

THE NEGOTIABLE INSTRUMENTS ACT, 1881

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THE NEGOTIABLE INSTRUMENTS ACT, 1881

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.■

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:■

Preamble

CHAPTER I

PRELIMINARY

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

Short title

It extends to the whole of Bangladesh; but nothing herein contained affects the provisions of 1[Articles 23 and 24 of the Bangladesh Bank Order, 1972]; and it shall come into force on the first day of March, 1882.

Local extent Saving of usages relating to hundis, etc. Commencement

2[1A. 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.]

Application of the Act

2. [Repealed by the Amending Act, 1891 (Act No. XII of 1891).]

■ Throughout this Act, except otherwise provided, the words “Bangladesh”, “Government” and “Taka” were substituted, for the words “Pakistan”, Central Government” and “Rs.” or “Rupees” respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

1 The words, figures and comma “Articles 23 and 24 of the Bangladesh Bank Order, 1972” were substituted, for the words, figures and comma “Sections 24 and 25 of the State Bank of Pakistan Act, 1956” by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973). 2 Section 1A was inserted by section 3 of the Negotiable Instruments Act, 1881 484

Interpretation-clause 3. 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;

(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 Government to perform the functions of notary public under this Act and a notary appointed under the Notaries Ordinance, 1961.

CHAPTER II
OF NOTES, BILLS AND CHEQUES
“Promissory note”

4. 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 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.

Negotiable Instruments Act, 1881 485

Illustrations

A signs instruments in the following terms:

(a) “I promise to pay B or order Taka 500.”

(b) “I acknowledge myself to be indebted to B in Taka 1,000 to be paid on demand, for value received.”

(c) “Mr. B, I O U Taka 1,000.”

(d) “I promise to pay B Taka 500 and all other sums which shall be due to him.”

(e) “I promise to pay B Taka 500, first deducting thereout any money which he may owe me.”

(f) “I promise to pay B Taka 500 seven days after my marriage with C.”

(g) “I promise to pay B Taka 500 on D’s death, provided D leaves me enough to pay that sum.”

(h) “I promise to pay B Taka 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. A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay on demand or at 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.
“Bill of exchange”

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.

Negotiable Instruments Act, 1881 486

The sum payable may be "certain," within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is 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, the whole or the unpaid balance shall become due.

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.

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

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

"Drawer" "Drawee" 7. 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". Negotiable Instruments Act, 1881 487

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."

"Acceptor for honour"

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".
"Payee"

8. 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.
"Holder"

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.

9. "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.
"Holder in due course"

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" 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.
"Payment in due course"

11. A promissory note, bill of exchange or cheque drawn or made in Bangladesh, and made payable in, or drawn upon any person resident in, Bangladesh shall be deemed to be an inland instrument.
Inland instrument Negotiable Instruments Act, 1881 488

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

"Negotiable instrument" 13. (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.

(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.

Negotiation 14. 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.

Indorsement 15. 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".

"Indorsement in blank" and "in full" "Indorsee"

16. (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. Negotiable Instruments Act, 1881 489

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

17. 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.

Ambiguous instruments

18. 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:

Where amount is stated differently in figures and words

Provided that if the words, are ambiguous or uncertain, the amount may be ascertained by referring to the figures.

19. A promissory note or bill of exchange is payable on demand,■

Instruments 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.

20. (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.
Inchoate stamped instruments

(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:

Negotiable Instruments Act, 1881 490

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.

"At sight." "On presentment." "After sight"

21. 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.

When note or bill payable on demand is overdue

1[21A. 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.

A note or bill payable at a determinable future time

21B. 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. Anti-dating and post-dating 21C. A promissory note, bill of exchange or cheque is invalid by reason only that it is anti-dated or post-dated:

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

1 Sections 21A, 21B and 21C were inserted by section 12 of the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 491

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

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.
Days of grace

23. 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.
Calculating maturity of bill or note payable so many months after date or sight

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. 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.

Calculating maturity of bill or note payable so many days after date or sight

. Negotiable Instruments Act, 1881 492

When day of maturity is a holiday

25. 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.

Explanation - The expression "public holiday" includes Sundays and the days declared by the Government, by notification in the official Gazette, to be public holidays.

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES

Capacity to make, etc., promissory notes, etc.

26. 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 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.

Agency 27. Every person capable of binding himself or of being bound, by the making, drawing, acceptance or negotiation of a negotiable instrument, may so bind himself or be bound by a duly authorised 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.

Authority of partners

1[27A. 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 authorised by law relating to partnership for the time being in force.]

1 Section 27A was inserted by section 16 of the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 493

28. (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.
Liability of agent signing

(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.

1[28A. (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".
Transferor by delivery and transferee

(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. 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.
Liability of legal representative signing

1[29A. 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:
Signature essential to liability

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.

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1 Sections 28A, 29A, 29B and 29C were inserted by section 19 of the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 494
Forged or unauthorised signature

29B. 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 unauthorised 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 unauthorised signature not amounting to a forgery.

Stranger signing instrument presumed to be indorser

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

Liability of drawer 30. (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.

Liability of drawee of cheque

31. 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. Negotiable Instruments Act, 1881 495

32. (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.

Liability of maker of note and acceptor of bill

(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. 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.

Only drawee can be acceptor except in need or for honour

34. 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.
Acceptance by several drawees not partners

35. 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.

Liability of indorser

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

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

Liability of prior parties to holder in due course

37. 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.

Maker, drawer and acceptor principals Negotiable Instruments Act, 1881 496

Prior party a principal in respect of each subsequent party

38. 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.

Liability of accommodation party and position of accommodation party

1[38A. (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.]

Suretyship 39. 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, 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.

Discharge of indorser's liability

40. 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."

1 Section 38A was inserted by section 23 of the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 497

This bill A puts in suit against John Rozario and strike 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. 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.

Acceptor bound although indorsement forged

42. 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.

Acceptance of bill drawn in fictitious name

43. 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.

Negotiable instrument made, etc., without consideration

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.

. Negotiable Instruments Act, 1881 498

Partial absence
or failure of
money
consideration

44. 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 Taka 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 Taka 400, and as an accommodation to the plaintiff as to the residue. A can only recover Taka 400.

Partial failure
of
consideration
not consisting
of money

45. 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 inquiry, 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.

Holder's right
to duplicate of
lost bill

1[45A. 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.]

1 Section 45A was inserted by section 3 of the Negotiable Instruments (Amendment) Act, 1885 (Act No. II of 1885). Negotiable Instruments Act, 1881 499
CHAPTER IV

OF NEGOTIATION

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

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 authorised 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.

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

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.

Negotiable Instruments Act, 1881 500

(b) A, the holder of a 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.

Negotiation by indorsement 48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Conversion of indorsement in blank into indorsement in full
49. 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.

Effect of indorsement

50. (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.

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." Negotiable Instruments Act, 1881 501

(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. 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.

Who may negotiate

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. 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. Indorser who excludes his own liability or makes it conditional

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

Negotiable Instruments Act, 1881 502

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.

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.

Holder claiming through holder in due course

53. (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.

Rights of holder in due course

1[53A. 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.]

1 Section 53A was inserted by section 28 of the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 503

54. 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.

Instrument indorsed in blank

55. 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.

Conversion of indorsement in blank into indorsement in full

56. (1) Negotiation by indorsement must be of the entire instrument.

Requisites of indorsement

(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.

57. 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.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased

1[57A. 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.
Negotiation of instrument to party already liable thereon

57B. 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.]
Rights of holder

1 Sections 57A and 57B were inserted by section 30 of the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 504

Defective title 58. 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.

Instrument acquired after dishonour or when overdue Accommodation note or bill

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor and is subject to the equities to which the transferor was subject at the time of acquisition by such holder:

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.

Instrument negotiable till payment or satisfaction

60. 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. 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.

Presentment for acceptance

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.

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

62. 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.

Presentment of promissory note for sight

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time for deliberation

64. 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.

Presentment for payment Negotiable Instruments Act, 1881 506

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 nor is presentment necessary to charge the acceptor of a bill of exchange.

The provisions of this section are without prejudice to the provisions relating to presentment or acceptance in the case of a bill of exchange.

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.

Hours for
presentment

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

Presentment
for payment of
instrument
payable after
date or sight

66. 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.

Presentment
for payment of
promissory
note payable by
instruments

67. 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.

Presentment
for payment of
instrument
payable at
specified place
and not
elsewhere

68. 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.

Instrument
payable at
specified place

69. 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. Negotiable Instruments Act, 1881 507

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70. A promissory note or bill of exchange, not made

payable as mentioned in sections 68 and 69, must be presented for payment 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 if known, or at the ordinary residence (if known), of the maker, drawee or acceptor thereof, as the case may be.

Presentment where no exclusive place specified

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or 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.

Presentment when maker, etc., has no known place of business or residence

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.

1[71A. (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.

What constitutes valid presentment and mode of presentment

(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. 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.

Presentment of cheque to charge drawer

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

Presentment of cheque to charge any other person

74. 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.

Presentment of instrument payable on demand

1 Section 71A was inserted by section 36 of the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 508

Presentment by
or to agent,
representative
of deceased or

assignee of
insolvent

75. 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.

Excuse for
delay in
presentment for
acceptance or
payment

1[75A. Delay in presentment 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.]

When
presentment
unnecessary

76. No presentment for payment is necessary, and the instrument 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 authorised 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;

(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;

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1 Section 75A was inserted by section 2 of the Negotiable Instruments (Amendment) Act, 1920 (Act No. XXV of 1920). Negotiable Instruments Act, 1881 509

(d) as against the drawer, if the drawer could not suffer

damage from the want of such presentment;

(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 holder has reason to believe that the negotiable instrument will, on presentment, be dishonoured does not dispense with the necessity for presentment.

77. 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.

Liability of
banker for
negligently
dealing with
bill presented
or payment

CHAPTER VI OF PAYMENT AND INTEREST

78. 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.

To whom
payment
should be made

79. 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,■

Interest when
rate specified
or not specified

(a) when interest at a specified rate is expressly made payable on a promissory note or bill of exchange and no date is fixed from which interest is to be paid, interest 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;

. Negotiable Instruments Act, 1881 510

(b) when a promissory note or bill of exchange is silent as regards interest or does not specify the rate of interest, 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 realisation of the amount due thereon, or until the date of the institution of a suit to recover such amount.

Interest when no rate specified

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, 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 realisation of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation - When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment, or indemnity in case of loss

81. 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 Discharge from liability- 82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon■

by cancellation (a) 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;

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Negotiable Instruments Act, 1881 511

(b) 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;

by release

(c) 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.

by payment

83. If the holder of a bill of exchange allows the drawee more than 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.

Discharge by allowing drawee more than forty-eight hours to accept

84. (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.

When cheque not duly presented and drawer damaged thereby

(2) In determining what is a reasonable time is, 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 Taka 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.

Negotiable Instruments Act, 1881 512

(b) A draws a cheque at 1[Dinajpur] on a bank in Chittagong. The bank fails before the cheque could be presented in ordinary course. A is on discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Cheque payable to order

85. (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

(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 indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

Drafts drawn by one branch of a bank on another payable to order 2[85A. 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 indorsed by or on behalf of the payee, the bank is discharged by payment in due course.]

Parties not consenting discharged by qualified or limited acceptance

86. 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;

1 The word “Dinajpur” was substituted, for the word “Sialkot” by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973). 2 Section 85A was inserted by section 2 of the Negotiable Instruments (Amendment) Act, 1930 (Act No. XXV of 1930). Negotiable Instruments Act, 1881 513

(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. Any material alteration of a negotiable instrument renders the same void as against any one 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;
Effect of material alteration

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

consideration thereof.
Alteration by indorsee

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

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

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

Negotiable Instruments Act, 1881 514

Extinguishment of rights of action on bill in acceptor's hands

90. (1) The maker, drawer, acceptor or indorser of a 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.

CHAPTER VIII OF NOTICE OF DISHONOUR

Dishonour by non-acceptance

91. 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.

Dishonour by non-payment

92. 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.

By and to whom notice should be given

93. 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.

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. Negotiable Instruments Act, 1881 515

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. Notice of dishonour may be given to a duly authorised 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.

Mode in which notice may be given

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

95. 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. Party receiving must transmit notice of dishonour

96. When the instrument is deposited with an agent for presentment, the agent 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.

Agent for presentment

97. 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.

When party to whom notice given is dead Negotiable Instruments Act, 1881 516

When notice of dishonour is unnecessary

98. 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.

CHAPTER IX OF NOTING AND PROTEST

Noting 99. 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.

Protest 100. 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.

. Negotiable Instruments Act, 1881 517

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.

Protest for better security.

101. A protest under section 100 must contain- Contents of protest

(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 be found;

(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.

A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorised by agreement or usage, by registered letter.

102. 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.

Notice of protest

. Negotiable Instruments Act, 1881 518

Protest for non-payment after dishonour by non-acceptance

103. 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.

Protest of
foreign bills

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

When noting
equivalent to
protest

1[104A. 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 taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.]

CHAPTER X OF REASONABLE TIME

Reasonable
time

105. 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.

Reasonable
time of giving
notice of
dishonour

106. 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.

1 Section 104A was inserted by section 5 of the Negotiable Instruments (Amendment) Act, 1885 (Act No. II of 1885). Negotiable Instruments Act, 1881 519

107. 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.

Reasonable time for transmitting such notice

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

108. 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.

Acceptance for honour

109. A person desiring to accept for honour must, 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. How acceptance for honour must be made

110. 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.

Acceptance not specifying for whose honour it is made

111. 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.

Liability of acceptor for honour

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. 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.

When acceptor for honour may be charged Negotiable Instruments Act, 1881 520

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Payment for honour

113. 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 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.

Right of payer for honour

114. 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.

Drawee in case of need 115. 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.

Acceptance and payment without protest

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

CHAPTER XII OF COMPENSATION

Rules as to compensation

117. 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 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 realisation thereof, together with all expenses caused by the dishonour and payment; Negotiable Instruments Act, 1881 521

(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;

(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.

CHAPTER XIII

SPECIAL RULES OF EVIDENCE

118. Until the contrary is proved, the following presumptions shall be made:

Presumptions as to negotiable instruments of consideration

(a) 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) that every negotiable instrument bearing a date was made or drawn on such date;
as to date

(c) that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
as to time of acceptance

(d) that every transfer of a negotiable instrument was made before its maturity;
as to time of transfer

(e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
as to order of indorsement

(f) that a lost promissory note, bill of exchange or cheque was duly stamped;
as to stamp

. Negotiable Instruments Act, 1881 522

that holder is a holder in due course

(g) 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 burden of proving that the holder is a holder in due course lies upon him.

Presumption on proof of protest 119. 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.

Estoppel against denying original validity of instrument

120. 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.

Estoppel against denying capacity of payee to indorse

121. No maker of a promissory note and no acceptor of a bill of exchange 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.

Estoppel against denying signature or capacity of prior party

122. 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

SPECIAL PROVISIONS RELATING TO CHEQUES

Revocation of banker's authority

1[122A. 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.]

1 Section 122A was inserted by section 42 of the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 523

123. 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.

Cheque crossed generally

1[123A. (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".

Cheque 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.]

124. 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.

Cheque crossed specially

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

Crossing after issue

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.

1 Section 123A was inserted by section 43 of the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 524

When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

Crossing a material part of a cheque

1[125A. A crossing authorised by this Act is a material part part of the cheque; it shall not be lawful for any person to obliterate, or, except as authorised by this Act, to add to or alter, the crossing.]

Payment of cheque crossed generally

126. 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.

Payment of cheque crossed specially more than once

127. 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.

Payment in due course of crossed cheque

128. Where the banker on whom a crossed cheque is drawn 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.

Payment of crossed cheque out of due course

129. 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:

1 Section 125A was inserted by section 45 of the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 525

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 authorised 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 authorised 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. 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. Cheque bearing "not negotiable"

131. 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.

Non-liability of banker receiving payment of cheque

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.

1[131A. The provisions of this Chapter shall apply to any draft, as defined in section 85A, as if the draft were a cheque.]
Application of Chapter to drafts

2[131B. 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 Protection to banker crediting cheque crossed "account payee"

1 Section 131A was inserted by section 2 of the Negotiable Instruments (Amendment) Act, 1947 (Act No. XXXIII of 1947).

2 Sections 131B, 131C, 131D, 131E, 131F, 131G, 131H and 131I were inserted by the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962). Negotiable Instruments Act, 1881 526

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.

Cheque not operating as assignment of funds

131C. 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.

CHAPTER XV

SPECIAL PROVISIONS RELATING TO BILLS OF EXCHANGE

Several drawees

131D. 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.

In whose favour a bill may be drawn

131E. 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.

When presentment for acceptance is necessary

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

When presentment excused

131G. 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. Negotiable Instruments Act, 1881 527

131H. 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. Holder's right of recourse against drawer and indorsers

131-I. 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.]

Holder may refuse qualified acceptance

132. 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.

Set of bills

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.

133. 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.
Holder of first acquired part entitled to all

CHAPTER XVI

OF INTERNATIONAL LAW

134. 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,-

Law governing liability of parties to a foreign instrument (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:

Negotiable Instruments Act, 1881 528

. 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 indorsed in Bangladesh, and is dishonoured. An action on the bill is brought against B in Bangladesh. He is liable to pay Interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. [Omitted by the Negotiable Instruments (Amendment) Ordinance, 1962 (Ordinance No. XLIX of 1962) section 53.]

Instrument made, etc., outside Bangladesh but in accordance with their law

136. If a negotiable instrument is made, drawn, accepted or indorsed outside Bangladesh, but in accordance with the law of Bangladesh, 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 within Bangladesh.

Presumption as to foreign law

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of Bangladesh, unless and until the contrary is proved. Negotiable Instruments Act, 1881 529

1[CHAPTER XVII

ON PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNT

138. 2[(1)] Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount on Dishonour of cheque for insufficiency, etc. of funds in the account

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 5[thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of

1 The "CHAPTER XVII" including sections 138 to 141 were substituted, for "CHAPTER XVII" including sections 138 and 139" by section 2 of the Negotiable Instruments (Amendment) Act, 1994 (Act No. XIX of 1994).

2 The existing section was re-numbered as sub-section (1) by section 2 of the Negotiable Instruments (Amendment) Act, 2000 (Act No. XVII of 2000).

3 The words and commas "for the discharge, in whole or in part, of any debt or other liability," were omitted by section 2 of the Negotiable Instruments (Amendment) Act, 2000 (Act No. XVII of 2000).

4 The word "thrice" was substituted, for the word "twice" by section 2 of the Negotiable Instruments (Amendment) Act, 2000 (Act No. XVII of 2000). 5 The words "thirty days" were substituted for the words "fifteen days" by section 2 of the Negotiable Instruments (Amendment) Act, 2006 (Act No. III of 2006). Negotiable Instruments Act, 1881 530 the cheque, within 1[thirty days] of the receipt of the said notice.

2[* * *]

3[(1A) The notice required to be served under clause (b) of sub-section (1) shall be served in the following manner-

(a) by delivering it to the person on whom it is to be served; or

(b) by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh; or

(c) by publication in a daily Bangla national newspaper having wide circulation.]

4[(2) Where any fine is realised under sub-section (1), any amount upto the face value of the cheque as far as is covered by the fine realised shall be paid to the holder.

(3) Notwithstanding anything contained in sub- section (1) and (2), the holder of the cheque shall retain his right to establish his liability on the drawer of the cheque.

Restriction in respect of appeal

5[138A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no appeal against any order of sentence shall lie.

139. [Omitted by the Negotiable Instruments (Amendment) Act, 2000 (Act No. XVII of 2000), section 3.]

1 The words "thirty days" were substituted, for the words "fifteen days" by section 2 of the Negotiable Instruments (Amendment) Act, 2006 (Act No. III of 2006). 2 The Explanation of sub-section (1) of section 138 was substituted by section 2 of the Negotiable Instruments (Amendment) Act, 2000 (Act No. XVII of 2000). 3 Sub-section (1A) was inserted by section 2 of the Negotiable Instruments (Amendment) Act, 2006 (Act No. III of 2006). 4 Sub-sections (2) and (3) were added by section 2 of the Negotiable Instruments (Amendment) Act, 2000 (Act No. XVII of 2000). 5 Section 138A was inserted by section 3 of the Negotiable Instruments (Amendment) Act, 2006 (Act No. III of 2006). Negotiable Instruments Act, 1881 531

140. (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well

as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
Offences of companies

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purposes of this section-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

141. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898),-
Cognisance of offences

(a) no court shall take cognisance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

1[(c) no court inferior to that of a Court of Sessions shall try any offence punishable under section 138.]

SCHEDULE ■ [Repealed by the Amending Act, 1891 (Act No. XII of 1891).]

■■■■■

1 Clause (c) of section 141 was substituted, for the former clause (c) by section 4 of the Negotiable Instruments (Amendment) Act, 2006 (Act No. III of 2006).