



DEPARTMENT OF MERCANTILE LAW

THE LAW OF NEGOTIABLE INSTRUMENTS, INTELLECTUAL PROPERTY AND COMPETITION

(MRL4801)

SEMESTERS 1 AND 2

TUTORIAL LETTER 102/3/2010

CONTENTS

1 THE BILLS OF EXCHANGE ACT 34 OF 1964

Dear Student

Thus far you should have received tutorial letters 101. We will be sending tutorial letters 103 (which contains information about the discussion classes and the examination) and 201 (which provides answer guidelines for the assignments) to you shortly.

1 EXTRACTS FROM THE BILLS OF EXCHANGE ACT 34 OF 1964

Only those sections of the Act which you are required to understand for the negotiable instruments section of the course are included in this extract.

BILLS OF EXCHANGE ACT 34 OF 1964

as amended by
 Suretyship Amendment Act 57 of 1971
 Bills of Exchange Amendment Act 58 of 1977
 Finance Act 77 of 1986
 Bills of Exchange Amendment Act 56 of 2000

Section 1: Definitions

Only a few of the definitions in the Act are given here:

acceptance: means an acceptance completed by delivery or notification;

bank: means a body of persons, whether incorporated or not, that carries on the business of banking, and includes the South African Reserve Bank contemplated in the South African Reserve Bank Act, 1989 (Act 90 of 1989), a bank as defined in section 1 of the Banks Act, 1990 (Act 94 of 1990), a mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act 124 of 1993), and the Post Office Savings Bank as defined in section 1 of the Post Office Act, 1958 (Act 44 of 1958);

bearer: means the person in possession of a bill which is payable to bearer;

bill: means a bill of exchange as defined in section 2;

cheque: means a bill drawn on a bank payable on demand;

collecting bank: means a bank collecting payment of a cheque or other document contemplated in section 83;

delivery: means actual or constructive transfer of possession from one person to another;

holder: means the payee of indorsee of a bill who is in possession of it, or the bearer thereof;

indorsement: means an indorsement completed by delivery;

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

note: means a promissory note as defined in section 87; and

payment in due course: means payment made at or after the maturity of a bill to the holder thereof in good faith and, if his title to the bill is defective, without notice thereof.

Section 2: Definition of and requirements for bill of exchange

- (1) 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 a specified person or his order, or to bearer.
- (2) An instrument which does not comply with the requirements specified in subsection (1) or which orders any act to be done in addition to the payment of money, is not a bill.
- (3) An order to pay out of a particular fund is not unconditional within the meaning of subsection (1) 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 of a particular account to be debited with the amount;
 - (b) a statement of the transaction which gives rise to the bill;
 - (c) a statement on the bill that it is drawn against specified documents attached thereto for delivery on acceptance or on payment of the bill, as the case may be; or
 - (d) a statement on the bill that it is drawn under or against a specified letter of credit or other similar authority,is unconditional within the meaning of the said subsection.
- (4) 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 therefor;
 - (c) that it does not specify where it is drawn or where it is payable.

Section 3: Effect if different parties to a bill are the same person, or drawee a fictitious person or not having capacity to contract

- (1) A bill may be drawn payable to the drawer or his order, or it may be drawn payable to the drawee or his order.
- (2) If in a bill, drawer and drawee are the same person, or the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill or as a note.

Section 4: Requirements as to drawee

- (1) The drawee must be named or otherwise indicated with reasonable certainty in a bill.
- (2) A bill may be addressed to two or more drawees, whether they are partners or not, but an order addressed to two or more drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

Section 5: Requirements as to payee

- (1) If a bill is not payable to bearer, the payee must be named or otherwise indicated with reasonable certainty therein.
- (2) A bill may be drawn payable-
 - (a) to two or more payees jointly;
 - (b) to one of two, or one or some of several, payees, in the alternative; or
 - (c) to the holder of an office.
- (3) If the payee is a fictitious or non-existing person, or a person not having capacity to contract, the bill may be treated as payable to bearer.

Section 6: Negotiability of bills

- (1) A bill must be payable either to bearer or to order to be negotiable.
- (2) A bill is payable to bearer if it is expressed to be so payable, or if the only or last indorsement on it is an indorsement in blank, or if it is expressed to be payable to the order of 'cash' or to 'cash or order'.
- (3) A bill is payable to order if it is expressed to be so payable, or if it is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.
- (4) If a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person and not to him or his order, it is nevertheless payable to him or his order at his option.
- (5) If a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties to the bill, but is not negotiable.

Section 7: Sum payable

- (1) The sum payable by a bill is a sum certain in money within the meaning of this Act although it is required to be paid-
 - (a) with interest;

- (b) by stated instalments;
 - (c) by stated instalments, and upon default in payment of any instalment the whole becomes due by virtue of a provision to that effect in the bill; or
 - (d) according to a rate of exchange indicated, or to be ascertained as directed, by the bill.
- (2) If 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) If a bill is expressed to be payable with interest, interest runs, unless the instrument otherwise provides, from the date of the bill or, if it is undated, from the date of issue thereof.

Section 8: When bill is payable on demand

- (1) A bill is payable on demand-
- (a) if it is expressed to be payable on demand, or at sight, or on presentation; or
 - (b) if no time for payment is expressed therein.
- (2) If a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts or any indorser who so indorses it, be deemed to be a bill payable on demand.

Section 9: When a future time is determinable

- (1) A bill is payable at a determinable future time within the meaning of this Act, if it is expressed to be payable-
- (a) at the expiration of a fixed period after date or sight; or
 - (b) on, or at the expiration of a fixed period after, the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.
- (2) An instrument expressed to be payable on, or after the occurrence of, a specified event which may or may not happen, is not a bill, and the happening of the event does not cure the defect.

Section 10: Omission of date in bill payable after date

If a bill expressed to be payable at the expiration of a fixed period after date, is issued undated, or if the acceptance of a bill, payable at the expiration of a fixed period after sight, is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that-

- (a) if the holder in good faith and by mistake inserts a wrong date; or
- (b) if a wrong date is inserted and the bill subsequently comes into the hands of a holder in due course, the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Section 11: Presumption as to correctness of date, and antedating and post-dating, and date of a non-business day

- (1) If a bill, or the acceptance of or any indorsement on a bill, is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance or indorsement of the bill, as the case may be.
- (2) A bill is not invalid by reason only that it is antedated or post-dated, or that it bears the date of a non-business day.

Section 12: Computation of time of payment

If a bill is not payable on demand, the day on which it falls due is determined as follows, namely-

- (a) if the date on which the bill would fall due is a non-business day, the due date thereof shall be the next business day;
- (b) there are no days of grace;
- (c) if a bill is payable at the expiration of a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the period is to begin to run, and by including the day of payment;
- (d) if a bill is payable at the expiration of a fixed period after sight, the period begins to run from the date of the acceptance, if the bill is accepted, and from the date of noting or protest, if the bill is noted or protested for non-acceptance.

Section 14: Optional stipulations by drawer or indorser

The drawer and any indorser of a bill may insert therein an express stipulation-

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

Section 15: Definition and requisites of acceptance

- (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.
- (2) An acceptance is invalid unless it complies with the following requirements, namely-
 - (a) it must be written on the bill and be signed by the drawee, the mere signature of the drawee without additional words being however sufficient;
 - (b) it must not stipulate that the drawee will perform his promise by any other means than the payment of money.

Section 16: Time for acceptance

- (1) A bill may be accepted-
 - (a) before it has been signed by the drawer, or while otherwise incomplete;
 - (b) when it is overdue, or after it has already been dishonoured by non-acceptance or non-payment.
- (2) If a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder is, in the absence of any different agreement, entitled to have the bill accepted as from the date of first presentment thereof to the drawee for acceptance.

Section 17: General and qualified acceptances

- (1) An acceptance is either-
 - (a) general; or
 - (b) qualified.
- (2)
 - (a) A general acceptance assents without qualification to the order of the drawer.
 - (b) An acceptance to pay at a particular place shall be deemed to be a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.
- (3)
 - (a) A qualified acceptance in express terms varies the effect of the bill as drawn.
 - (b) In particular an acceptance is qualified if it-
 - (i) is a conditional acceptance, that is to say, if it makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
 - (ii) is a partial acceptance, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
 - (iii) is an acceptance to pay only at a particular specified place and not elsewhere;
 - (iv) qualifies the time of payment;
 - (v) is the acceptance of one or more of the drawees but not of all.

Section 18: Inchoate instruments

- (1) If a person places his signature upon a blank paper and delivers such paper to any other person 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, using the said signature for that of the drawer, the acceptor or an indorser.

- (2) If a bill is wanting in any material particular, the person in possession of it has in like manner a prima facie authority to fill up the omission in question in any way he thinks fit.
- (3) In order that any instrument referred to in subsection (1) or (2) may, when completed, be enforceable against any person who became a party thereto prior to its completion, it must be filled up within the time agreed on or, if no time is agreed on, within a reasonable time, and strictly in accordance with the authority given: Provided that if any such instrument after completion thereof is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within the time allowed and strictly in accordance with the authority given.
- (4) For the purposes of subsection (3) the question what a reasonable time is, is a question of fact.

Section 19: Delivery as requirement for contract on a bill

- (1) No contract on a bill, whether it be the drawer's, the acceptor's, an indorser's, or that of the signer of an aval, shall be complete and irrevocable, until delivery of the instrument in question in order to conclude such a contract: Provided that if an acceptance or an aval is written on a bill and the drawee or the signer of the aval, as the case may be, gives notice to, or according to the directions of, the person entitled to the bill that he has accepted or signed it, the acceptance or aval then becomes complete and irrevocable.
- (2) As between immediate parties, and as regards a remote party other than a holder in due course the delivery of a bill-
 - (a) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing the bill, as the case may be;
 - (b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the ownership in the bill.
- (3) If a bill is in the hands of a holder in due course a valid delivery of such bill by all parties prior to him, so as to make them liable to him, is conclusively presumed.
- (4) If a bill is no longer in the possession of a party who has signed it as drawer, acceptor or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Section 20: Capacity of parties

- (1) Capacity to incur liability as a party to a bill is coextensive with capacity to contract.
- (2) If a bill is drawn or indorsed by a minor or a corporation having no capacity or power to incur liability on a bill, the drawing or indorsement of the bill entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Section 21: Signature as requirement for liability

No person is liable as drawer, acceptor or indorser of a bill if he has not signed it as such: Provided that-

- (a) if a person signs a bill in a trade or assumed name, he is liable thereon 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 so signing, of the names of all persons liable as partners of that firm.

Section 22: Forged and unauthorized signatures

Subject to the provisions of this Act, if a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that 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: Provided that nothing in this section contained shall affect the ratification of an unauthorized signature not amounting to forgery.

Section 24: Signature as agent or in representative capacity

- (1) If a person signs a bill as drawer, acceptor or indorser and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative capacity, or if he signs as drawer and the name of the principal appears with his signature, he is not personally liable thereon: Provided that if such person had in fact no authority to sign for or on behalf of the person indicated as principal, or in a representative capacity, he shall be personally liable on the said bill.
- (2) In determining whether a signature on a bill is that of a principal or that of the agent by whom it was written, the construction most favourable to the validity of the instrument shall be adopted.

Section 25: Holder for value

A holder takes a bill for value if he takes it under onerous title.

Section 27: Holder in due course

- (1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following circumstances, namely-
 - (a) he must have become the holder of it before it was overdue, and if it had previously been dishonoured, without notice thereof; and
 - (b) he must have taken the bill in good faith and for value, and at the time the bill was negotiated to him, he must have had no notice of any defect in the title of the person who negotiated it.

- (2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act if he obtained the bill, or the acceptance thereof, by fraud or other unlawful means, or for an illegal consideration, and is deemed to have been so defective if he negotiates the bill in breach of faith, or under such circumstances as amount to fraud.
- (3) 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.

Section 28: Presumption as to value and good faith

- (1) Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value.
- (2) Every holder of a bill is prima facie deemed to be a holder in due course: Provided that if in an action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud or illegality, the burden of proof is shifted, unless and until the holder proves that subsequent to the alleged fraud or illegality value has in good faith been given for the bill.

Section 29: Negotiation of bill

- (1) A bill is negotiated if it is transferred from one person to another in such a manner as to constitute 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 indorsement of the holder completed by delivery.
- (4) If the holder of a bill payable to his order transfers it without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the bill indorsed by the transferor.
- (5) If any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Section 30: Manner of indorsing

- (1) An indorsement, in order to effect a negotiation of a bill, must be written on the bill itself, be signed by the indorser, and be an indorsement of the entire bill: Provided that an indorsement written on the allonge of a bill 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.
- (2) The simple signature of the indorser on the bill without additional words is sufficient to constitute an indorsement.
- (3) A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not effect a negotiation of the bill.

- (4) If a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse in order to effect a negotiation of the bill, unless the one indorsing has authority to indorse for the others.
- (5) If in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may, in order to effect a negotiation of the bill, indorse the bill as he is therein described, adding, if he thinks fit, his proper signature.
- (6) If there are two or more indorsements on a bill, each indorsement is deemed, until the contrary is proved, to have been made in the order in which it appears on the bill.
- (7) An indorsement may be made in blank or special and may also contain terms making it restrictive.

Section 31: Indorsement in blank and special indorsement

- (1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.
- (2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.
- (3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.
- (4) If a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to himself or his order or to some other person or the order of the latter.

Section 32: Restrictive indorsement

- (1) An indorsement is restrictive if it prohibits the further negotiation of the bill, or if it expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill is indorsed 'Pay D. only', or 'Pay D. for the account of X.', or 'Pay D. or order for collection.'
- (2) A restrictive indorsement gives the indorsee the right to receive payment of the bill, and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee, unless it expressly authorizes him to do so.
- (3) If a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights, and subject to the same liabilities, as the first indorsee under the restrictive indorsement.

Section 33: Conditional indorsement

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

Section 34: Continuance of negotiability, and negotiation of overdue or dishonoured bill

- (1) If a bill is negotiable in its origin it continues to be negotiable until it has been-
 - (a) restrictively indorsed; or
 - (b) discharged by payment or otherwise.
- (2) If 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.
- (3)
 - (a) A bill payable on demand is deemed to be overdue within the meaning, and for the purposes, of this section when it appears on the face of it to have been in circulation for an unreasonable length of time.
 - (b) The question what an unreasonable length of time for the purpose of paragraph (a) is, is a question of fact.
- (4) Every negotiation of a bill is prima facie deemed to have been effected before the bill was overdue, except where the date of the relevant indorsement is a date after the maturity of the bill.
- (5) If a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour: Provided that nothing in this subsection contained shall affect the rights of a holder in due course.

Section 35: Negotiation of bill to party already liable thereon

If a bill is negotiated back to the drawer, a prior indorser or the acceptor, such drawer, indorser or acceptor may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Section 36: Rights and powers of the holder

The rights and powers of the holder of a bill are as follows, namely-

- (a) he may sue on the bill in his own name;
- (b) if he is a holder in due course, he holds the bill free from any defect in the title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;
- (c) if the title is defective and-
 - (i) he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; or

- (ii) he obtains payment of the bill in due course the person who made such payment gets a valid discharge of the bill.

Section 37: When presentment for acceptance is necessary, and delay in such presentment

- (1) If a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of such bill.
- (2) If a bill expressly stipulates that it shall be presented for acceptance, or if a bill is drawn payable elsewhere than at the place of residence or business of the drawee, it must be presented for acceptance before it can be presented for payment.
- (3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.
- (4) If the holder of a bill, drawn payable elsewhere than at the place of residence or business of the drawee, has no time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay, caused by presenting the bill for acceptance before presenting it for payment, is excused and does not discharge the drawer and indorsers.

Section 38: Time for presenting for acceptance bill payable after sight

- (1) (a) Subject to the provisions of this Act, if a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time within the meaning of subsection (2).
 - (b) If the holder does not do so, the drawer and all indorsers prior to that holder are discharged.
- (2) In determining what is a reasonable time for the purposes of paragraph (a) of subsection (1), regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

Section 39: Rules as to presentment for acceptance, and excuses for non-presentment

- (1) A bill is duly presented for acceptance if it is presented in accordance with the following rules, namely-
 - (a) the presentment must be made by or on behalf of the holder at a reasonable hour on a business day, and before the bill is overdue, to the drawee, or to a person authorized to accept or refuse acceptance on his behalf;
 - (b) if a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, in which case presentment may be made to him only;
 - (c) if the drawee is dead, presentment may be made to his executor;
 - (d) if the drawee is insolvent, presentment may be made to him or his trustee;
 - (e) a presentment by post, if in due course, is sufficient.

- (2) Presentment in accordance with the provisions of subsection (1) is excused, and a bill may be treated as dishonoured by non-acceptance-
- (a) if the drawee is dead or insolvent, or is a fictitious or non-existing person or a person not having capacity to contract;
 - (b) if, after the exercise of reasonable diligence, such presentment cannot be effected; or
 - (c) if, when irregular presentment is made, acceptance is refused on some other ground.
- (3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured, does not excuse presentment.

Section 40: Failure to accept within customary time

- (a) If a bill is duly presented for acceptance and it is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance.
- (b) If such person does not do so, the holder shall lose his right of recourse against the drawer and indorsers.

Section 41: When bill is dishonoured by non-acceptance, and consequences thereof

- (1) A bill is dishonoured by non-acceptance if-
- (a) it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or
 - (b) presentment for acceptance is excused and the bill is not accepted.
- (2) Subject to the provisions of this Act, if a bill is dishonoured by non-acceptance, a right of recourse against the drawer and indorsers immediately accrues to the holder, and no presentment for payment is necessary.

Section 42: Duties as to and consequences of qualified acceptance

- (1) The holder of a bill may refuse to take a qualified acceptance, and, if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance.
- (2) If a qualified acceptance is taken and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, the drawer or such indorser is discharged from his liability on the bill: Provided that the provisions of this subsection do not apply to a partial acceptance whereof due notice has been given.
- (3) If the drawer or an indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

Section 43: Rules as to presentment for payment

- (1)
 - (a) Subject to the provisions of this Act, a bill must be duly presented for payment in accordance with the provisions of subsection (2).
 - (b) If it is not so presented, the drawer and indorsers shall be discharged.
- (2) A bill is duly presented for payment if it is presented in accordance with the following rules, namely-
 - (a) if the bill is not payable on demand, presentment must be made on the day it falls due;
 - (b) if the bill is payable on demand, presentment must, subject to the provisions of this Act, be made within a reasonable time, within the meaning of subsection (3), after its issue, in order to render the drawer liable, and within such a reasonable time after its endorsement, in order to render the indorser liable;
 - (c) presentment must, subject to the provisions of subsection (5), be made 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 within the meaning of subsection (4), either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can be found there;
 - (d) if the bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all;
 - (e) if the drawee or acceptor of the bill is dead and no place of payment is specified, presentment must be made to his executor, if there is one and, with the exercise of reasonable diligence, he can be found.
- (3) In determining what is a reasonable time for the purposes of paragraph (b) of subsection (2), regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.
- (4) A bill is presented at the proper place if-
 - (a) when a place of payment is specified in the bill, the bill is presented there;
 - (b) when no place of payment is specified, but the address of the drawee or acceptor is given in the bill, the bill is presented there;
 - (c) when no place of payment is specified, and no address is given, the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary place of residence, if known;
 - (d) in any other case, the bill is presented wherever the drawee or acceptor can be found, or it is presented at his last known place of business or residence.
- (5) A presentment by post, if in due course, is sufficient.

Section 44: When presentment for payment may be delayed or dispensed with

- (1) Delay in making presentment for payment is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence: Provided that if the cause of delay ceases to operate, presentment must be made with reasonable diligence.
- (2) Presentment for payment is dispensed with-
 - (a) if after the exercise of reasonable diligence, presentment as required by this Act cannot be effected;
 - (b) if the drawee is a fictitious person;
 - (c) as regards the drawer, if the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;
 - (d) as regards an indorser, if the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill will be paid if presented;
 - (e) by express or implied waiver of presentment;
 - (f) if the drawee or acceptor is insolvent.
- (3) Subject to the provisions of subsection (2), the fact that the holder has reason to believe that the bill will on presentment be dishonoured, does not dispense with the necessity for presentment.

Section 45: When bill is dishonoured by non-payment, and consequences thereof

- (1) A bill is dishonoured by non-payment-
 - (a) if it is duly presented for payment and payment is refused or cannot be obtained; or
 - (b) if presentment is excused and the bill is overdue and unpaid.
- (2) Subject to the provisions of this Act, if a bill is dishonoured by non-payment, a right of recourse against the drawer and indorsers immediately accrues to the holder.

Section 46: Notice of dishonour and effect of failure to give such notice

Subject to the provisions of this Act, if a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged: Provided that-

- (a) if a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course who became such a holder subsequent to the omission, shall not be prejudiced by the omission;

- (b) if a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill was accepted in the meantime.

Section 47: Rules as to notice of dishonour

- (1) Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules, namely-
 - (a) the notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill;
 - (b) the notice may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party is his principal or not;
 - (c) the notice may be given in writing, or by personal communication, and may be given in any terms which sufficiently identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment;
 - (d) the return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed to be a sufficient notice of dishonour;
 - (e) a written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication;
 - (f) if notice of dishonour is required to be given to any person, it may be given either to such person himself or to a person authorized to receive such notice on his behalf;
 - (g) if the drawer or an indorser is dead, and the party giving notice knows it, the notice must be given to the executor, if there is one and, with the exercise of reasonable diligence, he can be found;
 - (h) if the drawer or an indorser is insolvent, notice may be given either to himself, or to his trustee;
 - (i) if there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for one or more of the others, in which case notice to the one having such authority shall be deemed to be notice to such other person or persons;
 - (j) the notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time within the meaning of subsection (5);
 - (k) if a bill, when dishonoured, is in the hands of an agent, he may give notice either to the parties liable on the bill or to his principal, and if he gives notice to his principal, he must do so within the same period of time that would have been allowed if he were the holder.

- (2) If the notice is given by or on behalf of the holder, it ensures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.
- (3) If notice is given by or on behalf of an indorser entitled to give notice by virtue of the provisions of subsection (1), it ensures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.
- (4) A misdescription of the bill in the notice shall not vitiate the notice, unless the party to whom the notice is given is, in fact, misled thereby.
- (5) In the absence of special circumstances, it is deemed that notice is not given within a reasonable time for the purposes of paragraph (j) of subsection (1), unless notice is given or the notice is posted-
 - (a) on the business day next after the day on which the bill is dishonoured; or
 - (b) if that business day is a Saturday, on the business day next after that Saturday.
- (6) A principal upon receipt of notice contemplated in paragraph (k) of subsection (1) has himself the same period of time for giving notice that he would have had if the agent had been an independent holder.
- (7) If a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after dishonour.
- (8) If a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour notwithstanding any miscarriage by the Post Office.

Section 48: When notice of dishonour may be delayed or dispensed with

- (1) Delay in giving notice of dishonour is excused if the delay is caused by circumstances beyond the control of the party giving notice and not imputable to his default, misconduct, or negligence: Provided that if the cause of delay ceases to operate, the notice must be given with reasonable diligence.
- (2) Notice of dishonour is dispensed with-
 - (a) if after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be held liable;
 - (b) by express or implied waiver, either before the time of giving notice has arrived, or after omission to give due notice;
 - (c) as regards the drawer in the following cases, namely-
 - (i) where drawer and drawee are the same person;
 - (ii) where the drawee is a fictitious person or a person not having capacity to contract;

- (iii) where the drawer is the person to whom the bill is presented for payment;
- (iv) where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill;
- (v) where the drawer has countermanded payment;
- (d) as regards an indorser in the following cases, namely-
 - (i) where the drawee is a fictitious person or a person not having capacity to contract, and such indorser was aware thereof at the time he indorsed the bill;
 - (ii) where such indorser is the person to whom the bill is presented for payment;
 - (iii) where the bill was accepted or made for the accommodation of such indorser.

Section 49: Protest of bill, and consequences of failure to protest

- (1A) (a) If a bill has been dishonoured by non acceptance or non-payment it may be protested for non-acceptance or non-payment, as the case may be, but it shall not be necessary so to protest any such bill to hold the drawer or any indorser liable.
- (b) If a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance it may be protested for non-payment, and in such event no further presentment for payment to, or demand on, the drawee is necessary.
- (2) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.
- (3) (a) Subject to the provisions of this Act, if it is intended to protest a bill, it must be protested not later than on the business day next after the day on which it is dishonoured, or, if such business day is a Saturday, not later than on the business day next after that Saturday.
- (b) If it is intended to protest a bill in terms of paragraph (a) of the proviso to subsection (5), it must be protested-
 - (a) if received during business hours, on the day of its return or, if that day is a Saturday, not later than on the business day next after that Saturday; or
 - (b) if not received during business hours, not later than on the next business day, not being a Saturday.
- (4) If the acceptor of a bill becomes insolvent or suspends payment before the bill matures, the holder may cause it to be protested for better security against the drawer and indorsers.

- (5) A bill must be protested at the place where it is dishonoured: Provided that-
- (a) if a bill is presented by post and returned by post dishonoured, it may be protested at the place to which it is returned;
 - (b) a bill protested as is contemplated in the proviso to paragraph (a) of subsection (1) or in paragraph (b) of subsection (1A) must be protested at the place where it is expressed to be payable.
- (6) A protest must contain a copy of the bill and be signed by the notary making it, and must specify-
- (a) the person at whose request the bill is protested;
 - (b) the place and date of the protest, and the cause or reason for protesting the bill;
 - (c) the demand made and the answer given (if any), or the fact that the drawee or acceptor could not be found, if such is the case.
- (7) If a bill is lost or destroyed or is wrongly withheld from the person entitled to hold it, the protest may be made on a copy or written particulars thereof.
- (8)
- (9) Delay in protesting is excused if the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence: Provided that if the cause of delay ceases to operate, the bill must be protested with reasonable diligence.

Section 51: Liability of drawee

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

Section 52: Liability of acceptor

The acceptor of a bill, by accepting it-

- (a) engages that he will pay it according to the tenor of his acceptance;
- (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;
 - (ii) in the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or the validity of his indorsement;
 - (iii) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or the validity of his indorsement.

Section 53: Liability of drawer and of indorser

- (1) The drawer of a bill by drawing it-
 - (a) engages that, on due presentment, it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder, or an indorser who who is compelled to pay it, provided the requisite proceedings on dishonour are duly taken;
 - (b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.
- (2) The indorser of a bill by indorsing it-
 - (a) engages that, on due presentment, it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder, or an indorser who is compelled to pay it, provided the requisite proceedings on dishonour are duly taken;
 - (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 indorsements;
 - (c) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Section 56: Liability of transferor by delivery

- (1) If the holder of a bill payable to bearer negotiates such bill by delivery without indorsing it, he is called a transferor by delivery.
- (2) A transferor by delivery is not liable on the instrument in question.
- (3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee, if the latter is a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that, at the time of transfer, he is not aware of any fact which renders it valueless.

Section 57: Discharge by payment in due course

- (1) A bill is discharged by payment in due course or is discharged proportionally by payment of part of the amount for which the bill is drawn, noted by indorsement on the bill, if such payment be made by or on behalf of the drawee or acceptor.
- (2) Subject to the provisions of subsections (3), (4) and (5), a bill is not discharged if it is paid by the drawer or an indorser.
- (3) If a bill is payable to a third party or the order of the latter, is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

- (4) If a bill is paid by an indorser, or if a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor and antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.
- (5) If an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

Section 58: Bank paying demand draft where indorsement is forged

If a bill payable to order on demand is drawn on a bank, and the bank pays the bill in good faith and in the ordinary course of business, it is not incumbent on the bank to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the bank is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority: Provided such indorsement does not purport to be that of a person who is a customer of the bank at the branch on which the said bill is drawn.

Section 59: Discharge by acceptor becoming holder

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

Section 60: Discharge by waiver

- (1) Subject to the provisions of subsection (4), if the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor in the manner contemplated in subsection (2), the bill is discharged.
- (2) The renunciation of rights contemplated in subsection (1) must be in writing on the bill, unless the bill is delivered up to the acceptor.
- (3) Subject to the provisions of subsection (4), the liabilities of any party to a bill may in the manner contemplated in subsections (1) and (2) be waived by the holder before, at, or after its maturity.
- (4) Nothing in this section contained shall affect the rights of a holder in due course who had no notice of the renunciation or waiver.

Section 61: Discharge by cancellation of bill, and discharge of party by cancellation of his signature

- (1) If a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.
- (2) (a) Any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent.
- (b) If a signature is so cancelled any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged.

- (3) A cancellation made unintentionally or under a mistake or without the authority of the holder, is inoperative: Provided that if a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally or under a mistake or without authority.

Section 67: Holder's rights if bill or note is lost or destroyed

- (1) If a bill or note is lost or destroyed before it is overdue, the person who was the holder of it may request the drawer or maker to give him another bill or note, as the case may be, of the same tenor, giving adequate security to the drawer or maker, if required, to indemnify him against all persons whatever in case the bill or note alleged to have been lost or destroyed is found again.
- (2) If the drawer or maker on such request refuses to give such bill or note he may be compelled to do so.

Section 71: Applicability to cheques of certain provisions relating to certain other bills

- (1) Except as otherwise provided in this chapter, the provisions of this Act applicable to a bill payable on demand apply to a cheque.
- (2) Notwithstanding the provisions of subsection (2) of section 3, the provisions of this Act applicable to a cheque apply to a bill drawn by a bank on itself and payable on demand.

Section 72A: Liability of drawee who has certified cheque

- (1) A cheque is certified if the drawee signs it and adds words to the cheque that indicate that the cheque will be paid or that funds are available for its payment.
- (2) When a drawee of a cheque certifies it he-
- (a) undertakes that he will pay the holder, or the drawer or an indorser who has been compelled to pay the cheque, the amount recoverable in terms of section 55 according to the tenor of his certification;
 - (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 cheque;
 - (ii) the existence of the payee and his then capacity to indorse.

Section 72B: Prevention of fraud

Any person who is required by law to have his financial statements audited by a person registered in terms of section 15 of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991), or by the Auditor-General, and any person obliged to appoint an accounting officer in terms of section 59 of the Close Corporations Act, 1984 (Act 69 of 1984), shall exercise reasonable care in the custody of cheque forms and in the reconciliation of its bank statements.

Section 73: Revocation of bank's authority

The duty and authority of a bank to pay a cheque drawn on it by its customer are terminated by receipt of-

- (a) countermand of payment;
- (b) notice of the customer's death or incapacity;
- (c) notice of the customer having been sequestrated or wound-up or placed under judicial management or declared a prodigal:

Provided such countermand or notice identifies the cheque, in the case of countermand, and the customer with reasonable particularity and gives the drawee a reasonable opportunity to act on it.

Section 75: General and special crossings on cheques

- (1) If a cheque bears across its face an addition of two parallel transverse lines, either with or without the words 'not negotiable', that addition constitutes a crossing and the cheque is crossed generally.
- (2) If a cheque bears across its face an addition of the name of a bank, either with or without the words 'not negotiable' or 'and Company' or any abbreviation thereof, that addition constitutes a crossing and the cheque is crossed specially and to that bank.

Section 75A: Non-transferable cheques

- (1) Where a cheque bears boldly across its face the words 'not transferable' or 'non transferable', either with or without the word 'only' after the payee's name-
 - (a) the cheque shall not be transferable but shall be valid as between the parties thereto;
 - (b) the cheque shall be deemed to be crossed generally, unless it is crossed specially; and
 - (c) the words 'not transferable' or 'non transferable' may not be cancelled and any purported cancellation shall be of no effect.
- (2) A bank shall not be negligent by reason only of its failure to concern itself with-
 - (a) an indorsement intended to prevent transfer of the cheque; or
 - (b) words prohibiting transfer, or indicating an intention that it shall not be transferable, other than in the manner provided for in this section.

Section 76: Crossings by drawer, or after issue

- (1) A cheque may be crossed generally or specially by the drawer or a collecting bank.
- (2) If a cheque is uncrossed the holder may cross it generally or specially.
- (3) If a cheque is crossed generally the holder may cross it specially.
- (4) If a cheque is crossed generally or specially, the holder may add the words 'not negotiable'.
- (5) If a cheque is crossed specially, the bank to which it is crossed may again cross it specially to another bank for collection.

Section 78: Duties of banks as to crossed cheques

- (1) If a cheque is crossed generally, the bank on which it is drawn shall not pay it to any person other than a bank.
- (2) If a cheque is crossed specially, the bank on which it is drawn shall not pay it to any person other than the bank to which it is crossed, or the latter's agent for collection, if it is a bank.
- (3) If a cheque is crossed specially to more than one bank, except when crossed to two banks of which the one is an agent for collection of the other, the bank on which it is drawn shall refuse payment thereof.
- (4) If the bank on which a cheque is drawn-
 - (a) pays such cheque if it is crossed as is contemplated in subsection (3);
 - (b) pays such cheque to any person other than a bank if it is crossed generally; or
 - (c) pays such cheque, if it is crossed specially, to any person other than the bank to which it is crossed or the latter's agent for collection, if it is a bank, it is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid: Provided that if a cheque is presented for payment and it does not, at the time of presentment, appear to be crossed or to have had a crossing which has been obliterated, or to have a crossing which has been added to or altered, otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made to a person other than a bank or the bank to which the cheque is or was crossed, or the latter's agent for collection which is a bank, as the case may be.

Section 79: Protection to bank and drawer where cheque is crossed

If the bank on which a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a bank, and, if crossed specially, to the bank to which it is crossed, or the latter's agent for collection, which is a bank, the bank paying the cheque, and, if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Section 80: Effect of crossing and addition of words 'not negotiable' on rights of holder

If a person takes a crossed cheque which bears on it the words 'not negotiable', he shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Section 81: True owner of stolen or lost crossed cheque marked 'not negotiable' entitled to compensation from certain subsequent possessors

- (1) If a cheque was stolen or lost while it was crossed as authorized by this Act and while it bore on it the words 'not negotiable', and it was paid by the bank upon which it was drawn, under circumstances which do not render such bank liable in terms of this Act to the true owner of the cheque for any loss he may sustain owing to the cheque having been paid, the true owner shall, if he suffered any loss as a result of the theft or loss of the cheque, be entitled to recover from any person who was a possessor thereof after the theft or loss, and either gave a consideration therefor or took it as a donee, an amount equal to the true owner's said loss or the amount of the cheque, whichever is the lesser.
- (2) If a person has after the theft or loss paid any such cheque into his account with a bank after having paid, or for the purpose of paying, the amount of the cheque or part thereof to the person from whom he received the cheque, or, on his direction, to any other person, he shall, for the purposes of subsection (1), be deemed to have been a possessor of the cheque and to have given a consideration therefor: Provided that the foregoing provisions of this subsection shall not apply to a collecting bank employing another bank as its agent for the collection of any such cheque.
- (3) If a person took any such cheque into his possession or custody after the theft or loss, and fails to furnish the true owner or any person who has in terms of subsection (7) the rights of a true owner, at his request, with any information at his disposal in connection with the cheque, he shall for the purposes of subsection (1) be deemed to have been a possessor of the cheque and either to have given a consideration therefor or to have taken it as a donee.
- (4) Every possessor of any such cheque shall, for the purposes of this section, and until the contrary is proved, be deemed either to have given a consideration therefor or to have taken it as a donee.
- (5) For the purposes of subsection (1), a bank which receives payment of any such cheque for a customer shall, subject to the provisions of subsection (3), not be regarded as having given a consideration therefor, merely because it has in its own books credited its customer's account with the amount of the cheque before receiving payment thereof, or because any such payment is applied towards the reduction or settlement of any debt owed by the customer to the bank.

- (6) If in any action under this section the defendant proves that when he became the possessor of the cheque, it did not appear to be crossed or to have had a crossing which had been obliterated, and to bear on it the words 'not negotiable', or to have borne on it any words which might have been the words 'not negotiable' and had been obliterated, he shall, subject to the provisions of subsection (3), not be held liable under this section.
- (7) (a) A person who has discharged his liability under subsection (1) and who took the cheque in good faith and without notice of any defect in the title of the transferor, shall as against any prior possessor of the cheque, who became a possessor thereof after the theft or loss and either gave a consideration therefor or took it as a donee, have the rights conferred upon a true owner by subsection (1).
- (b) The provisions of paragraph (a) shall mutatis mutandis apply to a person who has discharged his liability under the said paragraph or under the said paragraph as applied by this paragraph.
- (8) For the purposes of this section the giving of a consideration includes the receiving of any such cheque in reduction or settlement of any debt or liability.

Section 83: Effect of payment to or crediting of accounts by bankers of amounts of unindorsed or irregularly indorsed cheques and certain other documents

- (1) If a bank in good faith and in the ordinary course of business credits the account of its customer with or pays to another bank the amount of-
- (a) any cheque drawn on it;
- (b) any other document issued by its customer and intended to enable any person to obtain payment on demand of the sum mentioned in such document from it (or from any bank, if the document was issued on behalf of the State); or
- (c) draft payable on demand drawn by such first-mentioned bank upon itself, or upon its agent who is a bank, whether payable at the head office or some other office of its bank or of such agent,

it shall not incur any liability by reason only of the absence of, or irregularity in, indorsement thereof, and such cheque, document or draft shall be discharged by such crediting of the account in question or by such payment.

- (2) The provisions of subsection (1) shall mutatis mutandis also apply to any document which-
- (a) was issued on behalf of the State;
- (b) is drawn upon or addressed to a servant of the State (hereafter in this section called the drawee); and
- (c) is intended to enable any person to obtain payment on demand of the sum mentioned in such document from the drawee or from or through a bank,

as if the said document were a cheque and as if the drawee were a bank and the State its customer.

Section 84: Rights of banks if unindorsed or irregularly indorsed cheques or certain other documents are delivered to them for collection

- (1) If a cheque, or draft or other document referred to in section 83, which is payable to order, is delivered by the holder thereof to a bank for collection, and such cheque, draft or document is not indorsed or was irregularly indorsed by such holder, such bank shall have such rights, if any, as it would have had if, upon such delivery, the holder had indorsed it in blank.
- (2) Where a cheque referred to in section 75A is delivered by the holder thereof to a bank for collection and the holder is indebted to the bank, the bank shall be deemed to be the holder thereof taking the cheque in pledge for such indebtedness with the same rights and subject to the same liabilities as the holder had.

Section 87: Promissory note defined

- (1) A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, and engaging to pay on demand or at a fixed or determinable future time, a sum certain in money, to a specified person or his order, or to bearer.
- (2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.
- (3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell it or dispose thereof.

Section 92: Liability of maker

The maker of a note by making it-

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

Section 93: Application to notes of provisions relating to bills

- (1) Subject to the provisions of this chapter, and except as by this section provided, the provisions of this Act relating to bills apply with the necessary modifications to notes.
- (2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.
- (3) The following provisions as to bills do not apply to notes, namely, the provisions relating to-
 - (a) presentment for acceptance;
 - (b) acceptance; and
 - (c) bills in a set.

Section 94: Good faith

A thing is deemed to be done in good faith within the meaning of this Act, if it is in fact done honestly, whether it is done negligently or not.

Section 95: Signature

If by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written or printed thereon by some other person, by or under his authority, and the authorized sealing or stamping with a seal or stamp of a corporation shall be sufficient and be deemed to be equivalent to the signing or indorsement of any such instrument or writing.

PLEASE NOTE: The discussion of the legislation in the study guide for the sections dealing with Intellectual Property and Competition law is sufficient. You do not have to consult the Acts themselves.

Good luck with your studies!

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