**NEGOTIABLE INSTRUMENTS**

**GENERAL PRINCIPLES**

**PURPOSE OF CODIFICATION**

♣      Chief  purpose  was  to  produce  uniformity  in  the  laws  of  the  different states  upon  this  important  subject,  so  that  the  citizens  of  each  state might  know  the  rules  which  would  be  applied  to  their  notes,  checks, and other negotiable paper in every other state in which the law was  
enacted,  since  it  is  an  absolute  impossibility  for  the  commercial purchaser  
♣      Second  purpose  was  to  preserve  the  law  as  nearly  as  possible  as  it then existed

**COMMON FORMS OF NEGOTIABLE INSTRUMENTS**

1.    Promissory notes  
2.    Bills of exchange  
3.    Checks, which are also bills of exchange, but of a special kind

**PROMISSORY NOTE, SECTION 184**

♣      “A  negotiable  promissory  note,  within  the  meaning  of  this  act,  is  an unconditional promise in writing by one person to another, signed by the  maker

(1),  engaging  to  pay  on  demand  or  at  a  fixed  or determinable future time

(2), a sum certain in money

(3) to order or to bearer

(4).  Where a note is drawn to the maker’s own order, it is not complete until indorsed by them.”

♣      Essentially a promise in writing to pay a sum certain in money  
♣      The promise is to pay on demand or on a fixed or determinable future time  
♣      General  characteristics:  amount;  place  where  contract  to  pay  is executed;  due  date;  absolute  promise  to  pay  something;  payable  to order/bearer; payee; maker of the note

**BILL OF EXCHANGE, SECTION 126**

•      “A  bill  of  exchange  is  an  unconditional  order  in  writing  addressed  by one person to another signed by the person giving it

(1), requiring the person  to  whom  it  is  addressed  to  pay  on  demand  or  at  a  fixed  or determinable future time

(2) a sum certain in money

(3) to order or to bearer”

•      General characteristics:  the order or command to pay; drawer/maker; drawee

**CHECK**

♣      A bill of exchange drawn on a bank payable on demand

**TO WHOM INSTRUMENTS MAY BE PAYABLE**

1.    Bearer  
2.    Order  
3.    To a specified person

**WHEN IS IT PAYABLE TO BEARER?**

1.    When it is expressed to be so payable  
2.    When it is payable to a person named therein or bearer

**WHEN IS IT PAYABLE TO ORDER?**

1.    When it is expressed to be payable to the order of a specified person  
2.    To a specified person or his order

**WHEN IS IT PAYABLE TO A SPECIFIED PERSON?**

♣      When  the  instrument  is  payable  to  a  specified  person  named  in  the  
instrument and no other

**PARTIES TO A PROMISSORY NOTE**

1.    Maker—the person who executes the written promise to pay  
2.    Payee,  if  the  instrument  is  payable  to  order—the  person  in  whose favor the promissory note is made payable  
3.    Bearer, if the instrument is payable to bearer

**PARTIES TO A BILL OF EXCHANGE**

1.    Drawer—the person who executes the written order to pay  
2.    Payee,  if  the  instrument  is  payable  to  order—the  person  in  whose favor a bill of exchange is drawn payable   
3.    Bearer, if the instrument is payable to bearer  
4.    Acceptor—the  drawee  who  signifies  his  assent  to  the  order  of  the drawer.  It is  only when he accepts the bill  that he becomes a party thereto and liable thereon.

**OTHER PARTIES TO NEGOTIATED INSTRUMENTS**

1.    Indorser and   
2.    Indorsee, in the case of instruments payable to order  
3.    Persons negotiating by mere delivery  
4.    Persons to whom the instrument is negotiated by delivery

**INDORSER AND INDORSEE**

♣      When  the  negotiation  is  by  indorsement  completed  by  delivery,  the parties added are the indorser and indorsee  
♣      Indorser—the one who negotiates the instrument  
♣      Indorsee—the   one   to   whom   the   instrument   is   negotiated   by indorsement

**WHERE INSTRUMENT IS PAYABLE TO BEARER**

•      Where  the  instrument  is  payable  to  bearer,  it  can  be  negotiated  by mere delivery without necessity of indorsement

**HOLDER**

♣      The payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof  
♣      If the instrument is payable to order, he who is the payee or indorsee and who is in possession thereof  
♣      If the instrument is payable to bearer, he who is in possession thereof

**ISSUE**

♣      First  delivery  of  the  instrument,  complete  in  form  to  a  person  who takes it as a holder

**DELIVERY**

♣      Consists  principally  of  placing  the  transferee  in  possession  of  the instrument, but it must be accompanied by the intent to transfer title  
♣      “every   contract   on   a   negotiable   instrument   is   incomplete   and revocable  until  delivery  of  the  instrument  for  the  purpose  of  giving effect thereto”

**NEGOTIATION**

•      Transfer of an instrument from one person to another as to constitute the transferee the holder of the instrument  
•      Mode of transferring an instrument  
•      Effect is to make the transferee the holder of the instrument

**HOW INSTRUMENT PAYABLE TO BEARER IS NEGOTIATED**

♣      May be negotiated by mere delivery

**HOW INSTRUMENT PAYABLE TO ORDER IS NEGOTIATED**

♣      Must be negotiated by indorsement completed by delivery  
♣      Indorsement  is  necessary  to  make  the  transferee  the  indorsee  and delivery  is  necessary  to  place  the  transferee  in  possession  of  the instrument

**INDORSEMENT**

♣      Legal  transaction,  effected  by  the  writing  of  one’s  own  name  on  the back  of  the  instrument  or  upon  a  paper  attached  thereto,  with  or without  additional  words  specifying  the  person  to  whom  or  to  whose order the instrument is to be payable whereby one not only transfers  
one’s full legal title to the paper transferred but likewise enters into an implied guaranty that the instrument will be duly paid

**SPECIAL INDORSEMENT**

♣      Specifies the person to whom  or to whose order the instrument is to be payable

**BLANK INDORSEMENT**

♣      One  that  doesn’t  specify  the  person  to  whom  or  to  whose  order  the instrument is to be payable

**NEGOTIATION, INDORSEMENT, DELIVERY, COMPARED.**

1. Indorsement is merely the first step in the process of negotiating an instrument which is payable to order

2. Where  the  instrument  is  payable  to  order,  neither  is  delivery equivalent to negotiation  
3. But  where  the  instrument  is  payable  to  bearer,  delivery  is equivalent to negotiation

**PRESENTMENT FOR ACCEPTANCE**

♣      Exhibiting the bill to the drawee and demanding that he accept it, that is, signify his assent to the order or command of the drawer

**ACCEPTANCE**

♣      Signification of the drawee of his assent to the order of the drawer

**DISHONOR BY ACCEPTANCE**

♣      Where the bill is presented for acceptance, and acceptance is refused by  the  drawee,  or  cannot  be  obtained,  or  where  presentment  for acceptance is excused, and the bill is not accepted

**PRESENTMENT FOR PAYMENT**

♣      Consists  of  exhibiting  the  instrument  to  the  person  primarily  liable thereon and demanding payment form him on the date of maturity

**DISHONOR BY NON-PAYMENT**

♣      Where  the  instrument  is  presented  for  payment  and  payment  is refused or cannot be obtained,  or where presentment for  payment is excused and the instrument is overdue and unpaid

**NOTICE OF DISHONOR**

♣      When  an  instrument  has  been  dishonored  by  non-payment  or  non-acceptance

**DISCHARGE**

•      An instrument is discharged by payment in due course by or on behalf of the principal debtor

**PARTIES PRIMARILY AND SECONDARILY LIABLE**

•      Under  the  Negotiable Instruments Law,  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

**IN BILLS OF EXCHANGE**

•      The acceptor is the one primarily liable  
•      He is absolutely required to pay the instrument as he engages that he will pay it according to the tenor of his acceptance

**SECONDARY LIABILITY OF DRAWER**

•      By  the  mere  drawing  of  the  instrument,  the  drawer  assumes  the liability stated in Section 61  
•      The general tenor of the liability of the drawer is that he will pay the bill if the drawee doesn’t accept or pay the bill.    
•      In  other  words,  he  is  not  absolutely  required  to  pay  the  bill—if  the drawee  pays,  then  he  is  not  required  to  pay.    It  is  only  when  the drawee doesn’t pay that he will be required to pay.

**SECONDARY LIABILITY OF INDORSER**

♣      He will pay the instrument if the person primarily liable will not pay.

**SECONDARY LIABILITY OF ONE NEGOTIATING BY DELIVERY**

♣      By merely delivering an instrument payable to bearer, without saying anything more, the person negotiating by mere delivery assumes the liability mentioned in Section 65.    
♣      Under said section, the general tenor of liability is similar to that of an indorser

**IN PROMISSORY NOTES**

♣      The maker is primarily liable  
♣      Agreement of the maker is that he will pay the instrument according to the tenor

**FUNCTION OF NEGOTIABLE INSTRUMENTS**

1.    Substitute for money   
2.    Increase the purchasing medium in circulation

**PAYMENT BY NEGOTIABLE INSTRUMENTS**

♣      W/N the giving and taking of a promissory note or bill of exchange is prima  facie  absolute  payment  as  in  the  case  of  money  or  merely  a prima facie conditional payment?  
♣      The  delivery  of  the  promissory  notes  payable  to  order,  or  bills  of exchange  or  other  mercantile  documents  shall  produce  the  effect  of payment only when they have been cashed, or when, through the fault of the creditor, they have been impaired

**PRINCIPAL FEATURES OF NEGOTIABLE INSTRUMENTS**

1.    Negotiability  
2.    Accumulation of secondary contracts as they are transferred from one person to another

**NEGOTIABILITY**

♣      Attribute or property whereby a bill, note or check passes or 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  collect the sums payable for himself free from defense.

**PRIMARY PURPOSE OF NEGOTIABILITY**

♣      To  allow  bills  and  notes  the  effect  which  money,  in  the  form  of government bills or notes, supplies in the commercial world

**ACCUMULATION OF SECONDARY CONTRACTS**

♣      Most   important   characteristic   of   negotiable   instruments   is   the accumulation of secondary contracts which they pick up and carry with them as they are negotiated from one person to another  
♣      Advantage:  they  improve  as  they  pass  from  hand  to  hand,  as  more debtors are added

## 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 at a fixed or determinable future time a sum certain in money to order or to bearer.

## TYPES OF BILLS OF EXCHANGE 1. Draft 2. Trade acceptance 3. Banker’s acceptance 4. Treasury warrants 5. Money orders 6. Clean bills of exchange 7. Documentary bill of exchange 8. D/A bills of exchange 9. D/P bills of exchange 10. Time or usance bills 11. Bills in set 12. Inland bills 13. Foreign bills

## DRAFT > Common term for all bills of exchange and they are used synonymously

### IN BANK DRAFTS, DRAWER AND DRAWEE BANK ARE LIABLE TO PURCHASER OF DRAFT FOR NOT COMPLYING WITH HIS INSTRUCTIONS

> The drawee bank acting as “payor” bank is solely liable for acts not done in accordance with the instructions of the drawer bank or of the purchaser of the draft  
> The drawee bank has the burden of proving that it didn’t violate

## TRADE ACCEPTANCE

> A bill of exchange payable to order and at a certain maturity, drawn by a seller against the purchaser of goods as drawee, for a fixed sum of money, showing on its face the acceptance of the purchaser of goods and that it has arisen out of a purchase of goods by the acceptor  
> A draft drawn by the seller on the purchaser of goods sold and accepted by such purchaser  
> States upon its face that the obligation of the acceptor arises out of purchase of goods from the drawer  
> Arises from credit obligations arising from the sale of goods and must have a definite maturity

## BANKER’S ACCEPTANCE > Draft of which the acceptor is a bank or banker engaged generally in the business of granting banker’s acceptance credit > Similar to a trade acceptance > Drawn against the bank instead of the buyer

**TRUST RECEIPT**

> The written or printed document signed by the entrustee in favor of the entruster containing terms and conditions substantially complying with the provisions of this decree  
> The legal title to the matter entrusted remains in the entruster but the entruster gives to the trustee a form of title which is good and legal against everybody except the entruster  
> **Entrustee**—the person having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person for the purpose or purposes specified in the trust receipt agreement  
> **Entruster**—person holding title over the goods, documents, or instruments subject of a TRA and any successor-in-interest of such person

# Promissory Note, Defined

**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.**

## SPECIAL TYPES OF PROMISSORY NOTES

1.    Certificate of deposit  
2.    Bonds  
3.    Bank notes  
4.    Due bills

## CERTIFICATE OF DEPOSIT

> Written  acknowledgment  by  a  bank  of  the  receipt  of  money  on deposit which the bank promises to pay to the depositor, bearer, or to some other person or order

## BONDS

> A promise, under seal to pay money  
> More formal in character  
> Runs for a longer period of time  
> Issued under different legal circumstances

## CLASSES OF BONDS

1.    Mortgage bonds  
2.    Equipment bonds  
3.    Collateral trust bonds  
4.    Guaranteed bonds  
5.    Debentures  
6.    Income bonds  
7.    Convertible   
8.    Redeemable  
9.    Registered bonds  
10.  Coupon bonds

## REQUISITES AS TO A NEGOTIABLE NOTE

1. It must be in writing and signed by the maker    
2. It must contain an unconditional promise to pay a sum certain in money  
3. It  must  be  payable  on  demand,  or  at  a  fixed  or  determinable future time  
4. It must be payable to order or to bearer

## REQUISITES AS TO A NEGOTIABLE BILL

1. It must be in writing and signed by the maker  
2. It  must  contain  an  unconditional  order  to  pay  a  sum  certain  in money  
3. It  must  be  payable  on  demand,  or  at  a  fixed  or  determinable future time  
4. It must be payable to order or to bearer  
5. The  drawee  must  be  named  or  otherwise  indicated  therein  with reasonable certainty

## THE INSTRUMENT MUST BE IN WRITING

>      There must be a writing of some kind, for if the instrument were not in writing, there would be nothing to be negotiated or passed from hand to hand

## THE INSTRUMENT MUST BE SIGNED BY THE MAKER OR DRAWER

>      Full name must be written  
>      At  least  the  surname  should  appear  and  generally,  the  signature usually is by writing the signer’s name  
>      But, where the name is not signed, the holder must prove that what is written is intended as a signature of the person sought to be charged  
>      Commonly,  it  is  found  in  the  lower  part  of  the  instrument.    It  could also be signed anywhere as long as the maker or drawer acknowledges the signature to be his own.

## IF A BILL, IT MUST CONTAIN AN ORDER TO PAY

•      It is an instrument demanding right  
•      Any words which are equivalent to order or which show the drawer’s will  that  the  money  should  be  paid,  are  sufficient  to  make  the instrument a bill of exchange

## AN INSTRUMENT WITH AN EFFECT OF MERE AUTHORITY TO PAY

>      It is not negotiable because it is not an order to pay  
>      “I hereby authorize you to pay P1000 to Pedro Cruz”

## EFFECT OF MERE REQUEST TO PAY

>      The  instrument  is  not  negotiable  as  it  is  not  an  order  to  pay  but  a mere request to pay  
>      “Please to let the bearer have P70 and place to  my account and you will oblige”

## EFFECT OF MERE WORDS OF CIVILITY

>      The  mere  fact  that  it  contains  words  of  civility  or  courtesy  doesn’t make it non-negotiable

## WHERE INSTRUMENT IS A NOTE, IT MUST CONTAIN A PROMISE TO PAY

1. It is enough that words of equivalent meaning are used  
2. The  promise  is  implied  from  promissory  words  contained  in  the instrument

## THE PROMISE OR ORDER TO PAY MUST BE UNCONDITIONAL

>      It must not be subject to a condition  
>      It must be unconditional and absolute

## SUM PAYABLE MUST BE DEFINITE AND CERTAIN

>      The amount of money to be paid must be determinable by inspection and must be stated plainly on the face of the instrument, and like the denomination of money, must be started in the body of the instrument

## SUM MUST BE PAYABLE IN MONEY ONLY

>      Money is the one standard of value in actual business or more stable standard of value  
>      Legal tender—that kind of money which the law compels the creditor to accept in payment of his debt when tendered by the debtor in the right amount  
>      But  if  authorized  by  law  or  consent  of  creditor,  cash  may  be substituted by other means, or may be check  
>      Instrument need not be payable in legal tender

## INSTRUMENT MUST SPECIFY DENOMINATION

>      Instruments should express the specific denomination of money when  it is payable in the money of a foreign country in order that the courts may  be  able  to  ascertain  its  equivalent  value;  otherwise,  it  is  non-negotiable

## PAYABLE ON DEMAND OR ON A FIXED OR DETERMINABLE FUTURE TIME

>      On demand  
>      At a fixed or determinable future time

## WHERE NO YEAR IS SPECIFIED

>      Neither payable on demand or on a fixed or determinable future time  
>      Time of payment is not determinable as the year is not stated

## THE INSTRUMENT MUST BE PAYABLE TO ORDER OR TO BEARER

>      An  instrument  is  not  negotiable  unless  made  payable  to  a  person  or his order or bearer or unless words of the similar or equivalent import are used such as assigns or assignees or holder

## WHERE PAYABLE TO THE ORDER OF BEARER

>      Also negotiable  
>      This was held to be payable to order  
>      The  payee  of  such  an  instrument  is  the  bearer  and  it  can  only  be negotiated by his indorsement 

## WHERE PAYABLE TO A CERTAIN PERSON

>      Where the instrument is payable to a specified person, it’s not payable to order  
>      Payable to a certain person or his agent

>      Where payable to “bearer B”

## THE DRAWEE MUST BE NAMED

>      Requirement that refers only to bills of exchange  
>      Drawee’s name may be omitted and be filled in under implied authority like any other blank  
>      An acceptance may supply the omission of the designation

## IMPORTANCE OF FORMALITIES

>      Essential for the security of the mercantile transactions  
>      Distinguish   the   negotiable   instrument   from   the   ordinary   non-transferrable written contract

**Notes on Section 1:**

–          In order to be negotiable, there must be a writing of some kind, else there would be nothing to be negotiated or passed from hand to hand. The writing may be in ink, print or pencil. It may be upon parchment, cloth, leather or any other substitute of paper.

–          It must be signed by the maker or drawer. It may consist of mere initials or even numbers, but the holder must prove that what is written is intended as a signature of the person sought to be charged.

–          The Bill must contain an order, something more than the mere asking of a favor.

–          Sum payable must be in money only. It cannot be made payable in goods, wares, or merchandise or in property.

–          A drawee’s name may be filled in under Section 14 of the NIL

15.   **Determination of negotiability**

1. by the provisions of the Negotiable Instrument Law, particularly Section 1 thereof
2. by considering the whole instrument
3. by what appears on the face of the instrument and not elsewhere

\*In determining is the instrument is negotiable, only the instrument itself and no other, must be examined and compared with the requirements stated in Sec. 1. If it appears on the instrument that it lacks one of the requirements, it is not negotiable and the provisions of the NIL do not govern the instrument. The requirement lacking cannot be supplied by using a separate instrument in which that requirement which is lacking appears.

16.   **Sum is certain even if it is to be paid with:**

a.       interest

b.       in installments

c.       in installments with acceleration clause

d.       with exchange

e.       costs of collection or attorney’s fees (Sec. 2 NIL)

17.   General Rule: The promise or order should not depend on a contingent event. If it is conditional, it is non-negotiable.

Exceptions:

a.       indication of particular fund from which the acceptor disburses himself after payment

b.       statement of the transaction which gives rise to the instrument. (Sec. 3 NIL)

But an order or promise to pay out of a particular fund is not unconditional

**Notes on Section 3**

–          The particular fund indicated should not be the direct source of payment, else it becomes unconditional and therefore non-negotiable. The fund should only be the source of reimbursement.

–          A statement of the transaction does not destroy the negotiability of the instrument. Exception: Where the promise to pay or order is made subject to the terms and conditions of the transaction stated.

18.  **Instrument is payable upon a determinable future time if:**

a.       there is a fixed period after sight/date

b.       on or before a specified date/fixed determinable future time

c.       on or at a fixed date after the occurrence of an event certain to happen though the exact date is not certain (Sec. 4 NIL)

**Notes on Section 4**

–          If the instrument is payable upon a contingency, the happening of the event does not cure the defect (still non-negotiable)

19.   **General Rule: If some other act is required other than the payment of money, it is non-negotiable.**

Exceptions:

a.       sale of collateral securities

b.       confession of judgment

c.       waives benefit of law

d.       gives option to the holder to require something to be done in lieu of money (Sec. 5 NIL)

**Notes of Section 5**

–          Limitation on the provision, it cannot require something illegal.

–          There are two kinds of judgements by confession: a) cognovit actionem b) relicta verificatione

–          Confessions of judgement in the Philippines are void as against public policy.

–          If the choice lies with the debtor, the instrument is rendered non-negotiable.

20.   **The validity and negotiability of an instrument is not affected by the fact that:**

1. it is not dated
2. does not specify the value given or that any had been given
3. does not specify the place where it is drawn or payable
4. bears a seal
5. designates the kind of current money in which payment is to be made (Sec. 6 NIL)

21.   **Instrument is payable upon demand if:**

a.       it is expressed to be so payable on sight or upon presentation

b.       no period of payment is stipulated

c.       issued, accepted, or endorsed after maturity (Sec. 7 NIL)

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

**Notes on Section 7**

– if the time for payment is left blank (as opposed to being omitted), it may properly be considered as an incomplete instrument and fall under the provisions of Sec. 14, 15, or 16 depending on how the instrument is delivered.

22.   **Instrument is payable to order:**

–          where it is drawn payable to the order of a specified person or

–          to a specified person or his order

It may be drawn payable to the order of:

1. a payee who is not a maker, drawer, or drawee
2. the drawer or maker
3. the drawee
4. two or more payees jointly
5. one or some of several payees
6. the holder of an office for the time being       (Sec. 8 NIL)

**Notes on Section 8**

–          The payee must be named or otherwise indicated therein with reasonable certainty.

–          If there is no payee, there would be no one to indorse the instrument payable to order. Therefore useless to be considered negotiable.

–          Joint payees in indicated by the conjunction “and”. To negotiate, all must indorse.

–          Being several payees is indicated by the conjunction “or”.

23.   **Instrument is payable to bearer :**

a.       when it is expressed to be so payable

b.       when payable to the person named or bearer

c.       payable to order of fictitious or non-existent person and this fact was known to drawer

d.       name of payee not name of any person

e.       only and last indorsement is an indorsement in blank (Sec. 9 NIL)

**Notes on Section 9**

–          “fictitious person” is not limited to persons having no legal existence. An existing person may be considered fictitious depending on the intention of the maker or the drawer.

–          “fictitious person” means a person who has no right to the instrument because the maker or drawer of it so intended. He was not intended to be the payee.

–          where the instrument is drawn, made or prepared by an agent, the knowledge or intent of the signer of the instrument is controlling.

–          Where the agent has no authority to execute the instrument, the intent of the principal is controlling

24.   **The date may be inserted in an instrument when:**

1. an instrument expressed to be payable at a fixed period after date is issued undated
2. where acceptance of an instrument payable at a fixed period after sight is undated (Sec. 13 NIL)

Effects:

–          any holder may insert the true date of issuance or acceptance

–          the insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course

–          as to the holder in due course, the date inserted (even if it be the wrong date) is regarded as the true date.

25.   **Subsequent Holder in Due Course not affected by the following deficiencies:**

a.       incomplete but delivered instrument (Sec. 14 NIL)

b.       complete but undelivered (Sec. 16 NIL)

c.       complete and delivered issued without consideration or a consideration consisting of a promise which was not fulfilled (Sec 28 NIL)

**26.   Holder in Due Course Affected by Abnormality/Deficiency:**

a.       incomplete and undelivered instrument (Sec. 15 NIL)

b.       maker/drawer’s signature forged (Sec. 23 NIL)

**27.   Incomplete but Delivered Instrument:**

1. Where an instrument is wanting in any material particular:

a.       Holder has *prima facie* authority to fill up the blanks therein.

b.       It must be filled up strictly in accordance with the authority given and within a reasonable time.

c.       If negotiated to a holder in due course, it is valid and effectual for all purpose as though it was filled up strictly in accordance with the authority given and within reasonable time. (Sec. 14 NIL)

2. Where only a signature on a blank paper was delivered:

1. It was delivered by the person making it in order that it may be converted into a negotiable instrument
2. The holder has *prima facie*authority to fill it up as such for any amount. (Sec. 14 NIL)

**Notes on Section 14**

–          if the instrument is wanting in material particular, mere possession of the instrument is enough to presume prima facie authority to fill it up.

–          material particular may be an omission which will render the instrument non-negotiable (e.g. name of payee), an omission which will not render the instrument non-negotiable (e.g. date)

–          in the case of the signature in blank, delivery with intent to convert it into a negotiable instrument is required. Mere possession is not enough.

28.  **Incomplete and Undelivered Instrument:**

General Rule: 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 against any person who signed before delivery. (Sec. 15 NIL)

**Notes on Section 15**

–          it is a real defense. It can be interposed against a holder in due course.

–          delivery is not conclusively presumed where the instrument is incomplete

–          defense of the maker is to prove non-delivery of the incomplete instrument.

29.   **Complete but Undelivered:**

General Rule: Every contract on a negotiable instrument is incomplete and revocable until delivery for the purpose of giving effect thereto.

a.       If between immediate parties and remote parties not holder in due course, to be effectual there must be authorized delivery by the party making, drawing, accepting or indorsing. Delivery may be shown to be conditional or for a special purpose only

b.       If the holder is a holder in due course, all prior deliveries conclusively presumed valid

c.       If instrument not in hands of drawer/maker, valid and intentional delivery is presumed until the contrary is proven (Sec. 16 NIL)

**Rules on delivery of negotiable instruments:**

1)    delivery is essential to the validity of any negotiable instrument

2)    as between immediate parties or those is like cases, delivery must be with intention of passing title

3)    an instrument signed but not completed by the drawer or maker and retained by him is invalid as to him for want of delivery even in the hands of a holder in due course

4)    but there is prima facie presumption of delivery of an instrument signed but not completed by the drawer or maker and retained by him if it is in the hands of a holder in due course. This may be rebutted by proof of non-delivery.

5)    an instrument entrusted to another who wrongfully completes it and negotiates it to a holder in due course, delivery to the agent or custodian is sufficient delivery to bind the maker or drawer.

6)    If an instrument is completed and is found in the possession of another, there is prima facie evidence of delivery and if it be a holder in due course, there is conclusive presumption of delivery.

7)    delivery may be conditional or for a special purpose but such do not affect the rights of a holder in due course.

**30.   General rule: a person whose signature does not appear on the instrument in not liable.**

Exception:

1. one who signs in a trade or assumed name (Sec. 18)
2. a duly authorized agent (Sec. 19)
3. a forger (Sec. 23)

31.   General rule: an agent is not liable on the instrument if he were duly authorized to sign for or on behalf of a principal.

Requisites:

1. he must be duly authorized
2. he must add words to his signature indicating that he signs as an agent
3. he must disclose his principal (Sec. 20 NIL)

**Notes on Section 20**

–          if an agent does not disclose his principal, the agent is personally liable on the instrument.

**32.   Per Procuration – operates as notice that the agent has a limited authority to sign.**

Effects:

–          the principal in only bound if the agent acted within the limits of the authority given

–          the person who takes the instrument is bound to inquire into the extent and nature of the authority given. (Sec. 21 NIL)

33.   General rule: Infants and corporations incur no liability by their indorsement or assignment of an instrument. (Sec. 22 NIL)

Effects:

–          no liability attached to the infant or the corporation

–          the instrument is still valid and the indorsee acquires title

34.   General rule: a signature which is forged or made without authority is wholly inoperative.

Effects:

1. no right to retain
2. no right to give a discharge
3. no right to enforce payment can be acquired.       (Sec. 23 NIL)

Exception:

–          the party against whom it is sought to be enforced is precluded from setting up the forgery or want of authority.

**Notes on Section 23**

–          Section 23 applies only to forged signatures or signatures made without authority

–          Alterations such as to amounts or like fall under section 124

–          Forms of forgery are a) fraud in factum b) duress amounting to fraud c) fraudulent impersonation

–          Only the signature forged or made without authority is inoperative, the instrument or other signatures which are genuine are affected

–          The instrument can be enforced by holders to whose title the forged signature is not necessary

–          Persons who are precluded from setting up the forgery are a) those who warrant or admit the genuineness of the signature b) those who are estopped.

–          Persons who are precluded by warranting are a) indorsers b) persons negotiating by delivery c) acceptors.

–          drawee bank is conclusively presumed to know the signature of its drawer

–          if endorser’s signature is forged, loss will be borne by the forger and parties subsequent thereto

–          drawee bank is not conclusively presumed to know the signature of the indorser. The responsibility falls on the bank which last guaranteed the indorsement and not the drawee bank.

–          Where the payee’s signature is forged, payments made by the drawee bank to collecting bank is ineffective. No debtor/creditor relationship is created. An agency to collect is created between the person depositing and the collecting bank. Drawee bank may recover from collecting bank who may in turn recover from the person depositing.

**Rules on liabilities of parties on a forged instrument**

**In a PN**

–          a party whose indorsement is forged on a note payable to order and all parties prior to him including the maker cannot be held liable by any holder

–          a party whose indorsement is forged on a note originally payable to bearer and all parties prior to him including the maker may be held liable by a holder in due course provided that it was mechanically complete before the forgery

–          a maker whose signature was forged cannot be held liable by any holder

**In a BOE**

–          the drawer’s account cannot be charged by the drawee where the drawee paid

–          the drawer has no right to recover from the collecting bank

–          the drawee bank can recover from the collecting bank

–          the payee can recover from the drawer

–          the payee can recover from the recipient of the payment, such as the collecting bank

–          the payee cannot collect from the drawee bank

–          the collecting bank bears the loss but can recover from the person to whom it paid

–          if payable to bearer, the rules are the same as in PN.

–          if the drawee has accepted the bill, the drawee bears the loss and his remedy is to go after the forger

–          if the drawee has not accepted the bill but has paid it, the drawee cannot recover from the drawer or the recipient of the proceeds, absence any act of negligence on their part.

35.   Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration. (Sec. 24 NIL)

Effects:

–          every person whose signature appears thereon is a party for value

–          presumption is disputable

36.   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. 26 NIL)

37.   Effect of want of consideration:

1. Absence or failure of consideration may be set up against a holder not a holder in due course (personal defense)
2. Partial failure of consideration is a defense pro tanto (Sec 28 NIL)

**Notes on Section 28**

–          absence of consideration is where no consideration was intended to pass.

–          failure of consideration implies that consideration was intended by that it failed to pass

–          the defense of want of consideration is ineffective against a holder in due course

–          a drawee who accepts the bill cannot allege want of consideration against the drawer

38.   An accommodation party is one who signs the instrument as maker, drawer, acceptor, or indorser without receiving value therefor and for the purpose of lending his name to some other person.

Effects:

–          an accommodation party is liable to the holder for value notwithstanding that such holder knew that of the accommodation. (Sec. 28 NIL)

**Notes on Section 28**

–          the accommodated party cannot recover from the accommodation party

–          want of consideration cannot be interposed by the accommodation party

–          an accommodation maker may seek reimbursement from a co-maker even in the absence of any provision in the NIL; the deficiency is supplied by the New Civil Code.

–          he may do this even without first proceeding against the debtor provided:

a.       he paid by virtue of judicial demand

b.       principal debtor is insolvent

39.   An instrument is negotiated when:

1. it is transferred from one person to another
2. that the transfer must be in a manner as to constitute the transferee a holder

For a bearer instrument – by delivery

For payable to order – by indorsement and delivery (Sec. 30 NIL)

40.   Indorsement to be must be:

1. written
2. on the instrument itself or upon a piece of paper attached (Sec. 31 NIL)

**Notes on Section 31**

–          the paper attached with the indorsement is an allonge

–          an allonge must be attached so that it becomes a part of the instrument, it cannot be simply pinned or clipped to it.

**41.   Kinds of Indorsements:**

1. Special (Sec. 34)
2. Blank (Sec. 35)
3. Restrictive (Sec. 36)
4. Qualified (Sec. 38)
5. Conditional (Sec. 39 NIL)

**42.   Effects of indorsing an instrument originally payable to bearer:**

–          it may further be negotiated by delivery

–          the person indorsing is liable as indorser to such persons as to make title through his indorsement (Sec. 40 NIL)

**Notes on Section 40**

–          Section 40 applies only to instruments originally payable to bearer

–          It cannot apply where the instrument is payable to bearer because the only or last indorsement is in blank.

43.   A holder may strike out any indorsement which is not necessary to his title.

Effects:

–          An indorser whose indorsement is struck out is discharged

–          All indorsers subsequent to such indorser who has been discharged are likewise relieved. (Sec. 48 NIL)

**44.   Effects of a transfer without endorsement:**

–          the transferee acquires such title as the transferor had

–          the transferee acquires the right to have the indorsement of the transferor

–          negotiation takes effect as of the time the indorsement is actually made (Sec. 49 NIL)

**45.   Rights of a holder:**

–          a holder may sue in his own name

–          a holder may receive payment.

Effects:

–          if in due course it discharges the instrument (Sec. 51 NIL)

**46.   Requisites for a Holder in Due Course (HDC):**

a.       receives the instrument complete and regular on its face

b.       became a holder before it was overdue and had no notice that it had been previously dishonored if such was the fact

c.       takes the instrument for value and in good faith

d.       at time he took the instrument, no notice of infirmity in instrument or defect in the title of the person negotiating it (Sec. 52 NIL)

**Notes on Section 52**

–          every holder is presumed to be a HDC (Sec. 59)

–          the person who questions such has the burden of proof to prove otherwise

–          if one of the requisites are lacking, the holder is not HDC

–          an instrument is considered complete and regular on its face if a) the omission is immaterial b) the alteration on the instrument was not apparent on its face

–          an instrument is overdue after the date of maturity.

–          on the date of maturity, the instrument is not overdue and the holder is a HDC

–          acquisition of the transferee or indorsee must be in good faith

–          good faith means lack of knowledge or notice of defect or infirmity

47.   A holder is not a HDC where an instrument payable on demand is negotiated at an unreasonable length of time after its issue (Sec. 53 NIL)

**48.   Rights of a HDC:**

–          holds the instrument free from any defect of title of prior parties

–          free from defenses available to prior parties among themselves (personal/ equitable defenses)

–          may enforce payment of the instrument for the full amount against all parties liable(Sec. 57 NIL)

**Notes on Section 57**

–          Personal or equitable defenses are those which grow out of the agreement or conduct of a particular person in regard to the instrument which renders it inequitable for him through legal title to enforce it. Can be set up against holders not HDC

–          Legal or real defenses are those which attach to the instrument itself and can be set up against the whole world, including a HDC.

|  |  |
| --- | --- |
| Personal Defenses | Real Defenses |
| 1. absence or failure of consideration | Alteration |
| 2. want of delivery of complete instrument | Want of delivery of incomplete instrument |
| 3. insertion of wrong date where payable at a fixed period after date and issued undated; or at a fixed period after sight and acceptance is undated | Duress amounting to forgery |
| 4. filling up the blanks contrary to authority given or not within reasonable time | Fraud in factum or in esse contractus |
| 5. fraud in inducement | Minority |
| 6. acquisition of the instrument by force, duress or fear | Marriage in case of a wife |
| 7. acquisition of the instrument by unlawful means | Insanity where the insane person has a guardian appointed by the court |
| 8. acquisition of the instrument for an illegal consideration | Ultra vires acts of a corporation where its charter or by statue, it is prohibited from issuing commercial paper |
| 9. negotiation in breach of faith | Want of authority of agent |
| 10. negotiation under circumstances amounting to fraud | Execution of instrument   between public enemies |
| 11.Mistake | Illegality of contract made by statue |
| 12. intoxication | Forgery |
| 13. ultra vires acts of corporations |  |
| 14. want of authority of the agent where he has apparent authority |  |
| 15. illegality of contract where form or consideration is illegal |  |
| 16. insanity where there is no notice of insanity |  |

49.   A instrument not in the hands of a HDC is subject to the same defenses as if it were non-negotiable.

Exception:

–          a holder who derives his title through a HDC and is not a party to any fraud or illegality affecting the instrument, has all the rights of such HDC in respect to all parties prior. (Sec. 58 NIL)

**Rights of a holder not a HDC**

–          may sue in his own name

–          may receive payment and if it is in due course, the instrument is discharged

–          holds the instrument subject to the same defenses as if it were non-negotiable

–          if he derives his title through a HDC and is not a party to any fraud or illegality thereto, has all the rights of such HDC

50.   General rule: every holder is deemed prima facie to be a holder in due course.

Exception:

–          where it is shown that the title of any person who has negotiated the instrument is defective, the burden is on the holder to prove that he is a HDC or that a person under whom he claims is a HDC (Sec. 59 NIL)

51.   A maker is primarily liable:

Effects of making the instrument, the maker:

a.       engages to pay according to tenor of instrument

b.       admits existence of payee and his capacity to indorse (Sec. 60 NIL)

**Notes on Section 60**

–          a maker’s liability is primarily and unconditional

–          one who has signed as such is presumed to have acted with care and to have signed with full knowledge of its contents, unless fraud is proved

–          the payee’s interest is only to see to it that the note is paid according to its terms

–          when two or more makers sign jointly, each is individually liable for the full amount even if one did not receive the value given

–          the maker is precluded from setting up the defense of a) the payee is fictional, b) that the payee was insane, a minor or a corporation acting ultra vires

52.   A drawer is secondarily liable

Effects of drawing the instrument, the drawer:

1. admits the existence of the payee,
2. the capacity of such payee to indorse
3. engages that on due presentment, the instrument will be accepted or paid or both according to its tenor.

If the instrument is dishonored, and the necessary proceedings on dishonor duly taken

1. the drawer will pay the amount thereof to the holder
2. will pay to any subsequent indorser who may be compelled to pay it. (Sec. 61 NIL)

**Notes on Section 61**

–          a drawer may insert an express stipulation to negative or limit his liability

53.   An acceptor is primarily liable

By accepting the instrument, an acceptor:

–          engages that he will pay according to the tenor of his acceptance

–          admits the existence of the drawer, the genuineness of his signature and his capacity and authority to draw the instrument

–          the existence of the payee and his then capacity indorse

**54.   Irregular Indorser** – a person not otherwise a party to an instrument places his signature in blank before delivery is liable as an indorser in the following manner:

1. if payable to order of a third person – liable to the payee and to all subsequent parties
2. if payable to order of the maker or drawer – liable to all parties subsequent to the maker or drawer
3. if payable to bearer – liable to all parties subsequent to the maker or drawer
4. if signs for an accommodation party – liable to all parties subsequent to the payee (Sec. 64 NIL)

**55.   Warranties where negotiating by delivery or qualified endorsement:**

1. the instrument is genuine and in all respect what it purports to be
2. the indorser has good title to it
3. all prior parties had the capacity to contract
4. indorser has no knowledge of any fact that would impair the validity or the value of the instrument.

**Limitations of warranties:**

-if by delivery – extends only to immediate transferee

-warranty of capacity to contract does not apply to persons negotiating public or corporate securities (Sec. 65 NIL)

**Notes on Section 65**

–          a qualified indorser is one who indorses without recourse or sans recourse

–          recourse – resort to a person secondarily liable after default of person primarily liable

–          a qualified indorser cannot raise the defense of a) forgery b) defect of his title or that it is void c) the incapacity of the maker, drawer or previous indorsers.

–          a qualified Indorsement makes the indorser mere assignor of title of instrument, relieves him of general obligation to pay if instrument is dishonored, but he is still liable for the warranties arising from instrument only up to warranties of general indorser

–          the warranty is to the capacity of prior parties at the time the instrument was negotiated. Subsequent incapacity does not breach the warranty.

–          lack of knowledge of the indorser as to any fact that would impair the validity or the value of the instrument must be subsisting all throughout.

–          a person Negotiating by Delivery warrants same as those of qualified indorser and extends to immediate transferees only

**56.   Warranties of a general indorser:**

1. the instrument is genuine and in all respect what it purports to be
2. the he has good title to it
3. all prior parties had the capacity to contract
4. that the instrument at the time of his indorsement was valid and subsisting (Sec. 66 NIL)

In addition:

–          engages that the instrument will be accepted or paid or both according to its tenor on due presentment

–          engages to pay the amount thereof if it be dishonored and the necessary proceedings on dishonor are taken

**Notes on Section 66**

–          the indorser under Section 66 warrants the solvency of a prior party

–          the indorser warrants that the instrument is valid and subsisting regardless of whether he is ignorant of that fact or not.

–          warranties extend in favor of a) a HDC b) persons who derive their title from HDC c) immediate transferees even if not HDC

–          the indorser does not warrant the genuineness of the drawer’s signature

–          general indorser is only secondarily liable

57.   General rule: Presentment for payment is not necessary to charge persons primarily liable on the instrument. Presentment for payment is necessary to charge the drawer and indorsers. (Sec 70 NIL)

**Notes on Section 70**

–          presentation for payment – production of a BOE to the drawee for his acceptance, or to a drawee or acceptor for payment. Also presentment of a PN to the party liable for payment of the same.

–          consists of a) a personal demand for payment at a proper place b) the bill or note must be ready to be exhibited if required and surrendered upon payment.

–          parties primarily liable – persons by the terms of the instrument are absolutely required to pay the same. E.g maker and acceptors. They can be sued directly.

–          if payable at the special place, and the person liable is willing to pay there at maturity, such willingness and ability is equivalent to tender of payment.

–          presentment is necessary to charge persons secondarily liable otherwise they are discharged

–          Acts needed to charge persons secondarily liable: a) presentment for payment/acceptance b) dishonor by non-payment/non-acceptance c) notice of dishonor to secondary parties

–          Acts needed to charge persons secondarily liable in other cases: a) Protest for non-payment by the drawee b) protest for non-payment by the acceptor for honor

**58.   Proper presentment:**

1. by the holder or an authorized person
2. at a reasonable hour on a business day
3. at a proper place
4. to the person primarily liable or if absent to any person found at the place where presentment is made (sec. 72 NIL)

**Notes on Section 72**

–          only the holder or one authorized by him has the right to make presentment for payment

–          presentment cannot be made on a Sunday or holiday

–          presentment for payment is made to the maker, or acceptor. Not to the person secondarily liable.

–          if the instrument is payable on demand – a) if it is a note – presentment must be made within reasonable time after issue b) if it is a bill – presentment must be made within reasonable time after last negotiation.

**59.   Presentment not required to charge the drawer:**

1. he has no right to expect
2. he has no right to require

that the drawee or acceptor will pay (Sec 79 NIL)

**60.   Presentment not required to charge the indorser where:**

1. the instrument was made or accepted for his accommodation
2. he has no reason to expect that the instrument will be paid if presented (Sec. 80 NIL)

61.   General rule: Presentment for payment necessary to charge persons secondarily liable otherwise they are discharged:

Exception:

–          Section 79 and 80

**Notes on Section 79 and 80**

–          only the drawer or indorser are not discharged. All other parties secondarily liable are discharged.

**62.   Presentment for payment excused if:**

a.       after due diligence, presentment cannot be made

b.       presentment is waived

c.       the drawee is a fictitious person (Sec 82 NIL)

**Notes on Section 82**

–          what is excused is the failure to make presentment. There is no need to make any presentment versus under section 81 (delay in presentment) presentment for payment is still required after the cause of delay has ceased.

63.   Summary of rules as to presentment for payment:

1. presentment not necessary to charge persons primarily liable
2. necessary to charge persons secondarily liable except:

–          the drawer under Sec. 79

–          the indorser under Sec. 80

–          when excused under Sec. 82

–          when the instrument has been dishonored by non-acceptance under Sec. 83

64.   How dishonored by non-acceptance:

–          the instrument was duly presented but payment is refused or cannot be obtained

–          presentment is excused and the instrument is overdue and unpaid (Sec. 83 NIL)

65.   Effects of dishonor by non-payment:

–          an immediate right of recourse to all parties secondarily liable accrues to the holder. (Sec. 84 NIL)

**Notes on Section 84**

–          parties cease to be secondarily liable and become principal debtors.

–          Liability becomes the same as that of the original obligors.

**66.   Requisites for payment in due course:**

1. made at or after the maturity of the instrument
2. to the holder
3. in good faith
4. without notice of any defect in the holder’s title (sec. 88 NIL)

**Notes on Section 88**

–          payment must be made to the possessor of the instrument

–          possession of the note by the maker is presumptive evidence that it has been paid

**67.   Notice of Dishonor may be given:**

1. by or on behalf or the holder
2. by or on behalf of any party who:

–          is a party to the instrument and might be compelled to pay the instrument

–          to a holder who having taken it up would have a right of reimbursement from the party to whom notice is given. (Sec. 90 NIL)

**68.   Notice:**

1. may be written or oral (Sec. 96)
2. written notice need not be signed or may be supplemented by verbal communication (Sec. 95)
3. may be by personal delivery or by mail (Sec. 96)

**69.   Notice may be waived either expressly or implied:**

1. before the time of giving notice has arrived
2. after the omission to give due notice (Sec. 109 NIL)

**70.   Protest may be waived:**

Effects:

–          deemed a waiver of presentment and notice of dishonor as well (Sec. 111 NIL)

**Notes on Section 111**

–          Where notice is waived, presentment is not waived

–          Where presentment is waived, notice is also waived

–          Where protest is waived, notice and presentment is waived

71.   **Notice of Dishonor** – given by the holder to the parties secondarily liable, drawer and each indorser, that the instrument was dishonored by non-acceptance or non-payment by the drawee/maker

General rule: Any drawer or indorser to whom such notice is not given is discharged.

Exceptions:

1. Waiver (Sec. 109)
2. Notice is dispensed (Sec. 112)
3. Not necessary to Drawer (Sec. 114)
4. Not necessary to Indorser (Sec. 115)

– if notice is delayed, delay may be excused (Sec. 113)

**72.   Instances when Notice of Dishonor Not Necessary to Drawer**

a.       drawer and drawee same person

b.       drawee is a fictitious/incapacitated person

c.       drawer is the person to whom presentment for payment is made

d.       drawer has no right to expect that the drawee will accept/pay the instrument (Sec. 114 NIL)

**73.   Instances when Notice Not Required to Indorser**

a.       drawee was a fictitious/incapacitated person and the indorser was aware of such at the time of indorsement

b.       indorser is the person to whom instrument was presented for payment

c.       instrument made/accepted for his accommodation (Sec. 115 NIL)

74.   Omission to give notice of dishonor by non-acceptance doe not prejudice a HDC (Sec. 117 NIL)

75.   Protest only necessary for a foreign bill of exchange. Protest for other negotiable instruments is optional. (Sec. 118 NIL)

**76.   Causes of Discharge of the Instrument**

a.       payment by the debtor

b.       payment by accommodated party

c.       intentional cancellation by holder of instrument

d.       any other act discharging a simple monetary obligation

e.       debtor becomes holder of the instrument at/after maturity in his own right ( Sec 119 NIL)

**Notes on Section 119**

–          discharge of the instrument discharges all the parties thereto

–          payment must be in due course, and by the principal debtor or on his behalf

–          if payment is not made by the principal debtor, payment only cancels the liability of the payor and those obligated after him but does not discharge the instrument.

–          payment by an accommodation party does not discharge the instrument.

**77.   Discharge of Secondary Parties:**

a.       any act discharging the instrument

b.       cancellation of indorser’s signature by indorsers

c.       discharge of prior party

d.       tender of payment by prior party

e.       release of principal debtor

f.         extension of payment by the holder/postponement of right to enforce without assent of secondary parties and without reservation of right of recourse against secondary parties (Sec 120 NIL)

**78.   Rights of a party secondarily liable who pays:**

–          the instrument is not discharge

–          the party is remitted to his former rights as to all prior parties

–          the party may strike out his own and all subsequent indorsements

–          the party may negotiate the instrument again

Exception:

–          an instrument cannot be renegotiated where it is payable to order of a 3rd person and has been paid by the drawer

–          and instrument cannot be renegotiated where is was made or accepted for accommodation and it has been paid by the party accommodated.

**78. Renunciation by a holder discharges an instrument when:**

1. it is absolute and unconditional
2. made in favor of a person primarily liable
3. made at or after maturity of the instrument
4. in writing or the instrument is delivered up to the person primarily liable (Sec. 122 NIL)

**Notes on Section 122**

–          if renounced in favor of a party secondarily liable, only he is exonerated from liability and all parties subsequent to him

–          discharge by novation is allowed

79.   General rule: When materially altered, without the consent of all parties liable, the instrument is avoided except as against:

1. the party who has made the alteration
2. the party who authorized or assented to the alteration.
3. subsequent indorsers

Exception:

–          if in the hands of a HDC, may be enforced according to its original tenor

**Notes on Section 124**

–          there is no distinction between fraudulent and innocent alteration

**80.   Material Alteration – an alternation is said to be material if it alters the effect of the instrument.**

Under Section 125 the following changes are considered material alterations:

1. dates
2. the sum payable
3. time and place of payment
4. number or relations of the parties
5. medium or currency for payment
6. adding a place of payment where no place is specified
7. any other which alters the affect of the instrument

**81.   Instances where a BOE may be treated as a PN:**

1. where the drawer and the drawee are one and the same
2. where the drawee is a fictitious person
3. where the drawee has no capacity to contract (Sec. 130 NIL)

The holder has the option to treat it as a BOE or a PN

82.   Acceptance is the signification by the drawee of his assent to the order of the drawer. It is an act by which a person on whom the BOE is drawn assents to the request of the drawer to pay it. (Sec. 132 NIL)

**Acceptance may be:**

1. actual
2. constructive
3. general (Sec. 140)
4. qualified (Sec. 141)

**Requisites of actual acceptance:**

–          in writing

–          signed by the drawee

–          must not express the drawee will perform his promise by any other means than payment of money

–          communicated or delivered to the holder

1. **A holder has the right:**
2. require that acceptance be written on the bill and if refused, treat it as if dishonored (Sec. 133)
3. refuse to accept a qualified acceptance and may treat it as dishonored (Sec. 142)
4. **Constructive Acceptance:**
5. where the drawee to whom the bill has been delivered destroys it
6. the drawee refuses within 24 hrs after such delivery or within such time as is given, to return the bill accepted or not.       (Sec. 137 NIL)

**Notes on Section 137**

–          drawee becomes primarily liable as an acceptor.

–          mere retention is equivalent to acceptance

1. **When presentment for acceptance is necessary:**
2. if necessary to fix the maturity of the bill
3. if it is expressly stipulated that it shall be presented for acceptance
4. if the bill is drawn payable elsewhere than the residence or place of business of the drawee (Sec. 143 NIL)

**Notes on Section 143**

–          Presentment is the production of a BOE to the drawee for his acceptance

–          in on order case is presentment necessary to make parties liable.

**90. Summary on presentment for acceptance of Bills of Exchange:**

a.       to make the drawee primarily liable and for the accrual of secondary liability (Sec. 144)

b.       necessary to fix maturity date, where bill expressly stipulates presentment, bill payable other than place of drawee (Sec. 143)

c.       when presentment is excused: drawee is dead, hides, is fictitious, incapacitated person, after due diligence presentment cannot be made, presentment is refused on another ground although presentment is irregular (Sec. 148)

1. General rule: Protest is required only for foreign bills

Exception:

–          inland bills and notes may also be protested if desired

**Protest is required:**

1. where the foreign bill is dishonored by non acceptance
2. where the foreign bill is dishonored by non-payment
3. where the bill has been accepted for honor, it must be protested for non-payment before it is presented for payment to the acceptor for honor
4. where the bill contains a referee in case of need, it must be protested for non payment before presentment for payment to the referee in case of need (Sec. 152)

**Notes on Section 152**

–          Protest – formal statement in writing made by a notary under his seal of office at the request of the holder, in which it is declare that the some was presented for payment or acceptance (as the case may be) and such was refused.

–          it means all steps or acts accompanying the dishonor of a bill or note necessary to charge an indorser

–          required when the instrument is a foreign bill of exchange.

–          it must be made on the same date of dishonor, by a notary/respectable citizen of the place in the presence of 2 credible witnesses so recourse to secondary parties

1. **Acceptance for Honor**   (Sec. 161 NIL)– an acceptance of a bill made by a stranger to it before maturirty, where the drawee of the bill has:
2. refused to accept it
3. and the bill has been protested for non-acceptance
4. or where the bill has been protested for better security

**Requisites for acceptance for honor:**

–          the bill must have been previously protested a) for non-acceptance b) or for better security

–          the bill is not overdue at the time of the acceptance for honor

–          the acceptor for honor must be a stranger to the bill

–          the holder must give his consent

**Notes on Acceptance for Honor**

–          Purpose: to save the credit of the parties to the instrument or some party to it as the drawer, drawee, or indorser or somebody else.

–          Acceptor for honor is liable to the holder and to all the parties to the bill subsequent to the party for whose honor he has accepted (Sec. 164)

1. **How acceptance for honor is made:**
2. in writing and indicated that it is an acceptance for honor
3. signed by the person making the acceptance (Sec. 162 NIL)

1. **Payment for Honor** – payment made through a notarial act of honor of a party liable/stranger to the bill after bill has been dishonored by non-payment by the acceptor and protested for non-payment by the holder

Requisites:

a.       protest for non-payment

b.       any person may pay supra protest

**Form for payment of honor:**

1. payment must be attested by notarial act appended to the protest, or form an extension to it.
2. notarial act of honor must be based on a declaration by the payer for honor

1. **Bills in Set** – bill of exchange drawn in several parts, each part of the set being numbered and containing a reference to the other parts, the whole of the parts just constituting one bill (Sec 178 NIL)

**DISCHARGE**

1. Of the Instrument
2. payment in due course by or on behalf of principal debtor

* Payment in due course:

1. made at or after maturity
2. to the holder thereof
3. in good faith and without notice that his title is defective
4. payment in due course by party accommodated where party is made/ accepted for accommodation
5. intentional cancellation by holder

* if unintentional or under mistake or without authority of holder, inoperative. Burden of proof  on party which alleges it was unintentional, etc.

1. any other act which discharges a simple contract
2. principal debtor becomes holder of instrument at or after maturity in his own right
3. renunciation of holder:

* holder may expressly renounce his rights vs. any party to the instrument, before or after its maturity
* absolute and unconditional renunciation of his rights vs. principal debtor made at or after maturity discharges the instrument
* renunciation does not affect rights of HDC w/o notice.
* Renunciation must be in writing unless instrument delivered up to person primarily liable thereon

1. material alteration (sec. 124: material alteration w/o assent of all parties liable avoids instrument except as against party to alteration and subsequent indorsers)
2. Of secondary parties
3. any act which discharges the instrument
4. intentional cancellation of signature by holder
5. discharge of prior party
6. valid tender of payment made by prior party
7. release of principal debtor, unless holder’s right of recourse vs. 2ndary party reserved
8. any agreement binding upon holder to extend time of payment, or to postpone holder’s right to enforce instrument, unless made with assent of party secondarily liable, or unless right of recourse reserved.
9. Failure to make due presentment (sec. 70, 144)
10. failure to give notice of dishonor
11. certification of check at instance of holder
12. reacquisition by prior party

* where instrument negotiated back to a prior party, such party may reissue and further negotiate, but not entitled to enforce payment vs. any intervening party to whom he was personally liable
* where instrument is paid by party secondarily liable, it’s not discharged, but

1. the party so paying it is remitted to his former rights as regard to all prior parties
2. and he may strike out his own and all subsequent indorsements, and again negotiate instrument, except

* where it’s payable to order of 3rd party and has been paid by drawer
* where it’s made/accepted for accommodation and has been paid by party accommodated.
* Kinds of Acceptance:

1. general
2. qualified
   1. conditional
   2. partial
   3. local
   4. qualified as to time
   5. not all drawees

\* sec. 142 (rights of parties as to qualified acceptance)

* Certification: Principles

1. when check certified by bank on which it’s drawn, equivalent to acceptance
2. where holder of check procures it to be accepted/certified, drawer and all indorsers discharged from al liability
3. check not operate as assignment of any part of funds to credit of drawer with bank, and bank is not liable to holder, unless and until it accepts or certifies check
4. certification obtained at request of drawer: secondary parties not released
5. bank which certifies liable as an acceptor
6. checks cannot be certified before payable

1. **SECONDARY PARTIES**
2. Liability of Drawer
3. Admits existence of payee and his then capacity to endorse
4. Engages that on due presentment instrument will be accepted, or paid, or both, according to its tenor and that
5. If it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to an subsequent indorser who may be compelled to pay it

* drawer may insert in the instrument an express stipulation negativing / limiting his own liability to holder

1. **Liability of Indorsers:**

* Qualified Indorser and one Negotiating by Delivery

1. Instrument  genuine, in all respects what it purports to be
2. good title
3. all prior parties had capacity to contract
4. he had no knowledge of any fact w/c would impair validity of instrument or render it valueless

* in case of negotiation by delivery only, warranty only extends in favor of immediate transferee
* **Liability of a General or Unqualified Indorser**

1. instrument genuine, good title, capacity of prior parties
2. instrument is at time of indorsement valid and subsisting
3. on due presentment, it shall be accepted or paid, or both, according to tenor
4. if it be dishonored, and necessary proceedings on dishonor be duly taken, he will pay the amt. To holder, or to any subsequent indorser who may be compelled to pay it

* **Order of Liability among Indorsers**

1. among themselves: liable prima facie in the order they indorse, but proof of another agreement admissible
2. but holder may sue any of the indorsers, regardless of order of indorsement
3. joint payees/indorsees deemed to indorse jointly and severally

1. **Liability of  Accomodation Party**

* Definition: one who signed instrument as maker/drawer/acceptor/ indorser w/o receiving  value thereof, for the purpose of lending his name to some other person
* AP liable on the instrument to holder for value even if  holder,  at time of taking instrument, knew he was only an AP
* Liability of Irregular Indorser
  + Where a person not otherwise a party to an instrument, places thereon his signature in blank before delivery, he’s liable as an indorser, in accordance w/ these rules:

1. Instrument payable to order of 3rd person: liable to payee and to all subsequent parties
2. Instrument payable to the order of maker/drawer, or payable to bearer: liable to all parties subsequent to maker/drawer
3. Signs for accommodation of payee, liable to all parties subsequent to payee

* Sadaya v Sevilla Rules:

1. a joint and several accommodation maker of a negotiable promissory note may demand from the principal debtor reimbursement for the amt. That he paid to the payee
2. a joint and several accommodation maker who pays on the said promissory note may directly demand reimbursement from his co-accommodation maker without first directing his action vs. the principal debtor provided:
   1. he made the payment by virtue of a judicial demand
   2. or the principal debtor is insolvent

I.  Presentment For Acceptance

When presentment for acceptance must be made

1. bill payable after sight, or in other cases where presentment for acceptance necessary to fix maturity
2. where bill expressly stipulates that it shall be presented for acceptance
3. where bill is drawn payable elsewhere than at residence / place of business of drawee

When failure to present releases drawer/indorser

Failure to present for acceptance of negotiate bill of exchange within reasonable time

Reasonable Time

Must consider

1. nature of instrument
2. usage of trade or business with respect to instrument
3. facts of each case

How and When Made Sec. 145, 146, 147

When Excused Sec. 148

**Dishonor and Effects**

* sec. 149 (when dishonored by non-acceptance)
* sec. 150 (duty of holder where bill not accepted)
* sec. 151 (rights of holder where bill not accepted)
* sec. 89 (to whom notice of dishonor must be given)
* sec. 117 (effect of omission to give notice of non-acceptance)

**II. For Payment**

Where necessary Sec. 70

Where not necessary Sec. 79, 80, 82, 151, 111

Date and time of presentment of instrument bearing fixed maturity Sec. 71, 85, 86, 194

**Date of presentment**

* Where instrument not payable on demand: presentment must be made on date it falls due
* Where payable on demand: presentment must be made within reasonable time after issue, except that in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after last negotiation (*but note: though reasonable time from last negotiation, it may be unreasonable time from issuance thus holder may not be HDC under sec. 71*)
* Check must be presented for payment within reasonable time after its issue or drawer will be discharged from liability thereon to extent of loss caused by delay

Delay excused Sec. 81

Manner Sec. 74, 72, 75

Place Sec. 73

To Whom Sec. 72, 76, 77, 78

Dishonor by nonpayment Sec. 83, 84

**Notice of Dishonor**

General rule: to drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged

Form, Contents, Time Sec. 95, 96, 102, 103, 104, 105, 106, 108, 113

**By Whom Given**

* By or on behalf of the holder or any party to the instrument who may 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
* Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not
  + Where instrument has been dishonored in hands of agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal (as if agent an independent holder)

**In whose favor notice operates**

1. when given by/on behalf of holder: insures to benefit of
   1. all subsequent holders and
   2. all prior parties who have a right of recourse vs. the party to whom it’s given
2. where notice given by/on behalf of a party entitled to give notice: insures for benefit of a.  holder , and

b. all parties subsequent to party to whom notice given

Waiver Sec. 109, 110

**Where not necessary to charge drawer**

1. drawer/drawee same person
2. drawee fictitious, incapacitated
3. drawer is person to whom instrument is presented for payment
4. drawer has no right to expect/require that drawee/acceptor will honor instrument
5. drawer countermanded payment

**Where not necessary to charge indorser**

1. drawee fictitious, incapacitated, and indorser aware of the fact at time of indorsement
2. indorser is person to whom instrument presented for paymt
3. instrument made/accepted for his accommodation

**Difference between Negotiable Instruments from Non-Negotiable Instruments:**

|  |  |
| --- | --- |
| **Negotiable Instruments** | **Non-negotiable Instruments** |
| Contains all the requisites of Sec. 1 of the NIL | does not contain all the requisites of Sec. 1 of the NIL |
| Transferred by negotiation | transferred by assignment |
| Holder in due course may have better rights than transferor | transferee acquires rights only of his transferor |
| Prior parties warrant payment | prior parties merely warrant legality of title |
| Transferee has right of recourse against intermediate parties | transferee has no right of recourse |

4.       **Difference between Negotiable Instruments and Negotiable Documents of Title**

|  |  |
| --- | --- |
| **Negotiable Instruments** | **Negotiable Documents of Title** |
| Have requisites of Sec. 1 of the NIL | does not contain requisites of Sec. 1 of NIL |
| Have right of recourse against intermediate parties who are secondarily liable | no secondary liability of intermediate parties |
| Holder in due course may have rights better than transferor | transferee merely steps into the shoes of the transferor |
| Subject is money | subject is goods |
| Instrument itself is property of value | instrument is merely evidence of title; thing of value are the goods mentioned in the document |

1. Promissory Note – unconditional promise to pay in writing made by one person to anther, signed by the maker, engaging to pay on demand or a fixed determinable future time a sum certain in money to order or bearer. When the note is drawn to maker’s own order, it is not complete until indorse by him. (Sec. 184 NIL)

Parties:

1. maker
2. payee

6.       **Bill of Exchange** – 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 to bearer. (Sec. 126 NIL)

Parties:

1. drawer
2. payee
3. drawee/ acceptor

7.       **Check** – bill of exchange drawn on a bank and payable on demand. (Sec. 185 NIL)

8.       **Difference between Promissory Note and Bill of Exchange**

|  |  |
| --- | --- |
| **Promissory Note** | **Bill of Exchange** |
| Unconditional promise | unconditional order |
| Involves 2 parties | involves 3 parties |
| Maker primarily liable | drawer only secondarily liable |
| only 1 presentment – for payment | generally 2 presentments – for acceptance and for payment |

9.       **Distinctions between a Check and Bill of Exchange**

|  |  |
| --- | --- |
| **CHECK** | **BOE** |
| – always drawn upon a bank or banker | – may or may not be drawn against a bank |
| – always payable on demand | – may be payable on demand or at a fixed or determinable future time |
| – not necessary that it be presented for acceptance | – necessary that it be presented for acceptance |
| – drawn on a deposit | – not drawn on a deposit |
| – the death of a drawer of a check, with knowledge by the banks, revokes the authority of the banker pay | – the death of the drawer of the ordinary bill of exchange does not |
| – must be presented for payment within a reasonable time after its issue   (6 months) | – may be presented for payment within a reasonable time after its last negotiation. |

10.  **Distinctions between a Promissory Note and Check**

|  |  |
| --- | --- |
| **PN** | **CHECK** |
| – there are two (2) parties, the maker and the payee | – there are three (3) parties, the drawer, the drawee bank and the payee |
| – may be drawn against any person, not necessarily a bank | – always drawn against a bank |
| – may be payable on demand or at a fixed or determinable future time | -always payable on demand |
| – a promise to pay | – an order to pay |

11.   **Other Forms of Negotiable Instruments:**

a.       certificates of deposits

b.       trade acceptances

c.       bonds in the nature of promissory notes

d.       drafts which are bills of exchange drawn by 1 bank to another

e.       letters of credit

12.   **Trust Receipt** – a security transaction intended to aid in the financing of importers and retailers who do not have sufficient funds to finance their transaction and acquire credit except to use as collateral the merchandise imported.