

**THE NEGOTIABLE INSTRUMENTS ACT OF THE  
KINGDOM OF BHUTAN 2000**



**ROYAL GOVERNMENT OF BHUTAN**

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**THE NEGOTIABLE  
INSTRUMENTS ACT OF THE KINGDOM OF BHUTAN  
2000**

An Act to define the law relating to promissory notes, bills of exchange and cheques

WHEREAS it is expedient to define the law relating to promissory notes, bills of exchange and cheques;

It is hereby enacted by the National Assembly at its 78<sup>th</sup> session as follows:

**PART I  
PRELIMINARY**

**1. Short title**

This Act may be called the Negotiable Instruments Act of Kingdom of Bhutan, 2000.

**Local extent and Commencement:** It extends to the whole of the Kingdom of Bhutan; and it shall come into force on the .....day of, .....2000.

**2. Application of the Act**

Every negotiable instrument shall be governed by the provisions of this Act, and except as otherwise provided in this Act, no usage or custom at variance with any such provision shall apply to any such instrument.

**3. Interpretation clause**

In this Act, unless there is anything repugnant in the subject or context, -

- (a) “banker” means a person transacting the business of accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, and includes any post office saving bank;
- (b) “bearer” means a person who by negotiation comes into possession of a negotiable instrument, which is payable to bearer;
- (c) “delivery” means transfer of possession, actual or constructive, from one person to another;

- (d) “issue” means the first delivery of a promissory note, bill of exchange or cheque complete in form to a person who takes it as a holder; and
- (e) “material alteration” in relation to a promissory note, bill of exchange or cheque includes any alteration of the date, the sum payable, the time of payment, the place of payment, and, where any such instrument has been accepted generally, the addition of a place of payment without the acceptor’s assent.

## **PART II** OF NOTES, BILLS AND CHEQUES

### **4. “Promissory note”**

A “Promissory note” is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

#### *ILLUSTRATIONS*

A signs instruments in the following terms:

- (a) “I promise to pay B or order Nu.500.”
- (b) “I acknowledge myself to be indebted to B in Nu.1,000 to be paid on demand, for value received.”
- (c) “Mr. B I OU Nu.1,000.”
- (d) “I promise to pay B Nu.500 and all other sums which shall be due to him.”
- (e) “I promise to pay B Nu.500, first deducting therefrom any money which he may owe me”
- (f) “I promise to pay B Nu.500 seven days after my marriage with C.”
- (g) “I promise to pay B Nu.500 on D’s death, provided D leave me enough to pay that sum.”
- (h) “I promise to pay B Nu. 500 and to deliver to him my black horse on 1<sup>st</sup> January next.”

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

## 5. “Bill of exchange”

A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

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

The sum payable may be “certain”, within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is payable at the current rate of exchange, and although it is to be paid in stated installments and contains a provision that on default of payment of one or more instruments or interest, the whole of the unpaid balance shall become due.

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

## 6. “Cheque”

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

## 7. “Drawer”, “drawee”

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

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

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

**“Acceptor for honour”:** When acceptance of a bill of exchange has been refused and any person knowing of such refusal accepts it for honour of the drawer or of any one of the indorser, such person is called and “acceptor for honour”.

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



**8. “Holder”**

The “holder of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at time of such loss or destruction.

**9. “Holder in due course”**

“Holder in due course” means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

**10. “Payment in due course”**

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

**11. “Inland instrument”**

A promissory note, bill of exchange or cheque drawn or made in the Kingdom of Bhutan and made payable in, or drawn upon any person resident in the Kingdom of Bhutan shall be deemed to be an inland instrument.

**12. “Foreign instrument”**

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

**13. “Negotiable instrument”**

(1) A “negotiable instrument” means a promissory note, bill of exchange or cheque payable either to order or to bearer.

*Explanation 1:* A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

*Explanation 2:* A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in bank.

*Explanation 3:* Where a promissory note, bill of exchange or either originally or by indorsement, is expressed to be so payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option in the alternative to one of two, or one or some of several payees.

(2) A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

#### **14. Negotiation**

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

#### **15. Indorsement**

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

#### **16. Indorsement “in blank” and “in full”- “indorsee”**

(1) If the indorser signs his name only, the indorsement is said to be “in blank”, and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be “in full”, and the person so specified is called the “indorsee” of the instrument.

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

#### **17. Ambiguous instruments**

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

#### **18. Where amount is stated differently in figures and words**

If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

## **19. Instruments payable on demand**

A promissory note or bill of exchange is payable on demand, -

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

## **20. Inchoate stamped instruments**

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

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

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

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

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

## **21. “At sight”, “On presentment”, “After sight”**

In a promissory note or bill of exchange the expressions “at sight” and “on presentment” mean on demand. The expression “after sight” means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance or non-acceptance.

## **22. “Maturity”**

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

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

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

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

### *ILLUSTRATIONS*

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

## **24. Calculating maturity of bill or note payable so many days after date or sight**

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

## **25. When day of maturity is a holiday**

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

*Explanation.* – The expression “public holiday” includes Sundays and the days declared by the Royal Government of Bhutan, by notification in the official, circular, to be public holidays.

**PART III**  
**PARTIES TO NOTES, BILLS CHEQUES**

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

Every person who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Where such an instrument is made, drawn or negotiated by a minor, the making, drawing or negotiation entitles the holder to receive payment of such instrument and to enforce it against any party thereto other than the minor.

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

**27. Agency**

Every person capable of binding himself or of being bound, by the making, drawing, acceptance or negotiation of a negotiable instrument, may so bind himself or be bound by a duly authorised agent acting in his name.

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

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

**27A. AUTHORITY OF PARTNERS**

A partner acting in the firm name may bind the firm by the making, drawing, acceptance or negotiation of a negotiable instrument to the extent authorized by the agreement relating to partnership.

**28. Liability of agent signing**

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

(2) Notwithstanding anything contained in sub-section (1), any person signing on a promissory note, bill of exchange or cheque for and on behalf of the principal is not liable

to a person who induces him to sign upon the belief that the principal alone would be held liable.

## **29. Liability of legal representative signing**

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

### **29A. SIGNATURE ESSENTIAL TO LIABILITY**

No person is liable as maker, drawer, indorser or acceptor of a promissory note, bill of exchange or cheque who has not signed it as such.

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

### **29B. FORGED OR UNAUTHORIZED SIGNATURE**

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

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

The penalty for forged or unauthorized signature on a promissory note, bill of exchange or cheque shall be in accordance with the relevant provisions of the Thrimzhung Chenpo.

### **29C. STRANGER SIGNING INSTRUMENT PRESUMED TO BE INDORSER**

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

## **30. Liability of drawer**

The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

### **31. Liability of drawee of cheque**

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

### **32. Liability of maker of note and acceptor of bill**

In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

### **33. Only drawee can be acceptor except in need or for honour**

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

### **34. Acceptance by several drawees not partners**

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

### **35. Liability of indorser**

In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

### **36. Liability of prior parties to holder in due course**

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

### **37. Maker, drawer, and acceptor principals**

The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively

liable thereon as principle debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

### **38. Prior party a principal in respect of each subsequent party**

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

#### *ILLUSTRATION*

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

### **39. Suretyship**

When the holder of an accepted bill of exchange enters into any contract with the acceptor by which, the other parties are discharged, or by any act or omission, the legal consequence of which is the discharge of the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

### **40. Discharge or indorser's liability**

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

#### *ILLUSTRATION*

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

First indorsement, "B".  
Second indorsement, "Pema".  
Third indorsement, "Rinchen".  
Fourth indorsement, "Jamyang".

This bill A puts in suit against Jamyang and strikes out, without Jamyang's consent, the indorsements by Pema, and Rinchen A is not entitled to recover anything from Jamyang.



#### **41. Acceptor bound, although indorsement forged**

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

#### **42. Acceptance of bill drawn in fictitious name**

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

#### **43. Negotiable instrument made, etc. without consideration**

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

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

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

#### **44. Partial absence or failure of money-consideration**

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

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

### *ILLUSTRATION*

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

#### **45. Partial failure of consideration not consisting of money**

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

#### **45A. Holder's right to duplicate of lost bill**

Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all person whatever in case the bill alleged to have been lost shall be found again.

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

## **PART IV OF NEGOTIATION**

#### **46. Delivery**

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

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

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

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

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

#### **47. Negotiation by delivery**

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

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

#### *ILLUSTRATIONS*

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

#### **48. Negotiation by indorsements**

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

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

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

## 50. Effect of indorsement

- (1) Subject to the provisions of this Act relating to restrictive, conditional and qualified indorsement, the indorsement of a negotiable instrument followed by the delivery transfers to the indorsee the property therein with the right of further negotiable.
- (2) An indorsement is restrictive which either-
  - (a) restricts or excludes the right to further negotiate the instrument; or
  - (b) constitutes the indorsee an agent of the indorser to indorse the instrument or to receive its contents for the indorser or for some other specified person:

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

### *ILLUSTRATIONS*

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

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

These indorsements exclude the right of further negotiation by C.

- (e) "Pay C."
- (f) "Pay C value in account with the Bhutan National Bank."
- (g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the Indorser and others."

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

## 51. Who may negotiate

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

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

### *ILLUSTRATION*

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

## **52. Indorser who excludes his own liability or makes it conditional**

The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the endorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

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

Where the right of an indorsee to receive the amount due on the negotiable instrument is made dependent in the aforesaid manner, the condition is valid only as between the indorser and the indorsee.

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

### *ILLUSTRATIONS*

- (a) The indorser of a negotiable instrument signs his name adding the words – “without recourse”.  
Upon this indorsement he incurs no liability.
- (b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement “without recourse,” he transfers the instrument to B, and B indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B.

## **53. Holder deriving title from holder in due course**

A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

### **53A. RIGHTS OF HOLDER IN DUE COURSE**

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

#### **54. Instrument endorsed in blank**

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

#### **55. Conversion of indorsement in blank into indorsement in full**

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

#### **56. Indorsement for part of sum due**

No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which, may then be negotiated for the balance.

#### **57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased**

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

#### **58. Instrument obtained by unlawful means or for unlawful consideration**

When a negotiable instrument has been lost, or has been obtained from any maker, drawer, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, drawer, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

## **59. Instrument acquired after dishonour or when overdue**

The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor.

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

### *ILLUSTRATION*

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

## **60. Instrument negotiable till payment or satisfaction**

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

## **PART V OF PRESENTMENT**

### **61. Presentment for acceptance**

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

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

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

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

## **62. Presentment of promissory note for sight**

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

## **63. Drawee's time for deliberation**

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

## **64. Presentment for payment**

Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

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

*Exception:* Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

## **65. Hours for presentment**

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



**66. Presentment for payment of instrument payable after date or sight**

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

**67. Presentment for payment of promissory note payable by instalments**

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

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

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

**69. Instrument payable at specified place**

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

**70. Presentment where no exclusive place specified.**

A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the address of the maker, acceptor or drawee given in the instrument, and if no such address is given at the place of business (if known), or at the ordinary residence (if known), of the maker, drawee or acceptor thereof, as the case may be.

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

If the maker, drawee, or acceptor of a negotiable instrument has no known place of business or residence, and no place is specified in the instrument for presentment for acceptance or payment such presentment may be made to him in person wherever he can be found.

*Explanation:* In this section and sections 68 and 69, “specified place” means a place sufficiently described so as to enable the person presenting the instrument to locate it.

#### **71A. What Constitutes valid presentment and mode of presentment**

- (1) To constitute a valid presentment it shall be sufficient if instead of the original negotiable instrument a copy thereof certified to be true by the holder is delivered to the person liable thereon, either personally or by registered post or by other effective means.
- (2) If, after such delivery, the person liable to pay so demands, the holder shall allow him to inspect the original negotiable instrument during the hours of business of the holder, and if the holder fails to do so within a reasonable time, the presentment shall be deemed to be invalid.

#### **72. Presentment of cheque to charge drawer**

Subject to the provisions of section 84, a cheque must, in order to charge the drawer, be presented at the bank on which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

#### **73. Presentment of cheque to charge any other person**

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

#### **74. Presentment of instrument payable at demand.**

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

#### **75. Presentment by or to agent, representative of deceased, or assignee of insolvent.**

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

### **75A. Excuse for delay in presentment for acceptance or payment**

Delay in presentment for acceptance of payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of the delay ceases to operate, presentment must be made within a reasonable time.

### **76. When presentment unnecessary**

No presentment for payment is necessary, and the instrument shall be deemed to be dishonoured at the due date for presentment, in any of the following cases:

- (a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or  
if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or  
if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or  
if the instrument not being payable at any specified place, he cannot after due search be found;
- (b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
- (c) as against any party if, after maturity, with knowledge that the instrument has not been presented-  
he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due therein whole or in part, or otherwise waives his right to take advantage of any default in presentment for payment;
- (d) as against the drawer, if the drawer could not suffer damage from the want of such presentment; and
- (e) where, after the exercise of reasonable diligence, presentment as required by this Act cannot be effected.

### **77. Liability of banker for negligently dealing with bill presented for payment**

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

**PART VI**  
**OF PAYMENT AND INTEREST**

**78. To whom payment should be made**

Subject to the provision of section 82, clause (c), payment of the amount due on promissory notes, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

**79. Interest when rate specified**

When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount to the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the court directs.

**80. Interest when no rate specified**

When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of fifteen per cent per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the court directs.

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

**81. Delivery of instrument on payment or indemnity in case of loss**

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

**PART VII**  
**OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES**

**82. Discharge from liability**

The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon –

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

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

If the holder of a bill of exchange allows the drawee more than forty eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

**84. When cheque not duly presented and drawer damaged thereby**

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer of person on whose account it is drawn had right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delays, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been if such cheque had been paid.

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

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

#### *ILLUSTRATIONS*

- (a) A draws a cheque for Nu.1000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.
- (b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

### **85. Cheque payable to order**

- (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
- (2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

### **85A. Drafts drawn by one branch of a bank on another payable to order**

Where any draft, that is an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be indorsed by or behalf of the payee, the bank is discharged by payment in due course.

### **86. Parties not consenting discharged by qualified or limited acceptance**

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

Explanation: An acceptance is qualified –

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

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

### **87. Effect of material alteration**

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

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

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

### **88. Acceptor or indorser bound notwithstanding previous alteration**

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

### **89. Payment of instrument on which alteration is not apparent**

Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

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

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

### **90. Extinguishment of rights of a action on bill in acceptor's hands**

If a bill of exchange, which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

## **PART VIII OF NOTICE OF DISHONOUR**

### **91. Dishonour by non-acceptance**

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

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

### **92. Dishonour by non-payment**

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

### **93. By and to whom notice should be given**

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

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



#### **94. Mode in which notice may be given**

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

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

#### **95. Party receiving must transmit notice of dishonour**

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

#### **96. Agent for presentment**

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

#### **97. When notice of dishonour is unnecessary**

When the party to whom notice of dishonour is dispatched is dead, but the party dispatching the notice is ignorant of his death, the notice is sufficient.

#### **98. When notice of dishonour is unnecessary**

No notice of dishonour is necessary –

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment,
- (c) when the party charged could not suffer damages for want of notice;
- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

- (e) to charge the drawers, when the acceptor is also a drawer;
- (f) in the case of a promissory note which is not negotiable; and
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

## **PART IX OF REASONABLE TIME**

### **99. Reasonable time**

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

### **100. Reasonable time of giving notice of dishonour**

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

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

### **101. Reasonable time for transmitting such notice**

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

**PART X**  
**OF ACCEPTANCE AND PAYMENT FOR HONOUR**  
**AND REFERENCE CASE OF NEED**

**102. Acceptance for honour**

When an acceptance on a bill of exchange has been refused, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill accept the same for the honour of any party thereto.

**103. How acceptance for honour must be made**

A person desiring to accept for honour must, by writing on the bill under his hand, declare that he accepts that bill under protest for the honour of the drawer or of a particular indorser whom he names, or generally for honour.

**104. Acceptance not specifying for whose honour it is made**

Where the acceptance does not express for whose honour it is made it shall be deemed to be made for the honour of the drawer.

**105. Liability of acceptor for honour**

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

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

**106. When acceptor for honour may be charged**

An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him.

**107. Payment for honour**

When payment on a bill of exchange has been refused, any person may pay the same for the honour of any party liable to pay the same; provided that the person so paying or his agent in that behalf has previously declared in writing the party for whose honour he pays, and that such declaration has been recorded on the bill itself.

**108. Right of payer for honour**

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

**109. Drawee in case of need**

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

**110. Acceptance and payment by drawee in need**

A drawee in case of need may accept and pay the bill of exchange even where acceptance and payment of the bill has been previously refused.

**PART XI  
OF COMPENSATION**

**111. Rules as to compensation**

The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall be determined by the following rules:

- (a) the holder is entitled to the amount due upon the instrument together with the expense properly incurred in presenting it or towards its dishonour;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;

- (c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at fifteen per cent per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured. If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

## PART XII SPECIAL RULES OF EVIDENCE

### **112. Presumption as to negotiable instruments of consideration**

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

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

**113. Presumption on proof of dishonour**

In a suit upon an instrument, which has been dishonoured, the court shall, on proof of issuance of the notice, presume the fact of dishonour, unless and until such fact is disproved.

**114. Estoppel against denying original validity of instrument**

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

**115. Estoppel against denying capacity of payee to indorse**

No maker of a promissory note, and no acceptor of a bill of exchange payable to order shall, in suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of note or bill, to indorse the same.

**116. Estoppel against denying signature or capacity of prior party**

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

**PART XIII  
OF CROSSED CHEQUES**

**117. Cheque crossed generally**

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

### **117A. CHEQUE CROSSED “ACCOUNT PAYEE”**

- (1) Where a cheque crossed generally bears across its face an addition of the words “account payee” between the two parallel transverse lines constituting the general crossing, the cheque, besides being crossed generally, is said to be crossed “account payee”.
- (2) When a cheque is crossed “account payee”-
  - (a) it shall cease to be negotiable; and
  - (b) it shall be the duty of the banker collecting payment of the cheque to credit the proceeds thereof only to the account of the payee named in the cheque.

### **118. Cheque crossed specially**

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

### **119. Crossing after issue**

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

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

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

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

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

### **119A. Crossing a material part of a cheque**

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

### **120. Payment of cheque crossed generally**

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

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

**121. Payment of cheque crossed specially more than once**

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

**122. Payment in due course of crossed cheque**

Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

**123. Payment of crossed cheque out of due course**

Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

**124. Cheque bearing “not negotiable”**

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

**125. Non-liability of banker receiving payment of cheque**

Subject to the provisions of this Act relating to cheques crossed “account payee”, where a banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.



*Explanation:* A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

#### **125A. Application of Part to drafts**

The provisions of this Part shall apply to any draft, as defined in section 85A, as if the draft were a cheque.

### **PART XIV OF BILLS IN SETS**

#### **126. Set of bills**

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

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

#### **127. Holder of first acquired part entitled to all**

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

**PART XV**  
**OF INTERNATIONAL LAW**

**128. Law governing liability of parties to a foreign instrument**

In the absence of contract to the contrary and subject to the provisions of section 130, in the case of a foreign promissory note, bill of exchange or cheque, -

(a) the law of the place where the instrument was made or drawn, or accepted or negotiated shall determine-

(i) the capacity of the parties; and

(ii) the validity of the instrument or, as the case may be, of its acceptance or negotiation;

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

(b) the law of the place where such instrument is payable shall determine,-

(i) the liability of all parties thereto;

(ii) the duties of the holder with respect to presentment for acceptance or payment;

(iii) the date of maturity of the instrument;

(iv) what constitutes dishonour;

(v) the necessity for and sufficiency of a notice of dishonour; and

(vi) all questions relating to payment and satisfaction including the currency in which and the rate of exchange at which the instrument is to be paid.

*ILLUSTRATION*

A bill of exchange was drawn by A in California, where the rate of interest is 25%, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in Bhutan, and is dishonoured. An action on the bill is brought against B in Bhutan. He is liable to pay interest at the rate of 15 per cent only; but, if A is charged as drawer, A is liable to pay interest at the rate 25 per cent.

**129. Instrument made, etc. out of Bhutan, but in accordance with the law of Bhutan**

If a negotiable instrument is made, drawn accepted or indorsed outside Bhutan, but in accordance with the law of Bhutan, the circumstances that any agreement evidenced by such instrument is invalid according to the law of the

country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon within Bhutan.

**130. Presumption as to foreign law**

The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of Bhutan, unless and until the contrary is proved.

**PART XVI**  
**OF PENALTIES IN CASE OF DISHOUR OF CERTAIN CHEQUES FOR**  
**INSFFICIENCY OF FUNDS IN THE ACCOUNTS**

**131. Dishonour of cheque for insufficiency, etc., of funds in the accounts**

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term or with fine or both as determined with the provisions of the Thrimzhung Chenpo.

Provided that nothing contained in this section shall apply unless:

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

*Explanation* – For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

**132. Presumption in favour of holder**

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 131 for the discharge, in whole or in part, of any debt or other liability.

**133. Defence which may not be allowed in any prosecution under section 131**

It shall not be defense in a prosecution for an offence under section 131 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

**134. Offences by companies**

(1) If the person committing an offence under section 131 is a company, every person who, at the time the offence was committed, was in charged of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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

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

*Explanation* – For the purposes of this section, -

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

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

**135. Cognizance of offences**

Notwithstanding anything contained in any law for the time being in force, -

(a) no court shall take cognizance of any offence punishable under section 131 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque; and

(b) Such complaint is made within one month of the date on which the cause-of-action arises under clause (c) of the proviso to section 131.