

NEGOTIABLE INSTRUMENTS

A negotiable instrument is a doc. that represents money.

Characteristics of Negotiable Instruments

1. Part consideration is ~~not~~ sufficient consideration.
2. If payable to the bearer it is negotiable by delivery.
3. If payable to the order of a specified person it is negotiable by endorsement and delivery.
4. A Transferee of a negotiable instrument need not to be notified if it is negotiated.
5. A holder for value can sue in its own name.

Types of ~~Bill~~ Negotiable Instruments

1. Bill of Exchange
2. Promissory notes
3. Chequer

Bill of Exchange

It's an unconditional written order addressed by one person to another signed by the person giving it demanding payment of a certain amount of money or payment and the sum must be paid on demand or at a future time to a specified person his order or the bearer.

Parties to a Bill of Exchange

1. The drawer - person who draws the bill of exchange.
2. Drawee - person to whom the bill is drawn.
3. Payee - person to whom the amount is payable.

Types / Classification of Bills

1. To whom payable

- a) Bearer bill - payable to the bearer of the instrument.
- b) Order bill - payable to the order of a specified person.

2. Where drawn and payable

- a) Inland bill - drawn and payable only within East Africa.
- b) Foreign bill - drawn and payable outside East Africa.

3. When Payable

- a) Sight - payable on demand.
- b) Usance - payable at a determinable future date.

4. Whether transferable or negotiable

- a) Transferable bill - capable of being negotiated by one person to another.
- b) Non-transferable bill - prohibits transfer.

- Rules relating to presentation of bills for acceptance and payment**
1. The bill is presented by the drawer or his agent.
 2. It must be presented at reasonable hours on a business day.
 3. It must be presented to the drawee and if dead to his personal representative.
 4. It must be presented to the drawee and if he is bankrupt the bill is presented to his trustee in bankruptcy.
 5. If trade usage & custom permits it may be done through the post.
 6. It must be presented within reasonable time.

Acceptance of a Bill.

It may be general or qualified.

1. **General Acceptance.**
The drawee accepts the bill without any qualification.

2. Qualified Acceptance.

The drawee varies or modifies the bill in various ways. These variations are

1. **Conditional.** The drawee accepts a condition subject to which the bill is payable.

2. **Partial.** The drawee accepts to pay part of the sum.

3. **Local.** The drawee accepts to pay the bill at a specified place.

4. **Time.** The drawee changes the time of payment.

5. **Acceptance by sum** but not all drawers.

Discounting and Negotiation of Bills.

- A bill is discounted if the payee receives the amount from the bank less the discount for the unexpired duration.

- Negotiation of bills is when it is transferred from one person to another.

A bill may be negotiated in two ways:

1. By delivery - Bearer

2. Endorsement & delivery order.

Endorsement of Bills

It is signing of a bill for purpose of negotiating it to another.

Characteristics of Endorsement.

1. It must be written on the face of the bill or on its reverse side.
2. It must be signed by the endorser.
3. He must endorse the entire bill.
4. The endorsement may be blank, special, conditional or restrictive.

Types of Endorsement

1. **Blank** - It does not specify the endorsee. It converts an order bill into a bearer bill.

2. **Special endorsement** - It specifies the person to whom the bill is payable.

3. **Conditional endorsement** - It requires the payment to be made if specified condition is met.

A Restrictive endorsement - It prohibits further negotiation of a bill.

Holder of a bill of Exchange.
A holder of a bill can either be the drawer or the payee.

Duties of the holder.

1. It is the duty of the drawer to present the bill to the drawee for acceptance.
2. It is the duty of the payee to present the bill to the ^{acceptor} drawee for payment.
3. In the event of dishonour of the bill it is the duty of the payee to have the bill noted and protested.

Dishonoured Bills

A bill is said to be dishonoured if:

1. Presentation for payment is prohibited by law.
2. Payment is refused.

3. If a bill is dishonoured it is the duty of payee to have it noted & protested.

Noting and Protested.

Once a bill is dishonoured the payee presents it to the notary public who represents to the acceptor for payment and if the payment is refused, the notary public indicates the date of dishonour & reason for dishonour. This is called noting the bill.

The notary public also makes a formal declaration of the facts of dishonour of a bill. This is called protest of a bill.

The protest note should contain the following:-

- The person against whom the bill is made.
- Reason for the protest.
- Date and place of the protest.
- Particulars of the notary public.

Rules representing

Rules relating to notice of dishonour.

1. The notice may be given by the payee or his agent.
2. The notice may be oral or written.
3. It must be given within reasonable time of dishonour.
4. It must be given at reasonable time on a business day.
5. If effected by post it is effective when the letter is posted.
6. Return of the dishonoured bill is sufficient notice.
7. If written it need not be signed.

Discharge of a bill.

1. Payment in due course.
2. Non-presentation of a bill.
3. Waiver.
4. Material alteration.
5. Cancellation.

Promissory notes
It is an unconditional, promise in writing made by a person to a other ^{signed} by the maker, promising to pay a certain sum of money at a fixed future time or on demand and the sum is payable to a specified person his order or the bearer

Difference between Promissory notes and Bill of exchange

Bill of exchange	Promissory note
Demands for payment	is a promise to pay.
Must be presented and non-representation discharges it.	Does not require presentation
Requires acceptance while non-acceptance dishonoured it.	Does not require acceptance

Cheques

is a bill of exchange drawn on a banker payable on demand. It differs from bill of exchange in the following:-

1. It can only be drawn on a banker.
2. It is payable on demand.
3. It does not require acceptance.
4. Non-presentation does not discharge it.
5. It is less negotiable.
6. Notice or dishonoured is not necessary

Types / Classification of cheques

1. Bearer cheques - Cheques whose ^{proceeds} are payable to the holder.
2. Order cheque - Cheques whose proceeds are payable to specified persons.
3. Open cheque - Cheques whose proceeds are payable over the counter.
4. Crossed cheques - It's a cheque whose proceeds are not payable over the counter. Crossing is an instruction to the banker not to pay over the counter.

Banker Customer relationship.

Duties of customer.

1. Duty of care - to draw the cheque with care and avoid alterations
2. To notify the banker of any irregularity affecting his account.

Duties of the banker.

1. Duty of care when dealing with the customer.
2. Duty to provide professional advice to customer especially in regard to investment.
3. Duty to honour cheques provided they meet the following conditions:
 1. Cheque is complete and regular on face of it.

2. The customer's account has sufficient funds.

3. The cheque is presented at a reasonable hour during the working day.

4. The payee identifies himself to the satisfaction of the banker.

4. Duty of secrecy - The banker is not supposed to give information about the customer to third parties. However, he can give info. to third parties if:

1. Where disclosure is provided for by the law.

2. Where the banker has the customer's consent to disclose.

3. Where disclosure is necessary in public interest.

4. Where disclosure is necessary to protect the customer.

~~5. Duty to pay upon getting authority~~

5. Duty to pay upon getting authority from the customer:-
circumstances:

1. The customer later on instructs the banker not to pay.

2. If the banker has notice of the customer's death.

3. If the banker has notice that the customer is of unsound mind.

4. If the banker has notice that the customer is of undischarged bankrupt.

5. If the cheque is irregular i.e. amount in words & figures differ.

6. If the cheque is presented before time (postdated) or after 6 months (stale cheque).

7. The customer's account has insufficient amount.

8. The customer has closed his account.

Questions:

1. Describe the main function and composition of the judicial service commission.

Composition:

1. Chief Justice

2. Attorney General

3. A representative of judges of the High Court.

4. A representative of judges of the Court of Appeal.

5. 2 persons representing the public.

6. Chairman's public service commission.

Functions:

1. They recommend to the president person's to be appointed as judges of the High Court and Court of Appeal.

2. Recommending to the president the person to be the Chief Justice.

3. Appointment of magistrates, High Court Registrar & staff of judiciary.

4. Hearing disciplinary cases against judges, magistrates and other judicial staff.

1. Discuss the civil jurisdiction and composition of the magistrate courts.

The magistrate court hears matters of civil nature as follows:-

1. Chief magistrate court hear civil matters whose subject matter does not exceed 20m.

2. The senior principal magistrate court hear matters whose subject matter does not exceed 15m.

3. The principal magistrate court hear matters whose value does not exceed 10 million.

4. Senior resident court hears matters whose value does not exceed 7 million.

5. Resident magistrate court hears matters whose value does not exceed 5 million.