

II. INTERNATIONAL PAYMENTS

Negotiable instruments

1. *Draft uniform law on international bills of exchange and commentary: report of the Secretary-General (A/CN.9/67)**

CONTENTS

	Page	Articles	Page
INTRODUCTION	145	D. The endorser	41-42 168
Abbreviations	147	E. The guarantor	43-45 169
PART ONE. SPHERE OF APPLICATION: FORM	1-3 147	PART FIVE. PRESENTMENT, DISHONOUR AND RECOURSE	46-68 170
PART TWO. INTERPRETATION	4-11 150	Section 1. Presentment for acceptance	46-51 170
Section 1. General	4-6 150	Section 2. Presentment for payment	52-56 174
Section 2. Interpretation of formal requirements	7-10 152	Section 3. Recourse	57-68 176
Section 3. Completion of an incomplete instrument	11 154	PART SIX. DISCHARGE	69-78 181
PART THREE. TRANSFER AND NEGOTIATION	12-22 154	Section 1. General	69 181
PART FOUR. RIGHTS AND LIABILITIES	23-45 161	Section 2. Payment	70-75 181
Section 1. The rights of a holder and a protected holder	23-26 161	Section 3. Renunciation	76 184
Section 2. Liability of the parties	27-45 163	Section 4. Reacquisition by a prior party	77 184
A. General	27-33 163	Section 5. Discharge of a prior party	78 184
B. The drawer	34 166	PART SEVEN. LIMITATION (PRESCRIPTION)	79 185
C. The drawee and the acceptor	35-40 166	PART EIGHT. LOST BILLS	80 185
		Annex. Draft uniform law on international bills of exchange	185

Introduction

1. The United Nations Commission on International Trade Law decided at its fourth session "to proceed with work directed towards the preparation of uniform rules applicable to a special negotiable instrument for optional use in international transactions". To this end, the Commission requested the Secretary-General "to prepare a draft of such rules accompanied by a commentary".¹ The present report, setting forth a draft uniform law on international bills of exchange with commentary, has been prepared in response to that decision.

2. The decision taken by the Commission at its fourth session was based upon the analysis of a substantial body of information resulting from question-

naires directed to Governments and to banking and trade institutions. These inquiries were designed to ascertain current methods and practices for making and receiving international payments and also the nature and scope of problems encountered in settling international transactions by means of negotiable instruments.² These inquiries evidenced that, in spite of a trend towards increasing use of the cable or telegraphic transfer, negotiable instruments play a vital role in international payment transactions, and that the problems encountered in this area made it advisable to continue the work on this subject. The analyses of the voluminous material submitted in response to the questionnaires and comparative studies effected by the Secretariat have shown that significant problems have resulted from divergencies among the rules of the different legal systems. These divergencies relate, *inter alia*, to: rules related to the form and content of negotiable instruments; the effect of stipulations

¹ Report of the United Nations Commission on International Trade Law on the work of its fourth session, *Official Records of the General Assembly, Twenty-sixth Session, Supplement No. 17 (A/8417)*, (UNCITRAL, report on the fourth session (1971)), para. 35; Yearbook of the United Nations Commission on International Trade Law (hereafter referred to as UNCITRAL Yearbook) vol. II: 1971, part one, II, A. For a brief history of the subject up to the fourth session of the Commission, see A/CN.9/53, paras. 1 to 7.

² The text of the questionnaire prepared pursuant to a decision taken by the Commission at its second session is reproduced in document A/CN.9/38. An analysis of the replies to that questionnaire is contained in document A/CN.9/38 and Add. 1.

* 31 March 1972.

on an instrument such as drawing without recourse and interest clauses; the conditions under which a person can acquire an instrument free from claims and defences of other parties; the effect of forged signatures and of material alteration; rights under a lost instrument; the formalities required in connexion with protest for non-acceptance or non-payment of an instrument; the consequences of failure to give notice of dishonour; the facts leading to discharge of liability and the effects of such discharge. Other problems were shown to owe their existence to difficulties in understanding the rules and requirements of foreign legal systems that may be applicable where an instrument circulates internationally.

3. The Commission requested the Secretary-General to carry out the present work "after consultation with interested international organizations, including banking and trade institutions."³ Pursuant to this request, throughout the preparatory stages leading up to the formulation of the present draft uniform law, consultations were held with specialists provided by international organizations having a special interest in the matter. At a series of meetings held with these specialists,⁴ advice was secured with respect to the basic scope and structure of the proposed uniform rules and the choice between the existing divergent rules which would be most consistent with current commercial practices and needs; at later stages, the specialists reviewed preliminary drafts of the uniform rules from the point of view of substance and form. Through the co-operation of these specialists, supplementary questionnaires directed to issues that had arisen in the course of the preparation of the uniform rules were addressed to various banking and trade institutions;⁵ valuable supplementary information on present-day commercial practices was received in reply to these questionnaires.

4. In conformity with the terms of reference set forth in the decision taken by the Commission at its fourth session, the use of an international bill of exchange subject to the uniform law is optional: the drawer of a bill of exchange may elect to draw the bill either under national law or under the uniform law. In order to draw a bill of exchange subject to the uniform law, it is required under article 1 (2) (a) that the bill bear the designation "international bill of exchange subject to the Convention of . . .".

5. The issues dealt with in the present draft are, in general, those encompassed by one or another of the principal systems of negotiable law. The present

draft, like the existing formulations, does not attempt to provide rules for many of the issues that may arise in connexion with a negotiable instrument such as capacity to contract, the authority of agents, bankruptcy, succession and torts. Such issues are dealt with under the general law and it would not be practicable to establish uniform rules for these areas as a part of a uniform law dealing with negotiable instruments. Consequently, under this draft, as under the existing systems of negotiable instruments law, such areas are governed by the applicable national law.

6. At an early stage in the preparation of the present draft, consideration was given to the feasibility of restricting the uniform rules to a much narrower scope than that of any of the existing formulations of negotiable instruments law. Under this approach, the uniform rules would deal only with certain questions where divergencies among the existing legal systems have proved to be most troublesome in the international use of negotiable instruments.

7. This approach was given careful consideration and was the subject of consultation with banking and trade institutions. The conclusion was that such a narrow approach to the draft created more problems than it avoided. Analysis showed that there is an area of negotiable instruments law involving a network of interrelationships on the instrument; this area needs to be dealt with as a unit. Selecting only some of these issues for inclusion in the uniform rules and remitting related issues to the rules of national law would lead to various difficulties. In some situations there will be doubt as to which national law is applicable, and the parties in one country can not readily understand or comply with the rules of foreign legal systems. In other cases, even where the rules of the existing systems of negotiable instrument law seem, at first glance, to be compatible with each other, closer examination of the judicial interpretation given these rules shows that they do not mesh precisely with each other or with any limited set of uniform rules applicable to an international instrument.

8. The degree of the relationship among the uniform rules embodied in the present draft varies from article to article. It is possible that some of the articles of the present draft, on further examination, could be omitted without serious impairment of the unity of the draft. But it is believed that any such pruning should be undertaken with caution, and that substantial restriction of the scope of these uniform rules would impair the Commission's objective to promote uniformity and certainty in connexion with instruments employed for international payments.

9. The rules embodied in the present draft reflect a policy to minimize departures from the content of the existing principal legal systems of negotiable instruments law. Where the existing legal systems concur in a rule, that rule generally has been followed in the present draft. In the instances where the systems differ, a choice or a compromise between divergent rules was based on available evidence of current commercial practice and need. Thus, a questionnaire addressed to Governments and to banking and trade institutions called attention to such divergencies, and solicited views as to the most appropriate solution. An analysis of the responses, which was submitted to the

³ UNCITRAL, report on the fourth session (1971) para. 35.

⁴ Six meetings were held at the following times: 20 June to 4 July 1969; 19 to 23 January 1970; 16 to 22 July 1970; 18 to 22 January 1971; 20 to 29 September 1971; 13 to 19 January 1972. The following organizations participated in these meetings: International Monetary Fund, Organization of American States, Hague Conference on Private International Law, International Institute for the Unification of Private Law, International Bank for Economic Co-operation, Bank for International Settlements, International Chamber of Commerce, and Fédération bancaire des communautés européennes. The Secretariat acknowledges gratefully the co-operation and assistance received from the above organizations and experts.

⁵ These supplementary questionnaires were sent in July 1970 and September 1971. The analysis of the replies thereto has not been reproduced in documents of the Commission, but will be available at the session for consultation by members of the Commission.

Commission at its fourth session (A/CN.9/48), has been of great assistance in making a responsible choice between divergent rules.

10. The present draft uniform law is concerned with bills of exchange in the narrow sense of the term; cheques and promissory notes are not within the scope of the present draft. Inquiries have been made amongst banking and trade circles as to the desirability of extending the uniform rules on international bills of exchange also to international promissory notes.

11. The virtually unanimous view of those consulted was that it would be advisable for the uniform law also to encompass promissory notes, since in certain parts of the world, promissory notes are widely used in international commerce and there are indications that promissory notes may well assume, in the future, greater importance than is at present the case. The Commission may therefore wish to consider the desirability of requesting the Secretariat to modify the present draft with a view to extending its application to promissory notes.

Abbreviations

The abbreviations used in the commentary to the draft uniform law on international bills of exchange are as follows:

BEA: Bills of Exchange Act, 1882 (United Kingdom)

ULB: Geneva Uniform Law on Bills of Exchange and Promissory Notes (1930)

UCC: Uniform Commercial Code (United States)

Part One. Sphere of application: form

Article 1

(1) This Law shall apply to international bills of exchange.

(2) An international bill of exchange is a written instrument which

(a) Contains, in the text thereof, the words "Pay against this international bill of exchange, drawn subject to the Convention of _____" or words of similar import); and

(b) Contains an unconditional order whereby one person (the drawer) directs another person (the drawee) to pay a definite sum of money to a specified person (the payee) or to his order; and

(c) Is payable on demand or at a definite time; and

(d) Is signed by the drawer; and

(e) Shows that it is drawn in a country other than the country of the drawee or of the payee or of the place where payment is to be made.

Relevant legislation

BEA—section 3

UCC—section 3-503

ULB—articles 1 and 2

Cross references

Definite sum of money: article 7

Payable on demand: article 9 (1) and (2)

Payable at a definite time: article 9 (3)

COMMENTARY

Paragraph (1)

1. The definition of an international bill of exchange is set forth in paragraph (2) which makes clear that the use of an international bill of exchange subject to this Law is optional. As regards the applicability of this Law, see also articles 2 and 3.

Paragraph (2)

2. This paragraph defines an international bill of exchange, i.e., it lays down the formal requisites with which an instrument must comply in order to be an international bill of exchange subject to this Law. Non-compliance of an instrument with these requisites will make the uniform law inapplicable. The inapplicability of this Law is the sole consequence of non-compliance with paragraph (2); such non-compliance does not interfere with the validity or negotiability of the instrument under applicable national law (e.g., the law of the place of drawing or of the place of issuance).

"A written instrument"

3. The term "written" is not defined in the uniform law. This term, in the context in which it is here used, would include any mode of representing or reproducing words in visible form, and is sufficiently flexible to permit the Law to apply to long-distance electronic transmission or reproduction of a writing.

4. Subject to the requirements laid down in paragraph (2), the validity of an instrument as an international bill of exchange is not dependent on the use of any specific wording or any specific language.

Subparagraph (a): the designation

5. This Law becomes applicable only by the voluntary use of an international bill of exchange which clearly states that the bill is governed by this Law. Subparagraph (a) is designed to ensure that this choice is clearly manifested. The choice to bring the instrument within this Law would initially be made by the drawer in employing an instrument bearing the designation "international bill of exchange drawn subject to the convention of _____." Others who become a party to the instrument bearing this designation, in view of the voluntary nature of their act, similarly manifest their consent to the applicability of this Law.

Subparagraphs (b) to (d): other formal requisites

6. These requisites are in substance those which in the principal legal systems are considered to be the minimum requirements for an instrument to qualify as a bill of exchange. Consequently, bills currently in use under the principal legal systems may be made into international bills of exchange subject to this Law by the use of the designation specified in subparagraph (a) and by the evidence on the bill of the international elements under subparagraph (e).

7. To come within this Law, a bill must be an "unconditional order" (i.e., it must not be payable upon a contingency) to pay "a definite sum of money" (as defined in article 7) "on demand" or "at a definite time" (as defined in article 9). As to a conditional endorsement, see article 17. As to a conditional acceptance, see article 40.

"... To a specified person (the payee) or to his order; ..."

8. The expression "to the order of" (pay to the order of) or "to his order" (pay X or to his order) is frequently found on bills. Under the BEA or the ULB, in contrast to the UCC,

such an expression is irrelevant to the negotiability of the instrument, and the omission thereof does not therefore prevent negotiation. This Law follows in this respect the BEA and the ULB. Hence, a bill under this Law may be drawn either "pay to X", "pay to the order of X", or "pay to X or to his order". The wording of article 1 (2) (b) does not permit an international bill of exchange to be drawn payable to bearer. However, the drawer (by drawing the bill payable to himself) or any holder may transform the bill into a bearer bill by endorsing it in blank.

Subparagraph (e): internationality

9. An international bill of exchange under this Law is intended to serve as a means of settling international payments. Hence, the uniform law will be applicable only when certain international elements appear on the face of the bill. Subparagraph (e) requires that an international bill of exchange shown a place of drawing that is situated in a country other than the country of the drawee or of the payee or of the place where payment is to be made. The requirement that the place of drawing be mentioned on a bill is only found in the ULB (articles 1 and 2), and not in the BEA (s. 3 (4) (c)) and UCC (s. 3-112 (1) (a)). However, inquiries amongst banking and trade circles revealed that, whatever the legal system may be under which a bill is drawn, the place of drawing and the place of payment are generally specified on instruments used for international payments. Thus, the requirement under subparagraph (e) of article 6 corresponds to present commercial practice.

10. Paragraph (2) (e) does not require that detailed street addresses of places in two different countries appear on the bill. For the purpose of internationality, it suffices for the bill to mention two countries. Thus, a bill drawn by J. Brown, New York, on F. Dupont, France, or made payable to F. Dupont, France, would meet the requirement of subparagraph (e). However, it would be in the interest of the drawer to specify the address of the drawee and the place of payment, since under articles 51 and 56 of the uniform law, a bill is dishonoured by non-acceptance or by non-payment, *inter alia*, if presentment for acceptance or for payment cannot be made because the drawee or the acceptor cannot be found. In such a case, the holder of the bill may exercise a right of recourse against the drawer.

11. Consideration has been given to the feasibility of other tests of the "internationality" of an instrument, such as a test based on the requirement that an international bill of exchange be used solely to settle international transactions, e.g., the international sale of goods or a test geared to potential conflict of law situations. After consultation with interested international organizations these tests were abandoned because they were considered impracticable and lacked the advantage of the present test, namely the indisputable appearance of internationality on the face of the instrument. Analysis of the sphere of application of the uniform law shows that the test prescribed in article 1 (2) (e) embraces the majority of cases in which there is an international movement of credit and also the principal situation in which conflicts of law arise.

Article 2

The incorrectness of statements made on a bill for the purpose of paragraph (2) (e) of article 1 shall not affect the application of this Law.

COMMENTARY

1. The security of transactions in international bills of exchange depends on a clear and indisputable identification of the applicable legal régime. To this end, article 1 in paragraph (2) (e) requires that the bill be designated as an international bill of exchange drawn subject to this convention. In addition, under paragraph (2) (e) an instrument subject

to this Law must show "that it is drawn in a country other than that of the drawee, or of the payee, or of the place where payment is to be made". The requirement of "internationality" consequently must appear from the statements made on the instrument. These rules are strengthened by the rule of the present article whereby the applicability of this Law cannot be placed in doubt by controverting the statements made on the face of the bill in conformity with paragraph (2) (e).

2. Article 2 has the same effect as a provision that, for the purpose of application of the law, the appearance of the international elements, required under article 1 (2) (e), constitutes an irrebuttable presumption. Therefore, an incorrect statement as to the place of drawing, etc., so as to bring the instrument under the uniform law, does not thereby make the instrument invalid as an international bill of exchange, and cannot be a defence to be raised against a holder, even if such holder had knowledge of the fact that the statement is incorrect. To provide otherwise would provide grounds for casting doubt on the applicability of Law, and would impair the circulation of an international bill of exchange.

3. This article does not preclude a party from bringing, outside the bill, an action for damages against another party on the ground that he made fraudulently incorrect statements as to the place of drawing, payment, the address of the drawee or that of the payee. In the course of discussions of this article with interested international organizations and banking and trade institutions, the suggestion was made that the convention of which the uniform law will form an annex could contain an article permitting contracting States to provide, in their national legislation, for sanctions against a party who fraudulently abuses article 1 (2) (e).

Article 3

This Law shall apply without regard to whether the countries indicated on an international bill of exchange pursuant to paragraph (2) of article 1 are Contracting States.

Cross reference

Definition of "international bill of exchange": article 1 (2).

COMMENTARY

1. The sole requirement for the Law's applicability is that the instrument is an international bill of exchange, i.e. an instrument which complies with the formal requirements laid down in article 1 (2). Under this test, the form of a contracting State would apply the uniform law, and not its domestic law or the bills of exchange law of a foreign State which, through the application of conflict rules, might otherwise be applicable.

2. The provision of article 2 may be illustrated by the following example. An instrument containing, in the text thereof, the words "International Bill of Exchange drawn subject to the Convention of..." (see article 1 (2) (a)) on its face shows that it is drawn in State X on drawee in State Y. Neither X nor Y is a contracting State. The instrument is accepted by the drawee, and the payee endorses the bill to E. The acceptor dishonours the bill by non-payment and E requests the drawer to pay the bill. The drawer asserts a defence (for instance, failure by the holder to observe applicable formalities as to protest, and the holder brings his claim before the court of a contracting State. By virtue of article 2, the uniform law is applicable, and the rights and liabilities of all parties to the bill are governed by the uniform law, irrespective of the place where each separate contract on the bill was made, where the bill was dishonoured, or where protest was made or should have been made. This rule on the applicability of the uniform law thus supplants the various rules on conflict of laws that might otherwise be applicable.

3. In substance, article 2 gives effect to the intention of the parties that their legal relationships on the bill would be governed by the uniform law, in accordance with the statement on the bill. Thus, parties signing an international bill as drawer, endorser, guarantor or acceptor thereby manifest their intention to be governed by the uniform law. The same may be said of a person who takes the bill as transferee, holder or protected holder. The application of the uniform law to legal relationships between parties to an international bill of exchange on the sole ground that the instrument is an international bill of exchange responds therefore to the reasonable expectations of the parties.

4. The intent of the parties that this uniform law shall be applicable distinguishes the present draft from other uniform legislation which is applicable without regard to the rules of private international law. An example of the latter approach is provided by the Uniform Law on the International Sale of Goods (ULIS) annexed to The Hague Convention of 1964. Article 1 of ULIS makes the law applicable to sales contracts between parties whose places of business are in "different States": this provision does not require that either of these "different States" had adopted the law. In addition, article 2 of ULIS provides:

"Rules of private international law shall be excluded for the purposes of the application of the present Law subject to any provision to the contrary in the said Law."

This provision was the subject of criticism at sessions of the United Nations Commission on International Trade Law (UNCITRAL) and of UNCITRAL's Working Group on the International Sale of Goods, and a different approach to the applicability of such uniform rules was recommended.¹ One of the grounds for criticism was the possibility that a sales transaction could be covered by ULIS when the parties had not chosen ULIS and had no grounds for expecting that ULIS would be applicable to their transaction. This difficulty, of course, is obviated by article 1 (2) (a) of the present draft which specifies, as one of the conditions of the law's applicability, that the bill bear a prescribed designation which evidences the intent of the parties to choose the uniform law.²

¹ UNCITRAL, report on second session (1969), annex I, para. 40; UNCITRAL, report on third session (1970), para. 30, UNCITRAL Yearbook, vol. I: 1968-1970, part two, II, A, and part two, III, A; UNCITRAL, report on fourth session (1971), paras. 67-69, UNCITRAL Yearbook, vol. II, 1971, part two, II, A; Working Group on the International Sale of Goods, report, on the second session (A/CN.9/52), paras. 32-35, UNCITRAL Yearbook, vol. II: 1971, part two, I, A, 2.

² The draft convention on prescription (limitation) in the field of international sale of goods (September 1971), adopted by the Working Group on Prescription at its third session (August-September 1971), states in article 2 that the law shall be applicable "without regard to the rules of private international law". A/CN.9/70, annex I, *supra*, part two, I, B, 2. This rule of applicability, like that of ULIS, does not rest on a choice of the parties. The special problems inherent in problems of prescription that led to this wider approach to applicability are explained in the commentary to the draft convention on prescription. (A/CN.9/70/Add.1, commentary to article 2 at paras. 2-9)

A more precise parallel to the present draft uniform law on international bills of exchange is provided by the draft convention on the international combined transport of goods (TCM Convention), as adopted by the fourth session of the Joint IMCO/ECE meeting, 15-19 November 1971. (CTC IV/18/Rev.1; TRANS/374/Rev.1.) Under article 1 (1) a Combined Transport Document shall bear the heading (e.g.,) "Negotiable Combined Transport Document governed by the TCM Convention". Under article 1 (3), the provisions of the Convention shall apply to every Combined Transport Document "whatever may be the place of issue, the place at which the goods are taken in charge, the place designated for delivery" or other specified aspects of the transaction, and without regard to whether they occur in a Contracting State. Thus, under the

5. Of course, the obligation to apply the uniform law in the circumstances defined in articles 1 to 3 is incumbent on Contracting States only. Consequently, whether the forum of a non-contracting State would apply the uniform law to an instrument that complies with the requirements set forth in article 1 (2) would depend on the conflict of law rules of that form. Presumably, the forum of a non-contracting State would consider such an instrument to be an international bill of exchange subject to the uniform law if its conflict rules referred to the law of the country where the instrument was drawn and if that country is a Contracting State. But, in other factual settings a non-contracting State may apply the rules of the national law rather than this uniform law. In such cases, an instrument, drawn as an international bill of exchange under the uniform law, might not qualify as a bill of exchange under the applicable law. The present draft seeks to meet that potential problem by laying down, in article 1 (2), requisites that are in substance similar to those which in the principal legal systems are considered to be the minimum requirements for an instrument to qualify as a bill of exchange (see commentary to article 2 above). Hence, the presence on an instrument of the requisites under article 1 (2) will, in most cases, also qualify the instrument as a bill of exchange under whatever national law may be applicable. Therefore, article 1 (2) helps to ensure that an instrument drawn pursuant to its provisions will qualify as a negotiable instrument even if the forum of a non-contracting State applies its own law, or by reason of its conflict rules, applies the law of another non-contracting State. However, there may be cases where a bill that satisfies the requisites of article 1 (2) will not meet one of the requirements imposed by a national law.

6. Consideration has been given to adding a provision that the uniform law would be applicable only if the instrument was drawn [or issued] in a Contracting State. The principal effect of such a rule would be to discourage banking and trade circles from drawing or issuing international bills of exchange in non-contracting States and thereby reduce the complications that might result from the application of conflict rules by the forums of non-contracting States. Such a rule limiting the applicability of the uniform law has not been incorporated in the present draft. Under this draft a person is given the opportunity to draw, accept and endorse an international bill of exchange without regard to whether it is drawn in a Contracting State or a non-contracting State, and a court in a Contracting State would give effect to their intent that the uniform rules should apply which was expressed on the face of the instrument and by the voluntary use of the bill. Of course, the court of a non-contracting State may not give effect to this intent. This possibility, however, can be taken into account by the parties in deciding whether to employ the international bill of exchange in the light of their expectation as to whether litigation would be brought in a Contracting or in a non-contracting State. Furthermore, the rule mentioned above would necessarily make the uniform law inapplicable to an instrument drawn as an international bill of exchange in a non-contracting State, even where the drawee is in a Contracting State, or the bill is payable in a Contracting State, and litigation arises in a Contracting State. Such a rule would unduly restrict the scope of application of the uniform law.

7. The above problem, and others related to the application of uniform rules to rights and liabilities on an international bill of exchange, are inherent in the process of adoption of uniform rules for as long as a uniform law is not universally adopted and applied.

Draft TCM Convention, as under the present draft uniform law on international bills of exchange, the applicability of the uniform rules is based on the issuance and the receipt by subsequent parties of a document bearing a designation that opts for the rules of the convention.

Part Two. Interpretation

Section 1: General

Article 4

In interpreting and applying the provisions of this Law, regard shall be had to its international character and to the need to promote uniformity in its interpretation and application.

COMMENTARY

1. The above general principle with regard to the interpretation and application of the Law corresponds to provisions recommended by the Working Group on the International Sale of Goods and by the Working Group on Prescription¹

2. One of the important objectives of the article is to promote uniformity in the interpretation and application of this Law. To this end, the text of the uniform law directs attention to its "international character"; the regard for the international character of the Law would avoid interpreting its provisions by recourse to local (and varying) national concepts, rather than to the Law's provisions read as an independent piece of international legislation. This article may also be helpful to encourage tribunals in one State to promote uniformity by interpreting the Law with due regard to the interpretation given to the Law in other States.

Article 5

In this Law:

(1) "Bearer" means a person in possession of a bill endorsed in blank;

(2) "Bill" means an international bill of exchange governed by this Law;

(3) (a) "Endorsement" means a signature, or a signature accompanied by a statement designating the person to whom the bill is payable, which is placed on the bill by the payee, by an endorsee from the payee, or by any person who is designated under an uninterrupted series of such endorsements. An endorsement which consists solely of the signature of the endorser means that the bill is payable to any person in possession of the bill.

(b) "Endorsement in blank" means an endorsement which consists solely of the signature of the endorser or which includes a statement to the effect that the bill is payable to any person in possession of the bill.

(c) "Special endorsement" means an endorsement which specifies the person to whom the bill is payable.

(4) "Holder" means the payee or the endorsee of a bill who is in possession thereof;

(5) "Issue" means the first transfer of a bill to a person who takes it as a holder;

(6) "Party" means a party to a bill;

(7) "Protected holder" means the holder of a bill which, on the face of it, appears to be complete and

¹Working Group on Sales: A/CN.9/52, para. 127, UNCITRAL Yearbook, vol. II: 1971, part two, I, A, 2; Working Group on Prescription: A/CN.9/50, annex I (article 5) and annex II (commentary to article 5), UNCITRAL Yearbook, vol. II: 1971, part two, I, C, 2; A/CN.9/70, annex I (article 7) and A/CN.9/70/Add.1 (commentary to article 7). (See above, part two, I, B, 2.) See also UNCITRAL, report on third session (1970), paras. 52-54; UNCITRAL Yearbook, vol. I: 1968-1970, part two, III, A; UNCITRAL, report on fourth session (1971), paras. 82-84; UNCITRAL Yearbook, vol. II: 1971, part one, II, A.

regular and not overdue, provided that such holder was, when taking the bill, without knowledge of any claims or defenses affecting the bill or of the fact that it was dishonoured.

COMMENTARY

Paragraph (2): "bill"

Article 1 (1) of this Law provides that the uniform law shall apply to an international bill of exchange. Article 1 (2) specifies the circumstances under which an instrument is an international bill of exchange. This Law uses the Expression "bill" to replace the longer expression "international bill of exchange".

Paragraph (3): "endorsement"

Relevant legislation

BEA—sections 2, 31

UCC—sections 3-202 (2) and 204

ULB—article 13

Subparagraph (a)

1. The existing legal systems refer to the concept of "endorsement" without defining this term. In the interest of clarity and uniformity, this Law includes a definition of this basic concept. Under this definition, an endorsement must comply with two basic requirements. First, it must be signed by the proper person, i.e., the payee or an endorsee from the payee, or any person who is designated under an uninterrupted series of such endorsements. Second, it must be done in a proper formal way: i.e., by a signature with or without a statement designating the person to whom the bill is payable.

Example A. The payee signs "pay A". This is a proper endorsement. It indicates the person to whom the bill is payable (A), and it is signed by a proper person (the payee).

Example B. The bill is stolen from the payee by T. The thief forges the payee's signature and orders the bill to be paid to B. This forgery is not an endorsement, since it is not signed by the proper person as specified in the definition.

"An uninterrupted series of such endorsements"

2. The first endorser is always the payee. The endorsee from the payee is the person who is indicated by the payee as the one to whom the bill is payable. This endorsee, in his turn, will be the second endorser. The person who is indicated by him is the next endorsee, etc. By such indication, an uninterrupted series of endorsements will be created, in a way that from the face of the bill the last possessor can trace his right to the bill to the payee.

Example C. The payee endorses the bill by writing "pay A" and signing his name. A endorses the bill by writing "pay B" and signing his name. B acquires the bill through an uninterrupted series of endorsements.

Example D. The payee endorses the bill "pay A" and signs his name. A delivers the bill to B without endorsing it. B writes "pay C" and signs his name. The series of endorsements was interrupted following the endorsement by the payee.

Example E. The payee endorses the bill "pay A" and signs his name. A endorses the bill by merely signing his name and delivers the bill to B. B delivers it to C. C acquired the bill through an uninterrupted series of endorsements.

Subparagraph (b): "endorsement in blank"

Relevant legislation

BEA—section 34 (1)

UCC—section 3-201 (2)

ULB—article 13

An endorsement in blank means an endorsement, as defined in article 5 (3) (a) "which consists solely of the signature

of the endorser or which includes a statement to the effect that the bill is payable to any person in possession of the bill". It differs from a special endorsement (article 5 (3) (c)) since the person to whom the bill is to be payable is not a specific person but is any person in possession of the bill.

Example F. The payee signs his name and provides:

- (1) Pay "any person"; or
- (2) Pay "bearer";

In those two cases the bill was endorsed "in blank". A bill is also endorsed in blank if the endorsee merely signs his name.

Paragraph (4): "holder"

Relevant legislation

BEA—section 2

UCC—section 1-201 (20)

1. The rights to and upon a bill are vested in the holder (article 26). He has the right to receive payment at maturity, and payment to him discharges the party paying (article 70). Being a "holder" is a necessary element for qualifying as a protected holder. Under part five of this Law, the holder has the duty to present the bill for acceptance and for payment, and, in the event of dishonour, to protest the bill and to give notice of dishonour.

2. Pursuant to article 5 (3) (a), in order to be a holder, one must

- (a) Be a payee or an endorsee; and
- (b) Be in possession of the bill.

If one of those requirements is missing, the person is not a holder.

Example G. The payee endorsed the bill "to A" (a "special" endorsement) and delivered the bill to A. A is the holder.

Example H. The payee endorsed the bill to "A", and delivered the bill to B. Neither A nor B is a holder.

Example I. The payee endorsed the bill in blank and delivered it to A. A is the holder.

Example J. The payee endorsed the bill in blank. The bill was stolen by T. T is the holder. Since the payee is not "in possession" of the bill, he is not the holder.

3. Under the definition of "holder", a drawer or guarantor are not holders since they are neither a "payee" nor "endorsee". It is provided, however, that they have rights on the bill (see articles 36 and 44 (3)).

Example K.

4. An acceptor dishonoured the bill. The holder exercised his rights of recourse, and was paid by the drawer. The bill was delivered to the drawer without an endorsement. The drawer (being neither "payee" nor "endorsee") is not the holder of the bill. However, he has rights on the bill against the acceptor in accordance with article 36.

5. A payee or endorsee may reacquire a bill. Even though the bill is not endorsed to them, in connexion with the reacquisition, the "payee" or "endorsee", comply with the definition of "holder".

6. If a holder parts with possession of the bill, he ceases to be the holder. His rights are determined by the rules on "lost bills".

7. For the purposes of the definition of holder, it is irrelevant whether the possession of the bill is lawful or not. As seen from example D, even a thief may be a holder. Of course, if the possession is unlawful, there may be a defence on or a claim to the bill pursuant to article 24.

8. To be a "holder", the possessor need be the owner of the bill. When a bill is endorsed "for collection", the endorsee in possession is the holder of the bill, although he may be only an agent of the endorser rather than the owner of the bill.

Paragraph (5): "issue"

Relevant legislation

BEA—section 2

Cross references

Presentment for payment of an undated bill: article 53 (c)

Interest on an undated bill from the issue thereof: article 8 (3)

The word "issue" is used several times in the draft. It means the first transfer of a bill to a person who takes it as a holder. The usual case is where the drawer delivers the bill to the payee. If the drawer makes the bill payable to himself and the drawer-payee endorses and transfers the bill to an endorsee, the bill is then "issued" to such endorsee. It should be noted that delivery of the bill by the drawer to the drawee for acceptance is not an "issue" of the bill, since the drawee does not take it as a holder.

Paragraph (6): "party"

The draft uses the term "party" to refer to a party "to the bill", i.e., a person who signed the bill. The drawer, endorses, acceptor and guarantor are parties to the bill. On the other hand, the drawee is not a party to the bill.

Paragraph (7): "protected holder"

Relevant legislation

BEA—section 29

UCC—sections 3-302 and 304

ULB—articles 16 and 17

1. The main advantages of a negotiable instrument result from the strong legal position of a protected holder, who takes the bill free from claims or defences (article 25).

2. To be a protected holder, a person must be a "holder" of a bill which appears on the face of it to be complete and regular and not overdue; he must take the bill without knowledge of any claim or defence or discharge affecting the bill and of the fact that it was dishonoured.

"On the face of it appears to be complete and regular"

3. A person cannot qualify as a protected holder if the bill, on the face of it, does not appear to be complete and regular. For example, a bill would not appear to be "complete" if there is a blank space for the date of issue and the date of issue is missing; the bill would not appear to be "regular" if the name of the first endorser does not correspond to the name of the payee. The expression "on the face of it" shows that the holder need not look beyond the instrument, and refers to both the face and the back of the bill.

"On the face of it appears to be . . . not overdue"

4. A holder who takes a fixed-term bill after the expiration of the term cannot qualify as a protected holder. Such a bill should have been paid, and its circulation cast doubt on its value.

5. A dated demand bill should be paid within one year of its date (article 53 (f)). If the holder takes the bill after such time, he cannot qualify as a protected holder. If a demand bill is undated, it should be presented for payment within one year of its issue (article 53 (f)). However, this date may not be known to the holder. Consequently, he takes the bill without such knowledge, he may qualify as a protected holder since, from its face, the bill does not "appear to be overdue".

"Without knowledge"

6. A holder cannot qualify as a protected holder if, when taking the bill, he knows about the existence of claims or defences affecting the bill or about the fact that the bill was dishonoured. Such holder takes the bill at his own risk, and it is not the policy of the uniform law to protect him. For the definition of the expression "without knowledge" (and especially the effect of negligent failure to know) see article 6 and commentary.

"When taking the bill"

7. A holder may be a protected holder if knowledge of claims, defences or dishonour was acquired by him after he has taken the bill.

8. A person may be a protected holder even if he has not given value or consideration for the bill. This rule is consistent with some legal systems and departs from the approach of others (see BEA, section 29 (1) (b), and UCC, sections 3-202 (1) (a) and 3-303). The present approach was selected because of the problems of unifying the various views on "value" (or "consideration") among divergent legal systems.

Article 6

For the purpose of this Law, a person is considered to have "knowledge" of a fact if he has actual knowledge thereof [or if the absence of knowledge thereof is due to [gross] negligence on his part] [or if he has been informed thereof or if the fact appears from the face of the bill].

Relevant legislation

- BEA—section 29 (1) (b), 59 (1) and 90
- UCC—section 1-201 (19) and (15), 3-303 and 304
- ULB—articles 16, 17 and 40

Cross references

- Knowledge in case of forged endorsement: article 22
- Knowledge in case of forged signature: article 28
- Knowledge in case of material alteration: article 29
- Knowledge in case of defects of an endorsed bill: article 42

COMMENTARY

In several provisions of the uniform law, the rights or liabilities of a party are dependent on whether he transferred or took the bill "without knowledge" (see cross references). Article 6 provides that for the purpose of the uniform law, knowledge means actual knowledge of a fact. The main question in this respect is whether the concept of "knowledge" should be extended beyond actual knowledge to cover the two following cases: (a) cases in which a person in the past had knowledge about a fact but had forgotten this fact so that he did not have actual knowledge of the fact at the time he took or transferred the bill; and (b) cases in which the absence of actual knowledge may be attributed to negligence (or gross negligence). On this issue the rules of the main legal systems are in conflict, and it is difficult at this stage to frame a single rule. In view of this fact, the above draft of article 6 sets forth alternative texts for consideration by the working group.

*Section 2. Interpretation of formal requirements**Article 7*

The sum payable by a bill is a definite sum although the bill states that it is to be paid

- (a) With interest; or
- (b) By stated instalments; or
- (c) According to an indicated rate of exchange or according to a rate of exchange to be determined as directed by the bill.

Relevant legislation

- BEA—section 9
- UCC—section 3-106
- ULB—articles 5 and 33

Cross references

- Amount of the bill: article 8 (1) (2)
- Interest (no date specified from which interest is to run): article 8 (3)
- Interest (no rate specified): article 8 (4)
- Interest to be paid after maturity: articles 67 and 68
- Rate of exchange (no rate specified): article 74

COMMENTARY

1. This article provides that if a bill states that it is to be paid with interest, by stated instalments, or according to a certain rate of exchange the sum payable by such a bill shall be a definite sum for the purpose of article 1 (2) (b). The article thus settles a sharp controversy between the principal legal systems. Anglo-American law permits the stipulation of interest on any bill (BEA, s. 9 (1) (a) and UCC, s. 3-106 (1) (a)), whereas the Geneva Uniform Law allows such a stipulation only in the case of bills payable at sight or at a fixed period after sight and denies it any effect to a stipulation for interest in the case of bills payable at other maturities (ULB, article 5). A majority of those who replied to the questionnaire favour a rule permitting the stipulation of interest (see A/CN.9/48, para. 26, UNCITRAL Yearbook, vol. II: 1971, part two, II, 2) and article 7 responds to this view.

2. Article 8 (3) and (4) set forth rules in respect of the calculation of interest on bills which do not specify the rate from which interest is to run or which do not specify the rate.

3. The same considerations have prevailed with respect to paragraph (b). A bill may be made payable by instalments, but by virtue of article 1 (2) (b) and (c), such a bill must specify the amount of each instalment and the date on which it is payable.

4. Paragraph (c) sanctions the common practice of bills drawn in a currency which is not that of the place of payment. If no rate of exchange is indicated or the bill contains no directions to that effect, article 74 will apply.

Article 8

(1) If there is a discrepancy between the amount of the bill expressed in words and the amount expressed in figures, the sum payable shall be the amount expressed in words.

[(2) If the amount of the bill is specified in a currency having the same designation but a different value in the country where it was drawn and the country where payment is to be made, the designation shall be considered to be in the currency of the country where payment is to be made [provided that the place where payment is to be made is indicated on the bill]].

(3) Where a bill states that it is to be paid with interest, without specifying the date from which interest is to run, interest shall run from the date of the bill [and if the bill is undated, from the issue thereof].

(4) Where a bill states that it is to be paid with interest, without specifying the rate, simple interest at the rate of [five] per cent per annum shall be payable.

Relevant legislation

- BEA—sections 9 and 72 (4)
- UCC—sections 3-106, 118 (c)
- ULB—article 6

Cross references

- Interest: article 7
- Issue: article 5 (5)

COMMENTARY

Paragraph (1)

1. This paragraph deals with bills where there is a discrepancy between the two, and follows in substance the relevant provisions of the BEA, UCC and ULB. The sum payable by a bill may of course be expressed in words only or in figures only.

Paragraph (2)

2. This provision envisages the case where, for instance, a bill for X francs is drawn in Paris, France, and made payable in Geneva, Switzerland. In the absence of any express indication to the contrary, the bill is then payable in Swiss francs.

3. During the discussions on this paragraph with interested international organizations, the view was expressed that this rule should only obtain if a place of payment is indicated on the bill. A proviso to that effect is put between brackets.

Paragraph (3)

4. As to "issue", see article 5 and commentary.

Paragraph (4)

5. If no rule of interest is specified simple (rather than compound) interest is payable unless the bill contains a stipulation for the payment of compound interest. As in the case of a rate of interest fixed on the bill, the legal rate of interest is payable only until maturity. After maturity, the rate of interest specified in article 67 (b) or article 68 (b) will be applicable.

Article 9

(1) A bill is payable on demand

(a) If it states that it is payable on demand or at sight or on presentment or if it contains words of similar import;

(b) If no time for payment is expressed.

(2) A bill which is accepted or endorsed or guaranteed after maturity is a bill payable on demand as regards the acceptor, the endorser or the guarantor.

(3) A bill is payable at a definite time if it states that it is payable

(a) On a stated date or at a fixed period after a stated date or at a fixed period after the date of the bill; or

(b) At a fixed period after sight; or

[(c) By instalments at successive dates, even when it is stipulated in the bill that upon default in payment of any instalment the unpaid balance shall become due immediately.].

(4) The time of payment of a bill payable at a fixed period after date is determined by reference to the date stated on the bill regardless of whether bill is ante-dated or post-dated.

Relevant legislation

BEA—sections 10 and 11

UCC—sections 3-108 and 109

ULB—articles 2, 33 and 34.

COMMENTARY

Bills payable on demand

1. Paragraph (1) (a) permits a wide latitude in the use of expressions which make a bill payable on demand. The requirement of one standard expression would not appear to

be justifiable in view of well-established practices in different parts of the world.

2. As to the period of time within which a demand bill must be presented for payment, see article 53 (e).

3. Paragraph (1) (b) restates similar rules found in the principal legal systems.

4. Paragraph (2) provides that the acceptance, endorsement or guarantee of an overdue bill will make the bill payable on demand as regards the acceptor, the endorser and the guarantor. Similar rules are found in the BEA (section 10) and the UCC (section 3-108).

Bills payable at a definite time

5. The word "sight" in paragraph (3) (b) refers to presentment for acceptance. "After sight" bills must be presented for acceptance (article 46 (1) (b)) in order to determine the date of maturity.

6. Article 7 (b) provides that a sum payable is a "definite sum" if the bill states that it is to be paid by stated instalments (i.e. say \$100 on the first of January 1973, \$100 on the first of January 1974 etc.). Article 9 (3) (c) provides a parallel rule as to the date of the bill, i.e. that a bill is payable at a definite time if it states that it is payable by instalments at successive dates. It is also provided that a bill is payable at a definite time if it states that upon default in payment of an instalment, the unpaid balance shall become due immediately. This last provision is put between brackets to indicate doubt as to whether such a rule is advisable. The holder of such a bill may not know, from its face, if there is a default and therefore he may not know what is the amount due. (It may also be noted that if such a rule is to be retained it might be included either in article 9 which deals with the definition of a "definitive time", or article 7 which deals with the definition of a "definitive sum").

7. Paragraph (3) (a) provides that bill is payable at a definite time if it states that it is payable at a fixed period after the date of the bill. Paragraph (4) provides further that: by the expression "date of the bill" is meant the date stated on the bill regardless of whether the bill is ante-dated or post-dated.

Example A. On the first of January 1972, the drawer draws a bill payable three months after date. The drawer writes on the bill the first of January 1971 [or the first of January 1973] as the date of the bill. Though such date is factually incorrect this does not prevent the bill from expressing a definite time of payment. Such time is the first of April 1971 [or the first of April 1973] and not the first of April 1972.

8. If the instrument states that it is payable at a fixed period after date, and no such date is indicated, the instrument is incomplete. The possessor of the instrument has the right to insert the date of the bill in accordance with the provisions of article 11.

Article 10

(1) A bill may

(a) Be drawn upon two or more drawees,

(b) Be signed by two or more drawers,

(c) Be payable to two or more payees.

(2) If a bill is payable to two or more payees in the alternative, it is payable to any one of them and any one of them in possession of the bill may exercise the rights of a holder. In any other case the bill is payable to all of them and the rights of a holder can only be exercised by all of them.

Relevant legislation

BEA—section 6 (2), 37 (3)

UCC—sections 3-110 (d), 3-116

Cross references

- Signature: article 27
 Negotiation of a bill: article 13
 Discharge: part six of the Law.

COMMENTARY

Paragraph (1)

1. Article 1 (2) provides that a bill is a written instrument which, *inter alia*, contains an unconditional order whereby one person (the drawer) directs another person (the drawee) to pay a definite sum of money to a specific person (the payee). The purpose of this paragraph is to make it clear that a written instrument is also a bill if the direction to pay is made by more than one person, or if the persons directed to pay or to receive payment are several.

Paragraph (1) (a)

2. Although inquiries amongst banking and trade institutions revealed that a plurality of drawees is only infrequently formed on bills, the majority view amongst those consulted favoured a rule that would permit such practice expressly.

Paragraphs (2) and (3)

3. This paragraph deals with the case where a bill is drawn payable to two or more payees. It provides a rule of interpretation whereby if the bill does not state expressly that such payees are in the alternative, it is payable to all of them and only all of them can exercise the rights of a holder.

Example A. A bill is drawn payable to A and B. A endorses the bill to C. What are C's rights? If A has authority to endorse the bill in the name of B, C is a holder, and has all the rights which a holder has under this Law. On the other hand, if A has no authority to endorse the bill on behalf of B, his signature is not an "endorsement" (as defined in article 5 (c)) since it is not signed by the proper persons, i.e., A and B together.

4. Where the bill provides that it is payable to A or B, every one of them in possession of the bill is its holder (see definition of holder in article 5 (4)); and every one of them in possession of the bill may exercise the rights of a holder as provided by this Law.

Section 3. Completion of an incomplete instrument

Article 11

(1) The possessor of an instrument which

(a) Contains, in the text thereof, the words "Pay against this International Bill of Exchange, drawn subject to the Convention of . . ." (or words of similar import), and

(b) Is signed by the drawer,

but which lacks elements pertaining to one or more of the other requirements set out in article 1 (2), shall be presumed to have received authority from the drawer to insert such elements, and the instrument so completed is effective as a bill.

(2) When such an instrument is completed otherwise than in accordance with the authority given, the lack of authority cannot be set up as a defence against a holder who took the bill without knowledge of the lack of authority.

Relevant legislation

- BEA—section 20
 UCC—section 3-115
 ULB—article 10

Cross references

"Pay against this International Bill of Exchange": article 1 (2)

"Knowledge": article 6

COMMENTARY

1. Article 11 deals with the completion of an instrument which lacks one or more of the requirements set forth in article 1 (2) of this Law: the sum of the bill, the name of the payee, the country of the drawer, drawee or payee, etc. However, the presumed authority under article 11 does not include the authority to insert: (a) the signature of the drawer (required by article 1 (2) (d)); or (b) the words "Pay against this International Bill of Exchange, drawn subject to the Convention of . . ." (required by article 1 (2) (d)). Therefore, only an instrument on which the designation already appears, and which is signed by the drawer, can be completed as a bill by inserting other elements required by article 1 (2) (e). Such completion would respond to the reasonable expectation of the parties.

2. If an instrument lacks elements pertaining to one or more of the requirements set out in article 1 (2), it is not a bill under this Law, and cannot be enforced as a bill until completed. When the missing elements have been inserted, the instrument becomes a bill, and the Law is applicable. Article 11 distinguishes between two cases: first, the completion was in accordance with the authority given: the bill is then effective as completed in the hands of any holder. The fact that it was previously not completed is not relevant. Second, the instrument was completed in contravention of the authority given: the instrument is a bill, but the lack of authority may be raised as a defence against a holder who knew about it.

Example. An instrument, containing in the text thereof the words "Pay against this International Bill of Exchange drawn subject to the Convention of . . ." and signed by the drawer is issued to the payee without the sum being stated. It is understood between the drawer and the payee that the sum to be inserted should be determined in the future. Without authority, the payee inserts an incorrect sum, and endorses the bill to A. What are A's rights?

If A took the bill without knowledge of the lack of authority, he has right on the bill, as completed, against the parties who signed it. If A knew about the unauthorized completion, the drawer may raise a defence based upon the fact that the instrument was completed without authority.

Part Three. Transfer and negotiation

Article 12

The transfer of a bill vests in the transferee the rights to and upon the bill of the transferor.

Relevant legislation

- BEA—sections 29 (3), 31 and (4)
 UCC—section 3-201

Cross references

- Definition of "protected holder": article 5
 Claims and defences: article 24 (1)

COMMENTARY

1. The uniform law makes a distinction between the transfer of a bill (article 12) and its negotiation (article 13). When a bill is transferred, the consequences thereof are similar to an assignment: the transferee has the same rights as the transferor. When a bill is negotiated, the transferee is a holder, and may qualify as a protected holder. His rights are not based only on those of this transferor but derive directly from his being a holder and if he qualifies as such, from his being a protected holder.

Example A. A bill payable to P is accepted by the drawee. The payee (P) transferred the bill to A without endorsement. What are A's rights? A is not a holder (see article 5) and therefore does not have the rights of a holder (see article 23). Article 12 provides that A has the same rights to and upon the bill as the payee. On these facts the payee has rights on the bill against the acceptor and the drawer; the same rights are vested in A.

Example B. P by fraud induces the drawer to draw a bill payable to P (the payee). P transfers the bill without an endorsement to A. A is without knowledge of the fraud. A brings an action against the drawer. The drawer has a defence based on fraud against P; under article 12, the drawer may also raise the defence of fraud against A.

2. In addition to the cases where a bill is transferred without being endorsed, article 12 applies also to cases where a bill is negotiated. In this case the transferee may rely either on his rights as a transferee, or on his independent rights as a holder or if he so qualifies, as a protected holder.

3. It will be noted that the "transferor" under article 12 may be a "protected holder" who has special rights under article 25. Such a protected holder may "transfer" the bill to one who would not qualify as a "protected holder" under article 25. This article deals with the circumstances in which the transferee receives the same protection as the transferor.

Example C. The payee by fraud induces the drawer to draw a bill payable to the payee. The payee endorses the bill to A, who is a protected holder pursuant to article 5. A transfers or endorses the bill to B, who knows about the fraud but did not participate in it. Upon dishonour of the bill, B brings an action against the drawer.

According to article 12, the drawer is liable to B. The drawer has no defence against A, as A is a protected holder (article 25). In the above facts, the rights of A were transferred to B. Therefore the drawer has no defence against B.

4. The reason for the so-called "shelter rule" is not to protect a holder who knows about the defect, but rather to enable a protected holder to transfer or negotiate the bill freely. Unless the transferee from a protected holder may enforce the protected holder's rights, in many cases the protected holder could not receive the full benefit from the right conferred on him by the uniform law.

"Rights to and upon the bill"

5. This expression indicates that the rights transferred are of two kinds:

(a) the rights upon the bill against parties who signed it. The extent of those rights is discussed in articles 34 to 45; and

(b) the proprietary rights to a bill (i.e., the proprietary right to demand the return of the bill or its value). The exercise of these proprietary rights is generally not dealt with by the uniform law, and is left to national law.

Article 13

(1) A bill is negotiated when it is transferred

(a) by endorsement and delivery of the bill by the endorsed to the endorsee, or

(b) by mere delivery of the bill but only if the last endorsement is in blank.

(2) Negotiation shall be effective to render the transferee a holder even though the bill was obtained under circumstances, including incapacity or fraud, duress or mistake of any kind, that would subject the transferee to claims to the bill or to defences as to liability thereon.

Relevant legislation

BEA—sections 22 (2), 31, 55 (2)

UCC—sections 3-202 (1), 3-207

ULB—articles 7 and 11

Cross references

Definition of "endorsement": article 5

Definition of "endorsement in blank": article 5

Definition of "holder": article 5

Claims and defences: article 24

COMMENTARY

Paragraph (1)

1. This paragraph follows in substance the relevant provisions of the existing legal systems. A bill is negotiated when the holder endorses it (either specially or in blank) and delivers it to the endorsee (see article 5). When a bill is negotiated, the transferee is a holder, and thereby acquires the rights, and is subject to all the liabilities, of a holder (see articles 5 and 24).

Example A. The payee endorses a bill specially to A, and delivers it to A. By these acts the bill was negotiated to A, and A thereby becomes the holder of the bill.

Example B. The payee endorsed a bill specially to A, but does not deliver the bill to A. Without further endorsement the payee delivers the bill to B. The bill was not negotiated either to A or to B. Neither A nor B is a holder.

Example C. The payee endorses a bill in blank and delivers it to A. The bill was thereby negotiated to A, who became its holder. If A delivers the bill to B, even without further endorsement, the bill is thereby negotiated to B, and B will be the new holder.

Paragraph (2)

2. The purpose of this paragraph is to provide that a bill is negotiated (and therefore the transferee is a holder), even though the transferor is a person without legal capacity, or the endorsement or delivery was obtained by fraud or other illegal means. The main importance of this provision lies in the fact that such transferee, being a holder, may qualify himself in proper circumstances as a protected holder. Even if such holder is not a protected holder, he may negotiate the bill to a person who may take it, in proper circumstances, as a protected holder.

3. This paragraph does not deal with the question of liability on a bill of the party negotiating it, nor does it impose the rights of a person to the bill. The party negotiating the bill may assert any defence or any claim available to him under articles 24 and 25 of this law.

4. Paragraph (2) does not impose any liability on a party who signed the bill under the circumstances mentioned in the paragraph. The question whether such party may raise the defence of *ius tertii* is governed by article 24 (3).

Example A. A induces the payee by way of fraud to negotiate to him a bill owned by the payee. Pursuant to article 13, the bill has been "negotiated" to A; consequently, A is a holder of the bill. The consequences are shown by the following examples.

Example B. The same facts as in example A. A brings an action against the payee P. Nothing in this article makes the payee P liable to A in spite of the fraud practised by A on P. Pursuant to article 24, the payee has a valid defence to A's action.

Example C. The same facts as in example A. The payee P brings an action against A to recover the bill or to prohibit A from negotiating the bill. The payee P will succeed if remedies of this type are permitted under the law of the place where the negotiation took place.

Example D. The same facts as in example A. A brings an action against the drawer. This question is not solved by article 13. The answer to this question is to be found in article 24.

Example E. By fraud A induces the payee (P) to negotiate to him a bill owned by P. A negotiates the bill to B, who takes it as a protected holder. P brings an action against B for conversion of the bill. P's action fails. According to article 13, A is a holder, and the bill was negotiated to B in circumstances that make B a protected holder. According to article 25, P's claim fails against a protected holder.

Example F. The same facts as in example E. B brings an action against the drawer and the payee (P). According to article 13, A was a holder and therefore B, being without knowledge of the fraud, may be a protected holder. According to article 25 the defences of the drawer and the payee are not available against the protected holder.

Article 14

Where a bill is transferred without an endorsement necessary to make the transferee a holder, the transferee is entitled to require the transferor to endorse the bill to him.

Relevant legislation

- BEA—section 31 (4)
- UCC—section 3-201 (3)

Cross references

- Definition of "negotiation": article 13
- Definition of "holder": article 5
- Definition of "special endorsement": article 5
- Definition of "endorsement in blank": article 5

COMMENTARY

1. Order bills are often transferred by a holder without an endorsement. Article 12 of this law provides that the transferee has the same rights as the transferor. But the transferee is not a holder. He may wish to have the transfer completed by endorsement so that he will be able to qualify as a holder and under the proper circumstances as a protected holder. Article 14 grants him that right. If the transferor refuses to endorse the bill, the court would require him to do so.

2. No provision is made as to the kind of endorsement (e.g., special, blank, unqualified) the transferor is obliged to give, since that depends on the circumstances of the transfer.

Article 15

The holder of a bill endorsed in blank may convert the blank endorsement into a special endorsement by indicating therein that the bill is payable to himself or to some other person.

Relevant legislation

- BEA—section 34 (4)
- UCC—section 3-204 (3)
- ULB—article 14

Cross references

- Definition of "holder": article 5
- Definition of "endorsement in blank": article 5
- Definition of "special endorsement": article 5

COMMENTARY

The provisions of this article are in substance those of the existing legal systems. The importance of this provision is twofold. First, the alteration of a blank endorsement into a special endorsement, since authorized therein, is not a material alteration; consequently, the provisions of article 29 do not apply. Second, the holder by merely converting the blank endorsement into a special endorsement does not incur liability on the bill, since he has not signed the bill (see article 27 (a)).

Article 16

When the drawer has included in the bill, or the endorser in his endorsement, words prohibiting transfer, such as "not transferable", "not negotiable", "not to order", or words of similar import, the bill cannot be negotiated except for purposes of collection.

Relevant legislation

- BEA—sections 8 (1), and 35
- UCC—sections 3-205, 3-206
- ULB—articles 11 and 15

Cross references

- Definition of "endorsement": article 5
- Definition of "negotiation": article 13
- Endorsement for collection: article 20

COMMENTARY

1. By virtue of this article, the drawer or an endorser may insert in the bill or in the endorsement words prohibiting its transfer. The legal effect of such wording is to prevent the further negotiation of the bill, except for collection under article 20. It should be noted that article 16 does not prevent the transfer of such a bill by ways that do not amount to negotiation.

2. Under article 1 (2) of this law, a bill may be payable "to a specific person"; it need not be payable "to order" of the payee. Therefore, the mere omission of that expression does not prevent the negotiation of the bill. To prevent such negotiation the bill must prohibit transfer, as by providing that it is not to order.

3. The Secretariat enquired among banking and trade institutions about the practice followed in connexion with endorsements prohibiting transfer of a bill. The information received suggests that such endorsements are rarely used and that their legal effect is unclear.

4. The Secretariat concluded that there was not sufficient evidence to justify limiting the power of the holder to insert in the bill a provision prohibiting its transfer.

Article 17

An endorsement purporting to negotiate a bill subject to a condition shall be effective to negotiate the bill irrespective of whether the condition is fulfilled.

Relevant legislation

- BEA—section 33
- UCC—section 3-202
- ULB—article 12

Cross references

Definition of "endorsement": article 5

Definition of "negotiation": article 13

COMMENTARY

1. Article 17 provides that a bill is negotiated and the transferee is a holder even if an endorsement is made conditional (e.g., "pay on the arrival of the goods") and even if the condition is not fulfilled. The condition does not avoid the negotiation of the bill.

2. This article is based on provisions that are similar in substance in the main legal systems. It is in conformity with majority view expressed in the replies to the Questionnaire on negotiable instruments (A/CN.9/48, para. 71).

3. This article, by its terms, is limited to endorsements; it does not impair the rule of article 1 (2) that a bill must contain "an unconditional order" to pay.

Article 18

An endorsement purporting to transfer only a part of the sum payable shall be ineffective as an endorsement.

Relevant legislation

BEA—section 32 (2)

UCC—section 3-202

ULB—article 12

Cross references

Definition of "endorsement": article 5

"Sum payable": articles 1 (2), 7, 8

COMMENTARY

1. Article 18 provides that "a partial endorsement" is not effective as an endorsement. The transferee of a bill endorsed as to part of the sum cannot, therefore, qualify as a holder. Nothing in this article can prevent the assignment of a part of a bill: this problem is not dealt with by the uniform law.

2. This article is based on provisions that are similar in substance in the main legal systems. It is also in conformity with the majority view expressed in the replies to the questionnaire on negotiable instruments (A/CN.9/48, para. 71).

Article 19

Where there are two or more endorsements, it shall be presumed, unless the contrary is established, that each endorsement was made in the order in which it appears on the bill.

Relevant legislation

BEA—section 32 (5)

UCC—section 3-414 (2)

Cross references

Definition of "endorsement": article 5

COMMENTARY

This provision is based on substantially similar provisions found in the BEA and UCC. It establishes a presumption of rank for the purpose of the right of recourse by an endorser, who paid the bill, against prior endorsers (see article 41: "subsequent to himself"). This provision is also relevant for determining to what extent the discharge of one endorser discharges subsequent endorsers (see article 78 (1): "any party who has a right of recourse against him").

Article 20

(1) Where an endorsement for collection contains the words "for collection", "for deposit", "value in collection", "by procuration", or words of similar import, authorizing the endorsee to collect the bill, the endorsee

(a) may only endorse the bill on the same terms; and

(b) may exercise all the rights arising out of the bill and shall be subject to all claims and defences which may be set up against the endorser.

(2) The endorser for collection shall not be liable upon the bill to any subsequent holder.

Relevant legislation

BEA—section 35

UCC—section 3-205 and 206

ULB—article 18

Cross references

Definition of "endorsement": article 5

Claims and defences: article 24

COMMENTARY

Paragraph (1)

1. An endorsement for collection grants to the endorsee the power to receive payment of the bill and makes him an agent of the endorser. The endorsee for collection has the same rights on the bill as his endorser: defences that prior parties may have against the endorser for collection are available against the endorsee for collection.

Example A. By fraud the payee induces the drawer to draw a bill payable to the payee. The payee endorses the bill "for collection" to A. A sues the drawer. By virtue of paragraph (1) (b) of this article, the drawer, since he could raise the defence of fraud against the payee, may raise it also against the payee's endorsee for collection.

2. To collect the bill it may be necessary for the endorsee for collection to endorse the bill further. Article 20 (1) (a) provides that such endorsement may be effected without specific authorization on the bill from the endorser for collection.

Paragraph (2)

3. The reason for the rule that an endorser for collection is not liable on the bill to any subsequent holder is that the purpose of the endorsement is to collect the bill for the endorser and not from him.

Example B. The payee endorsed the bill "for collection" to A. Fraudulently, and without the permission of the payee, the bill was sold (and endorsed in blank) by A to B. The acceptor refused payment, and B brought an action against the payee. By virtue of paragraph (2) the payee is not liable to B. In that respect, an endorsement for collection resembles an endorsement "without recourse" (see article 31).

Article 21

Where a bill is transferred or negotiated to a prior party, he may, subject to the provisions of this law, re-issue or further transfer or negotiate the bill.

Relevant legislation

BEA—section 37

UCC—section 3-208

Cross references

Transfer of a bill: article 12

Negotiation of a bill: article 13

Definition of "issue": article 5

As to the rights and liabilities of a prior party who acquired the bill: see article 77 and 78.

COMMENTARY

1. A bill may return to a prior party. This may happen in several ways: the bill may be endorsed to a prior party or may be delivered to him as a receipt for payment without any endorsement (see article 70 (2)). Article 21 provides that such prior party may re-issue or further negotiate the bill.

Example A. The payee endorsed the bill specially ("to the order of A"), to A. A endorsed the bill specially to B. The bill is dishonoured by the drawee, and paid by A who thereupon recovered the bill. According to article 22, A may negotiate the bill to D.

2. "*Subject to the provisions of this Law*"

Only a "holder" can negotiate a bill (see article 13). Therefore a prior party who re-acquires the bill can negotiate it only if he is a holder.

Example B. The payee endorsed the bill specially to A. A endorsed the bill specially to B. B endorsed the bill specially to the drawer. The drawer may negotiate the bill. Though the drawer was not a holder when he drew the bill (article 5), he became a holder when the bill was negotiated to him.

Example C. The payee endorsed the bill specially to A. A endorsed the bill specially to B. The bill is dishonoured by the drawee. The drawer pays it, and receives the bill without any endorsement. Under these circumstances the drawer is not a holder and he therefore may not negotiate the bill. However, he may re-issue it to A.

Article 22

(1) A person who acquires a bill through what appears on the face of the bill to be an uninterrupted series of endorsements shall be a holder even if one of the endorsements was forged or was signed by an agent without authority, provided that such person was without knowledge of the forgery or of the absence of authority.

(2) Where an endorsement was forged or was signed by an agent without authority, the drawer or the person whose endorsement was forged or was signed by an agent without authority shall have against the forger or such agent and against the person who took the bill from the forger or from such agent the right to recover compensation for any damage that he may have suffered because of the operation of paragraph (1) of this article.

(3) Subject to the provisions of article 28 (a) and (b), a forged endorsement or an endorsement by an agent without authority shall not impose any liability on the person whose signature was forged or on behalf of whom the agent purported to act when endorsing the bill.

Relevant legislation

BEA—section 24

UCC—section 3-404

ULB—articles 16 and 40

Cross references

Definition of "endorsement": article 5

Definition of "holder": article 5

Definition of "knowledge": article 6

COMMENTARY

1. The Geneva and the "common law tradition" systems differ considerably in respect of the effect of a forged¹ endorsement² on the rights and obligations of the parties to an order³ bill.⁴ Article 22 differs from the rules obtaining under these systems. A brief survey of the existing legal systems will be made, and the provisions of article 22 will then be examined.

1. THE EXISTING LEGAL SYSTEMS

A. *The Geneva Uniform Law*

2. Pursuant to the ULB (articles 16 and 40), a forged endorsement is considered to be a valid endorsement in so far as the rights of a non-negligent *bona fide* possessor or payor are concerned, provided that he established his title to the bill through an uninterrupted series of endorsements even though one or more were forged. The following consequences flow from the above rule:

(a) The *bona fide* possessor of a bill containing a forged endorsement has rights on the bill against parties who signed it, whether those parties signed the bill before or after the forged endorsement.

(b) A *bona fide* payment after maturity to the above-mentioned possessor discharges the payor. When the drawee pays the bill, he is entitled to debit the drawer's account with him.

B. *The "common law tradition" systems*

3. Both the BEA and the UCC deny effect to a forged endorsement. According to the BEA, a forged endorsement "is wholly inoperative, and no right to retain the bill or to give discharge therefor or to enforce payment therefor against any party thereto can be acquired through or under that signature" (BEA, s. 24). According to the UCC, a forged endorsement "is wholly inoperative as that of the person whose name is signed" (UCC, s. 3-404). It follows that:

(a) The *bona fide* possessor of a bill containing a forged endorsement has no rights on the bill against parties who signed the bill before⁵ the forged endorsement.

(b) The right to act upon the bill rests in the true owner, namely, the person from whom the bill was taken illegally. The true owner may recover the bill or its value from the unlawful possessor⁶ and also has rights upon the bill against parties who signed it before the forgery.⁷

¹ This difference applies also to the case of an endorsement by an agent acting outside his authority (BEA, s. 24; UCC, s. 3-404).

² All systems provide that the person whose signature is forged is not liable on the bill; see article 28 of the Uniform Law.

³ In respect of a bearer bill which was stolen from its owner, all systems provide that a *good faith* taker or payor has full rights, as if the bill was not taken illegally.

⁴ In the United Kingdom and several other Commonwealth countries, special rules apply as to a forged endorsement on cheques (arts. 60, 80 of the BEA and the Cheques Act 1957).

⁵ Both the BEA and the UCC, like the ULB, give the possessor rights against persons who signed the bill after the forgery. (See BEA, s. 55 (b), and UCC, s. 3-417.)

⁶ *Underwood (A.L.) Ltd. v. Bank of Liverpool* (1924) K.B. 775; UCC, art. 3-419. It should be noted that according to the UCC (art. 31-419 (3)), a bank acting as agent for collection, which is acting in good faith and in accordance with reasonable commercial standards is not liable in conversion to the true owner beyond the amount of any proceeds remaining in his hands.

⁷ See BEA, s. 70; UCC, s. 3-804.

(c) A *bona fide* payment after maturity to the person possessing the bill through a forged endorsement does not discharge the party making the payment. When the drawee pays the bill to the above-mentioned possessor, he is not entitled to debit the drawer's account. If the drawer's account was debited, it is the drawee's duty to reverse any resultant charge he made.⁸

(d) The drawee who paid the bill in good faith is entitled to recover the payment from the person paid.⁹

C. Who bears the risk of a forged endorsement?

4. The basic difference, in terms of bearing the risk of a forged endorsement, between the ULB and the BEA and UCC approach is the following: according to the ULB the risk of the forged endorsement rests upon the owner of the bill from whom the bill was stolen, while according to the BEA and the UCC, the risk rests upon the person who took the bill from the forger. The different results under the two main systems are shown by the following two examples:

Example A. The drawer drew and delivered a bill to the payee (P). T stole the bill from P. The thief (T) forged P's signature, and "endorsed" the bill to A, who took it without knowledge about the theft and forgery. A endorsed it to B, who took it without knowledge of the theft and forgery. B receives payment from the drawee, who pays without knowledge. The drawee debits the drawer's account.

Under the ULB, the payment by the drawee operates as a discharge of his debt to the drawer, and he is entitled to debit the drawer's account (i.e., the risk is not upon the drawee). As the bill is paid to the person entitled to payment, the drawer discharges his obligation to the payee (i.e. the risk is not upon the drawer). The risk of forgery rests, therefore, according to the ULB, on the payee, the last owner before the forgery, who lost possession of the bill.

Under the BEA and the UCC, payment by the drawee does not discharge his debt to the drawer. When the forgery is discovered he must credit the account of the drawer. (As a result, the risk does not remain upon the drawer; on the other hand, the drawer does not gain from the forgery since he is still liable upon the bill to the payee.) The drawee is entitled to recoup his loss, by shifting it to B, who in turn will shift it on A (i.e. the risk is not upon the drawee or the person paid by him). A cannot shift the risk back. He will bear it. Consequently, under the BEA and UCC the risk falls on the person who took the bill from the forger.

Example B. The drawer sent a bill by post to the payee (P). Before the bill reaches the payee, T stole the bill from the post. T forged P's signature, and "endorsed" the bill to A, who took it without knowledge about the theft or forgery. A endorsed it to B, who took it without knowledge. B receives payment from the drawee; the drawee's payment is without knowledge. The drawee debits the drawer's account.

Under the ULB, the drawee is discharged (i.e., the risk is not upon the drawee). The drawee is thus entitled to debit the drawer's account. The drawer has not paid the payee, as the bill has not reached the payee. It follows that the risk of the forgery is on the drawer, the owner of the bill from whom it was stolen, and whose account was debited.

Under the BEA and UCC the drawee is not discharged. He is not entitled to debit the drawer's account with him, and he must reverse it (i.e., the risk is not upon the

drawer; the drawer has not gained, as he is still liable to the payee under the obligation for which the bill was drawn). The drawee is entitled to recoup his loss by shifting it to B, who in turn will shift it to A (i.e., the risk is not upon the drawee or the person paid). A suffers the loss, as he presumably gave goods or services to the forger without receiving payment. Thus the loss ultimately falls on the person A who took the bill from the forger.

D. The advantages and disadvantages of the two approaches to forgery

5. The main advantages of the ULB, as compared to the BEA and UCC, are the following:

(a) The ULB promotes circulation and consequently easy financing of transactions by bills, since any possessor without knowledge is assured that a previous forged endorsement has no effect on his right to and upon the bill. Under the BEA and UCC, on the other hand, a possessor without knowledge may be hesitant in taking the bill, since he may have no right to, or upon, the bill if there is a previous forged endorsement.

(b) The ULB rule gives greater finality to payment. If a bill is given in payment of a debt, the payment will be final once the bill is paid by the drawer and it is no longer necessary to inquire whether the transferor or the transferee had rights to or upon the bill. In that respect payment by way of a bill resembles payment by way of money. Under the ULB, once the drawee paid the bill without fraud or gross negligence, the payment is final. The relations between the drawer and the drawee, the payee and the drawer (if the bill was stolen from the payee), and the endorsees among themselves, are settled promptly and with finality. On the other hand, under the BEA and UCC, the transactions must be reopened.

(c) The ULB rule provides economy of remedies. Pursuant to the ULB, when the drawee pays and debits the drawer's account, the risk of the forgery is automatically imposed on the party who should, under the ULB, bear the risk (i.e., the last owner before the forgery). There is no need for any action or litigation in order to impose the risk on such party. On the other hand, according to the BEA and UCC, a series of actions or remedies may be necessary to transfer the loss to the one ultimately responsible (i.e., the one who took from the forger). One may envisage several actions (and therefore possible disputes) before the risk rests on the taker from the forger. The first is the recrediting of the drawer's account; the second is the recouping by the drawee of the money paid; the third is the claim by the person paid against previous endorsees; the fourth is the action between the true owner and the drawer; the fifth is the action between the true owner and the drawee or subsequent endorser. Not all of those actions will actually take place and some of them are in the alternative, but there is an inherent risk of multiplicity of actions and remedies.

6. The main advantages of the approach of the BEA and UCC, compared to the ULB, are the following:

(a) It encourages the use of a bill by the drawer as a means of payment or credit, since the drawer is assured that he will not bear the risk of any forgery of an endorsement. Especially, it encourages the use of the mail as a means to transfer bills from the drawer to the drawee. Under the ULB, on the other hand, the potential drawer of a bill may be hesitant to issue the bill and to send it by post, since he may bear the risk if the bill is stolen from the post before it reaches the payee.

(b) The BEA-UCC approach puts the risk of forgery on the one who dealt with the forger. That party ought to bear the risk, as he can most easily prevent it. The endorsee should know his endorser. He should not take the bill from a stranger. The ULB, on the other hand, imposes the risk of forgery on the owner of the bill, who under normal and efficient procedures for handling bills (including the use of mail) cannot prevent theft and forgery of the bill.

⁸ Under the BEA, such payment is not made "in due course", as it is not made to the holder.

⁹ In the United Kingdom it is based on theory of "money had and received by mistake": See *London and River Plate Bank v. Bank of Liverpool* (1896) Q.B. 7.

II. ARTICLE 22 OF THE DRAFT

A. *The scope of the new rule*

7. Under article 22 of the draft the most important provisions are these: (a) in the hands of a holder without knowledge about the forgery, a forged endorsement should be considered to be a valid endorsement; (b) the last owner before the forgery has a right for damages from the forger and the person who took the bill from the forger. Of course, the person whose signature was forged is not liable on the bill.

8. As a result of those provisions:

(a) The possessor of a bill without knowledge about the forged endorsement has rights on the bill against parties who signed it, without regard whether those parties signed the bill before or after the forged endorsement.

(b) The last owner before the forgery loses his right to and upon the bill but has a right to receive compensation for that loss from the forger and from the person who took the bill from the forger.

B. *Who bears the risk of a forged endorsement?*

9. From the foregoing analysis it follows that the risk of forgery rests upon the party who took the bill from the forger. This may be shown by the following examples:

Example C. The drawer issued a bill to the payee (P), who received it. T stole the bill from P. T forged P's signature, and "endorsed" the bill to A, who took it without knowledge of the forgery. A endorsed it to B who took it without knowledge of the forgery. B received payment from the drawee. The drawee debited the drawer's account. Who bears the risk?

Pursuant to article 22 the payment by the drawee effects a discharge of his debt to the drawer (consequently, the risk is not on the drawee). Since the bill was paid to the person entitled to payment, the drawer discharges his obligation to the payee (consequently, the risk is not upon the drawer). The payee who lost his rights to and upon the bill is entitled to compensation from A for such loss. A cannot shift the risk to anyone else. Therefore, the risk of the forgery rests on A, who took the bill from the forger.

Example D. The drawer sent a bill by post to the payee (P). Before the bill reaches P it was stolen from the post. The thief forged P's signature, and "endorsed" the bill to A, who took it without knowledge of the forgery. A endorsed it to B who takes it without knowledge of the forgery; B received payment from the drawee. The drawee debited the drawer's account. Who bears the risk?

According to article 22, the payment by the drawee entitles him to debit the drawer's account. The drawer—who still is liable on his underlying obligation to the payee—has lost ownership of the bill, and he has a right for compensation against A. A cannot shift the risk to anyone else. Therefore, the risk of the forgery rests on A, the person who took the bill from the forger. In both examples there are two persons who acquired the bill subsequent to the forgery. If the forger receives payment from the drawee, the drawee is the person who acquired from the forger, and the risk rests on him.

Example E. The drawer issued the bill to the payee, who received it. The bill was stolen from the payee. The thief forged the payee's signature and presented the bill for payment to the drawee. The drawee pays without knowledge of the forgery to the forger and debits the drawer's account. Who bears the risk?

Pursuant to article 22, the payment by the drawee effects a discharge of his debt to the drawer and he is entitled to debit the drawer's account. The drawer is discharged from any liability on the bill. The payee lost his rights to and upon the bill. He is entitled to compensation for such loss from the drawee. The risk rests on the drawee.

C. *Rationale*

10. As pointed out above, each solution to the "forged endorsement" problem, whether under the BEA, the UCC or the ULB, has its advantages and disadvantages. Theoretically, the best solution would be one which embodies all the advantages of these systems, without being subject to their disadvantages. This cannot be done since any "positive" aspect of an optimum solution is of necessity accompanied by a "negative" aspect. As has been noted, the elements of an optimum solution include: (a) finality of payment; (b) economy of remedies; (c) allocation of the risk of forgery to the person best able to guard against the risk; (d) encouragement of the use of bills as payment, credit or security instruments. Article 22 offers a compromise solution; it attempts to embody the principal advantages of the existing legal systems, whilst avoiding or minimizing their main disadvantages.

Finality of payment

11. Under article 22 that advantage is substantially achieved; payment by the drawee is final. The legal relations between the drawee and the drawer, the payee and the drawer, the endorsees between themselves, the drawee and the person receiving payment are settled in a final way. The only "non-final" element is the rule that enables the person from whom the bill was stolen to recover from the person who acquired the bill from the forger.

12. *Economy of remedies:* payment by a drawee without knowledge of the forgery effects a discharge of his obligation to the drawer; the drawee may debit the drawer's account. There is no occasion for further action between them. It follows that there is no need for further action between the drawee and the person receiving payment, or between him and previous endorsers. The person whose signature is forged (payee or endorsee) loses his right to act upon the bill, and therefore there is no need for further action by him against the drawer, drawee or any subsequent endorsee. All these potential actions are replaced by a single right of action of the last owner of the bill before the forgery against the forger and the person who acquired the bill from the forger.

13. *The risk of forgery should be borne by the person who is best able to prevent the forgery:* it is the person who acquired the bill from the forger who can best prevent the circulation of the bill containing the forged endorsement. The endorsee should know his endorser. He should not take the bill from a stranger. Article 22 encourages this by giving the last owner before the forgery a right of action against the person who took from the forger.

14. *Encouragement to drawers to issue bills:* article 22 is a compromise between the ULB rule on the one hand, and the BEA and UCC rule on the other. The position of the drawer under article 22 is not as good as under the BEA and UCC, since under article 22 the drawee without knowledge of the forgery may always debit the drawer's account, and the drawer is subject to liability on the bill to any possessor without knowledge. On the other hand, the drawer's position is somewhat better under article 22 than under ULB rule: if the bill was stolen on its way to the payee, the drawer has a right of action against the person who acquired it. Furthermore, the drawer can protect himself against possible risk by drawing the bill "not to order" (under article 16), in which case a forgery of the payee's endorsement will not subject him to liability even to a possessor without knowledge. Such drawing does not prevent the negotiation of the bill for purposes of collection.

15. *Encouragement to endorsees to acquire the bill for payment:* article 22 is a compromise between the ULB rule and the BEA and UCC rule. An endorsee without knowledge of the forgery is assured that payment by the drawee is final, and he is not subject to a possible action by the drawer. Furthermore, article 22 grants to the endorsee rights on the bill not only against parties who signed it after the forgery but also against parties who signed the bill before the forgery.

Finally, if the endorsement to the endorsee is authentic, any previous forged endorsement does not impair his rights. It follows that if the endorsee can assure himself that his endorser is not the forger, such endorsee will not hesitate to take the bill under article 22. It is submitted that in most cases an endorsee is able to have such assurance and therefore article 22 may encourage him to take the bill.

16. *Encouragement to the drawee to pay the bill*: a drawee who has not signed an acceptance is not under an obligation to the possessor of a bill who presents the bill for payment. But such a drawee may be obliged contractually to the drawer to honour the bill. Under the "common law tradition" systems, such drawee is sometimes put in a dilemma: If he will pay the bill, his payment will not discharge him if an endorsement was forged. If he will refuse payment and it will turn out that the endorsement is authentic, he may be liable to the drawer. Article 22 protects such drawee, and eliminates the above-mentioned dilemma. Article 22 assures the drawee that if he pays a person known to him to be honest—in most cases this will be a collecting bank known to the drawee—his payment will discharge him.

D. Further remarks

17. Paragraph 22 (1) sets forth a qualification that the person who acquired the bill took it without knowledge of the forgery. It follows that in the hands of a person who knew about the forgery, "a forged endorsement is no endorsement". Such person is not considered as a holder, and has no right upon the bill against parties who signed it before the forgery.

18. The rule provided in article 22 applies to a forged endorsement and to an authentic endorsement by a person purporting to act as an agent but without authority to do so.

19. The purpose of article 22 is to determine the rights and liabilities of the parties to a bill in case of a forged endorsement. The article does not deal with the liability of the person whose endorsement is forged. Such person's liability is dealt with under article 28.

Part Four. Rights and liabilities

Section 1. The rights of a holder and a protected holder

Article 23

A person who signs a bill is liable to the holder thereof in accordance with the provisions of this Law.

Relevant legislation

BEA—section 38
UCC—section 3-301

Cross references

Definition of "holder": article 5 (4)

As to the right of the holder to negotiate the bill: article 13

As to the right of the holder to receive payment of the bill: articles 67 and 48

As to the right of the holder to discharge parties to the bill, see part six

COMMENTARY

A person who signs a bill undertakes to pay it at maturity. This obligation is subject to necessary presentment and protest by the holder. The rights on a bill are concentrated in the hands of the holder. In the absence of any claim or defence, the holder (even if he is not a "protected holder") has full rights on the bill. Article 23 emphasizes this fact. Although the rights of a holder are subject to substantial qualifications in other articles (e.g., article 24), the general principle stated herein is a useful starting-point for solving problems under this Law.

Article 24

(1) The rights on a bill of a holder who is not a protected holder are subject to

(a) Any valid claim to the bill on the part of any person; and

(b) Any defence of any party which would be available under a contract.

(2) A party may not avoid liability to a remote holder on the ground that he has a defence against his immediate party if such defence is based on legal relations not connected with the bill.

(3) A party may not avoid liability to a holder on the ground that a third person has a valid claim to the bill, unless such person himself has claimed the bill from the holder and informed such party thereof.

Relevant legislation

BEA—section 36 (2) and (5)

UCC—section 3-306

ULB—articles 7, 16 and 17

Cross references

Definition of "holder": article 5 (4)

Definition of "protected holder": article 5 (7)

Rights of a protected holder: article 25

COMMENTARY

1. Article 23 states the general rule that any party who signs a bill is liable to the holder. However, in certain cases a party has a defence to his liability on the bill even though his signature appears on it. For example, his signature may have been obtained by unlawful means or he may have been dispossessed of the bill.

2. In such circumstances, if the holder is a "protected holder" (articles 5 (7) and 25), or if he is a transferee from a protected holder (article 25 (2)), he takes the bill free from all claims or defences of any party.

3. On the other hand, if the holder is not a protected holder, article 24 applies: he is subject to any claim or defence of any party. His legal status is similar to that usually applicable to an assignee in a simple assignment of debt.

Example A. The payee by fraud induced the drawer to draw a bill payable to the payee. The payee endorsed the bill to A. A knew about the fraud. A brings an action against the drawer. Under article 24, the drawer has a valid defence against A. Since A did not take the bill without knowledge he is not a protected holder. We may assume that under the applicable law, fraud is a valid defence to a claim based on a contract. It follows that the drawee has a valid defence against the payee.

"Claims" and "defences"

4. The holder who is not a protected holder is subject to any valid "claim to" the bill by any person and to any "defence" of any party. A "claim" to a bill refers to the assertion of a right to possession of the bill; a "defence" refers to a party's right to establish that he is free from liability on the bill. The claim is based on a right to the bill by any person, whether that right is based on full ownership or on some other proprietary right (e.g., security right, bailment). The defence is based on a contractual defence against liability on the bill (e.g., fraud, duress, breach of promise).

Example B. The payee (P) endorsed a bill in blank and negotiated it to A. B obtained the bill from A by fraud and negotiated it to C, who knew about the fraud. A brings an action against C to recover possession of the bill. Under article 24, A has a valid claim to the bill against C. C is a

holder of the bill, since the bill was negotiated to him. The fact that the bill was obtained by fraud does not prevent "negotiation" (article 13 (2)). But since C is not a protected holder, C's possession is subject to A's claim.

Example C. The payee by fraud obtained the acceptance of the drawee (E). The payee endorsed the bill to A who knew of the fraud. A brings an action against E, based on his acceptance. Under article 24, since A is not a protected holder, he is subject to E's defence based on fraud.

In most cases, the person who has a defence as to his liability on the bill will also have a valid claim to the bill.

Example D. By way of fraud A obtained the endorsement of the payee (P) on a bill. A negotiated the bill to B who knew of the fraud. B brings an action on the bill against the payee, P. Under article 24, P has a valid defence against B, and he has a valid claim against B for possession of the bill.

5. Under paragraph 2, a party may not avoid liability to a remote holder on the ground that he has a defence against his immediate party if such defence is based on legal relations not connected with the bill, e.g., the right of set-off arising out of another transaction. Article 24 provides that while such a defence may be a good defence between the two parties between whom it arises (i.e., the immediate parties), such a defence is not available as against a remote party. Article 24 does not attempt to define what are the defences which are based on relations not connected with the bill, and how far are they available between immediate parties. This question is left to national law. Article 24 provides only that such a defence, even though available between immediate parties, is not available between remote parties.

6. Article 24 (3) deals with the defence of *ius tertii* a defence based on the claim of a third person rather than on the non-liability of the defendant.

Example E. The drawer (D) drew and issued a bill to the payee (P). By fraud A induced P to negotiate the bill to him. A brings an action against D. Does D have a defence based on the fraud A practised on P? Pursuant to article 24 (3), D has no such defence.

The main reasons for this rule are as follows: (a) The rule protects the drawer (or any other party), since his obligation on the bill will be discharged by his payment to the holder even if the drawer knows of the claim of another person (see article 70); (b) It is not proper to allow the drawer (or any other party) to advance a defence which is based on a claim which the person entitled to it may not wish to raise. However, if such person asserts his claim and informs the party thought to be liable about his claim, the defence of *ius tertii* is available.

Article 25

(1) The rights on a bill of a protected holder are free from

(a) Any claim to the bill on the part of any person; and

(b) Any defence of any party, except defences based on circumstances which render the obligation on the bill of such party null and void; and

(c) Any defence based on discharge or on the absence of liability on the ground that the bill was dishonoured by non-acceptance or by non-payment or was not duly protested.

(2) The transfer of a bill by a protected holder shall not rest in the transferee the rights of a protected holder if the transferee has participated in a transaction which gives rise to a claim to, or a defence upon, the bill.

Relevant legislation

BEA—sections 38 and 59

UCC—sections 3-305 and 3-602

ULB—articles 4 and 17

Cross reference

Definition of "protected holder": article 5 (7)

"Claims" and "defences": article 24

Rights of a person who takes from a protected holder: article 12

Rights of a holder not being a protected holder: article 24

Discharge of a party's liability: see part six

Absence of liability in case of dishonour: articles 50, 55 and 60.

COMMENTARY

Paragraph (1)

1. As has been noted under article 5, the main advantages of a negotiable instrument result from the strong legal position of a protected holder. He receives the bill free from any defences of previous parties, and free from claims to it by any person.

Example A. The payee by fraud induced the drawer to draw a bill payable to the payee. The payee negotiated the bill to A, a protected holder. A brings an action against the drawer. Pursuant to paragraph (b), the drawer may not raise the defence of fraud against A.

Example B. The payee endorsed the bill in blank and sent it to A. The bill was stolen from the mail. The thief sold the bill to B, who is a protected holder. The payee brings an action against B for recovery of the bill or its amount. Pursuant to paragraph (1) (a), the claim of the payee to the bill is not available against the protected holder.

2. The general rule embodied in article 25, that the protected holder takes a bill free from all defences of any party is subject to an important exception. The protected holder does not cut defences based on circumstances which render the obligation of a party null and void ("real defences").

Example C. The payee made the drawer issue, under physical menace, a bill payable to the payee. The payee negotiated the bill to A, a protected holder. A exercises a right of recourse against the drawer. According to article 25, the drawer will have a valid defence against A if under applicable national law the circumstances under which the signature was made render it null and void.

Example D. B asks A to sign a document as a witness. In fact and without knowledge A signs a bill as drawer payable to B. B negotiates the bill to C, a protected holder. C brings an action against A. According to article 25, A has a valid defence against C if, under applicable national law, the circumstances under which the signature was made render it null and void.

3. Under paragraph (1) (c) the discharge of a party is not effective against a subsequent protected holder. The defence of "discharge" is not a "real defence". The policy of this provision is to protect the protected holder who takes a bill without knowledge of the discharge. The payer has an effective means to protect himself from liability to a subsequent holder by exercising his right to demand surrender of the bill when he pays (see article 70 (2)); the subsequent holder has no equivalent means for self-protection.

Example E. A bill was drawn and accepted payable on 1 January 1972. The acceptor paid the bill to the then holder, but did not ask for the bill. On the same day the holder endorsed the bill to A, who took it as a protected holder. According to article 25, the acceptor is liable to A.

4. According to article 5 (7), a "holder" may be a "protected holder" only when he takes a bill which on the face of it appears not to be overdue. Since most cases of "discharge"

occur at or after maturity, the possibility of having a protected holder after a previous discharge is very limited. Still, this may occur, as will be illustrated by the following examples:

Example F. A bill was dishonoured by non-acceptance. The holder made no protest and endorsed the bill to A who took it before maturity and without knowledge that it was dishonoured. Has A rights on the bill against the drawer?

Under article 60, if the holder fails to protest the bill, the drawer is not liable. Nevertheless, pursuant to article 25, A, since he is a protected holder, has rights on the bill against the drawer.

Example G. A party to a demand bill was discharged by the holder (e.g., he paid the bill to the holder). After the discharge, but within the one-year period for presentment for payment, provided for by article 53 (e) the bill was endorsed to A. A may be a protected holder and may have rights, under article 25, against a party who is discharged.

5. Discharge of a party is effective against a protected holder who knows of the discharge. In many cases, such knowledge in itself prevents the holder from being a protected holder (e.g., he knows that the bill was paid and therefore he does not take it in "without knowledge"). But there are circumstances in which such knowledge in itself does not prevent a party from being a protected holder (e.g., the signature of a party was cancelled, and such cancellation is visible on the face of the bill). In such cases, article 25 provides that the party discharged is not liable to the protected holder. Nothing should prevent such a protected holder from exercising his right as a protected holder against other parties, even if such parties were previously discharged, provided the protected holder has no knowledge of such discharge.

Example H. A, the endorsee of a demand bill, waives his right against the payee-endorser; the waiver was effected by cancelling the payee's endorsement. The bill was paid by the acceptor. After the payment, A endorsed the bill to B who took it as a protected holder. What are B's rights against the payee and the acceptor? It follows from article 25 that B has no right against the payee, but has a right to be paid by the acceptor.

6. The liability of the drawer, endorser and guarantor is "secondary", in that their liability does not crystallize before the holder makes the necessary presentment and protest. A holder who fails to make the necessary presentment and protest has no right against secondary parties. If such holder negotiates the bill to a protected holder, such protected holder is not subject to the defence of non-presentment and non-protest. This result follows from the provision of paragraph (1) (c) which provides that against a protected holder a party may not raise the defence of non-liability because the bill "was dishonoured by non-acceptance or by non-payment or was not duly protested".

Example I. A demand bill was presented by the holder for payment. The drawee dishonoured the bill. The holder failed to protest in due time (i.e. on the day on which the bill is dishonoured or on one of the two business days which follow (article 59)) and endorsed the bill to a holder, who took it as a protected holder. The drawer may not raise the defence of non-protest against the protected holder.

Paragraph (2)

7. Article 12 provides that the transfer of a bill vests the rights of the transferor in the transferee. It was pointed out earlier it follows from this rule that the transfer of a bill by a protected holder vests in the transferee the rights of the protected holder, even though the transferee may not qualify as a protected holder (the "shelter rule"). This rule is not intended, and should not be used, to permit any person who "participated in a transaction which gives rise to a claim to, or defence upon, the bill" to wash the bill clean by passing it into the hands of a holder. Consequently, under

paragraph (2), such a person is denied the protection of the "shelter rule".

Example J. The payee, in collaboration with B, by fraud induced the drawer to draw a bill payable to the payee. The payee endorsed the bill to A, who is a protected holder. A endorsed the bill to B. B brings an action against the drawer.

Pursuant to article 25, the drawer has a good defence. Though generally B acquires the same rights as A, and A, as a protected holder, has a valid right against the drawer, paragraph (1), this rule does not apply when the transferee was himself a party to the fraud. The same rule applies if the bill is negotiated by A back to the payee. On the other hand, this rule does not apply if the bill is negotiated to a person who merely knew about the defence. The rule of paragraph (2) applies only to a person who participates in a transaction which give rise to a claim to, or defence upon, a bill. A person does not "participate" in a transaction by mere knowledge of the transaction.

Article 26

(1) Every holder is presumed to be a protected holder

(2) Where it is established that a defence exists, the holder has the burden of establishing that he is a protected holder.

Relevant legislation

BEA—section 30

UCC—section 3-307 (3)

Cross references

Definition of "holder": article 5 (4)

Definition of "protected holder": article 5 (7)

Rights of a holder: article 24

Rights of a protected holder: article 25

COMMENTARY

This provision follows substantially the BEA and UCC. Until it is established that a defence exists, the presumption is that any holder is a protected holder. When it is established that a defence exists the plaintiff-holder may, if he so elects, seek to cut off the defence by establishing that he is a protected holder (or that he acquired the rights of a prior protected holder). On this issue he has the full burden of proof.

Section 2. Liability of the parties

A. GENERAL

Article 27

(1) A person is not liable on a bill unless he signs it.

(2) A person who signs in a name which is not his own shall be liable as if he had signed in his own name.

(3) A signature may be in handwriting or by facsimile, perforations, symbols or any other mechanical means.

Relevant legislation

BEA—section 23

UCC—section 3-401

ULB—articles 7 and 8

COMMENTARY

1. Article 27 (1) embodies one of the basic principles of the law of negotiable instrument namely that "a person is not liable on a bill unless he signs it". To this rule there are several exceptions dealt with by other articles of this law (articles 28 and 30).

2. This law does not define the expression "signature", but paragraph (3) provides that it may be in handwriting, by facsimile, perforations, symbols or any other mechanical means.

3. A person may have more than one name, e.g., a "private" name and a "business" or "trade" name. Paragraph (2) provides that the signature of any one of those names is sufficient to establish the signer's liability on the bill. It is the fact of signing, not of the name signed, that is the decisive factor. It also follows from paragraph (2) that a person who forges the signature of another person is liable on the bill as if he had signed his own name.

Article 28

A forged signature on a bill does not impose any liability thereon on the person whose signature was forged. Nevertheless, such person shall be liable:

(a) If he has ratified the signature;

(b) To a holder without knowledge of the forgery if, through his conduct he has given such holder or an intervening endorser reason to believe that the signature was his own or was made by an agent with authority.

Relevant legislation

BEA—section 24

UCC—section 3-404 and 406

Cross references

Signature on a bill: article 27

Knowledge: article 6

Signature by an agent: article 30

COMMENTARY

1. In conformity with the generally prevailing rule, article 28 provides that a forged signature on a bill does not impose liability on the person whose signature was forged. Two exceptions to this rule are set forth in article 28; a third appears in article 30.

2. One exception appears in paragraph (a). A person may incur liability under a forged signature if he ratifies the signature.

3. A second exception is stated in paragraph (b). A person whose forged signature appears on the bill may behave in such a way as to represent (expressly or by implication, intentionally or through his negligence) to the holder that the signature is genuine. In such case, the person so behaving is liable on the forged signature.

Example A. The payee intends to endorse the bill to A. Before A takes the bill he asks the drawer if the signature on the bill is his. The drawer answers in the affirmative. It turns out that the drawer's signature was forged. Article 28 (b) provides that the drawer is liable on the bill since through his answer to A he gave A reason to believe that the signature was his own.

4. The reason for paragraph (b) is that as between two innocent persons—the person whose signature was forged and the person who took the bill—the risk of forgery should be imposed on the person who through his conduct has given reason to believe that the signature was authentic. Conse-

quently, if the person who took the bill knew about the forgery, he should not be able to impose liability on the person whose signature is forged. It is provided, therefore, that only "a holder without knowledge of the forgery" may rely on the provisions of paragraph (b).

Article 29

(1) Where a bill has been materially altered:

(a) Parties who have signed the bill subsequent to the material alteration shall be liable on the bill according to the terms of the altered text; and

(b) Parties who have signed the bill before the material alteration shall be liable on the bill according to the terms of the original text, provided that:

(i) A party who has himself made, authorized, or assented to the material alteration shall be liable according to the terms of the altered text; and

(ii) A party who through his conduct facilitated the material alteration shall be liable to a holder without knowledge of the alteration according to the terms of the altered text.

(2) For the purpose of this law, any alteration is material which modifies the written undertaking on the bill of any party in any respect.

Relevant legislation

BEA—sections 55 (2) (b) and 64

UCC—section 3-406 and 407

ULB—article 69

Cross references

Definition of "holder": article 5 (4)

"Knowledge": article 6

COMMENTARY

Paragraph (1)

1. This article follows substantially the ULB and, with an important modification, the BEA and UCC.

2. Subparagraph (1) (b) differs from the BEA and UCC in that an alteration, even if fraudulent, does not discharge parties who signed the bill before the alteration; such parties are liable to any holder according to the original wording of the bill.

3. Subparagraph (b) (i) is an exception to paragraph (b) and, in substance, follows the BEA. The drawer or an endorser who alters the bill is not liable according to the terms of the original text, but according to the terms of his alteration.

4. Subparagraph (b) (ii), in substance, follows the UCC. The person whose conduct facilitated the material alteration shall be liable according to the terms of the altered text.

Example A. A bill which stated the sum payable as \$1,000 was accepted. The payee then raised the sum to \$21,000 and endorsed the bill to A. A endorsed the bill to B.

By virtue of article 29, the acceptor is liable to B for \$1,000.

If he dishonours the bill (and any necessary presentment and protest is performed) the drawer is liable to B for \$1,000. Pursuant to paragraph (1) (a), the payee and A are liable to B for \$21,000.

Example B. The same facts as in example A. The bill was drawn in such a way as to facilitate the material alteration (e.g., open space was left and this enabled the payee to change the figure and wording of the sum without it being apparent. By virtue of paragraph (1) (b) (ii) the drawer is liable to pay \$21,000, since the way he drew the bill facilitated the material alteration.

Paragraph (2)

5. Paragraph (2) defines what constitutes a material alteration. The test is: Was there any change in the "written undertaking on the bill"?

6. In the following cases there is no such change:

(a) A bill was made payable to "P". Thereafter, the bill is payable "to P or to order". This addition has not modified the written undertaking on the bill of any party (see article 1 (2)).

(b) The sum payable was initially stated as \$5. Thereafter, the sum payable was changed to 500 cents.

7. In the following cases there is a material alteration:

(a) The date of payment is changed;

(b) The sum payable is changed (whether increased or decreased).

Article 30

(1) A bill may be signed by an agent.

(2) The signature on a bill by an agent, with authority to sign, and showing on the bill that he is signing in a representative capacity, imposes liability on the bill on the person represented and not on the agent.

(3) Where an agent signs without authority or where he signs with authority but does not show on the bill that he is signing in a representative capacity, he shall be liable on the bill. The person whom the agent purports to represent shall not be liable on the bill.

(4) An agent who is liable on the bill pursuant to paragraph (3) and who pays the bill shall have the same rights as the person for whom he purported to act would have had if that person had paid it.

Relevant legislation

BEA—sections 25 and 26

UCC—section 3-403

ULB—article 8

Cross reference

"Signature": article 27

COMMENTARY

1. Paragraph (1) is common to the three legal systems.

2. Paragraph (2) achieves the same results as the BEA and the UCC, namely, that an agent signing a bill within his authority, and indicating that he is signing the bill as an agent, is not liable on the bill. The person liable is his principal.

3. Paragraph (3) follows substantially the UCC and ULB: it provides that an agent signing a bill without authority is personally liable on the bill; his principal is not liable. This provision deviates from the BEA in so far as the agent's liability under article 30 is on the bill itself, and not on a warranty of authority.

4. Paragraph (3) follows substantially the BEA and UCC: it provides that an agent who signs a bill while acting within his authority, but without indicating on the bill that he is signing in a representative capacity is personally liable on the bill. His principal is not liable.

5. Paragraph (4) follows substantially the ULB.

Example. The agent is A, and his principal is P. The bill bears the following signatures affixed by A (whether the signature of the acceptor, drawer, endorser or guarantor):

(1) "P"

(2) "A"

(3) "P by A, agent".

In each of these three cases, if the signature was made without authority, P is not liable on the bill and A is liable. On the other hand, if the signatures were made with the authority from P, then in the above three cases:

Case (1): P is liable on the bill; A is not liable

Case (2): A is liable on the bill; P is not liable

Case (3): P is liable on the bill; A is not liable.

Article 31

(1) Any party may exclude or limit his liability on the bill by an express stipulation on the bill.

(2) Such exclusion or limitation of liability shall be effective only with respect to the party making the stipulation.

Relevant legislation

BEA—section 16

UCC—sections 3-413 (2); 3-414 (1)

ULB—articles 9 and 15

COMMENTARY

1. Under the ULB, the drawer may not release himself from guaranteeing payment; a clause to that effect in a bill is deemed not to be written. The drawer may, however, exclude his liability for acceptance of the bill. An endorser may release himself from guaranteeing both acceptance and payment. In contrast, the BEA and the UCC permit the drawing or endorsing of a bill without the drawer or endorser incurring any liability thereon.

2. Inquiries amongst banking and trade institutions reveal that bills are drawn "without recourse" only sporadically; the exceptions occur under letters of credit which permit drawing in this manner. Endorsements "without recourse" also occur seldom. It was, however, pointed out that such endorsements are sometimes found on bills issued in connexion with short term credits or "without recourse financing" and are employed by banks when they pass on bills for collection. On the basis of this information, there would appear to be no justification for preventing the drawer or endorser from limiting or excluding his liability.

3. Article 31 does not specify the language that must be used to exclude or limit liability. The common expression is "without recourse". Article 22 provides that an endorsement "for collection" does not impose liability on the endorser to a subsequent holder. Such an endorsement is therefore an endorsement which "excludes" liability on the bill. Pursuant to article 46 (1) (a), a party may stipulate on the bill that it shall be presented for acceptance. Such party thereby made his liability conditional on the presentation for acceptance of the bill; if the bill is not duly presented for acceptance, the party making the stipulation is not liable. Under article 47, a party may stipulate on the bill that it shall not be presented for acceptance or that it shall not be presented before a specified date or before the occurrence of a specified event. Where a bill is presented for acceptance notwithstanding such a stipulation and acceptance is refused, the bill is not thereby dishonoured by non-acceptance as regards the party so stipulating. It follows that such a stipulation is in the nature of exclusion of liability for dishonour by non-acceptance.

4. The exclusion or limitation of liability pursuant to article 31 "shall be effective only with respect to the party making the stipulation". The stipulation does not operate in favour of a prior or subsequent party.

Example A. The drawer drew a bill "without recourse". The payee endorsed the bill without any qualification. The bill is dishonoured by the drawee. The holder has a right of recourse against the payee but not against the drawer.

Example B. The payee endorsed a bill "without recourse". The bill is dishonoured by the drawee. The holder has a right of recourse against the drawer but not against the payee.

5. Article 31 deals with exclusion or limitation of liability on the bill. Such a stipulation does not by itself affect the liability of an endorser under article 42.

Article 32

Where a person other than the drawee places his signature on a bill he shall be liable thereon as an endorser unless he clearly indicates on the bill that he signed in some other capacity.

Relevant legislation

BEA—section 56

UCC—section 3-402

Cross references

Liability of a guarantor: articles 43 to 45.

COMMENTARY

1. This article is based on the BEA and UCC. It differs from the BEA in so far as it extends the liability under article 32 to any holder and not merely to a holder in due course.

2. Liability under article 32 must be distinguished from the liability of a guarantor under articles 43 to 45. A person will be liable as a guarantor (and not as an endorser) if he specifies expressly on the bill that he is signing as a guarantor.

3. Questions concerning the capacity in which a person signs a bill must be answered from the bill itself and not from any evidence outside the bill.

Article 33

All drawers, acceptors, endorsers and guarantors of a bill are jointly and severally liable thereon.

Relevant legislation

ULB—article 47

Cross references

Liability of the drawer: article 34

Liability of the acceptor: article 36

Liability of the endorser: article 41

Liability of the guarantor: article 44

COMMENTARY

1. All the parties liable on the bill are liable jointly and severally. It follows that the holder has an option: he may proceed against all parties collectively or he may proceed against the parties separately. If he decides to proceed separately, he is not required to observe the order in which they became liable on the bill.

2. Since the liability of the parties is several (as well as joint) bringing an action against one party does not prevent bringing an action against the other parties.

3. Nothing in this article effects the provisions of this law with respect to the necessity of presentment for acceptance and for payment, or of protest. The holder has no right of recourse against the drawer and the endorsers if the necessary presentment and protest were not effected. The reference in article 33 to the liability of the parties assumes that the necessary presentment and protest were effected.

B. THE DRAWER

Article 34

The drawer engages that upon dishonour of the bill by non-acceptance or non-payment and upon any necessary protest he will pay the amount of the bill, and any interest and expenses which may be claimed under article 67 or 68, to the holder or to any party subsequent to himself who is in possession of the bill and who is discharged from liability thereon in accordance with articles 69 (2), 70, 71 or 76.

Relevant legislation

BEA—section 55 (2) (a)

UCC—section 3-414

ULB—article 9

Cross references

Dishonour by non-acceptance: article 51

Dishonour by non-payment: article 56

Necessary protest: article 57

Definition of "holder": article 5 (4)

COMMENTARY

1. The provisions of this article are substantially similar to those of the main legal systems. The drawer's liability is "secondary" to that of the acceptor. Only if the bill is dishonoured (by non-acceptance or non-payment) by the drawee or acceptor will the drawer be liable. The drawer's liability (unlike that of the acceptor) is "conditional": it is subject to any necessary presentment and protest. If the bill is not dishonoured, or if the bill is dishonoured but a necessary protest is not effected, the liability of the drawer has not crystallized. A distinction should be made between such non-liability situations and cases of discharge. The drawer is discharged of liability by payment or other occurrences provided in part six. Discharge assumes the actual existence of liability.

2. The engagement of the drawer is to pay the bill, upon dishonour and any necessary protest, to the holder. If the bill is paid by an endorser to the holder, and the bill is delivered to such endorser by the holder, the liability of the drawer is to pay the bill to such endorser. In the same way, if such endorser was discharged because of cancellation of his signature, and the bill was delivered to him by the holder, the drawee is liable to such endorser. Article 34 therefore provides that the drawer engages to pay the bill "to the holder or any party subsequent to himself who is in possession of the bill and is discharged of his liability thereon in accordance with articles 69 (2), 70, 71 or 76.

3. It may be noted that the liability of the drawer is not subject to any notice of dishonour. This is in conformity with the policy of this law that notice of dishonour is not necessary in order to render a party liable on the bill. Thus, article 66 provides that the only consequence of failure to give due notice of dishonour is to render the holder liable to the drawer for any damages that the drawer may suffer from such failure.

4. Article 34 deals with the liability of the drawer. The rights of the drawer against the acceptor are dealt with in article 36.

C. THE DRAWEE AND THE ACCEPTOR

Article 35

(1) The drawee is not liable on a bill until he accepts it.

(2) The drawing of a bill or its endorsement does not of itself operate as a transfer or assignment to the holder of funds in the hands of the drawee.

Relevant legislation

BEA—sections 23 and 53

UCC—sections 3-401 and 409

ULB—annex to the ULB, article 16

Cross references

Liability of an acceptor: article 36

Definition of endorsement: article 5 (2)

COMMENTARY

Paragraph (1)

1. The rule expressed in this paragraph is common to all systems. Article 27 provides that no person is liable on a bill unless he signs it. In conformity with this general rule under article 35 (1) the drawee is not liable on a bill until he accepts it.

Paragraph (2)

2. This paragraph provides that the drawing of a bill does not of itself operate as a transfer or an assignment to the holder of any funds in the hands of the drawee. (An assignment may, of course, be evidenced by facts outside the bill.) The rule of paragraph (2) follows substantially the BEA and UCC. There is no similar provision in the ULB. However, article 16 of the annex to the ULB provides that "the question whether the drawer is obliged to provide cover (provision) at maturity and whether the holder has special rights to this cover, remains outside the scope of the uniform law". Most countries following the Geneva system do not recognize "provision".

Article 36

The acceptor engages that he will pay to the holder:

(a) At maturity, the amount of the bill;

(b) After maturity, the amount of the bill and any interest and expenses which may be claimed under article 67 (b) or 68.

Relevant legislation

BEA—sections 17 (1) and 54 (1)

UCC—section 3-410

ULB—article 28

COMMENTARY

1. The rule expressed in this article follows substantially the provisions of the main legal systems. The acceptor is the **primary party liable on the bill**. His obligation is unconditional, i.e., he is liable on the bill even if the bill was not presented for payment, and no protest was made.

2. The liability of the acceptor is to pay the bill at maturity to the holder. If the bill was paid to the holder by the drawer or by an endorser, or if the holder discharges the drawer or the endorser of their liability, the acceptor is liable to pay the amount of the bill to the drawer or endorser who was so discharged and who is in possession of the bill.

Article 37

An acceptance must be written on the bill and may be effected either by the drawee's signature alone or by his signature accompanied by the word "accepted" or by words of similar import.

Relevant legislation

BEA—sections 2 and 17 (2) (a)

UCC—section 3-410 (1)

ULB—articles 25 and 29

COMMENTARY

This article follows in substance the relevant provisions of the principal legal systems. It provides that the acceptance must be in writing and on the bill. It must be signed by the drawee. A person who is not a drawee cannot accept a bill.

Article 38

(1) A bill may be accepted:

(a) Before the instrument has been signed by the drawer, or while otherwise incomplete;

(b) Before, at or after maturity, or after it has been dishonoured by non-acceptance or non-payment.

(2) Where a bill drawn payable at a fixed period after sight is accepted and the acceptor has not indicated the date of his acceptance, the drawer, before the issue of the bill, or the holder may insert the date of acceptance.

(3) Where a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder shall be entitled to have the acceptance dated as of the date of presentment to the drawee for acceptance.

Relevant legislation

BEA—section 18

UCC—section 3-410 (2) and (3)

ULB—article 25

Cross references

Presentment for acceptance: article 48

Dishonour by non-acceptance: article 51

Dishonour by non-payment: article 56

Incomplete instrument: article 11

"Issue": article 5

COMMENTARY

Paragraph (1)

1. This paragraph follows substantially the BEA and UCC. Inquiries amongst banking and trade institutions have shown that it is not uncommon for a bill to be accepted before its issuance or even before it is signed by the drawer or is incomplete in other respects. Similarly, acceptance at or after maturity occurs at times, and bills not infrequently are accepted after dishonour by non-acceptance or non-payment. On the basis of this information it was concluded that a rule on the lines of paragraph (1) would be justified.

Paragraph (2)

2. A bill drawn payable at a fixed period after sight (i.e., at a fixed period after presentment for acceptance) must be presented for acceptance in order to determine the date of payment (article 46 (1) (b)). It may happen that when such a bill is presented and accepted the acceptor for one reason or another omits to indicate the date of his acceptance. In such case, the date of payment cannot be ascertained from the face of the bill, and the bill is incomplete.

Paragraph (2) provides that in such case, the drawer or the holder may insert the date of acceptance. This solution seems to be preferable to the solution of the ULB, under which

the holder must in such case "authenticate the omission by a protest drawn up within the proper time" (article 25, ULB). This law, by giving the drawer or holder the right to insert the missing date, uses the approach that is applicable to any other completion of an incomplete instrument (article 11).

Paragraph (3)

3. It occurs in practice that the drawee is prepared to accept an "after sight" bill which he had previously dishonoured by a non-acceptance. In such case the date of acceptance is important in order to determine the date of payment. Paragraph (3) provides that the holder is entitled to have the bill accepted not as from the date of the acceptance, but as from the date of the first presentment for acceptance. If the acceptor refuses to write the correct date, this would be a "qualified acceptance" dealt with in article 39 and the holder may [refuse to take the "qualified" acceptance, and may] treat the bill as dishonoured by non-acceptance.

Article 39

(1) An acceptance may be either general or qualified.

(2) By a general acceptance the drawee engages to pay the bill according to its terms.

(3) By a qualified acceptance the drawee engages to pay the bill according to terms expressly stated in his acceptance. An acceptance is qualified if, *inter alia*, it is

(a) Conditional, in that the acceptance states that payment by the acceptor will be dependent upon the fulfilment of a condition therein stated;

(b) Partial, in that the acceptance relates to only part of the amount of the bill;

(c) Qualified as to place, in that the acceptance indicates a place of payment other than the place of payment indicated on the bill or, in the absence of such indication, other than the address indicated on the bill as that of the drawee;

(d) Qualified as to time;

(e) An acceptance by one or more of the drawees but not by all.

Relevant legislation

BEA—section 19

UCC—section 3-412

ULB—article 26

Cross references

"Acceptance": article 37

Dishonour by non-acceptance: article 51

The rights of the holder in case of a qualified acceptance: article 40

COMMENTARY

This article follows in substance the relevant provision of the BEA. Its purpose is to define the expressions "general acceptance" and "qualified acceptance". Those expressions are of importance in connexion with article 40.

Article 40

(1) The holder may refuse a qualified acceptance other than a partial [or local] acceptance. Upon such refusal the bill is dishonoured by non-acceptance.

(2) Where a holder takes a qualified acceptance other than an acceptance which is partial or is qualified as to place, the drawer and any endorser and guarantor who do not affirmatively assent shall be discharged of liability on the bill.

(3) Where the drawee gives a partial acceptance, the bill is dishonoured by non-acceptance as to the part of the amount not accepted.

Relevant legislation

BEA—section 44

UCC—section 3-412

ULB—article 26

Cross references

"Qualified acceptance": article 46

"Dishonour by non-acceptance": article 62

"Partial acceptance": article 46

COMMENTARY

1. Pursuant to article 40 and in conformity with the main legal systems, when the drawee offers a qualified acceptance, the holder has an option. He may reject the offer, insist on a general acceptance, and treat the refusal to give it as a dishonour. After any necessary protest the holder may exercise a right of recourse against the drawer, endorsers and their guarantors. If the holder opts to take the qualified acceptance, the acceptor is liable according to the terms of his acceptance. As far as the drawer, the endorsers and their guarantors are concerned, if they do not affirmatively assent, they are discharged. Article 40 deviates from the BEA in providing that only the affirmative consent by the drawer, endorsers and their guarantors will prevent their discharge. The BEA (section 44) provides that notice of the qualified acceptance should be given to the drawer and any endorser; if they do not express their dissent within a reasonable time, they shall be deemed to have assented.

2. An exception to this rule is recognized by this law in case of "partial acceptance", i.e., an acceptance of only a part of the amount of the bill (article 39 (3) (b)). Article 40 provides that, in such case, the holder must take the partial acceptance. The bill is not dishonoured as to the part accepted. As to the part not accepted, the bill is considered to be dishonoured by non-acceptance.

3. In the reply to the questionnaire (A/CN.9/48, para. 79), nearly half of the replies favoured a rule imposing on the holder the duty to take partial acceptance; slightly more than half opposed such a rule. The stronger reasons seemed to support the view that it is to be to the advantage of all parties that partial acceptance should be taken. Therefore, this draft provides that the holder may not refuse partial acceptance.

D. THE ENDORSER

Article 41

The endorser engages that upon dishonour of the bill by non-acceptance or non-payment, and upon any necessary protest, he will pay the amount of the bill, and any interest and expenses which may be claimed under articles 67 or 68, to the holder or to any party subsequent to himself who is in possession of the bill and who is discharged from liability thereon in accordance with articles 69 (2), 70, 71 or 76.

Relevant legislation

- BEA—section 55 (2) (a)
 UCC—section 3-414 (1)
 ULB—article 1

Cross references

- "Dishonour by non-acceptance": article 51
 "Dishonour by non-payment": article 56
 Necessary protest: article 57
 Definitions of "holder": article 5 (4)

COMMENTARY

1. The provisions of this article are substantially similar to those of the BEA, UCC and ULB. The endorser's liability, like that of the drawer's, is "secondary" and "conditional" (see commentary to article 34). For further commentary on this article see commentary to article 34.

2. In addition to his liability on the bill, an endorser may incur liability for any damages suffered by a holder subsequent to himself in accordance with the provisions of article 42.

Article 42

(1) Any person who negotiates a bill shall be liable to any holder subsequent to himself for any damages that such holder may suffer on account of the fact that prior to the negotiation

(a) A signature on the bill was forged or unauthorized; or

(b) The bill was materially altered; or

(c) A party has a valid claim or defence; or

(d) The bill is dishonoured by non-acceptance or non-payment.

(2) Liability on account of any defect mentioned in paragraph (1) shall be incurred only to a holder who took the bill without knowledge of such defect.

Relevant legislation

- BEA—sections 55 (2) (b) and 52 (a) and (c)
 UCC—sections 3-417 (2)

Cross references

- Definition of "endorsement": article 5 (3)
 Definition of "holder": article 5 (4)
 Forged signature: article 28
 Material alteration: article 29
 "Claim or defence": article 24
 Dishonour by non-acceptance: article 51
 Dishonour by non-payment: article 56
 "Knowledge of a fact": article 6

COMMENTARY

1. In addition to his liability on the bill pursuant to article 41, an endorser may incur liability to any holder subsequent to himself for any damages that such holder may suffer because of defects in previous signatures, material alteration or other defects in the endorser's title to the bill. Such liability may arise even before maturity of the bill, and the amount of the damages is not necessarily the amount of the bill. Under the UCC (section 3-417 (2)) and the BEA (section 58, dealing only with a bill payable to bearer) such liability is based on the concept of "warranties". This concept is not known in countries following the Geneva uniform law,

and in the interest of clarity is not employed in this Law. Article 42 is drafted in terms of liability for damages—a concept known to all legal systems.

Example A. The signature of the payee was forged. The forger "endorsed" the bill to A. A endorsed the bill to B. After such endorsement and before maturity the forgery was discovered. The payee, of course, is not liable on the bill since his signature was forged (article 28). Pursuant to article 42, B has a right to receive compensation from A for any damages that he may suffer because of his inability to receive payment of the bill from the payee.

Example B. A bill which stated the sum payable as \$1,000 was accepted. The payee then raised the sum to \$21,000 and endorsed the bill to A. A endorsed the bill to B.

By virtue of article 42, B has a right against A to compensation for the damage he may suffer because of his inability to receive payment of the full amount from the drawer, who is liable, pursuant to article 29 (see example A above), only for the amount of \$1,000.

2. Liability pursuant to article 42 runs in favour of any holder subsequent to the endorser. It is not limited to the immediate holder who took the bill from the endorsee thought to be liable. The holder has a right pursuant to article 42 only if he did not know about the defect when he took the bill.

E. THE GUARANTOR

Article 43

(1) Payment of a bill may be guaranteed, as to the whole or part of its amount, by any person who need not be a party to the bill.

(2) A guarantee must be written on the bill or on a slip affixed thereto. It is expressed by the words: "guaranteed", "aval", "good as *aval*", or by words of similar import, accompanied by the signature of the guarantor.

(3) A guarantor may specify the party whose payment he guarantees.

(4) In the absence of such specification, the person guaranteed shall be the drawer.

Relevant legislation

- ULB—Articles 30 and 31

Cross reference

- "Party": article 5 (5)

COMMENTARY

1. The provision of this article, and of articles 44 and 45, follow in substance the provisions of the ULB in respect of the giver of an *aval*. The liability of a guarantor, pursuant to articles 43 to 45 is "on the bill", and is "negotiable" in nature, i.e. it runs in favour of any subsequent holder, and defences will not be available against preferred rights of a protected holder. Nothing in this article prevents a person from guaranteeing the payment of a bill by an ordinary non-negotiable guarantee, governed by national law.

2. Payment may be guaranteed by a third person or by a person who is already a party. In that case, his liability as a guarantor should add to his main liability as a party, e.g., the endorsee may guarantee payment by the acceptor.

3. A person does not incur the liability of guarantee under the Law merely by signing his name on the bill. Such person is liable, pursuant to article 32, "as an endorser". In order to incur liability as a guarantor, the person signing the bill must use words expressing a guarantee (e.g.: "guaranteed", "good as *aval*").

4. A guarantor may specify the party whose liability he guarantees (i.e. "guarantee payment by the acceptor"). It may occur, however, that the guarantor has not specified the person guaranteed. In such case, the guarantee is not invalid. Paragraph (4) provides that in such case "the person guaranteed shall be the drawer".

5. Paragraph (4) lays down a rule of law rather than a rule of evidence; proof as to the guarantor's intent would be irrelevant.

Article 44

(1) A guarantor shall be liable on the bill to the same extent as the party for whom he has become guarantor, unless the guarantor has stipulated otherwise.

(2) The guarantor shall be liable on the bill even when the party for whom he has become guarantor is not liable thereon, unless that party's lack of liability is apparent from the face of the bill.

Relevant legislation

ULB—article 30

COMMENTARY

1. The liability of a guarantor is similar to that of the person for whom he has become guarantor. It follows, therefore, that if the person guaranteed is the drawer or the endorser, the guarantor is not liable on the bill if the bill was not duly presented and due protest was not effected. If the person guaranteed is discharged of his liability on the bill, the guarantor is discharged. Similarly, if the person guaranteed has a defence to his liability on the bill—whether this defence relates to the bill or whether it relates to another transaction—this defence is available to the guarantor since he is liable "to the same extent as the person for whom he has become guarantor".

2. The guarantor under articles 43 to 45 differs from the "non-negotiable" guarantor in that his liability is not truly secondary in nature. Paragraph 2 provides that a guarantor shall be liable on the bill "even when the person for whom he has become a guarantor is not liable on the bill" except where such absence of liability is apparent from the face of the bill.

Example A. A guaranteed payment by the drawer. The drawer is a person who has no capacity to incur liability on the bill. Pursuant to article 44 (2), A is liable on the bill.

Example B. A guaranteed payment by the drawer. The drawer's signature was forged. Though such "drawer" is not liable on the bill (see article 28), A is liable on the bill.

Example C. A guaranteed payment by the payee. The payee transferred the bill without the necessary endorsement. The payee is not liable on the bill, and his absence of liability "is apparent from the face of the bill". A is not liable on the bill.

3. The policy behind paragraph (2) is to protect the reasonable expectations of a holder. If from the face of the bill it appears that the person guaranteed is liable on the bill, the guarantor should be liable in the same manner. On the other hand, if from the face of the bill it is shown that the person guaranteed is not liable on the bill, the basic reason for the rule—to protect the holder's reasonable expectations—does not support liability for the guarantor.

Article 45

The guarantor, when he pays the bill, shall have rights on the bill against the party guaranteed and against those who are liable thereon to that party.

Relevant legislation

ULB—article 30

Cross references

Payment of the bill: article 70

Party: article 5

COMMENTARY

By payment of the bill, the guarantor acquires rights on the bill against the person whose payment was guaranteed, and against those persons who are liable on the bill to that person.

Part Five. Presentment, dishonour and recourse

Section 1. Presentment for acceptance

Article 46

(1) The holder must present a bill for acceptance

(a) When the drawer or an endorser or a guarantor has stipulated on the bill that it shall be so presented;

(b) When the bill is drawn payable at a fixed period after sight; or

[(c) When the bill is drawn payable elsewhere than at the residence or place of business of the drawee].

(2) The holder may present for acceptance any other bill.

Relevant legislation

BEA—section 39

UCC—section 3-501 (1) (a)

ULB—articles 21 and 22

Cross references

Definition of "holder": article 5 (4)

Acceptance: article 37

Stipulation on a bill: article 31

Definite time: article 9 (3)

COMMENTARY

1. The general rule embodied in this article is that presentment for acceptance is optional, except in the cases stated in subparagraphs (a), (b) and (c) of paragraph (1). In those cases presentment for acceptance is necessary in order to render prior parties liable on the bill. The provisions of paragraph 1 (a) and (b) are common to the Geneva and Anglo-American systems.

Paragraph (1) (a)

2. An express stipulation on a bill that it must be presented for acceptance is effective only in respect of the party who made the stipulation (article 31 (2)). A stipulation requiring presentment may also oblige the holder to present the bill within a specific period of time or at or after a specified date or the occurrence of a specific event (article 47 (1)).

Example. The drawer D drew a fixed-term bill on drawee B payable to payee P. P endorsed the bill to C and stipulated on the bill that it is to be presented for acceptance before a certain date.

(a) C does not present the bill for acceptance: P is not liable on the bill (see article 50 (1)).

(b) C presents it after the date specified by P (but before maturity) and acceptance is refused: P is not liable on the bill (there is no due presentment pursuant to article 48 (g) and C requires an immediate right of recourse against D pursuant to article 51 (2)).

Paragraph 1 (b)

3. Where a bill is drawn payable at a fixed period after sight, presentment for acceptance is necessary in order to determine the date of maturity. If the acceptor of such a bill omits to state on the bill the date of acceptance, the holder may insert that date (article 38 (2)).

Paragraph 1 (c)

4. The BEA (s.39) and the UCC (s.3-501 (1) (a)) require presentment for acceptance of a bill which is drawn payable elsewhere than at the residence or place of business of the drawee. Such a bill is often referred to as a "domiciled" bill. The ULB (article 22) provides that where a bill is drawn payable at the address of a third party or in a locality other than that of the domicile of the drawee, the drawer may not prohibit presentment for acceptance. Under the Geneva system, the holder retains therefore his option to present or not present a bill so drawn.

Under the Anglo-American system, the rationale of the obligation of the holder to present a domiciled bill for acceptance is founded upon the need to advise the drawee that a bill has been drawn upon him payable at a place other than that of his residence or place of business (usually a bank), so as to enable him to provide his agent (the bank) with the necessary funds. Under that system, failure by the holder to present a domiciled bill for acceptance results in discharge of the liability of prior parties.

Under the Geneva uniform law, the failure by the holder to present a domiciled bill does not make him lose his rights on the bill against prior parties, unless of course the drawer or an endorser has expressly stipulated that it shall be presented for acceptance.

5. Enquiries amongst banking and trade institutions have not led to a clearcut view as to whether it is desirable to include in article 46 a provision on the lines of subparagraph (c); that subparagraph is therefore placed between brackets.

It would appear that, in actual practice, a rule on the lines of subparagraph (c) would not impose an undue burden upon the holder. Enquiries on current practice have shown that presentment for acceptance, even in the case of fixed-term bills, is normally made since acceptance by the drawee establishes his liability on the bill, and, in the case of non-acceptance renders prior parties immediately liable. Moreover, in many countries the Central Bank will purchase only bills that have been accepted, or the purchase of non-accepted bills is restricted to bills which do not exceed a certain amount or in respect of which the period between the time of drawing and the maturity date does not exceed a certain minimum period.

On the other hand, the inclusion of subparagraph (c) in the uniform law would relieve prior parties of their liability on the bill to the holder if the holder failed to present a domiciled bill for acceptance; and it could be argued that such non-liability of the drawer or of an endorser who has received goods from the holder for the issue or endorsement of the bill imposes undue hardship upon the holder.

6. Consideration was given to a compromise approach whereby the non-presentment of a domiciled bill would have a different legal effect than the non-presentment of bills which fall within the provisions of subparagraphs (a) or (b). Under that approach, if the failure of the holder to present a domiciled bill for acceptance is the cause of non-payment by the drawee, the drawer and the endorsers would still be liable on their signature but should be able to seek compensation from the holder for the damages they have suffered because they were obliged to pay the bill in place of the drawee. In certain circumstances, this would lead to a result similar to that obtaining under Anglo-American law. However, there may be cases in which the dishonour by non-

payment is not caused by the failure of the holder to present the bill for acceptance. In such cases, the compromise approach provided that the drawer or endorsers should pay the amount of the bill at maturity without a right to receive compensation from the holder.

7. Summing up, three alternative solutions are therefore possible:

- (i) The holder has an option to present or not present a domiciled bill for acceptance; in that case subparagraph (c) should be deleted;
- (ii) The holder must present a domiciled bill for acceptance and failure to present results in non-liability of prior parties; in that case, subparagraph (c) should be retained;
- (iii) The holder must present a domiciled bill for acceptance and failure to present renders him liable to a prior party for any damages that may result from such failure if the bill is dishonoured by non-payment; in that case subparagraph (c) should be retained and article 50 should be modified accordingly.

Paragraph 2

8. Presentment for acceptance is optional in respect of bills that do not fall within paragraph (1). Bills drawn payable on demand entitle the holder to immediate payment upon presentment. Consequently, if the drawee refuses to pay a demand bill, but accepts it, the holder may refuse to take the acceptance and treat the bill as dishonoured by non-payment. However, the acceptance establishes the liability of the acceptor on the bill.

Article 47

(1) The drawer or an endorser or a guarantor may stipulate on the bill that it shall not be presented for acceptance or that it shall not be presented before a specified date or before the occurrence of a specified event.

(2) Where a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph (1), and acceptance is refused, the bill is not thereby dishonoured in respect of the party making the stipulation.

(3) Where the drawee accepts a bill notwithstanding a stipulation that it shall not be presented for acceptance, the acceptance shall be effective.

Relevant legislation

ULB—article 22

Cross references

Exclusion or limitation of liability on the bill: article 31.
Dishonour by non-acceptance: article 51.

COMMENTARY

Paragraph (1)

1. The legal effect of a prohibition from presenting a bill for acceptance is that the holder cannot exercise an immediate right of recourse for dishonour by non-acceptance against the parties in respect of whom the stipulation is operative. Similarly, where a party stipulates that the bill shall not be presented before a certain date, the right of recourse for dishonour by non-acceptance against such party will only accrue to the holder if the dishonour occurred on or after that date.

2. Paragraph (1) permits a stipulation to the effect that the bill must not be presented before the occurrence of a specified event. Enquiries amongst banking and trade institutions have shown that such stipulations occur not infrequently.

In some countries, particularly Latin American, it appears to be normal practice to delay presentment until the merchandise has arrived or (in some African countries) until after customs clearance. In some countries, drawees often refuse to accept documentary bills on the ground that the carrying vessel has not yet reached its destination point, and a bill may therefore often direct a holder not to present it for acceptance until the vessel has arrived.

Such stipulation, if made on a bill drawn payable at a fixed period after sight, does not affect the validity of the instrument as an international bill of exchange on the ground that the instrument would no longer be payable at a definite time or would be "conditional". If the specified event did not occur, for instance the vessel suffered shipwreck before reaching its destination, presentment for acceptance as directed by the stipulation is obviously impossible and would be dispensed with under article 49 (2). In that case, the holder would acquire an immediate right of recourse against the party who made the stipulation (by virtue of article 51 (1) (b)). The bill is not made "conditional" by such a stipulation because the order to pay is not conditional.

3. In contrast to paragraph 1, article 22 of the ULB provides that the stipulation prohibiting presentment for acceptance, whether totally or limited in time, can only be made by the drawer. The present paragraph extends a similar possibility to endorser and guarantors; this extension is consistent with article 31 which provides that any party to a bill may exclude or limit his liability on the bill.

Paragraph (2)

4. "... The bill is not thereby dishonoured by non-acceptance" means that the holder cannot exercise, under article 51 (2), an immediate right of recourse in the event of non-acceptance against a prior party who made the stipulation.

Paragraph (3)

5. An acceptance is an engagement on the part of the drawee that he will pay the bill to the holder (article 36). The acceptance of a bill does not adversely affect a party who made the stipulation under paragraph (1).

Article 48

A bill is duly presented for acceptance if it is presented in accordance with the following rules:

- (a) The holder must present the bill to the drawee.
- (b) A bill drawn upon two or more drawees may be presented to any one of them, unless the bill clearly indicates otherwise.
- (c) Where the drawee is dead, presentment may be made to the person or authority who, under the applicable law is entitled to administer his estate.
- (d) Where the drawee is in the course of insolvency proceedings, presentment may be made to a person who under the applicable law is authorized to act in his place.
- (e) Where a bill is drawn payable on, or at a fixed period after, a stated date, any presentment for acceptance must be made before the date of maturity.
- (f) A bill drawn payable at a fixed period after sight must be presented for acceptance within one year of its date.

(g) A bill in which the drawer or an endorser or a guarantor has stated a date or time-limit for presentment for acceptance must be presented on the stated date or within the stated time-limit.

(h) A bill in which the drawer or an endorser or a guarantor has stipulated that it shall be presented for acceptance, but without stating a date or time-limit for presentment, [or a bill which is drawn payable elsewhere than at the place of business or residence of the drawee and which is not a bill payable after sight,] must be presented before the date of maturity.

Relevant legislation

- BEA—sections 40 and 41
- UCC—sections 3-503 and 504
- ULB—articles 21, 23, 24

Cross references

- Definition of "holder": article 5 (4)
- Bill drawn upon two or more drawees: article 10

COMMENTARY

1. This article sets forth the rules regarding proper presentment for acceptance.

Paragraph (a)

2. As elsewhere in this Law, the word "holder" or "drawee" includes an authorized agent.

3. In contrast to presentment for payment, which is local, i.e. where the funds are, presentment for acceptance is personal. It must be made to the drawee himself because he must write the acceptance. For this reason, it is not necessary to set forth rules as to the place of presentment for acceptance.

Paragraph (b)

4. This paragraph envisages the special case of bills drawn upon two or more drawees, and follows in this respect section 3-504 (3) (a) of the UCC which eliminates the requirement, found in section 41 (1) (b) of the BEA, that presentment be made to each of two or more drawees. Under paragraph (b), presentment is to be made to all drawees only when it is so indicated on the bill.

Paragraphs (c) and (d)

5. If the drawee is dead or is in the course of insolvency proceedings, the holder may, pursuant to article 49 (a), dispense with presentment for acceptance. In these cases, presentment is therefore optional and paragraphs (2) and (3) indicate to whom presentment may be made. A similar provision obtains under the BEA (sections 41 (1) (c) and (d) and 2 (a)).

Paragraphs (e) to (h)

6. The provisions of these paragraphs lay down rules as to the time of presentment for acceptance.

Paragraph (e)

7. "Before the date of maturity". This is in accordance with the ULB (article 21). The BEA and UCC permit presentment for acceptance also on the date on which the bill is payable.

Paragraph (f)

8. As regards the period of time within which a bill payable at a fixed period after sight must be presented for acceptance, paragraph (f) follows the ULB by laying down a period of one year as from the date stated on the bill or, if no such date is stated, from the date of the bill. The BEA and UCC provide that an after sight bill must be either presented for acceptance or negotiated within a reasonable time. Since the concept of "reasonable time" with reference to negotiable

instruments is unknown outside the common law countries and might lead to difficulties of application on universal level, it has not been retained in this draft.

Paragraph (g)

9. Paragraph (g) also covers bills payable after sight in respect of which a party has extended or abridged the time of presentment prescribed by paragraph (f). Pursuant to article 31 (2), such a stipulation is personal to the party stipulating it. The provision of paragraph (g) leads to the following result in the case of bills payable after sight: If an endorser stipulated that the bill must be presented within six months after date, and the holder presented the bill (say) seven months after date, the holder loses his right of recourse against that endorser, whether the bill was accepted or not, by reason of the fact that there was no due presentment for acceptance in respect of that endorser. If the drawee refuses to accept, the parties to the bill other than that endorser are liable on the bill and the holder may exercise an immediate right of recourse against such parties by virtue of article 51 (2).

Paragraph (h)

10. Paragraph (h) covers the two remaining types of bill in respect of which presentment for acceptance is necessary pursuant to article 46 (b) and (c).

Presentment for acceptance by mail

10. Consideration has been given to a provision worded as follows:

"Where authorized by agreement or by the usage of banking or trade, a presentment by acceptance by mail is sufficient, in which event the time of presentment is determined by the time of receipt of the mail".

A similar provision covered presentment for payment by mail.

These provisions were inspired by similar provisions found in the BEA (s. 41 (1) (e)) and the UCC (s. 3-504 (2) (a)).

11. Subsequent enquiries as to business and banking practices with regard to presentation by mail revealed little or no usage in this respect, in either common law and civil countries, mainly because of the many difficulties to which presentment by mail may give rise in practice. Amongst the difficulties put forward by banking and trade circles are the following:

- (i) The difficulty of fixing appropriate and practicable time-limits since postal services cannot always and everywhere be relied upon; e.g. there can be mistakes in delivery of the mail, postal strikes or other circumstances that are beyond the control of the parties;
- (ii) The difficulty of obtaining satisfactory evidence of the fact that a registered letter has been delivered to the drawee or acceptor;
- (iii) The difficulty for the holder to prove that the registered letter did indeed contain the bill sent for presentment;
- (iv) The existence of generous time-limits (necessary for international bills) within which the holder must receive notification of payment, or of dishonour, might induce debtors to pay only shortly before the expiry of such time-limits;
- (v) In the event of dishonour the holder will have lost possession of the bill and in some countries the law establishes a presumption of payment in favour of the drawee or the acceptor in possession of the bill.

12. In view of the absence of support for a rule which would entitle the holder to treat a bill presented by mail as dishonoured simply because of the passage of a given period of time, the present draft of the uniform law does not set forth a rule on presentment by mail. Nor does the present draft contain a rule that prevents presentment by mail. Presentment may be made not only by the holder, but also by an agent. Technically, the postal service would serve as

an agent of the holder in making presentment. The issue is therefore whether special rules of substantive law or of evidence should be provided in the uniform law regarding the special case of presentment by mail. The evidence and opinion summarized above has led to the conclusion that no special provision should be made for presentment by mail.

Article 49

Presentment for acceptance shall be dispensed with

(1) Where the drawee is dead or is in the course of insolvency proceedings, or is a person not having capacity to accept the bill; or

(2) Where, with the exercise of reasonable diligence, presentment cannot be effected within the time-limits prescribed for presentment for acceptance;

(3) Where a party has waived presentment expressly or by implication, in respect of such party.

Relevant legislation

BEA—section 41 (2)

UCC—section 3-511

ULB—article 54

Cross reference

Time-limits for presentment for acceptance: article 48 (e) to (h)

COMMENTARY

1. The common law system and the Geneva Uniform Law both recognize the existence of circumstances which excuse the holder from an obligation to present a bill for acceptance or for payment, or from drawing up a protest. However, there are sharp differences as to the approach adopted, on the one hand, by the BEA and UCC and, on the other hand, by the ULB:

(a) Under the English and American statutes, circumstances beyond the control of the holder excuse delay in presentment or protesting; once the cause of delay has ceased to operate presentment or protest must be made with "reasonable diligence". Presentment or protest is dispensed with when, after the exercise of reasonable diligence, it cannot be effected. Under the ULB, the existence of an unsurmountable obstacle ("*vis major*") extends the time-limits for presentment or for protest. The holder must, on pain of losing his right of recourse against the drawer, endorsers and their guarantors, present the bill or draw up protest "without delay" if the "*vis major*" ceases to operate within a period of 30 days after maturity, or, in respect of demand bills and after sight bills, within 30 days as from the date on which the holder has given notice of "*vis major*" to his endorser. The holder is dispensed from making presentment or protest if the "*vis major*" continues to operate beyond that period, and he is then permitted to exercise an immediate right of recourse.

(b) The grounds upon which presentment or protest is excused or dispensed with under the two systems also differ. The ULB mentions only "*vis major*", including the "legal prohibition (*prescription légale*) by any State", but excludes expressly "facts which are purely personal to the holder". Under the BEA and UCC, such "personal facts" can be a legitimate cause for delay or for dispensation.

(c) The BEA and UCC set forth grounds, excusing delay in presentment or protest or dispensing with these formalities, that are not expressly mentioned in the ULB, and vice versa.

2. Article 49 does not make provision for the excuse of delay. This Law adopts a system of fixed time-limits for presentment for acceptance (cf. article 48), as in the ULB, rather than the concept of reasonable time recognized under Anglo-American law. If by reasonable diligence presentment for acceptance cannot be made within the prescribed time-

limits for such presentment, presentment is completely dispensed with; the bill is then dishonoured by non-acceptance (article 51 (1) (b)) and the holder acquires an immediate right of recourse against prior parties (article 51 (2)).

3. If the drawee is dead, presentment to "the person or authority who under the applicable law is entitled to administer his estate or to his heirs" is optional (article 48 (c)).

4. If the drawee is in the course of insolvency proceedings, presentment to "a person who under the applicable law is authorized to act in his place" is optional (article 48 (d)). The question what constitutes insolvency is left to national law.

Article 50

(1) If a bill which must be presented for acceptance in accordance with article 46 (1) (a) is not duly presented, the party who stipulated on the bill that it shall be presented shall not be liable on the bill.

(2) If a bill which must be presented for acceptance in accordance with article 46 (1) (b) or (c) is not duly presented, the drawer, the endorser and the guarantors shall not be liable on the bill.

Relevant legislation

BEA—sections 39 (3) and (4), 40

UCC—sections 3-501, 502

ULB—article 53

Cross references

Bills that must be presented for acceptance: article 46

Due presentment for acceptance: article 48

Presentment dispensed with: article 49

COMMENTARY

Paragraph (1)

1. Pursuant to article 31 (2), a stipulation that the bill must be presented for acceptance is effective only in respect of the party making the stipulation. Therefore, if the bill is not presented, that party is not liable. The holder cannot exercise against him a right of recourse if the bill is subsequently dishonoured by non-payment.

Paragraph (2)

2. This paragraph concerns bills drawn payable at a fixed period after sight and those that are payable elsewhere than at the residence or place of business of the drawee. Non-presentment of such bills results in the holder failing to acquire a right of recourse against all prior parties in the event of dishonour by non-payment.

3. The consequences of failure to present is that specified parties "shall not be liable on the bill". The draft draws a distinction between circumstances that bar the creation of liability and circumstances that lead to discharge. The undertaking of the drawer or an endorser is that "upon dishonour of the bill by non-acceptance . . . he will pay the amount of the bill" (see articles 34 (the drawer) and 41 (endorser)). If the bill is not presented for acceptance, although it must be so presented under article 46 (1), it is not dishonoured by non-acceptance, and the liability of the drawer and endorser does not materialize. On the other hand, a party is "discharged" of his liability, if he paid the bill, or on any other ground set forth in article 69 of this Law. The notion of discharge, as used in that and other articles in part six, implies that the liability of a party has materialized.

4. The same considerations obtain in respect of the use of the expression "shall not be liable" in article 55 in the context of failure to present for payment.

Article 51

(1) A bill is dishonoured by non-acceptance

(a) When acceptance is refused upon due presentment or when the holder cannot obtain the acceptance to which he is entitled under this Law; or

(b) When presentment for acceptance is dispensed with pursuant to article 49, and the bill is not accepted.

(2) Where a bill is dishonoured by non-acceptance the holder may, subject to the provisions of article 57, exercise an immediate right of recourse against the drawer, the endorser and the guarantors.

Relevant legislation

BEA—sections 42 and 43

UCC—section 3-507

ULB—article 53

Cross references

Due presentment: article 48

Presentment dispensed with: article 49

An acceptance to which the holder is entitled: article 40

COMMENTARY

Paragraph (1) (a): "acceptance to which he is entitled"

1. Pursuant to article 40, the holder is entitled to a general acceptance; he may refuse to take a qualified acceptance and the bill is then dishonoured.

As to what constitutes a general or a qualified acceptance, see article 39 (2) and (3)

2. The fact that a bill has been dishonoured by non-acceptance does not prevent the drawee from accepting it subsequently (see article 38 (1) (b)).

3. The term "dishonour" is not used in the Geneva uniform law, but appears to be widely understood in civil law countries. The term, as used in this Law, comprises actual dishonour (a refusal to accept or to pay) and constructive dishonour (where presentment is dispensed with).

4. The immediate right of recourse can only be exercised after the bill has been duly protested for dishonour by non-acceptance (article 57).

Section 2. Presentment for payment

Article 52

(1) Presentment of a bill for payment shall be necessary in order to render the drawer, an endorser or a guarantor liable on the bill.

(2) Presentment for payment shall not be necessary to render the acceptor liable.

Relevant legislation

BEA—section 45 and 52

UCC—section 3-501

ULB—article 38.

Cross references

Liability of the drawer: article 34

Liability of an endorser: article 41

Liability of a guarantor: article 44

COMMENTARY

Paragraph (1)

1. Presentment for payment is a condition precedent to liability of the drawer, endorsers and their guarantors. Failure to present deprives the holder from his right of recourse against prior parties (article 55).

2. As to what constitutes due presentment for payment, see article 53.

Paragraph (2)

3. The acceptor is liable by virtue of his acceptance; presentment for payment to him, or to his guarantor, is not a condition precedent to his liability on the bill.

Article 53

A bill is duly presented for payment if it is presented in accordance with the following rules:

(a) The holder of a bill must present the bill for payment to the drawee or to the acceptor.

(b) Where a bill is drawn upon or accepted by two or more drawees, it shall be sufficient to present the bill to any one of them; if a place of payment is specified, presentment shall be made at that place.

(c) Where the drawee or acceptor is dead, and no place of payment is specified, presentment must be made to the person or authority who under the applicable law is entitled to administer his estate.

(d) A bill which is not payable on demand must be presented for payment on the day on which it is payable or on one of the two business days which follow.

(e) A bill which is payable on demand must be presented for payment within one year of its stated date and if the bill is undated within one year of the issue thereof.

(f) A bill must be presented for payment:

- (i) At the place of payment specified on the bill; or
- (ii) Where no place of payment is specified, at the address of the drawee or the acceptor indicated on the bill; or
- (iii) Where no place of payment is specified and the address of the drawee or the acceptor is not indicated at the principal place of business or residence of the drawee or the acceptor.

Relevant legislation

BEA—sections 45 and 52

UCC—sections 3-501, 503 and 504.

ULB—articles 34 and 38.

Cross references

Definition of "holder": article 5 (4)

Bill drawn upon two or more drawees: article 10

Bills payable at a definite time: article 9 (3)

Bill payable on demand: article 9 (1)

COMMENTARY

1. This article sets forth the rules regarding proper presentment for payment.

Paragraph (a)

2. As elsewhere in this Law, the word "holder," "drawee" or "acceptor" includes an authorized agent. Since presentment for payment is "local", paragraph (f) sets forth rules regarding the proper place of presentment for payment.

Paragraph (b)

3. This paragraph envisages the special case of a bill drawn upon or accepted by two or more drawees, and follows in this respect sections 3-504 (3) (a) of the UCC which eliminates the requirement, found in section 45 (b) of the BEA, that presentment be made to each of two or more drawees, unless they are partners, and no place of payment is specified. If a place of payment is specified on the bill, the holder must present the bill to the drawee or acceptor at that place, but if two or more drawees have their residence or place of business in that place, he may present the bill to any one of them.

Paragraph (c)

4. If the drawee or acceptor is dead, the holder must present the bill for payment to the person or authority who under the applicable law is entitled to administer the drawee's or acceptor's estate. In contrast with presentment for acceptance (article 48 (c)), the death of the drawee or of the acceptor does not dispense with presentment for payment, although, under article 54 (1), this circumstance may excuse delay in making presentment.

Paragraphs (d) and (e)

5. The provisions of these paragraphs lay down rules as to the time at which or within which presentment of payment must be made. Presentment after the due date (in the case of bills payable at a definite time) or after the expiry of the period of one year (in the case of bills payable on demand) deprives the holder of his right of recourse if the bill is dishonoured, and prior parties will not be liable to him on the bill.

Paragraph (f)

6. This paragraph sets forth the rules regarding the proper place of presentment for payment.

Article 54

(1) Delay in making presentment for payment shall be excused when the delay is caused by circumstances beyond the control of the holder. When the cause of delay ceases to operate, presentment must be made promptly [within days].

(2) Presentment for payment shall be dispensed with

(a) Where the drawer or an endorser or a guarantor has waived presentment expressly or by implication; such waiver shall bind only the party who made it;

(b) Where a bill is not payable on demand, and the cause of delay in making presentment continues to operate beyond 30 days after maturity;

(c) Where a bill is payable on demand, and the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment;

(d) Where the drawee or acceptor of a bill after the issue thereof, is in the course of insolvency proceedings in the country where presentment is to be made;

(e) Where a bill has been protested for dishonour by non-acceptance;

(f) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to pay the bill and the drawer has no reason to believe that the bill would be paid if presented.

Relevant legislation

BEA—section 46
UCC—section 3-511
ULB—article 54

Cross reference

Due presentment for payment: article 53

COMMENTARY

Paragraph (1)

1. As to delay in presenting a bill for payment, see paragraph 1 of the commentary to article 49.

Paragraph (2) (a)

2. Waiver binds only the party who made it; this rule is in accordance with article 31 (2).

Paragraph (2) (c)

3. Pursuant to article 53 (2), a bill payable on demand must be presented for payment within one year of its stated date or, if the bill is undated, within one year of its issue.

Paragraph (2), (d) and (e)

4. The provisions of these subparagraphs are based on similar provisions of the BEA.

Article 55

If a bill is not duly presented for payment, the drawer, the endorsers and their guarantors shall not be liable on the bill.

Relevant legislation

BEA—section 45
UCC—section 3-501
ULB—article 53

Cross references

Due presentment for payment: article 53
Delay in presentment excused: article 54 (1)
Presentment dispensed with: article 54 (2)

COMMENTARY

Presentment of a bill for payment is one of the conditions precedent to the liability of parties prior to the holder. Therefore, non-presentment or failure to present a bill in accordance with the requirements of due presentment (article 53) deprives the holder of his right of recourse against prior parties. The drawer may of course accept the bill after maturity, and such an acceptance will make him liable to the holder and any party subsequent to the holder (article 38 (1) (b)).

Article 56

(1) A bill is dishonoured by non-payment

(a) When payment is refused upon due presentment or when the holder cannot obtain the payment to which he is entitled under this Law; or

(b) When presentment for payment is dispensed with pursuant to article 54 (2), and the bill is overdue and unpaid.

(2) Where a bill is dishonoured by non-payment the holder may, subject to the provisions of article 57, exercise a right of recourse against the drawer, the endorsers and the guarantees.

Relevant legislation

BEA—section 47
UCC—section 3-507 (1)
ULB—article 43.

Cross references

Due presentment: article 53
Presentment dispensed with: article 54 (2)
Payment to which the holder is entitled: articles 71 and 72.

COMMENTARY

Paragraph (1) (a): "payment to which he is entitled"

1. Pursuant to article 71 and 72, the holder may refuse partial payment or refuse to take payment in a place other than the place where the bill was duly presented for payment in accordance with article 53 (f).

Therefore, the refusal by the holder to accept such payment constitutes a dishonour of the bill by non-payment and the holder acquires a right of recourse against prior parties.

2. The right of recourse can only be exercised after the bill has been duly protested for dishonour by non-payment (article 57).

Section 3. Recourse

Article 57

Where a bill has been dishonoured by non-acceptance or by non-payment, the holder may exercise his right of recourse only after the bill has been duly protested for dishonour in accordance with the provisions of articles 58 to 61.

Relevant legislation

BEA—section 44 (2) and 51 (2)
UCC—section 3-501 (3)
ULB—article 44

Cross references

Definition of holder: article 5
Dishonour by non-acceptance: article 51
Dishonour by non-payment: article 56
Protest for dishonour: articles 58 to 61.

COMMENTARY

1. There are three conditions that may be precedent to the liability of the drawer, endorsers and their guarantors. These are: (a) presentment for acceptance, where this is required under article 46 (1), (b) presentment for payment and (c) protest for dishonour. Once these conditions are fulfilled, the holder is entitled to exercise his right of recourse against those parties. Failure to protest a bill for dishonour deprives the holder of his right of recourse: prior parties are not liable on the bill (article 60). However, the acceptor remains liable on the bill, irrespective of whether the bill was presented for payment or was protested for non-payment.

2. Pursuant to article 51 (2), dishonour by non-acceptance in respect of bills payable at a definite time entitles the holder to exercise an immediate right of recourse, i.e., before the maturity of the bill.

Article 58

(1) A protest may be effected by means of a declaration written on the bill and signed and dated by the drawee or the acceptor, or, in the case of a bill domiciled with a named person for payment, by that named person, the declaration shall be to the effect that acceptance or payment is refused.

(2) A protest shall be effected by means of an authenticated protest as specified in paragraph (3) and (4) of this article in the following cases:

(a) Where the declaration specified in paragraph (1) of this article is refused or cannot be obtained; or

(b) Where the bill stipulates an authenticated protest; or

(c) Where the holder does not effect a protest by means of the declaration specified in paragraph (1) of this article.

(3) An authenticated protest is a statement of dishonour drawn up, signed and dated by a person authorized to certify dishonour of a negotiable instrument by the law of the place where acceptance or payment of the bill was refused. The statement shall specify

(a) The person at whose request the bill is protested;

(b) The place and date of protest; and

(c) The cause or reason for protecting the bill, the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(4) An authenticated protest may

(a) Be made on the bill itself; or

(b) Be made as a separate document, in which case it must clearly identify the bill that has been dishonoured.

Relevant legislation

BEA—section 51 (7)

UCC—section 3-509

ULB—article 44, article 8 of the Geneva Convention of 1930 for the Settlement of Certain Conflicts of Laws in connexion with Bills of Exchange and Promissory Notes

Cross references

Protest as a condition precedent to the liability of parties: articles 57 and 60

Time for protest: article 59

Delay in protesting excused: article 61 (1)

Protest dispensed with: article 61 (2)

COMMENTARY

General

1. Under article 44 of the ULB, non-acceptance or non-payment must be evidenced by an authenticated act (protest for non-acceptance or non-payment). Questions as to the form of protest are left to the law of the place in which the protest must be drawn up. The Geneva Convention providing a Uniform Law for Bills of Exchange and Promissory Notes, in annex II (reservations), permits a Contracting State to "prescribe that protest to be drawn up in its territory may be replaced by a declaration dated and written on the bill itself, and signed by the drawee, except where the drawer stipulates in the body of the bill of exchange itself for an authenticated protest".

2. Under Anglo-American law, protest is required only in the case of foreign bills of exchange (BEA, section 51 (1) (2); UCC, section 3-501 (3)); dishonour of an inland bill may be evidenced by noting. Under section 51 (7) of the BEA, a protest must contain a copy of the bill, and must be signed by the notary making it. Under section 3-509 of the UCC, a protest is a certificate of dishonour "made under the hand and seal of a United States consul or vice-consul or a notary public or other person authorized to certify dishonour by the law of the place where dishonour occurs".

3. Replies to the 1969 Questionnaire on Negotiable Instruments revealed the existence of serious problems due to legal divergencies and to the rules on procedure in various countries with regard to legal action taken against parties to a bill (see A/CN.9/38, paragraphs 55 to 62). These replies further revealed a general desire for simplified rules on protest (see A/CN.9/48, paragraphs 112 to 114). Accordingly, further questions were addressed to banking and trade institutions in order to ascertain the practicability of various alternative solutions to the problems.

4. One solution considered was to reverse the procedure provided by article 46 of the ULB, i.e. protest should not be required unless there were an express stipulation to that effect on the bill, such as "with protest", "*avec frais*", etc. This procedure was proposed by several respondents to the 1969 Questionnaire on Negotiable Instruments (see A/CN.9/48, paragraph 114 (a)), and has been adopted in article 85 of the Draft Uniform Law for Latin America on Commercial Documents¹ ("A protest shall be necessary only when the drawer or a holder of a bill inserts the expression "supra protest" on the face with visible character"). This solution was abandoned in view of the virtually unanimous opinion of banking and trade institutions that, owing to the legal consequences of dishonour to parties prior to the holder and the duties of due presentment incumbent on the holder, some specified kind of evidence of dishonour should be required in all circumstances.

5. After consultation with interested international organizations and banking and trading institutions, the approach finally adopted is to provide for a simplified form of protest, consisting in a signed declaration on the bill by the drawee or the acceptor indicating a refusal to accept or to pay. Bills of exchange used for settling international transactions are commonly made payable at a bank. With respect to such domiciled bills a declaration of dishonour would, under paragraph (1), normally be given by the paying bank (which often acts also in a collecting capacity).

A more formal protest, i.e. an authenticated protest drawn up by a person authorized to certify dishonour under the law of the place where the dishonour occurred, is required only in the following cases:

(a) When the declaration of the drawee or the acceptor is refused, or cannot be obtained; or

(b) When the bill itself specifies an authenticated protest; or

(c) When the holder of the bill calls for an authenticated protest.

6. The uniform law thus envisages three possibilities:

(a) Waiver of the protest (article 61 (2) (a)). Such waiver binds only the party who made it (articles 31 (2) and 61 (2) (a)) and protest is required in respect of other prior parties;

(b) A simplified form of protest by a declaration effected in accordance with article 58 (1);

(c) An authenticated protest in the cases required under article 58 (2).

¹ Proyectos de Ley Uniforme de Titulos-Valores para América Latina (OAEA)/Ser. GIV., C-d-1589, Argentina, 11 June 1968.

7. Paragraphs (3) and (4) lay down the form which an authenticated protest must take.

Article 59

(1) Protest for dishonour by non-acceptance or by non-payment must be made on the day on which the bill is dishonoured or on one of the two business days which follow.

[(2) An authenticated protest must be effected at the place where the bill has been dishonoured.]

Relevant legislation

BEA—sections 51 and 93

UCC—section 3-509 (4)

ULB—article 44

Cross references

Form of protest: article 58

Failure to protest: article 60

Protest dispensed with: article 61 (2)

COMMENTARY

1. Obvious consideration was given to establishing time-limits for protest on the lines of the ULB; under this approach protest for dishonour by non-acceptance must be made within the time-limits fixed for presentment for acceptance, and protest for dishonour by non-payment within the time-limits fixed for presentment for payment (in the case of bills payable on demand) or on one of the two business days following the day on which the bill is payable (in the case of bills not payable on demand).

2. In the course of discussions with interested international organizations, the view was expressed that the time-limits laid down by the ULB were too long, in particular because the ULB (article 45) requires that notice of dishonour be given "within the four business days which follow the day for protest". It was pointed out that, where bills of exchange are used for the settlement of international commercial transactions, it was of the utmost importance that prior parties, against whom the holder may wish to have recourse, be advised of the dishonour without delay. Article 59 (1) lays down, therefore, the brief time-limit of three days, running from, and including, the day on which the bill was dishonoured.

Paragraph (2)

3. In the case of dishonour by non-acceptance, the place where the bill is dishonoured is the place where acceptance was refused by the drawee. If the drawee could not be found, presentment for acceptance is dispensed with (article 49 (b).) Dispensation from presentment for acceptance is a ground on which protest is dispensed with (article 61 (e)).

4. In the case of dishonour by non-payment, the place where the bill is dishonoured is the place where presentment for payment must be made (article 53 (f)).

Article 60

If a bill which must be protested for non-acceptance or for non-payment is not duly protested, the drawer, the endorsers and their guarantors shall not be liable on the bill.

Relevant legislation

BEA—section 51 (2)

UCC—section 3-501 and 502

ULB—article 53

Cross reference

Protest dispensed with: article 61

COMMENTARY

1. The provision of this article is in accordance with the relevant provisions of the main legal systems. Protest, together with due presentment for acceptance (where necessary) and for payment, is a condition precedent to the liability of prior parties.

2. The use of the words "shall not be liable on the bill" is explained in paragraph 3 of the commentary to article 50.

Article 61

(1) Delay in protesting a bill for dishonour by non-acceptance or by non-payment shall be excused when the delay is caused by circumstances beyond the control of the holder. When the cause of delay ceases to operate, protest must be made promptly [within . . . days].

(2) Protest for dishonour by non-acceptance or by non-payment shall be dispensed with:

(a) Where the drawer, an endorser or a guarantor has waived protest expressly or by implication; such waiver shall bind only the party who made it;

(b) Where the cause of delay in making protest continues to operate beyond 30 days after maturity or, in the case of a bill payable on demand, where the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment;

(c) As regards the drawer of a bill, where (i) the drawer and the drawee are the same person; or (ii) the drawer is the person to whom the bill is presented for payment; or (iii) the drawer has countermanded payment; or (iv) the drawee or the acceptor is under no obligation to accept or pay the bill;

(d) As regards the endorser, where the endorser is the person to whom the bill is presented for payment;

(e) Where presentment for acceptance or for payment is dispensed with in accordance with articles 49 or 54 (2).

Relevant legislation

BEA—section 51 (8) and (9)

UCC—section 3-511 (2), (4) and (5)

ULB—article 54

Cross references

Waiver: see also article 31

Presentment for acceptance: articles 46 to 49

Presentment for payment: articles 52 to 54

Time-limit for presentment of a bill payable on demand: article 53 (e)

COMMENTARY

Paragraph (1)

1. As to delay in protesting, see paragraph 1 of the commentary to article 49.

Paragraph (2) (a)

2. . . . "Waiver shall bind only the party who made it": this rule is in accordance with article 31 (2).

3. In contrast to section 3-511 (5) of the UCC, a waiver of protest does not include or imply a waiver of presentment.

Paragraph (2) (b)

3. Pursuant to article 53 (e), a bill payable on demand must be presented for payment within one year of its stated date or, if the bill is undated, within one year of its issue.

Paragraphs (2) (c), (d) and (e)

4. The provisions of these subparagraphs are based on similar provision in the BEA.

Article 62

(1) Where a bill has been dishonoured by non-acceptance or by non-payment, due notice of dishonour must be given to the drawer, the endorser and their guarantors.

(2) Notice may be given by the holder or any party who has himself received notice, or by any other party who can be compelled to pay the bill.

(3) Notice operates for the benefit of all parties who have a right of recourse on the bill against the party notified.

Relevant legislation

BEA—section 49
UCC—section 3-508
ULB—article 45

Cross references

Dishonour by non-acceptance: article 51
Dishonour by non-payment: article 56
Form of notice of dishonour: article 63
Time-limit for giving notice of dishonour: article 64
Delay in giving notice of dishonour: article 65 (1)
Notice of dishonour dispensed with: article 65 (2)
Effects of failure to give notice of dishonour: article 66

*COMMENTARY**General*

1. Under the BEA and UCC, the giving of notice of dishonour is necessary to charge secondary parties. In contrast, under the ULB, failure by the holder to give notice merely makes him liable to such parties for damages which shall not exceed the amount of the bill. This draft follows the approach of the Geneva Uniform Law (see article 66). Notice of dishonour is therefore not a condition precedent to the liability of parties to the bill.

Paragraph (1)

2. As to what constitutes due notice of dishonour, see article 63.

3. Under the ULB, the holder need give notice only to his immediate endorser, and each endorser to his immediate endorser, until ultimately the drawer is notified by the payee. On the other hand, the BEA and the UCC require the holder or a prior endorser liable on the bill to notify any other party against whom he wishes to proceed. Paragraph (1) follows the procedure laid down in Anglo-American law.

4. "... To the drawer, the endorser and their guarantors": the acceptor and his guarantor are not entitled to notice.

Paragraph (2)

5. This paragraph follows the similar provision of section 3-508 (1) of the UCC.

Paragraph (3)

6. It follows from this paragraph that notice of dishonour given by the payee to the drawer operates as a notice from

endorsers subsequent to the payee. If an endorser subsequent to the payee exercises a right of recourse against the drawer, the drawer cannot then claim damages under article 66 on the ground that that endorser failed to give notice.

Article 63

Notice of dishonour may be given in writing or orally and in any terms which identify the bill and state that it has been dishonoured. The return of the dishonoured bill shall be sufficient notice.

Relevant legislation

BEA—section 49 (5) and (7)
UCC—section 3-508 (3)
ULB—article 45

COMMENTARY

1. This article follows the substance of the relevant provisions of the BEA, UCC and ULB.

2. A written notice need not be signed; it suffices that the party notified is informed of the identity of the bill and of the fact of dishonour. All three systems provide that the return of a dishonoured bill constitutes due notice of dishonour.

Article 64

Notice of dishonour must be given within the two business days which follow:

(a) The day of protest or, where protest is dispensed with, the day of dishonour; or

(b) The receipt of notice from another party.

Relevant legislation

BEA—section 49 (12)
UCC—section 3-508
ULB—article 45

Cross references

Form of notice of dishonour: article 63
Time-limit for protest: article 59
Delay in protesting: article 61 (1)
Protest dispensed with: article 61 (2)
Failure to give due notice: article 66

COMMENTARY

1. It is commercially desirable that parties liable on the bill as a consequence of dishonour be advised without delay that they have become liable. Inquiries amongst banking and trade circles have led to the conclusion that a period of three days (i.e., the day of protest or, where protest is dispensed with, the day of dishonour, and the two business days that follow) is an adequate and practicable period in which to give notice; it will, in most cases, enable the holder's agent in a foreign country where the bill was payable to inform his principal of the dishonour and will enable the holder to give notice to prior parties against whom he wishes to have recourse. Unavoidable delay in giving notice is excused under article 65 (1).

2. A party receiving notice has the same period of time for giving notice to prior parties that the holder had upon dishonour.

Article 65

(1) Delay in giving notice of dishonour is excused when the delay is caused by circumstances beyond

the control of the holder. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

(2) Notice of dishonour shall be dispensed with:

(a) Where the drawer or an endorser or a guarantor has waived notice of dishonour expressly or by implication; such waiver shall bind only the party who made it;

(b) Where the cause of delay in giving notice continues to operate beyond 30 days after the last date on which it should have been given;

(c) As regards the drawer of the bill, where the drawer and the drawee are the same person, or the drawer is the person to whom the bill is presented for acceptance or payment, or where the drawer has countermanded payment, or where the drawee or the acceptor is under no obligation to accept or pay the bill;

(d) As regards the endorser, where the endorser is the person to whom the bill is presented for payment.

Relevant legislation

BEA—section 50

UCC—section 3-511

ULB—article 46

Cross references

To whom notice must be given: article 62

Form of notice of dishonour: article 63

Time-limit for giving notice: article 64

Failure to give due notice: article 66

COMMENTARY

Paragraph (1)

1. As to delay in giving notice of dishonour, see paragraph 1 of the commentary to article 49.

Paragraph (2) (a)

2. Waiver binds only the party who made it; this rule is in accordance with article 31 (2).

Paragraph (2) (b)

3. "... The last date on which notice should have been given," i.e., the second business day following the day of protest or, where protest is dispensed with, the second business day following the day of dishonour or, where the notice is given by a party who himself has received notice, the second business day following the receipt by him of notice from another party.

Paragraphs 2 (c) and (d)

4. These subparagraphs cover the various situations where a party is not entitled to notice; they follow in substance the provisions of the BEA.

Article 66

Failure to give due notice of dishonour shall render the holder liable to the drawer, the endorsers and their guarantors for any damages that they may suffer from such failure [provided that the total amount of the damages shall not exceed the amount of the bill].

Relevant legislation

BEA—section 48

UCC—section 3-501 (2)

ULB—article 45

Cross references

When to give notice to dishonour: article 62 (1)

To whom notice must be given: article 62 (2)

Form of notice: article 63

Time-limit for giving notice: article 64

Delay in giving notice: article 65 (1)

Notice dispensed with: article 65 (2)

COMMENTARY

1. The consequences of failure to give notice differ sharply between the Anglo-American Law and the Geneva Uniform Law. Under the BEA and the UCC, the giving of notice of dishonour is necessary to charge secondary parties and is thus a condition precedent to their liability on the bill to the holder or to any other party who has acquired a right of recourse against them. Under the ULB, failure to give notice does not discharge the drawer's or prior endorsers' liability on the bill, but merely makes the party who failed to give notice liable for the damages resulting from such failure. Under the ULB, therefore, a holder or any other party who acquires a right of recourse, but failed to give notice, may exercise such right of recourse upon due protest.

2. Article 66 follows the ULB approach. Under this article, failure to give due notice of dishonour renders the holder liable to the party paying the bill for any damages that he may suffer. The term "holder" includes, of course, a party who paid the bill and proceeds against another party antecedent to him.

3. The words "provided that the total amount of the damages shall not exceed the amount of the bill" are placed between brackets. A provision to that effect is found in article 45 of the ULB. However, in the course of discussions with interested international organizations, the opinion was voiced that failure to give notice and a delayed exercise of the right of recourse might, in certain circumstances, give rise to damages that exceed the amount of the bill. This aspect of the provision of article 66 is therefore referred to the Working Group for consideration.

Article 67

The holder may recover from any party liable,

(a) At maturity: the amount of the bill;

(b) After maturity: the amount of the bill, interest due at (. . .) per cent per annum above the official rate of discount effective at the place of payment [at the place where the holder has his residence or place of business] calculated on the basis of the number of days and of a year of (365) days, and any expenses of protest and of the notices given;

(c) Before maturity: the amount of the bill, subject to a discount from the date of making payment to the date of maturity, to be calculated at the official rate of discount effective on the date when the recourse is exercised at the place where the holder has his residence or place of business.

Relevant legislation

BEA—section 57

UCC—no equivalent provision, but see section 3-122

ULB—article 48

Cross reference

Holder: article 5 (4)

COMMENTARY

1. When a bill is dishonoured, the holder is entitled, upon due protest, to recover from any prior party and the acceptor the amount of the bill and also any interest that may be due because payment was made after maturity and any expenses in making protest and giving notices.

2. If payment is made before maturity (i.e., an immediate right of recourse was exercised upon dishonour by non-acceptance), the party paying is entitled to a discount from the date of payment to the date of maturity.

3. If the bill itself provides for interest, it is part of the sum payable (article 7) until maturity. After maturity, interest is payable as damages.

Article 68

A party who takes up and pays a bill may recover from the parties liable to him:

(a) The entire sum which he was obliged to pay in accordance with article 67;

(b) Interest due on that sum calculated at the highest permissible legal rate at the pace of payment from the day on which he made payment;

(c) Any expenses which he has incurred.

Relevant legislation

BEA—section 57

UCC—no equivalent provision, but see section 3-122

ULB—article 49

COMMENTARY

Where the drawer has taken up and paid a bill, the acceptor is liable to the drawer for the sum the drawer was compelled to pay pursuant to article 67 and for any interest and expenses. An endorser or a guarantor has similar rights on the bill against prior parties and the acceptor.

Part Six. Discharge

Section I. General

Article 69

(1) Liability of a party on a bill is discharged by:

(a) Payment in accordance with articles 70 to 75;

(b) Renunciation in accordance with article 76;

(c) Reacquisition of the bill by a prior party in accordance with article 77;

(d) Discharge of a prior party in accordance with article 78 (1);

(e) Absence of his assent to a qualified acceptance in accordance with article 40 (2).

(2) A party is also discharged of his liability on the bill by any act or agreement which would discharge him of his contractual liability for the payment of money.

Relevant legislation

UCC—section 3-601

COMMENTARY

1. Article 69 is declaratory. Being the first article of part six on "discharge", it summarizes the various ways by which liability on a bill is discharged.

"Discharge"

2. A party who is "discharged" of his liability has no further liability on the bill (but see article 25). If an action on the bill is brought against such party, he may raise his discharge as a defence. If the party discharged is the acceptor, he may debit any current account that he has with the drawer. If the drawer or an endorser is discharged of liability on the bill, he is also discharged of liability on the underlying obligation to his immediate party.

Example A. The drawee is indebted to the drawer. The drawer is indebted to the payee. A bill is drawn on the drawee. On presentment by the payee, the drawee accepts the bill. At maturity the bill is paid by the acceptor to the payee. The acceptor is discharged. He may debit the drawer's account with him.

Example B. Same facts as in A, but the acceptor dishonours the bill and the drawer pays the payee. The drawer is discharged of his liability on the bill. We may assume that under applicable national law, his original debt to the payee is also discharged.

3. Articles 70 to 78 provides four ways by which liability on a bill is discharged. These enumerated grounds for discharge are not exhaustive. It is provided by article 69 (2) that any act or agreement which would discharge a party to a contract of his contractual liability for the payment of money shall also discharge him of his liability on the bill.

Example C. The holder, orally (and without delivering the bill), waives his rights on the bill against an endorser. Is the endorser discharged?

According to article 76, such waiver does not constitute a discharge. It may be, however, that under a given legal system such waiver is a valid discharge of an obligation to pay money. If this is the case, such waiver will also discharge the endorser of his liability on the bill. In several countries there are rules (of substance and of procedure) by which the debtor may deposit the amount of the debt with a competent authority (e.g. the courts); such a deposit is considered equivalent to payment to the creditor and therefore operates as a discharge. In countries where such a possibility exists, the deposit of the amount of the bill by a party liable should discharge him of liability, since it is considered to be an "act" under paragraph (2) which would discharge a party of his contractual liability for the payment of money.

4. The draft does not provide conflict rules for the application of the rule set forth in paragraph (2); this question is accordingly left to national law.

Section 2. Payment

Article 70

(1) A party is discharged of his liability on the bill when he pays the holder or a party subsequent to himself the amount due pursuant to articles 67 or 68.

(2) A person receiving payment of a bill in accordance with paragraph (1) shall deliver the receipted bill and any such authenticated protest to the person paying the bill.

Relevant legislation

BEA—section 59

UCC—section 3-603

ULB—articles 39 and 40

Cross references

"Discharge": see comments to article 69
 Definition of holder: article 5 (4)

COMMENTARY

1. Payment discharges the payor if it is made at or after maturity since this is his undertaking by signing the bill (see articles 34, 36 and 41). Payment before maturity is governed by article 67 (c). If the bill is dishonoured by non-acceptance, the parties liable should be able to discharge their liability even before maturity, since the holder has an immediate right of recourse (article 51 (2)).

2. The payor is fully discharged if he pays the amount of the bill and any additional sum required pursuant to article 67. An offer to pay a lesser amount is governed by article 71.

"A party subsequent to himself"

3. The person receiving payment is usually the holder. If the bill is dishonoured by the drawee or acceptor, the holder has a right of recourse against the drawer and the endorsers (articles 51 (2) and 56 (2)). When the drawer or an endorser pays the bill to the holder, the bill is usually delivered to the payor. In the absence of an endorsement by the holder—and such endorsement is not necessary—the payor, though in possession of the bill may not be considered to be a holder (see article 5 (4)). The drawer who paid the bill to the holder has a right thereon against the acceptor. If the bill was paid to the holder by an endorser, he has a right against the acceptor, drawer and previous endorsers. Article 70 provides that payment by the acceptor, drawer or endorsers to "a subsequent party" (i.e., the party who paid the holder), discharges him of his liability on the bill.

Example A. A, an endorsee from the payee, presented the bill for payment to the acceptor but the bill was dishonoured. A exercised his right of recourse against the payee, who paid A. The payee then exercised his right of recourse against the drawer. Payment by the payee discharges him (the payee) since he paid the "holder" (A). Payment by the drawer to the payee discharges the drawer, since he paid "a subsequent party".

4. It should be noted that payment discharges a party, even if the payor knows that there is a claim to the bill. This results from the provision of article 24.

Example B. The drawer (D) drew and issued a bill to the payee (P). By fraud A induced P to negotiate the bill to him. At maturity, the bill was presented for payment to the acceptor by A. The acceptor paid knowing of the fraud. Is the acceptor discharged? Pursuant to article 70 the acceptor is discharged. This follows from the rule provided by article 24 (3), under which on these facts D has no defence on the bill against A (*ius tertii* is no defence).

Article 71

(1) The holder may take partial payment from the drawee or the acceptor. In that case

(a) the acceptor is discharged of his liability on the bill to the extent of the amount paid; and

(b) the bill shall be considered as dishonoured by non-payment as to the amount unpaid.

(2) The drawee or the acceptor making partial payment may require that mention of such payment be made on the bill and that a receipt therefore be given to him.

(3) When a bill has been paid in part, a party who pays the unpaid amount shall be discharged of his liability on the bill, and the person receiving the pay-

ment shall deliver the receipted bill and any authenticated protest to the party making the payment.

Relevant legislation

BEA—section 47

UCC—section 3-507

ULB—article 39

Cross references

Definition of holder: article 5 (4)

Definition of "authenticated protest": article 58 (2)

COMMENTARY

1. Under this draft the holder is not obliged to accept partial payment. He has an option. On the one hand, the holder may accept partial payment. In this case any party liable is discharged *pro tanto*, and the bill is dishonoured to the extent of the amount unpaid. On the other hand, the holder may refuse partial payment. In this case the bill is considered to be dishonoured by non-payment as to the whole amount.

2. In replies to the questionnaire on negotiable instruments (A/CN.9/48, para. 84), several respondents favoured a rule imposing on the holder the duty to take partial payment. An almost equal number opposed such a rule on the ground that the holder should not be obliged to take less than he is entitled to. It was also considered that it is not proper to impose on the holder the burden of dividing his right to payment between several persons.

Article 72

(1) The holder may refuse to take payment in a place other than the place where the bill was duly presented for payment in accordance with article 53 (f).

[(2) If payment is not then made in the place where the bill was duly presented for payment in accordance with article 53 (f), the bill shall be considered as dishonoured by non-payment.]

Relevant legislation

BEA—section 45 (4)

UCC—section 3-504

Cross references

Definition of holder: article 5 (4)

COMMENTARY

1. Pursuant to article 62 (f), a bill must be presented for payment at the place of payment specified in the bill. When no place of payment is specified, the bill must be presented for payment at the address of the drawer or acceptor indicated on the bill. When no place of payment is specified and the address of the drawee or acceptor is not indicated, the bill must be presented for payment at the principal place of business or residence of the drawee or the acceptor. It is commercially reasonable for payment to be made at the place where the bill is presented for payment. It is therefore provided that an offer to pay the bill in some other place may be rejected by the holder, who may then treat the bill as dishonoured by non-payment.

2. Paragraph (2) explains in more detail the legal meaning of the "may" provision in paragraph (1). It is put between brackets because it may be considered superfluous.

Article 73

(1) Where a bill has been materially altered as to its amount, any person who pays the bill pursuant to such alteration without knowledge of the alteration shall have the right to recover the amount by which the bill was raised from the party who so altered the bill or from any subsequent party except a party who was without knowledge of the alteration at the time he transferred the bill.

(2) In any other case of alteration which is material, as defined in article 29 (2), any person who pays the bill pursuant to such alteration without knowledge of the alteration shall have the right to receive the amount paid by him from the person who altered the bill, or from any subsequent party except a party who was without knowledge of the alteration at the time he transferred the bill.

(3) Where the signature of the drawer has been forged, any person who pays the bill without knowledge of the forgery shall have the right to recover the amount paid by him from the person who forged the signature of the drawer, or from any party subsequent to the drawer a party who was without knowledge of the forgery at the time he transferred the bill.

Relevant legislation

BEA—section 54

UCC—section 3-417 (1), 3-418

Cross references

Rights of holder and protected holder in case of alteration: article 29

"Forged signature": article 28

"Knowledge": article 6

*COMMENTARY**Paragraph (1)*

1. Article 73 (1) deals with the alteration of a bill by modification of its amount. If the amount is lowered, no question of recovery by the payor can arise. The question of recovery may, however, arise in the case where the amount of the bill is raised.

Example A. A bill which stated the sum payable as \$1,000 was accepted. The payee then raised the sum to \$10,000 and endorsed the bill to A. A endorsed the bill to B. At maturity the bill was paid as altered by the acceptor. What are the acceptor's rights?

The acceptor paid \$9,000 more than he was obliged to pay to the holder (article 36). If he paid with knowledge of the alteration, he paid at his own risk. If he paid without knowledge, he may, under article 73 (1), recover this amount from any person who took the altered bill, except from a party who was without knowledge of the alteration. In example A, the acceptor may recover \$9,000 from the payee, and from A or B if they knew about the alteration. This would appear to be a just solution, since the risk of the alteration is shifted to the party who made the alteration or to a party who knew about it.

Paragraph 2

2. This paragraph deals with other cases of material alteration, e.g. alteration of the date.

Example B. A bill was drawn and accepted as payable on 1 January 1973. The payee then altered the date to 1 January 1972, and endorsed the bill to A. A endorsed the bill to B. On 1 January 1972, the bill was paid by the acceptor.

Article 73 (2) provides that if the acceptor paid without knowledge of the alteration, he may recover the amount of the bill from the payee, or from A or B, if A or B knew about the alteration.

Paragraph 3

3. This paragraph deals with the case of a forged drawing. Under article 28, the drawer whose signature was forged is not liable on the bill. Payment by the acceptor or drawee, without knowledge of the forgery, is payment by mistake. It is the policy of this law that the drawee or acceptor should be able to receive the amount paid from the forger (who is liable on the bill (article 28)), and from any party who had knowledge of the forgery at the time he transferred the bill. If all parties (except the forger) are innocent, the risk of the forgery as a theoretical matter, will lie on the forger. If, as will usually be the case, the forger cannot be found or has no funds to pay the bill, the risk falls on the drawee or acceptor (the rule in *Price v. Neal*). The reason for this result is that the drawee or acceptor is in a better position than the holder to identify the forger's signature.

4. No provision is made in article 73 concerning forged endorsements since that case is covered by article 22 of the draft.

5. No provision is made for other cases in which payment is made by a party to the bill though: (a) he is not obliged to pay (he has a "real defence"), or (b) some other party has a claim to the bill.

The question raised under (a) is left to national law. As to (b) there is no occasion for recovery since under article 24 such claims do not provide a valid defence.

Article 74

[This article will contain rules in respect of a bill drawn payable in a currency other than that of the payment. At the time of finalizing the draft uniform law consultations had not yet been completed regarding certain implications of such rules and their possible conflict with existing international agreements and mandatory national rules such as exchange control regulations. It is expected that a draft uniform rule on this issue will be finalized in time for the first meeting of the Working Group.]

Article 75

[(1) Where a party tenders payment of the amount due in accordance with articles 67 or 68 to the holder at or after maturity and the holder refuses to accept such payment:

(a) The party tendering payment shall not be liable for any interest or costs as from the day payment was offered; and

(b) Any party who has a right of recourse against a party tendering payment shall not be liable for such interests or costs.

(2) The provisions of paragraph (1) (b) shall also apply if the person tendering payment to the holder is the drawee.]

Relevant legislation

UCC—section 3-604

Cross references

The amount to be paid at or after maturity: article 67 and 68

COMMENTARY

1. This article deals with the offer of payment ("tender"). It provides that a party liable on a bill may, at or after maturity, offer payment to the holder. If the holder refuses to accept such payment, the party making the offer will not be liable to pay interest or costs as from the date of the offer. As to the parties who have a right of recourse against the party offering payment, article 75 provides that they are discharged from any liability for interests or costs as from the date of the offer.

2. Paragraph (2) is necessary since paragraph (1) refers to tender by "a party". The drawee is not a "party", since he has not signed the bill. It is submitted that the rules about tender should apply also, as far as the right of recourse is concerned, to the tender made by the drawee.

3. The article is put between brackets, since it may already be covered by the provision of article 69 (2).

Section 3. Renunciation*Article 76*

(1) A party is discharged of his liability on the bill if the holder, at or after maturity, writes on the bill an unconditional renunciation of his rights thereon against such party.

(2) Such renunciation shall not affect the right to the bill of the party who so renounced his rights thereon.

Relevant legislation

BEA—sections 62 and 63

UCC—section 3-605

Cross reference

Definition of "holder": article 5 (4)

COMMENTARY

1. A party liable on a bill is discharged of his liability thereon when the holder renounces his rights against him, provided the renunciation is unconditional and is made on the bill at or after maturity. Waiver made before maturity or not on the bill, is dealt with under article 69 (2).

Example A. The holder renounces his right on the bill against the payee by cancellation of the payee's endorsement. The holder has no right against the payee. Any subsequent holder, even if he qualifies as a protected holder, has no rights against the payee (article 24).

2. It should be noted that a renunciation or waiver made under this article, while affecting the parties' liabilities on the bill does not affect the title to the instrument.

Example B. The renunciation by the holder in example A does not affect his title to the bill, though it seems, on the face of the bill, that he has not taken through an uninterrupted series of endorsements.

Section 4: Reacquisition by a prior party*Article 77*

A party liable who rightfully becomes the holder of the bill shall be discharged of liability thereon to any party who had a right of recourse against him.

Relevant legislation

BEA—section 61

Cross reference

Definition of "holder": article 5 (4)

COMMENTARY

1. Article 77 deals with the case where a bill is transferred to a party who has been liable on the bill and who now takes the bill as a holder. As a holder, such party has rights on the bill against all previous parties. Those parties, if obliged to pay to the holder, will have a right of recourse against parties previous to them, including the holder in his "capacity" as a previous party. In order to prevent multiplicity of actions, article 77 provides that a previous party who becomes a holder is discharged of liability on the bill to any party subsequent to him. Article 78 provides that such subsequent parties are discharged of liability against the holder.

Example A. The payee endorsed a bill to A. A endorsed the bill to the drawer. Pursuant to article 77, the drawer is discharged of his liability on the bill to the payee and to A, and the payee and A are discharged of their liability to A (in his "capacity" as a holder).

2. A party to a bill may reacquire the bill by unlawful means. There is no reason to discharge him in that case. It is provided, therefore, that discharge occurs only if the previous party becomes a holder rightfully.

Section 5. Discharge of a prior party*Article 78*

(1) Where a party is discharged of liability on the bill, any party who had a right of recourse against him shall also be discharged.

(2) An agreement, not amounting to partial or total discharge, between the holder and a party liable on the bill shall not affect the right and liabilities of other parties.

Relevant legislation

BEA—section 37

UCC—section 3-208

COMMENTARY

Paragraph (1)

1. The discharge of a party to a bill affects not only his rights on the bill, but also the rights of parties subsequent to the party discharged. When those parties signed the bill they were entitled to assume that if they paid the bill, they would have a right of recourse against prior parties. The discharge of a previous party impairs this right of recourse. It is reasonable, therefore, to discharge parties subsequent to the party discharged.

Example A. The payee endorsed a bill to A. A waived his rights against the drawer by cancelling his signature. Pursuant to article 78, the payee is discharged of liability on the bill.

Paragraph (2)

2. The holder of a bill may agree not to sue a party, or may suspend his right to enforce payment or may make other agreements with a party that affects that party's liability but do not constitute a total or partial discharge. Article 78 (2) provides that such agreements do not affect the rights and liabilities of other parties to the bill. These other parties remain liable to the holder as if the contract was not made

and may exercise their right of recourse without taking the contract into account.

Example B. The holder agreed with the acceptor to postpone payment. The agreement may not be raised as a defence by the drawer if he is sued prior to the extended date set in the above agreement. If the drawer paid the bill, he has a right thereon against the acceptor; the contract between the holder and the acceptor may not be raised by the acceptor as a defence against the drawer's action. If, because of the postponement, presentment for payment or protest was not duly effected, the drawer is discharged.

This rule results from the independent nature of each party's liability on the bill; such independent liability is derived from the signature on the bill (and the provisions of the uniform law) and cannot be effected by an agreement to which the party is not privy.

Part Seven. Limitation (prescription)

Article 79

[It is expected that the law will include an article on the limitation of legal proceedings and the prescription of rights arising under an international bill of exchange. The preparation of such an article presents difficult problems of reconciling the divergent approaches of different legal systems,¹ and requires further study. It is expected that proposals with respect to this problem can be submitted in time for the first session of the Working Group.]

Part Eight. Lost bills

Article 80

[This article will deal with the question of lost bills, which is approached differently in the principal legal systems. Consultations with banking and trade organizations have shown that a workable solution is feasible. It is expected that draft proposals dealing with this issue can be submitted in time for the first session of the Working Group.]

ANNEX

Draft uniform law on international bills of exchange Part One. Sphere of application: form

Article 1

- (1) This Law shall apply to international bills of exchange.
- (2) An international bill of exchange is a written instrument which
 - (a) Contains, in the text thereof, the words "Pay against this international bill of exchange, drawn subject to the Convention of _____" (or words of similar import); and
 - (b) Contains an unconditional order whereby one person (the drawer) directs another person (the drawee) to pay a definite sum of money to a specified person (the payee) or to his order; and
 - (c) Is payable on demand or at a definite time; and
 - (d) Is signed by the drawer; and
 - (e) Shows that it is drawn in a country other than the country of the drawee or of the payee or of the place where payment is to be made.

¹ See report of the Working Group on Time-limits and Limitations in the International Sale of Goods. A/CN.9/70/Add.1; commentary to opening clauses at para. 4.

Article 2

The incorrectness of statements made on a bill for the purpose of paragraph (2) (e) of article 1 shall not affect the application of this Law.

Article 3

This Law shall apply without regard to whether the countries indicated on an international bill of exchange pursuant to paragraph (2) of article 1 are Contracting States.

Part Two. Interpretation

SECTION 1. GENERAL

Article 4

In interpreting and applying the provisions of this Law, regard shall be had to its international character and to the need to promote uniformity in its interpretation and application.

Article 5

In this Law:

- (1) "Bearer" means a person in possession of a bill endorsed in blank;
- (2) "Bill" means an international bill of exchange governed by this Law;
- (3) (a) "Endorsement" means a signature, or a signature accompanied by a statement designating the person to whom the bill is payable, which is placed on the bill by the payee, by an endorsee from the payee, or by any person who is designated under an uninterrupted series of such endorsements. An endorsement which consists solely of the signature of the endorser means that the bill is payable to any person in possession of the bill.
- (b) "Endorsement in blank" means an endorsement which consists solely of the signature of the endorser or which includes a statement to the effect that the bill is payable to any person in possession of the bill.
- (c) "Special endorsement" means an endorsement which specifies the person to whom the bill is payable.
- (4) "Holder" means the payee or the endorsee of a bill who is in possession thereof;
- (5) "Issue" means the first transfer of a bill to a person who takes it as a holder;
- (6) "Party" means a party to a bill;
- (7) "Protected holder" means the holder of a bill which, on the face of it, appears to be complete and regular and not overdue, provided that such holder was, when taking the bill, without knowledge of any claims or defences affecting the bill or of the fact that it was dishonoured.

Article 6

For the purpose of this Law, a person is considered to have "knowledge" of a fact if he has actual knowledge thereof [or if the absence of knowledge thereof is due to [gross] negligence on his part] [or if he has been informed thereof or if the fact appears from the face of the bill].

SECTION 2. INTERPRETATION OF FORMAL REQUIREMENTS

Article 7

The sum payable by a bill is a definite sum although the bill states that it is to be paid

- (a) With interest; or
- (b) By stated instalments; or
- (c) According to an indicated rate of exchange or according to a rate of exchange to be determined as directed by the bill.

Article 8

(1) If there is a discrepancy between the amount of the bill expressed in words and the amount expressed in figures, the sum payable shall be the amount expressed in words.

[(2) If the amount of the bill is specified in a currency having the same designation but a different value in the country where it was drawn and the country where payment is to be made, the designation shall be considered to be in the currency of the country where payment is to be made [provided that the place where payment is to be made is indicated on the bill]].

(3) Where a bill states that it is to be paid with interest, without specifying the date from which interest is to run, interest shall run from date of the bill [and if the bill is undated, from the issue thereof].

(4) Where a bill states that it is to be paid with interest, without specifying the rate, simple interest at the rate of [five] per cent per annum shall be payable.

Article 9

(1) A bill is payable on demand

(a) If it states that it is payable on demand or at sight or at sight or on presentment or if it contains words of similar import;

(b) If no time for payment is expressed.

(2) A bill which is accepted or endorsed or guaranteed after maturity is a bill payable on demand as regards the acceptor, the endorser or the guarantor.

(3) A bill is payable at a definite time if it states that it is payable

(a) On a stated date or at a fixed period after a stated date or at a fixed period after the date of the bill; or

(b) At a fixed period after sight; or

[(c) By instalments at successive dates, even when it is stipulated in the bill that upon default in payment of any instalment the unpaid balance shall become due immediately.]

(4) The time of payment of a bill payable at a fixed period after date is determined by reference to the date stated on the bill regardless of whether bill is ante-dated or post-dated.

Article 10

(1) A bill may:

(a) Be drawn upon two or more drawees,

(b) Be signed by two or more drawers,

(c) Be payable to two or more payees.

(2) If a bill is payable to two or more payees in the alternative, it is payable to any one of them and any one of them in possession of the bill may exercise the rights of a holder. In any other case the bill is payable to all of them and the rights of a holder can only be exercised by all of them.

SECTION 3. COMPLETION OF AN INCOMPLETE INSTRUMENT

Article 11

(1) The possessor of an instrument which

(a) Contains, in the text thereof, the words "Pay against this international bill of exchange, drawn subject to the Convention of _____" (or words of similar import), and

(b) Is signed by the drawer,

but which lacks elements pertaining to one or more of the other requirements set out in article 1 (2), shall be presumed to have received authority from the drawer to insert such elements, and the instrument so completed is effective as a bill;

(2) When such an instrument is completed otherwise than in accordance with the authority given, the lack of authority cannot be set up as a defence against a holder who took the bill without knowledge of the lack of authority.

*Part Three. Transfer and negotiation**Article 12*

The transfer of a bill vests in the transferee the rights to and upon the bill of the transferor.

Article 13

(1) A bill is negotiated when it is transferred

(a) By endorsement and delivery of the bill by the endorser to the endorsee, or

(b) By mere delivery of the bill but only if the last endorsement is in blank.

(2) Negotiation shall be effective to render the transferee a holder even though the bill was obtained under circumstances, including incapacity or fraud, duress or mistake of any kind, that would subject the transferee to claims to the bill or to defences as to liability thereon.

Article 14

Where a bill is transferred without an endorsement necessary to make the transferee a holder, the transferee is entitled to require the transferor to endorse the bill to him.

Article 15

The holder of a bill endorsed in blank may convert the blank endorsement into a special endorsement by indicating therein that the bill is payable to himself or to some other person.

Article 16

When the drawer has included in the bill, or the endorser in his endorsement, words prohibiting transfer, such as "not transferable", "not negotiable", "not to order", or words of similar import, the bill cannot be negotiated except for purposes of collection.

Article 17

An endorsement purporting to negotiate a bill subject to a condition shall be effective to negotiate the bill irrespective of whether the condition is fulfilled.

Article 18

An endorsement purporting to transfer only a part of the sum payable shall be ineffective as an endorsement.

Article 19

Where there are two or more endorsements, it shall be presumed, unless the contrary is established, that each endorsement was made in the order in which it appears on the bill.

Article 20

(1) Where an endorsement for collection contains the words "for collection", "for deposit", "value in collection", "by procuration", or words of similar import, authorizing the endorsee to collect the bill, the endorsee:

(a) May only endorse the bill on the same terms; and

(b) May exercise all the rights arising out of the bill and shall be subject to all claims and defences which may be set up against the endorser.

(2) The endorser for collection shall not be liable upon the bill to any subsequent holder.

Article 21

Where a bill is transferred or negotiated to a prior party, he may, subject to the provisions of this Law, re-issue or further transfer or negotiate the bill.

Article 22

(1) A person who acquires a bill through what appears on the face of the bill to be an uninterrupted series of endorsements shall be a holder even if one of the endorsements was forged or was signed by an agent without authority, provided that such person was without knowledge of the forgery or of the absence of authority.

(2) Where an endorsement was forged or was signed by an agent without authority, the drawer or the person whose endorsement was forged or was signed by an agent without authority shall have against the forger or such agent and against the person who took the bill from the forger or from such agent the right to recover compensation for any damage that he may have suffered because of the operation of paragraph (1) of this article.

(3) Subject to the provisions of article 28 (a) and (b), a forged endorsement or an endorsement by an agent without authority shall not impose any liability on the person whose signature was forged or on behalf of whom the agent purported to act when endorsing the bill.

Part Four. Rights and liabilities**SECTION 1. THE RIGHTS OF A HOLDER AND A PROTECTED HOLDER***Article 23*

A person who signs a bill is liable to the holder thereof in accordance with the provisions of this Law.

Article 24

(1) The rights on a bill of a holder who is not a protected holder are subject to:

(a) Any valid claim to the bill on the part of any person; and

(b) Any defence of any party which would be available under a contract.

(2) A party may not avoid liability to a remote holder on the ground that he has a defence against his immediate party if such defence is based on legal relations not connected with the bill.

(3) A party may not avoid liability to a holder on the ground that a third person has a valid claim to the bill, unless such person himself has claimed the bill from the holder and informed such party thereof.

Article 25

(1) The rights on a bill of a protected holder are free from

(a) Any claim to the bill on the part of any person; and

(b) Any defence of any party, except defences based on circumstances which render the obligation on the bill of such party null and void; and

(c) Any defence based on discharge or on the absence of liability on the ground that the bill was dishonoured by non-acceptance or by non-payment or was not duly protested.

(2) The transfer of a bill by a protected holder shall not rest in the transferee the rights of a protected holder if the transferee has participated in a transaction which gives rise to a claim to, or a defence upon, the bill.

Article 26

(1) Every holder is presumed to be a protected holder.

(2) Where it is established that a defence exists, the holder has the burden of establishing that he is a protected holder.

SECTION 2. LIABILITY OF THE PARTIES**A. GENERAL***Article 27*

(1) A person is not liable on a bill unless he signs it.

(2) A person who signs in a name which is not his own shall be liable as if he had signed in his own name.

(3) A signature may be in handwriting or by facsimile, perforations, symbols or any other mechanical means.

Article 28

A forged signature on a bill does not impose any liability thereon on the person whose signature was forged. Nevertheless, such person shall be liable:

(a) If he has ratified the signature;

(b) To a holder without knowledge of the forgery if, through his conduct he has given such holder or an intervening endorser reason to believe that the signature was his own or was made by an agent with authority.

Article 29

(1) Where a bill has been materially altered:

(a) Parties who have signed the bill subsequent to the material alteration shall be liable on the bill according to the terms of the altered text; and

(b) Parties who have signed the bill before the material alteration shall be liable on the bill according to the terms of the original text, provided that:

(i) A party who has himself made, authorized, or assented to the material alteration shall be liable according to the terms of the altered text; and

(ii) A party who through his conduct facilitated the material alteration shall be liable to a holder without knowledge of the alteration according to the terms of the altered text.

(2) For the purpose of this Law, any alteration is material which modifies the written undertaking on the bill of any party in any respect.

Article 30

(1) A bill may be signed by an agent.

(2) The signature on a bill by an agent, with authority to sign and showing on the bill that he is signing in a representative capacity, imposes liability on the bill on the person represented and not on the agent.

(3) Where an agent signs without authority or where he signs with authority but does not show on the bill that he is signing in a representative capacity, he shall be liable on the bill. The person whom the agent purports to represent shall not be liable on the bill.

(4) An agent who is liable on the bill pursuant to paragraph (3) and who pays the bill shall have the same rights as the person for whom he purported to act would have had if that person had paid it.

Article 31

(1) Any party may exclude or limit his liability on the bill by an express stipulation on the bill.

(2) Such exclusion or limitation of liability shall be effective only with respect to the party making the stipulation.

Article 32

Where a person other than the drawee places his signature on a bill he shall be liable thereon as an endorser unless he clearly indicates on the bill that he signed in some other capacity.

Article 33

All drawers, acceptors, endorsers and guarantors of a bill are jointly and severally liable thereon.

B. THE DRAWER**Article 34**

The drawer engages that upon dishonour of the bill by non-acceptance or non-payment and upon any necessary protest he will pay the amount of the bill, and any interest and expenses which may be claimed under articles 67 or 68, to the holder or to any party subsequent to himself who is in possession of the bill and who is discharged from liability thereon in accordance with articles 69 (2), 70, 71 or 76.

C. THE DRAWEE AND THE ACCEPTOR**Article 35**

- (1) The drawee is not liable on a bill until he accepts it.
- (2) The drawing of a bill or its endorsement does not of itself operate as a transfer or assignment to the holder of funds in the hands of the drawee.

Article 36

The acceptor engages that he will pay to the holder:

- (a) At maturity, the amount of the bill.
- (b) After maturity, the amount of the bill and any interest and expenses which may be claimed under articles 67 (b) or 68.

Article 37

An acceptance must be written on the bill and may be effected either by the drawee's signature alone or by his signature accompanied by the word "accepted" or by words of similar import.

Article 38

- (1) A bill may be accepted
 - (a) Before the instrument has been signed by the drawer, or while otherwise incomplete;
 - (b) Before, at or after maturity, or after it has been dishonoured by non-acceptance or non-payment.
- (2) Where a bill drawn payable at a fixed period after sight is accepted and the acceptor has not indicated the date of his acceptance, the drawer, before the issue of the bill, or the holder may insert the date of acceptance.
- (3) Where a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder shall be entitled to have the acceptance dated as of the date of presentment to the drawee for acceptance.

Article 39

- (1) An acceptance may be either general or qualified.
- (2) By a general acceptance the drawee engages to pay the bill according to its terms.
- (3) By a qualified acceptance the drawee engages to pay the bill according to terms expressly stated in his acceptance. An acceptance is qualified if, *inter alia*, it is
 - (a) Conditional, in that the acceptance states that payment by the acceptor will be dependent upon the fulfilment of a condition therein stated;

(b) Partial, in that the acceptance relates to only part of the amount of the bill;

(c) Qualified as to place, in that the acceptance indicates a place of payment other than the place of payment indicated on the bill or, in the absence of such indication, other than the address indicated on the bill as that of the drawee;

(d) Qualified as to time;

(e) An acceptance by one or more of the drawees but not by all.

Article 40

(1) The holder may refuse a qualified acceptance other than a partial [or local] acceptance. Upon such refusal the bill is dishonoured by non-acceptance.

(2) Where a holder takes a qualified acceptance other than an acceptance which is partial or is qualified as to place, the drawer and any endorser and guarantor who do not affirmatively assent shall be discharged of liability on the bill.

(3) Where the drawee gives a partial acceptance, the bill is dishonoured by non-acceptance as to the part of the amount not accepted.

D. THE ENDORSER**Article 41**

The endorser engages that upon dishonour of the bill by non-acceptance or non-payment, and upon any necessary protest, he will pay the amount of the bill, and any interest and expenses which may be claimed under articles 67 or 68, to the holder or to any party subsequent to himself who is in possession of the bill and who is discharged from liability thereon in accordance with articles 69 (2), 70, 71 or 76.

Article 42

(1) Any person who negotiates a bill shall be liable to any holder subsequent to himself for any damages that such holder may suffer on account of the fact that prior to the negotiation

- (a) A signature on the bill was forged or unauthorized; or
- (b) The bill was materially altered; or
- (c) A party has a valid claim or defence; or
- (d) The bill is dishonoured by non-acceptance or non-payment.

(2) Liability on account of any defect mentioned in paragraph (1) shall be incurred only to a holder who took the bill without knowledge of such defect.

E. THE GUARANTOR**Article 43**

(1) Payment of a bill may be guaranteed, as to the whole or part of its amount, by any person who need not be a party to the bill.

(2) A guarantee must be written on the bill or on a slip affixed thereto. It is expressed by the words: "guaranteed", "aval", "good as *aval*", or by words of similar import, accompanied by the signature of the guarantor.

(3) A guarantor may specify the party whose payment he guarantees.

(4) In the absence of such specification, the person guaranteed shall be the drawer.

Article 44

(1) A guarantor shall be liable on the bill to the same extent as the party for whom he has become guarantor, unless the guarantor has stipulated otherwise.

(2) The guarantor shall be liable on the bill even when the party for whom he has become guarantor is not liable thereon, unless that party's lack of liability is apparent from the face of the bill.

Article 45

The guarantor, when he pays the bill, shall have rights on the bill against the party guaranteed and against those who are liable thereon to that party.

Part Five. Presentment, dishonour and recourse**SECTION 1. PRESENTMENT FOR ACCEPTANCE***Article 46*

(1) The holder must present a bill for acceptance

(a) When the drawer or an endorser or a guarantor has stipulated on the bill that it shall be so presented;

(b) When the bill is drawn payable at a fixed period after sight; or

[(c) When the bill is drawn payable elsewhere than at the residence or place of business of the drawee].

Article 47

(1) The drawer or an endorser or a guarantor may stipulate on the bill that it shall not be presented for acceptance or that it shall not be presented before a specified date or before the occurrence of a specified event.

(2) Where a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph (1), and acceptance is refused, the bill is not thereby dishonoured in respect of the party making the stipulation.

(3) Where the drawee accepts a bill notwithstanding a stipulation that it shall not be presented for acceptance, the acceptance shall be effective.

Article 48

A bill is duly presented for acceptance if it is presented in accordance with the following rules:

(a) The holder must present the bill to the drawee.

(b) A bill drawn upon two or more drawees may be presented to any one of them, unless the bill clearly indicates otherwise.

(c) Where the drawee is dead, presentment may be made to the person or authority who, under the applicable law is entitled to administer his estate.

(d) Where the drawee is in the course of insolvency proceedings, presentment may be made to a person who under the applicable law is authorized to act in his place.

(e) Where a bill is drawn payable on, or at a fixed period after, a stated date, any presentment for acceptance must be made before the date of maturity.

(f) A bill drawn payable at a fixed period after sight must be presented for acceptance within one year of its date.

(g) A bill in which the drawer or an endorser or a guarantor has stated a date or time-limit for presentment for acceptance must be presented on the stated date or within the stated time-limit.

(h) A bill in which the drawer or an endorser or a guarantor has stipulated that it shall be presented for acceptance, but without stating a date or time-limit for presentment, [or a bill which is drawn payable elsewhere than at the place of business or residence of the drawee and which is not a bill payable after sight,] must be presented before the date of maturity.

Article 49

Presentment for acceptance shall be dispensed with

(1) Where the drawee is dead or is in the course of insolvency proceedings, or is a person not having capacity to accept the bill; or

(2) Where, with the exercise of reasonable diligence, presentment cannot be effected within the time-limits prescribed for presentment for acceptance;

(3) Where a party has waived presentment expressly or by implication, in respect of such party.

Article 50

(1) If a bill which must be presented for acceptance in accordance with article 46 (1) (a) is not duly presented, the party who stipulated on the bill that it shall be presented shall not be liable on the bill.

(2) If a bill which must be presented for acceptance in accordance with article 46 (1) (b) or (c) is not duly presented, the drawer, the endorsers and the guarantors shall not be liable on the bill.

Article 51

(1) A bill is dishonoured by non-acceptance:

(a) When acceptance is refused upon due presentment or when the holder cannot obtain the acceptance to which he is entitled under this Law; or

(b) When presentment for acceptance is dispensed with pursuant to article 49, and the bill is not accepted.

(2) Where a bill is dishonoured by non-acceptance the holder may, subject to the provisions of article 57, exercise an immediate right of recourse against the drawer, the endorsers and the guarantors.

SECTION 2. PRESENTMENT FOR PAYMENT*Article 52*

(1) Presentment of a bill for payment shall be necessary in order to render the drawer, an endorser or a guarantor liable on the bill.

(2) Presentment for payment shall not be necessary to render the acceptor liable.

Article 53

A bill is duly presented for payment if it is presented in accordance with the following rules:

(a) The holder of a bill must present the bill for payment to the drawee or to the acceptor.

(b) Where a bill is drawn upon or accepted by two or more drawees, it shall be sufficient to present the bill to any one of them; if a place of payment is specified, presentment shall be made at that place.

(c) Where the drawee or acceptor is dead, and no place of payment is specified, presentment must be made to the person or authority who under the applicable law is entitled to administer his estate.

(d) A bill which is not payable on demand must be presented for payment on the day on which it is payable or on one of the two business days which follow.

(e) A bill which is payable on demand must be presented for payment within one year of its stated date and if the bill is undated within one year of the issue thereof.

(f) A bill must be presented for payment:

(i) At the place of payment specified on the bill; or

(ii) Where no place of payment is specified, at the address of the drawee or the acceptor indicated on the bill; or

(iii) Where no place of payment is specified and the address of the drawee or the acceptor is not indicated at the principal place of business or residence of the drawee or the acceptor.

Article 54

(1) Delay in making presentment for payment shall be excused when the delay is caused by circumstances beyond the

control of the holder. When the cause of delay ceases to operate, presentment must be made promptly [within days]

(2) Presentment for payment shall be dispensed with:

(a) Where the drawer or an endorser or a guarantor has waived presentment expressly or by implication; such waiver shall bind only the party who made it;

(b) Where a bill is not payable on demand, and the cause of delay in making presentment continues to operate beyond 30 days after maturity;

(c) Where a bill is payable on demand, and the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment;

(d) Where the drawee or acceptor of a bill after the issue thereof, is in the course of insolvency proceedings in the country where presentment is to be made;

(e) Where a bill has been protested for dishonour by non-acceptance;

(f) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to pay the bill and the drawer has no reason to believe that the bill would be paid if presented.

Article 55

If a bill is not duly presented for payment, the drawer, the endorsers and their guarantors shall not be liable on the bill.

Article 56

(1) A bill is dishonoured by non-payment:

(a) When payment is refused upon due presentment or when the holder cannot obtain the payment to which he is entitled under this Law; or

(b) When presentment for payment is dispensed with pursuant to article 54 (2), and the bill is overdue and unpaid.

(2) Where a bill is dishonoured by non-payment the holder may, subject to the provisions of article 57, exercise a right of recourse against the drawer, the endorsers and the guarantors.

SECTION 3. RECOURSE

Article 57

Where a bill has been dishonoured by non-acceptance or by non-payment, the holder may exercise his right of recourse only after the bill has been duly protested for dishonour in accordance with the provisions of articles 58 to 61.

Article 58

(1) A protest may be effected by means of a declaration written on the bill and signed and dated by the drawee or the acceptor, or, in the case of a bill domiciled with a named person for payment, by that named person, the declaration shall be to the effect that acceptance or payment is refused.

(2) A protest shall be effected by means of an authenticated protest as specified in paragraphs (3) and (4) of this article in the following cases:

(a) Where the declaration specified in paragraph (1) of this article is refused or cannot be obtained; or

(b) Where the bill stipulates an authenticated protest; or

(c) Where the holder does not effect a protest by means of the declaration specified in paragraph (1) of this article.

(3) An authenticated protest is a statement of dishonour drawn up, signed and dated by a person authorized to certify dishonour of a negotiable instrument by the law of the place where acceptance or payment of the bill was refused. The statement shall specify:

(a) The person at whose request the bill is protested;

(b) The place and date of protest; and

(c) 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.

(4) An authenticated protest may:

(a) Be made on the bill itself; or

(b) Be made as a separate document, in which case it must clearly identify the bill that has been dishonoured.

Article 59

(1) Protest for dishonour by non-acceptance or by non-payment must be made on the day on which the bill is dishonoured or on one of the two business days which follow.

[(2) An authenticated protest must be effected at the place where the bill has been dishonoured.]

Article 60

If a bill which must be protested for non-acceptance or for non-payment is not duly protested, the drawer, the endorsers and their guarantors shall not be liable on the bill.

Article 61

(1) Delay in protesting a bill for dishonour by non-acceptance or by non-payment shall be excused when the delay is caused by circumstances beyond the control of the holder. When the cause of delay ceases to operate, protest must be made promptly [within . . . days].

(2) Protest for dishonour by non-acceptance or by non-payment shall be dispensed with:

(a) Where the drawer, an endorser or a guarantor has waived protest expressly or by implication; such waiver shall bind only the party who made it;

(b) Where the cause of delay in making protest continues to operate beyond 30 days after maturity or, in the case of a bill payable on demand, where the cause of delay continues to operate beyond 30 days after the expiration of the time-limit for presentment for payment;

(c) As regards the drawer of a bill, where (i) the drawer and the drawee are the same person; or (ii) the drawer is the person to whom the bill is presented for payment; or (iii) the drawer has countermanded payment; or (iv) the drawee or the acceptor is under no obligation to accept or pay the bill;

(d) As regards the endorser, where the endorser is the person to whom the bill is presented for payment;

(e) Where presentment for acceptance or for payment is dispensed with in accordance with articles 49 or 54 (2).

Article 62

(1) Where a bill has been dishonoured by non-acceptance or by non-payment, due notice of dishonour must be given to the drawer, the endorsers and their guarantors.

(2) Notice may be given by the holder or any party who has himself received notice, or by any other party who can be compelled to pay the bill.

(3) Notice operates for the benefit of all parties who have a right of recourse on the bill against the party notified.

Article 63

Notice of dishonour may be given in writing or orally and in any terms which identify the bill and state that it has been dishonoured. The return of the dishonoured bill shall be sufficient notice.

Article 64

Notice of dishonour must be given within the two business days which follow:

(a) The day of protest or, where protest is dispensed with, the day of dishonour; or

(b) The receipt of notice from another party.

Article 65

(1) Delay in giving notice of dishonour is excused when the delay is caused by circumstances beyond the control of the holder. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

(2) Notice of dishonour shall be dispensed with:

(a) Where the drawer or an endorser or a guarantor has waived notice of dishonour expressly or by implication; such waiver shall bind only the party who made it;

(b) Where the cause of delay in giving notice continues to operate beyond 30 days after the last date on which it should have been given;

(c) As regards the drawer of the bill, where the drawer and the drawee are the same person, or the drawer is the person to whom the bill is presented for acceptance or payment, or where the drawer has countermanded payment, or where the drawee or the acceptor is under no obligation to accept or pay the bill;

(d) As regards the endorser, where the endorser is the person to whom the bill is presented for payment.

Article 66

Failure to give due notice of dishonour shall render the holder liable to the drawer, the endorsers and their guarantors for any damages that they may suffer from such failure [provided that the total amount of the damages shall not exceed the amount of the bill].

Article 67

The holder may recover from any party liable.

(a) At maturity: the amount of the bill;

(b) After maturity: the amount of the bill, interest due at (. . .) per cent per annum above the official rate of discount effective at the place of payment [at the place where the holder has his residence or place of business] calculated on the basis of the number of days and of a year of (365) days, and any expenses of protest and of the notices given;

(c) Before maturity: the amount of the bill, subject to a discount from the date of making payment to the holder and the date of maturity, to be calculated at the official rate of discount effective on the date when the recourse is exercised at the place where the holder has his residence or place of business.

Article 68

A party who takes up and pays a bill may recover from the parties liable to him:

(a) The entire sum which he was obliged to pay in accordance with article 67;

(b) Interest due on that sum calculated at the highest permissible legal rate at the place of payment from the day on which he made payment;

(c) Any expenses which he has incurred.

Part Six. Discharge

SECTION 1. GENERAL

Article 69

(1) Liability of a party on a bill is discharged by:

(a) Payment in accordance with articles 70 to 75;

(b) Renunciation in accordance with article 76;

(c) Reacquisition of the bill by a prior party in accordance with article 77;

(d) Discharge of a prior party in accordance with article 78 (1);

(e) Absence of his assent to a qualified acceptance in accordance with article 40 (2);

(2) A party is also discharged of his liability on the bill by any act or agreement which would discharge him of his contractual liability for the payment of money.

SECTION 2. PAYMENT

Article 70

(1) A party is discharged of his liability on the bill when he pays the holder or a party subsequent to himself the amount due pursuant to articles 67 or 68.

(2) A person receiving payment of a bill in accordance with paragraph (1) shall deliver the receipted bill and any such authenticated protest to the person paying the bill.

Article 71

(1) The holder may take partial payment from the drawee or the acceptor. In that case:

(a) The acceptor is discharged of his liability on the bill to the extent of the amount paid; and

(b) The bill shall be considered as dishonoured by non-payment as to the amount unpaid.

(2) The drawee or the acceptor making partial payment may require that mention of such payment be made on the bill and that a receipt therefore be given to him.

(3) Where a bill has been paid in part, a party who pays the unpaid amount shall be discharged of his liability on the bill, and the person receiving the payment shall deliver the receipted bill and any authenticated protest to the party making the payment.

Article 72

(1) The holder may refuse to take payment in a place other than the place where the bill was duly presented for payment in accordance with article 53 (f).

[(2) If payment is not then made in the place where the bill was duly presented for payment in accordance with article 53 (f), the bill shall be considered as dishonoured by non-payment.]

Article 73

(1) Where a bill has been materially altered as to its amount, any person who pays the bill pursuant to such alteration without knowledge of the alteration shall have the right to recover the amount by which the bill was raised from the party who so altered the bill or from any subsequent party except a party who was without knowledge of the alteration at the time he transferred the bill.

(2) In any other case of alteration which is material, as defined in article 29 (2), any person who pays the bill pursuant to such alteration without knowledge of the alteration shall have the right to receive the amount paid by him from the person who altered the bill, or from any subsequent party except a party who was without knowledge of the alteration at the time he transferred the bill.

(3) Where the signature of the drawer has been forged, any person who pays the bill without knowledge of the forgery shall have the right to recover the amount paid by him from the person who forged the signature of the drawer, or from any party subsequent to the drawer except a party who was without knowledge of the forgery at the time he transferred the bill.

Article 74

[This article will contain rules in respect of a bill drawn payable in a currency other than that of the place of payment. At the time of finalizing the draft uniform law consultations had not yet been completed regarding certain implications of such rules and their possible conflict with existing international

agreements and mandatory national rules such as exchange control regulations. It is expected that a draft uniform rule on this issue will be finalized in time for the first meeting of the Working Group.]

Article 75

[(1) Where a party tenders payment of the amount due in accordance with articles 67 or 68 to the holder at or after maturity and the holder refuses to accept such payment:

(a) The party tendering payment shall not be liable for any interest or costs as from the day payment was offered; and

(b) Any party who has a right of recourse against a party tendering payment shall not be liable for such interest or costs.

(2) The provisions of paragraph (1) (b) shall also apply if the person tendering payment to the holder is the drawee.]

SECTION 3. RENUNCIATION

Article 76

(1) A party is discharged of his liability on the bill if the holder, at or after maturity, writes on the bill an unconditional renunciation of his rights thereon against such party.

(2) Such renunciation shall not affect the right to the bill of the party who so renounced his rights thereon.

SECTION 4. REACQUISITION BY A PRIOR PARTY

Article 77

A party liable who rightfully becomes the holder of the bill shall be discharged of liability thereon to any party who had a right of recourse against him.

SECTION 5. DISCHARGE OF A PRIOR PARTY

Article 78

(1) Where a party is discharged of liability on the bill, any party who had a right of recourse against him shall also be discharged.

(2) An agreement, not amounting to partial or total discharge, between the holder and a party liable on the bill shall not affect the right and liabilities of other parties.

Part Seven. Limitation (prescription)

Article 79

[It is expected that the Law will include an article on the limitation of legal proceedings and the prescription of rights arising under an international bill of exchange. The preparation of such an article presents difficult problems of reconciling the divergent approaches of different legal systems¹, and requires further study. It is expected that proposals with respect to this problem can be submitted in time for the first session of the Working Group.]

Part Eight. Lost Bills

Article 80

[This article will deal with the question of lost bills, which is approached differently in the principal legal systems. Consultations with banking and trade organizations have shown that a workable solution is feasible. It is expected that draft proposals dealing with this issue can be submitted in time for the first session of the Working Group.]

¹ See report of the Working Group on Time-limits and Limitations in the International Sale of Goods. A/CN.9/70/Add.1; commentary to opening clauses at para. 4.

2. List of relevant documents not reproduced in the present volume

<i>Title or description</i>	<i>Document reference</i>
International Payments: negotiable instruments: note by UNIDROIT concerning the effects of the international bill of exchange in the executory process	A/CN.9/72
Bankers' commercial credits, bank guarantees, and security interests in goods: work in progress: note by the Secretary-General	A/CN.9/R.10
International payments: note submitted by the International Chamber of Commerce	A/CN.9/R.13