

## Negotiable Instrument

### Lecture 11

#### Notes - Crossing of Cheques

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#### Doctrine of mandate

Ordinarily the relation between banker and customer (who puts money in the account) is that of creditor and debtor. But when the bank's obligation to pay a customer's cheque to the payee if the customer's account has sufficient funds, the above relationship seems like that of a principal and agent (the bank).

According to the doctrine of mandate, a banker entrusted by his customer with the collection of a cheque is bound to act according to the directions, order or mandate given by the customers. Thus, the bank is under the mandate of the customer when it comes to collection of cheques.

#### Application :-

This mandate to pay only applies when the cheque is 'duly signed'. If it is a forged signature or without signature, there is no mandate and the cheque does not fall into the relation of banker and customer. And it is the duty of the bank to verify it as the bank is supposed to be familiar with the customer's signature.

If the bank honors such a forged cheque, it amounts to 'paying without authority' and the bank will be liable to the customer for such harm caused due to unauthorized payment.

But there are circumstances where there might be forgery or fraud but the bank is discharged.

#### Section 85(1) :-

Under Section 85(1) (Cheque payable to order), if there is a cheque payable to order in which payee's indorsement is forged and the bank makes a payment in good faith (payment in due course), then the bank is discharged from liability.

But this circumstance also has two exceptions, depending on which party failed to do its duty.

#### No protection when drawer's signature is forged :-

A banker is supposed to know the signature of his customer and if the banker makes payment on such a forged signature, the bank will be liable for the loss. The money shall be paid by the bank, not debited from the customer's account.

*Imperial Bank of Canada v. Bank of Hamilton (1903)*

It was ruled that when the drawer's signature is forged, the instrument is not a cheque, it is a nullity as it does not fulfill the essentials of being a cheque and so no payment is to be made on that.

*Allahabad Bank v. Kul Bhusan (1961)*

The court considered the question where both the bank and customers were the innocent victims of the fraud (when the signature is forged very well, etc.). But even when there are two innocent parties, the one whose negligence led to the ultimate loss is primarily responsible. Here, the bank's negligence led to loss of money from the customer's account.

Estoppel against forgery :-

When the negligence of the customer is found to be the proximate cause for the loss to the bank on the payment of forged cheques, the loss has to be borne by the customer.

It is the duty of the customer to inform the bank about the forgery of his signature which whenever comes to his knowledge so that the bank can take action against it. But if the customer does not inform and withholds such information, then the customer will be estopped from relying on the fact of the forgery of his signature.

### Crossing of cheques

There are two kinds of cheques on the basis of how and to whom payment will be done. They are 'open cheques' and 'crossed cheques'.

A cheque which can be presented to the banker and be paid at the counter of the bank is an open cheque.

A crossed cheque is a cheque which cannot be paid at the counter of the bank and is only payable to a bank account. A crossed cheque is when a cheque bears across its face two parallel transverse lines. Usually the lines are made at the top left corner of the cheque but it may be drawn anywhere.

If an open cheque is lost, the finder may go to the bank and get payment over the counter. But in case of crossed cheque, the finder cannot secure payment over the counter, and even if he does, since the money goes directly to another bank account, it will be easier to trace and get a hold of.

Purpose of crossing cheques :-

When a cheque is crossed, it is a direction to the paying bank to pay the money generally to a bank or a particular bank as the case may be. It is an caution to the bank to not pay over the counter.

The object of crossing is to secure payment to a banker, in order that it may be easily traced for whose use the money was received, and to compel the holder to have credit in the eyes of the banker.

Even though crossing is a material alteration to a cheque, crossing of cheque by the holder doesn't in any way affect his rights in respect of the cheque. It is covered under Chapter XIV (Crossing of Cheques) from Section 123-131A.

Kinds of crossing :-

Section 123 and 124 talk about the kinds of crossing.

Section 123: Cheques crossed generally :-

When there is no bank mentioned between the crossed lines, it is a generally crossed cheque. Its payment can be obtained by any paying bank. So the banker on whom it is drawn shall not pay it otherwise than to a banker. (Section 126)

Section 124: Cheques crossed specially :-

When in between the crossed lines, the name of a bank is mentioned, the cheque is said to be crossed specially. It has the effect that the banker on whom it is drawn is only going to pay to the bank or its agent on whose name it is crossed.

Who can cross the cheque :-

1. Drawer :-

A drawer can cross the cheque generally or specially.

2. Holder :-

A holder can cross the cheque in two circumstances. If the holder has received an uncrossed cheque, he can make such lines and do a general or a special crossing.

If he receives a generally crossed cheque, he can make it a specially crossed cheque by adding the name of the bank. If he receives a specially crossed cheque, he can add 'not negotiable' and restrict its negotiability. Such restriction can be applied by the holder to any crossed cheque.

3. Banker :-

A banker may cross an uncrossed cheque or if a cheque is crossed generally, he may cross it specially to himself.

Also, if a cheque is crossed specially, he can cross it to another banker for collection and this second banker acts as an agent for the first banker.

Section 130: Cheque bearing not negotiable :-

This section talks about when one writes 'not negotiable' or something to that effect between the lines. It is called 'Not negotiable' Crossing can be done on a specially crossed or a generally crossed cheque.

If such words are written, the person giving the cheque will not be capable of transferring a better title than what he had. Even a holder in due course shall get the same rights as the person from whom he is getting it from and the cheque will not be cured of its defects.

The addition of the word 'not negotiable' affects only the negotiability of the cheque and does not affect its transferability . It only takes away the vital feature of the transfer to a holder in due course, and such HoDC shall receive the same defective title as the transferor.