

CHAPTER 46:02
BILLS OF EXCHANGE
ARRANGEMENT OF SECTIONS

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Law 30, 1964,
L.N. 84, 1966,
Act 30, 1983,
S.I. 83, 1984

An Act to consolidate and amend the law relating to bills of exchange, cheques and promissory notes.

[Date of Commencement: 19th November, 1964]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Bills of Exchange Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**acceptance**" means an acceptance completed by delivery or notification;

"**action**" includes a counter-claim and a plea of set-off;

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

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

"**bill**" means a bill of exchange as defined in section 3;

"**cheque**" means a bill drawn on a banker payable on demand;

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

"**holder**" means the payee or 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;

"**legal representative**", in relation to a person who is dead, means the person who in law or in customary law, whichever may be applicable, represents the estate of that person;

"**non-business day**" has the meaning assigned to it in section 5 of the Public Holidays Act;

"**note**", used as a noun, means a promissory note as defined in section 88;

"**note**", used as a verb, means make a notarial minute, in the usual manner, of the circumstances of dishonour of a bill, within the time prescribed by section 50(5) and (6), and includes present for acceptance or payment by a notary;

"**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;

"**value**" means valuable consideration within the meaning of section 26.

PART II
Bills of Exchange (ss 3-71)
Form and Interpretation (ss 3-20)

3. Bill of exchange defined

(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 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.

4. Effect where different parties to the bill are the same person

(1) A bill may be drawn payable to, or to the order of, the drawer, or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill the drawer and the drawee are the same person, or where 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 of exchange or as a promissory note.

5. 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 two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

6. Certainty required as to payee

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

(2) A bill may be made payable to two or more payees jointly, or it may be made in the alternative to one of two, or one or some of several payees.

(3) A bill may also be made payable to the holder of an office for the time being.

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

7. What bills are negotiable

(1) When a bill contains words prohibiting transfer or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

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

(3) A bill is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable or which 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.

(5) Where 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.

8. 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 an indicated rate of exchange, or according to 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) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if it is undated, from the date of the issue thereof.

9. Bill 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.

10. Bill payable at future time

(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 a contingency is not a bill, and the happening of the event does not cure the defect.

11. Omission of date in bill payable after date

Where a bill expressed to be payable at the expiration of a fixed period after date is issued undated, or where 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-

- (i) where the holder in good faith and by mistake inserts a wrong date; or
- (ii) every case where 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.

12. Antedating and postdating

(1) Where a bill, or the acceptance of or any indorsement on a bill, is dated, the date shall, unless the contrary is 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 ante-dated or post-dated, or that it bears the date of a non-business day.

13. Computation of time of payment

(1) Subject to subsection (2), where 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) where 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;
- (c) where 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.

(2) There are no days of grace for the purpose of computing the day on which a bill falls due under this section.

14. Referee in case of need

(1) The drawer or any indorser of a bill may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment.

(2) Such person is called the referee in case of need.

(3) The holder may resort to the referee in case of need or not, as he may think fit.

15. 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.

16. 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.

17. 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) When 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.

18. General and qualified acceptances

(1) An acceptance is either general or qualified.

(2) A general acceptance assents without qualification to the order of the drawer.

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

(4) A qualified acceptance in express terms varies the effect of the bill as drawn.

(5) An acceptance is qualified if it is-

- (a) a conditional acceptance, that is to say, if it makes payment by the acceptor dependent on the fulfilment of a condition therein stated;
- (b) a partial acceptance, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;
- (c) an acceptance to pay only at a particular specified place and not elsewhere;
- (d) qualified as to the time of payment;
- (e) the acceptance of one or more of the drawees but not of all.

19. Inchoate instruments

(1) Where a person places his signature upon, and affixes a stamp to, 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 such a stamp will cover, using the said signature for that of the drawer, the acceptor or an indorser.

(2) Where 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.

20. Delivery as requirement for contract on a bill

(1) No contract on a bill, whether it is the drawer's, the acceptor's or an indorser's, shall

be complete and irrevocable, until delivery of the instrument in question in order to conclude such a contract:

Provided that if 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 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.

Capacity and Authority of Parties (ss 21-25)

21. Capacity of parties

(1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

(2) Where 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.

22. Signature as required for liability

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

Provided that-

- (i) where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name, and
- (ii) 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.

23. Forged and unauthorized signatures

Subject to the provisions of this Act, where 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 contained in this section shall affect the ratification of an unauthorized signature not amounting to forgery.

24. Procuration signature

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

25. Signature as agent or in representative capacity

(1) Where 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, 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.

The Consideration for a Bill (ss 26-29)

26. Value and holder for value

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

- (a) any cause sufficient to support an action founded on contract or agreement;
- (b) an antecedent debt or liability, irrespective of whether the bill is payable on demand or at a future time.

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

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

27. Accommodation bill of party

(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or indorser, without receiving value therefor, but for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value, irrespective of whether or not, when such holder took the bill, he knew such party to be an accommodation party.

28. 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, or when he negotiates the bill in breach of faith, or under such circumstances as amount to a 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.

29. 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; but 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 the holder proves that subsequent to the alleged fraud or illegality value has in good faith been given for the bill.

Negotiation of Bills (ss 30-37)

30. Negotiation of bill

(1) A bill is negotiated when 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) Where the holder of a bill payable to his order transfers it for value 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) Where 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.

31. Manner of indorsing

(1) An indorsement, in order to operate as 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 allongé 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 affect a negotiation of the bill.

(4) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse in order to operate as a negotiation of the bill, unless the one indorsing has authority to indorse for the others.

(5) Where in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he must, in order to operate as a negotiation of the bill, indorse the bill as he is therein described, adding his proper signature.

(6) Where 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.

32. 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) When 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.

33. 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) Where 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.

34. Conditional indorsement

Where 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.

35. Continuance of negotiability and negotiation of overdue or dishonoured bill

(1) Where a bill is negotiable in its origin it continues to be negotiable until it has been restrictively indorsed, or discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward 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 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; what is an unreasonable length of time for this purpose is a question of fact.

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

(5) Where 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, but nothing in this subsection shall affect the rights of a holder in due course.

36. Negotiation of bill to party already liable thereon

Where a bill is negotiated back to the drawer, or to a prior indorser, or to 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.

37. 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) where 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) where his title is defective if-
 - (i) he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and
 - (ii) he obtains payment of the bill in due course, the person who made such payment gets a valid discharge of the bill.

General Duties of the Holder (ss 38-51)

38. When presentment for acceptance is necessary, and delay in such presentment

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

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where 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) Where 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.

39. Time for presenting the acceptance bill payable after sight

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

(2) If the holder does not do so, the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, 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.

40. 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) where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, in which case presentment may be made to him only;
- (c) where the drawee is dead, presentment may be made to his legal representative;
- (d) where the drawee is insolvent or has assigned his estate presentment may be made to him or his trustee or assignee;
- (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) where the drawee is dead or insolvent or is a fictitious person or a person not having capacity to contract by bill;
- (b) where, after the exercise of reasonable diligence, such presentment cannot be effected; or
- (c) where, although the presentment has been irregular, acceptance has been refused on some other grounds.

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

41. Failure to accept within customary time

(1) When 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.

(2) If such person does not do so, the holder shall lose his right of recourse against the drawer and indorsers.

42. When bill is dishonoured by non-acceptance, and consequences thereof

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

- (a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or
- (b) when presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Act, when 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.

43. 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) Where 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) When 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.

44. Rules as to presentment for payment

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

(2) If it is not so presented, the drawer and indorsers shall be discharged.

(3) A bill is duly presented for payment if it is presented in accordance with the following

rules, namely-

- (a) where the bill is not payable on demand, presentment must be made on the day it falls due;
- (b) where 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 (4), 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 (6), 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 (5), 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) where 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) where the drawee or acceptor of the bill is dead and no place of payment is specified, presentment must be made to his legal representative, if there is one and, with the exercise of reasonable diligence, he can be found.

(4) In determining what is a reasonable time for the purposes of subsection (3)(b), 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.

(5) A bill is presented at the proper place-

- (a) where a place of payment is specified in the bill, and the bill is presented there;
- (b) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is presented there;
- (c) where no place of payment is specified, and no address is given, and 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.

(6) A presentment by post, if in due course, is sufficient.

45. When presentment for payment may be delayed or dispensed with

(1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence:

Provided that when the cause of delay ceases to operate, presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with-

- (a) where after the exercise of reasonable diligence, presentment as required by this Act cannot be effected;
- (b) where the drawer is a fictitious person;
- (c) as regards the drawer, where 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, where 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) where the drawee or acceptor is insolvent or has assigned his estate.

(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.

46. When bill is dishonoured by non-payment and consequences thereof

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

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

(b) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, a right to recourse against the drawer and indorsers immediately accrues to the holder.

47. Notice of dishonour and effect of failure to give such notice

Subject to the provisions of this Act, when 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-

(i) where 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;

(ii) where 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.

48. 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) where notice of dishonour is required to be given to any person, it may be given either to such person himself or to a person, it may be given either to such person himself or to a person authorized to receive such notice on his behalf;

(g) where the drawer or an indorser is dead, and the party giving notice knows it, the notice must be given to the legal representative, if there is one, and, with the exercise of reasonable diligence, he can be found;

(h) where the drawer or an indorser is insolvent or has assigned his estate, notice may be given either to himself, or to his trustee or assignee;

(i) where 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 to the one having such authority shall be 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) where 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 he would be allowed if he were the holder.

(2) Where 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 whom

it is given.

(3) Where 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 subsection (1)(j), unless notice is given or the notice is posted on the business day next after the day on which the bill is dishonoured.

(6) A principal upon receipt of notice contemplated in subsection (1)(k) has himself the same period of time for giving notice that he would have had if the agent had been an independent holder.

(7) Where 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) Where 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.

49. 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 when the cause of delay ceases to operate, the notice must be given with reasonable diligence.

(2) 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 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.

50. Protest of bill and consequences of failure to protest

(1) When a bill has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment:

Provided that where 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 must be protested for non-payment, and no further presentment for payment to, or demand on, the drawee is necessary.

(2) Where a bill so dishonoured is not so protested the drawer and indorsers are discharged.

(3) Where a bill has been accepted as to part, it must be so protested as to the balance.

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

(5) Subject to the provisions of this Act, when 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.

(6) Where it is intended to protest a bill in terms of subsection (8), it must be protested on the day of its return, if received during business hours, or not later than on the next business day, if not received during business hours.

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

(8) A bill must be protested at the place where it is dishonoured:

Provided that-

- (i) when a bill is presented by post and returned by post dishonoured, it may be protested at the place to which it is returned;
- (ii) a bill protested as is contemplated in the proviso to subsection (1) must be protested at the place where it is expressed to be payable.

(9) 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.

(10) Where 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.

(11) Protest is dispensed with by any circumstance which would dispense with notice of dishonour.

(12) Delay in protesting is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence:

Provided that when the cause of delay ceases to operate, the bill must be protested with reasonable diligence.

51. Duties of holder as regards acceptor

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

(2) When by the terms of a qualified acceptance, presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by an omission to present the bill for payment on the day that it matures.

(3) It is not necessary, in order to render the acceptor of a bill liable, to protest such bill or to give notice of dishonour to such acceptor.

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

Liabilities of Parties (ss 52-57)

52. 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.

53. 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.

54. 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 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 a subsequent 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.

55. Liability of stranger signing a bill

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

56. Damages recoverable from parties to dishonoured bill

(1) Subject to the provisions of subsections (2) and (3), where a bill is dishonoured, the holder may recover from any party liable on the bill, and the drawer, who has been compelled to pay the bill, may recover from the acceptor, and an indorser who has been compelled to pay the bill, may recover from the acceptor or the drawer, or from a prior indorser as damages, which shall be deemed to be liquidated-

- (a) the amount of the bill;
- (b) interest thereon from the time of presentment for payment if the bill is payable on demand, or from the maturity of the bill in any other case;
- (c) the expenses of noting, and when protest is necessary and has been extended, the expenses of the protest.

(2) In the case of a bill which has been dishonoured abroad, in lieu of the damages stipulated in subsection (1), the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill, may recover from any party liable to him, as damages, which shall be deemed to be liquidated, the amount of the re-exchange and, subject to the provisions of subsection (3), interest thereon until the time of payment.

(3) Where in terms of the provisions of this Act interest may be recovered as damages, such damages, if justice requires it, may be withheld wholly or in part, and if a bill is expressed to be payable with interest at a given rate, may or may not be awarded at the same rate as the rate so given.

57. Liability of transferor by delivery

(1) Where 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.

Discharge of Bill (ss 58-63)

58. 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 is 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) Where a bill 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) Where a bill is paid by an indorser, or where 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) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

59. Banker paying demand draft where indorsement is forged

When a bill payable to order on demand is drawn on a banker, and the banker pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker 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 banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority:

Provided that such indorsement does not purport to be that of a person who is a customer of the banker at the branch on which the said bill is drawn.

60. Discharge by acceptor becoming holder

When 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.

61. Discharge by waiver

(1) Subject to the provisions of subsection (4), when 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 contained in this section shall affect the rights of a holder in due course who had no notice of the renunciation or waiver.

62. Discharge by cancellation of bill and discharge of party by cancellation of his signature

(1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) Any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent.

(3) Where 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.

(4) A cancellation made unintentionally or under a mistake or without the authority of the holder, is inoperative:

Provided that where 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.

63. Effect of alteration of bill or acceptance

(1) Where a bill or an acceptance is materially altered, the liability of all parties who were parties to the bill at the date of alteration and who did not assent to it, must be regarded as if the alteration had not been made, but any party who has himself made, authorized or assented to the alteration, and all subsequent indorsers are liable on the bill as altered.

(2) For the purposes of subsection (1) material alterations include any alteration of the date, the sum payable, the time of payment and the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour, and Payment by Referee in Case of Need (ss 64-67)

64. Acceptance for honour *supra* protest, and maturity of certain bills so accepted

(1) Where a bill has been protested for dishonour by non-acceptance or protested for better security, and is not overdue, any person, not being a party already liable thereon, may with the consent of the holder intervene and accept the bill, *supra* protest, for the honour of any party liable thereon, or for the honour of 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) An acceptance for honour, *supra* protest, in order to be valid must-

- (a) be written on the bill and indicate that it is an acceptance for honour;
- (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 is deemed to be an acceptance for the honour of the drawer.

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

65. Liability of acceptor for honour

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

66. Presentment to acceptor for honour and referee in case of need

(1) Where a dishonoured bill has been accepted for honour, *supra* protest, or 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 the referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than on the business day next after its maturity, and where the address of the acceptor for honour is in some place other than the place where it is protested for non-payment, the bill must be posted to him or forwarded for presentment to him not later than on the business day next after its maturity.

(3) Delay in presenting or failure to present a bill for payment contemplated in subsection (1) is excused by any circumstances which, in any other case, would excuse delay in presenting, or failure to present, a bill for payment.

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

67. Payment for honour *supra* protest

(1) Where a bill has been protested for non-payment, any person, not being a party already liable thereon, may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of 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 shall have 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 referred to in subsection (3) must be founded on a declaration made by the payer for honour or a person authorized by him to do so, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is substituted for, and succeeds to both 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, on paying to the holder the amount of the bill, and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest.

(7) If the holder does not, on demand, deliver them up, he shall be liable to the payer for honour in damages.

(8) Where the holder of a bill refuses to receive payment for honour *supra protest*, he shall lose his right of recourse against every party who would have been discharged by such payment.

Lost Instruments (ss 68-69)

68. Holder's rights if bill is lost

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

(2) If the drawer on such request refuses to give such bill he may be compelled to do so.

69. Action upon lost bill

In any action or proceeding upon a bill, other than a proceeding for provisional sentence, the court may order that the loss or non-production of the instrument shall not be set up by way of defence, provided an indemnity is given to the satisfaction of the court against the claims of any other person upon the instrument in question.

Bill in a Set (s 70)

70. Rules as to a bill in a set

(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 constitutes one bill.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed to be the true owner of the bill:

Provided that nothing contained in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance of a bill drawn in a set may be written on any part thereof, and it must be written on one such part only.

(5) If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(6) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding and in the hands of a holder in due course, he is liable to the holder thereof.

(7) Subject to the provisions of subsections (2), (3), (4) and (5), if any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws (s 71)

71. Rules if laws conflict

Where a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows, namely-

- (a) the validity of the bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of every supervening contract, such as acceptance, indorsement or acceptance for honour *supra protest*, is determined by the law of the place where such contract was made:

Provided that-

- (i) where a bill is issued outside Botswana it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue; and
- (ii) where a bill issued outside Botswana conforms, as regards requisites in form, to the Laws of Botswana, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Botswana;
- (b) subject to the provisions of this Act, the interpretation of the contract of the drawer, indorser, acceptor, or acceptor for honour *supra protest*, of a bill is determined by the law of the place where such contract is made:
- Provided that where a bill drawn and payable in Botswana is indorsed elsewhere, the indorsement shall as regards the payer be interpreted according to the Laws of Botswana;
- (c) the duties of the holder with respect to presentment for acceptance or payment, and the necessity for, or sufficiency of a protest or notice of dishonour or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured;
- (d) where a bill is drawn outside but payable in Botswana, and the sum payable is not expressed in currency of Botswana, the amount shall, in the absence of an express stipulation to the contrary, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable;
- (e) where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III

Cheques (ss 72-87)

General Provisions (ss 72-75)

72. Application of Act to cheques

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

73. Presentment of cheque for payment

(1) Subject to the provisions of this Act-

- (a) where a cheque is not presented for payment within a reasonable time, within the meaning of subsection (2), of its issue, and the drawer or the person on whose account it is drawn had the right, at the time at which such cheque should have been presented for payment, as between himself and the banker, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid;
- (b) the holder of a cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and be entitled to recover the amount from him.

(2) In determining what is a reasonable time for the purposes of subsection (1)(a),

regard shall be had to the nature of the instrument, the usage of trade and of bankers and the facts of the particular case.

74. Revocation of bankers' 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;
- (b) receipt of notice of the customer's death;
- (c) receipt of notice of the customer having become insolvent.

75. Consequences of failure to protest

The provisions of section 50(1) and (2) shall not apply in respect of the drawer or the payee of a cheque.

Crossed Cheques (ss 76-83)

76. General and special crossings on cheques

(1) Where a cheque bears across its face an addition of-

- (a) the words "and Company", or any abbreviation thereof, between two parallel transverse lines, either with or without the words "not negotiable"; or
- (b) two parallel transverse lines simply, either with or without the words "not negotiable", that addition constitutes a crossing and the cheque is crossed generally.

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

77. 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.

78. Crossing a material part of cheque

A crossing authorized by this Act is a material part of the cheque, and it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter such a crossing.

79. Duties of bankers as to crossed cheques

- (1) Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it to any person other than a banker.
- (2) Where a cheque is crossed specially, the banker on whom it is drawn shall not pay to any person other than the banker to whom it is crossed, or the latter's agent for collection, if he is a banker.
- (3) Where a cheque is crossed specially to more than one banker, except when crossed to two bankers of whom the one is an agent for collection of the other, the banker on whom it is drawn shall refuse payment thereof.
- (4) Where the banker on whom 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 banker if it is crossed generally; or
 - (c) pays such cheque, if it is crossed specially, to any person other than the banker to whom it is crossed or the latter's agent for collection, if he is a banker,

he 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 when 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 banker 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 banker or the banker to whom the cheque is or was crossed, or the latter's agent for collection who is a banker, as the case may be.

80. Protection to banker and drawer where cheque is crossed

Where the banker on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and, if crossed specially, to the banker to whom it is crossed, or the latter's agent for collection, who is a banker, the banker 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.

81. Effect of crossing on holder

Where 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.

82. True owner of stolen or lost crossed cheque marked "Not Negotiable" entitled to compensation from certain subsequent possessors

(1) Where 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 banker upon whom it was drawn, under circumstances which do not render such banker 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) Where a person has after the theft or loss paid any such cheque into his account with a banker 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 banker employing another banker as his agent for the collection of any such cheque.

(3) Where 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 banker who 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 he has in his own books credited his 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 banker.

(6) Where 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 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).

(8) The provisions of subsection (7) shall *mutatis mutandis* apply to a person who has discharged his liability under the said subsection or under the said subsection as applied by this subsection.

(9) 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.

83. Application of sections 76 to 82 to certain documents other than cheques

Sections 76 to and including 82 shall also apply to any document issued by a customer of any banker and intended to enable any person to obtain payment on demand of the sum mentioned in such document from such banker (or from any banker, if the document was issued on behalf of the Government of Botswana), and shall so apply as if the said document were a cheque, and the said sections shall *mutatis mutandis* also apply to any document which-

- (a) was issued on behalf of the Government of Botswana;
- (b) is drawn upon or addressed to a servant of the Government of Botswana (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 banker,

as if the said document were a cheque and as if the drawee were a banker and the Government of Botswana his customer:

Provided that nothing contained in this section shall render any such document a negotiable instrument.

Unindorsed or Irregularly Indorsed Instruments (ss 84-87)

84. Effect of payment to or crediting of accounts by bankers of amounts of unindorsed or irregularly indorsed cheques and certain other documents

(1) Where a banker in good faith and in the ordinary course of business credits the account of a customer of his with or pays to another banker the amount of-

- (a) any cheque drawn on him;
- (b) any other document issued by a customer of his and intended to enable any person to obtain payment on demand of the sum mentioned in such document from him (or from any banker, if the document was issued on behalf of the Government of Botswana); or
- (c) a draft payable on demand drawn by such first-mentioned banker upon himself, or upon his agent who is a banker, whether payable at the head office or some other office of his bank or of such agent,

he 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 Government of Botswana;
- (b) is drawn upon or addressed to a servant of the Government of Botswana (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 banker, as if the said document were a cheque and as if the drawee were a banker and the Government of Botswana his customer.

85. Rights of bankers regarding irregularly indorsed cheques

Where a cheque, or draft or other document referred to in section 84, which is payable to order, is delivered by the holder thereof to a banker for collection, and such cheque, draft or document is not indorsed or was irregularly indorsed by such holder, such banker shall have such rights, if any, as he would have had if, upon such delivery, the holder had indorsed it in blank.

86. Effect of payment of irregularly indorsed cheques, etc.

Where an unindorsed or irregularly indorsed cheque, or draft or other document referred to in section 84, has been paid by the banker (including a drawee referred to in subsection (2) of the said section) on whom it is drawn, such payment shall be *prima facie* evidence of the receipt by the payee of the sum mentioned in such cheque, draft or document.

87. Negotiability of documents referred to in sections 84, 85 and 86

The provisions of sections 84, 85 and 86 shall not make negotiable any document which, apart from them, is not negotiable.

PART IV

Promissory Notes (ss 88-94)

88. 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 it is indorsed by the maker.

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

89. Delivery necessary

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

90. Joint or joint and several liability on notes

(1) A note may be made by two or more persons and they may be liable thereon jointly, or jointly and severally, according to its tenor.

(2) If a note runs "I promise to pay", and is signed by two or more persons, it is deemed to be their joint and several note, and any note signed by two or more persons is deemed to be their joint and several note in the absence of a contrary intention appearing upon the face of it.

91. Time of presentment for payment of note payable on demand and indorsed

(1) Where a note payable on demand has been indorsed it must be presented for payment within a reasonable time.

(2) If it is not so presented, the indorser is discharged.

(3) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

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

92. Presentment of note for payment

(1) Where a note is in the body of it made payable at a particular place, it must be presented for payment at that place to render the maker liable, unless the particular place mentioned is the place of business of the payee and the note remains in his hands.

(2) In no other case is presentment for payment necessary in order to render the maker liable.

(3) Presentment for payment is necessary to render the indorser of a note liable.

(4) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary to render an indorser liable.

(5) Where a place of payment is indicated by way of memorandum only, presentment at that place is necessary to render an indorser liable:

Provided that presentment to the maker elsewhere, if sufficient in other respects, shall be sufficient to render an indorser liable.

93. 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.

94. Application to notes of provisions relating to bills

(1) Subject to the provisions of this Part and except as provided by this section, 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;
- (c) acceptance for honour *supra* protest;
- (d) bills in a set.

PART V

Supplementary (ss 95-101)

95. 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.

96. Signature

Where 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 thereon by some other person, by or under his authority, and the authorized sealing with a seal of a corporation shall be sufficient and be deemed to be equivalent to the signing or indorsement of any such instrument or writing.

97. Computation of time

Where by this Act the time limited for doing any act or thing is less than four days, non-business days are excluded in reckoning such time.

98. When noting equivalent to protest

Where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient, for the purposes of this Act, that the bill or note 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 at any time thereafter as of the date of the noting.

99. Protest when notary not accessible

(1) Where a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill or note is dishonoured, any landowner or householder of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

(2) The form set out in the Schedule may be used with the necessary modifications for such certificate, and if so used, shall be sufficient.

100. Application of Act to dividend warrants, etc.

The provisions of this Act as to crossed cheques shall apply also to warrants for the payment of dividends, to coupons for payment of interest and to postal and money orders.

101. Laws that are not affected by this law

Nothing in this Act shall affect or in any way restrict-

- (a) any law relating to stamp duty or revenue;
- (b) any law relating to banks;
- (c) any law relating to companies;
- (d) the procedure and practice in regard to the granting of provisional sentence in judicial proceedings.

SCHEDULE

**FORM OF PROTEST WHICH MAY IN TERMS OF SECTION 99 BE USED
WHEN THE SERVICES OF A NOTARY CANNOT BE OBTAINED**

Know all men that I, A.B., landowner or householder of
in the district of at the request of C.D., there being no notary available, did on the day
of 20 at
demand payment or acceptance from E.F., of the bill of exchange which or a copy of which is
hereto annexed, to which demand he answered (state answer, if any) wherefore I now in the
presence of G.H., and J.K., do protest the said bill of exchange.

A.B.

Witnesses:

G.H.

J.K.

N.B. The bill itself or a copy of the bill and of everything appearing thereon should be annexed.