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Bills of Exchange Act 1908

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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Protest where the services of a notary cannot be obtained

An Act to consolidate certain enactments of the Parliament of New Zealand relating to bills of exchange

Title: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

1 Short Title

- (1) The Short Title of this Act is the Bills of Exchange Act 1908.
Enactments consolidated
- (2) This Act is a consolidation of the enactments mentioned in Schedule 1.
- (3) This Act is divided into Parts, as follows:
 - Part 1—Bills of exchange (sections 3 to 72)
 - Part 2—Cheques on a bank (sections 73 to 83)
 - Part 3—Promissory notes (sections 84 to 90)

Part 4—Miscellaneous (sections 91 to 98).

2 Interpretation

In this Act, if not inconsistent with the context,—

acceptance means an acceptance completed by delivery or notice

action includes counterclaim and set-off

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

bankrupt includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy

bearer means the person in possession of a bill or note payable to bearer

bill means bill of exchange, and **note** means promissory note

business day means any day that is not a non-business day

delivery means transfer of possession, actual or constructive, from one person to another

holder means the payee or indorsee of a bill or note 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 or note, complete in form, to a person who takes it as a holder

non-business day means any Saturday or Sunday or any bank holiday (not being a part holiday) within the meaning of the Banking Act 1982; and includes, in respect of any bank premises, every day on which those premises are not open for business

value means valuable consideration.

Compare: 1883 No 8 s 2

Section 2 **business day**: inserted, on 1 January 1980, by section 2 of the Bills of Exchange Amendment Act 1979 (1979 No 3).

Section 2 **non-business day**: inserted, on 1 January 1980, by section 2 of the Bills of Exchange Amendment Act 1979 (1979 No 3).

Section 2 **non-business day**: amended, on 16 December 1982, pursuant to section 15 of the Banking Act 1982 (1982 No 144).

Part 1

Bills of exchange

Forms and interpretation

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 or to the order of a specified person, or to bearer.

- (2) An instrument that does not comply with these conditions, or that orders any act to be done in addition to the payment of money, is not a bill of exchange.
- (3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself or herself or a particular account to be debited with the amount, or (b) a statement of the transaction giving rise to the bill, is unconditional.
- (4) A bill is not invalid by reason that—
 - (a) it is not dated;
 - (b) it does not specify the value given, or that any value has been given, therefor;
 - (c) it does not specify the place where it is drawn or the place where it is payable.

Compare: 1883 No 8 s 3

4 **Inland and foreign bills**

- (1) An **inland bill** is a bill that is, or on the face of it purports to be,—
 - (a) both drawn and payable in New Zealand; or
 - (b) drawn in New Zealand on a person who resides or has a place of business in New Zealand.
- (1A) Any other bill is a **foreign bill**.
- (2) Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.

Compare: 1883 No 8 s 4; 1884 No 28 s 2

Section 4(1): replaced, on 19 December 2002, by section 3 of the Bills of Exchange Amendment Act 2002 (2002 No 58).

Section 4(1A): inserted, on 19 December 2002, by section 3 of the Bills of Exchange Amendment Act 2002 (2002 No 58).

5 **How bills may be drawn**

- (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 drawer and 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 or her option, either as a bill of exchange or as a promissory note.

Compare: 1883 No 8 s 5

6 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 2 or more drawees, whether they are partners or not; but an order addressed to 2 drawees in the alternative, or to 2 or more drawees in succession, is not a bill of exchange.

Compare: 1883 No 8 s 6

7 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—
 - (a) to 2 or more payees jointly; or
 - (b) in the alternative to one of 2, or 1 or some of several payees; or
 - (c) to the holder of an office for the time being.

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

Compare: 1883 No 8 s 7

8 What bills are negotiable

- (1) Where a bill contains words prohibiting transfer, or indicating an intention that it is not 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 if it is expressed to be so payable, or if the only or the last indorsement thereon is an indorsement in blank.
- (4) A bill is payable to order if it is expressed to be so payable, or if it is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it is not 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 her or his or her order, it is nevertheless payable to him or her or his or her order at his or her option.

Compare: 1883 No 8 s 8

9 Sum payable

- (1) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—
 - (a) with interest:
 - (b) by stated instalments:

- (c) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due:
 - (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 2, the sum denoted by the words is the amount payable.
 - (3) Where a bill is expressed to be payable with interest, unless the instrument provides otherwise, interest runs from the date of the bill, and, if the bill is undated, from the issue thereof.

Compare: 1883 No 8 s 9

10 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) Where 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 a bill payable on demand.

Compare: 1883 No 8 s 10

11 Bill payable at a 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 a fixed period after date or sight:
 - (b) on or at a fixed period after the occurrence of a specified event that 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.

Compare: 1883 No 8 s 11

12 Omission of date in bill payable after date

Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at 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 (a) where the holder in good faith and by mistake inserts a wrong date, and (b) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, it shall not be avoided

by the insertion of a wrong date, but shall operate and be payable as if the date so inserted had been the true date.

Compare: 1883 No 8 s 12

13 Antedating and post-dating

- (1) Where a bill or an acceptance 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, as the case may be.
- (2) A bill is not invalid by reason only that it is antedated or post-dated, or that it bears date on a Sunday.

Compare: 1883 No 8 s 13

14 Computation of time of payment

Where a bill is not payable on demand, the day on which it falls due is determined as follows:

- (a) the bill is due and payable in all cases on the last day of the time of payment as fixed by the bill or, if that day is a non-business day, on the next following business day:
- (b) where a bill is payable at 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 time is to begin to run and by including the day of payment:
- (c) where a bill is payable at a fixed period after sight, the time 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 or for non-delivery:
- (d) the term **month** in a bill means calendar month.

Compare: 1883 No 8 s 14

Section 14(a): replaced, on 1 January 1980, by section 3(1) of the Bills of Exchange Amendment Act 1979 (1979 No 3).

15 Referee in case of need

The drawer of a bill and any indorser 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. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he or she thinks fit.

Compare: 1883 No 8 s 15

16 Optional stipulations by drawer or indorser

The drawer of a bill, and any indorser, may insert therein an express stipulation—

- (a) negating or limiting his or her own liability to the holder:

(b) waiving as regards himself or herself some or all of the holder's duties.

Compare: 1883 No 8 s 16

17 Definition and requisites of acceptance

- (1) The acceptance of a bill is the signification by the drawee of his or her assent to the order of the drawer.
- (2) An acceptance is invalid unless it complies with the following conditions, namely:
 - (a) it must be written on the bill and be signed by the drawee; the mere signature of the drawee without additional words is sufficient:
 - (b) it must not state that the drawee will perform his or her promise by any other means than the payment of money.

Compare: 1883 No 8 s 17

18 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 been dishonoured by a previous refusal to accept, or by non-payment.
- (2) Where a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as on the date of its first presentation to the drawee for acceptance.

Compare: 1883 No 8 s 18

19 General and qualified acceptances

- (1) An acceptance is either (a) general, or (b) qualified.
- (2) A general acceptance assents without qualification to the order of the drawer: a qualified acceptance in express terms varies the effect of the bill as drawn.
- (3) In particular, an acceptance is qualified which is—
 - (a) conditional—that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated:
 - (b) partial—that is to say, an acceptance to pay part only of the amount for which the bill is drawn:
 - (c) local—that is to say, an acceptance to pay only at a particular specified place. 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:
 - (d) qualified as to time:

(e) the acceptance of some 1 or more of the drawees, but not of all.

Compare: 1883 No 8 s 19

20 Inchoate instruments

(1) Where a simple signature on a blank stamped paper is delivered by the signer 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 the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and in like manner, where a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he or she thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact:

provided that if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his or her hands, and he or she may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Compare: 1883 No 8 s 20

21 Delivery

(1) Every contract on a bill, whether it is the drawer's, the acceptor's, or an indorser's, is incomplete and revocable until delivery of the instrument in order to give effect thereto:

provided that where 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 or she has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than the holder in due course, the delivery—

(a) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, 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 property in the bill.

(3) If the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him or her so as to make them liable to him or her is conclusively presumed.

(4) Where 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 or her is presumed until the contrary is proved.

Compare: 1883 No 8 s 21

*Capacity and authority of parties***22 Capacity of parties**

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

provided that nothing in this section shall enable a corporation to make itself liable as a drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

- (2) Where a bill is drawn or indorsed by a minor or corporation, having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill and to enforce it against any other party thereto.

Compare: 1883 No 8 s 22

23 Signature essential to liability

No person is liable as drawer, indorser, or acceptor of a bill unless he or she has signed it as such:

provided that—

- (a) where a person signs a bill in a trade or assumed name, he or she is liable thereon as if he or she had signed it in his or her own name:
- (b) 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 in that firm.

Compare: 1883 No 8 s 23

24 Forged or unauthorised signature

- (1) Subject to the provisions of this Act, where a signature on a bill is forged, or is placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised 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.
- (2) Nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

Compare: 1883 No 8 s 24

25 Signature by procuration

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

Compare: 1883 No 8 s 25

26 Person signing as agent or representative

- (1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his or her signature indicating that he or she signs for or on behalf of a principal, or in a representative character, he or she is not personally liable thereon; but the mere addition to his or her signature of words describing him or her as an agent, or as filling a representative character, does not exempt him or her from personal liability.
- (2) In determining whether a signature on a bill is that of the principal, or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

Compare: 1883 No 8 s 26

The consideration for a bill

27 Value, and holder for value

- (1) Valuable consideration for a bill may be constituted by—
 - (a) any consideration sufficient to support a simple contract:
 - (b) an antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at 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 parties prior to that time.
- (3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he or she is deemed to be a holder for value to the amount of the sum for which he or she has a lien.

Compare: 1883 No 8 s 27

28 Accommodation 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, and for the purpose of lending his or her name to some other person.
- (2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he or she knew such party to be an accommodation party or not.

Compare: 1883 No 8 s 28

29 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 conditions, namely:
 - (a) that he or she became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

- (b) that he or she took the bill in good faith and for value, and that at the time the bill was negotiated to him or her he or she 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 when he or she obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he or she negotiates it in breach of faith, or under such circumstances as amount to a fraud.
- (3) A holder (whether for value or not) who derives his or her title to a bill through a holder in due course, and who is not himself or herself 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.

Compare: 1883 No 8 s 29

30 Presumption of 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—
- (a) that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality; or
- (b) that the bill was drawn as part of, or pursuant to, a credit contract and that 1 or more of the provisions of the Credit Contracts and Consumer Finance Act 2003 have not been complied with, or that section 120(a), (b), or (c) of that Act applies, in respect of the contract—
- the burden of proof is shifted, unless and until the holder proves that,—
- (c) in any case to which paragraph (a) applies, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill; and
- (d) in any case to which paragraph (b) applies, value has been given for the bill in good faith and without knowledge of the non-compliance or any oppressiveness.

Compare: 1883 No 8 s 30

Section 30(2): replaced, on 1 June 1982, by section 50 of the Credit Contracts Act 1981 (1981 No 27).

Section 30(2)(b): amended, on 1 April 2005, by section 139 of the Credit Contracts and Consumer Finance Act 2003 (2003 No 52).

Negotiation of bills

31 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 or her 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 indorsement of the transferor.
- (5) Where any person is under obligation to indorse a bill in a representative capacity, he or she may indorse the bill in such terms as to negative personal liability.

Compare: 1883 No 8 s 31

32 Requisition of a valid indorsement

An indorsement in order to operate as a negotiation must comply with the following conditions, namely:

- (a) it must be written on the bill itself and be signed by the indorser; the simple signature of the indorser on the bill, without additional words, is sufficient:

provided that an indorsement written on an allonge, or on a “copy” of a bill issued or negotiated in a country where “copies” are recognised, shall be deemed to be written on the bill itself:
- (b) it must be an indorsement of the entire bill. A partial indorsement—that is to say, an indorsement that purports to transfer to the indorsee a part only of the amount payable, or to transfer the bill to 2 or more indorsees severally—does not operate as a negotiation of the bill:
- (c) where a bill is payable to the order of 2 or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others:
- (d) where in a bill payable to order the payee or indorsee is wrongly designated, or his or her name is misspelt, he or she may indorse the bill as therein described, adding, if he or she thinks fit, his or her proper signature:
- (e) where there are 2 or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved:
- (f) an indorsement may be either special or in blank; it may also contain terms making it restrictive.

Compare: 1883 No 8 s 32

33 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.

Compare: 1883 No 8 s 33

34 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) Where 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 or to the order of himself or herself or some other person.

Compare: 1883 No 8 s 34

35 Restrictive indorsement

- (1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which 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 or her indorser could have sued, but gives him or her no power to transfer his or her rights as indorsee unless it expressly authorises him or her to do so.
- (3) Where a restrictive indorsement authorises 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.

Compare: 1883 No 8 s 35

36 Negotiation of overdue or dishonoured bill

- (1) Where a bill is negotiable in its origin, it continues to be negotiable until it has been either restrictively indorsed, or discharged by payment or otherwise.
- (2) Where an overdue bill is negotiated, it can be negotiated only 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 or she 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 indorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill became overdue.
- (5) Where a bill that 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.

Compare: 1883 No 8 s 36

37 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 party may, subject to the provisions of this Act, reissue and further negotiate the bill; but he or she is not entitled to enforce payment of the bill against any intervening party to whom he or she was previously liable.

Compare: 1883 No 8 s 37

38 Rights of the holder

The rights and powers of the holder of a bill are as follow:

- (a) he or she may sue on the bill in his or her own name:
- (b) where he or she is a holder in due course, he or she holds the bill free from any defect of 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 or her title is defective,—
 - (i) if he or she negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and
 - (ii) if he or she obtains payment of the bill, the person who pays him or her in due course gets a valid discharge for the bill.

Compare: 1883 No 8 s 38

General duties of the holder

39 When presentment for acceptance is necessary

- (1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.
- (2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of busi-

ness 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 business or residence of the drawee has not 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.

Compare: 1883 No 8 s 39

40 Time for presenting bill payable after sight

- (1) Subject to the provisions of this Act, where a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.
- (2) If he or she does not do so, the drawer and all indorsers prior to that holder are discharged to the extent that they are prejudiced by the omission.
- (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.

Compare: 1883 No 8 s 40

Section 40(2): replaced, on 1 January 1980, by section 4(1) of the Bills of Exchange Amendment Act 1979 (1979 No 3).

41 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:
 - (a) the presentment must be made by or on behalf of the holder to the drawee, or to some person authorised to accept or to refuse acceptance on his or her behalf, at a reasonable hour on a business day and before the bill is overdue:
 - (b) where a bill is addressed to 2 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 or her only:
 - (c) where the drawee is dead, presentment may be made to his or her executor or administrator:
 - (d) where the drawee is bankrupt, presentment may be made to him or her or to his or her assignee:
 - (da) where the drawee is a body corporate that is being wound up, presentment may be made to the body corporate itself or to the liquidator:

- (e) where authorised by agreement or usage, a presentment through the post office is sufficient.
- (2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance,—
 - (f) where the drawee is dead or bankrupt, or is a fictitious person, or a person not having capacity to contract by bill:
 - (fa) where the drawee is a body corporate that is being wound up:
 - (g) where, after the exercise of reasonable diligence, such presentment cannot be effected:
 - (h) where, although the presentment has been irregular, acceptance has been refused on some other ground.
- (3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Compare: 1883 No 8 s 41

Section 41(1)(da): inserted, on 1 January 1980, by section 5(1) of the Bills of Exchange Amendment Act 1979 (1979 No 3).

Section 41(2)(fa): inserted, on 1 January 1980, by section 5(2) of the Bills of Exchange Amendment Act 1979 (1979 No 3).

42 Non-acceptance

Where a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he or she does not, the holder shall lose his or her right of recourse against the drawer and indorsers to the extent that they are prejudiced by the omission.

Compare: 1883 No 8 s 42

Section 42: amended, on 1 January 1980, by section 4(2) of the Bills of Exchange Amendment Act 1979 (1979 No 3).

43 Dishonour by non-acceptance, and its consequences

- (1) A bill is dishonoured by non-acceptance—
 - (a) where it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused, or cannot be obtained; or
 - (b) where 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 an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Compare: 1883 No 8 s 43

44 Qualified acceptance

- (1) The holder of a bill may refuse to take a qualified acceptance, and if he or she does not obtain a general 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 authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his or her liability on the bill. The provisions of this subsection do not apply to a partial acceptance whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.
- (3) Where the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his or her dissent to the holder, he or she shall be deemed to have assented thereto.

Compare: 1883 No 8 s 44

45 Rules as to presentment for payment

- (1) Subject to the provisions of this Act, a bill must be duly presented for payment. If it is not so presented, the drawer and indorsers shall be discharged to the extent that they are prejudiced by the omission.
- (2) A bill is duly presented for payment if it is presented in accordance with the following rules:
 - (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, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable.

In determining what is a reasonable time regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case:
 - (c) presentment must be made by the holder, or by some person authorised to receive payment on his or her behalf, at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his or her behalf, if by the exercise of reasonable diligence such person can there be found:
 - (d) a bill is presented at the proper place—
 - (i) where a place of payment is specified in the bill, and the bill is there presented:

- (ii) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented:
 - (iii) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his or her ordinary residence, if known:
 - (iv) in any other case, if presented to the drawee or acceptor at his or her last known place of business or residence, or wherever he or she can be found:
- (e) where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required:
- (f) where a bill is drawn upon or accepted by 2 or more persons who are not partners, and no place of payment is specified, presentment must be made to them all:
- (g) where the drawee or acceptor of the bill is dead, and no place of payment is specified, presentment must be made to the executor or administrator of the deceased, if any, and if by the exercise of reasonable diligence he or she can be found:
- (ga) where the drawee or acceptor of the bill is bankrupt, presentment may be made to the bankrupt himself or herself or to his or her assignee:
- (gb) where the drawee or acceptor of the bill is a body corporate that is being wound up, presentment may be made to the body corporate itself or to the liquidator:
- (h) where authorised by agreement or usage, presentment through the post office is sufficient.

Compare: 1883 No 8 s 45

Section 45(1): amended, on 1 January 1980, by section 4(3) of the Bills of Exchange Amendment Act 1979 (1979 No 3).

Section 45(2)(ga): inserted, on 1 January 1980, by section 6 of the Bills of Exchange Amendment Act 1979 (1979 No 3).

Section 45(2)(gb): inserted, on 1 January 1980, by section 6 of the Bills of Exchange Amendment Act 1979 (1979 No 3).

46 Excuses for delay or non-presentment for payment

- (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 or her default, misconduct, or negligence. 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:
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:
- (b) where the drawee is a fictitious person:
- (ba) where the drawee or acceptor is bankrupt:
- (bb) where the drawee or acceptor is a body corporate that is being wound up:
- (c) as regards the drawer,—
 - (i) where the drawee or acceptor is not bound, as between himself or herself 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; or
 - (ii) where the drawer is bankrupt; or
 - (iii) where the drawer is a body corporate that is being wound up:
- (d) as regards an indorser,—
 - (i) where the bill was accepted or made for the accommodation of that indorser, and he or she has no reason to believe that the bill would be paid if presented; or
 - (ii) where that indorser is bankrupt; or
 - (iii) where that indorser is a body corporate that is being wound up:
- (e) by waiver of presentment, express or implied.

Compare: 1883 No 8 s 46

Section 46(2)(ba): inserted, on 1 January 1980, by section 7 of the Bills of Exchange Amendment Act 1979 (1979 No 3).

Section 46(2)(bb): inserted, on 1 January 1980, by section 7 of the Bills of Exchange Amendment Act 1979 (1979 No 3).

Section 46(2)(c): replaced, on 1 January 1980, by section 7 of the Bills of Exchange Amendment Act 1979 (1979 No 3).

Section 46(2)(d): replaced, on 1 January 1980, by section 7 of the Bills of Exchange Amendment Act 1979 (1979 No 3).

47 Dishonour by non-payment

- (1) A bill is dishonoured by non-payment—
 - (a) where it is duly presented for payment and payment is refused, or cannot be obtained; or
 - (b) where presentment is excused and the bill is overdue and unpaid.

- (2) Subject to the provisions of this Act, where a bill is dishonoured by non-payment an immediate right of recourse against the drawers or indorsers accrues to the holder.

Compare: 1883 No 8 s 47

48 Notice of dishonour

Subject to the provisions of this Act, where 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 to the extent that he or she is prejudiced by the omission:

provided that—

- (a) where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission:
- (b) 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 has in the meantime been accepted.

Compare: 1883 No 8 s 48

Section 48: amended, on 1 January 1980, by section 4(4) of the Bills of Exchange Amendment Act 1979 (1979 No 3).

49 Rules as to notice of dishonour

Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:

- (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 or herself liable on the bill:
- (b) notice of dishonour may be given by an agent either in his or her own name or in the name of any party entitled to give notice, whether that party is his or her principal or not:
- (c) where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers having a right of recourse against the party to whom it is given:
- (d) where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given:
- (e) the notice may be given either in writing or by personal communication, and may be given in any terms sufficient to identify the bill, and intimating that the bill has been dishonoured by non-acceptance or non-payment:

- (f) the return of a dishonoured bill to the drawer or an indorser is in point of form deemed a sufficient notice of dishonour:
- (g) a written notice need not be signed, and an insufficient written notice may be supplemented and made valid by verbal communication:
- (h) a misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby:
- (i) where notice of dishonour is required to be given to any person, it may be given either to the party himself or herself or to his or her agent in that behalf:
- (j) where the drawer or indorser is dead, and the party giving notice is aware of the fact, the notice must be given to an executor or administrator of the deceased, if any, and if by the exercise of reasonable diligence he or she can be found:
- (k) where the drawer or indorser is bankrupt, notice may be given either to the party himself or herself or to his or her assignee:
- (ka) where the drawer or indorser is a body corporate that is being wound up, notice may be given either to the body corporate itself or to the liquidator:
- (l) where there are more than 2 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 on behalf of the others:
- (m) the notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter:
- (n) in the absence of special circumstances notice is not deemed to have been given within a reasonable time unless—
 - (i) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill:
 - (ii) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there is a post at a convenient hour on that day, and, if there is no such post on that day, then by the next post thereafter:
- (o) where a bill when dishonoured is in the hands of an agent, he or she may either himself or herself give notice to the parties liable on the bill, or he or she may give notice to his or her principal. If he or she gives notice to his or her principal, he or she must do so within the same time as if he or she were the holder; and the principal, upon receipt of such notice, has himself or herself the same time for giving notice as if the agent had been an independent holder:

- (p) where a party to a bill receives due notice of dishonour, he or she has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour:
- (q) where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour notwithstanding any mis-carriage by the post office.

Compare: 1883 No 8 s 49

Section 49(ka): inserted, on 1 January 1980, by section 8 of the Bills of Exchange Amendment Act 1979 (1979 No 3).

50 Excuses for want of notice and delay

- (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his or her default, misconduct, or negligence. 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 charged:
 - (b) by waiver, express or implied, either before the time of giving notice of dishonour has arrived, or after the omission to give due notice:
 - (c) as regards the drawer, in the following cases, namely:
 - (i) where the 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 as between himself or herself and the drawer under no obligation to accept or pay the bill:
 - (v) where the drawer has countermanded payment:
 - (d) as regards the indorser, in the following cases, namely:
 - (i) where the drawee is a fictitious person, or a person not having capacity to contract, and the indorser was aware of the fact at the time he or she indorsed the bill:
 - (ii) where the indorser is the person to whom the bill is presented for payment:
 - (iii) where the bill was accepted and made for his or her accommodation.

Compare: 1883 No 8 s 50

51 Noting or protest of bill

- (1) Where an inland bill has been dishonoured it may, if the owner thinks fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.
- (2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, not having been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment, otherwise the drawer and indorsers are discharged to the extent that they are prejudiced by the omission.
- (3) Where a bill does not appear on the face of it to be a foreign bill, protest thereof as in case of dishonour is unnecessary.
- (4) A bill that has been protested for non-acceptance may be subsequently protested for non-payment.
- (5) Subject to the provisions of this Act, where a bill is noted or protested it must be noted on the day of dishonour.
- (6) Where a bill has been duly noted, the protest may be subsequently extended so as to take effect from the date of the noting.
- (7) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill 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—
 - (a) where a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day; and
 - (b) when 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 at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary.
- (9) A protest must contain a copy of the bill, and must 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 protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

- (10) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or on written particulars thereof.
- (11) Protest is dispensed with by any circumstance that would dispense with notice of dishonour.
- (12) Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his or her default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Compare: 1883 No 8 s 51

Section 51(2): amended, on 1 January 1980, by section 4(5) of the Bills of Exchange Amendment Act 1979 (1979 No 3).

52 Duties of holder as regards drawee or 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 the omission to present the bill for payment on the day that it matures.
- (3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him or her.
- (4) When the holder of a bill presents it for payment, he or she shall exhibit the bill to the person from whom he or she demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Compare: 1883 No 8 s 52

Liabilities of parties

53 Funds in hands of drawee

A bill of itself does not operate as an assignment of funds in the hands of the drawee 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.

Compare: 1883 No 8 s 53

54 Liability of acceptor

The acceptor of a bill, by accepting it,—

- (a) engages that he or she will pay it according to the tenor of his or her acceptance:
- (b) is precluded from denying to a holder in due course—
 - (i) the existence of the drawer, the genuineness of his or her signature, and his or her 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 validity of his or her indorsement:
- (iii) in the case of a bill payable to the order of a third person, the existence of the payee and his or her then capacity to indorse, but not the genuineness or validity of his or her indorsement.

Compare: 1883 No 8 s 54

55 Liability of drawer or indorser

- (1) The drawer of a bill, by drawing it,—
 - (a) engages that on due presentation it shall be accepted and paid according to its tenor, and that if it is dishonoured he or she will compensate the holder or any indorser who is compelled to pay it, provided that 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 or her then capacity to indorse.
- (2) The indorser of a bill, by indorsing it,—
 - (c) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he or she will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken:
 - (d) 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:
 - (e) is precluded from denying to his or her immediate or a subsequent indorsee that the bill was at the time of his or her indorsement a valid and subsisting bill, and that he or she had then a good title thereto.

Compare: 1883 No 8 s 55

56 Stranger signing bill liable as indorser

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

Compare: 1883 No 8 s 56

57 Measure of damages against parties to dishonoured bill

Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:

- (a) 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 from the drawer, or from a prior indorser,—
 - (i) the amount of the bill:

- (ii) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case:
- (iii) the expenses of noting, or, when protest is necessary and the protest has been extended, the expenses of protest:
- (b) in the case of a bill that has been dishonoured abroad, in lieu of the above damages 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 or her, the amount of the re-exchange, with interest thereon until the time of payment:
- (c) where by this Act interest may be recovered as damages, such interest may, if justice requires it, be withheld wholly or in part, and, where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Compare: 1883 No 8 s 57

58 Transferor and transferee by delivery

- (1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he or she is called a **transferor by delivery**.
- (2) A transferor by delivery is not liable on the instrument.
- (3) A transferor by delivery who negotiates a bill thereby warrants to his or her immediate transferee being a holder for value that the bill is what it purports to be, that he or she has a right to transfer it, and that at the time of transfer he or she is not aware of any fact which renders it valueless.

Compare: 1883 No 8 s 58

Discharge of bill

59 Payment in due course

- (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.
- (2) **Payment in due course** means payment to the holder of the bill made at or after the maturity thereof in good faith and without notice that the holder's title is defective.
- (3) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged: but
 - (a) where a bill payable to or to the order of a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not reissue the bill:
 - (b) 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 or her former rights as regards the acceptor or antecedent parties, and may, if

he or she thinks fit, strike out his or her own and subsequent indorsements, and again negotiate the bill.

- (4) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Compare: 1883 No 8 s 59

60 Banker paying on demand draft bearing forged indorsement

- (1) Where a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn 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.

- (2) Where a banker carries on the business of banking at more branches than 1 he or she shall, for the purposes of this section, be deemed to be an independent banker in respect of each of such branches, and a draft issued by one of such branches and payable at another shall be deemed to be a bill.

Compare: 1883 No 8 s 60; 1905 No 40 s 2

61 Where acceptor the holder at maturity

Where the acceptor of a bill is or becomes the holder of it in his or her own right, at or after its maturity, the bill is discharged.

Compare: 1883 No 8 s 61

62 Holder may waive his or her rights

- (1) Where the holder of a bill at or after its maturity absolutely and unconditionally renounces his or her rights against the acceptor the bill is discharged. The renunciation must be in writing, unless the bill is delivered up to the acceptor.
- (2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity.
- (3) Nothing in this section shall affect the rights of a holder in due course without notice of any such renunciation.

Compare: 1883 No 8 s 62

63 Cancellation

- (1) Where a bill is intentionally cancelled by the holder or his or her agent, and the cancellation is apparent thereon, the bill is discharged.
- (2) Any party liable on a bill may in like manner be discharged by the intentional cancellation of his or her signature by the holder or his or her agent. In such case an indorser who would have had a right of recourse against the party whose signature has been cancelled is also discharged.

- (3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but 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.

Compare: 1883 No 8 s 63

64 Alteration of bill

- (1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself or herself made, authorised, or assented to the alteration, and subsequent indorsers:

provided that, where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself or herself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

- (2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Compare: 1883 No 8 s 64

Acceptance and payment for honour

65 Acceptance for honour *supra* protest

- (1) Where a bill of exchange 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 on 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; and
 - (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 the noting for non-acceptance, and not from the date of the acceptance for honour.

Compare: 1883 No 8 s 65

66 Liability of acceptor for honour

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

Compare: 1883 No 8 s 66

67 Presentation to acceptor for honour

- (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 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 or her not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded for presentment to him or her not later than the day following its maturity.
- (3) Delay in presentment, or non-presentment, is excused by any circumstance that would excuse delay in presentment for payment, or non-presentment for payment.
- (4) Where a bill is dishonoured by the acceptor for honour it must be protested for non-payment by him or her.

Compare: 1883 No 8 s 67

68 Payment for honour *supra* protest

- (1) Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person on whose account the bill is drawn.
- (2) Where 2 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 may form an extension of it.
- (4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his or her agent in that behalf, declaring his or her intention to pay the bill for honour, and for whose honour he or she 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 subrogated

for and succeeds to both the rights and duties of the holder, as regards the party for whose honour he or she 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, and if the holder does not deliver them up on demand he or she shall be liable to the payer for honour in damages.
- (7) Where the holder of a bill refuses to receive payment *supra* protest he or she shall lose his or her right of recourse against any party who would have been discharged by such payment.

Compare: 1883 No 8 s 68

Lost bills

69 Holder's right to duplicate of lost bill

- (1) Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him or her another bill of the same tenor, giving security to the drawer if required to indemnify him or her against all persons whatever in case the bill alleged to have been lost is found again.
- (2) If the drawer, on request as aforesaid, refuses to give such duplicate bill, he or she may be compelled to do so.

Compare: 1883 No 8 s 69

70 Action on lost bill

In any action or proceeding upon a bill, the court or a Judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the court or Judge against the claims of any other person upon the instrument in question.

Compare: 1883 No 8 s 70

Bill in a set

71 Rules as to sets

- (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 constitute 1 bill.
- (2) Where the holder of a set indorses 2 or more parts to different persons, he or she is liable on every such part, and every indorser subsequent to him or her is liable on the part he or she has himself or herself indorsed as if the said parts were separate bills.
- (3) Where 2 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 the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him or her.

- (4) The acceptance may be written on any part, and it must be written on 1 part only.
- (5) If the drawee accepts more than 1 part, and such accepted parts get into the hands of different holders in due course, he or she is liable on every part as if it were a separate bill.
- (6) Where the acceptor of a bill drawn in a set pays it without requiring the part bearing his or her acceptance to be delivered up to him or her, and that part at maturity is outstanding in the hands of a holder in due course, he or she is liable to the holder thereof.
- (7) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Compare: 1883 No 8 s 71

Conflict of laws

72 Law governing contracts contained in a bill

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:

- (a) the validity of a 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 the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is in each case determined by the law of the place where the contract was made:
provided that—
 - (i) where a bill is issued out of New Zealand it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue:
 - (ii) where a bill issued out of New Zealand conforms, as regards requisites in form, to the law of New Zealand, 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 New Zealand:
- (b) subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill is determined by the law of the place where such contract was made:
provided that where an inland bill is indorsed in a foreign country the indorsement shall, as regards the payer, be interpreted according to the law of New Zealand:
- (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 dis-

honour, 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 out of but is payable in New Zealand and the sum payable is not expressed in the currency of New Zealand, the amount shall, in the absence of some express stipulation, 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.

Compare: 1883 No 8 s 72

Part 2

Cheques on a bank

73 Cheque defined

- (1) A **cheque** is a bill of exchange drawn on a banker payable on demand.
- (2) Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Compare: 1883 No 8 s 73

74 Presentment of cheques for payment

Subject to the provisions of this Act,—

- (a) where a cheque is not presented for payment within a reasonable time after its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between himself or herself and the banker to have the cheque paid, and suffers actual damage through the delay, he or she 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 or she would have been had such cheque been paid:
- (b) in determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case:
- (c) the holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and shall be entitled to recover the amount from him or her.

Compare: 1883 No 8 s 74

75 Revocation of banker's authority

- (1) The duty and authority of a banker to pay a cheque drawn on him or her by his or her customer are determined by—
 - (a) countermand of payment;
 - (b) notice of the customer's death.
- (2) Notwithstanding the provisions of paragraph (b) of subsection (1), a banker may pay a cheque drawn on him or her, notwithstanding that he or she has notice of the death of the customer who drew it, if the cheque is presented not more than 10 days after the date of the customer's death, unless—
 - (a) the cheque is dated after that date; or
 - (b) the banker receives a countermand of payment by a person who claims to be entitled to a grant of administration in respect of or to be a beneficiary of the customer's estate.

Section 75: replaced, on 20 September 1971, by section 2 of the Bills of Exchange Amendment Act 1971 (1971 No 21).

*Crossed cheques***76 General and special crossings defined**

- (1) Where a cheque bears across its face an addition of—
 - (a) the words “and company”, or “bank”, or any abbreviation thereof, between 2 parallel transverse lines, either with or without the words “Not negotiable”; or
 - (b) 2 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.

Compare: 1883 No 8 s 76

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, the banker may cross it specially to himself or herself.

Compare: 1883 No 8 s 77

78 Crossing to be deemed a material part of cheque

A crossing authorised by this Act is a material part of the cheque, and no person may obliterate or, except as authorised by this Act, add to or alter the crossing.

Compare: 1883 No 8 s 78

79 Duties of banker as to crossed cheques

- (1) Where a cheque is crossed specially to more than 1 banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.
- (2) Where the banker on whom a cheque so crossed is drawn nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his or her agent for collection being a banker, he or she is liable to the true owner of the cheque for any loss he or she may sustain owing to the cheque having been so paid.
- (3) Where a cheque presented for payment does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised 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 authorised by this Act, and of payment having been made otherwise than to a banker, or to the banker to whom the cheque is or was crossed, or to his or her agent for collection being a banker, as the case may be.

Compare: 1883 No 8 s 79

80 Protection to banker and drawer where cheque is crossed

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

Compare: 1883 No 8 s 80

81 Effect of the words “Not negotiable”

Where a person takes a crossed cheque bearing on it the words “Not negotiable”, he or she shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he or she took it had.

Compare: 1883 No 8 s 81

82 Protection to collecting banker

[Repealed]

Section 82: repealed, on 1 January 1961, by section 8(1) of the Cheques Act 1960 (1960 No 17).

83 Branch banks deemed independent banks for certain purposes

Where a banker carries on the business of banking at more branches than 1 he or she shall, for the purposes of sections 76 to 82, be deemed to be an independent banker in respect of each of such branches.

Compare: 1905 No 40 s 2

Part 3

Promissory notes

84 Promissory note defined

- (1) A **promissory note** is an unconditional promise in writing made by one person to another, signed by the maker, engaging 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.
- (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 and until it is indorsed by the maker.
- (3) A note is not invalid by reason only that it contains also a pledge of collateral security, with authority to sell or dispose thereof.
- (4) A note that is, or on the face of it purports to be, both made and payable in New Zealand is an **inland note**; any other note is a **foreign note**.

Compare: 1883 No 8 s 83

85 Delivery necessary

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

Compare: 1883 No 8 s 84

86 Joint and several notes

- (1) A promissory note may be made by 2 or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.
- (2) Where a note runs “I promise to pay” and is signed by 2 or more persons, it is deemed to be their joint and several note.

Compare: 1883 No 8 s 85

87 Note payable on demand

- (1) Where a note payable on demand is indorsed, it must be presented for payment within a reasonable time of the indorsement. If it is not so presented, the indorser is discharged.
- (2) 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.
- (3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purposes of affecting the holder with defects of title of which he or she had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Compare: 1883 No 8 s 86

88 Presentment of note for payment

- (1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable; but in any other case presentment for payment is not necessary in order to render the maker liable.
- (2) Presentment for payment is necessary in order to render the indorser of a note liable.
- (3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Compare: 1883 No 8 s 87

89 Liability of maker

The maker of a promissory note, by making it,—

- (a) engages that he or she 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 or her then capacity to indorse.

Compare: 1883 No 8 s 88

90 Application of Part 1 to notes

- (1) Subject to the provisions in this Part, and except as provided by this section, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory 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, provisions relating to—

- (a) presentment for acceptance:
 - (b) acceptance:
 - (c) acceptance *supra* protest:
 - (d) bills in a set.
- (4) Where a foreign note is dishonoured, protest thereof is unnecessary.
Compare: 1883 No 8 s 89

Part 4 Miscellaneous

91 Good faith

A thing is deemed to be done in good faith within the meaning of this Act where it is in fact done honestly, whether it is done negligently or not.

Compare: 1883 No 8 s 90

92 Signature

- (1) Where by this Act any instrument or writing is required to be signed by any person, it is not necessary that he or she should sign it with his or her own hand, but it is sufficient if his or her signature is written thereon by some other person by or under his or her authority.
- (2) Where a corporation makes any instrument or writing required by this Act to be signed, it is sufficient if the instrument or writing is sealed with the corporate seal.
- (3) Nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Compare: 1883 No 8 s 91

93 Computation of time

Where by this Act the time limited for doing any act or thing is less than 3 days, in reckoning time non-business days are excluded.

Compare: 1883 No 8 s 92

Section 93: amended, on 12 October 1946, by section 12(2) of the Statutes Amendment Act 1946 (1946 No 40).

94 When noting equivalent to protest

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill 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 to take effect from the date of the noting.

Compare: 1883 No 8 s 93

95 Protest when notary not accessible

- (1) Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of 2 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 given in Schedule 2 may be used with necessary modifications, and if used shall be sufficient.

Compare: 1883 No 8 s 94

96 Bill drawn at sight to be deemed a bill payable on demand

Every bill of exchange or promissory note drawn and purporting to be payable at sight or on presentation shall be stamped as and shall for all purposes be deemed to be a bill of exchange or promissory note payable on demand without any days of grace, any law or custom to the contrary notwithstanding.

Compare: 1883 No 8 s 95

96A Actions on other lost negotiable instruments

Section 70 applies to a negotiable instrument that is not a bill in the same way as it applies to a bill.

Compare: 1908 No 89 s 88; 1947 No 16 s 118

Section 96A: inserted, on 1 March 2017, by section 4 of the Bills of Exchange Amendment Act 2016 (2016 No 54).

97 Special provision in case of Maori

[Repealed]

Section 97: repealed, on 23 October 1963, by section 2 of the Bills of Exchange Amendment Act 1963 (1963 No 75).

98 Saving

- (1) The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.
- (2) Nothing in this Act shall affect—
 - (a) the provisions of the Stamp and Cheque Duties Act 1971 or any law or enactment for the time being in force relating to the revenue.
 - (b) *[Repealed]*

Compare: 1883 No 8 s 98

Section 98(2)(a): amended, on 1 January 1972, pursuant to section 101(1) of the Stamp and Cheque Duties Act 1971 (1971 No 51).

Section 98(2)(b): repealed, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Schedule 1
Enactments consolidated

Bills of Exchange Act 1883 (1883 No 8)

Bills of Exchange Act 1883 Amendment Act 1884 (1884 No 28)

Bills of Exchange Act Amendment Act 1905 (1905 No 40)

Schedule 2

Protest where the services of a notary cannot be obtained

s 95

Know all people that I, AB [householder], of [*specify*], in New Zealand, at the request of CD, there being no notary public available, did on [*date*], at [*place*], demand payment [*or acceptance*] of the bill of exchange hereunder written, from EF, to which demand he or she made answer [*state answer, if any*]: wherefore I now, in the presence of GH and JK, do protest the said bill of exchange.

(Signed) AB

GH

JK

witnesses

Note: the bill itself should be annexed, or a copy of the bill, and all that is written thereon should be underwritten.

Compare: 1883 No 8 Schedule 1

Cheques Act 1960

Public Act	1960 No 17
Date of assent	30 September 1960
Commencement	see section 1(2)

1 Short Title and commencement

- (1) This Act may be cited as the Cheques Act 1960, and shall be read together with and deemed part of the Bills of Exchange Act 1908 (hereinafter referred to as “the principal Act”).
- (2) This Act shall come into force on 1 January 1961.

2 Protection of bankers paying unindorsed or irregularly indorsed cheques

- (1) Where a banker in good faith and in the ordinary course of business pays a cheque drawn on him or her which is not indorsed or is irregularly indorsed, he or she shall not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and he or she shall be deemed to have paid it in due course.
- (2) Where a banker in good faith and in the ordinary course of business pays any such instrument as the following, namely—
 - (a) a document issued by a customer of his or her which, though not a bill of exchange, is intended to enable a person to obtain payment from him or her of the sum mentioned in the document; or
 - (b) a draft payable on demand drawn by him or her upon himself or herself whether payable at the head office or some other office of his or her bank—

he or she shall not, in doing so, incur any liability by reason only of the absence of, or irregularity in, indorsement, and the payment shall discharge the instrument.

3 Rights of bankers collecting cheques not indorsed by holders

A banker who gives value for, or has a lien on, a cheque payable to order which the holder delivers to him or her for collection without indorsing it shall have such rights (if any) as he or she would have had if, upon delivery, the holder had indorsed it in blank.

4 Unindorsed cheques as evidence of payment

An unindorsed cheque which appears to have been paid by a banker on whom it is drawn shall, in the absence of proof to the contrary, be sufficient evidence of the receipt by the payee of the sum payable by the cheque.

5 Protection of bankers collecting payment of cheques

- (1) Where a banker in good faith and without negligence—
- (a) receives payment for a customer of an instrument to which this section applies; or
 - (b) having credited a customer's account with the amount of any such instrument receives payment thereof for himself or herself—

and the customer has no title, or a defective title, to the instrument, the banker shall not incur any liability to the true owner of the instrument by reason only of having received payment thereof.

- (2) This section applies to the following instruments, namely:
- (a) cheques:
 - (b) any document issued by a customer of a banker which, though not a bill of exchange, is intended to enable a person to obtain payment from that banker of the sum mentioned in the document:
 - (c) any document, not being a bill of exchange, issued by an official in the service of Her Majesty which is intended to enable a person to obtain payment from a Crown Bank Account or any other Government account under the Public Finance Act 1989 of the sum mentioned in the document:
 - (d) any document, not being a bill of exchange, issued by any person or authority which is intended to enable a person to obtain payment from any such account as may from time to time be specified in that behalf by the Governor-General by Order in Council of the sum mentioned in the document:
 - (e) any draft payable on demand drawn by a banker upon himself or herself, whether payable at the head office or some other office of his or her bank.

- (3) A banker shall not be treated for the purposes of this section as having been negligent by reason only of his or her failure to concern himself or herself with the absence of, or irregularity in, indorsement of an instrument.

Section 5(2)(c): amended, on 25 January 2005, pursuant to section 83(7) of the Public Finance Act 1989 (1989 No 44).

Section 5(2)(c): amended, on 1 July 1989, pursuant to section 87 of the Public Finance Act 1989 (1989 No 44).

Section 5(2)(c): amended, on 1 April 1978, by section 160(1) of the Public Finance Act 1977 (1977 No 65).

6 Application of certain provisions of principal Act

The provisions of the principal Act relating to crossed cheques shall, so far as applicable, have effect in relation to instruments (other than cheques) to which section 5 applies as they have effect in relation to cheques.

7 Effect of Act

Nothing in the provisions of this Act shall be deemed to make negotiable any instrument which, apart from those provisions, is not negotiable.

7A Interpretation

- (1) For the purposes of sections 7D and 7E, **inter-bank clearing system** means any system for the presentment and payment of cheques by electronic or other means between paying and collecting banks or between paying and collecting branches of banks and that is established in accordance with written rules that are binding on those banks or branches.
- (2) Notwithstanding section 73 of the Bills of Exchange Act 1908, for the purposes of sections 7B to 7E, a cheque includes—
 - (a) a document issued by a customer of a bank that, although not a bill of exchange, is intended to enable a person to obtain payment from the bank of a sum mentioned in the document; and
 - (b) a draft payable on demand drawn by a bank upon that bank whether payable at the head office or some other office of that bank.

Section 7A: inserted, on 30 June 1995, by section 2 of the Bills of Exchange Amendment Act 1995 (1995 No 35).

7B Non-transferable cheques

- (1) This section applies to a cheque that is crossed and that bears across its face—
 - (a) the words “Not transferable” or “Non-transferable”; or
 - (b) the words “account payee” or “a/c payee”, either with or without the word “only”.
- (2) A cheque to which this section applies is valid only as between the parties to it and is not transferable.
- (3) Where a cheque to which this section applies contains an endorsement that is intended to have the effect of negotiating or transferring ownership of the cheque,—
 - (a) the endorsement is not effective to transfer ownership of the cheque; and
 - (b) to the extent that a banker collects the cheque without giving effect to the endorsement, the banker acts in the ordinary course of business and without negligence; and
 - (c) to the extent that a banker collects the cheque giving effect to the endorsement, the banker does not act in the ordinary course of business and without negligence; and
 - (d) if it is necessary for a banker who pays the cheque to consider whether the person by whom or on whose behalf the cheque is presented for payment is the true owner of the cheque,—

- (i) to the extent that the banker pays the cheque without giving effect to the endorsement, the banker acts in the ordinary course of business and without negligence; and
 - (ii) to the extent that the banker pays the cheque giving effect to the endorsement, the banker does not act in the ordinary course of business and without negligence.
- (4) Nothing in section 8(1) of the Bills of Exchange Act 1908 applies to a cheque.
- (5) This section shall come into force on 1 January 1996.

Section 7B: inserted, on 30 June 1995, by section 2 of the Bills of Exchange Amendment Act 1995 (1995 No 35).

7C Transfer of dishonoured cheques permitted in certain cases

- (1) Nothing in section 7B prevents the transfer of a cheque to which that section applies if the cheque is transferred—
 - (a) after it has been presented for payment by or on behalf of the payee and been dishonoured by non-payment; and
 - (b) in favour of any person (including the collecting banker in respect of the cheque) who—
 - (i) is authorised by the payee of the cheque to recover payment of the amount of the cheque on behalf of the payee; or
 - (ii) has paid or credited the payee of the cheque with the whole or part of the amount of the cheque and is authorised by the payee to recover payment of the amount of the cheque on that person's own behalf.
- (2) This section shall come into force on 1 January 1996.

Section 7C: inserted, on 30 June 1995, by section 2 of the Bills of Exchange Amendment Act 1995 (1995 No 35).

7D Presentment of cheques for payment

- (1) A cheque is presented for payment if it is presented in accordance with the following rules:
 - (a) presentment must be made within a reasonable time after the date of the cheque:
 - (b) presentment must be made—
 - (i) by the holder, or by some person authorised to receive payment on behalf of the holder, presenting the cheque at the branch of the bank on which the cheque is drawn or at such other place as may be specified on the cheque, as the case may be, at a time when the branch or other place is open for business; or

- (ii) by the bank receiving payment for a customer or for that bank presenting the cheque at the place designated by the paying bank in accordance with the rules of an inter-bank clearing system; or
 - (iii) if the cheque is a cheque referred to in subsection (4) or belongs to a class of cheques referred to in that subsection, by the bank receiving payment for a customer or for that bank delivering to the paying bank particulars of the cheque by electronic or other means in accordance with the rules of an inter-bank clearing system:
- (c) where a cheque is presented for payment in accordance with paragraph (b)(i) or (ii) at the proper place for presentment and no person with authority to pay or refuse payment of the cheque is available, no further presentment to the bank upon which the cheque is drawn is required.
- (2) Where a cheque is presented for payment in accordance with subsection (1)(b)(iii), the paying bank may—
 - (a) request the collecting bank to provide it with such further particulars in relation to the cheque as it may specify; or
 - (b) whether or not it has made a request under paragraph (a), request the collecting bank to exhibit the cheque or a copy of the cheque to it.
- (3) After a cheque that has been presented under subsection (1)(b)(iii) is paid, the collecting bank must, when required to do so by the paying bank, but subject to such conditions as may be specified in the rules of the inter-bank clearing system, give possession of the cheque to the paying bank.
- (4) Any banks or branches of banks that are bound by the rules of an inter-bank clearing system may, from time to time, by agreement in writing, determine that subsection (1)(b)(iii) shall apply in relation to such cheques or such classes of cheques as may be specified in the agreement.
- (5) Nothing in section 45(2) of the Bills of Exchange Act 1908 applies to a cheque.

Section 7D: inserted, on 30 June 1995, by section 2 of the Bills of Exchange Amendment Act 1995 (1995 No 35).

7E Liability of paying bank

- (1) This section applies to a cheque that has been presented for payment in accordance with section 7D(1)(b)(iii).
- (2) A paying bank that pays a cheque to which this section applies is not negligent and does not act otherwise than in the ordinary course of business by reason only of having determined, by an agreement entered into under subsection (4) of section 7D, that subsection (1)(b)(iii) of that section shall apply in relation to that cheque or to a class of cheques that includes that cheque.
- (3) Except as provided in subsection (2), a paying bank that pays a cheque to which this section applies is not relieved from any liability to which it would have been subject if the cheque had been presented otherwise than in accordance with section 7D(1)(b)(iii).

- (4) Without limiting subsection (3), a paying bank that pays a cheque to which this section applies shall be treated as having been required to make such inquiries and take such action as would have been required if the cheque had been presented for payment in accordance with section 7D(1)(b)(i) or (ii).

Section 7E: inserted, on 30 June 1995, by section 2 of the Bills of Exchange Amendment Act 1995 (1995 No 35).

8 Repeal and saving

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) Where in any enactment a reference is made to section 82 of the principal Act, the reference shall, with the necessary modifications, be deemed to be a reference to this Act.

Reprints notes

1 *General*

This is a reprint of the Bills of Exchange Act 1908 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Bills of Exchange Amendment Act 2016 (2016 No 54)
Companies Amendment Act 2013 (2013 No 111): section 14
Credit Contracts and Consumer Finance Act 2003 (2003 No 52): section 139
Bills of Exchange Amendment Act 2002 (2002 No 58)
Constitution Act 1986 (1986 No 114): section 29(2)
Banking Act 1982 (1982 No 144): section 15
Credit Contracts Act 1981 (1981 No 27): section 50
Bills of Exchange Amendment Act 1979 (1979 No 3)
Stamp and Cheque Duties Act 1971 (1971 No 51): section 101(1)
Bills of Exchange Amendment Act 1971 (1971 No 21)
Bills of Exchange Amendment Act 1963 (1963 No 75)
Cheques Act 1960 (1960 No 17)
Statutes Amendment Act 1946 (1946 No 40): section 12(2)