

Chapter 250.
Bills of Exchange Act 1951.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 250.

Bills of Exchange Act 1951.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Bills of Exchange Act 1951,

Being an Act relating to bills of exchange, cheques and promissory notes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

(1) In this Act, unless the contrary intention appears—

“**acceptance**” means the signification by the drawee of his assent to the order of the drawer, completed by delivery;

“**accommodation party**”, in relation to a bill, means a person who has signed the bill as drawer, acceptor or endorser—

- (a) without receiving value for the bill; and
- (b) for the purpose of lending his name to some other person;

“**action**” includes counter-claim and set-off;

“**Australasia**” means—

- (a) Papua New Guinea; and
- (b) Australia; and
- (c) any Territory of Australia; and
- (d) New Zealand; and
- (e) Fiji;

“**banker**” includes a body of persons, whether incorporated or not, who carry on the business of banking;

“**bearer**” means the person who is in possession of a bill that is payable to bearer;

“**bill**” means a bill of exchange;

“**bill of exchange**” has the meaning ascribed to it by Section 8;

“**business day**” means a day other than Sunday or a bank holiday;

“**cheque**” means a bill drawn on a banker and payable on demand;

“**crossing**” has the meaning ascribed to it by Section 83;

“**delivery**” means transfer of possession, actual or constructive, from one person to another;

“**endorsement**” means an endorsement completed by delivery;

“**endorsement in blank**” means an endorsement that specifies no endorsee;

“**foreign bill**” means a bill other than an inland bill;

“**general acceptance**” has the meaning ascribed to it by Section 24;

“**holder**”, in relation to a bill, means—

- (a) the bearer of the bill; or
- (b) the payee or endorsee of the bill who is in possession of it;

“**holder in due course**”, in relation to a bill, means a holder who has taken the bill, which was complete and regular on the face of it, under the following conditions:—

- (a) that he became the holder of it before it was overdue, and without notice that it had been previously dishonoured (if such were the fact);
- (b) that he took the bill in good faith and for value, and that at the time when the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it;

“**inland bill**” has the meaning ascribed to it by Section 9;

“**insolvent**” means a person whose estate is vested in a trustee under the *Insolvency Act 1951*;

“**issue**”, in relation to a bill, means the first delivery of the bill, complete in form, to a person who takes it as a holder;

“**negotiation**” has the meaning ascribed to it by Section 36;

“**note**” means a promissory note;

“**partial endorsement**”, in relation to a bill, means an endorsement that purports—

- (a) to transfer to the transferee part only of the amount payable under the bill; or
- (b) to transfer the bill to two or more transferees severally;

“**payment in due course**”, in relation to a bill, means payment made at or after the maturity of the bill to the holder in good faith and without notice that his title to the bill is defective;

“**person**” includes a body of persons, whether incorporated or not;

“**promissory note**” has the meaning ascribed to it by Section 93;

“**qualified acceptance**” has the meaning ascribed to it by Section 24;

“**referee in case of need**”, in relation to a bill, means a person whose name is inserted in the bill as the person to whom the holder may resort, in accordance with Section 20;

“**restrictive endorsement**” means an endorsement that—

- (a) prohibits the further negotiation of the bill; or
- (b) expresses that it is a mere authority to deal with the bill as directed by the endorsement and not a transfer of the ownership of the bill. *Example*—if the bill is endorsed—
 - (i) “Pay D. only”; or
 - (ii) “Pay D. for the account of X”; or
 - (iii) “Pay D. or order for collection”;

“**special endorsement**”, in relation to a bill, means an endorsement that specifies the person to whom, or to whose order, the bill is payable;

“**sum certain**” has the meaning ascribed to it by Section 14;

“**transferor by delivery**” means the holder of a bill payable to bearer who negotiates it by delivery without endorsing it;

“**value**” means valuable consideration.

(2) For the purposes of this Act, a thing shall be deemed to be done in good faith if it is done honestly, whether or not it is done negligently.

2. RULES OF INSOLVENCY AND UNDERLYING LAW.

(1) Nothing in this Act affects the operation of the rules in insolvency relating to bills and promissory notes.

(2) Except where they are inconsistent with the express provisions of this Act, the rules of the underlying law apply to bills and promissory notes.

3. SIGNATURE.

(1) Where, by this Act, an instrument is required to be signed by a person, it is sufficient if his signature is written by some other person by or under his authority.

(2) Where, by this Act, an instrument is required to be signed by a corporation, it is sufficient if the instrument is sealed with the seal of the corporation.

(3) This section does not require the bill or note of a corporation to be under seal.

4. COMPUTATION OF TIME.

(1) Where, by this Act, the time limited for doing an act or thing is less than three days, in reckoning time days other than business days shall be excluded.

(2) Where the day on which a payment, presentation, notice, noting, protest, acceptance, act or thing should be made, given or done in connection with a bill, cheque or note falls on a day other than a business day, it may be made, given or done on the business day next following.

(3) Where, under any law, any portion of a day is declared to be a bank holiday in the country, or in a part of the country, the day is a bank holiday as regards bills and promissory notes—

- (a) payable on that day at any bank in the locality to which the holiday applies; and
- (b) not presented for payment during the portion of the day not included in the bank holiday.

5. WHEN NOTING EQUIVALENT TO PROTEST.

For the purposes of this Act, where a bill or note is required to be protested—

- (a) within a specified time; or
- (b) before some further proceeding is taken,

it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding, and the formal protest may be extended, as of the date of the noting, at any time afterwards.

6. PROTEST WHEN NOTARY NOT ACCESSIBLE.

(1) Where a dishonoured bill or note is authorized or required to be protested, any householder or substantial resident of the place where the bill is dishonoured may give a certificate in the presence of, and signed by, two witnesses attesting the dishonour of the bill, and the certificate operates in all respects as if it were a formal protest of the bill.

(2) The form in Schedule 1 may be used with any necessary modifications.

7. DIVIDEND WARRANTS.

(1) The provisions of this Act relating to crossed cheques apply to dividend warrants.

(2) This Act does not affect the validity of any usage relating to, or to the endorsement of, dividend warrants.

PART II. – BILLS OF EXCHANGE.

Division 1.

Form and interpretation.

8. BILLS OF EXCHANGE.

(1) Subject to this Division, 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 or to the order of a specified person, or to bearer.

(2) An instrument that does not comply with the conditions specified in Subsection (1), or that orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section, but an unqualified order to pay, coupled with–

(a) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount;
or

(b) a statement of the transaction that gave rise to the bill,

is unconditional.

(4) A bill of exchange is not invalid by reason of the fact that–

(a) it is not dated; or

(b) it does not specify the value given, or that any value has been given for the bill; or

(c) it does not specify the place where it is drawn, or the place where it is payable.

9. INLAND BILLS.

(1) A bill that is, or on the face of it purports to be–

(a) drawn and payable within Australasia; or

(b) drawn within, and on some person resident in, Australasia,

is an inland bill.

(2) Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

10. PARTIES TO BILLS.

(1) A bill may be drawn payable to, or to the order of–

(a) the drawer; or

(b) the drawee.

(2) Where, in a bill—

(a) drawer and drawee are the same person; or

(b) the drawee is a fictitious person or a person not having capacity to contract,

the holder may, at his option, treat the instrument as a bill of exchange or as a promissory note.

11. ADDRESS TO DRAWEE.

(1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees, whether they are partners or not, but an order addressed to—

(a) two drawees in the alternative; or

(b) two or more drawees in succession,

is not a bill of exchange.

12. CERTAINTY REQUIRED AS TO PAYEE.

(1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated in the bill with reasonable certainty.

(2) A bill may be made payable—

(a) to two or more payees jointly; or

(b) in the alternative to one of two, or one of some of several, payees; or

(c) to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

13. NEGOTIABLE BILLS.

(1) Where a bill contains words—

(a) prohibiting transfer; or

(b) indicating an intention that it should not be transferable,

it is valid between the parties to the bill, but is not negotiable.

(2) A negotiable bill may be payable to order or to bearer.

(3) A bill is payable to bearer where—

(a) it is expressed to be so payable; or

(b) the only or last endorsement is an endorsement in blank.

(4) A bill is payable to order where—

- (a) it is expressed to be so payable; or
- (b) it is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it is not transferable.

(5) Where a bill is expressed, originally or by endorsement, to be payable to the order of a specified person, and not to him or to his order, it is payable, at his option, to him or to his order.

14. SUM PAYABLE.

(1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

- (a) with interest; or
- (b) by stated instalments; or
- (c) by stated instalments, with a provision that on default in payment of any instalment the whole becomes due; or
- (d) according to—
 - (i) an indicated rate of exchange; or
 - (ii) a rate of exchange to be ascertained as directed by the bill.

(2) 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 amount payable.

(3) Unless the instrument provides otherwise, where a bill is expressed to be payable with interest the interest runs from the date of the bill, or if the bill is undated from the issue of the bill.

15. BILL PAYABLE ON DEMAND.

(1) A bill is payable on demand where—

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

(2) Where a bill is accepted or endorsed when it is overdue, it is, in respect to the acceptor or endorser, a bill payable on demand.

16. BILL PAYABLE AT A FUTURE TIME.

(1) A bill that is expressed to be payable—

- (a) at a fixed period after date or sight; or

- (b) on or at a fixed period after the occurrence of a specified event that is certain to happen, though the time of happening may be uncertain,

is payable at a determinable future time within the meaning of this Act.

(2) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

17. OMISSION OF DATE IN BILL PAYABLE AFTER DATE.

(1) Where—

- (a) a bill expressed to be payable at a fixed period after date is issued undated; or

(b) the acceptance of a bill payable at a fixed period after sight is undated,

any holder may insert in the bill the true date of issue or acceptance, and the bill is payable accordingly.

(2) Where the holder in good faith and by mistake inserts a wrong date, and the bill subsequently comes into the hands of a holder in due course, the bill is not avoided but operates and is payable as if the date inserted were the true date.

18. ANTE-DATING AND POST-DATING.

(1) Where a bill or an acceptance or an endorsement on a bill is dated, unless the contrary is proved the date shall be deemed to be the true date of the drawing, acceptance or endorsement, as the case may be.

(2) A bill is not invalid by reason only of the fact that it is ante-dated or post-dated, or that it bears the date of a Sunday.

19. COMPUTATION OF THE TIME OF PAYMENT.

(1) In a bill, “**month**” means calendar month.

(2) Where a bill is not payable on demand, the day on which it falls due is determined as follows:—

- (a) unless the bill provides otherwise, three days (called “**days of grace**”) are added to the time of payment as fixed by the bill, and the bill is due and payable—

(i) on the last day of grace; or

(ii) when the last day of grace falls on a day other than a business day, on the next business day;

(b) where a bill is payable at a fixed period after—

(i) date; or

(ii) sight; or

(iii) the 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 day of payment;

- (c) where a bill is payable at a fixed period after sight the time begins to run from—
 - (i) the date of the acceptance, if the bill is accepted; or
 - (ii) the date of noting or protest, if the bill is noted or protested for non-acceptance or for non-delivery.

20. REFEREE IN CASE OF NEED.

(1) The drawer of a bill, and any endorser, may insert in the bill the name of a person as a person to whom the holder may resort if the bill is dishonoured by non-acceptance or non-payment.

(2) The holder has the option to resort to the referee in case of need or not, as he thinks fit.

21. OPTIONAL STIPULATIONS BY DRAWER OR ENDORSER.

The drawer of a bill, and any endorser, may insert in the bill an express stipulation—

- (a) negating or limiting his own liability to the holder; or
- (b) waiving, as regards himself, some or all of the holder's duties.

22. REQUISITES OF ACCEPTANCE.

An acceptance is invalid if—

- (a) it is not written on the bill and signed by the drawee (the signature of the drawee, without additional words, being sufficient); and
- (b) it states that the drawee will perform his promise by any other means than the payment of money.

23. TIME FOR ACCEPTANCE.

(1) A bill may be accepted—

- (a) before it has been signed by the drawer, or while otherwise incomplete; or
- (b) when it is overdue; or
- (c) after it has been dishonoured by a previous refusal to accept or by non-payment.

(2) Where a bill payable after sight is dishonoured 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 first presentment to the drawee for acceptance.

24. GENERAL AND QUALIFIED ACCEPTANCES.

(1) An acceptance that assents without qualification to the order of the drawer is a general acceptance.

(2) An acceptance that in express terms varies the effect of the bill as drawn is qualified acceptance.

(3) An acceptance that is—

(a) a conditional acceptance; or

(b) a partial acceptance; or

(c) a local acceptance; or

(d) qualified as to time; or

(e) the acceptance of some one or more of the drawees, but not of all,

is a qualified acceptance.

(4) In Subsection (2)—

“**conditional acceptance**” means an acceptance that makes payment by the acceptor dependent on the fulfilment of a condition stated in the acceptance;

“**local acceptance**” means an acceptance to pay only at a specified place;

“**partial acceptance**” means an acceptance to pay part only of the amount for which the bill is drawn.

(5) Unless it expressly states that the bill is to be paid there only, and not elsewhere, an acceptance to pay at a particular place is a general acceptance.

25. INCHOATE INSTRUMENTS.

(1) For the purposes of this section “**duty stamp**” includes a duty stamp required by law to be impressed on a bill.

(2) Where a simple signature on a blank paper stamped with an impress duty stamp is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount that the stamp will cover, using the signature for that of the drawer, acceptor or endorser.

(3) Where a simple signature, on unstamped paper, or paper stamped with an adhesive stamp only, is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount not exceeding the amount (if any) written on the paper as the maximum, using the signature for that of the drawer, acceptor or endorser.

(4) Where a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(5) Subject to Subsection (7), an instrument specified in Subsection (2), (3) or (4), when completed, is enforceable against any person who became a party to the instrument before its completion only if it is filled up within a reasonable time, and strictly in accordance with the authority given.

(6) What is a reasonable time for the purposes of Subsection (5) is a question of fact.

(7) Where an instrument specified in Subsection (2), (3) or (4) is negotiated after completion 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 as required by Subsection (5).

26. DELIVERY.

(1) Subject to Subsection (2), each contract on a bill, whether it is the drawer's, the acceptor's or an endorser's, is incomplete and revocable until delivery of the instrument in order to give effect to the contract.

(2) Where an acceptance is written on a bill and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance is complete and irrevocable.

(3) Between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

- (a) must be made by or under the authority of the party drawing, accepting, or endorsing, as the case may be; or
- (b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

(4) Where the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, shall be conclusively presumed.

(5) Where a bill is no longer in the possession of a party who has signed it as a drawer, acceptor or endorser, a valid and unconditional delivery by him shall be presumed until the contrary is proved.

Division 2.

Capacity and Authority of Parties.

27. CAPACITY OF PARTIES.

(1) Subject to Subsection (2), capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

(2) Unless a corporation is competent to do so under the law relating to corporations, Subsection (1) does not enable it to make itself liable as drawer, acceptor or endorser of a bill.

(3) Where a bill is drawn or endorsed by a minor or a corporation having no capacity or power to incur liability on a bill, the drawing or endorsement entitles the holder to receive payment of the bill and to enforce it against any other party to the bill.

28. SIGNATURE ESSENTIAL TO LIABILITY.

(1) Subject to Subsections (2) and (3), a person who has not signed a bill as drawer, endorser or acceptor is not liable on it as such.

(2) For the purposes of Subsection (1)–

- (a) where a person signs a bill in a trade or assumed name he is liable on it as if he had signed it in his own name; and
- (b) the signature of the name of a firm is equivalent to the signature, by the person signing, of the names of all persons liable as partners in the firm.

29. FORGED OR UNAUTHORIZED SIGNATURE.

(1) Subject to this Act, where a signature on a bill is forged or placed on the bill without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right–

- (a) to retain; or
- (b) to give a discharge for; or
- (c) to enforce payment of,

the bill against any party to the bill can be acquired through or under the signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

(2) This section does not affect the ratification of an unauthorized signature not amounting to a forgery.

30. PROCURATION SIGNATURES.

A signature by procuration operates as notice that the agent has a limited authority to sign, and the principal is bound by the signature only if the agent, in signing, was acting within the actual limits of his authority.

31. PERSON SIGNING AS AGENT, ETC.

(1) A person who signs a bill as drawer, endorser or acceptor, and adds words to his signature indicating that he signs–

- (a) for or on behalf of a principal; or

(b) in a representative character,

is not personally liable on the bill, but the mere addition to his signature of words describing him as—

(c) an agent; or

(d) filling a representative character,

does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of—

(a) the principal; or

(b) the agent by whose hand it is written,

the construction most favourable to the validity of the instrument shall be adopted.

Division 3.

Consideration for a Bill.

32. VALUE AND HOLDER FOR VALUE.

(1) Valuable consideration for a bill may be constituted by—

(a) any consideration sufficient to support a simple contract; or

(b) an antecedent debt or liability.

(2) For the purposes of Subsection (1)(b), an antecedent debt or liability is valuable consideration whether the bill is payable on demand or at a future time.

(3) Where value has been given at any time for a bill, the holder shall be deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to that time.

(4) Where the holder of a bill has a lien on it, arising from contract or by implication of law, he shall be deemed to be a holder for value to the extent of the sum for which he has a lien.

33. ACCOMMODATION BILL OR PARTY.

An accommodation party is liable on the bill to a holder for value, and it is immaterial whether, when the holder took the bill, he knew the party to be an accommodation party or not.

34. HOLDER IN DUE COURSE.

(1) The title of a person who negotiates a bill is defective within the meaning of this Act where—

(a) he obtained the bill or the acceptance of the bill—

(i) by fraud or duress, or force and fear, or other unlawful means; or

(ii) for an illegal consideration; or

- (b) he negotiates it—
 - (i) in breach of faith; or
 - (ii) under such circumstances as amount to a fraud.

(2) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

35. PRESUMPTION OF VALUE AND GOOD FAITH.

(1) Every party whose signature appears on a bill shall *prima facie* be deemed to have become a party to the bill for value.

(2) Subject to Subsection (3), every holder of a bill shall *prima facie* be deemed to be a holder in due course.

(3) Where, in an action on a bill, it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected by—

- (a) fraud or duress, or force and fear; or
- (b) illegality,

the burden of proof imposed by Subsection (2) is shifted, until the holder proves that, after the alleged fraud or illegality, value in good faith has been given for the bill.

Division 4.

Negotiation of Bills.

36. NEGOTIATION.

(1) A bill is negotiated when it is transferred from one person to another in a manner that constitutes the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the endorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee—

- (a) such title as the transferor had in the bill; and
- (b) the right to have the endorsement of the transferor.

(5) Where any person is under an obligation to endorse a bill in a representative capacity, he may endorse the bill in terms that negative personal liability.

37. VALID ENDORSEMENT.

(1) In order to operate as a negotiation, an endorsement must—

- (a) be written on the bill itself and signed by the endorser, (the simple signature of the endorser on the bill, without additional words, being sufficient); and
- (b) be an endorsement of the entire bill; and
- (c) in the case of a bill payable to the order of two or more payees or endorsees who are not partners, be endorsed by all payees or endorsees unless the payee or endorsee endorsing has authority to endorse for the others.

(2) An endorsement written on an allonge, or on a “copy” of a bill issued or negotiated in a country where “copies” are recognized, shall be deemed to be written on the bill itself.

(3) Where, in a bill payable to order, the payee or endorsee is wrongly designated, or his name is mis-spelt, he may endorse the bill as described in the bill, adding, if he thinks fit, his proper signature.

(4) Where there are two or more endorsements on a bill, each endorsement shall be deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(5) An endorsement may—

- (a) be made in blank or special; and
- (b) contain terms making it restrictive.

(6) A partial endorsement does not operate as a negotiation of the bill.

38. CONDITIONAL ENDORSEMENT.

Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid whether the condition has been fulfilled or not.

39. ENDORSEMENT IN BLANK AND SPECIAL ENDORSEMENT.

(1) A bill endorsed in blank is payable to bearer.

(2) The provisions of this Act relating to a payee apply, with the necessary modifications, to an endorsee under a special endorsement.

(3) When a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing, above the endorser’s signature, a direction to pay the bill to or to the order of himself or some other person.

40. RESTRICTIVE ENDORSEMENT.

(1) A restrictive endorsement gives the endorsee the right to—

- (a) receive payment of the bill; and
- (b) sue any party to the bill that his endorser could have sued,

but unless it expressly authorizes him to do so it gives him no power to transfer his rights as endorsee.

(2) Where a restrictive endorsement authorizes further transfer, all subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement.

41. NEGOTIATION OF OVERDUE OR DISHONOURED BILL.

(1) For the purposes of this section, a bill payable on demand shall be deemed to be overdue when it appears on the face of it to have been in circulation for an unreasonable length of time.

(2) What is an unreasonable length of time for the purposes of Subsection (1) is a question of fact.

(3) Where a bill is negotiable in its origin, it continues to be negotiable until it has been—

- (a) restrictively endorsed; or
- (b) discharged by payment or otherwise.

(4) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(5) Except where an endorsement bears date after the maturity of the bill, every negotiation shall *prima facie* be deemed to have been effected before the bill was overdue.

(6) Where a bill that is not overdue has been dishonoured, a person who takes it with notice of the dishonour takes it subject to any defect of title attaching to the bill at the time of dishonour, but this subsection does not affect the rights of a holder in due course.

42. NEGOTIATION OF BILL TO PARTY ALREADY LIABLE.

Subject to this Act, where a bill is negotiated back to—

- (a) the drawer; or
- (b) a prior endorser; or
- (c) the acceptor,

he may re-issue and further negotiate the bill, but is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

43. RIGHTS OF HOLDER.

(1) The holder of a bill has the following rights and powers:—

- (a) he may sue on the bill in his own name;
- (b) where he is a holder in due course, he—

- (i) holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves; and
 - (ii) may enforce payment against all parties liable on the bill.
- (2) Where a holder's title is defective—
- (a) if he negotiates the bill to a holder in due course—the holder in due course obtains a good and complete title to the bill; and
 - (b) if he obtains payment of the bill—a person who pays him in due course gets a valid discharge for the bill.

Division 5.

General Duties of the Holder.

44. WHERE PRESENTATION FOR ACCEPTANCE IS NECESSARY.

(1) Where a bill is payable after sight, presentation for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill—

- (a) expressly stipulates that it shall be presented for acceptance; or
- (b) is drawn payable elsewhere than at the residence or place of business of the drawee,

it must be presented for acceptance before it can be presented for payment.

(3) Subject to Subsections (1) and (2), presentation for acceptance is not necessary in order to render a party liable on the bill.

(4) Where the holder of a bill that was drawn payable elsewhere than at the place of business or residence of the drawee has not 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 drawer and endorsers.

45. PRESENTING BILL PAYABLE AFTER SIGHT.

(1) Subject to this Act, where a bill payable after sight is negotiated the holder must present it for acceptance or negotiate it within a reasonable time.

(2) If the holder does not comply with Subsection (1), the drawer and all endorsers prior to the holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to—

- (a) the nature of the bill; and
- (b) the usage of trade with respect to similar bills; and

- (c) the facts of the particular case.

46. PRESENTATION FOR ACCEPTANCE, AND EXCUSES FOR NON-PRESENTATION.

(1) A bill is duly presented for acceptance if it is presented, by or on behalf of the holder—

- (a) at a reasonable hour on a business day; and
- (b) before the bill is overdue,

to the drawee or to some person authorized to accept or refuse acceptance on his behalf, or—

- (c) in the case of a bill addressed to two or more drawees, who are not partners, the bill is presented to them all, unless one of them has authority to accept for all, when the bill may be presented to him only; or
- (d) if the drawee is dead, the bill is presented to his personal representative; or
- (e) if the drawee is insolvent, the bill is presented to him or to his trustee or assignee.

(2) If authorized by agreement or usage, the bill may be presented through the post.

(3) Presentation in accordance with Subsection (1) or (2) is excused and a bill may be treated as dishonoured by non-acceptance where—

- (a) the drawee is—
 - (i) dead; or
 - (ii) insolvent; or
 - (iii) a fictitious person; or
 - (iv) a person not having capacity to contract by bill; or
- (b) after the exercise of reasonable diligence, presentation cannot be effected; or
- (c) although the presentation has been irregular, acceptance has been refused on some other ground.

(4) The fact that the holder has reason to believe that the bill will be dishonoured on presentation does not excuse presentation.

47. NON-ACCEPTANCE.

Where a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it loses his right of recourse against the drawer and endorsers unless he treats it as dishonoured by non-acceptance.

48. DISHONOUR BY NON-ACCEPTANCE.

(1) A bill is dishonoured by non-acceptance if—

- (a) it is duly presented for acceptance, and acceptance in a manner prescribed by this Act is refused or cannot be obtained; or
- (b) presentation for acceptance is excused, and the bill is not accepted.

(2) Subject to this Act, where a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentation for payment is necessary.

49. QUALIFIED ACCEPTANCE.

(1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonoured by non-acceptance.

(2) Subject to Subsection (3), where a qualified acceptance is taken, and the drawer or an endorser—

- (a) has not expressly or impliedly authorized the holder to take a qualified acceptance; or
- (b) does not subsequently assent to the qualified acceptance,

the drawer or endorser is discharged from his liability on the bill.

(3) Subsection (2) does not apply to a partial acceptance, of which due notice has been given, and where—

- (a) a foreign bill has been accepted as to part; and
- (b) due notice has been given,

it must be protested as to the balance.

(4) Where the drawer or endorser of a bill receives notice of a qualified acceptance and does not express his dissent to the holder within a reasonable time, he shall be deemed to have assented to the qualified acceptance.

50. RULES AS TO PRESENTATION FOR PAYMENT.

(1) Subject to this Act, a bill must be duly presented for payment.

(2) If a bill is not duly presented for payment the drawer and endorsers are discharged.

(3) A bill is duly presented for payment where—

- (a) if the bill is not payable on demand—it is presented on the day it falls due; or
- (b) subject to this Act, if the bill is payable on demand—it is presented within a reasonable time—
 - (i) after its issue, in order to render the drawer liable; and

- (ii) after its endorsement, in order to render the endorser liable; or
 - (c) the bill is presented by the holder or by some person authorized to receive payment on his behalf, at a reasonable hour on a business day, at the proper place as defined in Subsection (6), to—
 - (i) the person designated by the bill as payer; or
 - (ii) some person authorized to pay or refuse payment on his behalf,
 - if with the exercise of reasonable diligence such a person can be found at that place; or
 - (d) the bill is drawn on or accepted by two or more persons who are not partners, and no place of payment is specified—it is presented to them all; or
 - (e) the drawee or acceptor of a bill is dead, and no place of payment is specified—it is presented to a personal representative, if there is one and if he can be found with the exercise of reasonable diligence.
- (4) If authorized by agreement or usage, a bill may be presented through the post.
- (5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found, no further presentation to the drawee or acceptor is required.
- (6) In determining what is a reasonable time for the purposes of this section, regard shall be had to—
- (a) the nature of the bill; and
 - (b) the usage of trade with regard to similar bills; and
 - (c) the facts of the particular case.
- (7) A bill is presented at the proper place if it is presented—
- (a) at the place of payment specified in the bill; or
 - (b) where no place of payment is specified—at the address of the drawee or acceptor given in the bill; or
 - (c) where no place of payment is specified and no address is given—at the drawee's or acceptor's—
 - (i) place of business, if known; or
 - (ii) ordinary residence, if known; or
 - (d) in any other case—to the drawee or acceptor—
 - (i) wherever he can be found; or
 - (ii) at his last known place of business or residence.

51. EXCUSES FOR DELAY OR NON-PRESENTATION FOR PAYMENT.

(1) Delay in presenting a bill 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.

(2) When the cause of delay ceases to operate the bill must be presented with reasonable diligence.

(3) Presentation for payment is dispensed with—

(a) where, after the exercise of reasonable diligence, presentation, as required by this Act, cannot be effected; or

(b) where the drawee is a fictitious person; or

(c) as regards the drawer, where—

(i) the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill; and

(ii) the drawer has no reason to believe that the bill would be paid if presented; or

(d) as regards an endorser—

(i) where the bill was accepted or made for his accommodation; and

(ii) he has no reason to expect that the bill would be paid if presented; or

(e) by waiver, express or implied.

(4) The fact that the holder has reason to believe that the bill will be dishonoured on presentation does not dispense with the necessity for presentation.

52. DISHONOUR BY NON-PAYMENT.

(1) A bill is dishonoured by non-payment where—

(a) it is duly presented for payment and payment is refused or cannot be obtained; or

(b) presentation is excused and the bill is overdue and unpaid.

(2) Subject to this Act, where a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and endorsers accrues to the holder.

53. NOTICE OF DISHONOUR AND EFFECT OF NON-NOTICE.

(1) Subject to this Act, where a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each endorser, and any drawer or endorser to whom notice is not given is discharged.

(2) In the case of a bill that is dishonoured by non-acceptance—

(a) if notice of dishonour is not given, the rights of a holder in due course subsequent to the omission are not prejudiced by the omission; or

- (b) if due notice of dishonour is given, it is not necessary to give notice of a subsequent dishonour by non-payment, unless in the meantime the bill has been accepted.

54. RULES AS TO NOTICE OF DISHONOUR.

(1) In order to be valid and effectual, a notice of dishonour—

- (a) must be given by or on behalf of the holder or by and on behalf of an endorser who, at the time of giving it, is himself liable on the bill; and
- (b) may be given by an agent, in his own name, or in the name of any party entitled to give notice, whether the party is his principal or not.

(2) Where the drawer or endorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if there is one, who can be found with the exercise of reasonable diligence.

(3) Where the drawer or endorser is insolvent, the notice may be given to the party himself, or to the trustee or assignee.

(4) Where there are two or more drawers or endorsers who are not partners, the notice must be given to each of them, unless one of them has authority to receive the notice for the others.

(5) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior endorsers who have a right of recourse against the party to whom it is given.

(6) Where the notice is given by or on behalf of an endorser entitled to give notice as provided by this section, it enures for the benefit of the holder and all endorsers subsequent to the party to whom notice is given.

(7) The notice may be given in writing or by personal communication, and may be given in any terms that—

- (a) sufficiently identify the bill; and
- (b) intimate that the bill has been dishonoured by non-acceptance or non-payment,

and if given in writing—

- (c) need not be signed; and
- (d) if insufficient, may be supplemented and validated by verbal communication; and
- (e) misdescription of the bill does not vitiate the notice unless the party to whom the notice is given is in fact misled.

(8) The return of a dishonoured bill to the drawer or an endorser is a sufficient notice of dishonour in point of form.

(9) Where notice of dishonour is required to be given to any person, it may be given to the person himself, or to his agent for that purpose.

(10) A notice of dishonour—

- (a) may be given as soon as the bill is dishonoured; and
- (b) must be given within a reasonable time after the bill is dishonoured.

(11) For the purposes of Subsection (10), in the absence of special circumstances, notice of dishonour shall not be deemed to have been given within a reasonable time unless—

- (a) where the person giving and the person to receive notice reside in the same place, the notice is given or sent in time to reach the latter on the day after the dishonour of the bill; or
- (b) where the person giving and the person to receive notice reside in different places, the notice is sent on the day after the dishonour of the bill, if there is a post at a convenient hour on that day, and if there is no such post on that day then by the next post.

(12) Where a bill is in the hands of an agent when it is dishonoured, he may give notice—

- (a) to the parties liable on the bill; or
- (b) to his principal,

and where the agent gives notice to his principal—

- (c) he must do so within the time within which he would be bound to give it if he were the holder; and
- (d) on receipt of the notice the principal has the same time for giving notice as if the agent had been an independent holder.

(13) Where a party to a bill receives due notice of dishonour, he has, after the receipt of the notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(14) Where a notice of dishonour is duly addressed and posted the sender shall be deemed to have given due notice of dishonour notwithstanding any miscarriage by the post office.

55. EXCUSES FOR NON-NOTICE AND DELAY.

(1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances that are beyond the control of the party giving notice and not imputable to his default, misconduct or negligence.

(2) When the cause of delay ceases to operate, the notice must be given with reasonable diligence.

(3) Notice of dishonour is dispensed with—

- (a) when, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or endorser sought to be charged; and

- (b) by waiver, express or implied and whether before the time of giving notice has arrived or after the omission to give due notice; and
- (c) as regards the drawer, where—
 - (i) the drawer and drawee are the same person; or
 - (ii) the drawee is a fictitious person or a person not having capacity to contract; or
 - (iii) the drawer is the person to whom the bill is presented for payment; or
 - (iv) the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill; or
 - (v) the drawer has countermanded payment; and
- (d) as regards the endorser, where—
 - (i) the drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time when he endorsed the bill; or
 - (ii) the endorser is the person to whom the bill is presented for payment; or
 - (iii) the bill was accepted or made for his accommodation.

56. NOTING OR PROTEST OF BILLS.

(1) If the holder thinks fit, where an inland bill has been dishonoured it may be noted for non-acceptance or non-payment, as the case may be, but it is not necessary to note or protest any such bill in order to preserve the recourse against the drawer or endorser.

(2) Where a foreign bill, appearing on the face of it to be such—

- (a) has been dishonoured by non-acceptance; or
- (b) has not been previously dishonoured by non-acceptance, but is dishonoured by non-payment,

the bill must be duly protested for non-acceptance or non-payment, as the case may be, and if it is not so protested the drawer and endorsers are discharged.

(3) Where a bill does not appear on the face of it to be a foreign bill, protest for dishonour is unnecessary.

(4) A bill that has been protested for non-acceptance may be subsequently protested for non-payment.

(5) Subject to this Act, when a bill is noted or protested it must be noted within 24 hours after its dishonour.

(6) When a bill has been duly noted, the protest may be extended as of the date of the noting.

(7) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers.

(8) Subject to Subsection (9), a bill must be protested at the place where it is dishonoured.

(9) Where a bill—

(a) is presented through the post and returned by post dishonoured, it may be protested at the place to which it is returned—

(i) on the day of its return if received during business hours; and

(ii) if not received during business hours, then not later than the next business day; and

(b) that is drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance it must be protested for non-payment at the place where it is expressed to be payable, and no further presentation for payment to, or demand on, the drawee is necessary.

(10) A protest must contain a copy of the bill, must be signed by the notary or person making it, and must specify—

(a) the person at whose request the bill is protested; and

(b) the place and date of protest; and

(c) the cause or reason for protesting the bill; and

(d) the answer (if any) given, or the fact that the drawee or acceptor could not be found.

(11) Where 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 of the bill.

(12) Protest is dispensed with by any circumstance that would dispense with notice of dishonour.

(13) Delay in noting or protesting is excused when the delay is caused by circumstances that are beyond the control of the holder, and not imputable to his default, misconduct or negligence.

(14) When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

57. DUTIES OF HOLDER AS REGARDS DRAWEE OR ACCEPTOR.

(1) Where a bill is accepted generally, presentation for payment is not necessary in order to render the acceptor liable.

(2) Where by the terms of a qualified acceptance presentation for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not

discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable, it is not necessary—

- (a) to protest it; or
- (b) that notice of dishonour should be given to him.

(4) Where the holder of a bill presents it for payment, he must exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder must deliver it up immediately to the party paying it.

Division 6.

Liabilities of Parties.

58. FUNDS IN HANDS OF DRAWEE.

A bill does not of itself operate as an assignment of funds in the hands of the drawee that are available for the payment of the bill, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument.

59. LIABILITY OF ACCEPTOR.

By accepting a bill the acceptor—

- (a) engages that he will pay it according to the tenor of his acceptance; and
- (b) is precluded from denying to a holder in due course—
 - (i) the existence of the drawer, the genuineness of his signature and his capacity and authority to draw the bill; and
 - (ii) where a bill is payable to drawer's order, the capacity at that time of the drawer to endorse, but not the genuineness or validity of his endorsement; and
 - (iii) where a bill is payable to the order of a third person, the existence of the payee and his capacity at that time to endorse, but not the genuineness or validity of his endorsement.

60. LIABILITY OF DRAWER OR ENDORSER.

(1) By drawing a bill, the drawer—

- (a) engages that on due presentation it will be accepted and paid according to its tenor, and that if it is dishonoured he will, if the requisite proceedings on dishonour are taken, compensate the holder or any endorser who is compelled to pay it; and
- (b) is precluded from denying to a holder in due course the existence of the payee and his capacity at that time to endorse.

(2) By endorsing a bill, the endorser—

- (a) engages that on due presentation it will be accepted and paid according to its tenor, and that if it is dishonoured he will compensate, if the requisite proceedings on dishonour are taken, the holder or a subsequent endorser who is compelled to pay it; and
- (b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements; and
- (c) is precluded from denying to his immediate or a subsequent endorsee that the bill was at the time of his endorsement a valid and subsisting bill, and that at that time he had a good title to the bill.

61. STRANGER LIABLE AS ENDORSER.

Where a person signs a bill otherwise than as drawer or acceptor, he incurs the liabilities of an endorser to a holder in due course.

62. DAMAGES AGAINST PARTIES TO DISHONoured BILL.

(1) Where a bill is dishonoured, damages may be recovered as follows:—

- (a) the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser—
 - (i) the amount of the bill; and
 - (ii) interest on the bill from the time of presentation for payment if the bill is payable on demand, and from the maturity of the bill in any other case; and
 - (iii) the expenses of noting, or, when protest is necessary and the protest has been extended, the expenses of protest; and
- (b) where a bill has been dishonoured abroad, in place of the damages specified in Paragraph (a) the holder may recover from the drawer or an endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest until the time of payment; and
- (c) where by this Act interest may be recovered as damages—
 - (i) if justice requires it, the interest may be withheld wholly or in part; and
 - (ii) where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

(2) Damages referred to in Subsection (1) shall be deemed to be liquidated damages.

63. TRANSFER BY DELIVERY.

(1) A transferor by delivery is not liable on the instrument.

(2) A transferor by delivery who negotiates a bill warrants to any holder for value who is his immediate transferee that—

(a) the bill is what it purports to be; and

(b) he has a right to transfer it; and

(c) at the time of transfer he is not aware of any fact that makes it valueless.

Division 7.

Discharge of Bill.

64. PAYMENT IN DUE COURSE.

(1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

(2) Subject to this Division, where a bill is paid by the drawer or an endorser it is not discharged, but—

(a) where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment of the bill against the acceptor, but may not re-issue the bill; and

(b) where a bill is paid by an endorser or is payable to drawer's order and is paid by the drawer, the party paying it has recourse only to his former rights as regards the acceptor or antecedent parties, and may, if he thinks fit, strike out his own and subsequent endorsements and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

65. BANKER PAYING DEMAND DRAFT WHERE ENDORSEMENT IS FORGED.

(1) Where a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the endorsement of the payee or any subsequent endorsement was made by or under the authority of the person whose endorsement it purports to be, and, even if the endorsement has been forged or made without authority, the banker shall be deemed to have paid the bill in due course.

(2) For the protection of the banker under this section, an order on demand, drawn by or on behalf of a banker at one place of business on and payable by the banker at the same or at some other place of business, shall be deemed to be a bill payable to order on demand.

66. ACCEPTOR THE HOLDER AT MATURITY.

Where the acceptor of a bill is or becomes, at or after its maturity, the holder in his own right, the bill is discharged.

67. EXPRESS WAIVER.

(1) Where the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged.

(2) A renunciation under Subsection (1) must be in writing, unless the bill is delivered up to the acceptor.

(3) The liabilities of any party to a bill may be renounced in the same manner by the holder before, at or after its maturity.

(4) This section does not affect the rights of a holder in due course without notice of the renunciation.

68. CANCELLATION.

(1) A bill is discharged where—

- (a) it is intentionally cancelled by the holder or his agent; and
- (b) the cancellation is apparent on the bill.

(2) A party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent, and any endorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.

(3) A cancellation made—

- (a) unintentionally; or
- (b) by mistake; or
- (c) without the authority of the holder,

is inoperative, and where a bill or any signature on the bill appears to have been cancelled the burden of proof that Paragraph (a), (b) or (c) applies is on the party alleging it.

69. ALTERATION OF BILL.

(1) Subject to Subsection (2), where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against—

- (a) a party who has himself made, authorized or assented to the alteration; and
- (b) subsequent endorsers.

(2) Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, the holder may—

- (a) avail himself of the bill as if it had not been altered; and
 - (b) enforce payment of it according to its original tenor.
- (3) For the purposes of Subsection (2)–
- (a) any alteration of–
 - (i) the date; or
 - (ii) the sum payable; or
 - (iii) the time of payment; or
 - (iv) the place of payment; or
 - (b) where a bill has been accepted generally the addition of a place of payment without the acceptor's assent,

is a material alteration.

Division 8.

Acceptance and Payment for Honour.

70. ACCEPTANCE FOR HONOUR SUPRA PROTEST.

- (1) Where a bill has been protested for dishonour–
- (a) by non-acceptance; or
 - (b) for better security,

and is not overdue, any person other than a party already liable on the bill may, with the consent of the holder, intervene and accept the bill supra protest for the honour of–

- (c) any party liable on the bill; or
- (d) the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

- (3) In order to be valid an acceptance for honour supra protest must–
- (a) be written on the bill, and indicate that it is an acceptance for honour; and
 - (b) be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it shall be deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity shall be calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honour.

71. LIABILITY OF ACCEPTOR FOR HONOUR.

(1) By accepting a bill for honour, the acceptor engages that if it is not paid by the drawee he will, on due presentation, pay the bill according to the tenor of his acceptance if it has been duly presented for payment and protested for non-payment and he receives notice of those facts.

(2) The acceptor for honour is liable to the holder, and to all parties to the bill subsequent to the party for whose honour he has accepted.

72. PRESENTATION TO ACCEPTOR FOR HONOUR.

(1) Where a dishonoured bill—

- (a) has been accepted for honour supra protest; or
- (b) contains a reference in case of need,

it must be protested for non-payment before it is presented for payment to the acceptor for honour or referee in case of need.

(2) Where—

- (a) the address of the acceptor for honour is in the place where the bill is protested for non-payment—the bill must be presented to him not later than the day following its maturity; and
- (b) the address of the acceptor for honour is in some other place—the bill must be forwarded not later than the day following its maturity for presentation to him.

(3) Delay in presentation, or non-presentation, is excused by any circumstance that would excuse delay in presentation, or non-presentation, as the case may be, for payment.

(4) Where a bill is dishonoured by the acceptor for honour, it must be protested for non-payment by him.

73. PAYMENT FOR HONOUR SUPRA PROTEST.

(1) Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of—

- (a) any party liable on the bill; or
- (b) the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill has the preference.

(3) Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent for that purpose, declaring his intention to pay the bill for honour, and stating the person for whose honour he pays.

(5) Where a bill has been paid for honour—

- (a) all parties subsequent to the party for whose honour it is paid are discharged; and
- (b) the payer for honour is subrogated for, and succeeds to the rights and duties of, the holder as regards the party for whose honour he pays and all parties liable to that party.

(6) The payer for honour is entitled, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, to receive the bill and the protest, and if the holder does not deliver them on demand he is liable in damages to the payer for honour.

(7) 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.

Division 9.

Lost Instruments.

74. DUPLICATE OF LOST BILL.

(1) Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security (if required) to the drawer to indemnify him against all persons if the bill alleged to have been lost is found.

(2) If on a request under Subsection (1) the drawer refuses to give a duplicate bill, he may be compelled to do so.

75. ACTION ON LOST BILL.

Where in an action or proceeding on a bill an indemnity is given to the satisfaction of the court or Judge against the claims of any other person on the instrument in question, the court or a Judge may order that the loss of the instrument shall not be set up.

Division 10.

Bill in a Set.

76. RULES AS TO SETS.

(1) 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 constitute one bill.

(2) Where the holder of a set endorses two or more parts to different persons, he is liable on each part, and each endorser subsequent to him is liable on the part that he has himself endorsed, as if the parts were separate bills.

(3) Subject to Subsection (4), where two or more parts of a set are negotiated to different holders in due course the holder whose title first accrues shall, as between those holders, be deemed to be the true owner of the bill.

(4) Subsection (3) does not affect the rights of a person who in due course accepts or pays the part first presented to him.

(5) The acceptance may be written on any part but it must be written on one part only.

(6) Where—

(a) the drawee accepts more than one part; and

(b) the accepted parts get into the hands of different holders in due course,

the drawee is liable on each such part as if it were a separate bill.

(7) Where 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 that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder.

(8) Subject to this section, where any part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

Division 11.

Conflict of Laws.

77. RULES WHERE LAWS CONFLICT.

Where a bill drawn in one country is negotiated, accepted or payable in another country, the rights, duties and liabilities of the parties to the bill shall be determined as follows:—

(a) subject to Paragraph (b), the validity as regards requisites in form of—

(i) a bill—is as determined by the law of the place of issue; and

(ii) the supervening contracts, such as acceptance, endorsement or acceptance supra protest—is as determined by the law of the place where the contract was made; and

(b) a bill—

(i) that is issued out of the country is not invalid by reason only of the fact that it is not stamped in accordance with the law of the place of issue; and

(ii) that is issued out of Papua New Guinea and conforms, as regards requisites in form, to the law of Papua New Guinea may be treated for the purpose of enforcing payment as valid as between

all persons who negotiate, hold or become parties to it in Papua New Guinea; and

- (c) subject to this Act, the interpretation of the drawing, endorsement, acceptance, or acceptance supra protest of a bill, is as determined by the law of the place where the contract is made, except that where an inland bill is endorsed in a foreign country, the endorsement, as regards the payer, shall be interpreted according to the law of Papua New Guinea; and
- (d) the duties of the holder with respect to presentation for acceptance or payment, and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are as determined by the law of the place where the act is done or the bill is dishonoured; and
- (e) where a bill is drawn out of but payable in Papua New Guinea and the sum payable is not expressed in Papua New Guinea currency, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day that the bill is payable; and
- (f) where a bill is drawn in one country and is payable in another, the due date is as determined according to the law of the place where it is payable.

78. NON-COMPLIANCE WITH STAMP LAWS.

A bill issued in the country and presented for acceptance, accepted or payable outside the country, and that is unstamped or not properly stamped in accordance with any law requiring the bill to be stamped—

- (a) is not invalid by reason only that it is not so stamped, or is not properly so stamped; and
- (b) may be received in evidence on payment of the proper duty and penalty (if any).

PART III. – CHEQUES ON A BANKER.

Division 1.

Cheques Generally.

79. APPLICATION OF ACT TO CHEQUES.

Except as provided in this Part, the provisions of this Act that apply to a bill payable on demand apply to a cheque.

80. PRESENTATION OF CHEQUE FOR PAYMENT.

(1) Subject to this Act–

(a) where a cheque is not presented for payment within a reasonable time after its issue, and the drawer or the person on whose account it is drawn–

(i) had, at the time when the presentation ought to have been made, the right as between him and the banker to have the cheque paid; and

(ii) suffers actual damage through the delay,

he is discharged to the extent of the damage, that is, to the extent to which he is a creditor of the banker to a larger amount than he would have been had the cheque been paid; and

(b) the holder of a cheque as to which the drawer or person is discharged under Paragraph (a) becomes a creditor, in place of the drawer or person, of the banker to the extent of the discharge, and is entitled to recover the amount from him.

(2) In determining for the purposes of Subsection (1) what is a reasonable time regard shall be had to–

(a) the nature of the instrument; and

(b) the usage of trade and of bankers; and

(c) the facts of the particular case.

81. RIGHT OF BANKER RE STALE CHEQUES.

(1) A stale cheque is a cheque that appears on the face of it to have been in circulation for more than 12 months.

(2) In the absence of–

(a) an agreement between the banker and the drawer of the cheque; or

(b) a direction of the drawer of the cheque to the contrary,

a banker may refuse payment of a stale cheque.

82. REVOCATION OF BANKER'S AUTHORITY.

The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

- (a) countermand of payment; or
- (b) notice of the customer's death.

Division 2.***Crossed Cheques.*****83. INTERPRETATION OF DIVISION 2.**

(1) In this Division, “**cheque**” includes a banker's draft payable on demand drawn by or on behalf of a bank on itself, whether it is payable at the head office or at some other office of the bank.

(2) Where a cheque bears across its face an addition of—

- (a) the word “bank” or the words “and company” or any abbreviation of those words, between two parallel transverse lines, with or without the words “not negotiable”; or
- (b) two parallel transverse lines simply, with or without the words “not negotiable”,

that addition constitutes a crossing, and the cheque is crossed generally.

(3) Where a cheque bears across its face an addition of the name of a banker, with or without the words “not negotiable”, that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

84. CROSSING BY DRAWER OR AFTER ISSUE.

(1) A cheque may be crossed generally or specially by the drawer.

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

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

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

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

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

85. CROSSING A MATERIAL PART OF CHEQUE.

(1) A crossing authorized by this Act is a material part of the cheque.

(2) No person may obliterate or, except as authorized by this Act, add to or alter a crossing.

86. DUTIES OF BANKER AS TO CROSSED CHEQUES.

(1) Except when crossed to an agent (being a banker) for collection, where a cheque is crossed specially to more than one banker the banker on whom it is drawn shall refuse payment of the cheque.

(2) Subject to Subsection (3), where a banker on whom a cheque is drawn—

- (a) if the cheque is crossed specially to more than one banker (except when crossed to an agent, being a banker, for collection), pays the cheque; or
- (b) if the cheque is crossed generally, pays it otherwise than to a banker; or
- (c) if the cheque is crossed specially, pays it otherwise than to the banker to whom it is crossed or his agent, being a banker, for collection,

the banker is liable to the true owner of the cheque for any loss that he sustains owing to the cheque having been so paid.

(3) Where a cheque is presented for payment and does not at the time of presentation appear—

- (a) to be crossed; or
- (b) to have had a crossing that has been obliterated; or
- (c) to have a crossing that has been added to or altered otherwise than as authorized by this Act,

the banker paying or receiving payment of the cheque in good faith and without negligence is not responsible and does not incur any liability, and the payment shall not be questioned, by reason of—

- (d) the cheque having been crossed; or
- (e) the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act; or
- (f) payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent, being a banker, for collection.

87. PROTECTION WHERE CHEQUE IS CROSSED.

Where the banker on whom a crossed cheque is drawn, in good faith and without negligence—

- (a) if it is crossed generally, pays it to a banker; or
- (b) if it is crossed specially, pays it to the banker to whom it is crossed, or his agent, being a banker, for collection,

the banker paying the cheque, and if the cheque has come into the hands of the payee the drawer, are respectively entitled to the same rights, and are respectively placed in the same position, as if payment of the cheque had been made to the true owner.

88. EFFECT OF CROSSING ON HOLDER.

A person who takes a crossed cheque bearing the words “not negotiable” does not have, and is not capable of giving, a better title to the cheque than the person had from whom he took it.

Division 3.***Other Provisions relating to Cheques.*****89. PROTECTION OF BANKERS PAYING UNENDORSED CHEQUES OR DRAFTS.**

(1) Where a banker in good faith and in the ordinary course of business pays to another banker a cheque drawn on the first-mentioned banker that is not endorsed, is irregularly endorsed or has been endorsed without authority—

- (a) the first-mentioned banker does not, in paying the cheque, incur liability by reason only of the absence of endorsement, or an irregularity in the endorsement, or his failure to concern himself with the existence of authority for endorsement; and
- (b) he shall be deemed to have paid the cheque in due course.

(2) Where a banker, in good faith and in the ordinary course of business, pays to another banker a draft drawn by the first-mentioned banker on himself and payable on demand, whether the draft is payable at the head office or at some other office of the banker—

- (a) the first-mentioned banker does not, in paying the draft, incur liability by reason only of the absence of endorsement, or an irregularity in the endorsement, or his failure to concern himself with the existence of authority for endorsement; and
- (b) the payment discharges the draft.

(3) For the purposes of Subsections (1) and (2), a banker who—

- (a) has paid a cheque drawn on him or a draft drawn by him on himself; and
- (b) has credited the account of a customer with the amount of the cheque or draft,

shall be deemed to have paid the cheque or draft to another banker.

90. PAYMENT OF UNENDORSED CHEQUE, ETC., EVIDENCE OF RECEIPT BY PAYEE.

(1) An unendorsed cheque payable to order that appears to have been paid by the banker on whom it is drawn is evidence of the receipt by the payee of the sum payable by the cheque.

(2) Subsection (1) applies in relation to a draft drawn by a banker on himself and payable on demand as it applies in relation to a cheque, whether the draft is payable at the head office or at some other office of the banker.

91. PROTECTION OF BANKERS COLLECTING PAYMENT OF CHEQUES, ETC.

(1) Where—

(a) a banker, in good faith and without negligence—

(i) receives payment for a customer of a cheque; or

(ii) having credited a customer's account with the amount of a cheque receives payment of a cheque for himself; and

(b) the customer has no title, or has a defective title, to the cheque,

the banker does not incur any liability to the true owner of the cheque by reason only of having received payment of the cheque.

(2) Subject to Subsection (3), a banker shall not, for the purposes of this section, be deemed to have been negligent by reason only of his failure to concern himself with the absence of endorsement, or an irregularity in the endorsement, of a cheque.

(3) Subsection (2) does not apply in relation to a cheque unless the name appearing on the cheque as the name of the payee—

(a) is the same as the name of the customer; or

(b) is so similar to the name of the customer that it was reasonable, in all the circumstances, for the banker to assume that the customer was the person intended by the drawer to be the payee.

(4) This section applies in relation to a draft drawn by a banker on himself and payable on demand as it applies in relation to a cheque, whether the draft is payable at the head office or at some other office of the banker.

92. RIGHTS OF BANKER COLLECTING CHEQUE NOT ENDORSED BY PAYEE.

A banker who gives value for, or has a lien on, a cheque payable to order that the payee, without endorsing the cheque, delivers to the banker for collection for the payee has such rights (if any) as he would have had if, on the delivery of the cheque to him, the payee had endorsed it in blank.

PART IV. – PROMISSORY NOTES.**93. PROMISSORY NOTE DEFINED.**

(1) A promissory note is a written, unconditional promise 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 or to the order of a specified person, or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a promissory note within the meaning of this section unless and until it is endorsed by the maker.

(3) A promissory note is not invalid by reason only of the fact that it contains also a pledge of collateral security with authority to sell or dispose of the security.

(4) A promissory note that is, or on the face of it purports to be, both made and payable within Australasia is an inland note and any other note is a foreign note.

94. DELIVERY NECESSARY.

A promissory note is inchoate and incomplete until delivery to the payee or bearer.

95. JOINT AND SEVERAL NOTES.

(1) A promissory note may be made by two or more makers, and they may be liable on the note jointly, or jointly and severally, according to its tenor.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it shall be deemed to be their joint and several note.

96. NOTE PAYABLE ON DEMAND.

(1) Where a promissory note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement.

(2) If a promissory note specified in Subsection (1) is not presented for payment within a reasonable time the endorser is discharged.

(3) Where a note payable on demand is negotiated, it shall not be deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason of the fact that it appears that a reasonable time for presenting it for payment had elapsed since its issue.

(4) In determining, for the purposes of this section, what is a reasonable time, regard shall be had to—

- (a) the nature of the instrument; and
- (b) the usage of trade; and
- (c) the facts of the particular case.

97. PRESENTATION OF NOTE FOR PAYMENT.

(1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to make the maker liable.

(2) Where a promissory note is not in the body of it made payable at a particular place, presentation for payment is not necessary in order to make the maker liable.

(3) Presentation for payment is necessary in order to make the endorser of a promissory note liable.

(4) Subject to Subsection (5), where a promissory note is in the body of it made payable at a particular place, presentation at that place is necessary in order to make an endorser liable.

(5) Where a place of payment is indicated by way of memorandum only, presentation at that place is sufficient to render the endorser liable, but presentation to the maker elsewhere is, if sufficient in other respects, sufficient.

98. LIABILITY OF MAKER.

By making a promissory note, the maker—

- (a) engages that he will pay it according to its tenor; and
- (b) is precluded from denying to a holder in due course the existence of the payee and his capacity, at the time of the making, to endorse.

99. APPLICATION OF PART II. TO PROMISSORY NOTES.

(1) Subject to this Part, the provisions of this Act relating to bills apply, with the necessary modifications, to promissory notes.

(2) In applying the provisions specified in Subsection (1)—

- (a) the maker of a note shall be deemed to correspond with the acceptor of a bill; and
- (b) the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The provisions of this Act relating to—

- (a) the presentation of bills for acceptance; and
- (b) the acceptance of bills; and
- (c) the acceptance of bills supra protest; and
- (d) bills in a set,

do not apply to promissory notes.

(4) Where a foreign promissory note is dishonoured, protest of the note is unnecessary.

SCHEDULE 1 – FORM OF PROTEST.

Sec. 6.

¹PAPUA NEW GUINEA.

Bills of Exchange Act 1951.

Form

Know all men that I, A.B. (*householder*), of . . . in Papua New Guinea, at the request of C.D., did on . . . 20... , at . . . demand payment (*or acceptance*) of the bill of exchange written below from E.F., to which demand he answered (*state answer, if any*), and now, in the presence of G.H. and J.K., protest that bill of exchange.

Dated . . . 20...

(*Signed*) A.B.)

G.H.) Witnesses.

J.K.)

Note—The bill should be annexed, or a copy of the bill and all that is written on the bill should be set out below.

Office of Legislative Counsel, PNG

¹ Schedule The bill should be annexed, or a copy of the bill and all that is written on the bill should be set out below.