

# Negotiable Instruments Law

## NEGOTIABLE INSTRUMENTS, IN GENERAL

### **Function and importance of negotiable instruments**

- Although they do not constitute legal tender, they are used as a substitute for money.
- Negotiable papers, particularly checks, constitute, at present, the media of exchange for most commercial transactions.
- Negotiable instruments also serve as a medium of credit transactions.
- Negotiable instruments shall produce the effect of payment only when they have been encashed or when through the fault of the creditor they have been impaired. [Article 1249, Civil Code]

### **Characteristics of negotiable instruments**

- Negotiability: That quality or attribute 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 sum payable for himself free from defenses.
- The most important feature of negotiable instruments is the accumulation of secondary contracts as they are transferred from one person to another.

### **Common forms of negotiable instruments**

1. Bill of exchange
2. Promissory note
3. Check

### **Bill of exchange**

- 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. [Section 126, Negotiable Instruments Law]

### **Promissory note**

- A negotiable promissory note 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. [Section 184, Negotiable Instruments Law]

### **Check**

- A check is a bill of exchange drawn on a bank and payable on demand. [Section 185, Negotiable Instruments Law]

### **Kinds of bill of exchange**

1. Draft
2. Trade acceptance
3. Check

### **Inland v. foreign bill of exchange**

- An inland bill of exchange is one which, on its face, purports to be both drawn and payable in the Philippines. Any other bill is a foreign bill.

### **Kinds of promissory notes**

1. Certificate of deposit
2. Bond
3. Bank note
4. Due bill
5. Mortgage note
6. Title-retaining note

7. Judgment note

**Bill of exchange v. promissory note**

- Unconditional order v. unconditional promise
- Three (3) parties in bill while only two (2) in note
- Drawer in a bill is only secondarily liable while maker in a promissory is primarily liable
- A bill drawn payable to drawer's own order is complete without indorsement while a note drawn payable to maker's own order is not complete until indorsed by him
- A bill must be presented for acceptance in some cases while there is no need of presentment for note
- Reasonable time from last negotiation v. reasonable time from issue

**Form and Interpretation****Form of negotiable instruments**

1. It must be in writing and signed by the maker or drawer.
2. It must contain an unconditional promise or 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. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. [Section 1, Negotiable Instruments Law]

**Terms, when sufficient**

- The instrument need not follow the language of this Act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. [Section 10, Negotiable Instruments Law]



**What constitutes certainty as to sum**

- The sum payable is a sum certain within the meaning of this act, although it is to be paid:
  1. With interest; or
  2. By stated installments; or
  3. By stated installments, with a provision that, upon default in payment of any installment or of interest, the whole shall become due; or
  4. With exchange, whether at a fixed rate or at the current rate; or
  5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity. [Section 2, Negotiable Instruments Law]

**When promise is unconditional**

- An unqualified order or promise to pay is unconditional.
- It is still unconditional though coupled with:
  1. An indication of a particular fund out of which reimbursement is to be made or a particular account to be debited with the amount; or
  2. A statement of the transaction which gives rise to the instrument.

**When promise is not unconditional**

- An order or promise to pay out of a particular fund is not unconditional. [Section 3, Negotiable Instruments Law]

**Omissions; seal; particular money**

- The validity and negotiable character of an instrument are not affected by the fact that:
  1. It is not dated; or
  2. Does not specify the value given, or that any value had been given therefor; or

3. Does not specify the place where it is drawn or the place where it is payable; or
  4. Bears a seal; or
  5. Designates a particular kind of current money in which payment is to be made.
- But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

**When payable on demand**

1. When it is so expressed to be payable on demand, or at sight, or on presentation
2. In which no time for payment is expressed
3. Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand [Section 7, Negotiable Instruments Law]

**Determinable future time; what constitutes**

- An instrument is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:
  1. At a fixed period after date or sight; or
  2. On or before a fixed or determinable future time specified therein; or
  3. On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain.
- An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. [Section 4, Negotiable Instruments Law]

**When payable to order**

- The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. [Section 8, Negotiable Instruments Law]

- Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.

**To whom may it be drawn payable to**

- It may be drawn payable to the order of —
  1. A payee who is not a maker, drawer, or drawee; or
  2. The drawer or maker; or
  3. The drawee; or
  4. Two or more payees jointly; or
  5. One or some of several payees; or
  6. The holder of an office for the time being.

**Bearer**

- Bearer means the person in possession of a bill or a note which is payable to bearer. A person who steals an instrument payable to bearer is a "bearer."

**When payable to bearer**

1. When it is expressed to be so payable
2. When it is payable to a person named therein or bearer
3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable
4. When the name of the payee does not purport to be the name of any person
5. When the only or last indorsement is an indorsement in blank [Section 9, Negotiable Instruments Law]

**Negotiation of instrument payable to order and to bearer**

- An instrument payable to order is negotiated by indorsement and delivery; an instrument payable to bearer, by mere delivery.



**Some notes on date**

- Date is not an essential element for negotiability
- Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement, as the case may be. [Section 11, Negotiable Instruments Law]
- The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. [Section 12, Negotiable Instruments Law]
- Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. [Section 13, Negotiable Instruments Law]

**Importance of the date of the instrument**

- Determining when instrument, indorsement or acceptance is due (authority)
- Determining prescription of cause of action

**Additional provisions not affecting negotiability**

- An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. Thus, an instrument embodying an obligation that is subject to a condition is non-negotiable.
- But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:
  1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
  2. Authorizes a confession of judgment if the instrument be not paid at maturity; or

3. Waives the benefit of any law intended for the advantage or protection of the obligor; or
  4. Gives the holder an election to require something to be done in lieu of payment of money.
- But nothing in this section shall validate any provision or stipulation otherwise illegal. [Section 5, Negotiable Instruments Law]
  - Under Section 29, however, a condition in the indorsement would not destroy the negotiability of the instrument.

### **Delivery**

- Delivery means the transfer of the possession of instrument by the maker or drawer, with intent to transfer title to the payee and recognize him as the holder thereof.
- Every contract on negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto.
- Issue is the first delivery of the instrument, complete in form, to a person who takes it as a holder.

### **Incomplete instrument but delivered**

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

given and within a reasonable time. [Section 14, Negotiable Instruments Law]. In this sense, Section 14 gives only a personal, not a real, defense

**Incomplete instrument not delivered**

- Where an incomplete instrument has not been delivered, it will not, if completed and negotiated without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. [Section 15, Negotiable Instruments Law]
- In this sense, it gives a real defense, not just personal.

**Delivery; when effectual; when presumed**

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

**Construction where instrument is ambiguous**

- Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:
  1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;
  2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from

the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;
4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;
5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;
6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;
7. Where an instrument containing the word "*I promise to pay*" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. [Section 17, Negotiable Instruments Law]

#### **Liability of person signing in trade or assumed name**

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

#### **Rules on signature of agent**

- The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. [Section 19, Negotiable Instruments Law]
- Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. [Section 20, Negotiable Instruments Law]

#### **Signature by procuration; effect of**

- A signature by "*procuracion*" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. [Section 21, Negotiable Instruments Law]

### **Effect of indorsement by infant or corporation**

- The contract of indorsement of an infant is not void, and that his indorsee has the right to enforce payment from all parties prior to the infant indorser; the incapacity of the infant cannot be availed of by prior parties. However, it does not destroy the right of such an infant indorser to disaffirm under the rules of infancy.
- The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity, the corporation or infant may incur no liability thereon. [Section 22, Negotiable Instruments Law]
- In both instances, the indorsements are voidable – until annulled – so that they pass food title. Therefore, parties prior to the minor or corporation cannot escape liability by setting up as defense the incapacity of the indorsers.

### **Forged signature; effect of**

- When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority. [Section 23, Negotiable Instruments Law]

### **Who are precluded from setting up the forgery or want of authority?**

1. Those who warrant or admit the genuineness of the signature in question (indorsers, persons negotiating by delivery, and acceptors of bills of exchange).
2. Those who, by their acts, silence or negligence, are estopped from setting up the defense of forgery. (estoppel)

3. When the forged signature is unnecessary to the title of the holder as when the indorsement is forged on an instrument payable to bearer.

Forgery in General p. 225-227

Forgery in Promissory Notes pp 227-228

Forgery in Bills pp 228 - 230

Associated Bank v. CA pp 232 - 234

## **Consideration**

### **Presumption of consideration**

- Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value. [Section 24, Negotiable Instruments Law]

### **Value, what constitutes**

- Value is any consideration sufficient to support a simple contract.
- An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time. [Section 25, Negotiable Instruments Law]

### **What constitutes holder for value**

- Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time. [Section 26, Negotiable Instruments Law]
- Where the holder has a lien on the instrument arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. [Section 27, Negotiable Instruments Law]

### **Effect of want of consideration**

- Absence or failure of consideration is a matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense *pro tanto*, whether the failure is an ascertained and liquidated amount or otherwise. [Section 28, Negotiable Instruments Law]
- Absence or failure of consideration is a personal defense available only against a holder not in due course.
- Absence or failure should be distinguished from inadequate consideration.
- Essentially, a person who signs as maker, drawer, acceptor or indorser without receiving any consideration, signs as an accommodation party merely for the purpose of lending the credit of his name. Such accommodation party cannot set up lack of consideration against any holder, even as to one who is not a holder in due course.
- After paying on the instrument, the accommodation party shall have a right to obtain reimbursement from the party accommodated since the relation between them is in effect that of principal and surety, the accommodation party being the surety.

### **Liability of accommodation party**

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

## **Negotiation**

### **Three types of transfers**

1. By assignment – Generally for non-negotiable instruments. In assignment, the assignee is merely placed in the position of the assignors and acquires the instrument subject to all the defenses that might have been set up against the original payee.

2. By operation of law – Such as by succession or insolvency.
3. By negotiation

### **What constitutes negotiation**

- An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof.
- A holder means the payee or indorsee of a bill or note who is in possession of it or the bearer thereof. [Section 191, Negotiable Instruments Law]
- If payable to bearer, it is negotiated by delivery; if payable to order, it is negotiated by the indorsement of the holder completed by delivery. [Section 30, Negotiable Instruments Law]

### **Indorsement; how made**

- The indorsement must be written on the instrument itself or upon a paper attached thereto.
  - a. Indorsement is usually written at the back of the instrument.
  - b. Where the instrument is written in an allonge, the same must be tacked or pasted on the instrument so as to become part of it.
  - c. The indorsement may be made in any form, as long as it is meant to be an indorsement.
- The signature of the indorser, without additional words, is a sufficient indorsement. [Section 31, Negotiable Instruments Law]

### **Allonge**

- It is a piece of paper that is attached permanently to an instrument for the purpose of accommodating or allowing additional indorsements. The majority rule is that an allonge is allowed only when the back portion of the instrument is already filled up with indorsements.

### **Indorsement must be of entire instrument**

- The indorsement must be an indorsement of the entire instrument.



- An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. [Section 32, Negotiable Instruments Law]

**Rule re: continuing negotiability**

- **General rule:** An instrument which is negotiable in origin continues to be negotiable until it has been:
  1. restrictively indorsed; or
  2. paid at or after maturity.

**Kinds of indorsement**

1. Special or in blank
2. Restrictive or qualified or conditional [Section 33, Negotiable Instruments Law]

**Special indorsement v. indorsement in blank**

- A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable, and the indorsement of such indorsee is necessary to the further negotiation of the instrument
- An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. [Section 34, Negotiable Instruments Law]

**Blank indorsement; how changed to special indorsement**

- The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [Section 35, Negotiable Instruments Law]

**When indorsement restrictive**

- An indorsement is restrictive which either:

1. Prohibits the further negotiation of the instrument; or
  2. Constitutes the indorsee the agent of the indorser; or
  3. Vest the title in the indorsee in trust for or to the use of some other persons.
- But the mere absence of words implying power to negotiate does not make an indorsement restrictive. [Section 36, Negotiable Instruments Law]

### **Effect of restrictive indorsement; rights of indorsee**

- A restrictive indorsement confers upon the indorsee the right:
  1. To receive payment of the instrument;
  2. To bring any action thereon that the indorser could bring;
  3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.
- But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. [Section 37, Negotiable Instruments Law]

### **Qualified indorsement**

- A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument.
- It may be made by adding to the indorser's signature the words "*without recourse*" or any words of similar import.
- Such an indorsement does not impair the negotiable character of the instrument. [Section 38, Negotiable Instruments Law]
- The qualified indorser guarantees only the genuineness of the instrument but does not guarantee its payment. He will be liable only of the signature of the maker turns out to be a forgery. He will not be liable if the maker refuses to pay.

### **Without recourse**

- "Without recourse" means without resort to a person who is secondarily liable after the default of the person who is primarily liable.

### **Limited liability of qualified indorser**

- He is liable only if the instrument is dishonored by non-acceptance or non-payment due to:
  1. Forgery
  2. Lack of good title on the part of the indorser
  3. Lack of capacity to indorse on the part of the prior parties
  4. The fact that at the time of the indorsement, the instrument was valueless or not valid, and he knew of that fact.

### **Conditional indorsement**

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

### **Indorsement of instrument payable to bearer**

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

### **Indorsement where payable to two or more persons**

- Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others. [Section 41, Negotiable Instruments Law]

### **Effect of instrument drawn or indorsed to a person as cashier**

- Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable

to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer. [Section 42, Negotiable Instruments Law]

**Indorsement where name is misspelled, and so forth**

- Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described adding, if he thinks fit, his proper signature. [Section 43, Negotiable Instruments Law]

**Indorsement in representative capacity**

- Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. [Section 44, Negotiable Instruments Law]

**Time of indorsement; presumption**

- Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue. [Section 45, Negotiable Instruments Law]

**Place of indorsement; presumption**

- Except where the contrary appears, every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated. [Section 46, Negotiable Instruments Law]

**Continuation of negotiable character**

- An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. [Section 47, Negotiable Instruments Law]

**Striking out indorsement**

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

**Transfer without indorsement; effect of**

1. The transfer vests in the transferee such title as the transferor had therein.
2. The transferee acquires in addition, the right to have the indorsement of the transferor.
3. For the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. [Section 49, Negotiable Instruments Law]

#### **When prior party may negotiate instrument**

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

## **Rights of the Holder**

### **Holder**

- A holder means a payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

### **Classes of holders**

1. Simple holder

The instrument is subject to the same defenses as if it were non-negotiable; he may enforce the instrument and receive payment therefor.

2. Holder for value

Important for the liability of an accommodation party.

3. Holder in due course

### **Right of holder to sue; payment**

- The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument. [Section 51, Negotiable Instruments Law]

### **What constitutes a holder in due course**

- A holder in due course is a holder who has taken the instrument under the following conditions:
  1. That it is complete and regular upon its face;
  2. That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact;
  3. That he took it in good faith and for value;
  4. That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. [Section 52, Negotiable Instruments Law]

### **Who is deemed holder in due course**

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

### **When person not deemed holder in due course**

- Where an instrument payable on demand is negotiated on an unreasonable length of time after its issue, the holder is not deemed a holder in due course. [Section 53, Negotiable Instruments Law]
- To determine what constitutes "*reasonable time*," regard must be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instrument, and the facts of the particular case.

### **Notice before full amount paid**

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

### **When title defective**

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

### **What constitutes notice of defect**

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

### **Rights of holder in due course**

1. To sue on the instrument
  2. To receive payment on the instrument, and payment in due course discharges the instrument
  3. To hold the instrument free from any defect of title of prior parties
  4. To hold the instrument free from defenses available to prior parties among themselves
  5. To enforce payment on the instrument to the full amount against all parties liable thereon [Section 57, Negotiable Instruments Law]
- The defenses referred to are personal defenses or equities. Real defenses are available even against a holder in due course.

### **Defenses**

- A holder in due course receives the instrument free from any defect which it may have had in the past. Only real defenses may be set up against a holder in due course. Personal defenses may not be set up against such a holder.
- A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. [Section 57, Negotiable Instruments Law]

### **When subject to original defense**

- In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable.
- But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. [Section 58, Negotiable Instruments Law]

### **Real defense**

- Real defenses are those available against all holders. They attach to the *res* regardless of the merits or demerits of the holder.
- Real defenses do not render the instrument valueless. With real defenses, the instrument is unenforceable only against the party entitled to set up the defense but not against those whom such a defense is not available as such, as in the case of forgery which is not available to persons estopped.

### **Kinds of real defenses**

1. Forgery
2. Illegality (if law so provides)
3. Alteration (deliberate)
4. Discharge after maturity
5. Incompleteness
6. Fraud in factum



7. Incapacity
8. Insolvency

### **Personal defenses**

- Personal 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, though holding the legal title, to enforce it against the party sought to be made liable but which are not available against a holder in due course.

### **Kinds of personal defenses**

1. Duress
2. Illegality
3. Discharge before maturity
4. Alteration (unintentional)
5. Fraud in inducement
6. Incompleteness (delivered)
7. No consideration
8. Set off

Specific discussions of defense  
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## **Liabilities of Parties**

### **Who are primarily liable?**

1. Maker
2. Acceptor

**Secondarily liable**

1. Drawer
2. Indorser

**Liability of maker**

1. The maker of a negotiable instrument warrants that:
  - a. He will pay it according to its tenor;
  - b. The payee exists; and
  - c. The payee has capacity to indorse. [Section 60, Negotiable Instruments Law]
2. Consequently, the maker is precluded from setting up the following defenses:
  - a. That the payee is a fictitious person; or
  - b. That the payee was insane, a minor or a corporation acting *ultra vires*.
3. The liability of the maker is primary and unconditional. Neither can the maker escape liability by virtue of the non-benefit to him of the proceeds of the note since that is of no concern to the payee.

**Liability of drawer**

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

**Liability of acceptor**

- The acceptor, by accepting the instrument:

1. Engages that he will pay it according to the tenor of his acceptance (not according to tenor of the bill accepted).
2. Admits:
  - a. The existence of the drawer;
  - b. The genuineness of the drawer's signature;
  - c. The capacity and authority of the drawer to draw the instrument; and
  - d. The existence of the payee and his then capacity to indorse. [Section 62, Negotiable Instruments Law]
3. Consequently, the acceptor is precluded from:
  - a. Setting up the defense that the drawer is non-existent or fictitious;
  - b. Claiming that the drawer's signature is a forgery; and
  - c. Escaping the liability by alleging want of consideration between him and the drawer.

**Liability of maker**

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**Liability of drawer**

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Liability of acceptor

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**Liability of avalista**

- Aval is a written contract of guaranty for the payment of a bill of exchange independent of the liability of the drawer, acceptor or indorser. It is a contract, not found in the Negotiable Instruments Law, but is based on commercial customs.
- It is applicable only to a bill of exchange and not to a promissory note.

- There is no oral aval.
- The person who guarantees payment in writing is called the avalista.

### **Liability of indorser**

#### **When a person deemed indorser**

- A person placing his signature upon an instrument other than as maker, drawer, or acceptor, is deemed to be indorser unless he clearly indicates by appropriate words his intention to be bound in some other capacity. [Section 63, Negotiable Instruments Law]

#### **Liability of irregular indorser**

- Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser, in accordance with the following rules:
  1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.
  2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.
  3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. [Section 64, Negotiable Instruments Law]

#### **Warranty where negotiation by delivery or qualified indorsement**

- Every person negotiating an instrument by delivery or by a qualified indorsement warrants:
  1. That the instrument is genuine and in all respects what it purports to be;
  2. That he has a good title to it;
  3. That all prior parties had capacity to contract;

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.
- But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.
  - The provisions of subdivision (3) of this section do not apply to a person negotiating public or corporation securities other than bills and notes. [Section 65, Negotiable Instruments Law]

### **Liability of general indorser**

- Every indorser who indorses without qualification, warrants to all subsequent holders in due course:
  1. That the instrument is genuine and in all respects what it purports to be;
  2. That he has a good title to it;
  3. That all prior parties had capacity to contract;
  4. That the instrument is, at the time of his indorsement, valid and subsisting; and
  5. In addition, he engages that, on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. [Section 66, Negotiable Instruments Law]

### **Liability of indorser where paper negotiable by delivery**

- Where a person places his indorsement on an instrument negotiable by delivery, he incurs all the liability of an indorser. [Section 67, Negotiable Instruments Law]

### **Order in which indorsers are liable**

- As respects one another, indorsers are liable *prima facie* in the order in which they indorse; but evidence is admissible to show that, as between or among themselves, they have agreed otherwise.

- Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. [Section 68, Negotiable Instruments Law]
- The foregoing rule does not apply to a holder in due course to whom the indorsers are liable in any order.
- Every indorser is liable to all indorsers subsequent to him, but not those indorsers prior to him.
- Before dishonor, the obligation of the indorser is only subsidiary.
- After dishonor by non-payment, Sec. 84 provides that an immediate right of recourse to all parties secondarily liable thereto accrues to the holder. Thus, the liability of indorsers becomes principal and solidary.

#### **Liability of an agent or broker**

- Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by Section 65 of this Act, unless he discloses the name of his principal and the fact that he is acting only as agent. [Section 69, Negotiable Instruments Law]

## **Presentation for Payment**

#### **Effect of want of demand on principal debtor**

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

#### **Presentment where instrument is not payable on demand and where payable on demand**

- Where the instrument is not payable on demand, presentment must be made on the day it falls due.

- Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. [Section 71, Negotiable Instruments Law]

### **What constitutes a sufficient presentment**

- Presentment for payment, to be sufficient, must be made:
  1. By the holder, or by some person authorized to receive payment on his behalf;
  2. At a reasonable hour on a business day;
  3. At a proper place as herein defined;
  4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made. [Section 72, Negotiable Instruments Law]

### **Place of presentment**

- Presentment for payment is made at the proper place:
  1. Where a place of payment is specified in the instrument and it is there presented;
  2. Where no place of payment is specified but the address of the person to make payment is given in the instrument and it is there presented;
  3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;
  4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. [Section 73, Negotiable Instruments Law]

### **Instrument must be exhibited**

- The instrument must be exhibited to the person from whom payment is demanded, and when it is paid, must be delivered up to the party paying it. [Section 74, Negotiable Instruments Law]

**Presentment where instrument payable at bank**

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

**Presentment where principal debtor is dead**

- Where the person primarily liable on the instrument is dead and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found. [Section 76, Negotiable Instruments Law]

**Presentment to persons liable as partners**

- Where the persons primarily liable on the instrument are liable as partners and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. [Section 77, Negotiable Instruments Law]

**Presentment to joint debtors**

- Where there are several persons, not partners, primarily liable on the instrument and no place of payment is specified, presentment must be made to all of them. [Section 78, Negotiable Instruments Law]

**When presentment not required to charge the drawer**

- Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. [Section 79, Negotiable Instruments Law]

**When presentment not required to charge the indorser**

- Presentment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no



reason to expect that the instrument will be paid if presented. [Section 80, Negotiable Instruments Law]

**When delay in making presentment is excused**

- Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence.
- When the cause of delay ceases to operate, presentment must be made with reasonable diligence. [Section 81, Negotiable Instruments Law]

**When presentment for payment is excused**

- Presentment for payment is excused:
  1. Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be made;
  2. Where the drawee is a fictitious person;
  3. By waiver of presentment, express or implied. [Section 82, Negotiable Instruments Law]

**When instrument dishonored by non-payment**

- The instrument is dishonored by non-payment when:
  1. It is duly presented for payment and payment is refused or cannot be obtained; or
  2. Presentment is excused and the instrument is overdue and unpaid. [Section 83, Negotiable Instruments Law]

**Liability of person secondarily liable, when instrument dishonored**

- Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. [Section 84, Negotiable Instruments Law]

**Time of maturity**

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

**Time: how computed**

- When the instrument is payable at a fixed period after date, after sight, or after that happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. [Section 86, Negotiable Instruments Law]

**Rule where instrument payable at bank**

- Where the instrument is made payable at a bank, it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. [Section 87, Negotiable Instruments Law]

**What constitutes payment in due course**

- Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. [Section 88, Negotiable Instruments Law]

## **Notice of Dishonor**

**To whom notice of dishonor must be given**

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

**By whom given**

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

**Notice given by agent**

- Notice of dishonor may be given by any agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. [Section 91, Negotiable Instruments Law]

**Effect of notice on behalf of holder**

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

**Effect where notice is given by party entitled thereto**

- Where notice is given by or on behalf of a party entitled to give notice, it inures to the benefit of the holder and all parties subsequent to the party to whom notice is given. [Section 93, Negotiable Instruments Law]

**When agent may give notice**

- Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder. [Section 94, Negotiable Instruments Law]

**When notice sufficient**

- A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. [Section 95, Negotiable Instruments Law]

**Form of notice**

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

#### **To whom notice may be given**

- Notice of dishonor may be given either to the party himself or to his agent in that behalf. [Section 97, Negotiable Instruments Law]

#### **Notice where party is dead**

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

#### **Notice to partners**

- Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution. [Section 99, Negotiable Instruments Law]

#### **Notice to persons jointly liable**

- Notice to joint persons who are not partners must be given to each of them unless one of them has authority to receive such notice for the others. [Section 100, Negotiable Instruments Law]

#### **Notice to bankrupt**

- Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. [Section 101, Negotiable Instruments Law]

#### **Time within which notice must be given**

- Notice may be given as soon as the instrument is dishonored and, unless delay is excused as hereinafter provided, must be given within the time fixed by this Act. [Section 102, Negotiable Instruments Law]

**Where parties reside in same place**

- Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:
  1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.
  2. If given at his residence, it must be given before the usual hours of rest on the day following.
  3. If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following. [Section 103, Negotiable Instruments Law]

**Where parties reside in different places**

- Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:
  1. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on last day, by the next mail thereafter.
  2. If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision. [Section 104, Negotiable Instruments Law]

**When sender deemed to have given due notice**

- Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. [Section 105, Negotiable Instruments Law]

**Deposit in post office; what constitutes**

- Notice is deemed to have been deposited in the post-office when deposited in any branch post office or in any letter box under the control of the post-office department. [Section 106, Negotiable Instruments Law]

**Notice to subsequent party; time of**

- Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. [Section 107, Negotiable Instruments Law]

**Where notice must be sent**

- Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:
  1. Either to the post-office nearest to his place of residence or to the post-office where he is accustomed to receive his letters; or
  2. If he lives in one place and has his place of business in another, notice may be sent to either place; or
  3. If he is sojourning in another place, notice may be sent to the place where he is sojourning.
- But where the notice is actually received by the party within the time specified in this Act, it will be sufficient, though not sent in accordance with the requirement of this section. [Section 108, Negotiable Instruments Law]

**Waiver of notice**

- Notice of dishonor may be waived either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be expressed or implied. [Section 109, Negotiable Instruments Law]

**Whom affected by waiver**

- Where the waiver is embodied in the instrument itself, it is binding upon all parties; but, where it is written above the signature of an indorser, it binds him only. [Section 110, Negotiable Instruments Law]

**Waiver of protest**

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

**When notice is dispensed with**

- Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. [Section 112, Negotiable Instruments Law]

**Delay in giving notice; how excused**

- Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence.
- When the cause of delay ceases to operate, notice must be given with reasonable diligence. [Section 113, Negotiable Instruments Law]

**When notice need not be given to drawer**

- Notice of dishonor is not required to be given to the drawer in either of the following cases:
  1. Where the drawer and drawee are the same person;
  2. When the drawee is fictitious person or a person not having capacity to contract;
  3. When the drawer is the person to whom the instrument is presented for payment;
  4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;
  5. Where the drawer has countermanded payment. [Section 114, Negotiable Instruments Law]

**When notice need not be given to indorser**

- Notice of dishonor is not required to be given to an indorser in either of the following cases:
  1. When the drawee is a fictitious person or person not having capacity to contract, and the indorser was aware of that fact at the time he indorsed the instrument;

2. Where the indorser is the person to whom the instrument is presented for payment;
3. Where the instrument was made or accepted for his accommodation. [Section 115, Negotiable Instruments Law]

**Notice of non-payment where acceptance refused**

- Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary unless in the meantime the instrument has been accepted. [Section 116, Negotiable Instruments Law]

**Effect of omission to give notice of non-acceptance**

- An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission. [Section 117, Negotiable Instruments Law]

**When protest need not be made; when must be made**

- Where any negotiable instrument has been dishonored, it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange. [Section 118, Negotiable Instruments Law]

## **Discharge of Negotiable Instruments**

**Discharge**

- It is the release of all parties, whether primary or secondary, from the obligation on the instrument.
- It renders the instrument non-negotiable.

**Instrument; how discharged**

1. By payment in due course by or on behalf of the principal debtor



2. By payment in due course by the party accommodated, where the instrument is made or accepted for his accommodation
3. By the intentional cancellation thereof by the holder
4. By any other act which will discharge a simple contract for the payment of money
5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right [Section 119, Negotiable Instruments Law]

**When persons secondarily liable on the instrument are discharged**

1. By any act which discharges the instrument
2. By the intentional cancellation of his signature by the holder
3. By the discharge of a prior party
4. By a valid tender or payment made by a prior party
5. By a release of the principal debtor unless the holder's right of recourse against the party secondarily liable is expressly reserved
6. By any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument unless made with the assent of the party secondarily liable or unless the right of recourse against such party is expressly reserved. [Section 120, Negotiable Instruments Law]

**Right of party who discharges instrument**

- Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regard all prior parties, and he may strike out his own and all subsequent indorsements and again negotiate the instrument, except:
  1. Where it is payable to the order of a third person and has been paid by the drawer; and
  2. Where it was made or accepted for accommodation and has been paid by the party accommodated. [Section 121, Negotiable Instruments Law]

**Renunciation by holder**

- The holder may expressly renounce his rights against any party to the instrument before, at, or after its maturity.
- An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument.
- But a renunciation does not affect the rights of a holder in due course without notice.
- A renunciation must be in writing unless the instrument is delivered up to the person primarily liable thereon. [Section 122, Negotiable Instruments Law]

**Cancellation; unintentional; burden of proof**

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

**Alteration of instrument; effect of**

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

**What constitutes a material alteration**

- Any alteration which changes:
  1. The date;
  2. The sum payable, either for principal or interest;

3. The time or place of payment:
4. The number or the relations of the parties;
5. The medium or currency in which payment is to be made;
6. Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. [Section 125, Negotiable Instruments Law]

## **Bills of Exchange — Form and Interpretation**

### **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. [Section 126, Negotiable Instruments Law]

### **Types of bills of exchange**

1. Draft
2. Trade Acceptance
3. Banker's Acceptance
4. Check

### **Draft**

- This is the common term of a bill of exchange and used synonymously.
- A bank draft is a bill of exchange drawn by a bank, issued at the solicitation of a stranger who purchases and pays therefor.

### **Trade acceptance**

- A draft or bill of exchange drawn by the seller on the buyer of goods sold and accepted by such purchaser of goods. It is payable to order and with certain maturity.

### **Banker's acceptance**

- A draft or bill of exchange of which the acceptor is a bank or banker engaged generally in the business of granting banker's acceptance credit. Chiefly used for international trade financing.

### **Bill not an assignment of funds in hands of drawee**

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

### **Bill addressed to more than one drawee**

- A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. [Section 128, Negotiable Instruments Law]

### **Inland and foreign bills of exchange**

- An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within the Philippines. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. [Section 129, Negotiable Instruments Law]

### **When bill may be treated as promissory note**

1. Where in a bill the drawer and drawee are the same person
2. Where the drawee is a fictitious person
3. Where the drawee is a person not having capacity to contract, i.e., minor [Section 130, Negotiable Instruments Law]

### **Referee in case of need**

- The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case

the bill is dishonored by non-acceptance or non-payment. Such person is called a referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. [Section 131, Negotiable Instruments Law]

## Acceptance

### **Acceptance; how made, by and so forth**

- The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.
- The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. [Section 132, Negotiable Instruments Law]

### **Manner of acceptance**

- The acceptance must be communicated or delivered to the holder.
- The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and, if such request is refused, may treat the bill as dishonored. [Section 133, Negotiable Instruments Law]
- Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. [Section 134, Negotiable Instruments Law]

### **Promise to accept; when equivalent to acceptance**

- An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value. [Section 135, Negotiable Instruments Law]

### **Time allowed drawee to accept**

- The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; the acceptance, if given, dates as of the day of presentation. [Section 136, Negotiable Instruments Law]

**Liability of drawee retraining or destroying bill**

- Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same. [Section 137, Negotiable Instruments Law]

**Acceptance of incomplete bill**

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

**Kinds of acceptance**

- An acceptance is either general or qualified.
- A general acceptance assents without qualification to the order of the drawer.
- A qualified acceptance in express terms varies the effect of the bill as drawn. [Section 139, Negotiable Instruments Law]

**What constitutes a general acceptance**

- An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere. [Section 140, Negotiable Instruments Law]

**Qualified acceptance**

- An acceptance is qualified which is:
  1. Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;
  2. Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local; that is to say, an acceptance to pay only at a particular place;
4. Qualified as to time;
5. The acceptance of some, one or more of the drawees but not of all.  
[Section 141, Negotiable Instruments Law]

### **Rights of parties as to qualified acceptance**

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

## **Presentment for Acceptance**

### **When presentment for acceptance must be made**

- Presentment for acceptance must be made:
  1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
  2. Where the bill expressly stipulates that it shall be presented for acceptance; or
  3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

- In no other case is presentment for acceptance necessary in order to render any party to the bill liable. [Section 143, Negotiable Instruments Law]

**When failure to present releases drawer and indorser**

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

**Presentment; how made**

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

**On what days presentment may be made**

- A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of Sections 72 and 85 of this Act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day. [Section 146, Negotiable Instruments Law]

**Presentment where time is insufficient**

- Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has no time, with the exercise of



reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. [Section 147, Negotiable Instruments Law]

### **Where presentment is excused**

- Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:
  1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.
  2. Where, after the exercise of reasonable diligence, presentment can not be made.
  3. Where, although presentment has been irregular, acceptance has been refused on some other ground. [Section 148, Negotiable Instruments Law]

### **When dishonored by non-acceptance**

- A bill is dishonored by non-acceptance:
  1. When it is duly presented for acceptance and such an acceptance as is prescribed by this Act is refused or can not be obtained; or
  2. When presentment for acceptance is excused and the bill is not accepted. [Section 149, Negotiable Instruments Law]

### **Duty of holder where bill not accepted**

- Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers. [Section 150, Negotiable Instruments Law]

### **Rights of holder where bill not accepted**

- When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder and no presentment for payment is necessary. [Section 151, Negotiable Instruments Law]

## Protest

### Protest

- It is a formal statement in writing made by a notary under his seal of office, at the request of the holder of a bill, in which it is declared that the same was on a certain day presented for payment (or acceptance, as the case may be), and such payment was refused, whereupon the notary protests against all parties to such instrument, and declares that they will be held responsible for all loss or damage arising from its dishonor.

### When protest required

1. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance.
2. Where a foreign bill which has not previously been dishonored for non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. [Section 152, Negotiable Instruments Law]

### When protest not necessary

- Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. [Section 152, Negotiable Instruments Law]

### Exceptions, when protest necessary even if bill is not a foreign bill

1. 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.
2. Where the bill contains a referee in case of need, it must be protested for non-payment before it is presented for payment to the referee in case of need.

### Protest; how made

- The protest must be annexed to the bill or must contain a copy thereof, and must be under the hand and seal of the notary making it and must specify:

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause or reason for protesting the bill;
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. [Section 153, Negotiable Instruments Law]

**Protest, by whom made**

- Protest may be made by:
  1. A notary public; or
  2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. [Section 154, Negotiable Instruments Law]

**Protest; when to be made**

- When a bill is protested, such protest must be made on the day of its dishonor unless delay is excused as herein provided.
- When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. [Section 155, Negotiable Instruments Law]
- "*Duly noted*" is when the notary public jots down a note on the bill, or paper affixed thereto, or in his registry book, consisting of his initials or signature and those matters required to be stated in Section 153.

**Protest; where made**

- A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary. [Section 156, Negotiable Instruments Law]

**Protest both for non-acceptance and non-payment**

- A bill which has been protested for non-acceptance may be subsequently protested for non-payment. [Section 157, Negotiable Instruments Law]

**Protest before maturity where acceptor insolvent**

- Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. [Section 158, Negotiable Instruments Law]

**When protest dispensed with**

- Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. [Section 159, Negotiable Instruments Law]

**Protest where bill is lost and so forth**

- When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. [Section 160, Negotiable Instruments Law]

**Acceptance for Honor****When bill may be accepted for honor**

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

**Acceptance for honor; how made**

- An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor and must be signed by the acceptor for honor. [Section 162, Negotiable Instruments Law]

**When deemed to be an acceptance for honor of the drawer**

- Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. [Section 163, Negotiable Instruments Law]

**Liability of the acceptor for honor**

- The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. [Section 164, Negotiable Instruments Law]

**Agreement of acceptor for honor**

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

**Maturity of bill payable after sight; accepted for honor**

- Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor. [Section 166, Negotiable Instruments Law]

**Protest of bill accepted for honor, and so forth**

- Where a dishonored bill has been accepted for honor supra protest or contains a referee in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need. [Section 167, Negotiable Instruments Law]

**Presentment for payment to acceptor for honor, how made**

- Presentment for payment to the acceptor for honor must be made as follows:
  1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.
  2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in Section 104. [Section 168, Negotiable Instruments Law]

**When delay in making presentment is excused**

- The provisions of Section 81 apply where there is delay in making presentment to the acceptor for honor or referee in case of need. [Section 169, Negotiable Instruments Law]

**Dishonor of bill by acceptor for honor**

- When the bill is dishonored by the acceptor for honor, it must be protested for non-payment by him. [Section 170, Negotiable Instruments Law]

## **Payment for Honor**

**Who may make payment for honor**

- Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. [Section 171, Negotiable Instruments Law]

**Payment for honor; how made**

- The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor which may be appended to the protest or form an extension to it. [Section 172, Negotiable Instruments Law]

**Declaration before payment for honor**

- The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. [Section 173, Negotiable Instruments Law]

**Preference of parties offering to pay for honor**

- Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference. [Section 174, Negotiable Instruments Law]

**Effect on subsequent parties where bill is paid for honor**

- Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. [Section 175, Negotiable Instruments Law]

**Where holder refuses to receive payment supra protest**

- Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. [Section 176, Negotiable Instruments Law]

**Rights of payer for honor**

- The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. [Section 177, Negotiable Instruments Law]

## **Bills in Set**

**Bills in set constitute one bill**

- Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill. [Section 178, Negotiable Instruments Law]

**Right of holders where different parts are negotiated**

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

**Liability of holder who indorses two or more parts of a set to different persons**

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

**Acceptance of bill drawn in sets**

- The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part and such accepted parts negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. [Section 181, Negotiable Instruments Law]

**Payment by acceptor of bills drawn in sets**

- When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and the part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. [Section 182, Negotiable Instruments Law]

**Effect of discharging one of a set**

- Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. [Section 183, Negotiable Instruments Law]

**Promissory Notes and Checks****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. [Section 184, Negotiable Instruments Law]

### **Check defined**

- A check is a bill of exchange drawn on a bank payable on demand.
- Except as herein otherwise provided, the provisions of this Act applicable to a bill of exchange payable on demand apply to a check. [Section 185, Negotiable Instruments Law]
- A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank, is not liable to the holder, unless and until it accepts or certifies the check.
- A check is payable on demand even when not so stated on its face.
- A check is supposed to be drawn against a previous deposit of funds, while an ordinary need not be drawn against a deposit.
- A check need not be presented for acceptance.

### **Types of checks**

#### 1. Cashier's check

One drawn by the cashier of a bank in the name of the bank against the bank itself payable to a third person or order.

A cashier's check is a primary obligation of the issuing bank and accepted in advance by its mere issuance.

#### 2. Manager's check

A check drawn by the manager of a bank in the name of the bank against the bank itself payable to a third person.

It is similar to the cashier's check as to effect and use.

## 3. Memorandum check

A check in which is written the word "*memorandum*," "*memo*" and "*mem*" signifying that the drawer engages to pay the bona fide holder absolutely, and not upon a condition to pay upon presentment of maturity and if due notice of presentment and non-payment should be given.

It is a check given by a borrower to a lender for the amount of a short loan, with the understanding that it is not to be presented at the bank, but will be redeemed by the maker himself when the loan falls due and which understanding is evidenced by writing the word "*memorandum*," "*memo*" or "*mem*" on the check.

## 4. Certified check

A certification is an agreement whereby the bank against whom a check is drawn undertakes to pay it on any future time when presented for payment.

Certification is equivalent to acceptance and operates as an assignment of a part of the funds to the creditors.

## 5. Crossed check

Under accepted banking practice, crossing a check is done by writing two parallel lines diagonally on the left top portion of the checks.

The crossing is special where the name of the bank or a business institution is written between the two parallel lines, which means that the drawee should pay only with the intervention of that company.

**Effects of crossed checks**

1. The check may not be encashed but only deposited in the bank.
2. The check may be negotiated only once—to one who has an account with a bank.
3. The act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose, so that he must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course.

**Stale check**

- One which is not presented for payment within a reasonable time after its issue.

**Within what time a check must be presented**

- A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. [Section 186, Negotiable Instruments Law] Hence, if no loss or injury is shown, the drawer is not discharged.

**Certification of check; effect of**

- Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. [Section 187, Negotiable Instruments Law]
- However, a bank is not obligated to the depositor to certify checks.

**Effect where the holder of check procures it to be certified**

- Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon. [Section 188, Negotiable Instruments Law]

**When check operates as an assignment**

- A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder unless and until it accepts or certifies the check. [Section 189, Negotiable Instruments Law]

## **General Provisions**

**Definition and meaning of terms**

- "Acceptance" means an acceptance completed by delivery or notification.
- "Action" includes counterclaim and set-off.

- "*Bank*" includes any person or association of persons carrying on the business of banking, whether incorporated or not.
- "*Bearer*" means the person in possession of a bill or note which is payable to bearer.
- "*Bill*" means bill of exchange, and "*note*" means negotiable promissory note.
- "*Delivery*" means transfer of possession, actual or constructive, from one person to another.
- "*Holder*" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.
- "*Indorsement*" means an indorsement completed by delivery.
- "*Instrument*" means negotiable instrument.
- "*Issue*" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.
- "*Person*" includes a body of persons, whether incorporated or not.
- "*Value*" means valuable consideration.
- "*Written*" includes printed, and "*writing*" includes print.

#### **Persons primarily liable on instrument**

- The person "*primarily*" liable on an instrument is the person who, by the terms of the instrument, is absolutely required to pay the same. All other parties are "*secondarily*" liable. [Section 192, Negotiable Instruments Law]

#### **Reasonable time, what constitutes**

- In determining what is a "*reasonable time*" regard is to be had to the nature of the instrument, the usage of trade or business with respect to such instruments, and the facts of the particular case. [Section 193, Negotiable Instruments Law]

#### **Time, how computed; when last day falls on holiday**

- Where the day, or the last day for doing any act herein required or permitted to be done falls on a Sunday or on a holiday, the act may be done on the next succeeding secular or business day. [Section 194, Negotiable Instruments Law]

***Application of Act***

- The provisions of this Act do not apply to negotiable instruments made and delivered prior to the taking effect hereof. [Section 195, Negotiable Instruments Law]

***Cases not provided for in Act***

- Any case not provided for in this Act shall be governed by the provisions of existing legislation or in default thereof, by the rules of the law merchant. [Section 196, Negotiable Instruments Law]

**Enacted 03 February 1911**