



Outline and Lecture of:
ATTY. MARY ANN L. REYES
 NIL – Sundays 9:00AM-12:00PM

I. INTRODUCTION

1. History, Governing Laws (Act 2031, Code of Commerce, New Civil Code)

History of Law Merchant¹

- ➔ Medieval period – merchants adopted the plan of transferring credit through paper rather than physical transfer
- ➔ The Law merchant – originated from unwritten customs of merchants; based on usages of trade
- ➔ Merchant courts began in the 13th century which had jurisdiction over maritime and commercial cases
- ➔ Uniformity of Negotiable Instruments Law was adopted by every state (U.S. and England)

Law merchant – the custom of merchants

2. Applicability of the Negotiable Instruments Law

Kauffman v. PNB

[G.R. No. 16454, September 29, 1921]

[T]he provisions of the Negotiable Instruments Law can come into operation there must be a document in existence of the character described in Section 1 of the Law; and no rights properly speaking arise in respect to said instrument until it is delivered. In the case before us there was an order, it is true, transmitted by the defendant bank to its New York branch, for the payment of a specified sum of money to George A. Kauffman. But this order was not made payable "to order or "to bearer," as required in subsection (d) of that Act; and inasmuch as it never left the possession of the bank, or its representative in New York City, there was no delivery in the sense intended in Section 16 of the same Law. In this connection it is unnecessary to point out that the official receipt delivered by the bank to the purchaser of the telegraphic order, and already set out above, cannot itself be viewed in the light of a negotiable instrument, although it affords complete proof of the obligation actually assumed by the bank.

GSIS v. Court of Appeals

[G.R. No. L-40824, February 23, 1989]

[T]he promissory note hereinbefore quoted, as well as the mortgage deeds subject of this case, are clearly not negotiable instruments. These documents do not comply with the fourth requisite to be considered as such under Section 1 of Act No. 2031 because they are neither payable to order nor to bearer. The note is payable to a specified party, the GSIS. Absent the aforesaid requisite, the provisions of Act No. 2031 would not apply; governance shall be afforded, instead, by the provisions of the Civil Code and special laws on mortgages.

¹ <http://www.notarizationattorney.com/wp-content/uploads/2012/11/NIL-PDF2.pdf>

3. Concept of Negotiable Instruments

a) Negotiable Instruments Defined

Written contracts for the payment of money; by its form, intended as a substitute for money and intended to pass from hand to hand, to give the holder in due course the right to hold the same and collect the sum due.

It is a special contract which complies with the requirements of Negotiable Instruments Law (Act No. 2031)

b) Functions of Negotiable Instruments

1. Substitute for money
2. Medium of exchange
3. Credit instrument which increases credit circulation
4. Increase purchasing medium in circulation
5. Evidence of transaction

c) What is Legal Tender?

- That kind of money that the law compels a creditor to accept payment of a debt when tendered by the debtor in the right amount
- That which a debtor may compel a creditor to accept

SEC. 52. Legal Tender Power. All notes and coins issued by the Bangko Sentral shall be fully guaranteed by the Government of the Republic of the Philippines and shall be legal tender in the Philippines for all debts, both public and private: *Provided, however, That, unless otherwise fixed by the Monetary Board, coins shall be legal tender in amounts not exceeding Fifty pesos (P50) for denominations of twenty-five centavos and above, and in amounts not exceeding Twenty pesos (P20) for denominations of ten centavos or less.*

SEC. 60. Legal Character. Checks representing demand deposits do not have legal tender power and their acceptance in the payment of debts, both public and private, is at the option of the creditor: *Provided, however, That a check which has been cleared and credited to the account of the creditor shall be equivalent to a delivery to the creditor of cash in an amount equal to the amount credited to his account.*



BSP CIRCULAR NO. 537

Series of 2006

Pursuant to Section 52 of Republic Act No. 7653 and Monetary Board Resolution No. 862 dated 6 July 2006, the maximum amount of coins to be considered as legal tender is adjusted as follows:

1. One thousand pesos (P1,000.00) for denominations of 1-Piso, 5-Piso and 10-Piso coins; and
2. One hundred pesos (P100.00) for denominations of 1-sentimo, 5-sentimo, 10-sentimo, and 25-sentimo coins.

This Circular shall take effect after fifteen (15) days following its publication in the Official Gazette or in a newspaper of general circulation.

Tibajia Jr. v. Court of Appeals

[G.R. No. 100290. June 4, 1993]

A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor.

Philippine Airlines v. Court of Appeals

[G.R. No. L-49188. January 30, 1990]

Since a negotiable instrument is only a substitute for money and not money, the delivery of such an instrument does not, by itself, operate as payment. A check, whether a manager's check or ordinary check, is not legal tender, and an offer of a check in payment of a debt is not a valid tender of payment and may be refused receipt by the obligee or creditor. Mere delivery of checks does not discharge the obligation under a judgment. The obligation is not extinguished and remains suspended until the payment by commercial document is actually realized (Art. 1249, Civil Code, par. 3). (*citations omitted*)

4. Characteristics of Negotiable Instruments

Negotiability – it is that attribute or property whereby a bill or a note or check may pass from hand to hand similar to money, so as to give the holder in due course the right to hold the instrument and to collect the sum payable from himself, free from defense.

Accumulation of Secondary Contracts – secondary contracts are picked up and carried along with Negotiable instruments as they are negotiated from one person to another; or in the course of negotiation of negotiable Instruments, a series of juridical ties between the parties thereto arise either by law or by privity. The indorsers become secondarily liable to holder.

5. Incidents in the Life of Negotiable Instruments

- (1) Preparation and signing
- (2) Issuance (to the payee)
- (3) Negotiation
- (4) Presentment for acceptance
- (5) Acceptance
- (6) Dishonor by non-acceptance
- (7) Presentment for payment
- (8) Payment
- (9) Dishonor by non-payment
- (10) Notice of dishonor/protest
- (11) Discharge

6. Kinds of Negotiable Instruments

a) Negotiable Promissory Notes

Sec. 184. Promissory note, defined. A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

i. parties to a negotiable promissory note

- **Maker/promissor** – party who promises to pay.
- **Payee** – to whom payment is to be made

ii. kinds of negotiable promissory note²

- **CERTIFICATE OF DEPOSIT** – a form of promissory note which is a written acknowledgment of a bank or its receipt of a certain sum with a promise to pay the same.
- **BONDS** – a certificate or evidence of a debt on which the issuing company or governmental body promises to pay the bondholders a specified amount of interest for a specified length of time and to repay the loan on the expiration date.
- **DEBENTURE** – a promissory note or bond backed by the general credit of a corporation and usually not secured by a mortgage or lien on any specific property.

² *Supra*.



b) Bills of Exchange

Sec. 126. Bill of Exchange, defined. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or the fixed or determinable future time a sum certain in money to order or to bearer.

Sec. 185. Check, defined. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Act applicable to a bill of exchange payable on demand apply to a check.

i. parties to a bill of exchange

- **Drawer** – the party who orders another to pay the third party
- **Drawee** – party who is ordered to pay the third party
- **Payee** – third party who will receive payment

ii. kinds of bills of exchange³

- **DRAFT** – used synonymously with bill of exchange although it normally refers to a bill of exchange used in documentary exchange like letters of credit transactions.
- **INLAND AND FOREIGN BILL** – an inland bill is a bill which is, or on its face purports to be, both drawn and payable within the Philippines. Any other bill is a foreign bill.
- **TIME DRAFT** – draft that is payable at a fixed date.
- **SIGHT OR DEMAND DRAFT** – draft that is payable when the holder presents it for payment.
- **TRADE ACCEPTANCE** – bill that is used in contracts of sale where the seller as drawer orders the buyer (as drawee) to pay a sum certain to the same seller (payee).
- **BANKER'S ACCEPTANCE** – a time draft across the face of which the drawee has written the word accepted.
- **CHECK** – a bill of exchange drawn on a bank payable on demand (Sec.185)

7. When Bill Treated as Notes

Sec. 17. Construction where instrument is ambiguous. - Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

³ *Supra*.

- Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;
- Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;
- Where the instrument is not dated, it will be considered to be dated as of the time it was issued;
- Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;
- Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;
- Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;
- Where an instrument containing the word "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Sec. 130. When bill may be treated as promissory note. Where in a bill the drawer and drawee are the same person or where the drawee is a fictitious person or person not having capacity to contract, the holder may treat the instrument at his option either as bill of exchange or as promissory note.

8. Bills and Notes Distinguished

<i>Bills</i>	<i>Notes</i>
Unconditional order	Unconditional promise
Involves 3 parties (drawer, drawee, payee)	Involves 2 parties (maker, payee)
Drawer only secondarily liable	Maker is primary liable
Generally 2 presentments: for acceptance and for payment	Only 1 presentment: for payment

9. Negotiable Instruments Compared with other Papers

Sesbreño v. Court of Appeals

[G.R. No. 89252. May 24, 1993]

[I]t is important to bear in mind that the *negotiation* of a negotiable instrument must be distinguished from the *assignment* or *transfer* of an instrument whether that be negotiable or non-negotiable. Only an instrument qualifying as a negotiable instrument under the relevant statute may be *negotiated* either by indorsement thereof coupled with delivery, or by delivery alone where the negotiable instrument is in bearer form. A negotiable instrument may, however, instead of being negotiated, also be *assigned* or *transferred*. The legal consequences of negotiation as distinguished from assignment of a negotiable instrument are, of course, different. A non-negotiable instrument may, obviously, not be negotiated; but it may be assigned or transferred, absent an express prohibition against assignment or transfer written in the face of the instrument.



10. Some Non-Negotiable Instruments ⁴

a) Documents of Title

Any written instrument, such as a bill of lading, a warehouse receipt, or an order for the delivery of goods, that in the usual course of business or financing is considered sufficient proof that the person who possesses it is entitled to receive, hold, and dispose of the instrument and the goods that it covers.

b) Letters of Credit

A written instrument from a bank or merchant in one location that requests that anyone or a specifically named party advance money or items on credit to the party holding or named in the document.

c) Certificates of Stock

A printed document which states the name, incorporation state, and date of incorporation, the registered number of the certificate, the number of shares of stock in a corporation the certificate represents, the name of the shareholder, the date of issuance, and the number of shares authorized in the particular issue of stock, signed by the President and Secretary of the corporation (or with facsimile signatures). On the reverse side of the certificate is a form for transfer of the certificate to another person. After transfer the new owner should register the change of ownership with the corporation.

d) Postal Money Order ⁵

An order for the payment of a specified amount of money, usually issued and payable at a bank or post office.

Philippine Education Co. Inc. v. Soriano

[G.R. No. L-22405. June 30, 1971]

It is not disputed that our postal statutes were patterned after statutes in force in the United States. For this reason, ours are generally construed in accordance with the construction given in the United States to their own postal statutes, in the absence of any special reason justifying a departure from this policy or practice. The weight of authority in the United States is that postal money orders are not negotiable instruments, the reason behind this rule being that, in

establishing and operating a postal money order system, the government is not engaging in commercial transactions but merely exercises a governmental power for the public benefit. (citations omitted)

e) Treasury Warrants ⁶

An order in the form of a check that government disbursements are paid. With the treasury warrant, a drawer authorizes someone to pay a particular sum of money to another.

II. FORM AND INTERPRETATION OF NEGOTIABLE INSTRUMENTS

1. How Negotiability is Determined

Caltex (Philippines) vs. CA, 212 SCRA 448 (1992)

[T]he accepted rule is that the negotiability or non-negotiability of an instrument is determined from the writing, that is, from the face of the instrument itself. In the construction of a bill or note, the intention of the parties is to control, if it can be legally ascertained. While the writing may be read in the light of surrounding circumstances in order to more perfectly understand the intent and meaning of the parties, yet as they have constituted the writing to be the only outward and visible expression of their meaning, no other words are to be added to it or substituted in its stead. The duty of the court in such case is to ascertain, not what the parties may have secretly intended as contradistinguished from what their words express, but what is the meaning of the words they have used. What the parties meant must be determined by what they said.

2. Effect of Estoppel

Banco de Oro Savings and Mortgage Bank v. Equitable Banking Corp.

[G.R. No. 74917. January 20, 1988]

A commercial bank cannot escape the liability of an endorser of a check and which may turn out to be a forged endorsement. Whenever any bank treats the signature at the back of the checks as endorsements and thus logically guarantees the same as such there can be no doubt said bank has considered the checks as negotiable.

Apropos the matter of forgery in endorsements, this Court has succinctly emphasized that the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. ...

Philippine Bank of Commerce v. Aruego

[G.R. Nos. L-25836-37. January 31, 1981]

[U]nder the Negotiable Instruments Law, a bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or

⁴ <http://legal-dictionary.thefreedictionary.com/>

⁵ <http://www.thefreedictionary.com/>

⁶ <http://definitions.uslegal.com/>



to bearer. As long as a commercial paper conforms with the definition of a bill of exchange, that paper is considered a bill of exchange. The nature of acceptance is important only in the determination of the kind of liabilities of the parties involved, but not in the determination of whether a commercial paper is a bill of exchange or not.

3. Requisites of Negotiability

Section 1. Form of negotiable instruments. - An instrument to be negotiable must conform to the following requirements:

- (a) It must be in writing and signed by the maker or drawer;
- (b) Must contain an unconditional promise or order to pay a sum certain in money;
- (c) Must be payable on demand, or at a fixed or determinable future time;
- (d) Must be payable to order or to bearer; and
- (e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

a) must be in writing and signed by the maker or drawer

Sec. 191. Definition and meaning of terms. - In this Act, unless the contract otherwise requires:

"**Acceptance**" means an acceptance completed by delivery or notification;

"**Action**" includes counterclaim and set-off;

"**Bank**" includes any person or association of persons carrying on the business of banking, whether incorporated or not;

"**Bearer**" means the person in possession of a bill or note which is payable to bearer;

"**Bill**" means bill of exchange, and "note" means negotiable promissory note;

"**Delivery**" means transfer of possession, actual or constructive, from one person to another;

"**Holder**" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof;

"**Indorsement**" means an indorsement completed by delivery;

"**Instrument**" means negotiable instrument;

"**Issue**" means the first delivery of the instrument, complete in form, to a person who takes it as a holder;

"**Person**" includes a body of persons, whether incorporated or not;

"**Value**" means valuable consideration;

"**Written**" includes printed, and "**writing**" includes print.

b) must contain an unconditional promise or order to pay a sum certain in money

i. Promise or Order to Pay (Sec. 10, NIL)

Sec.10. Terms, when sufficient. The instrument need not follow the language of this Act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

ii. Promise or Order Must Be Unconditional

1. resolutive and suspensive condition (Civil Code)

Article 1179. Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once.

Every obligation which contains a resolutive condition shall also be demandable, without prejudice to the effects of the happening of the event.

xxx

Article 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

2. period (Civil Code)

Article 1193. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.

Obligations with a resolutive period take effect at once, but terminate upon arrival of the day certain.

A day certain is understood to be that which must necessarily come, although it may not be known when.

If the uncertainty consists in whether the day will come or not, the obligation is conditional, and it shall be regulated by the rules of the preceding Section.

3. when is promise unconditional

Sec. 3. When promise is unconditional. - An unqualified order or promise to pay is unconditional within the meaning of this Act though coupled with:



- (a) An indication of a particular fund out of which reimbursement is to be made or a particular account to be debited with the amount; or
- (b) A statement of the transaction which gives rise to the instrument. But an order or promise to pay out of a particular fund is not unconditional.

Sec. 39. Conditional indorsement. – Where an indorsement is conditional, the party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

4. sum certain in money

Sec. 2. What constitutes certainty as to sum. - The sum payable is a sum certain within the meaning of this Act, although it is to be paid:

- (a) with interest; or
- (b) by stated installments; or
- (c) by stated installments, with a provision that, upon default in payment of any installment or of interest, the whole shall become due; or
- (d) with exchange, whether at a fixed rate or at the current rate; or
- (e) with costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Sec. 5. Additional provisions not affecting negotiability. - An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

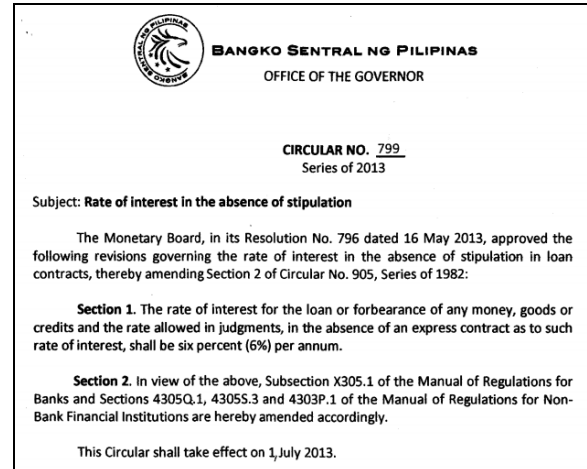
- (a) authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
- (b) authorizes a confession of judgment if the instrument be not paid at maturity; or
- (c) waives the benefit of any law intended for the advantage or protection of the obligor; or
- (d) gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

Sec. 6. Omissions; seal; particular money. - The validity and negotiable character of an instrument are not affected by the fact that:

- (a) it is not dated; or
- (b) does not specify the value given, or that any value had been given therefor; or
- (c) does not specify the place where it is drawn or the place where it is payable; or
- (d) bears a seal; or
- (e) designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.



Article 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum.

Acceleration Note

Provision which makes it possible for the maker to pay the negotiable instrument at an earlier date or make it possible for the holder to require payment of the negotiable instrument at an earlier date.

1st Class – on or before certain date

2nd Class

- (a) renders whole debt due and demandable upon failure to comply with certain conditions (**acceleration clause**);
- (b) maker shall supply additional collateral in case of depreciation of the value of the original deposit, and upon default, the note shall become due;
- (c) contains provisions for acceleration where holder deems himself insecure (**insecurity clause**)

Extension Clause

Provision that extend the maturity dates. An instrument is payable at a definite time if by its terms it is payable at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after specified act or event.⁷

N.B. This is different from Sec.120(f) of NIL.

⁷ Aquino, T.B. "Notes and Cases on Banking Law and Negotiable Instruments Law" Vol. 1 (2009), p.50



Sec. 120. When persons secondarily liable on the instrument are discharged. - A person secondarily liable on the instrument is discharged:

- (a) By any act which discharges the instrument;
- (b) By the intentional cancellation of his signature by the holder;
- (c) By the discharge of a prior party;
- (d) By a valid tender or payment made by a prior party;
- (e) By a release of the principal debtor unless the holder's right of recourse against the party secondarily liable is expressly reserved;
- (f) By any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved.

Metropolitan Bank and Trust Co. v. C.A.
[G.R. No. 88866. February 18, 1991]

Metrobank cannot contend that by indorsing the warrants in general, Golden Savings assumed that they were "genuine and in all respects what they purport to be," in accordance with Section 66 of the Negotiable Instruments Law. The simple reason is that this law is not applicable to the non-negotiable treasury warrants. The indorsement was made by Gloria Castillo not for the purpose of guaranteeing the genuineness of the warrants but merely to deposit them with Metrobank for clearing. It was in fact Metrobank that made the guarantee when it stamped on the back of the warrants: "All prior indorsement and/or lack of endorsements guaranteed, Metropolitan Bank & Trust Co., Calapan Branch."

- c) **must be payable on demand or at a fixed or determinable future time**

Pay v. Palanca

[G.R. No. L-29900. June 28, 1974]

There is no difficulty attending the disposition of this appeal by petitioner on questions of law. While several points were raised, the decisive issue is whether a creditor is barred by prescription in his attempt to collect on a promissory note executed more than fifteen years earlier with the debtor sued promising to pay either upon receipt by him of his share from a certain estate or upon demand, the basis for the action being the latter alternative. The lower court held that the ten-year period of limitation of actions did apply, the note being immediately due and demandable, the creditor admitting expressly that he was relying on the wording "upon demand." On the above facts as found, and with the law being as it is, it cannot be said that its decision is infected with error. We affirm.

- d) **must be payable to order or bearer**

Sec. 8. When payable to order. - The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

- (a) A payee who is not maker, drawer, or drawee; or
- (b) The drawer or maker; or
- (c) The drawee; or
- (d) Two or more payees jointly; or
- (e) One or some of several payees; or

- (f) The holder of an office for the time being.
- (g) Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

Sec. 9. When payable to bearer. - The instrument is payable to bearer:

- (a) When it is expressed to be so payable; or
- (b) When it is payable to a person named therein or bearer; or
- (c) When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
- (d) When the name of the payee does not purport to be the name of any person; or
- (e) When the only or last indorsement is an indorsement in blank.

Sec. 184. Promissory note, defined. - A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

Ang Tek Lian v. Court of Appeals
[G.R. No. L-2516. September 25, 1950]

Under the Negotiable Instruments Law (sec. 9 [d]), a check drawn payable to the order of "cash" is a check payable to bearer, and the bank may pay it to the person presenting it for payment without the drawer's indorsement.

- e) **drawee must be named or indicated with reasonable certainty**

Sec. 130. When bill may be treated as promissory note. - Where in a bill the drawer and drawee are the same person or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument at his option either as a bill of exchange or as a promissory note.

4. Omissions and Provisions That Do Not Affect Negotiability

The validity and negotiable character of an instrument are **NOT** affected by the fact that:

- a. It is not dated;
- b. It does not specify the value given, or that any value had been given therefor,
- c. It does not specify the place where it is drawn or the place where it is payable
- d. It bears a seal;
- e. It designates a particular kind of current money in which payment is to be made.

N.B. if the instrument is not dated, it will be considered to be dated as of the time it was issued.



5. Interpretation of Instruments

- i. Where the sum payable is expressed in words and also in figures and there is discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to figures to fix the amount;
- ii. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument;
- iii. Where the instrument is not dated it will be considered to be dated as of the time it was issued;
- iv. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;
- v. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;
- vi. Where the signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is deemed to be an indorser;
- vii. Where the instrument containing the phrase "I promise to pay..." is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

See also Sec. 191 of NIL.

De La Victoria v. Judge Burgos
[G.R. No. 111190. June 27, 1995]

Petitioner reiterates his position that the salary checks were not owned by Mabanto, Jr., because they were not yet delivered to him, and that petitioner as garnishee has no legal obligation to hold and deliver them to the trial court to be applied to Mabanto, Jr.'s judgment debt. The thesis of petitioner is that the salary checks still formed part of public funds and therefore beyond the reach of garnishment proceedings.

Petitioner has well argued his case.

2. Negotiation Defined

Sec. 30. What constitutes negotiation. - An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder and completed by delivery.

3. Assignment and Negotiation Distinguished; Liability of Assignor

III. ISSUE, TRANSFER AND NEGOTIATION OF NEGOTIABLE INSTRUMENTS

1. Issuance/Delivery of Negotiable Instruments

Sec. 15. Incomplete instrument not delivered. - Where an incomplete instrument has not been delivered, it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Sec. 16. Delivery; when effectual; when presumed. - Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and, in such case, the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the

Assignment	Negotiation
Refers generally to ordinary contract	Refers generally to negotiable instruments
Transferee is an assignee	Transferee is a holder
An assignee is subject to both real and personal defenses	A holder in due course is subject only to real defenses
Generally an assignee merely steps into shoes of the assignor	A holder in due course may acquire a better right than of a prior party
An assignor does not warrant the solvency of prior parties unless expressly stipulated or insolvency is known to him	A general indorser warrants the solvency of prior parties
An assignor is liable even without notice of dishonor	An indorser is not liable unless there be presentment and notice of dishonor
Governed by Articles 1624 to 1635 (on assignment of credits) of the Civil Code	Negotiation is governed by Negotiable Instruments law

ARTICLE 348. The assignor shall answer for the legality of the credit and the capacity in which he made the transfer; but he shall not answer for the solvency of the debtor unless there is an express agreement to the effect. (Code of Commerce)



Casabuena v. Court of Appeals

[G.R. No. 115410. February 27, 1988]

The act of assignment could not have operated to efface liens or restrictions burdening the right assigned, because an assignee cannot acquire a greater right than that pertaining to the assignor. At most, an assignee can only acquire rights duplicating those which his assignor is entitled by law to exercise. In the case at bar, the Casabuenas merely stepped into Benin's shoes, who was not so much an owner as a mere assignee of the rights of her debtors. Not having acquired any right over the land in question, it follows that Benin conveyed nothing to defendants with respect to the property.

While it is true that the *duplex* is owned by Benin, the Casabuenas mistakenly believed that the deed included cession of rights of ownership over the *land* as well. The encumbrance of the property may be deemed as an exercise of their right of ownership over the property considering that, under the law, only owners of certain properties may mortgage the same. By mortgaging a piece of property, a debtor merely subjects it to a lien *but ownership thereof is not parted with*. As a result, notwithstanding the encumbrance of the Bulacan lot through a deed of assignment in favor of Benin, the spouses Urdaneta remain its owners, to the exclusion of petitioner.

4. How are Negotiable Instruments and Non-Negotiable Instruments Transferred

Sesbreño v. Court of Appeals

[G.R. No. 89252. May 24, 1993]

(see page 3)

Consolidated Plywood Industries, Inc. v. IFC

Leasing and Acceptance Corp

[G.R. No. 72593. April 30, 1987]

"FOR VALUE RECEIVED, I/we jointly and severally promise to pay to the INDUSTRIAL PRODUCTS MARKETING, the sum of ONE MILLION NINETY THREE THOUSAND SEVEN HUNDRED EIGHTY NINE PESOS & 71/100 only (P 1,093,789.71), Philippine Currency, the said principal sum, to be payable in 24 monthly installments starting July 15, 1978 and every 15th of the month thereafter until fully paid...."

Considering that paragraph (d), Section 1 of the Negotiable Instruments Law requires that a promissory note "must be payable to order or bearer," it cannot be denied that the promissory note in question is not a negotiable instrument.

Trader's Royal Bank v. Court of Appeals

[G.R. No. 93397. March 3, 1997]

Petitioner, being a commercial bank, cannot feign ignorance of Central Bank Circular 769, and its requirements. An entity which deals with corporate agents within circumstances showing that the agents are acting in excess of corporate authority, may not hold the corporation liable. This is only fair, as everyone must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

5. How Negotiation Takes Place

Sec.16, see III (1) page 8

Sec.30, see III (2) page 8

Sec. 40. Indorsement of instrument payable to bearer. - Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Lim v. Court of Appeals

[G.R. No. 107898. December 19, 1995]

The petition has no merit. Section 1, par. 1, of B.P. Blg. 22 punishes "[a]ny person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment . . ." The gravamen of the offense is knowingly issuing a worthless check. Thus, a fundamental element is knowledge on the part of the drawer of the insufficiency of his funds in or credit with the drawee bank for the payment of such check in full upon presentment. Another essential element is subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.

De La Victoria v. Judge Burgos

[G.R. No. 111190. June 27, 1995]

[U]nder Sec. 16 of the Negotiable Instruments Law, every contract on a negotiable instrument is incomplete and revocable until *delivery* of the instrument for the purpose of giving effect thereto. As ordinarily understood, delivery means the transfer of the possession of the instrument by the maker or drawer *with intent to transfer title to the payee and recognize him as the holder thereof...*

Development Bank of Rizal v. Sima Wei

[G.R. No. 85419. March 9, 1993]

[I]nsofar as the other respondents are concerned, petitioner Bank has no privity with them. Since petitioner Bank never received the checks on which it based its action against said respondents, it never owned them (the checks) nor did it acquire any interest therein. Thus, anything which the respondents may have done with respect to said checks could not have prejudiced petitioner Bank. It had no right or interest in the checks which could have been violated by said respondents. Petitioner Bank has therefore no cause of action against said respondents, in the alternative or otherwise. If at all, it is Sima Wei, the drawer, who would have a cause of action against her co-respondents, if the allegations in the complaint are found to be true.

6. Incomplete Negotiation of Order Instrument

Sec. 49. Transfer without indorsement; effect of. - Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a



holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

7. Where Indorsement Should be Placed

Sec. 31. *Indorsement; how made.* - The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Allonge – separate paper for indorsement.

8. When Person Deemed Indorser

Sec. 63. *When a person deemed indorser.* - A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed to be indorser unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

9. Other Rules on Indorsement

Sec. 32. *Indorsement must be of entire instrument.* - The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

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Sec. 40. *Indorsement of instrument payable to bearer.* - Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Sec. 41. *Indorsement where payable to two or more persons.* - Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others.

Sec. 42. *Effect of instrument drawn or indorsed to a person as cashier.* - Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer.

Sec. 43. *Indorsement where name is misspelled, and so forth.* - Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described adding, if he thinks fit, his proper signature.

Sec. 44. *Indorsement in representative capacity.* - Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Sec. 45. *Time of indorsement; presumption.* - Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie

to have been effected before the instrument was overdue.

Sec. 46. *Place of indorsement; presumption.* - Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

Sec. 47. *Continuation of negotiable character.* - An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Sec. 48. *Striking out indorsement.* - The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Sec. 49. *Transfer without indorsement; effect of.* - Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Montinola v. PNB

[G.R. No. L-2861. February 26, 1951]

On the basis of the facts above related there are several reasons why the complaint of Montinola cannot prosper. The insertion of the words "Agent, Phil. National Bank" which converts the bank from a mere drawee to a drawer and therefore changes its liability, constitutes a material alteration of the instrument without the consent of the parties liable thereon, and so discharges the instrument. (Section 124 of the Negotiable Instruments Law). The check was not legally negotiated within the meaning of the Negotiable Instruments Law. Section 32 of the same law provides that "the indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, . . . (as in this case) does not operate as a negotiation of the instrument." Montinola may therefore not be regarded as an indorsee. At most he may be regarded as a mere assignee of the P30,000 sold to him by Ramos, in which case, as such assignee, he is subject to all defenses available to the drawer Provincial Treasurer of Misamis Oriental and against Ramos. Neither can Montinola be considered as a holder in due course because section 52 of said law defines a holder in due course as a holder who has taken the instrument under certain conditions, one of which is that he became the holder before it was overdue. When Montinola received the check, it was long overdue. And, Montinola is not even a holder because section 191 of the same law defines holder as the payee or indorsee of a bill or note and Montinola is not a payee. Neither is he an indorsee for as already stated, at most he can be considered only as assignee. Neither could it be said that he took it in good faith. As already stated, he has not paid the full amount of P90,000 for which Ramos sold him P30,000 of the value of the check. In the second place, as was stated by the trial court in its decision, Montinola speculated on the check and took a chance on its being paid after the war. Montinola must have known that at the time the check was issued in May, 1942, the money circulating in Mindanao and the Visayas was only the emergency notes and that the check was intended to be



payable in that currency. Also, he should have known that a check for such a large amount of P100,000 could not have been issued to Ramos in his private capacity but rather in his capacity as disbursing officer of the USAFFE, and that at the time that Ramos sold a part of the check to him, Ramos was no longer connected with the USAFFE but already a civilian who needed the money only for himself and his family.

Ang Tek Lian v. Court of Appeals
[G.R. No. L-2516. September 25, 1950]

Where a check is made payable to the order of "cash", the word cash "does not purport to be the name of any person", and hence the instrument is payable to bearer. The drawee bank need not obtain any indorsement of the check, but may pay it to the person presenting it without any indorsement. . .

10. Kinds of Indorsement

Sec. 33. Kinds of indorsement. - An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional.

a) Blank and Special Indorsements

Sec. 35. Blank indorsement; how changed to special indorsement. - The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

b) Qualified and General Indorsement

Sec. 38. Qualified indorsement. - A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Sec. 65. Warranty where negotiation by delivery and so forth. - Every person negotiating an instrument by delivery or by a qualified indorsement warrants:

- That the instrument is genuine and in all respects what it purports to be;
- That he has a good title to it;
- That all prior parties had capacity to contract;
- That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision (c) of this section do not apply to a person negotiating public or corporation securities other than bills and notes.

Metropol (Bacolod) Financing and Investment Corp v. Sambok Motors Company
[G.R. No. L-39641. February 28, 1983]

"Recourse" means resort to a person who is secondarily liable after the default of the person who is primarily liable. Appellant, by indorsing the note "with recourse" does not make itself a qualified indorser but a general indorser who is secondarily liable, because by such indorsement, it agreed that if Dr. Villaruel fails to pay the note, plaintiff-

appellee can go after said appellant. The effect of such indorsement is that the note was indorsed without qualification. A person who indorses without qualification engages that on due presentment, the note shall be accepted or paid, or both as the case may be, and that if it be dishonored, he will pay the amount thereof to the holder. Appellant Sambok's intention of indorsing the note without qualification is made even more apparent by the fact that the notice of demand, dishonor, protest and presentment were all waived. The words added by said appellant do not limit his liability, but rather confirm his obligation as a general indorser.

c) Conditional Indorsement

Sec. 39. Conditional indorsement. - Where an indorsement is conditional, the party required to pay the instrument may disregard the condition and make payment to the indorsee or his transferee whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

d) Restrictive Indorsement

Sec. 36. When indorsement restrictive. - An indorsement is restrictive which either:

- Prohibits the further negotiation of the instrument; or
- Constitutes the indorsee the agent of the indorser; or
- Vests the title in the indorsee in trust for or to the use of some other persons.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Sec. 37. Effect of restrictive indorsement; rights of indorsee. - A restrictive indorsement confers upon the indorsee the right:

- to receive payment of the instrument;
- to bring any action thereon that the indorser could bring;
- to transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Sec.47, see III (9) page 10

Gempesaw v. Court of Appeals
[G.R. No. 92244. February 9, 1993]

[T]he decision to hold the drawee bank liable is based on law and substantial justice and not on mere equity. And although the case was brought before the court not on breach of contractual obligations, the courts are not precluded from applying to the circumstances of the case the laws pertinent thereto. Thus, the fact that petitioner's negligence was found to be the proximate cause of her loss does not preclude her from recovering damages. The reason why the decision dealt on a discussion on proximate cause is due to the error pointed out by petitioner as allegedly committed by the respondent court. And in breaches of contract under Article 1173, due diligence on the part of the defendant is not a defense.



e) Absolute Indorsement

Sec.40, see III (5) page 10

f) Joint Indorsement

Sec.41, see III (9) page 10

g) Irregular Indorsement

Sec. 64. *Liability of irregular indorser.* - Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser, in accordance with the following rules:

- (a) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.
- (b) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.
- (c) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

11. When Indorsement Necessary

Sec. 30. *What constitutes negotiation.* - An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder and completed by delivery.

Sec. 184. *Promissory note, defined.* - A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

12. Indorsement of Entire Instrument

Sec.41, see III (9) page 10

13. Indorsement of Bearer Instrument

Sec.40, see III (5) page 9

14. Indorsement When Payable to Two or More Persons

Sec.41, see III (9) page 10

15. Indorsement in Representative Capacity

Sec.44, see III (9) page 10

16. Presumption on Time, Place of Indorsement

Sec.45, 46, see III (9) page 10

17. Continuation of Negotiable Character

Sec.47, see III (9) page 10

18. Negotiation by Prior Party

Sec. 50. *When prior party may negotiate instrument.* - Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this Act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

19. Striking Out of Indorsement

Sec.48, see III (9) page 10

20. Effect of Transfer Without Indorsement

Sec.49, see III (9) page 10

21. Consideration for Issuance and Subsequent Transfer

Sec. 24. *Presumption of consideration.* - Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

22. What Constitutes Value

Sec. 25. *Value, what constitutes.* — Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Bañas Jr. v. Court of Appeals

[G.R. No. 102967. February 10, 2000]

In the sale of mortgaged property the amount of the mortgage, whether the property is merely taken subject to the mortgage or whether the mortgage is assumed by the purchaser, shall be included as a part of the "selling price" but the amount of the mortgage, to the extent it does not exceed the basis to the vendor of the property sold, shall not be considered as a part of the "initial payments" or of the "total contract price," as those terms are used in section 43 of the Code, in sections 174 and 176 of these regulations, and in this section. The term "initial payments" does not include amounts received by the vendor in the year of sale from the disposition to a third person of notes given by the vendee as part of the purchase price which are due and payable in subsequent years. Commissions and other selling expenses paid or incurred by the vendor are not to be deducted or taken into account in determining the amount of the "initial payments," the "total contract price," or the "selling price." The term "initial payments" contemplates at least one other payment in addition to the initial payment. If the entire purchase price is to be paid in a lump sum in a later year, there being no payment during the year, the income may not be returned on the installment basis. Income may not be returned on the installment basis where no payment in cash or property, other than evidences of indebtedness of the purchaser, is received during the first year, the purchaser



having promised to make two or more payments, in later years.

23. Effect if Value Previously Given

Sec. 26. What constitutes holder for value. - Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time.

24. Holder for Value

Sec. 27. When lien on instrument constitutes holder for value. — Where the holder has a lien on the instrument arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

25. Effect of Want of Consideration

Sec. 28. Effect of want of consideration. - Absence or failure of consideration is a matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

IV. HOLDERS

1. What is a holder?

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof;

- a) **Classes of Holders**
 1. **Simple Holder**
 2. **Holder for Value**
 3. **Holder in Due Course**

Sec.26, see III (23) page 13
Sec.26, see III (24) page 13

Sec. 52. What constitutes a holder in due course. - A holder in due course is a holder who has taken the instrument under the following conditions:

- (a) That it is complete and regular upon its face;
- (b) That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact;
- (c) That he took it in good faith and for value;
- (d) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

b) **Rights of Holders**

Sec. 51. Right of holder to sue; payment. - The holder of a negotiable instrument may to sue thereon in his own name; and payment to him in due course discharges the instrument.

Sec. 88. What constitutes payment in due course. - Payment is made in due course when it is made at or after the maturity of the payment to the holder thereof in good faith and without notice that his title is defective.

Sec. 119. Instrument; how discharged. - A negotiable instrument is discharged:

- (a) By payment in due course by or on behalf of the principal debtor;
- (b) By payment in due course by the party accommodated, where the instrument is made or accepted for his accommodation;
- (c) By the intentional cancellation thereof by the holder;
- (d) By any other act which will discharge a simple contract for the payment of money;
- (e) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

Chan Wan v. Tan Kim

[G.R. No. L-15380. September 30, 1960]

[I]t does not follow as a legal proposition, that simply because he was not a holder in due course Chan Wan could not recover on the checks. The Negotiable Instruments Law does not provide that a holder who is not a holder in due course, may not in any case, recover on the instrument. If B purchases an overdue negotiable promissory note signed by A, he is not a holder in due course; but he may recover from A, if the latter has no valid excuse for refusing payment. The only disadvantage of holder who is not a holder in due course is that the negotiable instrument is subject to defense as if it were non-negotiable.

Atrium Management v. Court of Appeals

[G.R. No. 109491. February 28, 2001]

In the instant case, the checks were crossed checks and specifically indorsed for deposit to payee's account only. From the beginning, Atrium was aware of the fact that the checks were all for deposit only to payee's account, meaning E.T. Henry. Clearly, then, Atrium could not be considered a holder in due course.

However, it does not follow as a legal proposition that simply because petitioner Atrium was not a holder in due course for having taken the instruments in question with notice that the same was for deposit only to the account of payee E.T. Henry that it was altogether precluded from recovering on the instrument. The Negotiable Instruments Law does not provide that a holder not in due course can not recover on the instrument.

The disadvantage of Atrium in not being a holder in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable. One such defense is absence or failure of consideration.

Mesina v. Intermediate Appellate Court

[G.R. No. 70145. November 13, 1986]

Petitioner's allegations hold no water. Theories and examples advanced by petitioner on causes and effects of a cashier's check such as 1) it cannot be countermanded in the hands of a holder in due course and 2) a cashier's check is a bill of exchange drawn by the bank against itself-are general principles which cannot be aptly applied to the case



at bar, without considering other things. Petitioner failed to substantiate his claim that he is a holder in due course and for consideration or value as shown by the established facts of the case. Admittedly, petitioner became the holder of the cashier's check as endorsed by Alexander Lim who stole the check. He refused to say how and why it was passed to him. He had therefore notice of the defect of his title over the check from the start. The holder of a cashier's check who is not a holder in due course cannot enforce such check against the issuing bank which dishonors the same. If a payee of a cashier's check obtained it from the issuing bank by fraud, or if there is some other reason why the payee is not entitled to collect the check, the respondent bank would, of course, have the right to refuse payment of the check when presented by the payee, since respondent bank was aware of the facts surrounding the loss of the check in question. Moreover, there is no similarity in the cases cited by petitioner since respondent bank did not issue the cashier's check in payment of its obligation. Jose Go bought it from respondent bank for purposes of transferring his funds from respondent bank to another bank near his establishment realizing that carrying money in this form is safer than if it were in cash. The check was Jose Go's property when it was misplaced or stolen, hence he stopped its payment. At the outset, respondent bank knew it was Jose Go's check and no one else since Go had not paid or indorsed it to anyone. The bank was therefore liable to nobody on the check but Jose Go. The bank had no intention to issue it to petitioner but only to buyer Jose Go. When payment on it was therefore stopped, respondent bank was not the one who did it but Jose Go, the owner of the check. Respondent bank could not be drawer and drawee for clearly, Jose Go owns the money it represents and he is therefore the drawer and the drawee in the same manner as if he has a current account and he issued a check against it; and from the moment said cashier's check was lost and/or stolen no one outside of Jose Go can be termed a holder in due course because Jose Go had not indorsed it in due course. The check in question suffers from the infirmity of not having been properly negotiated and for value by respondent Jose Go who as already been said is the real owner of said instrument.

2. Holders in Due Course

Sec. 53. When person not deemed holder in due course. - Where an instrument payable on demand is negotiated on an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Sec. 54. Notice before full amount is paid. - Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount therefore paid by him.

Sec. 55. When title defective. - The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Sec. 56. What constitutes notice of defect. - To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the

person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Sec.88, see IV (1) page 13

- a) instrument complete and regular
- b) taken before overdue

Sec. 4. Determinable future time; what constitutes. - An instrument is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:

- (a) At a fixed period after date or sight; or
- (b) On or before a fixed or determinable future time specified therein; or
- (c) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Sec. 7. When payable on demand. - An instrument is payable on demand:

- (a) When it is so expressed to be payable on demand, or at sight, or on presentation; or
- (b) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

Sec.53, see IV (2) page 14

Sec. 83. When instrument dishonored by non-payment. - The instrument is dishonored by non-payment when:

- (a) It is duly presented for payment and payment is refused or cannot be obtained; or
- (b) Presentment is excused and the instrument is overdue and unpaid.

Sec. 85. Time of maturity. - Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday or a holiday, the instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

- c) previously dishonored

Sec.83, see IV (2) page 14 (above)

Sec. 149. When dishonored by nonacceptance. - A bill is dishonored by non-acceptance:

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



d) notice of infirmity or defect

Secs. 54, 55, 56, see IV (2) page 14

e) good faith

De Ocampo v. Gatchalian

[G.R. No. L-15126. November 30, 1961]

In the case at bar as the payee acquired the check under circumstances which should have put it to inquiry, why the holder had the check and used it to pay his own personal account, the duty devolved upon it, plaintiff-appellee, to prove that it actually acquired said check in good faith. The stipulation of facts contains no statement of such good faith, hence we are forced to the conclusion that plaintiff payee has not proved that it acquired the check in good faith and may not be deemed a holder in due course thereof.

Yang v. Court of Appeals

[G.R. No. 138074. August 15, 2003]

The Negotiable Instruments Law is silent with respect to crossed checks, although the Code of Commerce makes reference to such instruments. Nonetheless, this Court has taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and not converted into cash. The effects of crossing a check, thus, relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein. In *Bataan Cigar*, the rediscounting of the check by the payee knowingly violated the avowed intention of crossing the check. Thus, in accepting the cross checks and paying cash for them, despite the warning of the crossing, the subsequent holder could not be considered in good faith and thus, not a holder in due course.

Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals

[G.R. No. 93048. March 3, 1994]

It is then settled that crossing of checks should put the holder on inquiry and upon him devolves the duty to ascertain the indorser's title to the check or the nature of his possession. Failing in this respect, the holder is declared guilty of gross negligence amounting to legal absence of good faith, contrary to Sec. 52(c) of the Negotiable Instruments Law, and as such the consensus of authority is to the effect that the holder of the check is not a holder in due course.

In the present case, BCCFI's defense in stopping payment is as good to SIHI as it is to George King. Because, really, the checks were issued with the intention that George King would supply BCCFI with the bales of tobacco leaf. There being failure of consideration, SIHI is not a holder in due course. Consequently, BCCFI cannot be obliged to pay the checks.

The foregoing does not mean, however, that respondent could not recover from the checks. The only disadvantage of a holder who is not a holder in due course is that the instrument is subject to defenses as if it were non-negotiable. Hence, respondent can collect from the immediate indorser, in this case, George King.

Stelco Marketing Corporation v. Court of Appeals

[G.R. No. 96160. June 17, 1992]

It is clear from the relevant circumstances that STELCO cannot be deemed a holder of the check for value. It does not meet two of the essential requisites prescribed by the statute. It did not become "the holder of it before it was overdue, and without notice that it had been previously dishonored," and it did not take the check "in good faith and for value."

Sec. 24. Presumption of consideration. - Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Sec. 25. Value, what constitutes. — Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Sec. 26. What constitutes holder for value. - Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time.

Sec. 27. When lien on instrument constitutes holder for value. — Where the holder has a lien on the instrument arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

3. Presumption of Due Course Holding

Sec. 59. Who is deemed holder in due course. - Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

4. Rights of Holders in Due Course

Sec. 14. Blanks; when may be filled. - Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.



Sec. 16. Delivery; when effectual; when presumed. - Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and, in such case, the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Sec. 57. Rights of holder in due course. - A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

When Subject to Original Defense

Sec. 58. When subject to original defense. - In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But 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 instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Salas v. Court of Appeals [G.R. No. 76788. January 22, 1990]

Under the circumstances, there appears to be no question that Filinvest is a holder in due course, having taken the instrument under the following conditions: [a] it is complete and regular upon its face; [b] it became the holder thereof before it was overdue, and without notice that it had previously been dishonored; [c] it took the same in good faith and for value; and [d] when it was negotiated to Filinvest, the latter had no notice of any infirmity in the instrument or defect in the title of VMS Corporation.

State Investment House v. Intermediate Appellate Court

[G.R. No. 72764. July 13, 1989]

[I]t does not follow as a legal proposition that simply because petitioner was not a holder in due course as found by the appellate court for having taken the instruments in question with notice that the same is for deposit only to the account of payee named in the subject checks, petitioner could not recover on the checks. The Negotiable Instruments Law does not provide that a holder who is not a holder in due course may not in any case recover on the instrument for in the case at bar, petitioner may recover from the New Sikatuna Wood Industries, Inc. if the latter has no valid excuse for refusing payment. The only disadvantage of a holder who is not in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable.

Prudencio v. Court of Appeals [G.R. No. L-34539. July 14, 1986]

[R]espondent PNB is not a holder in due course. Thus, the petitioners can validly set up their personal defense of release from the real estate mortgage against PNB. The latter, in authorizing the third payment to the Company after the promissory note became due, in effect, extended the term of the payment of the note without the consent of the accommodation makers who stand as sureties to the accommodated party and to all other parties who are not holders in due course or who do not derive their right from the same, including PNB.

Stelco Marketing Corporation v. Court of Appeals

[G.R. No. 96160. June 17, 1992]

The record does show that *after* the check had been deposited and dishonored, STELCO came into possession of it in some way, and was able, several years after the dishonor of the check, to give it in evidence at the trial of the civil case it had instituted against the drawers of the check (Limson and Torres) and RYL. But, as already pointed out, possession of a negotiable instrument after presentment and dishonor, or payment, is utterly inconsequential; it does not make the possessor a holder for value within the meaning of the law; it gives rise to no liability on the part of the maker or drawer and indorsers.

5. Rights of Holders Not in Due Course

Secs. 14, 16, see IV (4) page 15-16
Sec. 51, see IV (1) page 14

Sec. 53. When person not deemed holder in due course. - Where an instrument payable on demand is negotiated on an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

6. Accommodation Parties

Sec. 29. Liability of accommodation party. - An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of taking the instrument, knew him to be only an accommodation party.

7. Shelter Rule

Sec. 58. When subject to original defense. - In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But 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 instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Fossum v. Hermanos

[G.R. No. L-19461. March 28, 1923]

It is a well-known rule of law that if the original payee of a note unenforceable for lack of consideration repurchase the instrument after transferring it to a holder in due course, the paper again becomes subject in the payee's hands to the same defenses to which it would have been subject if the paper had never passed through the hands of a holder in due course. The same is true where the instrument is retransferred to an agent of the payee.



V. PARTIES WHO ARE LIABLE

1. Primary and Secondary Liability Distinguished

Sec. 60. Liability of maker. - The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Sec. 66. Liability of general indorser. - Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

- (a) The matters and things mentioned in subdivisions (a), (b), and (c) of the next preceding section; and
- (b) That the instrument is, at the time of his indorsement, valid and subsisting;

And, in addition, he engages that, on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Sec. 192. Persons primarily liable on instrument. - The person "primarily" liable on an instrument is the person who, by the terms of the instrument, is absolutely required to pay the same. All other parties are "secondarily" liable.

2. Payment By Party Secondarily Liable

Sec. 68. Order in which indorsers are liable. - As respect one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that, as between or among themselves, they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

Sec. 70. Effect of want of demand on principal debtor. - Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Sec. 84. Liability of person secondarily liable, when instrument dishonored. - Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Sec. 89. To whom notice of dishonor must be given. - Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

3. Liability vs. Warranties

4. Liability and/or Warranties of Parties

a. Maker (Sec. 60, NIL)

Sec. 60. Liability of maker. - The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

b. Drawer (Sec. 61, NIL)

Sec. 61. Liability of drawer. - The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that, on due presentment, the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder.

i. Relationship with Drawee

ii. Relationship with Collecting Bank

Read:

Jai-Alai vs BPI, 66 SCRA 29, Aug. 6, 1975

c. Acceptor

Sec. 62. Liability of acceptor. - The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance and admits:

- (a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
- (b) The existence of the payee and his then capacity to indorse.

Sec. 127. Bill not an assignment of funds in hands of drawee. - A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Sec. 139. Kinds of acceptance. - An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Sec. 140. What constitutes a general acceptance. - An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

Sec. 141. Qualified acceptance. - An acceptance is qualified which is:



- (a) Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
- (b) Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (c) Local; that is to say, an acceptance to pay only at a particular place;
- (d) Qualified as to time;
- (e) The acceptance of some, one or more of the drawees but not of all.

Sec. 143. When presentment for acceptance must be made. - Presentment for acceptance must be made:

- (a) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
- (b) Where the bill expressly stipulates that it shall be presented for acceptance; or
- (c) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

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

Sec. 165. Agreement of acceptor for honor. - The acceptor for honor, by such acceptance, engages that he will, on due presentment, pay the bill according to the terms of his acceptance provided it shall not have been paid by the drawee and provided also that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

Sec. 189. When check operates as an assignment. - A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

Read:

PNB vs. Picornell, 46 Phil 716, Sept. 26, 1922
PNB vs CA, 25 SCRA 693, Oct. 29, 1968

d. Indorsers

Sec. 63. When a person deemed indorser. - A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed to be indorser unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Sec. 68. Order in which indorsers are liable. - As respect one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that, as between or among themselves, they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

i. General Indorser

Sec. 66. Liability of general indorser. - Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

- (a) The matters and things mentioned in subdivisions (a), (b), and (c) of the next preceding section; and

- (b) That the instrument is, at the time of his indorsement, valid and subsisting;

And, in addition, he engages that, on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Read:

Ang Tiong vs Ting, 22 SCRA 713, Feb. 22, 1968

People vs Maniego, 148 SCRA 30, Feb. 27, 1987

conditions precedent to make
 unqualified indorser liable

ii. Qualified Indorser

Sec. 65. Warranty where negotiation by delivery and so forth. — Every person negotiating an instrument by delivery or by a qualified indorsement warrants:

- (a) That the instrument is genuine and in all respects what it purports to be;
- (b) That he has a good title to it;
- (c) That all prior parties had capacity to contract;
- (d) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision (c) of this section do not apply to a person negotiating public or corporation securities other than bills and notes.

iii. Indorsers of Bearer Instruments (Sec. 40, 65, 67, NIL)

Sec. 40. Indorsement of instrument payable to bearer. - Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Sec. 65. Warranty where negotiation by delivery and so forth. — Every person negotiating an instrument by delivery or by a qualified indorsement warrants:

- (a) That the instrument is genuine and in all respects what it purports to be;
- (b) That he has a good title to it;
- (c) That all prior parties had capacity to contract;
- (d) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision (c) of this section do not apply to a person negotiating public or corporation securities other than bills and notes.



Sec. 67. Liability of indorser where paper negotiable by delivery. — Where a person places his indorsement on an instrument negotiable by delivery, he incurs all the liability of an indorser.

iv. Irregular Indorser

Sec. 64. Liability of irregular indorser. - Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser, in accordance with the following rules:

- (a) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.
- (b) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.
- (c) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

v. Liability of Accommodation Party

Sec. 29. Liability of accommodation party. - An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder, at the time of taking the instrument, knew him to be only an accommodation party.

Sec. 52. What constitutes a holder in due course. - A holder in due course is a holder who has taken the instrument under the following conditions:

- (a) That it is complete and regular upon its face;
- (b) That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact;
- (c) That he took it in good faith and for value;
- (d) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Read:

Clark vs Sellner, GR 16477, Nov. 22, 1921
Crisologo vs CA, 177 SCRA 594, Sept. 15, 1989
PNB vs Maza, GR 24224, Nov. 3, 1925
Maulini vs Serrano, 28 Phil 640, Dec. 16, 1914

vi. Order of Liability

Sec. 68. Order in which indorsers are liable. - As respect one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that, as between or among themselves, they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

Read:
People vs Maniego

- e. Persons Negotiating By Delivery (Sec. 65, NIL)

Sec. 65. Warranty where negotiation by delivery and so forth. — Every person negotiating an instrument by delivery or by a qualified indorsement warrants:

- (a) That the instrument is genuine and in all respects what it purports to be;
- (b) That he has a good title to it;
- (c) That all prior parties had capacity to contract;
- (d) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision (c) of this section do not apply to a person negotiating public or corporation securities other than bills and notes.

- f. Liability of Agent or Broker (Sec. 19-21, 69, NIL)

Sec. 19. Signature by agent; authority; how shown. - The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Sec. 20. Liability of person signing as agent, and so forth. - Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Sec. 21. Signature by procuracy; effect of. - A signature by "procuracy" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Sec. 69. Liability of an agent or broker. - Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by Section Sixty-five of this Act, unless he discloses the name of his principal and the fact that he is acting only as agent.

Read:
Philippine Bank of Commerce vs Aruego

- g. Person Who Should Sign (Sec. 18, NIL)

Sec. 18. Liability of person signing in trade or assumed name. - No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a



trade or assumed name will be liable to the same extent as if he had signed in his own name.

Exceptions: Those who do not sign in their own names or whose signatures do not appear in instrument itself but are still liable

- (1) trade or assumed name

Sec. 18. Liability of person signing in trade or assumed name. - No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

- (2) agent/authorized representative

Sec. 19. Signature by agent; authority; how shown. - The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

- (3) incapacitated persons signing through legal guardians
- (4) forgers of signatures

Sec. 23. Forged signature; effect of. - When a signature is forged or made without the authority of the person whose signature it purports to be, it 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 such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

- (5) those precluded from setting up defense of forgery
- (6) constructive acceptance

Sec. 137. Liability of drawee returning or destroying bill. - Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

- (7) Allonge
- (8) negotiating by mere delivery

Sec. 65. Warranty where negotiation by delivery and so forth. — Every person negotiating an instrument by delivery or by a qualified indorsement warrants:

- (a) That the instrument is genuine and in all respects what it purports to be;
- (b) That he has a good title to it;
- (c) That all prior parties had capacity to contract;

- (d) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision (c) of this section do not apply to a person negotiating public or corporation securities other than bills and notes.

VI. DEFENSES

1. Real and Personal Defenses Distinguished
2. Real Defenses
 - b. Minority and *ultra vires* acts (Sec. 22, NIL)

Sec. 22. Effect of indorsement by infant or corporation. - The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity, the corporation or infant may incur no liability thereon.

Defense of Minority not Total

Article 1341. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge. (NCC)

Read:

Atrium Management Corp. vs CA, GR 109491, Feb. 28, 2001
Crisologo-Jose vs CA, GR 80599, Sept. 15, 1989

- c. Non-Delivery of an Incomplete Instrument

Sec. 15. Incomplete instrument not delivered. - Where an incomplete instrument has not been delivered, it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Sec. 16. Delivery; when effectual; when presumed. - Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and, in such case, the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the



instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

- d. Fraud in Factum (vs Fraud in Inducement)

Read:

Salas vs CA, GR 76788, January 22, 1990
Prudencio vs CA, 143 SCRA 7, July 14, 1986

- e. Forgery and Want of Authority; Cut-off Rule

Sec. 23. Forged signature; effect of. - When a signature is forged or made without the authority of the person whose signature it purports to be, it 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 such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.

- (1) Forgery of Maker's Signature
- (2) Of Indorser's Signature
- (3) Of Drawer's Signature
- (4) Forgery of Bearer Instrument

Read:

Associated Bank vs. CA, GR 107382, Jan. 31, 1996 (doctrine of comparative negligence)
Gempesaw vs. CA, 218 SCRA 682, Feb. 9, 1993
Republic vs. Estrada, GR L-40769, July 31, 1975
MWSS vs CA

- (5) Persons Precluded from Setting Up Forgery

Read:

MWSS vs CA, GR L-62943, July 14, 1986
Metropolitan Bank vs CA, 194 SCRA 169 (1991)
Samsung Construction vs Far East Bank, GR 129015, Aug. 15, 2003
PNB vs Quimpo, 158 SCRA 582, March 14, 1988
Banco de Oro vs Equitable Banking, GR 74917, Jan. 20, 1988
Westmont Bank vs Eugene Ong, GR 132250, Jan. 30, 2002
Ilusorio vs CA, GR 139130, Nov. 27, 2002
Traders Royal Bank vs RPN, GR 138510, Oct. 10, 2002
BPI vs CA

- f. Material Alteration [partial defense] (Sec. 124, 125, NIL)

Sec. 124. Alteration of instrument; effect of. - Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course not a party to the alteration, he may enforce payment thereof according to its original tenor.

Sec. 125. What constitutes a material alteration. - Any alteration which changes:

- (a) The date;
- (b) The sum payable, either for principal or interest;
- (c) The time or place of payment;
- (d) The number or the relations of the parties;
- (e) The medium or currency in which payment is to be made;
- (f) Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

Read:

PNB vs. CA, 256 SCRA 491, April 25, 1996
Montinola vs. PNB, 88 Phil 178, Feb. 26, 1951

- (1) Alteration of negotiable instrument a crime

Article 172. Falsification by private individual and use of falsified documents. - The penalty of prison correccional in its medium and maximum periods and a fine of not more than P5,000 pesos shall be imposed upon:

- (1) Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and
- (2) Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.
- (3) Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree. (RPC)

- (2) Alteration of Amount in NI

- (3) Immaterial Alterations



g. Extinctive Prescription

Read:

PCIB vs CA, 350 SCRA 446

Papa vs AU Valencia, 284 SCRA 643, Jan. 23, 1998

h. Illegality

3. Personal Defenses

a. Ante-dating or post-dating (Sec. 12, NIL)

Sec. 12. Ante-dated and post-dated. - The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

b. Insertion of Wrong Date (Sec. 13, NIL)

Sec. 13. When date may be inserted. - Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

c. Filling up Blanks Beyond Authority (Sec. 14, NIL)

Sec. 14. Blanks; when may be filled. - Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

d. Absence or Failure of Consideration

Sec. 28. Effect of want of consideration. - Absence or failure of consideration is a matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense *pro tanto*, whether the failure is an ascertained and liquidated amount or otherwise.

Read: State Investment House vs CA

- e. Simple Fraud, Duress, Intimidation, Force or Fear, Illegality of Consideration, Breach of Faith

Sec. 55. When title defective. - The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Sec. 56. What constitutes notice of defect. - To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Sec. 57. Rights of holder in due course. - A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

f. Want of Delivery of Complete Instrument

Sec. 16. Delivery; when effectual; when presumed. - Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and, in such case, the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

g. Fraud in Inducement

Read:

Great Eastern Insurance vs. Hongkong and Shanghai Banking Corp., GR 18657, Aug. 23, 1922

Quirino Gonzalez Logging vs CA, GR 126568, April 20, 2003



VII. ENFORCEMENT OF LIABILITY

1. Parties Primarily and Secondarily Liable

how to enforce primary liability

Sec. 60. Liability of maker. - The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Sec. 62. Liability of acceptor. - The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance and admits:

- (a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
- (b) The existence of the payee and his then capacity to indorse.

2. General Steps in Enforcing Secondary Liability

a. Promissory Notes

(1) Presentment for Payment

Sec. 70. Effect of want of demand on principal debtor. - Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

(2) Notice of Dishonor

Sec. 89. To whom notice of dishonor must be given. - Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

b. Bills of Exchange

(1) presentment for acceptance, when mandatory

Sec. 143. When presentment for acceptance must be made. - Presentment for acceptance must be made:

- (a) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
- (b) Where the bill expressly stipulates that it shall be presented for acceptance; or
- (c) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

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

(2) if dishonored by non-acceptance

- (a) notice of dishonor (Sec. 89, 115, 116, NIL)

Sec. 89. To whom notice of dishonor must be given. - Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

(b) protest (Sec. 159, NIL)

Sec. 159. When protest dispensed with. - Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when 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, the bill must be noted or protested with reasonable diligence.

(3) if accepted

- (a) presentment for payment, unless excused/not required

(4) if dishonored upon presentment for payment

- (a) notice of dishonor
- (b) protest

(5) for acceptor for honor, referee in case of need

- (a) protest for non-payment

Sec. 165. Agreement of acceptor for honor. - The acceptor for honor, by such acceptance, engages that he will, on due presentment, pay the bill according to the terms of his acceptance provided it shall not have been paid by the drawee and provided also that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

3. Presentment for Payment

a. Concept

Sec. 70. Effect of want of demand on principal debtor. - Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein



otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

b. Requisites for Sufficiency of Payment
(Sec. 72, NIL)

Sec. 72. What constitutes a sufficient presentment. - Presentment for payment, to be sufficient, must be made:

- (a) By the holder, or by some person authorized to receive payment on his behalf;
- (b) At a reasonable hour on a business day;
- (c) At a proper place as herein defined;
- (d) To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

c. Date of Presentment (Sec. 71, NIL)

Sec. 71. Presentment where instrument is not payable on demand and where payable on demand. - Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

d. Rule in Determining Maturity Date

Sec. 85. Time of maturity. - Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday or a holiday, the instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

- (1) fixed date
- (2) payable on demand
- (3) payable at a bank

Sec. 75. Presentment where instrument payable at bank. - Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

e. Rule in Computing Time (Sec. 86, NIL)

Sec. 86. Time; how computed. - When the instrument is payable at a fixed period after date, after sight, or after that happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

f. Rule if Payable at a Bank (Sec. 75, 87, 127, 187, NIL)

Sec. 87. Rule where instrument payable at bank. - Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

Sec. 127. Bill not an assignment of funds in hands of drawee. - A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Sec. 187. Certification of check; effect of. - Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

g. Place of Presentment

Sec. 70. Effect of want of demand on principal debtor. - Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Sec. 73. Place of presentment. - Presentment for payment is made at the proper place:

- (a) Where a place of payment is specified in the instrument and it is there presented;
- (b) Where no place of payment is specified but the address of the person to make payment is given in the instrument and it is there presented;
- (c) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
- (d) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

h. Presentment to Party Primarily Liable

Sec. 60. Liability of maker. - The maker of a negotiable instrument, by making it, engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Sec. 62. Liability of acceptor. - The acceptor, by accepting the instrument, engages that he will pay it according to the tenor of his acceptance and admits:

- (a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and
- (b) The existence of the payee and his then capacity to indorse.

4. When Presentment Excused, Not Required
(Sec. 79-82, NIL)

Sec. 79. When presentment not required to charge the drawer. - Presentment for payment is not required in order to charge the drawer where he has no right to



expect or require that the drawee or acceptor will pay the instrument.

Sec. 80. When presentment not required to charge the indorser. - Presentment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

Sec. 81. When delay in making presentment is excused. - Delay in making presentment for payment is excused when 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 with reasonable diligence.

Sec. 82. When presentment for payment is excused. - Presentment for payment is excused:

- (a) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be made;
- (b) Where the drawee is a fictitious person;
- (c) By waiver of presentment, express or implied.

5. Dishonor by Non-Payment

Sec. 83. When instrument dishonored by non-payment. - The instrument is dishonored by non-payment when:

- (a) It is duly presented for payment and payment is refused or cannot be obtained; or
- (b) Presentment is excused and the instrument is overdue and unpaid.

6. Liability of Person Secondarily Liable When Instrument Dishonored

Sec. 84. *Liability of person secondarily liable, when instrument dishonored.* - Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Read:

Crisologo-Jose vs. CA, Sept. 15, 1989

Salas vs CA, Jan. 22, 1990

PNB vs CA, 256 SCRA 491

Associated Bank vs CA, Jan. 31, 1996

Great Eastern vs Hongkong Shanghai Bank, Aug. 23, 1922

Republic vs Ebrada, July 31, 1975

PNB vs Quimpo, March 14, 1988

Gempesaw vs CA, Feb. 9, 1993

PCIBank vs CA, 350 SCRA 446

Papa vs AU Valencia, 284 SCRA 643

Far East Realty vs Cam, 166 SCRA 256 (1988)

McGuire vs Province of Samar, GR L-8155, Oct. 23, 1956

Asia Banking vs Javier, GR 19051, April 1923

Gullas vs PNB, GR 43191, Nov. 13, 1935

Nyco Sales vs BA Finance, 200 SCRA 637, 1991

Great Asian Sales vs CA. GR 105774, April 25, 2002

Luis Wong vs CA, GR 117857, Feb. 2. 2001

7. Presentment for acceptance

a. How made

Sec. 145. Presentment; how made. - Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

- (a) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;
- (b) Where the drawee is dead, presentment may be made to his personal representative;
- (c) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

b. When made

Sec. 143. When presentment for acceptance must be made. - Presentment for acceptance must be made:

- (a) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
- (b) Where the bill expressly stipulates that it shall be presented for acceptance; or
- (c) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

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

Sec. 144. When failure to present releases drawer and indorser. - Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

c. Acceptance; requisites

Sec. 132. *Acceptance; how made, by and so forth.* - The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

how made

Sec. 133. *Holder entitled to acceptance on face of bill.* - The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and, if such request is refused, may treat the bill as



dishonored.

Sec. 134. Acceptance by separate instrument. - Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

Sec. 135. Promise to accept; when equivalent to acceptance. - An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

Sec. 145. Presentment; how made. - Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only; Where the drawee is dead, presentment may be made to his personal representative; Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

Sec. 72. What constitutes a sufficient presentment. - Presentment for payment, to be sufficient, must be made:

- (a) By the holder, or by some person authorized to receive payment on his behalf;
- (b) At a reasonable hour on a business day;
- (c) At a proper place as herein defined;
- (d) To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

Sec. 75. Presentment where instrument payable at bank. - Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

d. When deemed accepted (Sec. 137, NIL)

Sec. 137. Liability of drawee returning or destroying bill. - Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

- e. Future bills (Sec. 135, NIL)
- f. Time to accept (Sec. 136, 146-147, NIL)
- g. Rule when incomplete bill accepted (Sec. 138, NIL)

Sec. 138. Acceptance of incomplete bill. - A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

h. Kinds of acceptance (Sec. 139-142, NIL)

Sec. 139. Kinds of acceptance. - An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Sec. 140. What constitutes a general acceptance. - An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

Sec. 141. Qualified acceptance. - An acceptance is qualified which is:

- (a) Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
- (b) Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (c) Local; that is to say, an acceptance to pay only at a particular place;
- (d) Qualified as to time;
- (e) The acceptance of some, one or more of the drawees but not of all.

Sec. 142. Rights of parties as to qualified acceptance. - The holder may refuse to take a qualified acceptance and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder or he will be deemed to have assented thereto.

8. When Presentment for Acceptance Excused (Sec. 148, NIL)

Sec. 148. Where presentment is excused. - Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:

- (a) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.
- (b) Where, after the exercise of reasonable diligence, presentment can not be made.



(c) Where, although presentment has been irregular, acceptance has been refused on some other ground.

9. Dishonor by Non-Acceptance (Sec. 149, 150, 151, NIL)

Sec. 149. When dishonored by nonacceptance. - A bill is dishonored by non-acceptance:

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

Sec. 150. Duty of holder where bill not accepted. - Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

Sec. 151. Rights of holder where bill not accepted. - When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder and no presentment for payment is necessary.

10. Notice of Dishonor (Sec. 89, NIL)

Sec. 89. To whom notice of dishonor must be given. - Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

- a. when instrument considered dishonored (Sec. 149, NIL)
- b. by whom given (Sec. 90, NIL)

Sec. 90. By whom given. - The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

- c. notice by agent (Sec. 91, 92, 94, NIL)

Sec. 91. Notice given by agent. - Notice of dishonor may be given by any agent either in his own name or in the name of any party entitled to given notice, whether that party be his principal or not.

Sec. 92. Effect of notice on behalf of holder. - Where notice is given by or on behalf of the holder, it inures to the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Sec. 94. When agent may give notice. - Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the

same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.

- d. time to give notice (Sec. 102-107, NIL)

Sec. 102. Time within which notice must be given. - Notice may be given as soon as the instrument is dishonored and, unless delay is excused as hereinafter provided, must be given within the time fixed by this Act.

Sec. 103. Where parties reside in same place. - Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

- (a) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.
- (b) If given at his residence, it must be given before the usual hours of rest on the day following.
- (c) If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

Sec. 104. Where parties reside in different places. - Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

- (a) If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on last day, by the next mail thereafter.
- (b) If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

Sec. 105. When sender deemed to have given due notice. - Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Sec. 106. Deposit in post office; what constitutes. - Notice is deemed to have been deposited in the post-office when deposited in any branch post office or in any letter box under the control of the post-office department.

Sec. 107. Notice to subsequent party; time of. - Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

- e. form of notice (Sec. 95, 96, NIL)

Sec. 95. When notice sufficient. - A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.



Sec. 96. Form of notice. - The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

f. to whom notice given (Sec. 97-101, NIL)

Sec. 97. To whom notice may be given. - Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Sec. 98. Notice where party is dead. - When any party is dead and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence, he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Sec. 99. Notice to partners. - Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

Sec. 100. Notice to persons jointly liable. - Notice to joint persons who are not partners must be given to each of them unless one of them has authority to receive such notice for the others.

Sec. 101. Notice to bankrupt. - Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

g. place of notice (Sec. 108, NIL)

Sec. 108. Where notice must be sent. - Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

- (a) Either to the post-office nearest to his place of residence or to the post-office where he is accustomed to receive his letters; or
- (b) If he lives in one place and has his place of business in another, notice may be sent to either place; or
- (c) If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this Act, it will be sufficient, though not sent in accordance with the requirement of this section.

h. when notice not required, excused, or dispensed with (Sec. 109-115, 118, NIL)

Sec. 109. Waiver of notice. - Notice of dishonor may be waived either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be expressed or implied.

Sec. 110. Whom affected by waiver. - Where the waiver is embodied in the instrument itself, it is binding upon

all parties; but, where it is written above the signature of an indorser, it binds him only.

Sec. 111. Waiver of protest. - A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest but also of presentment and notice of dishonor.

Sec. 112. When notice is dispensed with. - Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

Sec. 113. Delay in giving notice; how excused. - Delay in giving notice of dishonor is excused when 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, notice must be given with reasonable diligence.

Sec. 114. When notice need not be given to drawer. - Notice of dishonor is not required to be given to the drawer in either of the following cases:

- (a) Where the drawer and drawee are the same person;
- (b) When the drawee is fictitious person or a person not having capacity to contract;
- (c) When the drawer is the person to whom the instrument is presented for payment;
- (d) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
- (e) Where the drawer has countermanded payment.

Sec. 115. When notice need not be given to indorser. - Notice of dishonor is not required to be given to an indorser in either of the following cases:

- (a) When the drawee is a fictitious person or person not having capacity to contract, and the indorser was aware of that fact at the time he indorsed the instrument;
- (b) Where the indorser is the person to whom the instrument is presented for payment;
- (c) Where the instrument was made or accepted for his accommodation.

i. other rules

Sec. 116. Notice of non-payment where acceptance refused. - Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary unless in the meantime the instrument has been accepted.

Sec. 117. Effect of omission to give notice of non-acceptance. - An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

j. delay in giving notice (Sec. 113, NIL)

Sec. 113. Delay in giving notice; how excused. - Delay in giving notice of dishonor is excused when 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, notice must be given with reasonable diligence.

11. Protest

a. by whom made

Sec. 154. Protest, by whom made. - Protest may be made by:

- (a) A notary public; or
- (b) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

b. when required

Sec. 152. In what cases protest necessary. - Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, by nonacceptance is dishonored and where such a bill which has not previously been dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

Sec. 161. When bill may be accepted for honor. - When a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Sec. 167. Protest of bill accepted for honor, and so forth. - Where a dishonored bill has been accepted for honor *supra* protest or contains a referee in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Sec. 170. Dishonor of bill by acceptor for honor. - When the bill is dishonored by the acceptor for honor, it must be protested for non-payment by him.

c. when protest need not be made (Sec. 118, NIL)

Sec. 118. When protest need not be made; when must be made. - Where any negotiable instrument has been dishonored, it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

d. protest for non-acceptance, non-payment (Sec. 157, NIL)

Sec. 157. Protest both for non-acceptance and non-payment. - A bill which has been protested for non-

acceptance may be subsequently protested for non-payment.

e. how made (Sec. 153, NIL)

Sec. 153. Protest; how made. - The protest must be annexed to the bill or must contain a copy thereof, and must be under the hand and seal of the notary making it and must specify:

- (a) The time and place of presentment;
- (b) The fact that presentment was made and the manner thereof;
- (c) The cause or reason for protesting the bill;
- (d) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

f. when to be made

Sec. 155. Protest; when to be made. - When a bill is protested, such protest must be made on the day of its dishonor unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

g. protest for better security

Sec. 158. Protest before maturity where acceptor insolvent. - Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

h. where made

Sec. 156. Protest; where made. - A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by nonacceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

i. when protest dispensed with

Sec. 159. When protest dispensed with. - Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when 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, the bill must be noted or protested with reasonable diligence.

j. protest where bill lost

Sec. 160. Protest where bill is lost and so forth. - When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

12. Notice of Dishonor vs. Protest



13. Acceptance for Honor

Sec. 161. When bill may be accepted for honor. - When a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Sec. 162. Acceptance for honor; how made. - An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor and must be signed by the acceptor for honor.

Sec. 163. When deemed to be an acceptance for honor of the drawer. - Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Sec. 164. Liability of the acceptor for honor. - The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

Sec. 165. Agreement of acceptor for honor. - The acceptor for honor, by such acceptance, engages that he will, on due presentment, pay the bill according to the terms of his acceptance provided it shall not have been paid by the drawee and provided also that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

Sec. 166. Maturity of bill payable after sight; accepted for honor. - Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

Sec. 167. Protest of bill accepted for honor, and so forth. - Where a dishonored bill has been accepted for honor *supra* protest or contains a referee in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Sec. 168. Presentment for payment to acceptor for honor, how made. - Presentment for payment to the acceptor for honor must be made as follows:

- (a) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.
- (b) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in Section one hundred and four.

Sec. 169. When delay in making presentment is excused. - The provisions of Section eighty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Sec. 170. Dishonor of bill by acceptor for honor. - When

the bill is dishonored by the acceptor for honor, it must be protested for non-payment by him.

14. Acceptance for Honor vs Ordinary Acceptance

15. Payment for Honor

Sec. 173. Declaration before payment for honor. - The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Sec. 174. Preference of parties offering to pay for honor. - Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Sec. 175. Effect on subsequent parties where bill is paid for honor. - Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Sec. 176. Where holder refuses to receive payment *supra* protest. - Where the holder of a bill refuses to receive payment *supra* protest, he loses his right of recourse against any party who would have been discharged by such payment.

Sec. 177. Rights of payer for honor. - The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

16. Acceptance for Honor vs Payment for Honor

17. Payment by Person Primarily Liable vs Payment for Honor

18. Bills in Sets

Sec. 178. Bills in set constitute one bill. - Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Sec. 179. Right of holders where different parts are negotiated. - Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the right of a person who, in due course, accepts or pays the parts first presented to him.

Sec. 180. Liability of holder who indorses two or more parts of a set to different persons. - Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.



Sec. 181. Acceptance of bill drawn in sets. - The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part and such accepted parts negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Sec. 182. Payment by acceptor of bills drawn in sets. - When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and the part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Sec. 183. Effect of discharging one of a set. - Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

VIII. DISCHARGE OF INSTRUMENTS

1. Concept of Discharge
2. How Instrument Discharged (Sec. 119, 120, NIL)

Sec. 119. Instrument; how discharged. - A negotiable instrument is discharged:

- (a) By payment in due course by or on behalf of the principal debtor;
- (b) By payment in due course by the party accommodated, where the instrument is made or accepted for his accommodation;
- (c) By the intentional cancellation thereof by the holder;
- (d) By any other act which will discharge a simple contract for the payment of money;
- (e) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

Sec. 120. When persons secondarily liable on the instrument are discharged. - A person secondarily liable on the instrument is discharged:

- (a) By any act which discharges the instrument;
- (b) By the intentional cancellation of his signature by the holder;
- (c) By the discharge of a prior party;
- (d) By a valid tender or payment made by a prior party;
- (e) By a release of the principal debtor unless the holder's right of recourse against the party secondarily liable is expressly reserved;
- (f) By any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved.

- a. payment in due course (Sec. 88, NIL)

Sec. 88. What constitutes payment in due course. - Payment is made in due course when it is made at or after the maturity of the payment to the holder thereof in good faith and without notice that his title is defective.

- (1) by the principal debtor (Sec. 119a)
- (2) by the accommodated party (Sec. 119b)
- (3) payment by person secondarily liable (See Sec. 121, NIL); right of party who discharges instrument

Sec. 121. Right of party who discharges instrument. - Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regard all prior parties, and he may strike out his own and all subsequent indorsements and against negotiate the instrument, except:

- (a) Where it is payable to the order of a third person and has been paid by the drawer; and
- (b) Where it was made or accepted for accommodation and has been paid by the party accommodated.

- (4) to whom must payment be made

- b. renunciation by holder (Sec. 22, NIL)

Sec. 22. Effect of indorsement by infant or corporation. - The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity, the corporation or infant may incur no liability thereon.

- c. intentional cancellation

rule in case of unintentional cancellation

Sec. 123. Cancellation; unintentional; burden of proof. - A cancellation made unintentionally or under a mistake or without the authority of the holder, is inoperative but where an instrument or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.

- d. any act that discharges simple contracts (Art. 1231, Civil Code)

Article 1231. Obligations are extinguished:

- (1) By payment or performance;
- (2) By the loss of the thing due;
- (3) By the condonation or remission of the debt;
- (4) By the confusion or merger of the rights of creditor and debtor;
- (5) By compensation;
- (6) By novation.

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutive condition, and prescription, are governed elsewhere in this Code.

- e. principle debtor becomes holder



3. Discharge of Persons Secondarily Liable

Sec. 120. When persons secondarily liable on the instrument are discharged. - A person secondarily liable on the instrument is discharged:

- (a) By any act which discharges the instrument;
- (b) By the intentional cancellation of his signature by the holder;
- (c) By the discharge of a prior party;
- (d) By a valid tender or payment made by a prior party;
- (e) By a release of the principal debtor unless the holder's right of recourse against the party secondarily liable is expressly reserved;

4. Discharge of Prior Party

5. Tender of Payment

6. Release of Principal Debtor

7. Extension of Term

8. Payment for Honor (Sec. 171-177, NIL)

9. Right of Party Who Discharges Instrument

Sec. 121. Right of party who discharges instrument. - Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regard all prior parties, and he may strike out his own and all subsequent indorsements and against negotiate the instrument, except:

- (a) Where it is payable to the order of a third person and has been paid by the drawer; and
- (b) Where it was made or acceptor

10. Surrender of Instrument upon Discharge

Read:

State Investment House vs CA, GR 101163, Jan. 11, 1993

Sec. 189. *When check operates as an assignment.* - A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

Read: Banco de Oro Savings vs Equitable Banking Corp., 157 SCRA 188 (1988)

2. Distinguished from Drafts

Read: RP vs Philippine National Bank, GR L-16106, Dec. 30, 1961

3. Relationship between Drawer, Drawee, and Payee

4. Kinds of Checks

- a. cashier's check and manager's check

Date Issued: 12.06.2000

CIRCULAR LETTER
Series of 2000

TO : ALL BANKS

SUBJECT : BSP Circular No. 259 dated 29 September 2000

The Monetary Board, in its Resolution No. 2006 dated 17 November 2000, decided to allow the Issuances of gift checks payable to bearer with issue date up to 31 December 2000, subject to the following conditions:

- a. That the amount of each check shall not exceed P10,000;
- b. That the buyer of the check is properly identified as required under Circular No. 259 dated 29 September 2000; and
- c. That a register of gift checks issued shall be maintained.

This Circular Letter shall take effect immediately.

RAFAEL B. BUENAVENTURA
Governor

IX. CHECKS

1. Checks defined (Sec. 185, 186, 189, NIL)

Sec. 185. *Check, defined.* - A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this Act applicable to a bill of exchange payable on demand apply to a check.

Sec. 186. *Within what time a check must be presented.* - A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.



Date Issued: 08.16.2001

Number: 0291

CIRCULAR NO. 291
Series of 2001

The Monetary Board, in its Resolution No. 707 dated 10 May 2001 decided to authorize the issuance of cashier's, manager's or certified checks or other similar instruments in blank or payable to cash, bearer or numbered account as an exception from the provisions of Circular no. 259, subject to the following conditions:

- a. That the amount of each check shall not exceed P10,000.00;
- b. That the buyer of the check is properly identified as required under Circular No. 259 dated 29 September;
- c. That a register of said checks shall be maintained with the following minimum information:
 1. Date issued;
 2. Amount;
 3. Name of buyer;
 4. Date paid;
 5. If the aggregate instruments purchased by the same person within any thirty (30) day period amounts to at least fifty thousand pesos (P50,000), the purpose of the buyer should be stated.
- d. That banks which issue as well as those which accept as deposits, said cashier's, manager's or certified checks or other similar instruments issued in blank or payable to cash, bearer or numbered account shall take such measure(s) as may be necessary to ensure that said instruments are not being used/resorted to by the buyer or depositor in furtherance of a money-laundering activity.
- e. That the deposit of said instruments shall be subject to the same requirements/scrutiny applicable to cash deposits.
- f. That transactions involving said instruments should be accordingly reported to the Bangko Sentral ng Pilipinas if there is reasonable ground to suspect that said transactions are being used to launder funds of illegitimate origin.

This Circular shall take effect immediately.

FOR THE MONETARY BOARD:

AMANDO M. TETANGCO JR.
Officer-in-Charge

- b. certified check (Sec. 187-189, NIL)

Sec. 187. Certification of check; effect of. - Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

Sec. 188. Effect where the holder of check procures it to be certified. -Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon.

Sec. 189. When check operates as an assignment. - A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check.

Read:

New Pacific Timber vs Hon. Seneris, Dec. 19, 1980

PNB vs National City Bank of New York, 63 Phil 711

- c. crossed check (Art. 541, Code of Commerce)

Art. 541. The maker or any legal holder of a check shall be entitled to indicate therein that it be paid to a certain banker or institution, which he shall do by writing across the face the name of said banker or institution, or only the words 'and company. (Code of Commerce)

- (1) kinds of crossed check
- (2) effects of crossing a check

Read:

Associated Bank vs CA, 208 SCRA 468 (1992)

Bataan Cigar vs CA, 230 SCRA 648, March 3, 1994

Gempesaw vs CA, 218 SCRA 682, Feb 3, 1994

State Investment House vs IAC, 174 SCRA 310

- d. memorandum and traveller's checks

Read:

People vs Nitafan, GR No. 75954, Oct. 22, 1992

5. Checks and Bills of Exchange Distinguished
6. Relationship between Payee, Drawer, Drawee

Read:

Spouses Moran vs CA, GR No. 105836, March 7, 1994

Gempesaw vs CA

Hongkong and Shanghai Bank vs Catalan, Oct. 18, 2004

7. When Required to be Presented for Payment (Sec. 185, NIL)
8. Effect of Death of Drawer
9. Pertinent Philippine Clearing House Corp. rules; RA 7653, New Central Bank Act, Sec. 102
 - a. relationship of parties
 - b. warranties
 - c. 24-hour rule
 - d. iron clad rule for cashier's checks

Read: **Mesina vs IAC**

10. Crimes Involving Checks

- a. Estafa [Revised Penal Code, Art. 315 (2d)]



(2)By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x

(d) By post-dating a check, or issuing a check in payment of an obligation when the offender therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack of insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. 4885, approved June 17, 1967.)

b. BP 22

AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES.

Read: Domagsang vs CA, 347 SCRA 75 (2000)

c. Check Kiting [Art. 315 (1b), RPC)

(1)With unfaithfulness or abuse of confidence, namely:

X x x

(b)By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

Read: Ramos vs CA, 203 SCRA 657