

Unit. 4

Endorsement

Meaning of Endorsement:

Endorsement of a negotiable instrument refers to the act of writing a person's name on the back of instrument for the purpose of negotiation.

Components of Endorsement 1881 Negotiable Act

The various components of an Endorsement include the signature of the maker / drawer of a negotiable endorsement or any holder thereof with the intention of signing the instruments for the purpose of negotiation.

The person who signs the instrument with the ~~proper~~ purpose of negotiation is called the 'endorser' and the person in whose favour instrument is transferred is called the endorsee'. The endorser

may sign either on the face or on the back of the negotiable instrument, the common usage being the endorsement made on the back of the negotiable instrument, the common usage being the endorsement. If the space on the back is insufficient for this purpose, a piece of paper, known as 'along' may be attached thereto for the purpose of recording the endorsement.

Types of Endorsement:

- General or blank endorsement
- Special or in. full endorsement
- converted full endorsement
- partial endorsement
- Restrictive endorsement
- conditional endorsement
- a) Sans recourse endorsement.
- b) Facultative endorsement
- c) Sans frais endorsement
- d) contingency conditional endorsement

General or Blank Endorsement

It refers to signing on the back of the negotiable instrument only the name of the person making it. The maker makes no mention of the endorsee's name. It make easy that the transfer of the property of the negotiable instrument by mere delivery.

In - full or Special Endorsement

It refers to writing on the back of the negotiable instrument direction to pay the amount to or to the order of a specified person by the person making it. A blank endorsement can become special endorsement by the holder of negotiable instrument. In a blank signing his own name by writing above the endorser's signature a direction to pay to any other person as endorsee.

Converted full Endorsement

According to Sec 49, an endorsement in blank may be converted into an endorsement in full with the holder of a negotiable instrument endorsing in blank without signing his own name and by writing above the endorser's signature a direction to pay to any other person.

Partial Endorsement

It refers to using on the back of the negotiable instrument direction to pay only a partial amount to or to the order of a specified person by the person making it.

Restrictive Endorsement

It is a type of endorsement that prohibits the endorsee from further negotiating the instrument or restricts the endorsee to deal with the instrument as directed by the endorser.

Conditional Endorsement

Under sec 58, a conditional endorsement refers to the negotiation by the endorser by expressing certain words that make his liability, or the right of the endorsee to receive the amount due there on, dependent on the happening of a specified event, although such event may never happen.

Sans recourse conditional endorsement

Where in an endorsement, the endorser expressly excludes his own liability in respect of dishonour of the instrument towards the endorsee or any subsequent holder it is a case of sans recourse conditional endorsement.

Facultative conditional Endorsement

Where in an endorsement, the endorser expressly increases his own liability or gives up some of his rights under the negotiable instrument the endorsement is termed as facultative conditional endorsement.

Sans frais conditional endorsement
Where in an endorsement is done by the endorser in such a way that his liability depends upon happening of a specified event, which may never happen, it is a case of contingency conditional endorsement.

Cheques payable to fictitious or impersonal persons.

No endorsement is possible or required in respect of cheques made out in the names of impersonal payees such as 'lent on order', 'money on order'.

In fact cheques that are made payable to these fictitious impersonal or imaginary persons are considered bad in law and are not valid too as they do not satisfy essential requisites of a cheque. Banks have a responsibility to insist on their customers to draw cheques in the name of either self or order. Such cheques are usually treated as bearer instrument. Where the banker makes payment in respect of such cheques, a duly stamped receipt must be obtained from the receiver of such payment.

Endorsement by legal Representative

under Sec 57, it is not possible for the legal representative of a deceased person to negotiate only by delivery a negotiable instrument which is payable to order and endorsed by the deceased but not delivered. Re-endorsement is required in such a case before delivering the instruments.

Negotiation Bank:

where in an endorsement, the instrument comes back to the same person who had endorsed it previously. it is a case of negotiation bank. In the case of negotiation bank, the instrument intermediate endorsers are not liable to him. However all intermediate endorsers are liable to an endorser where he excludes his liability and afterwards becomes the holder of the instrument.

Effects of Endorsement

1) In the case of Regular Endorsement

The Effect of an unconditional endorsement is that it ensures unconditional delivery of the property in the instrument to the endorsee with the right of future negotiation.

21) In the case of lost instruments

As regard cheques

Notice of loss

The holder of a lost instrument has to give notice of the loss to all parties liable on the instrument and also a public notice by an advertisement.

No right to sue:

The finder of a lost instrument is not entitled to sue thereon on his own name.

Recovery of instrument

The true owner can recover the instrument from the finder. If he already received payment and cannot return the instrument he must compensate the owner.

Valid Discharge:

An acceptor or maker or drawee that makes payment on due course of a lost instrument payable to the bearer, to a ~~specific~~ finder, gets a valid discharge for it.

Legal title:

If the instrument is drawn payable to bearer and is negotiated by the finder to a bonafide transferee for value, the transferee will acquire a better title.

No legal title

If the instrument which is payable to order is negotiated by the finder to a bonafide transferee for value by making a forged endorsement, the transferee does not acquire a legal title.

No Discharge

where payment in lieu of a negotiable instrument bearing a forged endorsement is made by the acceptor of a bill of exchange or promissory note, he will not be discharged from his liability even though made in good faith.

Discharge

where payment in lieu of a negotiable instrument bearing a forged endorsement is made by the bank it is discharged from its liability if it has made payment in due course of a cheque the banks will not be protected if the drawer's signature have been forged.

As regard bill of Exchange

Application to drawee

The holder of a ~~lost~~ lost bill has to make an application to the drawee for payment on the date of maturity.

Application of drawer

The holder of a lost bill has to make an application to the drawer if a bill of exchange has been lost before it is overdue.

3) In the case of stolen instrument

The position in case of a stolen instrument is that the thief does not get any title to the instrument. If the instrument is payable to the bearer and is negotiated to a holder in due course, he will get a good title to it not only against the thief but also against any party prior to him.

4) In the case of Instrument obtained by fraud

The person who gets the possession of the instrument by means of fraud or coercion does not get a valid title to the instrument. Further he is also liable to pay damages.

5) In the case of instrument obtained for unlawful consideration

A negotiable instrument that is endorsed to serve an unlawful consideration is not valid. It does not create any relationship between the parties to the negotiable instrument.

6) In the case of forged instrument
A negotiable instrument is considered forged where the title to the instrument is obtained fraudulently by writing the name of an existing person or by signing the name of a fictitious person with the intention that it may pass as that of a real person or by signing one's own name with the intention that the signature may pass as the signature of some other person of the same name.

7) In the case of forged dishonoured and overdue instrument

If the holder acquires a negotiable instrument after its dishonour with notice thereof, or after maturity, he will not be considered a holder in due course and his title will not be better than that of his transferor.

8) In the case of instrument drawn without consideration

where a negotiable instrument is made, drawn, accepted, endorsed or transferred for a lawful consideration, it is possible for the holder and every subsequent holder to recover the amount due on such instrument from the transferor or any prior party.

Rules Regarding Endorsement

1) Holder's Signature

A regular endorsement requires the signature of the holder of the negotiable instrument himself or his duly authorized agent on its face or back for the purpose of negotiation.

2) Payee's Signature:

The signature of the payee must be in the same name or exact spellings as appearing on the face of negotiable instrument.

3) Mode of Endorsement

Endorsement shall not be in pencil or by a rubber stamp.

4) No complimentary prefixes or suffixes

Endorsement need not contain the complimentary prefixes or suffixes.

5) Content

Endorsement must contain an order to pay.

6) Married woman:

In the case of a married woman, the name of her husband must also be mentioned on the endorsement.

7) Illiterate man

To make valid endorsement illiterate man should put his left thumb impression in the presence of the 'witness' who should sign the instrument as witness and append his address thereto.

8) Joint stock company

In case of Joint stock Companies endorsement should be made by person who is duly authorised to sign.

9) Stranger

A stranger a person who is not connected with the instrument cannot make endorsement.

10) Promise to endorse

An express promise in writing to endorse a bill and assignment of a note by a separate writing do not constitute an endorsement.

11) Delivery

Endorsement must be completed by delivery of the instruments.

12) Pre pro

A person signing a negotiable instrument only as an agent of another should make this clear by adding the

words 'for and on behalf of or per pro).

Paying Banker - Banker's Duty

The banker who makes payment of a negotiable instrument is called a 'paying banker'.

Banker's Duty :

Banker's Duty to make due payment of a cheque is contained in Section 31 of the negotiable instrument Act 1881, whereby it is stated that a banker has to pay the cheques as per the instructions of the drawer.

When the customer has sufficient balance of cash in his account, it is the responsibility of the banker to honor the cheques and make the payment.

The banker has to compensate the customer on respect of any damage or loss caused in case the banker commits default.

The banker exercises caution while honoring as well as dishonoring the customer's cheques.

A fundamental duty of a banker is to honor the cheque issued by his customer and make payment of the same according to the instructions given by the customer, subject to certain conditions.

Any negligence and carelessness in honouring a cheque is fraught with dangerous consequences.

It is essential that the banker makes due payment of the cheques as long as sufficient funds are available to his credit. If he fails he will be liable to compensate the customer in respect of any loss or damage caused.

Dishonouring customer's cheques:

1) Insufficiency of funds

Banker can refuse payment on a cheque when the balance to the credit of the customer is insufficient to meet the cheque.

2) Improper cheques

A banker can refuse payment on a cheque which is not applicable for payment such as drawing personal cheques to be paid out of trust accounts.

3) Death of the principal Drawer

A banker has to refuse payment by stopping payment of all cheques drawn against the account of the principal drawer customer upon receiving the notice or information of death.

An exception to this ~~rule~~ is that the banker has to honor and make payment of a cheque signed by the agent of the drawer in the event of the death of the agent.

4) Insolvency of the principal drawer

A banker has to refuse payment by stopping payment of all cheques drawn against the account of the principal drawer customer on whom insolvency petition has been filed and must close the account and intimate the balance of the current on the official Receiver on passing of order of adjudication.

5) Liquidation of the Company

In the event of liquidation of the company no cheques signed by the directors etc. should be paid by the bank from the company's account as the powers of the directors and managerial personnel cease on the commencement of winding up and they rest in the liquidator.

Other circumstances

a) when customer informs the bank about the lost cheques.

b) when the customer informs the bank about the defect in the title of the person presenting a cheque.

c) when the bank receives notice of an assignment of credit balance by a customer
d) when the banks come to know about improper use of application of funds in breach of trust.

e) when the customer closes the account before the cheque is presented by payment.

f) when the cheque is post-dated and is presented for payment before its obtainable date.

Discharge of paying banks

According to Section 18, a paying banker is discharged from liability by making payment of the amount of a bearer cheque) in due course to the holder thereof. It is not the duty of the paying banker to enquire into the title of its holder. A banker is also discharged from his liability even in respect of an 'order cheque' provided he makes payment in due course to the payee or to the apparent endorsee thereof.

Payment in crossed cheques

While making payment on a crossed cheque, it is important that the banker follows the instructions of the drawer depending on the type of crossing. These instructions should have already been

communicated before the issue of the cheque or are communicated to the bank after the issue of the cheque, but before its payment.

collecting Banker

A banker who undertakes the task of collecting cheques and other instrument of credit from the drawee bank is called a collecting banker. The collecting banker presents the cheques for encashment to the drawee banker and on its realization credit the accounts of the customer with the amount so realized. In addition to cheques the collecting banker also collects bill of exchange as requested by the customer.

Statutory Protection (Section 85)

Section 85 of the negotiable instrument act, 1881, provides statutory protection to paying banker when they make payment on cheques. Specifically, it protects the banker when paying a cheque payable to order if the payee or someone on their behalf endorses it or when paying in cheques originally payable to bearer, even if it is endorsed as long as the payment is made in due course.

cheques payable to order

If a cheque is payable to a specific individual (the payee) or their order and is endorsed, the banker is protected by saying it is due course (meaning it is paid according to the terms of the cheque and in good faith).

cheques originally payable to Bearer

If a cheque is originally made payable to the bearer, the banker is protected by paying it to whomever has possession of it, even if there is an endorsement on the ~~cheque~~ restricts further negotiation as long as the payment is in due course.

Payment of cheques is an important and sacred duty of a banker. It has to be exercised with care and caution. Otherwise the banker may incur the loss of payment having been made to a wrong person, consequent to which it will not be possible for the banker to debit the customer account.

Payment is to be made to a right person as per the instructions of a drawer. If the bank makes payment of a cheque strictly instrument but, he is given the following protection under the said Act.

In case of order cheques:

In case of order cheques, Section 85(1) provides statutory protection to the paying banker. The protection is available if he makes payment of an order cheque of the payer.

Regular Endorsement

In order that protection under Sec 85(1) is available to the banker it is important that the endorsement is regular. Regular endorsement refers to the transfer of a cheque under the signature bearing the same name and in the same spelling as that of the payee or the endorsee.

Payment in due course

To avail statutory protection the banker's payment should constitute a 'payment in due course'. Payment in due course means payment made in accordance with the apparent tenor of the instrument, in good faith and without negligence to any person in possession thereof under the circumstances.

The above statutory protection is granted to the banker in case of forged signature of the endorser and not that of the drawer.

2) In the case of Bearer cheques

Sec 85(2) of the Act provides protection to the paying banker in respect of bearer cheques. According to the provisions, the drawer is discharged by payment on due course to the bearer of the cheques.

3) In the case of crossed cheques

In case of crossed cheques the paying banker is given protection under Sec 128 of the Act provided he makes payment in accordance with the instruction of the drawer conveyed through the crossing.

Refusal of cheques payment

On countermanding of payment

On death of drawer

On the insolvency of the drawer

Insanity of the customer

Notice of assignment

Antisheer order

Breach of trust

On countermanding of payment

The drawer of a cheque has the authority to cancel or withdraw unconditional order carried on the cheque. The right of the drawer to stop payment of a cheque is known as countermanding right.

2) On the death of drawer

The banker must stop payment of the cheque signed by the drawer who has expired. The banker must do so immediately on hearing the news of death.

3) On the insolvency of the drawer

If a person commits an act of insolvency his whole property is vested with the court or the official Receiver appointed by the court.

The banker has the following duty regarding cheques issued by insolvent.

Stop payment
close accounts

4) Insanity of the customer

Insanity of a person renders him incapable of entering into a valid contract. The bank must stop payment of all the cheques issued by the insolvents.

5) Notice of Assignment:

See 130 of the Transfer of Property Act 1882 it is possible for a person to assign or transfer the amount standing to his credit to another person.

6) Garnishee Order

Garnishee Order refers to the order issued by the court of law that retains a person from paying the money from his account.

1) Breach of Trust:

The banker is also required to stop payment of a cheque issued by a person who operates the accounts of a trust immediately on the knowledge of the breach of trust.

Statutory Protection (Section 31)

Section 131 provides protection to a collecting banker who receives payment of a crossed cheque or draft on behalf of his customer. Under this provision a collecting banker will not be liable to compensate the true owner of the cheques for receiving payment if the title to the cheque is defective.

Conditions

crossed cheques

crossing can be general crossing or special crossing. To avail statutory protection the cheques must be crossed one.

Payment to customer

To be able to avail statutory protection, the collecting banker should have received payment on behalf of a

customer from the drawer's bank.
collection as an agent

In order to avail the protection under Section 131, the collecting banker must act as an agent of the customer and not as holder for value.

Payment in due course

To be able to avail the protection it is important to ensure that the collecting banker receives payment on behalf of the drawer's banker in due course.

Collecting Banker's Duty

Duty to present the cheques

Duty of Due care and Diligence

Duty to serve notice of Dishonour.

RBI Instructions

(1) Immediate credit for outstanding cheques

To give immediate credit of outstanding cheques up to 5,000.

Not to charge any interest for the period between the date of credit of the outstanding cheques and its return.

Not allow any interest on the amount of cheques credited to the customer's Savings bank account.

to charge interest at the normal rate in the event of dishonour of cheques.

2) Interest for Delay

The collecting banker is required to pay interest at a certain rate as instructed by the RBI for any delay in the collecting of outstanding cheques.

Paying Banker Vs collecting Banker

A paying banker undertakes to make payment of the cheques issued by the customer according to his instructions whereas a collecting banker undertakes to collect the cheques and other credit instrument of the customer from the drawer's bank.

Paying banker is given protection under Section 85 of the negotiable instrument Act 1881, whereas a collecting banker is given protection under section 131 of the negotiable instrument Act 1881.

Customer Grievances

A set of complaints, objections and criticism raised by a customer of a bank in respect of various banking and financial services rendered by it, is known as customer grievances.

Grievances Redressal

The mechanism of redressing, rectifying, restoring and remedying the complaints of a customer of a bank in respect of various banking and financial services rendered by it, is known as 'grievances redressal'.

The objective is to satisfy and enhance customer satisfaction.

Banking ombudsman scheme

The grievances and ~~redressal~~ redressal of customer of a bank are governed by the 'Banking ombudsman scheme'. The scheme was introduced by the RBI.

Object of the scheme

The object of the scheme is to enable resolution of complaints relating to provision of banking services and to facilitate the satisfaction or settlement of such complaints.

Suspension of the scheme

RBI can suspend the operation of all or any of the provisions of this scheme.

Appointment

Banking ombudsman is appointed by the RBI to carry out the functions entrusted to him by or under the scheme.

Territorial Jurisdiction

The RBI Bank specifies the territorial limits.

Location of office

The office of the ombudsman is located at those places specified by RBI.

Qualification

As should be a person of high standing in legal, banking, financial services, public administration or management sector.

Tenure

The banking ombudsman is appointed for a period not exceeding three years and be eligible for extension for a further period not exceeding two year subject to an overall age of limit of 65 years.

Remuneration

The remuneration and other perquisites payable / extended to the Banking ombudsman is determined by the RBI from time to time.

Staffing of the office.

The Banking ombudsman is provided with the Secretariate drawn from bank, RBI etc who will be placed on duty with the office of Banking ombudsman.