



UNIVERSITI SAINS ISLAM MALAYSIA

جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

Law of Banking and Security

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Week VI

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- Negotiable Instruments
 - Bills of Exchange
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Negotiable Instrument

- Monetary instruments facilitate trade and commerce
- A formal legal document which contains a legal obligation to pay money and which possesses the attributes of negotiability.
- Negotiability: a form of transfer of property (ownership) from one person to another in a document evidencing a contractual obligation to pay money.

Types of Negotiable Instruments

- BOE
- Cheques
- Promissory Notes
- Banker's draft, bank notes
- Treasury bills
- Share warrants
- Dividend warrants
- Debentures
- Traveller's cheques
- Banker's acceptance
- Negotiable certificate of deposit

Bills of Exchange

- BOE Act 1949:
- S3(1): is an unconditional order in writing addressed by one person to another signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person or to bearer.
- Cheque is by definition a BOE.

Term

- Drawer: A person who draws a bill (Customer)
- Drawee: A person on whom it is drawn (Bank)
- Payee: Person to whom the bill is drawn payable
- Acceptor: When the drawee accepts a bill (bank).

Characteristics of BOE

- Unconditional Order
- In writing
- Addressed by one person to another
- Signed by the person giving it
- To pay on demand or at a fixed or determinable future time
- A sum certain in money
- To or to the order of specified person or to bearer

Unconditional Order

- Must be unconditional.
- Palmer v Pratt
 - An order to pay at 30 days after the arrival of the ship was conditional.
- See also Cooperative Exportvereniging 'Vecofa' UA V Maha Syndicate [1970] 1 mlj 187

In writing

- S3 MIA 1967: Printing, photography and any other mode of representing words in visible form.
- May be drawn in any language
- See *Arab Bank Ltd v Ross* [1952] 2 QB 216

Addressed by one person to another

- Drawer (customer) to drawee (banker)
- Bank drafts drawn by a bank on itself are not BOE

Signature

- Signature is vital.
- Liabilities are depending on this requirement

To pay on demand or at a fixed determinable future time

- Mandate
- Ordinary cheques: payable on demand
- Some cheques: payable at a fixed or determinable future time

To or to the order of specified person or to bearer

- To specified person: Must be named and certain
- To bearer: simply paid to the bearer without requiring proof of identity.
- 'cash or order'
- Account payee only: a cheque can only be paid into the account of the person name on the cheque, the payee.

Cheques

- A document/instrument that orders a payment of money from a bank account.
- BOE 1949: A BOE drawn on a banker payable on demand.

Issuing Cheques

- Section 2- issue means the first delivery of a bill complete in form, to a person who takes it as a holder.
- Mere signing and fills in the blanks, not a valid cheque.
- Section 2 defines 'holder as the payee or indorsee of a bill who is in possession of it/bearer.
- Payee is the person to whom the cheque is drawn payable
- Indorsee is the person to whom the cheque is made payable by a special indorsement.
- Section 2 defines delivery- transfer of possession, actual/constructive from one person to another
- Section 21(2)- delivery may be **conditional or for a special purpose** only. It is not for the purpose of transferring the property in the cheque.

Dating a Cheque

- No legal requirement
- In practice, the drawee refuses to pay and return it with the answer “date required”.
- Antedated cheque: Bears a date before the date of issue.
- Postdated cheque: dated later than the date of issue.

Postdated Cheque

- It is a valid BOE and capable of being transferred.
- *Lien Chung Credit & Leasing Sdn Bhd v Chang Chin Choi* [1994] 3 MLJ 488
- Postdated cheque RM35K as a security for the loan.
 - Post dated cheque was not a cheque (not payable on demand).
 - It was not a security.

Negotiation of cheques

- If there is word 'only'- the cheques are incapable of negotiation
- Section 8(4)- a cheque payable simply to a specified person without the addition of the words 'or order' is negotiable in the usual way
- Section 81A : a cheque crossed 'account payee/AC payee shall not be transferable but shall only be valid between the parties.
- Section 31(1) i) Payable to bearer: negotiated by delivery alone ii) Payable to order: negotiated by the indorsement of the holder completed by the delivery

Crossing on Cheques

- Construed as a request to the drawee bank to exercise caution in the payment of cheques.
- General Crossing:- S76(1) a crossing 1. an addition to a cheque 2. made across its face and by means of two parallel transverse lines.
 - Payment can made to another banker
- Special Crossing- 1. an addition to a cheque 2. comprising the name of a banker 3. with or without words 'not negotiable'.
 - Payment can only be paid to the banker named in the crossing

A/C Payee Crossing

- A cheque crossed 'account payee' is non-transferable.
- Sole duty of a banker to pay an A/C payee cheque into the named payee's account.
- If the collecting banker fails to observe this duty, it is considered as negligent on the part of the bank.

Crossing with the words Not Negotiable




Indorsement

- Section 34(1) Blank indorsement
- Section 34(2) special indorsement
- Section 32(a) 82 of the Bills of Exchange Act- the signature of the holder or of his duly authorised agent is essential to the validity of indorsement
- Section 32(b) – partial indorsement, does not operate as negotiation of an instrument
- Section 32(d)- he may indorse the instrument as described- he may add, if he thinks fit, his proper signature
- See Arab Bank Ltd v Ross [1952] Court of Appeal: the omission of the word company made the indorsement irregular

What is Indorsement?

- **National Bank v Paterson** (1909) a South African case attempts to define indorsement:
 - Every signature written on the back of such instrument is an indorsement
 - Ordinary legal meaning is the signing of a name on the back of an instrument (intention to take liabilities of an indorser)
 - Last-named sense followed by delivery

Indorsement





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MEMO 1.631², 3.758, Pijush Ghosh Donald Knuth MP

Indorsement

- United Asian Bank Bhd v Tai Soon Heng Construction Sdn Bhd
- Tai, was a customer to UAB and had opened an account at UAB's branch in KL. UAB's account clerk who was not an authorized signatory to cheques, forged several cheques of Tai. All these cheques were honoured by UAB and Tai's account with it was debited in consequences. Tai brought an action against UAB after forgery was discovered.
- Issue: whether banker should be held liable?

- Anuar J: a customer need to establish on balance of probabilities
- Liability of a bank for payment on forged instruments of its customers is founded on the tort of conversion, tort of strict liability
- Duties of a customer a) to refrain from drawing a cheque which may facilitate forgery b) to inform the banker of any forgery of a cheque as soon as the customer becomes aware of it. Duty to inspect his periodical bank statements
- Appeal dismissed