GENERAL PRINCIPLES OF LAW

For

BUSINESS MANAGEMENT

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GENERAL PRINCIPLES OF LAW FOR BUSINESS MANAGEMENT

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TABLE OF CONTENT

CHAPTER FOURTEEN – BUSINESS ASSOCIATIONS II —
Jade Mohammed

CHAPTER FIFTEEN – BUSINESS ASSOCIATION III —
Adepoju Adeyombo

CHAPTER SIXTEEN – NEGOTIABLE INSTRUMENTS —
Abiodun Osuntoogun

CHAPTER SIXTEEN

NEGOTIABLE INSTRUMENTS

CHAPTER OBJECTIVES

After studying this chapter, you should be able to:

- explain different types of negotiable instruments i.e. bill of exchange, cheques and promissory notes;
- state the essentials of a valid bill of exchange;
- explain negotiation and negotiability of a bill;
- explain duties and liabilities of holders in due course;
- explain the relationship between a banker and a customer.

INTRODUCTION

A negotiable instrument is an instrument from the transferor to the transferee, in which the latter who takes it in good faith, and for value can pass a good title, free from any defect that may be affecting the title of the transferor.

ATTRIBUTES OF NEGOTIABLE INSTRUMENTS

1. It is a document or memorandum.

2. It is transferable by mere delivery if payable to bearer, or by delivery coupled with endorsement if payable to order.

3. The instrument is such that it is either an undertaking to pay a certain sum of money or it may be an order to another person to effect the payment of a certain sum, whether to the giver of the order, or to a third party.

1. The property or ownership passes either by mere delivery or endorsement.

2. Negotiable instrument is an exception to "NEMO DAT QUOD NON HABET" since the person who value and without notice of the defects (if any) in the title of the transferor accepts a good title unless there is forgery.

3. It is not necessary for the transferee to give notice to the debtor as in the case of other chooses in action.

4. Consideration is presumed to have been given.

5 The transferee (of a negotiable instrument) can sue in his own name.

6. The holder of a negotiable instrument in due course acquires a general and over-riding title.

TYPES OF NEGOTIABLE INSTRUMENT

(i) Promissory notes
(ii) Bill of exchange
(iii) Cheque
(iv) Dividend Warrant
(v) Banker's Draft, etc.

BILL OF EXCHANGE *(Bill of Exchange Act Cap 35 laws of federation 1990)*

A bill of exchange is defined by section 3 (1) of the Act as "An unconditional order, in writing, addressed by one person to another, signed by the person to 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, or to the order of, a specified person or bearer. Section 3 (2) of the Act goes on to state that "an instrument which does not comply with there conditions or which orders any act to be done in addition to the payment of money is not a bill of exchange but it is also specifically stated in section 3 (4) that a bill is not invalid by reason;

(a) that it is not dated;
(b) that it does not specify the value given, or that any value has been given therefore, and
(c) that it does not specify the place where it is drawn or the place where it's payable.

However an unstamped bill is ineffectual see section 41 of the stamp duties Act.

ORDER BILL PAYABLE ON DEMAND

₦50 Lagos, October 1, 1984

On demand pay Dele Ojo or order the sum of five hundred naira for value received.

To Odus Ojo Femi Odukale

ORDER BILL PAYABLE AT A FIXED TIME

₦500 Lagos, October, 1984

Ninety days after date pay to Alfred
Jones or order the sum of ₦500 for value received.

To Okrika Fine Desmond Odje

INLAND BILLS

₦400 Enugu, 10th March, 1984

Ten days after date pay to Kemi Ojo
or order the sum of four hundred naira for value received.

To Femi Ositelu Molayo Osunkale

STATUTORY REQUIREMENTS OF A BILL OF EXCHANGE

(1) The bill must be an order it must be in the nature of a command not a mere request. However in Ruff Webb (1794) 1 ESP, 130 the bill which states that "Mr, N. will much oblige Mr, W by paying to J R or order twenty guinea on his account" was held to be a qualified bill of Exchange.

(2) The order must be unconditional; This means no condition should be attached to the payment. In Roberts & Co. U Marsh (1915) 1 KB 42 a person drew a cheque on a blank sheet of paper and wrote on it the words "to be

retained" telling the payee not to present it for payment, as he would send him a cheque on a proper form to replace it. He did not send the promised cheque in substitution and the payer therefore presented the original cheque for payment. It was held that the order for payment was unconditional and the document was a cheque within the meaning of the Act. The court said the words "to be retained" were not addressed to the banker but were simply a condition between the drawer and payee.

(3) The instrument must be in writing and signed by the drawer. – The writing can be by ink or pencil, it includes typing and printing. The instrument is inchoate until it is signed. Agent of the drawer can sign on his her behalf.

(4) The order must be addressed by one person to another – the person here maybe a body of persons, incorporated or not e.g. a limited liability company, a local authority, an unincorporated club or a partnership.

(5) The order must be for a sum certain in money – Section 9 (1) says the sum payable by the bill is sum certain even though it may be required to be paid with interest or by stated installments.

(6) The instrument must provide for a certain or determinable time for payment. – It is payable on demand, if (1) it is expressed to be payable on demand, or at sight, or on presentation or (2) if no time for payment is expressed.

A bill is payable at a determinable future time if it is expressed to be payable at a fixed period after date or sight or on at a fixed period after the occurrence of a specified event which is certain to happen though the time of happening may be uncertain.

(7) The instrument must specify an identifiable payee – the payee must be named or indicated in the bill with a reasonable certainty it may also be paid to the "bearer".

USES OF A BILL OF EXCHANGE

(1) It is used for the payment of debt and facilitation of commercial transactions.

(2) It provides credit for the buyer and cash for the seller.

(3) It can be used to obtain a short time loan.

TYPES OF BILL EXCHANGE

(a) *Inland bill* – this is a bill drawn and payable in Nigeria.

(b) ***Foreign bill*** – this is the opposite of inland bill in the sense that it is drawn and payable outside Nigeria. If a foreign bill is dishonoured it must be "noted and protested" by the holder failing which the drawer is discharge from liability. "NOTING AND PROTESTING" involve a delivery of the dishonoured bill again. He minutes on it and the bill is said to have been duly noted. A formal certificate is thereafter prepared by the Notary public. The certificate is known as certificate of protest.

(c) Incomplete or inchoate bill – This is a bill, which is not complete on its face. It lacks some material particulars e.g. a bill drawn with the amount payable or name of payee omitted.

(d) ***Accommodation Bill*** – It is a bill signed by someone known as "Accommodation party" who has received no consideration for it but lends the use of his name to another person.

PARTIES TO A BILL OF EXCHANGE

(1) ***Drawer*** – Draws the bill. He makes the unconditional order instructing the drawee to effect payment.

(2) ***Drawee*** – he is the person to whom the drawer's order is addressed.

(3) ***Payee*** – He is the beneficiary of the bill.

(4) ***Acceptor*** – He is the person who accepts the bill, drawee used to become an acceptor and once he accepts the bill he becomes liable in respect there of.

(5) ***Endorser*** – He endorses a bill with a view to putting it in a negotiable or deliverable state. The payee used to become endorser by endorsing the bill to another person.

(6) ***Endorsee*** – The person to whom the bill has been endorsed by the payee.

(7) ***Holder*** – The holder may either be a payee in possession of the bill or an endorsee in possession or a person in possession of a bearer's bill.

DISCHARGE OF A BILL OF EXCHANGE

A Bill of Exchange is discharged by:

(1) Payment in due course either by the drawer or on his behalf.

(2) By material alteration.

(3) By international and apparent cancellation.

(4) Discharge under the limitation law at the expiration of a period of six years.

(5) By express waiver where by the holder absolutely and unconditionally renounces his right against the acceptor.

PROMISSORY NOTE

A promissory note may be in writing, made by one person to another, signed by the maker, engaging to pay either on demand or at a fixed determinable future time, a sum certain in money to the order of a specified person or bearer.

Distinction between a bill of exchange and promissory note

(1) A Bill of Exchange is an unconditional order, while a promissory note is an unconditional promise.

(2) The parties to the Bill of Exchange are Drawer, Drawee and Payee but the parties to the promissory note are promises and promisor.

(3) A Bill of Exchange requires an acceptance, promissory note does not require it.

CHEQUE

A cheque is a kind of a bill drawn on a banker and payable on demand. (Se S. 73 of the Bill of Exchange Act).

A stale cheque is a kind of bill, which has been in circulation for an unreasonable length of time without being presented for payment. A stale cheque is not statutorily defined but as a matter of practice bankers normally regard a cheque which has been in circulation for a period of 6 months or more as stale. Stale means "out of date" A post dated cheque is that which bears a future date on its face. The cheque must be paid on that date it bears, if the banker pays a cheque before the date specified on it, the customer's account can be debited before that date.

Ante – dated cheque is a cheque, which bears a date prior to that on which it was actually signed. It therefore means that the cheque is back-dated. An undated cheque is a cheque which is not dated, date may be inserted in an undated cheque as soon as such omission is discovered by the receiving or paying cashier but the banks usually reject undated cheque as a matter of tradition.

DISTINCTION BETWEEN A CHEQUE AND OTHER BILL OF EXCHANGE

(1) The procedure of "noting and protesting" which is applicable to dishonoured foreign bills are not applicable to cheque.

(2) The drawer of a cheque unlike the drawers of other bills must take reasonable care when drawing his cheque so as to avoid forgery or unauthorized alterations.

(3) The statutory period of 3 days period of grace applies to other bills not cheque.

(4) Unlike other drawees of other bills, a banker and protected against forged or unauthorized endorsement.

(5) The provisions of the bills of exchange Act relating to crossing apply only to cheque not to other bills.

(6) The drawer of a cheque is usually a banker but the drawees of other bills may not be bankers.

(7) A cheque does not require acceptance but other bills do.

(8) The drawers of cheque will not be discharged from liability where the holder fails to present it for payment within a reasonable time of issue. Other drawers of other bills will be discharged.

(9) Cheques are always payable on demand, other bills are not.

(10) Notice of dishonour is a condition precedent for the liability of drawers of other bills but for drawers of cheque notice of dishonour is not necessary.

CROSSING OF CHEQUES

The main object of crossing a cheque is to combat fraud. It is an instruction specified on the cheque in to a bank account or to a named banker. A crossed cheque should not be cashed over the counter.

ADVANTAGES OF CROSSING

(1) It makes it more difficult for a fraudulent party to obtain the proceeds of the cheque.

(2) It increases the time available to discover any fraud.

(3) It is possible to trace the fraudulent party or his collaborators back to the collecting banker.

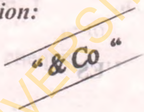
(4) The drawer too has enough time to stop the payment of the cheque.

TYPES OF CROSSINGS

(a) General Crossing

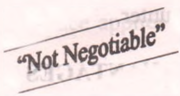
It consists of two parallel lines drawn across the face of the cheque, with or without the word "and Co." and or "Not negotiable" written between or near the lines. The effect of such crossing is to make it necessary for the cheque to be paid in to an account and for the proceeds to be collected from the drawee bank.

Illustration:

(i) 

(ii) 

(iii) 

(iv) 

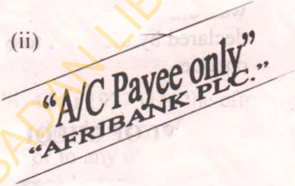
(b) Special Crossing

It is a crossing bearing the name of a particular bank (with or without the words "not negotiable". The effect is that the cheque must only be paid by the drawee banker to the banker named in the crossing.

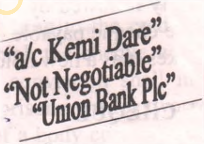
Illustration:

(i)

(ii)



(iii)



(c) "Not Negotiable" crossing this deprives a cheque of it's negotiability but not its transferability. The person who receives such a cheque even though in good faith can not retain it against the true owner since he can not have a better title to the cheque than that which the transferor had.

(d) Account payee crossing

This type of crossing does not concern the paying banker, nor affect the negotiability of the cheque, but it is well recognised by the courts that the crossing is directed to the collecting bankers, who may be deemed negligent if he collects such a cheque for a party other than the named payee. It is essential to note that the two parallel traverse lines constitutes crossing and one line does not suffice. In the case of Attorney General of Northern Nigeria V. African continental Bank Ltd. (1964) where only one line was drawn across the face of a cheque, the cheque was declared by the court to be an open cheque and not a cross cheque.

ENDORSEMENT OF CHEQUES

Endorsement may be defined as the signature usually at the back of the cheque by the holder of that cheque or his duly authorised agent. Signature is usually followed by delivery of the instrument whereby the holder of the cheque payable to his order negotiates it to another person who takes it as a new holder.

COUNTERMAND OF CHEQUE

Countermand is a way by which payment can be halted. It simply means a stop order. If despite a valid countermand, the banker still goes ahead to honour the cheque in issue such a banker becomes liable. Thus in Nwandu V. Barclays Bank Ltd. (ALL NLRI 962) the plaintiff was a customer of the defendant Bank. He issued a post-dated cheque in favour of a company and before the same was presented for payment, he validly countermanded it but the defendant Bank honoured the cheque. The court held that the Bank was liable.

FEATURES OF A VALID COUNTERMAND

(1) It must be in writing.

(2) The receipt of it must be proved.

(3) It must furnish material information about the cheque in issue.

(4) It must not be ambiguous.

DISHONOURED CHEQUES

Dishonoured cheques (offences) Act No. 44 of 1977 is to the effect that any person who obtains or induces the delivery of anything capable of being stolen either to himself or to any other person, or obtains credit for himself or any other person by means of a cheque that, when presented for payment not later than three months after the date of the cheque, is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn shall be guilty of an offence and on conviction shall in the case of an individual be sentenced to imprisonment for two years without the option of a fine and in case of a body corporate be sentenced to a fine of not less than ₦5,000. It could be seen that the act makes it an offence for any one to settle a lawful obligation by means of a cheque which presented with in three months is dishonoured on the ground of no funds or insufficient of funds.

The only defence available to the drawer of such a dishonoured cheque is to prove to the satisfaction of the court that when he issued the cheque he had reasonable grounds for believing and did believe in fact that it would be honoured if presented for payment within three months.

It must be noted that if a cheque is returned unpaid because it is stale (i.e. presented after six months) the drawer of such a stale cheque is not guilty of any offence since the fault is with the payee who failed to present the cheque according to banking practice.

BANKER AND CUSTOMER RELATIONSHIP

Banker can be defined as a body of persons who carry on the business of banking while a customer can be defined as somebody who enters in to transaction with a banker. Dr. Hart defined a customer as somebody "who has an account with a banker".

The relationship between a customer and banker are discussed below:

(1) The relationship between a banker and customer is that of a debtor and creditor. In Ekpeyong V. The State, the court held that a bank is a customer's debtor in the amount standing to a customer's credit.

(2) A banker can also act as his customer's agent, therefore the relationship of principal and agent is also created particularly when the customer instructs his banker to buy or sell shares and stocks or to do any other act on his behalf.

(3) When a customer deposits precious goods or document in custody of his bankers, the relationship of bailor and bailee is said to exist.

(4) Most often a banker gives credit to customers in such a way that the banker takes the property of the customer as a security. In such a situation the relationship of a mortgagor and mortgagee arises.

(5) The relationship of a trustee and beneficiary arises where a banker is in possession of money or properties which belong to a third party.

In summary the relationship of a banker and that of a customer is that of a debtor/creditor relationship.

DUTIES OF A BANKER

(1) Duty to honour cheques

A banker must honour the customer's is cheques up to the amount of his credit balance or in accordance with the agreement between them e.g. on overdraft or any form of loan.

In Ademiluyi V. ACB the bank refused to honour a cheque for ₦54.504 kobo when the customer had only ₦49.005 in his account. The court held that the dishonour was lawful.

The duty to honour cheques shall be excused:

(i) if there is an effective and valid countermand;

(ii) on the death of a customer;

(iii) when a banker comes to the knowledge that his customer is insane;

(iv) when notice of a winding up is given to a banker; and,

(v) when a garnishee order is placed on a customer's account.

(2) The banker has a duty to treat the affairs of his customers as confidential this is the duty of secrecy. In Tournier V. National Provincial Bank, the Bank's manager informed the customer's employers that the customer's account was overdrawn and that he had failed to keep his promise to put it in funds. The Defendant Bank was held liable as they had failed in their duty to the plaintiff to treat his account and affairs as confidential.

However, there are exceptions to duty of secrecy they are:

(i) Compulsion of law

(ii) Public interest

(iii) Disclosure in banker's interest and Disclosure with the consent of the customers

(3) Duty to pay only on customer's instruction. Any payment contrary to the instruction can not be debited from the customer's account.

However if there is forgery or alteration of cheques due to the negligence of the customer, the customer shall be liable and in another circumstances a customer can be estopped from denying that his signature has been forged, in such circumstances he must be liable.

(1) The banker has a duty to follow the usual course of business when acting for the customer.

DUTIES OF A CUSTOMER TO BANKER

(1) Duty to exercise due care when drawing up his cheques.

(2) Duty to pay interest or commission.

(3) Duty to report cases of forgery to his banker.

SELF ASSESSMENT QUESTIONS

1. Define and list types of negotiable instruments.
2. What do you understand by the term "holder for value of a bill of exchange?
3. X draws a cheque for ₦140,000 payable to D, his tailor for a native attire made for him. D specially indorses it to C for wages owing to C. C in turn specially indorses it to Rose his wife and hands it to her as a birthday gift. Rose specially endorses it to Ade and gives it tohim as a wedding present. Ade presents the cheque for payment but it is dishonoured. What is Ade's remedy in law?
4. What is the legal effect of a crossing on a cheque plus the words "Not Negotiable?"