in the firm name may bind the firm by the making, drawing, acceptance or negotiation of a negotiable instrument to the extent authorized by law relating to partnership for the time being in force.]

<sup>5</sup>**[28. Liability of agent signing.—**(1) Where a person signs a promissory note, bill of exchange or cheque without adding to his signature words indicating that he signs it as an agent for and on behalf of a principal or in a representative character, he is personally liable thereon but the mere addition to his signature of words describing him as an agent or as filling a representative character does not exempt him from personal liability.

(2) Notwithstanding anything contained in sub-section (1), any person signing a promissory note, bill of exchange or cheque for and on behalf of the principal is not liable to a person who induces him to sign upon the belief that the principal alone would be held liable.]

<sup>6</sup>**[28A. Transferor by delivery and transferee.—**(1) Where the holder of a negotiable instrument payable to bearer negotiates it by delivery without indorsing it, he is called a “transferor by delivery”.

<sup>1</sup>Subs. by Act 38, of 1997, s.2.

<sup>2</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 14, for the original paragraph.

<sup>3</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 15, for “as mentioned in section 26”.

<sup>4</sup>Section 27A ins. *ibid.*, s. 16.

<sup>5</sup>Subs. *ibid.*, s. 17, for the original section.

<sup>6</sup>Section 28A, ins. *ibid.*, s. 18.

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

(3) A transferor by delivery who negotiates a negotiable instrument thereby warrants to his immediate transferee, being a holder for consideration, that the instrument is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any defect which renders it valueless.]

**29. Liability of legal representative signing.** A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

<sup>1</sup>[**29A. Signature essential to liability.** No person is liable as maker, drawer, indorser or acceptor of a promissory note, bill of exchange or cheque who has not signed it as such:

Provided that where a person signs any such instrument in a trade or assumed name he is liable thereon as if he had signed it in his own name.

**29B. Forged or unauthorized signature.** Subject to the provisions of this Act, where a signature on a promissory note, bill of exchange or cheque is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the instrument or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the instrument is precluded from setting up the forgery or want of authority:

Provided that nothing in this section shall effect the ratification of an unauthorized signature not amounting to a forgery.

**29C. Stranger signing instrument presumed to be indorser.** A person placing his signature upon a negotiable instrument otherwise than as maker, drawer or acceptor is pre-sumed to be an indorser unless he clearly indicates by appropriate words his intention to be bound in some other capacity.]

<sup>2</sup>[**30. Liability of drawer.**—(1) (a) The drawer of a bill of exchange by drawing it, engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured, he will compensate the holder or any indorser who is compelled to pay it; and

(b) the drawer of a cheque by drawing it, engages that in the case of dishonour by the drawee he will compensate the holder:

Provided that due notice of dishonour of the bill or cheque has been given to or received by the drawer as hereinafter provided.

(2) The drawee of a bill of exchange is not liable thereon until acceptance in the manner provided by this Act.]

**31. Liability of drawee of cheque.** The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

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<sup>1</sup>Ss. 29A, 29B and 29C, ins. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962) s. 19.

<sup>2</sup>Subs. *ibid.*, s. 20, for the original section 30.

<sup>1</sup>[**32. Liability of maker of note and acceptor of bill.**—(1) In the absence of a contract to the contrary, the maker of a promissory note, by making it, and the acceptor before maturity of a bill of exchange by accepting it, engages that he will pay it according to the tenor of the note or his acceptance respectively, and in-default of such payment, such maker or acceptor is bound to compensate any party to the note or bill or any loss or damage sustained by him and caused by such default.

(2) The acceptor of a bill of exchange at or after maturity, by accepting it, engages to pay the amount thereof to the holder on demand.]

**33. Only drawee can be acceptor except in need or for honour.** No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

**34. Acceptance by several drawees not partners.** Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

**35. Liability of indorser.** <sup>2</sup>[In the absence of a contract to the contrary, the indorser of a negotiable instrument, by indorsing it, engages that on due presentment it shall be accepted and paid according to its tenor and that if it be dishonoured he will compensate the holder or subsequent indorser who is compelled to pay it for any loss or damage caused to him by such dishonour.]

Every indorser after dishonour is liable as upon an instrument payable on demand.

**36. Liability of prior parties to holder in due course.** Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

**37. Maker, drawer and acceptor principals.** The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

**38. Prior party a principal in respect of each subsequent party.** As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

#### *Illustration*

A draws a bill payable to his own order on B who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

<sup>3</sup>[**38A. Liability of accommodation party and position of accommodation party.**—(1) An accommodation party is liable on a negotiable instrument to a holder in due course, notwithstanding that when such holder took the instrument he knew such party to be an accommodation party.

(2) An accommodation party to a negotiable instrument, if he has paid the amount thereof, is entitled to recover such amount from the party accommodated.]

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<sup>1</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 21. for the original section 32.

<sup>2</sup>Subs. *ibid.*, s. 22. for the original paragraph.

<sup>3</sup>S. 38A, ins. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962). s. 23.

**39. Suretyship.** When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Contract Act, 1872 (IX of 1872), would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

**40. Discharge of indorser's liability.** When the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

*Illustration*

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:—

First indorsement, "B".

Second indorsement, "Peter Williams."

Third indorsement, "Wright & Co."

Fourth indorsement, "John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams, and Wright & Co. A is not entitled to recover anything from John Rozario.

**41. Acceptor bound although indorsement forged.** An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

**42. Acceptance of bill drawn in fictitious name.** An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

**43. Negotiable instrument made, etc. without consideration.** A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

*Exception I.*—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

*Exception II.*—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

**44. Partial absence or failure of money consideration.** When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.



*Explanation.*— The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

### ***Illustration***

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400. and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

**45. Partial failure of consideration not consisting of money.** Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

<sup>1</sup>**[45A. Holder's right to duplicate of lost bill.** Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]

## **CHAPTER IV OF NEGOTIATION**

**46. Delivery.** The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

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<sup>1</sup>S. 45A ins. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 3.

**47. Negotiation by delivery.** Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

**Exception.**—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

#### *Illustrations*

- (a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.
- (b) A, the holder of negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

**48. Negotiation by indorsement.** Subject to the provisions of section 58, a promissory note, bill of exchange or cheque <sup>1</sup>[payable to order] is negotiable by the holder by indorsement and delivery thereof.

<sup>2</sup>[**49. Conversion of indorsement in blank into indorsement in full.** When a negotiable instrument has been indorsed in blank, any holder may, without signing his own name, convert the blank indorsement into an indorsement in full by writing above the indorser's signature a direction to pay the amount to or to the order of himself or some other person; and the holder does not thereby incur the responsibility of an indorser.]

<sup>3</sup>[**50. Effect of indorsement.**—(1) Subject to the provisions of this Act relating to restrictive, conditional and qualified indorsement, the indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation.

(2) An indorsement is restrictive which either—

- (a) restricts or excludes the right to further negotiate the instrument; or
- (b) constitutes the indorsee an agent of the indorser to indorse the instrument or to receive its contents for the indorser or for some other specified person:

Provided that the mere absence of words implying right to negotiate does not make the indorsement restrictive.]

<sup>1</sup>Subs. by the Negotiable Instruments (Amdt.) Act, 1919 (8 of 1919), s. 4, for "payable to the order of a specified person or to a specified person or order".

<sup>2</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 24, for the original section 49.

<sup>3</sup>Subs. *ibid.*, s. 25, for the original section 50.

### *Illustrations*

B signs the following indorsements on different negotiable instruments payable to bearer :—

- (a) “Pay the contents to C only.”
- (b) “Pay C for my use.”
- (c) “Pay C or order for the account of B.”
- (d) “The within must be credited to C.”

These indorsements exclude the right of further negotiation by C.

- (e) “Pay C.”
- (f) “Pay C value in account with the Oriental Bank.”
- (g) “Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others.”

These indorsements do not exclude the right of further negotiation by C.

**51. Who may negotiate.** Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

*Explanation.*— Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

### *Illustration*

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words “or order” or any equivalent words. B may negotiate the instrument.

**52. Indorser who excludes his own liability or makes it conditional.** The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

<sup>1</sup>[Where the right of an indorsee to receive the amount due on the negotiable instrument is made dependent in the aforesaid manner the condition is valid only as between the indorser and the indorsee.]

Where the indorsement of a negotiable instrument purports to be conditional, the payer may disregard the condition, and payment to the indorsee is valid whether the condition has been fulfilled or not.]

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<sup>1</sup>Added by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 26.



### *Illustrations*

- (a) The indorser of a negotiable instrument signs his name adding the words—  
“Without recourse”.

Upon this indorsement he incurs no liability.

- (b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement “without recourse,” he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

<sup>1</sup>**[53. Holder claiming through holder in due course.** (1) A holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the negotiable instrument, has all the rights therein of that holder in due course as regards the acceptor and all parties to the instrument prior to that holder.

(2) Where the title of the holder is defective,—

- (a) if he negotiates the instrument to a holder in due course, that holder obtains a good and complete title to the instrument; and
- (b) if he obtains payment of the instrument, the person who pays him in due course gets a valid discharge for the instrument.]

<sup>2</sup>**[53A. Rights of holder in due course.** A holder in due course holds the negotiable instrument free from any defect of title of prior parties, and free from defences available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.]

**54. Instrument indorsed in blank.** Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

**55. Conversion of indorsement in blank in to indorsement in full.** If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

<sup>3</sup>**[56. Requisites of indorsement.—**(1) Negotiation by indorsement must be of the entire instrument.

(2) An indorsement which purports to transfer to the indorsee only a part of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, is not valid as a negotiation of the instrument; but where such amount has been paid in part, a note to that effect may be indorsed on the instrument, which may then be indorsed for the balance.]

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<sup>1</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 27, for the original section 53.

<sup>2</sup>S. 53A ins. *ibid.*, s. 28.

<sup>3</sup>Subs. *ibid.*, s. 29. for the original section 56.

**57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.** The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

<sup>1</sup>[**57A. Negotiation of instrument to party already liable thereon.** Where a negotiable instrument is negotiated back before maturity to the maker or drawer or a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the instrument, but he is not entitled to enforce payment of the instrument against any intervening party to whom he was previously liable.

**57B. Rights of holder.** A holder may receive payment in due course under a negotiable instrument and further negotiate it in the manner provided by this Act; he may also sue on such instrument in his own name.]

<sup>2</sup>[**58. Defective title.** When a promissory note, bill of exchange or cheque has been lost or has been obtained from any maker, drawer, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, neither the person who finds or so obtains the instrument nor any possessor or indorsee who claims through such person is entitled to receive the amount due thereon from such maker, drawer, acceptor or holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.]

**59. Instrument acquired after dishonour or when overdue.** The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or nonpayment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor <sup>3</sup>[and is subject to the equities to which the transferor was subject at the time of acquisition by such holder]:

**Accommodation note or bill.** Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

### *Illustration*

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

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<sup>1</sup>Sections 57A and 57B ins. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 30.

<sup>2</sup>Subs. *ibid.*, s. 31, for the original section 58.

<sup>3</sup>Ins. *ibid.*, s.32.

**60. Instrument negotiable till payment or satisfaction.** A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

## CHAPTER V OF PRESENTMENT

**61. Presentment or acceptance.** A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

<sup>1</sup>[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

**62. Presentment of promissory note for sight.** A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day in default of such presentment, no party thereto is liable thereon to the person making such default.

**63. Drawees time for deliberation.** The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee <sup>2</sup>[forty eight] hours (exclusive of public holidays) to consider whether he will accept it.

**64. Presentment for payment.** <sup>3</sup>[Subject to the provisions of section 76, promissory notes], bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

4\*                      \*                      \*                      \*                      \*                      \*

*Exception.*— Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof <sup>5</sup>[nor is presentment necessary to charge the acceptor of a bill of exchange].

<sup>5</sup>[The provisions of this section are without prejudice to the provisions relating to presentment for acceptance in the case of a bill of exchange.]

<sup>1</sup>Ins. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 4.

<sup>2</sup>Subs. by the Negotiable Instruments (Amdt.) Act, 1921 (12 of 1921) s. 2, for “twenty-four”.

<sup>3</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 33, for “Promissory notes” .

<sup>4</sup>The second paragraph which was ins. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 4 have been omitted by Ord. 49 of 1962, s. 33.

<sup>5</sup>Added *ibid*.

*Explanation.*— Where there are several persons, not being partners liable on the negotiable instrument, as makers, acceptors or drawees, as the case may be, and no place of payment is specified, presentment must be made to them all.]

**65. Hours for presentment.** Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

**66. Presentment for payment of instrument payable after date or sight.** A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

**67. Presentment for payment of promissory note payable by instalments.** A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

**68. Presentment for payment of instrument payable at specified place and not elsewhere.** A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

**69. Instrument payable at specified place.** A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

**70. Presentment where no exclusive place specified.** A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment <sup>1</sup>[at the address of the maker, acceptor or drawee given in the instrument, and if no such address is given] at the place of business <sup>2</sup>[(if known), or at the ordinary residence (if known)], of the maker, drawee or acceptor thereof, as the case may be.

**71. Presentment when maker etc., has no known place of business or residence.** If the maker, drawee or acceptor of a negotiable instrument has no known place of business or <sup>3</sup>\* residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

<sup>4</sup>[*Explanation.*— In this section and sections 68 and 69, “ specified place” means a place sufficiently described so as to enable the person presenting the instrument to locate it.]

<sup>5</sup>**[71A. What constitutes valid presentment and mode of presentment.—**(1) To constitute a valid presentment it shall be sufficient if instead of the original negotiable instrument a copy thereof certified to be true by the holder is delivered to the person liable thereon, either personally or by registered post or by other effective means.

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<sup>1</sup>Ins. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 34.

<sup>2</sup>Subs. *ibid.*, s. 34, for “ (if any), or at the usual residence”.

<sup>3</sup>The word “ fixed” omitted *ibid.*, s. 35.

<sup>4</sup>*Explanation* added, *ibid.*

<sup>5</sup>Section 71A ins. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 36.



(2) If, after such delivery, the person liable to pay so demands, the holder shall allow him to inspect the original negotiable instrument during the hours of business of the holder, and if the holder fails to do so within a reasonable time, the presentment shall be deemed to be invalid.]

**72. Presentment of cheque to charge drawer.** <sup>1</sup>[Subject to the provisions of section 84,] a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

**73. Presentment of cheque to charge any other person.** A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

**74. Presentment of instrument payable on demand.** Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

**75. Presentment by or to agent, representative of deceased or assignee of insolvent.** Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

<sup>2</sup>**[75A. Excuse for delay in presentment for acceptance or payment.** Delay in presentment <sup>3</sup>[for acceptance or payment] is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.]

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**76. When presentment unnecessary.** No presentment for payment is necessary and the instrument <sup>5</sup>[shall be deemed to be dishonoured] at the due date for presentment, in any of the following cases:—

- (a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,
- if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,
- if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or
- if the instrument not being payable at any specified place, he cannot after due search be found;

<sup>1</sup>Ins. by the Negotiable Instruments (Amdt.) Act, 1897 (6 of 1897), s. 2.

<sup>2</sup>S.75A Ins. by the Negotiable Instruments (Amdt.) Act, 1920 (25 of 1920), s. 2.

<sup>3</sup>Subs. by the Negotiable Instruments (Amdt.) Act, 1921 (12 of 1921), s. 3, for “for payment”.

<sup>4</sup>A new section 75B was temporarily inserted by the Negotiable Instruments Act (temporary Amdt.) Ordinance, 1948 (6 of 1948).

<sup>5</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962) s. 37, for “is dishonoured”.

- (b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
- (c) as against any party if, after maturity, with knowledge that the instrument has not been presented—  
  
he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part,  
  
or otherwise waives his right to take advantage of any default in presentment for payment;
- (d) as against the drawer, if the drawer could not suffer damage from the want of such presentment <sup>1</sup>[;]
- <sup>2</sup>[(e) where the drawee is a fictitious person;
- (f) as regards an indorser, where the negotiable instrument was made, drawn or accepted for the accommodation of that indorser and he had reason to expect that the instrument would not be paid if presented; and
- (g) where, after the exercise of reasonable diligence, presentment as required by this Act cannot be effected.

*Explanation.*— The fact that the holder has reason to believe that the negotiable instrument will, on presentment, be dishonoured does not dispense with the necessity for presentment.]

**77. Liability of banker for negligently dealing with bill presented for payment.** When a bill of exchange accepted payable at a specified bank has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

## THE PAKISTAN CODE

### CHAPTER VI OF PAYMENT AND INTEREST

**78. To whom payment should be made.** Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

<sup>3</sup>**79. Interest or return in any other form when rate specified or not specified.** Subject to the provisions of any law for the time being in force relating to the relief of debtors, and without prejudice to the provisions of section 34 of the Code of Civil Procedure, 1908, (Act V of 1908)—

<sup>1</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962) s. 37, for full-stop.

<sup>2</sup>Cls. (e), (f) and (g) and Explanation, added *ibid*.

<sup>3</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance 1962 (49 of 1962). s. 38, for the original section 79.

- (a) when interest <sup>1</sup>[or return in any other form] at a specified rate is expressly made payable on a promissory note or bill of exchange and no date is fixed from which interest <sup>1</sup>[or return in any other form] is to be paid, interest <sup>1</sup>[or return in any other form] shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the note, or, in the case of a bill, from the date on which the amount becomes payable, until tender or realisation of such amount, or until the date of the institution of a suit to recover such amount;
- (b) when a promissory note or bill of exchange is silent as regards interest or does not specify the rate of interest,

on the amount of the principal money due thereon shall, notwithstanding any collateral agreement relating to interest between any parties to the instrument, be allowed and calculated at the rate of six per centum per annum from the date of the note, or, in the case of a bill, from the date on which the amount becomes payable, until tender or realization of the amount due thereon, or until the date of the institution of a suit to recover such amount [ : ]<sup>2</sup>

<sup>3</sup>[Provided that in the case of an amount due on an instrument where the return is on bases other than interest, the return on the amount due, when no rate of return is specified in the instrument, shall be calculated at the following rate :—

- (i) in the case of return on the basis of mark-up in price, lease, hire-purchase or service charges, at the contracted rate of mark-up, rental, hire or service charges, as the case may be; and
- (ii) in the case of return on the basis of participation in profit and loss, at such rate as the Court may consider just and reasonable in the circumstances of the case, keeping in view the profit-sharing agreement entered into between the banking company and the judgement debtor when the loan was contracted;]

<sup>4</sup>[(c) notwithstanding the provisions of clauses (a) and (b), return on an amount due on an instrument where the return is on bases other than interest shall be allowed from the date it becomes due till the date it is actually paid.]

**80. Interest when no rate specified.** When no rate of interest is specified in the instrument, interest on the amount due thereon shall, <sup>5</sup>[notwithstanding any agreement relating to interest between any parties to the instrument,] be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged until tender or realization of the amount due thereon or until such date after the institution of a suit to recover such amount as the Court directs <sup>6</sup>[ : ]

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<sup>1</sup>Ins. by the Negotiable Instruments (Amdt.) Ordinance, 1980 (61 of 1980), s. 3.

<sup>2</sup>Subs by the Negotiable Instruments (Amdt.) Ordinance, 1980 (61 of 1980), s. 3. for full stop.

<sup>3</sup>Proviso added *ibid*.

<sup>4</sup>Clause (c) ins. *ibid*.

<sup>5</sup>Subs. by the Negotiable Instruments (Interest) Act, 1926 (30 of 1926) s. 2 for “except in cases provided for by the Code of Civil Procedure, section 532”.

<sup>6</sup>Subs. by Ord. 61 of 1980, s. 4 for full-stop.



<sup>1</sup>[Provided that in the case of an amount due on an instrument where the return is on bases other than interest return on the amount due, when no rate of return is specified in the instrument, shall be calculated at the following rate, and shall be allowed from the date it becomes due till the date it is actually paid :—

- (a) in the case of return on the basis of mark-up in price, lease, hire-purchase or service charges, at the contracted rate of mark-up, rental, hire or service charges, as the case may be ; and
- (b) in the case of return on the basis of participation in profit and loss, at such rate as the Court may consider just and reasonable in the circumstances of the case, keeping in view the profit-sharing agreement entered into between the banking company and the judgement debtor when the loan was contracted.]

*Explanation.*—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest <sup>2</sup>[or return in any other form, as the case may be,] only from the time that he receives notice of the dishonour.

**81. Delivery of instrument on payment, or indemnity in case of loss.** Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

## CHAPTER VII OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

**82. Discharge from liability.** The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

- (a) **by cancellation;** to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;
- (b) **by release;** to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;
- (c) **by payment.** to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

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<sup>1</sup>Proviso ins. by the Negotiable Instruments (Amdt.) Ordinance, 1980 (61 of 1980), s. 4.

<sup>2</sup>Ins. *ibid.*

**83. Discharge by allowing drawee more than forty-eight hours to accept.** If the holder of a bill of exchange allows the drawee more than <sup>1</sup>[forty-eight] hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

<sup>2</sup>**[84. When cheque not duly presented and drawer damaged thereby.]—**(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.]

#### *Illustrations*

- (a) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.
- (b) A draws a cheque at <sup>3</sup>[Sialkot] on a bank in <sup>4</sup>[Quetta]. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

**85. Cheque payable to order.**—<sup>5</sup>[(1)] Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

<sup>6</sup>[(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.]

<sup>7</sup>**[85A. Draft drawn by one branch of a bank on another payable to order.** Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.]

<sup>1</sup>Subs. by the Negotiable Instruments (Amdt.) Act, 1921 (12 of 1921), s. 2, for “twenty-four”.

<sup>2</sup>Subs. by the Negotiable Instruments Act, (Amendment) Act, 1897 (6 of 1897), s. 3, for the original section.

<sup>3</sup>Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s.3, and 2nd Sch., for “Umballa” (with effect from the 14th October, 1955).

<sup>4</sup>Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1980 (27 of 1980), s. 3 and IIInd Sch., for “Chittagong” which was subs. by Ord. 21 of 1960, s. 3 and 2nd Sch. for “Calcutta” (with effect from the 14th October, 1955).

<sup>5</sup>Section 85 re-numbered as sub-section (1) of section 85 by the Negotiable Instruments (Amdt.) Act, 1934 (17 of 1934), s. 2.

<sup>6</sup>Sub-section (2) added, *ibid*.

<sup>7</sup>Section 85A ins. by the Negotiable Instruments (Amdt.) Act, 1930 (25 of 1930), s.2.

**86. Parties not consenting discharged by qualified or limited acceptance.** If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

**Explanation.**—An acceptance is qualified—

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;
- (b) where it undertakes the payment of part only of the sum ordered to be paid;
- (c) where, no place of payment being specified on the order it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;
- (d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

**87. Effect of material alteration.** Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

**Alteration by indorsee.** and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

**88. Acceptor indorser bound notwithstanding previous alteration.** An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

**89. Payment of instrument on which alteration is not apparent.** Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

<sup>1</sup>[**90. Extinguishment of rights of action on bill in acceptor's hands.** The maker, drawer, acceptor or indorser of negotiable instrument is discharged from liability thereon when the person liable thereon as principal debtor becomes the holder thereof at or after its maturity.

(2) When the holder of an accepted bill of exchange enters into any contract with the acceptor of the nature referred to in section 39, the other parties are discharged, unless the holder has expressly reserved his right to charge them.]

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## CHAPTER VIII OF NOTICE OF DISHONOUR

**91. Dishonour by non-acceptance.** A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

**92. Dishonour by non-payment.** A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

**93. By and to whom notice should be given.** When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

<sup>2</sup>[When a bill of exchange is dishonoured by non-acceptance the drawer or any indorser to whom such notice is not given is discharged; but the rights of a holder in due course subsequent to the omission to give notice shall not be prejudiced by that omission.

When a bill of exchange is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall, in the meantime, have been accepted.]

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

**94. Mode in which notice may be given.** Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

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<sup>1</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance 1962 (49 of 1962), s. 39, for the original section 90.

<sup>2</sup>Ins. *ibid.*, s.40.



If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

**95. Party receiving must transmit notice of dishonour.** Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

**96. Agent for presentment.** When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

**97. When party to whom notice given is dead.** When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

**98. When notice of dishonour is unnecessary.** No notice of dishonour is necessary—

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer when he has countermanded payment;
- (c) when the party charged could not suffer damage for want of notice;
- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it ;
- (e) to charge the drawers when the acceptor is also a drawer;
- (f) in the case of a promissory note which is not negotiable;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

## THE PAKISTAN CODE

### CHAPTER IX OF NOTING AND PROTEST

**99. Noting.** When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

**100. Protest.** When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

**Protest for better security.** When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

**101. Contents of protest.** A protest under section 100 must contain—

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;
- (b) the name of the person for whom and against whom the instrument has been protested;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer or that he could not find;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

<sup>1</sup>[A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.]

**102. Notice of protest.** When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

**103. Protest for non-payment after dishonour by non-acceptance.** All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

**104. Protest of foreign bills.** Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

<sup>2</sup>[**104A. When noting equivalent to protest.** For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer or that he could not be taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting. ]

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<sup>1</sup>Ins. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 5.

<sup>2</sup>Section 104A ins. *ibid.*, s.6.

## CHAPTER X OF REASONABLE TIME

**105. Reasonable time.** In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

**106. Reasonable time of giving notice of dishonour.** If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

**107. Reasonable time for transmitting such notice.** A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

## CHAPTER XI OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

**108. Acceptance for honour.** When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto.

1\*                      \*                      \*                      \*                      \*                      \*

**109. How acceptance for honour must be made.** A person desiring to accept for honour must, <sup>2</sup>[by writing on the bill under his hand,] declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour;

<sup>3</sup>\*                      \*                      \*

**110. Acceptance not specifying for whose honour it is made.** Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

**111. Liability of acceptor for honour.** An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

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<sup>1</sup>The second paragraph of the section was rep. by the Negotiable Instruments Act, 1885 (2 of 1885), s. 7.

<sup>2</sup>Subs. *ibid.*, s. 8, for "in the presence of a notary public subscribe the bill with his own hand and".

<sup>3</sup>The words "and such declaration must be recorded by the notary in his register" rep. *ibid.*



But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

**112. When acceptor for honour may be charged.** An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

**113. Payment for honour.** When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying <sup>1</sup>[or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

**114. Right of payer for honour.** Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

**115. Drawee in case of need.** Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

**116. Acceptance and payment without protest.** A drawee in case of need may accept and pay the bill of exchange without previous protest.

## CHAPTER XII OF COMPENSATION

**117. Rules as to compensation.** The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall  
<sup>2</sup> \* \* \* be determined by the following rules :—

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;

<sup>1</sup>Ins. by the Negotiable Instruments Act, 1885 (2 of 1885), s.9.

<sup>2</sup>Certain words were omitted by the Negotiable Instruments (Interest) Act, 1926 (30 of 1926), s.3.

- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

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### CHAPTER XIII SPECIAL RULES OF EVIDENCE

**118. Presumptions as to negotiable instruments.** Until the contrary is proved, the following presumptions shall be made:

- (a) **of consideration;** that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
- (b) **as to date;** that every negotiable instrument bearing a date was made or drawn on such date;
- (c) **as to time of acceptance;** that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
- (d) **as to time of transfer;** that every transfer of a negotiable instrument was made before its maturity;
- (e) **as to order of indorsement;** that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- (f) **as to stamp;** that a lost promissory note, bill of exchange or cheque was duly stamped;
- (g) **that holder is a holder in due course.** that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

**119. Presumption on proof of protest.** In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

**120. Estoppel against denying original validity of instrument.** No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

**121. Estoppel against denying capacity of payee to indorse.** No maker of a promissory note and no acceptor of a bill of exchange <sup>1</sup>[payable to order] shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

**122. Estoppel against denying signature or capacity of prior party.** No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

## CHAPTER XIV

### <sup>2</sup>[SPECIAL PROVISIONS RELATING TO CHEQUES]

<sup>3</sup>[**122A. Revocation of banker's authority.** The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

- (1) countermand of payment ;
- (2) notice of the customer's death;
- (3) notice of adjudication of the customer as an insolvent.]

**123. Cheque crossed generally.** Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

<sup>4</sup>[**123A. Cheque crossed "account payee".**— (1) Where a cheque crossed generally bears across its face an addition of the words "account payee" between the two parallel transverse lines constituting the general crossing, the cheque, besides being crossed generally, is said to be crossed "account payee".

(2) When a cheque is crossed "account payee"—

- (a) it shall cease to be negotiable; and
- (b) it shall be the duty of the banker collecting payment of the cheque to credit the proceeds thereof only to the account of the payee named in the cheque.]

<sup>1</sup>Subs. by the Negotiable Instruments (Amdt.) Act, 1919 (8 of 1919), s. 5, for "payable to, or to the order of, a specified person".

<sup>2</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 41, for the original heading "OF CROSSED CHEQUES".

<sup>3</sup>Section 122A ins. *ibid.*, s.42.

<sup>4</sup>Section 123A ins. *ibid.*, s. 43.

**124. Cheque crossed specially.** Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable”, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

**125. Crossing after issue.** Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words “not negotiable”.

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

<sup>1</sup>[When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.]

<sup>2</sup>[**125A. Crossing a material part of a cheque.** A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate, or, except as authorized by this Act, to add to or alter, the crossing.]

**126. Payment of cheque crossed generally.** Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

**Payment of cheque crossed specially.** Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

**127. Payment of cheque crossed specially more than once.** Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

**128. Payment in due course of crossed cheque.** Where the banker on whom a crossed cheque is drawn <sup>3</sup>[in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed or his agent for collection, being a banker], the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

**129. Payment of crossed cheque out of due course.** Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid <sup>4</sup>[ : ]

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<sup>1</sup>New paragraph ins. by the Negotiable Instruments (Amdt.) Ordinance, 1962(49 of 1962), s. 44.

<sup>2</sup>Section 125A ins. *ibid.*, s. 45.

<sup>3</sup>Subs. *ibid.*, s. 46, for “ has paid the same in due course”.

<sup>4</sup>Subs. *ibid.*, s. 47, for the full-stop.



<sup>1</sup>[Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, added to or altered otherwise than as authorized by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection, being a banker, as the case may be.]

**130. Cheque bearing “not negotiable”.** A person taking a cheque crossed generally or specially, bearing in either case the words “not negotiable,” shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

**131. Non-liability of banker receiving payment of cheque.** <sup>2</sup>[Subject to the provisions of this Act relating to cheques crossed “account payee” , where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not, incur any liability to the true owner of the cheque by reason only of having received such payment.]

<sup>3</sup>[*Explanation.*— A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer’s account with the amount of the cheque before receiving payment thereof.]

<sup>4</sup>[**131A. Application of Chapter to drafts.** The provisions of this Chapter shall apply to any draft, as defined in section 85A, as if the draft were a cheque.]

<sup>5</sup>[**131B. Protection to banker crediting cheque crossed “account payee”.** Where a cheque is delivered for collection to a banker which does not at the time of such delivery appear to be crossed “account payee”, or to have had a crossing “account payee” which has been obliterated or altered, the banker, in good faith and without negligence collecting payment of the cheque and crediting the proceeds thereof to a customer, shall not incur any liability by reason of the cheque having been crossed “account payee”, or of such crossing having been obliterated or altered, and of the proceeds of the cheque having been credited to a person who is not the payee thereof.]

**131C. Cheque not operating as assignment of funds.** A cheque, of itself, does not operate as an assignment of any part of the funds to the credit of the drawer with the banker.]

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<sup>1</sup>Proviso added by the Negotiable Instruments (Amdt.) Ordinance, 1962(49 of 1962), s.47.

<sup>2</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 48, for the original paragraph.

<sup>3</sup> *Explanation* ins. by the Negotiable Instrument (Amdt.) Act, 1922 (18 of 1922), s. 2.

<sup>4</sup> Section 131A was added by the Negotiable Instruments (Amdt.) Act, 1947 (33 of 1947), s. 2.

<sup>5</sup> Sections 131B and 131C ins. by Ord. 49 of 1962, s. 49.



## CHAPTER XV

### [SPECIAL PROVISIONS RELATING TO BILLS OF EXCHANGE]

<sup>2</sup>[**131D. Several drawees.** A bill of exchange may be addressed to two or more drawees, whether they are partners or not; but an order addressed to two drawees, in the alternative, or to two or more drawees in succession, is not a bill of exchange.

**131E. In whose favour a bill may be drawn.** A bill of exchange may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

**131F. When presentment for acceptance is necessary.** A bill of exchange, in order to fix the acceptor with liability, must be presented for acceptance before it is presented for payment.

**131G. When presentment excused.** Presentment for acceptance is excused, and a bill of exchange may be treated as dishonoured by non-acceptance—

- (a) where the drawee is dead or is insolvent or is a fictitious person or a person not having capacity to contract by bill of exchange;
- (b) where, at the due date for presentment, the drawee cannot, after reasonable search, be found at the place at which the bill is to be presented;
- (c) where, after the exercise of reasonable diligence such, presentment cannot be effected;
- (d) where, although the presentment has been irregular, acceptance has been refused on some other ground.

**131H. Holder's right of recourse against drawer and indorsers.** Subject to the provisions of this Act, when a bill of exchange is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues, to the holder, and no presentment for payment is necessary.

**131I. Holder may refuse qualified acceptance.** The holder of a bill of exchange may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.]

**132. Set of bills.** Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

*Exception.*— When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

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<sup>1</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 50, for the original heading "OF BILLS IN SETS".

<sup>2</sup>Sections 131D, 131E, 131F, 131G, 131H and 131I, ins. *ibid.*, s. 51.

**133. Holder of first acquired part entitled to all.** As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

## CHAPTER XVI OF INTERNATIONAL LAW

<sup>1</sup>[**134. Law governing liability of parties to a foreign instrument.** In the absence of a contract to the contrary and subject to the provisions of section 136, in the case of a foreign promissory note, bill of exchange or cheque,—

- (a) the law of the place where the instrument was made or drawn, or accepted or negotiated shall determine—
  - (i) the capacity of the parties ; and
  - (ii) the validity of the instrument or, as the case may be, of its acceptance or negotiation:

Provided that such instrument shall not be invalid or inadmissible in evidence by reason only that it was not stamped or not sufficiently stamped according to the law of the place where it was made or drawn ;

- (b) the law of the place where such instrument is payable shall determine,—
  - (i) the liability of all parties thereto;
  - (ii) the duties of the holder with respect to presentment for acceptance or payment;
  - (iii) the date of maturity of the instrument;
  - (iv) what constitutes dishonour ;
  - (v) the necessity for and sufficiency of a protest or notice of dishonour ;
  - (vi) all questions relating to payment and satisfaction including the currency in which and the rate of exchange at which the instrument is to be paid.]

### *Illustration*

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is endorsed in <sup>2</sup>[Pakistan], and is dishonoured. An action on the bill is brought against B in <sup>2</sup>[Pakistan]. He is liable to pay interest at the rate of 6 percent only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

<sup>1</sup>Subs. by the Negotiable Instruments (Amdt.) Ordinance, 1962 (49 of 1962), s. 52, for the original section 134.

<sup>2</sup>Subs. by the Negotiable Instruments (Amdt.) Act, 1957 (5 of 1958), s.6 (with effect from the 14th October, 1955), for “the Provinces and the Capital of the Federation” which had been subs. by A. O., 1949, Arts. 3 (2) and 4, for “British India” .

**135.** *[Law of place of payment governs dishonour.] Omitted by the Negotiable Instruments (Amdt.) Ordinance, 1962 (XLIX of 1962) s. 53.*

**136. Instrument made, etc., outside Pakistan, but in accordance with their Law.** If a negotiable instrument is made, drawn, accepted or indorsed <sup>1</sup>[outside <sup>2</sup>[Pakistan]], but in accordance with the law of <sup>2</sup>[Pakistan], the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon <sup>3</sup>[within <sup>2</sup>[Pakistan]].

**137. Presumption as to foreign law.** The law of any <sup>4</sup>\* \* \* foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of <sup>2</sup>[Pakistan], unless and until the contrary is proved.

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## **<sup>5</sup>[ CHAPTER XVII NOTARIES PUBLIC**

**138. Power to appoint notaries public.** The <sup>6</sup>[Federal Government] may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such with in any local area, and may, by like notification, remove from office any notary public appointed under this Act.

**<sup>7</sup>139. Power to make rules for notaries public.** The <sup>6</sup>[Federal Government] may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters) fix the fees payable to such notaries.]

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**SCHEDULE.**—*[Enactments repealed.] Rep. by the Amending Act, 1891 (XII of 1891).*

## **THE PAKISTAN CODE**

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<sup>1</sup>Subs. by A.O., 1949, Sch., read with Art. 4, for “out of British India”.

<sup>2</sup>Subs. by the Negotiable Instruments (Admt.) Act, 1957 (5 of 1958), s. 6, for “the Provinces and the Capital of the Federation” (with effect from the 14th October, 1955).

<sup>3</sup>Subs. by A.O., 1949, Sch., read with Art. 4, for “in British India”.

<sup>4</sup>The words “Acceding State or” which were ins. by the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), s. 4 and 3rd Sch., omitted by Act No.5 of 1958, s. 6 (with effect from the 14th October, 1955).

<sup>5</sup>Ch. XVII was added by the Negotiable Instruments Act, 1885 (2 of 1885), s. 10.

<sup>6</sup>Subs. by F.A.O., 1975, Art. 2 and Table for “Central Government” which was subs. by A.O., 1937, for” L.G.” which has been subs., for” G.G. in C” by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Part I.

<sup>7</sup>For rules under this section, see Notification No. 1433, dated 30th September, 1886, Gazette of India, 1886. Part I, p.548.