

NEGOTIATION OF BILLS

Negotiation defined,

31. (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

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

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

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement,

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely :—

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a " copy " of a bill issued or negotiated in a country where " copies " are recognized, is deemed to be written on the bill itself,

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding if he think fit, his proper signature.

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

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

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

34. (1) An indorsement in blank indorsement in specifies no indorsee, and a bill so indorsed blank-becomes payable to bearer.

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

(3) The provisions of this Ordinance relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorsee's signature a direction to pay the bill to or to the order of himself or some other person.

35. (1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed— Restrictive indorsement, [§3,30 of 1961.]

" Pay D only " ;

or

" Pay D for the account of X " ;

or

"Pay D or order for collection".

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorize him to do so.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

How long bill continues negotiable.

36. (!) Where a bill is negotiable in its origin it continues to be negotiable until it has been—

- (a) restrictively indorsed, or
- (b) discharged by payment or otherwise,

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand' is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time, for this purpose is a question of fact.

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

(5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course.

Negotiation of bill to party already liable thereon.

37. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Ordinance, reissue and further negotiate the bill, but he is not

entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

38. The rights and powers of the holder of a bill are as follows :— Rights of the holder-

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

GENERAL DUTIES OF THE HOLDER

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

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

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

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

Time for presenting bill payable after sight.

.40. (I) Subject to the provisions of this Ordinance, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

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

Rules regarding presentment for acceptance, and excuses for non-presentment.

41. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules;—

- (a) the presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue ;
- (b) where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only;
- (c) where the drawee is dead presentment may be made to his personal representative;
- (d) where the drawee is insolvent or bankrupt, presentment may be made to him or to his assignee or trustee;
- (e) where authorized by agreement or usage, a presentment through the post office is sufficient;
- (f) where the day on which a bill should be presented is a bank holiday, the bill shall be presented on the succeeding business day. *

(2) Presentment in accordance with these rules is excused and a bill may be treated as dishonoured by non-acceptance—

- (ff) where the drawee is dead, insolvent, or bankrupt, or is a fictitious

person or a person not having capacity to contract by bill;

- (b) where, after the exercise of reasonable diligence, such presentment cannot be effected ;
- (c) where, although the presentment has been irregular, acceptance has been refused on some other ground.

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

42. (1) When a bill is duly presented for acceptance, and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Non-acceptance after customary time.

(2) Where the day on which a bill should be accepted is a bank holiday, the bill shall be accepted on the succeeding business day.

43. (1) A bill is dishonoured by non-acceptance—

Dishonour by non-acceptance and its consequences.

- (a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Ordinance is refused or cannot be obtained ; or
- (b) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Ordinance, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary,

44. (1) The holder of a bill 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.

Duties as to qualified acceptances.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.