

# **Department of Commerce (CA)**

## **ALLIED PAPER-II BANKING THEORY LAW AD PRACTICES.**

**SEMESTER:II  
B.COM(CA)**

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### **UNIT 4:**

**Cheques – Features – Crossing of Cheques – Kinds and Significance. Endorsement – Kinds ; Holder and Holder in Due Course ; Paying Banker – Precautions to be taken before honouring a cheque- Refusal of payment – Statutory protection- Payment in due courses, Collecting Banker- Duties- Statutory Protection.**

### **REFERENCE BOOK:**

- BANKING LAW AND PRACTICE- P. N. VARSHNEY
- A TEXT BOOK OF BANKING – RADHASWAMY AND VASUDEVAN
- BANKING THEORY LAW AND PRACTICES- GORDON AND NATARAJAN
- INDIAN BANKING – PARAMESHWARAN AND NATARAJAN
- BANKING THEORY LAW AND PRACTICES- SANTHANAM.

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## NEGOTIABLE INSTRUMENT ACT 1881

According to Sec 13 of NI Act, 'Negotiable Instrument means promissory note, bill of exchange or cheque payable either to order or to bearer'

### CHEQUE:

### DEFINITION:

Sec 6 of NI Act defines cheque as, 'A bill of exchange drawn on a specified banker and not express to be payable otherwise than on demand cheque is a nothing but a bill of exchange'

### FEATURES OF CHEQUE:

1) Instrument in writing:

- Oral order is not a cheque it is only in writing.
- A banker for their interest and for the customer safety allows the cheque only in ink.

2) An unconditional order:

The cheque can be encashed or credited to the account without any conditions for that particular account if there is any conditions then that instrument is not a cheque.

3) On a specified banker:

- A cheque is always drawn on a particular banker and that banker is called specified banker.
- The name and address of a particular bank is printed on the cheque and that bank is called specified bank.

4) Payee to be certain:

- For a valid cheque the payee must be mentioned clearly in the column provided on the cheque.
- The payee is the person whose account gets credited due to the cheque.

5) Amount should be certain:

The amount in figures and also in words should be clearly mention in the column provided on the cheque.

6) Payable on demand:

All the cheque is always payable on demand when the time factor, amount is sufficient the cheque can always be encashed.

7) To be signed by the drawer:

The cheque must be signed by the drawer it should be signed on the bottom right corner and it should match with the specimen signature.

## CROSSING OF CHEQUE:

### MEANING:

- A cheque without crossing is called open cheque.
- Open cheque is always risky.
- The alteration which is done after crossing of cheque is considered to be forgery, fraud and is liable and even can be penalized.

### TYPES OF CROSSING:

a. General crossing:

Sec 123 of NI Act, 'General crossing means where a cheque across its face and addition of words and company or any abbreviations thereof, between two parallel transverse lines with or without words not negotiable in addition to crossing and the cheque is said to be crossed generally'

Features of general crossing:

- i. Two lines are very important in crossing.
- ii. The lines should be parallel and it should be in a cross wise direction.
- iii. No mathematical signs like +, -, \* is allowed.
- iv. The general crossing gives direction to the paying banker.
- v. The direction is the paying banker should not pay the cheque at the counter but it should be paid only to the fellow banker.

b. Special crossing:

According to sec 124 of NI Act 1881 defines special crossing as, 'where a cheque bears across its face and addition of the name of the banker with or without the words not negotiable in addition to crossing and the cheque shall be deemed to be crossed specially and to be crossed to that banker'.

Features of special crossing:

- i. It is a direction to the paying banker that the cheque should be paid only to the banker that is mentioned in crossing.
- ii. If a specially crossed cheque is presented by another banker, the paying banker can return the cheque.
- iii. The special crossing cheque is more protected than general crossing.

c. Not negotiable crossing:

According to Sec 123 & 124 of NI Act, 'when the word not negotiable is mentioned between lines then it is called as not negotiable crossing'.

Features of not negotiable crossing:

- i. Not negotiable means not transferable.
- ii. No one can be a holder in due course in case of not negotiable crossing.
- iii. The transferee cannot obtain a better title than transferor.

iv. The main aim of this crossing is to give protection to the true owner.

d. Account payee crossing:

When the word a/c payee is mentioned in crossing it is called account payee crossing.

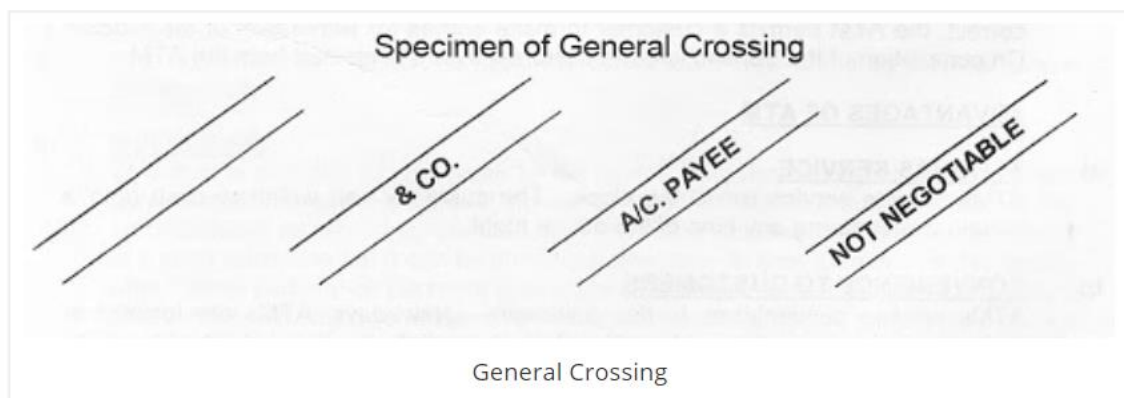
Features of account payee crossing:

- i. In this the collecting banker should not collect the cheque for any other person but only to the payee.
- ii. The collecting banker should make sure that the cheque is credited only to the payee.

e. Double crossing:

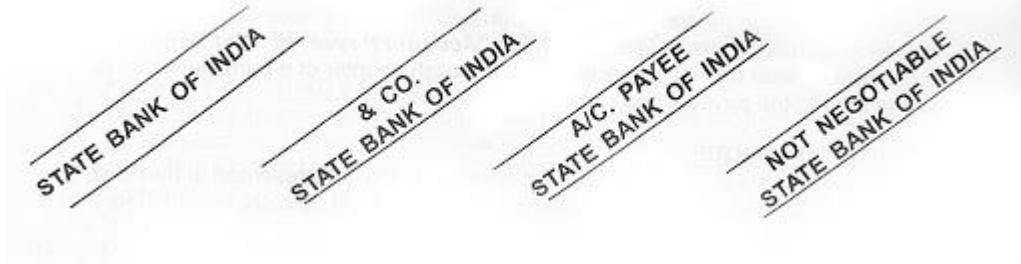
Sec 125 of NI Act, 'where a cheque is crossed specially the banker to whom it is crossed, may again cross it specially to another banker, it is agent for collection. This type of crossing is generally not in practice.

**FORMS OF GENERAL CROSSING:**



**FORMS OF SPECIAL CROSSING:**

Specimen of Special or Restrictive Crossing



### FORMS OF ACCOUNT PAYEE CROSSING:

A specimen of an account payee crossing form from State Bank of India. The form is light blue with white text. At the top left, it says "A/C Payee" in a yellow circle. The top right shows the date "01/02/2019" in a grid format, with "D D M M Y Y Y Y" below it. The text "VALID FOR THREE MONTHS FROM THE DATE OF ISSUE" is centered. The payee name "Ramesh kumar" is written in the "PAY" field, and "OR BEARER" is written to the right. The amount "Ten Thousand only" is written in the "RUPEES" field, and "₹ 10,000/-" is written in a box to the right. The account number "012345678901234" is written in the "A/C NO." field. At the bottom, there is a MICR line: "⑈ 23456 ⑈ 23456789 ⑈ 23456 ⑈ 2". The text "Payable at par at all branches of Bank Name in Country" is centered at the bottom. The text "012345678901234 Please sign above" is at the bottom right. The "paisabazaar.com" logo is at the bottom right.

### FORMS OF NOT NEGOTIABLE CROSSING:



### FORMS OF DOUBLE CROSSING:



## THIS FORM IS NOT IN PRACTICE

### Who can cross?

- ✓ Any holder of the cheque can cross.
- ✓ A banker can again cross to another banker (double crossing).

### Opening of crossing:

It means cancelling the crossed cheque. It can be converted into a open cheque by writing the word "Pay cash" on the face of the cheque with full signature.

### ENDORSEMENT:

#### MEANING:

The word 'endorsement' means 'upon the back'.

#### DEFINITION:

According to Sec 15 of NI Act 1881, "when the maker or holder of a negotiable instrument signs the same otherwise than as such maker, for the purpose of negotiation, on the back or face thereof, or on a slip of paper annexed thereto is said to endorse the same and is called the endorser".

#### ALLONGE:

If the space on the back of the cheque is completely covered, a piece of paper is safely attached to the cheque for endorsement, this paper is called allonge.

### Importance of endorsement:

- He has a good title.
- It is genuine always at the time of endorsement.
- All the previous endorsements were genuine.
- The endorser by endorsing promises the endorsee or any holder for any loss suffered due to dishonour.



- An endorsement means the right of further negotiation to the endorsee along with the right of ownership.

## KINDS OF ENDORSEMENT:

### 1. Blank endorsement:

An endorsement in blank is called general endorsement. It does not specify the endorsee and it becomes payable to the bearer.

Ex: A cheque payable to David.

### 2. Special endorsement:

If the endorser specifies a person in the instrument as endorsee it is called special endorsement.

Ex: Payable to Y-X

### 3. Restrictive endorsement:

- In this type of endorsement, the endorsee cannot further endorse the instrument.
- He adds the word 'only' after the endorsee's name.

Ex: Pay to Stephen only – David.

### 4. Conditional endorsement:

This is not a common type of endorsement. It is preceded by certain conditions which should be fulfilled by the endorsee for payment.

Ex: pay to Stephen on completion of house building – David.

### 5. Sans recourse endorsement: (without recourse endorsement)

- In this endorsement all the liability of the subsequent holder is fixed up and this is called without recourse endorsement.
- The original endorser is not relieved from the liability when the cheque is bounced.

Ex: Pay to ram without recourse to me – David.

### 6. Sans frais endorsement: (without expense)

The endorser does not want any expense to be incurred on his account but he accepts the liability for the amount of instrument.

Ex: Pay to rajkumar without expense to me – David.

7. Facultative endorsement:

In this the endorser waives some of the rights on the instrument and this is called facultative endorsement. When the cheque is dishonoured, the notice of dishonour need not be served to the endorser.

Ex: Pay to raja, notice of dishonour waived – David.

8. Partial endorsement:

In this only a part of the amount of the instrument is endorsed.

Ex:

A cheque for Rs.500 is endorsed by David as follows:

✚ Pay to chandran Rs.100 only – David (or)

✚ Pay to chandran Rs.100 only and pay to raja Rs.400 only.

9. Per pro endorsement:

In this, the authority gives prior information about the agent to the banker. If there is no prior information the banker cannot legally accept the endorsement.

Ex: Pay to raja an agent per pro – David.

PAYING BANKER:

MEANING:

A banker whom a cheque is drawn should pay the cheque when it is presented for payment and that banker is called paying banker. The paying banker should be very careful in his bank transactions.

Precautions before honouring the cheque:

1. Presentation of the cheque:

The paying banker should be very careful while presenting the cheque. It is divided into five types;

i. Type of cheque:

Before clearing the cheque the bank should check owner of the cheque, types of crossing (open/crossed), if it is crossed then the type of crossing.

ii. Branch:

The bank should see whether the cheque is drawn on the same branch or another branch.

iii. Account:

A customer may have many accounts in the same branch. The bank should see the account number very carefully in order to avoid mistakes.

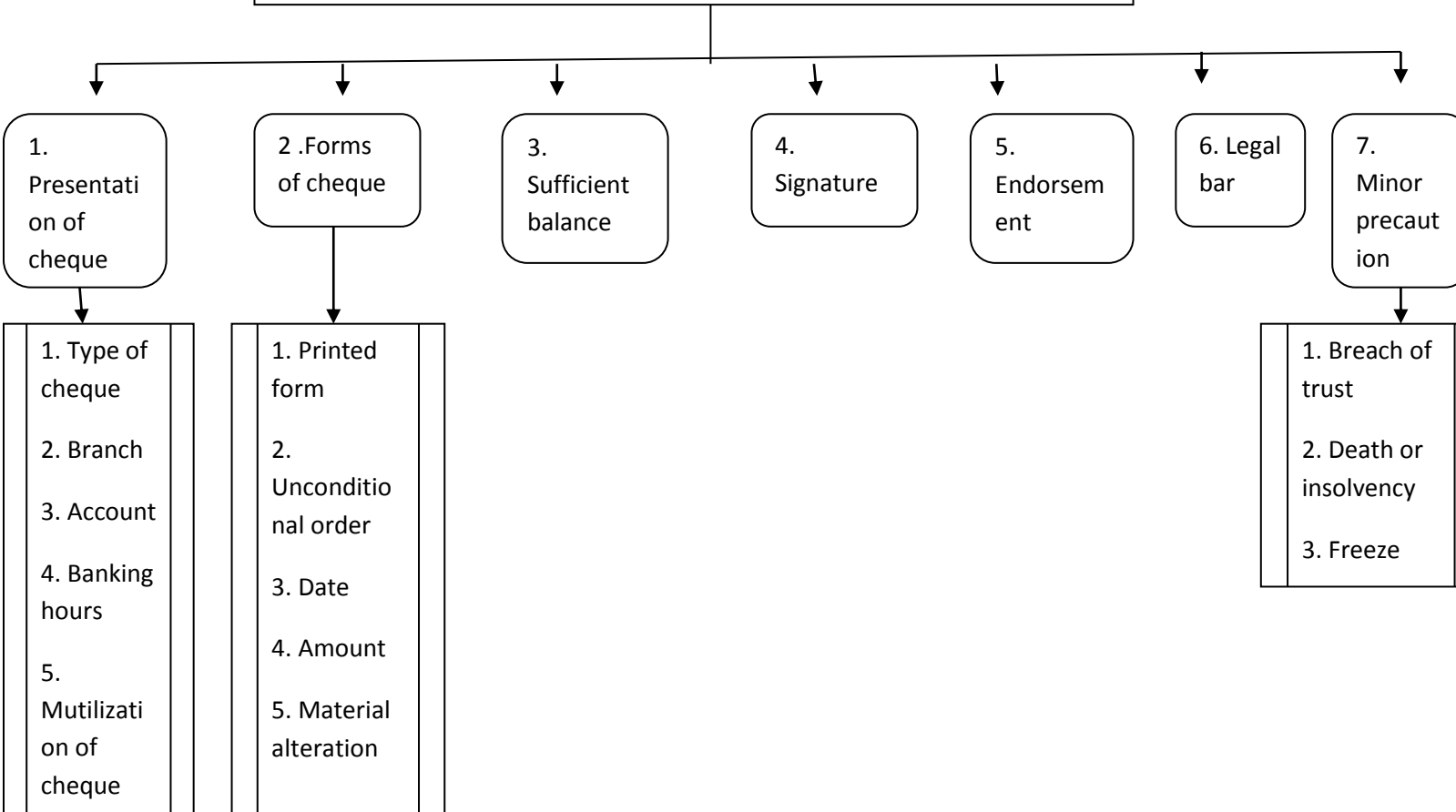
iv. Banking hours:

The banker should always note whether the cheque is presented during banking hours and banking day.

v. Mutilization cheque:

If the cheque is torn into pieces or cancelled or mutilated the banker should not honour and make payment.

**Precautions before honouring a cheque**



2. Forms of cheque:

a. Printed form:

The cheque given to the banker by the customer should be on the printed leaf supplied by the banker if not the bank can refuse and dishonour the cheque.

b. Unconditional order:

The cheque should not contain any condition. If it has any condition the paying bank has the right to dishonour the cheque.

c. Date:

Before honouring a cheque, the banker should check the date if it is the undated, post dated, anti dated (dead cheque).

d. Amount:

The next very important the banker should see is the amount mentioned in the cheque both words and figures should be same. If the banker should not see the difference and honour the smaller amount (or) honour the amount in words (or) he can dishonour the cheque.

e. Material alteration:

The paying banker should check the material alteration the banker should confirm with the drawer about the alteration. If paid in due course then the banker is not liable.

3. Sufficient balance:

The banker should check the balance whether it is sufficient, overdraft, etc.

4. Signature of the drawer:

The paying banker has to compare the drawer's signature with the specimen signature. If it is a forged signature the banker can stop the cheque.

5. Endorsement:

The banker should check if there is any endorsement on the cheque.

6. Legal bar:

If there is any legal problems like garnishee order that stops the banker to pay a cheque.

## 7. Minor precautions:

- Order not to pay
- Fraud
- Dead or insolvency of the customer

## Factors to dishonour the cheque:

- ✓ Mutilated
- ✓ Post dated cheque
- ✓ Stale cheque
- ✓ Amount and figures mismatch
- ✓ Forged signature
- ✓ No sufficient fund
- ✓ Cheque presented after banking hours
- ✓ Drawn on ordinary piece of paper (not in printed form)
- ✓ Irregular endorsement
- ✓ Crossed cheque presented at counter
- ✓ Death of the customer
- ✓ Insolvency of the customer
- ✓ Insanity of the customer
- ✓ Counter manding (instructions given by the customer to the bank requesting not to honour a particular cheque).

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