

## IMPORTANT ASPECTS OF ENDORSEMENT:

- Types of Instruments Endorsed: Cheque, B/E and Promissory note can be endorsed
- Who can endorse: An endorsement can be made by maker or holder of an instrument
- Number of Endorsements: There can be any number of endorsements
- **Minor: A minor can endorse u/s 26 of NI Act, but he will not be liable as an endorser**

### **TYPES OF ENDORSEMENTS**

**BLANK ENDORSEMENT** Section 16 (1) of the endorser signs his name only, without adding any words or directions, the endorsement is said to be blank. **This makes the instrument payable to bearer as per Section 54 of NI Act.**

**ENDORSEMENT IN FULL:** Where the endorser signs his name and adds the name of endorsee specifically, the endorsement is called full endorsement.

Paying bank get valid discharge if the endorsement is regular. Blank endorsement can be converted to endorsement in full.

**RESTRICTIVE ENDORSEMENT (SECTION 50)** Where the further negotiation is restricted likewise Pay to Sumit only will restrict the further endorsement of the instrument.

**PARTIAL ENDORSEMENT SECTION 56:** Transfers only a part of the amount not a valid endorsement, hence such instrument should not be paid.

**CONDITIONAL ENDORSEMENT:** Pay to Mr. A when he marries' However, paying bank is not bound to verify fulfillment of such conditions

**SANS RECOURSE ENDORSEMENT:** Pay Raghu or order without recourse to me. It is caution to endorsee.

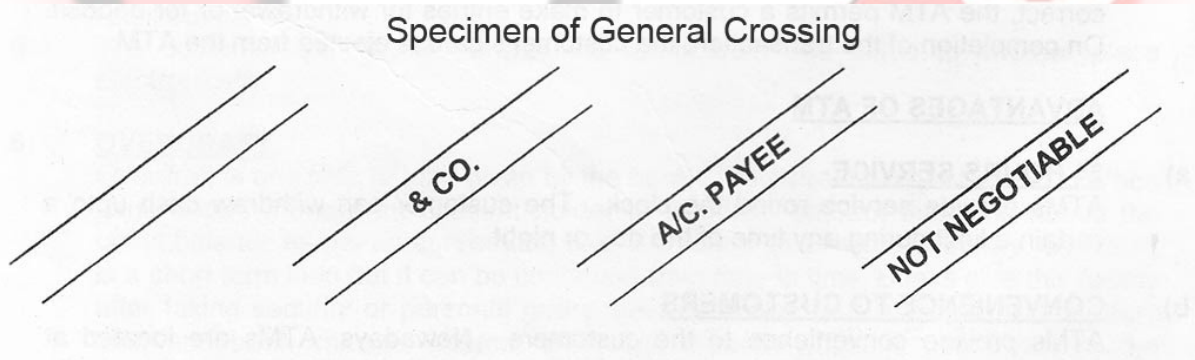
**FACULTATIVE:** Waives the condition of notice of dishonor.

**FORGED:** The Paying banker gets protection as per Sec. 85 provided the endorsement is regular

## CROSSING

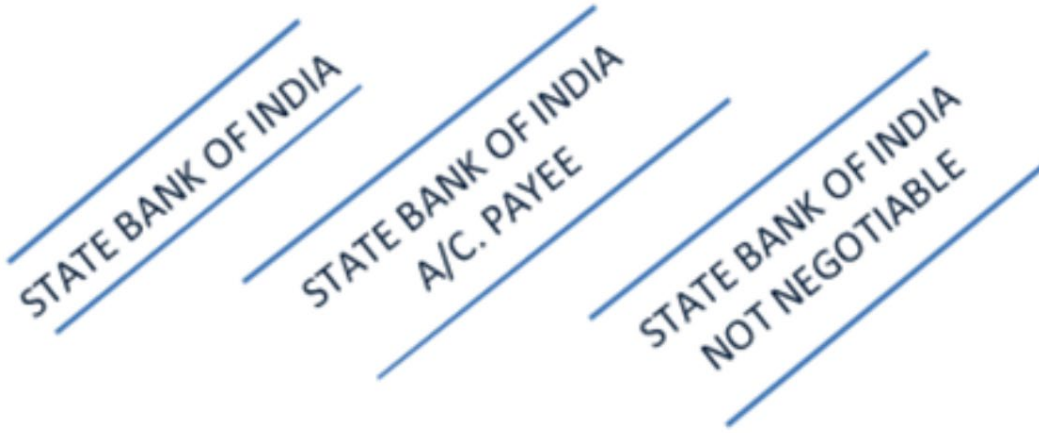
**GENERAL CROSSING (SEC. 123):** Two parallel transverse lines on the face of the instrument with or without the words 'not negotiable! A general crossing, as per Sec 126, is a direction to the paying bank not to pay a cheque across the counter

**SPECIAL CROSSING (SEC. 124):** Where a cheque bears across its face, an addition of the name of a bank either with or without the words 'not-negotiable', the cheque for paying it to the bank named therein. shall be deemed to be crossed specially. It is a direction to the paying bank



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## Specimen Of Special Crossing



### IMPORTANT ASPECTS OF CROSSING

- **Two transverse lines essential for General Crossing:** Two transverse lines across the face of the cheque are essential for general crossing
- **Two transverse lines not essential for Special Crossing.** The writing of name of the bank is legal requirement
- **Crossing is applicable to cheques only**, and not to Bill of Exchange and P/Note
- Cheque crossed to two or more branches of the same bank is considered to be crossed in one bank only
- **Not Negotiable Crossing (Section 130)** A not-negotiable crossing is a warning to the transferee of a cheque that he will not have a better title than that of the transferor in spite of fulfilling all the requirements of holder in due course.

- **Protection to Paying Bank for Crossed Cheque:** Protection available to a paying bank, as per Sec 128 of NI Act. if the same is a payment in due course as per Section 10 of N.I. Act.
- **Account Payee crossing:** Not recognized in any act. It is outcome of custom and usage

## Amount of a Cheque

- Where amount in figures and words differ, the one in words will prevail (Section 18) and be paid
- if amount in words only written it will be inchoate instrument Section 20 and not paid

## BEARER or ORDER CHEQUE

- if nothing mentioned on cheque being order or bearer it will be considered payable to order cheque
- conversion of bearer to order is allowed with full signatures
- if both words order and bearer are mentioned and none is deleted it will be considered payable to bearer

**If cheque drawn in different ink, language, scripts and handwritings such cheques will be paid if otherwise in order**

## Dates in Cheques

- **Undated Cheques:** will be returned by the bank
- **Cheques bearing date on holiday:** can be paid

- **Cheque bearing impossible date:** like if 29<sup>th</sup> feb 2019 the cheque will be paid on 28<sup>th</sup> feb
- **Ante Dated Cheque:** date prior to actual date of signing is valid
- **Stale cheque:** if the validity of the cheque is expired on the date of presentment of the cheque it is called stale cheque.
  - **Validity is reduced to 3 months by RBI as per Sec 35A of BR Act**
  - **Stale cheque can be revalidated any number of times**
  - **Validity starts from date of revalidation**
- **Post Dated Cheques:** which bear a date later to the date which it is drawn and will become effective on date mentioned
  - **These are valid**
  - **In the form of usance bill of exchange**
  - **Drawer can stop payment before the date of instrument**

## COLLECTION OF CHEQUES

**Section 131:** A banker who has in good faith and without negligence received payment for a customer of a Cheque (not available for PN or B/E) crossed generally or specifically to himself, shall not in case the title of the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

The present section gives protection provided following conditions are fulfilled

- The bank must have acted in good faith and without negligence
- The cheque collected must be crossed
- Bank has received the payment as agent for collection

- Bank has collected the cheque in the duly introduced account of customer only

## PAYMENT OF CHEQUES

**Liability of Drawee (Paying Banker):** It is **statutory obligation** of the banker to honor the cheques of a customer provided there is sufficient balance and the cheque is otherwise in **order Section 31** of NI Act provides that "The drawee of a cheque

- a. Having sufficient funds of the drawer in his hands,
- b. Properly applicable to the payment of such cheque,
- c. Must pay the cheque when duly required to do so
- d. In default of such payment, must compensate the drawer for any loss or damage As per RBI guidelines issued under Cheque Truncation System 2010, **no cutting or alteration except for date validation is permitted in cheque etc. in clearing under truncation system.**

## Protection for Paying Banker in case of Cheque

**Regularity of Endorsement Sec 85(1) 85 A in case of Bank Draft:** Paying banker's liability is to ensure the regularity of endorsement and is not concerned with genuineness of endorsement. **The genuineness of endorsement is the liability of collecting banker.** Therefore, protection is available to the paying banker in case of forged endorsement

- Payee or endorsee of a bill must himself or agent appointed by him should sign the endorsement
- Should not be in capital letters
- If payable to two persons both of them must endorse in their handwriting
- Spelling of the name of the endorsee must be same as appearing on the instrument

#### **PAYMENT IN DUE COURSE (Sec. 10)**

- a) In accordance with the apparent tenor of the instrument
- b) In good faith and without negligence
- c) To the person in possession of the instrument
- d) Under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount mentioned therein

**Endorsements in Bearer Cheque are meaningless (Sec 85 (2))**

**Cheque with material alteration not visible with naked eye u/s 89**

**For crossed cheque u/s 128 if payment is in due course**

## WHEN BANK SHOULD NOT PAY

**Death of the drawer** - The death of a drawer in case of individual's a/c (such as individual proprietorship joint accounts, HUF partnership firm) terminates the contractual relationship

**Company in liquidation** - The balance lying with the bank vests with the **official liquidator**

**Insane customers** - The Insanity terminates the contractual capacity

**Insolvent drawers:** Where a customer is adjudged insolvent the balance in the account is vested with official receiver assignee Hence bank should stop the operations in the account

**Countermanding:** On receipt of valid stop payment instructions from the drawer

**Others** - When cheque is post-dated or bank has insufficient funds or cheque is of doubtful legality, or the funds in the hands of the bank are not properly applicable to the payment, or cheque or it is irregular, ambiguous or otherwise materially altered or has become stale etc.

## CALCULATION OF DUE DATE

Due date is required to be calculated for payment in case of usance promissory note and usance bill of exchange. While calculating the due date three days of grace are required to be added (Section 22 of NI Act).

- If the drawer has either already mentioned the due date due date is already calculated by the drawer then grace period s not to be given.



- In case of usance promissory note on each installment three days of grace are to be added.
- In case of CP and Certificate of Deposit even though they are usance PN no days of grace are to be given because due date is already calculated by the drawer.

## PRINCIPLES FOR CALCULATING THE DUE DATE

- If a usance period is mentioned in **complete months** while calculating the due date corresponding date of the concerned month is to be taken and there after three days will be added.
- If that concerned date is not available, then last date of the month is to be taken, e., if due date is to be calculated for one month from 31 Jan, corresponding day works out to 31<sup>st</sup> Feb and as that day is not available, we will have to take last day of the month i.e. 28<sup>th</sup> 29 Feb and after adding three days of grace, due date will be 3 March.
- If the bill is drawn in days, then while calculating the due date, 1<sup>st</sup> day is to be excluded and last day to be included
- If the maturity date, falls on Public Holiday Sunday, the bill will become payable on next preceding business day, Public holidays are declared under Section 25 of NI Act by Central Govt only after making the notification in the Official Gazette.

**Noting u/s 99:** When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

**Protesting u/s 100:** When a promissory note or bill of exchange has been dishonoured by non- acceptance or non-payment, the holder may, within a reasonable time, such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

### **DISHONOUR OF CHEQUES (Sec. 138-147)**

- a) The cheque should have been issued for discharge of lawful liability
- b) Cheque should be returned with the reason **insufficient balance** but due to different judgments of Supreme Court reasons like Refer to drawer, A/c closed, Exceeds arrangement Payment stopped by drawer and effects not clear are treated equal to insufficient balance
- c) The payee or holder in due course should give notice to drawer within 30 days of return of cheque with the reason 'insufficient balance and demanding payment within 15 days of his receiving information of dishonor
- d) The drawer can make payment within 15 days of the receipt of notice and only if he fails to do so prosecution could take place. The complaint is to be made within one month of the cause of action arising i.e. expiry of notice period

e) **Summary Proceedings:** Fine up to Rs 5000 or imprisonment up to 1 year or both

f) **Regular Proceedings:** Punishment is fine up to double the amount of cheque or imprisonment up to 2 years or both

## Lien

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- Lien is defined as a right of a creditor to retain the possession of the **goods and securities** owned by the debtor until the debt has been paid.
  - It does not include the **right of sale of goods and securities**
  - Available on goods and securities only such as bill, cheques, promissory notes, bonds, debentures etc.
  - **Not available for deposits**
  - **Types of lien**
    - **Particular lien:** under **section 170 of Indian Contract Act:** creditor gets the right to retain possession only of goods or securities for which the dues have arisen and not for other dues. Means for particular Debt.
    - **General lien:** under section 171 of Indian Contract Act: the creditor to retain The Possession till all the amounts due from the debtor are paid or discharged. **Available only to bankers, factors, attorneys of High Court and policy brokers**
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# Banker's lien

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- Lien is a right of banker is to retain possession of goods and securities owned by the debtor until the debt due from the debtor is paid.
- Banker's lien is an **implied pledge**
- Limitation is not applicable
- Ownership is with the owner of the goods and securities

## **Applicability**

- **Bankers general lien gives the right to sell the debtor's property**
- The right under section 171 is not only given to the bankers but is also given to factors, High Court and policy brokers
- The goods and securities that the bank possess must be in the same capacity is of the debt due

## **Non applicability**

- In case of safe custody articles
  - Where documents or money deposited for specific purposes
  - Articles left in bank premises inadvertently
  - Immature debts
  - If the goods or securities are stolen
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