



Date: 24th JULY 2021

**VIRTUAL COACHING CLASSES
ORGANISED BY BOS, ICAI**

**INTERMEDIATE LEVEL
PAPER 2: CORPORATE AND OTHER LAWS**

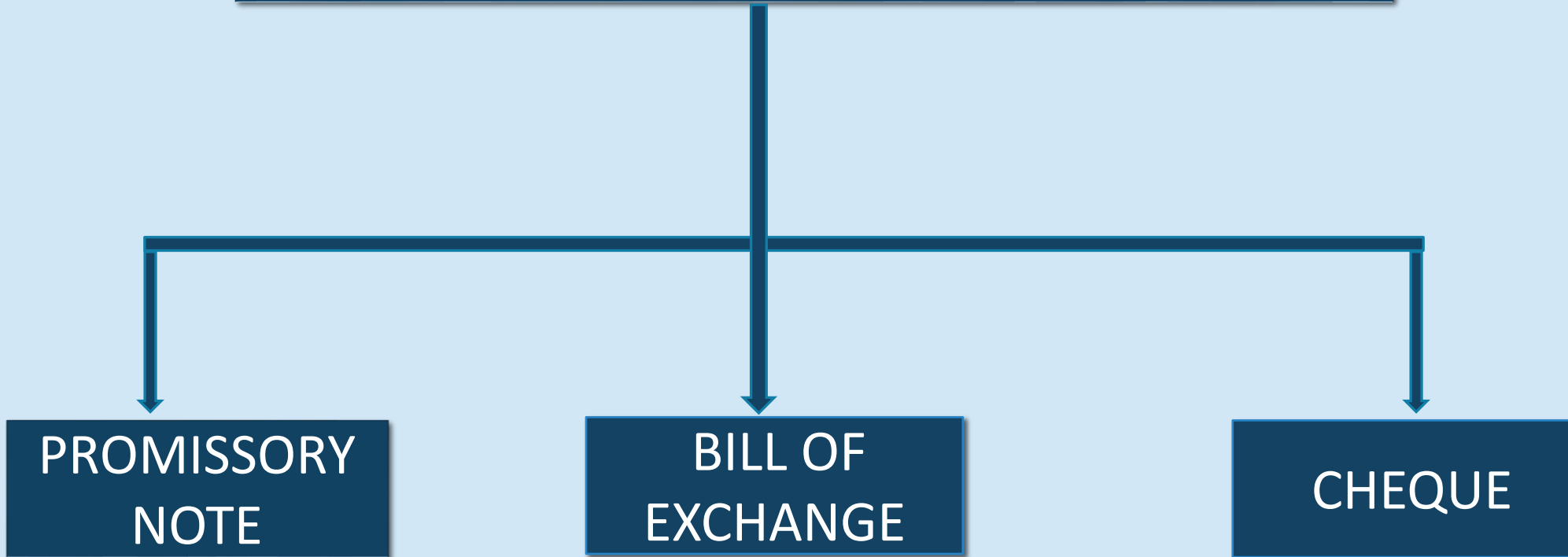
Faculty: CA. S. Srikanth



THE NEGOTIABLE INSTRUMENTS ACT, 1881



TYPES OF NEGOTIABLE INSTRUMENTS





A negotiable instrument is payable to order when

- it is expressed to be so payable
- When it is expressed to be payable to a special person and does not contain words prohibiting its transfer .(i.e.it is transferrable by indorsement and delivery)



A negotiable instrument is payable to bearer when

- When it is expressed to be so payable e.g. pay bearer
- when the only or last indorsement (indorsement means signing of the instrument) on the instrument is an indorsement in blank



The Negotiable Instruments Act, 1881

Essential Characteristics of Negotiable Instruments

- It is necessarily in writing.
- It should be signed.
- It is free transferable from one person to another.
- holders title is free from defects.

The Negotiable Instruments Act, 1881



- It can be transferred any number of times till its satisfaction
- Every negotiable instruments must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
- The sum payable, the time of payment, the payee, must be certain
- The instruments should be delivered. Mere drawing of instrument does not create liability.



Nature of Presumptions

Presumptions drawn

Until the contrary is proved, the following presumptions shall be made:

Of consideration	Every negotiable instrument was made or drawn for consideration
As to date	Every negotiable instrument bearing a date was made or drawn on such date
As to time of acceptance	Every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity
As to time to transfer	Every transfer of negotiable instrument was made before its maturity



Presumptions as to Negotiable instruments [Section 118]

Presumptions made in relation	Presumptions drawn
As to order of indorsements	Indorsements appearing upon a negotiable instruments were made in the order in which they appear thereon
As to stamps	Lost promissory note, bill of exchange or cheque was duly stamped
As to holder	The holder of a negotiable instrument is a holder in due course

The above presumption are rebuttable by evidence to the contrary.



PROMISSORY NOTE

“ A “ Promissory note “ is an instrument in writing (not being a bank-note or a currency –note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of a certain person, or the bearer of the instruments.” **(Section 4 of the negotiable instruments Act, 1881)**

Promissory note



Specimen of promissory note

10.000

Coimbatore
April 10, 2021

Three months after date, I promise to pay shri Ramesh or to his order

The sum of Rupees Ten Thousand, for value received.

To,
Ramesh,
B-20, Green flies
Salem

Stamp
Sd/-
Ram

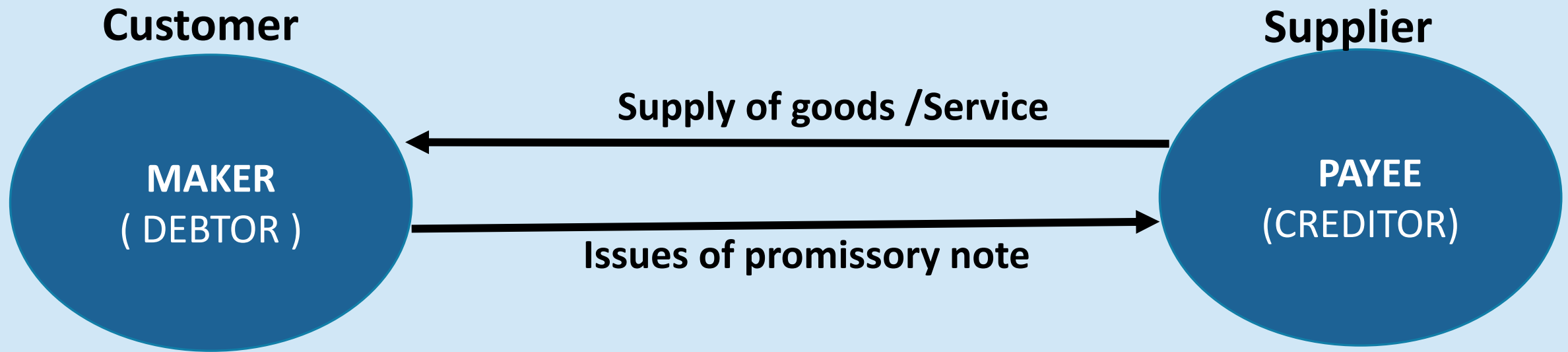


Maker: The person who makes the promise to pay is called the maker. He is the debtor and must sign the instrument

Payee: Payee is the person to whom the amount on the note is payable



PROMISSORY NOTE



Essential Characteristics of a Promissory Note.



PROMISSORY NOTE

- In **Writing** – An oral promise to pay is not sufficient
- There must be an **An express promise to pay**. Mere acknowledgement of debt is insufficient.



Essential Characteristics of a Promissory note

PROMISSORY NOTE

- The promise to pay should be **definite** and **unconditional** therefore, instruments payable on performance or non-performance of a particular act or on the happening or non-happening of an event, are not promissory notes. However, the promise to pay may be subject to a condition , which according to ordinary experience of mankind is bound happen



Essential Characteristics of a Promissory Note

PROMISSORY NOTE

- A promissory note must be **signed by the maker** otherwise it is incomplete and ineffective.
- Promise **to pay money only**
- Promise to pay a **certain sum**



Essential Characteristics of a Promissory note

PROMISSORY NOTE

The Maker and payee must be certain, definite and different persons .

A promissory note cannot be made payable to the bearer (Section 31 of RBI Act) Only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'



Essential Characteristics of a Promissory note





PROMISSORY NOTE

Stamping: A promissory note must be properly stamped in accordance with the provisions of the Indian Stamp Act and must be duly cancelled by maker's signatures or initials or otherwise

Essential Characteristics of a Promissory Note.



PROMISSORY NOTE

- (a) I promise to pay B or order RS.500
- (b) I acknowledge myself to be indebted to B in RS 1000, to be paid on demand for value received.
(a) and (b) are promissory notes.
- (c) Mr. B. I.O.U. RS.1000.

Essential Characteristics of a Promissory Note.



PROMISSORY NOTE

- (d) I promise to pay B RS.500, and all other sums which shall be due to him
- (e) I promise to pay B RS.500, first deducting thereof any money which he may owe me.
- (f) I promise to pay B RS.500 seven days after marriage with C.

Essential Characteristics of a Promissory Note.



PROMISSORY NOTE

(g) I promise to pay B RS.500 on D's death, provided D leaves me enough money to pay that sum.

(h) I promise to pay B RS.500 and to deliver to him my black horse on 1st January next.

(c),(d),(e),(f),(g),(h) are Not promissory notes.



BILLS OF EXCHANGE

A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.



Parties to the bill of exchange

- **Drawer:** The maker of a bill of exchange.
- **Drawee:** The person directed by the drawer to pay is called the 'drawee'.
He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill. His liability is primary and unconditional.
- **Payee:** The person named in the instrument, to whom or to whose order the money is by the instrument, directed to be paid.



Essential Characteristics of bill of exchange

BILLS OF EXCHANGE

- A) It must be in writing
- B) Must contain an express order to pay
- C) The order to pay must be definite and unconditional
- D) The drawer must sign the instrument

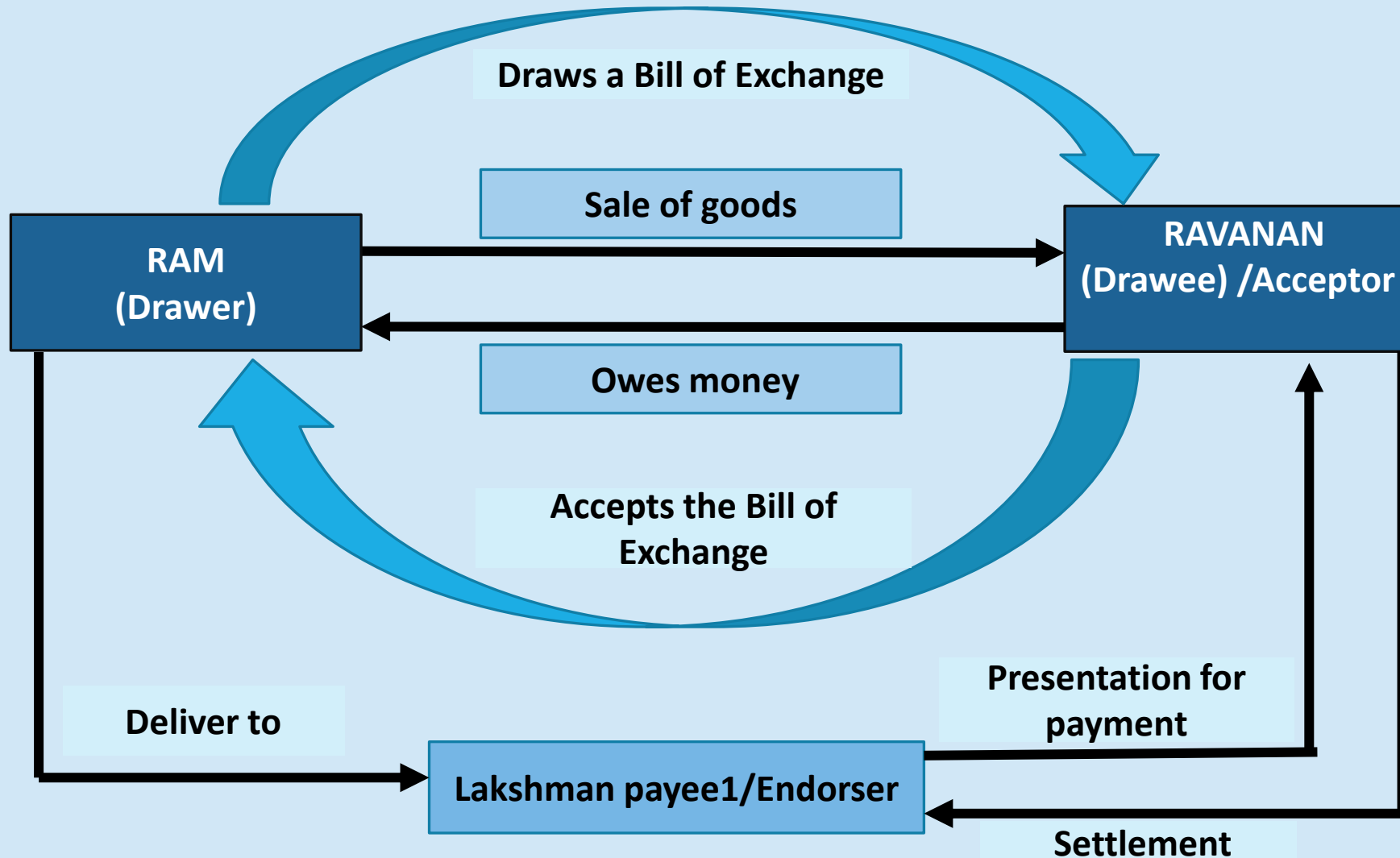


BILLS OF EXCHANGE

- (E) Drawer, Drawee and payee must be certain. All these three parties may not necessarily be three different persons. One can play the role of two .but there must be two distinct persons in any case. As per Section 31 of RBI Act,1934 a bill exchange cannot be made payable to bearear on demand .
- (F) The sum must be certain
- (G) The order must be to pay money only
- (H) it must be stamped.



Essential Characteristics of bill of exchange





Essential Characteristics of bill of exchange

S.NO	BASICS	PROMISSORY NOTE	BILL OF EXCHANGE
1.	Definition	“ A Promissory Note “ is an instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking signed by the maker , to pay a certain sum of money only to , or to the order of , a certain person or to the bearer of the instrument .	“A Bill of Exchange” is an instrument in writing containing an unconditional order , signed by the maker , directing a certain person to pay a certain sum of money only to , or to the order of a certain person or to the bearer of the instrument
2.	Nature of Instrument	In a promissory note there is a promise to pay money.	In a bill of exchange there is an order for making payment

Essential Characteristics of bill of exchange



S.NO	BASICS	PROMISSORY NOTE	BILL OF EXCHANGE
3.	Parties	In a promissory note there are only 2 parties namely : i. The maker and ii. The payee	In a bill of exchange , there are 3 parties namely : i. The drawer ii. The drawee iii. The payee
4.	Acceptance	A promissory note does not require any acceptance as its is signed by the person who is liable to pay	The bills of exchange need a acceptance from the drawee
5.	Payable to bearer	A promissory note cannot be made payable to bearer	On the other hand a bill of exchange can be drawn payable to bearer. However , it cannot be payable to bearer on demand



CHEQUE [SECTION 6]

A “ Cheque ” is bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form

The expression “ Banker ” includes any person acting as a banker
And any post office saving bank [Section3]



Payable on demand means-

it should be payable **whenever** the holder chooses to present it to the drawee (The banker)



Cheque in the electronic form- means a cheque drawn in electronic form by using any computer resource, and signed in a secure system with a digital signature (with/without biometric signature) and asymmetric crypto system or electronic signature ,as the case may be;

Note – For the purpose of this section the expressions “asymmetric crypto system” “computer resource” “digital signature “, “ electronic form” and “electronic signature “ shall have the same meanings respectively assigned to them in the Information Technology Act,2000.



“ A **truncated cheque** “ means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or buy the bank whether paying or receiving payment immediately on generation of an electronic image for transmission substituting for the further physical movement of the cheque in writing .



CHEQUE [SECTION 6]

HDFC BANK PAYABLE AT PAR THROUGH CLEARING/TRANSFER AT ALL BRANCHES OF HDFC BANK LTD
भुवनेश्वर शाखा, २०, बंगला रोड, बंगला रोड, बंगला रोड, बंगला रोड

Date / दिनांक : _____

RAY _____ OR BEARER / या धारक को

RUPEES / रुपये _____

अवा करे

Bs. / रु. _____

Ac No. _____ SB AC

HDFC BANK LTD. / एचडीएफसी बैंक लि.
101 FLUSH, WATSON TOWER NEAR KALABURGI TRISTONE
SAHAYWAGALDI, FRESHWATER AND ST. KENNEL
प्लॉट नं. १०१, वाटसन टॉवर, बंगला रोड, बंगला रोड
भुवनेश्वर (ओडीशा) - ७५१ ०११

RTGS / NEFT / FC - HDFC0000000

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CHEQUE [SECTION 6]

CHEQUE

Open cheque

A cheque which can be presented to the banker and can be paid at the counter of the bank

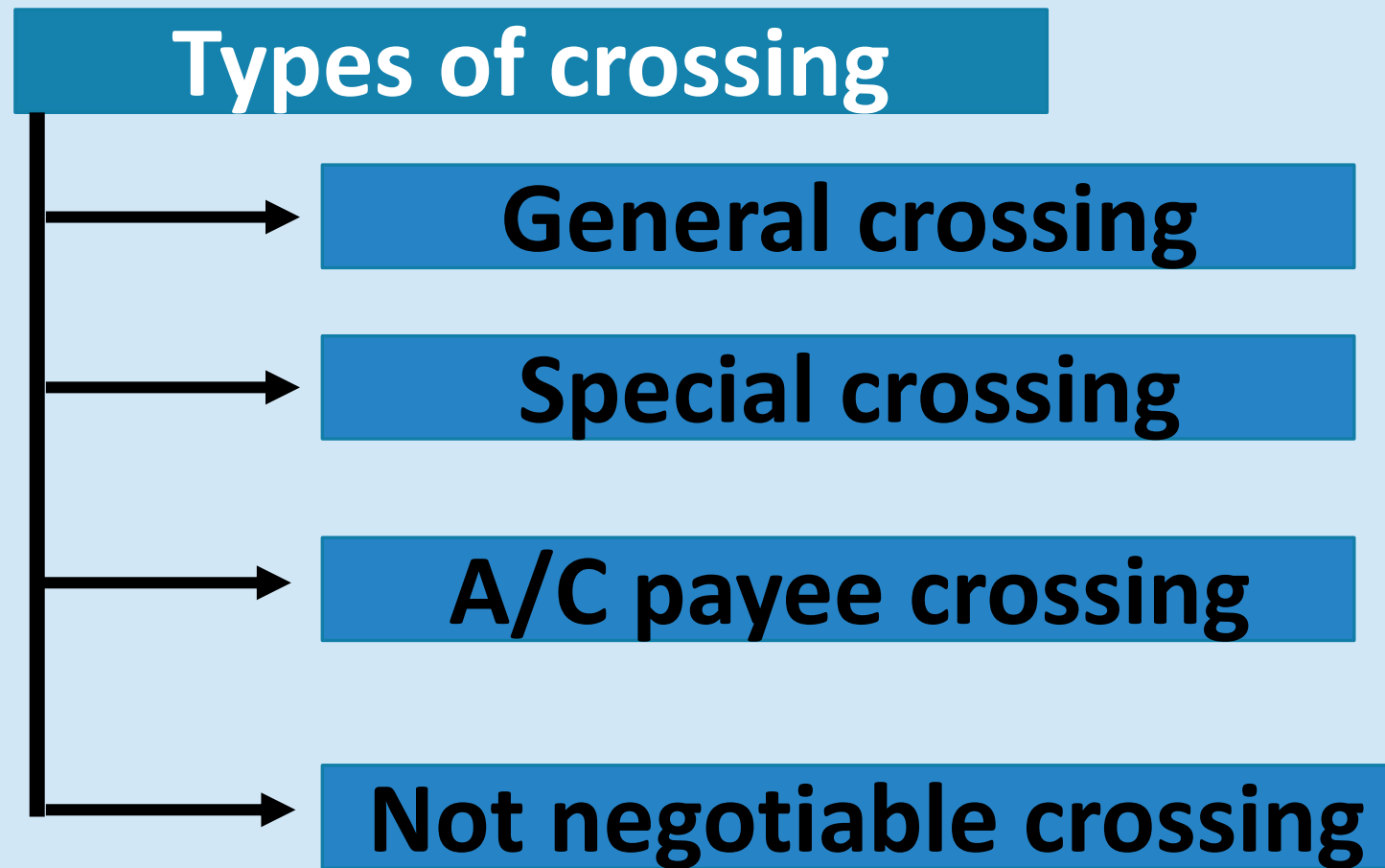
Crossed cheque

When a cheque bears across its face two parallel transverse lines

Crossing of a cheque means an instruction to the drwee i.e. the paying bank that the payment is not to be made at the counter but through a bank



CHEQUE [SECTION 6]





Types of crossing

General of crossing

Where a cheque bears across its face two parallel, transverse lines with or without the words 'and company' or/and 'not negotiable' written in between these two parallel lines, Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker **(SEC. 126)**



Types of crossing

Special crossing

where the lines of crossing bear the name of a banker either with or without any additional words. The effect is that its payment can be obtained only through particular banker whose name appears between the lines.



Types of crossing

A/C payee crossing

When the words “A/C payee” or “A/C payee only” are added to a general or special crossing, it is called restrictive crossing. . The effect of “Account payee” crossing is that the banker is supposed to collect the cheque only on behalf of that payee only whose name appears on the face of the cheque.



Types of crossing

Not negotiable crossing

This requires writing of words “not negotiable” in addition to the two parallel lines. These words may be written inside or outside these lines. a person taking a cheque crossed generally or specially, bearing in either case the word “not negotiable” shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it after had.



Who may cross [Section 125]

By Drawer: A drawer may cross it generally or specially

By Holder: : A holder may cross an uncrossed cheque generally or specially. If the cheque is crossed generally, the holder may cross specially. If cheque crossed generally or specially, he may add words “not negotiable”.

By Banker: A banker may cross an uncrossed cheque, or if a cheque is crossed generally he may cross it specially to himself. Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.



Cheque payable to order:

Where a cheque payable to order **purports to be indorsed by or on behalf of the payee**, the banker is discharged by payment in due course. **[Section 85(1)]**

Cheque payable to bearer :

As regards bearer cheque, the rule is “once a bearer always a bearer”. A banker gets a good discharge by payment in due course of the amount on a bearer cheque to the holder of the cheque. **[Section 85(2)]**



Payment of cheque crossed generally: Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially: Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.



Payment in due course of crossed cheque : Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof. **[Section 128]**



Payment of crossed cheque out of due course : Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.
[Section 129]



EXCEPTION: Payment of a cheque on which drawer signatures were forged: If any drawee bank made the payment on a cheque on which drawer signatures were forged then such bank shall be liable to the true owner. Thus, the paying banker shall be liable if it makes the payment of the cheque on which drawers signature was forged.



PROTECTION OF LIABILITY OF THE PAYING BANKER:

Non liability of banker receiving payment of cheque: A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title of the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment. **[Section 131]**

Inchoate and Ambiguous Instruments



- **Inchoate Instrument:** It means an instrument that is incomplete in certain respects.
- The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course.
- The holder of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor.
- The holder in due course can, however, recover any amount on such instrument provided it is covered by the stamp affixed on the instrument.



Ambiguous Instrument: “Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly”.

Where amount is stated differently in figures and words

If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

[Section 18]



ACCEPTOR AND ACCEPTOR FOR HONOR

“Acceptor” After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor”. **[Section 7]**

“Acceptor for honour” When a bill of exchange has been dishonoured by non-acceptance and any person accepts it for honour of the drawer or of any indorsers, such person is called "an Acceptor for honour". The payment which he makes is known as “payment for honour. **[Section 7]**



ACCEPTOR AND ACCEPTOR FOR HONOR

How acceptance for honor must be made: A person desiring to accept for honor must, [by writing on the bill under his hand], declare that he accepts under protest the protested bill for the honor of the drawer or of a particular indorser whom he names, or generally for honor.



ACCEPTOR AND ACCEPTOR FOR HONOR

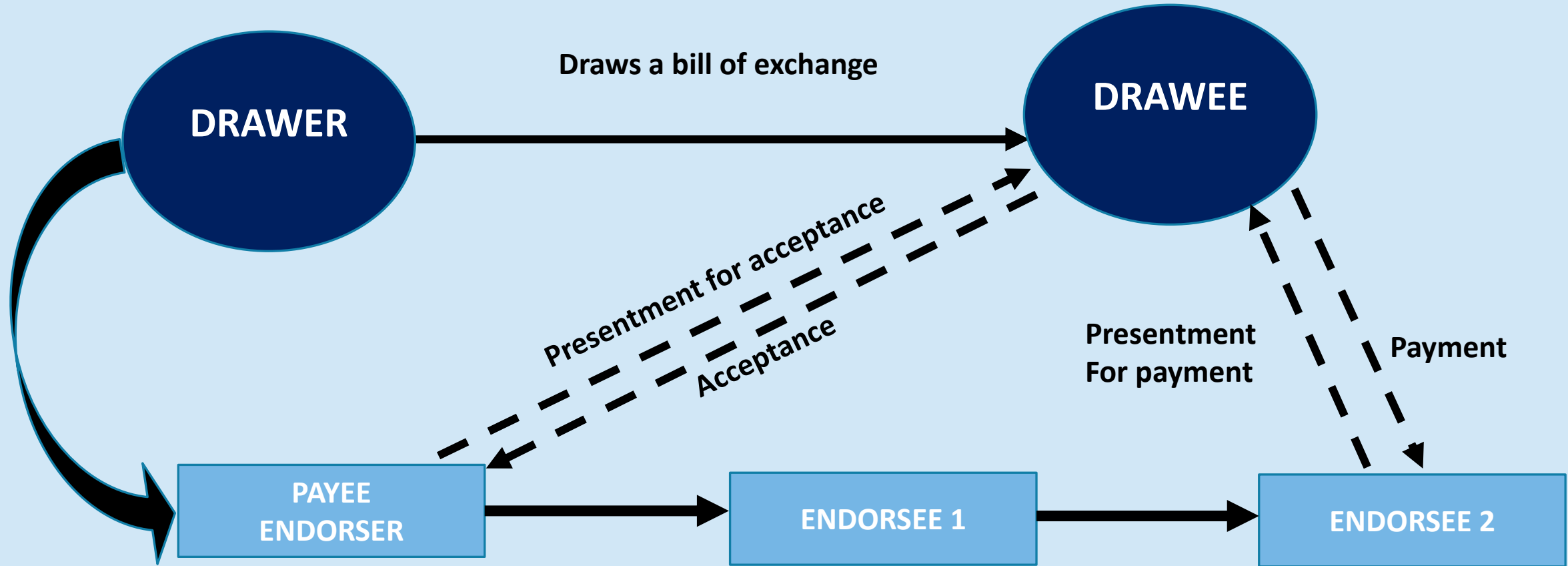
Essentials of valid acceptance for honor

- The holder must consent to acceptance for honor. The holder cannot be compelled to assent to acceptance for honor.
- The bill must have been noted or protested for the non-acceptance or for better security.
- Acceptance for honor can be made by a person who is not already liable on the bill. Drawee of the bill when he refuses to accept the bill becomes a stranger. He may therefore accept the bill for honor of any party thereto.
- It must be made by writing on the bill.

LIFE CYCLE OF A BILL OF EXCHANGE



LIFE CYCLE OF A BILL OF EXCHANGE





ACCEPTOR AND ACCEPTOR FOR HONOR

Essentials of valid acceptance for honor

- It must be for the whole amount due on the bill
- Acceptance must be for the honor of any party already liable on the bill.
- Acceptance for honor must be made before to bill is overdue.
- Stranger paying for honor must, before payment, declare before a Notary Public the party for whose honor he pays and the Notary Public must have recorded such a declaration.



ACCEPTOR AND ACCEPTOR FOR HONOR

Rights and liabilities of an acceptor for honour (Sections 111 & 112)

Acceptor for honor binds himself to all the subsequent parties to pay the amount of the bill if the drawee does not pay.

The party for whose honor he accepts to pay the amount and all prior parties are liable to compensate the acceptor for honor for all loss or damage sustained by him in consequence of such acceptance.



HOLDER AND HOLDER IN DUE COURSE

The “ Holder” of a promissory note, bill of exchange or cheque means any person entitled **IN HIS OWN NAME** to the possession thereof and receive or recover the amount due thereon from the parties thereto.

- The holder should be a person **ENTITLED IN HIS OWN NAME** to the possession of the instrument. So, he must be the bearer of the instrument.
- He must be entitled to receive or recover the amount due on the instrument.



HOLDER AND HOLDER IN DUE COURSE

- “**Holder in due course**” means any person:
- Who for **CONSIDERATION** became the possessor of a promissory note, bill of exchange or cheque if payable to bearer; or
 - The payee or indorsee thereof, if payable to order;
 - Before the amount mentioned in it became payable; and
 - Without sufficient cause to believe that any defect existed in the title



HOLDER AND HOLDER IN DUE COURSE

An analysis of the section will give the following essential of “Holder in due course”

- He should be the holder of the instrument. He should be in possession of the instrument as a bearer or payee or indorsee.
- He should have become the holder before the amount mentioned in the instrument became payable i.e before maturity.
- He should have become the holder for valuable consideration .
- He should not have sufficient cause to believe that any defect existed in the title of the party from whom he received it.



HOLDER AND HOLDER IN DUE COURSE

Privilege of a Holder in due course:

- **Under Section 20.** – The signer of an inchoate instrument shall be liable upon such instrument, in the capacity in which he signed the same, to Holder in due course for **ANY AMOUNT** specified in the instrument.

Note: The stamp should be sufficient to cover such amount.

- **Under section 36.** – Every prior party to a negotiable instrument is liable to a holder in due course until the instrument is duly satisfied (prior party may be maker, drawer, acceptor or indorsers.)



HOLDER AND HOLDER IN DUE COURSE

Privilege of a Holder in due course:

- **Under Section 42.** - Suppose a bill of exchange is drawn on a fictitious name and payable to the drawer's order. An acceptor of the bill of exchange is NOT relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature. In other words, the acceptor cannot allege that the name was fictitious.
- **Under section 46.** – Suppose an instrument is negotiated to a holder in due course. The other parties to the instrument cannot escape liability on the ground that the instrument was delivered conditionally or for a special purpose only.



HOLDER AND HOLDER IN DUE COURSE

Privilege of a Holder in due course:

- **Under Section 53.** – A holder of negotiable instrument who derives title from a holder in due course has the rights on the instrument as that of the holder in due course. In other words, an instrument passing through the hands of holder in due course is eliminated of all defects. A holder who receives it from a holder in due course takes it free of all defects. The holder may have knowledge of the defects. But he should not be a party to them.



HOLDER AND HOLDER IN DUE COURSE

Privilege of a Holder in due course:

- **Under Section 58.** – When a negotiable instrument has been lost, or has been obtained from any maker , acceptor or holder by means of an offence or fraud or for an unlawful consideration, a possessor or an indorsee who claims through the person who found or so obtained the instrument is **NOT** entitled to receive the amount due from such maker, acceptor or holder or from any party prior to such holder. However, a possessor or an indorsee who is a holder in due course is **ENTITLED** to receive the amount.



HOLDER AND HOLDER IN DUE COURSE

Privilege of a Holder in due course:

- **Under Section 118.** – It shall be presumed that the holder of a negotiable instrument is a holder in due course. This presumption is until the contrary is proved.
- **Under section 120.** – Where a suit has been filed by a holder in due course on a negotiable instrument . the maker, drawer or acceptor for honour shall **NOT** be permitted to deny the validity of the instrument as originally made or drawn. They are estopped from denying the original validity of the instrument.



HOLDER AND HOLDER IN DUE COURSE

Privilege of a Holder in due course:

- **Under Section 121.** – where a suit has been filed by a holder in due course on a promissory note or a bill exchange, the maker of the note or the acceptor of the bill payable to order shall **NOT** be permitted to deny the payee's capacity to indorse the same, at the date of the note or the bill. They are estopped from denying the capacity of the payee- at the date of the note or the bill to indorse the same.



HOLDER AND HOLDER IN DUE COURSE

ESSENTIALS TO BECOME HOLDER IN DUE COURSE (HDC):

- The holder must have paid **valuable consideration**:
 - To become a holder in due course, a person must obtain a negotiable instrument by paying valuable and lawful consideration for it.
 - When given as a gift or has been inherited, the transferee cannot be a holder in due course.
- A holder must **acquire the instrument before its maturity** in order to attain the status of holder in due course.



ESSENTIALS TO BECOME HOLDER IN DUE COURSE (HDC)

- The holder must have **obtained the instrument in good faith.**
- The instrument must be **complete and regular** on the face of it.
- He must have received the instrument as a holder- i.e. A HDC may be either payee, or the possessor (if the instrument is payable to bearer), or the indorsee (if the instrument is payable to order).



Inland instrument and Foreign instrument [Sections 11 & 12]

Inland instrument [Section 11]

A promissory note, bill of exchange
or cheque

drawn or made in India

and made payable in, or drawn upon
any person resident in India



Inland instrument and Foreign instrument [Sections 11 & 12]

Foreign instrument [Section 12]

Bills drawn outside India on a person resident in or outside India and made payable in India,

Bills drawn outside India on a person residing outside India and payable in India or outside India.

and made payable in, or drawn upon any person resident in India



Demand Instruments :

Cheques are always payable on demand.

A bill or promissory note is also payable on demand when it is expressed to be payable on demand , or “at sight” or “presentment”

Time instrument (Section 22):



Time instrument (Section 22):

- A bill or note which is payable:
- After a fixed period or
- After sight or
- On a specified day or
- On the happening of an event which is certain to happen.



AT SIGHT, ON PRESENTMENT, AFTER SIGHT [SECTION 21]

In a promissory note or bill of exchange the expressions “at sight” and “on presentment” means on demand.

The expression “after sight” means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non-acceptance, or protest for non-acceptance.



The maturity of a note or bill is the date on which it falls due.

Days of grace: A note or bill, which is not expressed to be payable on demand, at sight or on presentment; is at maturity on **the third day after the day on which it is expressed to be payable.**

(Section 22)

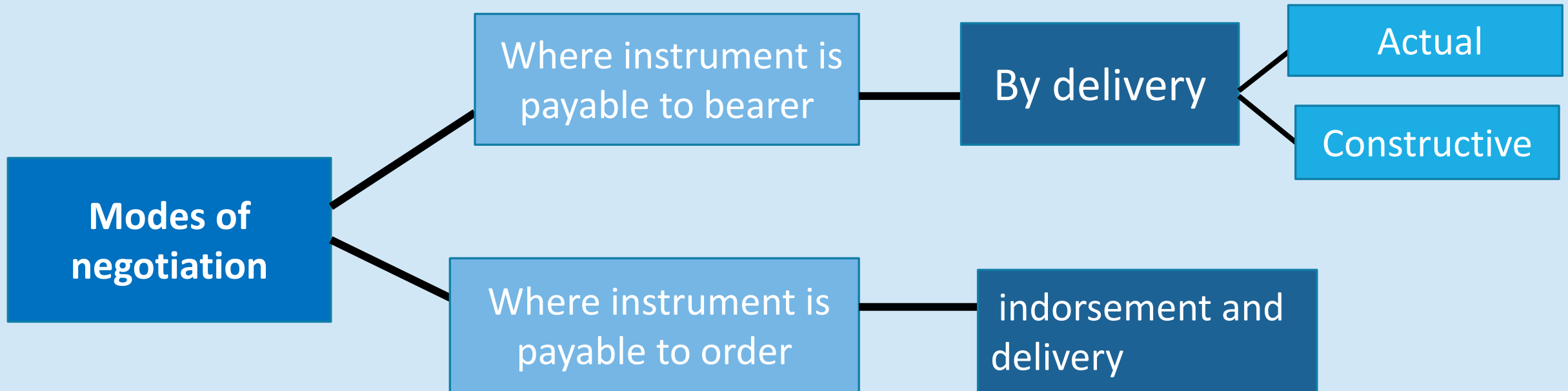


In calculating the date at which a promissory note or bill of exchange made payable at certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

When day of maturity is a holiday [Section 25]



When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day



Importance of Delivery in Negotiation[Section 46]



- Delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation.
- The delivery must be voluntary and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered.
- The delivery can be, actual or constructive.
- Actual delivery** takes place when the instrument changes hand physically.
- Constructive delivery** takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

INDORSEMENT OF INSTRUMENT (Section 15)



INDORSEMENT: When the maker or holder of a negotiable instrument signs the same (otherwise than as such maker)—

- for the purpose of negotiation
- on the back or face thereof or on a slip of paper annexed thereto called allonge, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument,
- he (maker/holder) is said to indorse the same, and is called the “indorser”.



- If the indorser signs his name only, the indorsement is said to be “in blank”,
- if the indorser adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be “in full”, and the person so specified is called the “indorsee” of the instrument



Restrictive Indorsement:

An indorsement is restrictive when the indorser while making indorsement restricts or excludes the right of the indorsee to further transfer the instrument or constitutes the indorsee as an agent to indorse the instrument or to receive its content for the indorser or for some other specified person **(Section 50)**.



Conditional indorsement:

Section 52 gives power to an indorser to insert in the indorsement by express words, a stipulation negating (excluding) or limiting his own liability to the holder by making such liability or the right of the indorsee to receive the amount due thereon upon the happening of a specified event although such event may never happen.



Conditional indorsement:

Sans recourse indorsement:

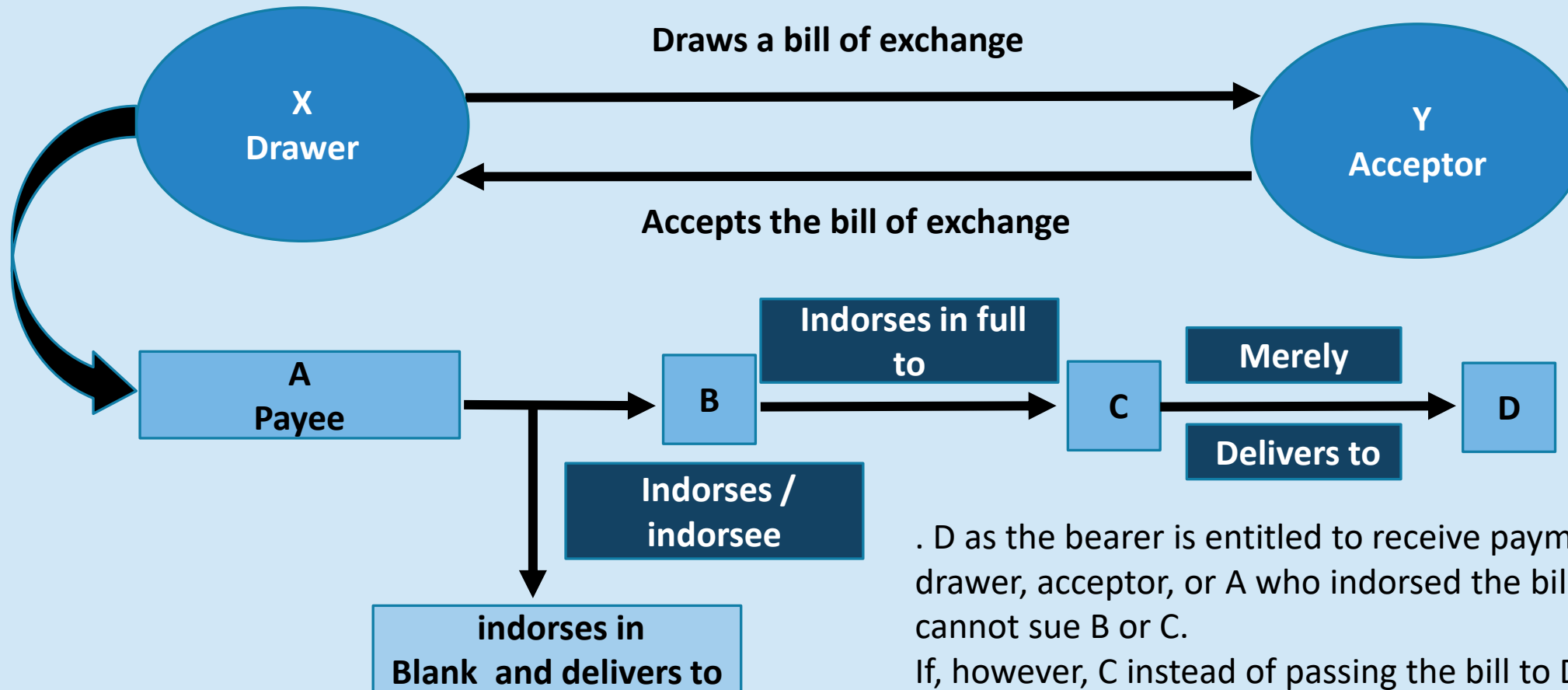
- Pay A or order without recourse to me, or Pay A or order sans recourse, or Pay A or order at his own risk'
- **Liability depended upon a contingency**
- **Facultative indorsement** – Where an indorser by express words abandons some right or increases his liability under an instrument , 'Pay A order. Notice of dishonor waived' is a facultative indorsement.



‘Sans frais’ indorsement – Where the indorser does not want the indorsee or any subsequent holder to incur any expenses on his account on the instrument, the indorsement is ‘sans frais’.



CONVERSION OF INDORSEMENT IN BLANK INTO INDORSEMENT IN FULL [SECTION 49]



. D as the bearer is entitled to receive payment or to sue drawer, acceptor, or A who indorsed the bill in blank, but he cannot sue B or C.

If, however, C instead of passing the bill to D without indorsement passes it by a regular indorsement, D can claim against all prior parties.

CONVERSION OF INDORSEMENT IN BLANK INTO INDORSEMENT IN FULL [SECTION 49]



If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person. **[Section 55]**



PRESENTMENT FOR ACCEPTANCE:

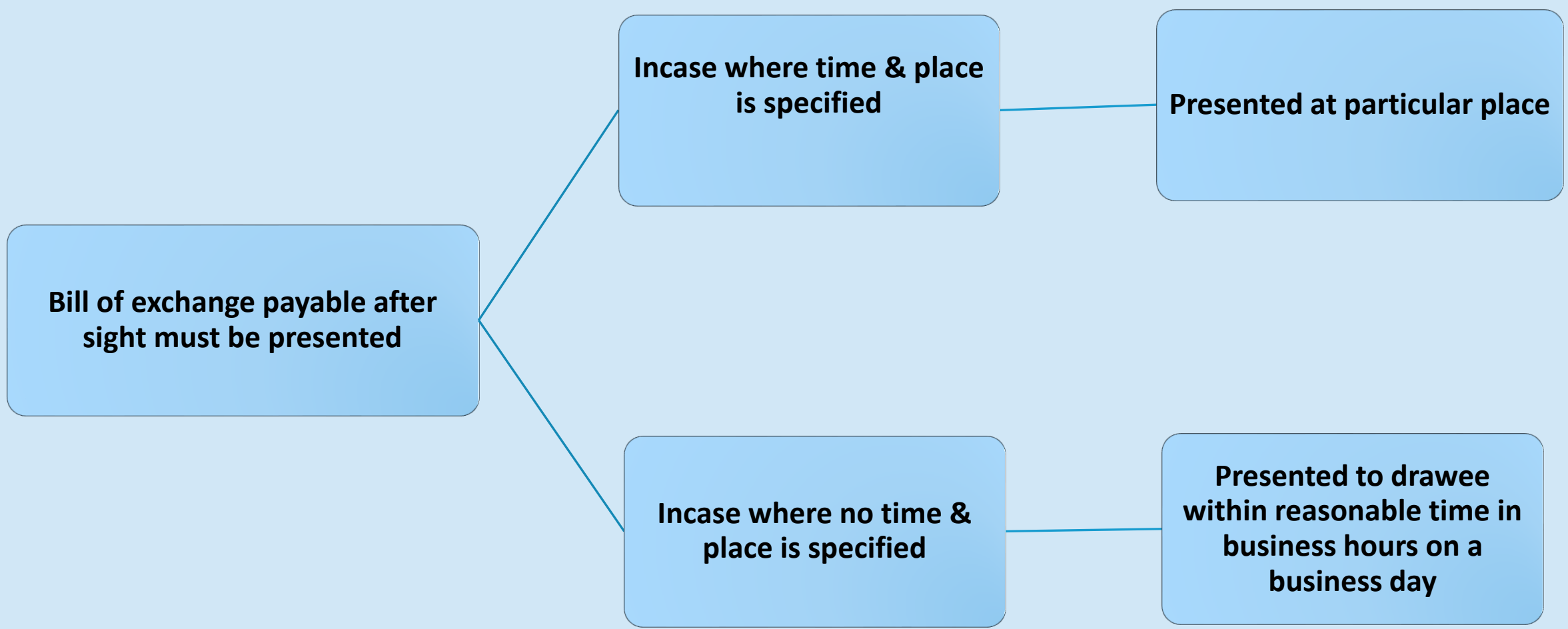
A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. **Section 61**



PRESENTMENT FOR ACCEPTANCE:

- If the drawee cannot, after reasonable search, be found, the bill is dishonoured.
- The holder of a bill must allow the drawee 48 hours (excluding of public holidays) to consider whether he will or will not accept the bill. **Section 63**
- If the holder allows more time, all the previous parties not consenting to such allowance are discharged from liability to such holder. **Section 83**

PRESENTMENT OF NEGOTIABLE INSTRUMENTS





How acceptance is made:

In order to make drawee liable, it is necessary that he should give his assent by signing on the face of the bill. It is immaterial that he may or may not write the word “accepted”. Oral acceptance is no acceptance.



Modes of acceptance

There can be two kinds of acceptance:

General or absolute acceptance- Where the drawee of a bill of exchange gives his acceptance without any condition, it is said to be a general or absolute acceptance.



Qualified acceptance- Where the drawee of the bill of exchange adds any condition while accepting it, it is said to be a qualified acceptance. If the holder refuses to take qualified acceptance he may treat the bill as dishonored. Where the holder accepts the qualified acceptance all parties shall stand discharged, if their consent was not taken on the qualified acceptance.

Effect of non presentment for acceptance



- To establish legal relation between the parties to a bill of exchange or privity of contract acceptance by drawee of the bill of exchange is required. If it is not presented the following consequences may arise.
- Drawee's liability under the bill will not arise.
- There will be no privity of the contract between the parties.
- The bill of exchange will be deemed to be dishonoured.
- No party thereto liable thereon to the person making such default.

Presentment for acceptance excused.



Presentment for acceptance is excused under the following circumstances:

- **The drawee cannot be found with reasonable search**
- **Where the drawee is dead or insolvent.** Section 75 of the act, contemplates that the instrument may be presented to the legal representative of the deceased drawee or assignee of the insolvent, however it is not compulsory.
- **The drawee is a fictitious person**
- **The drawee is incapable of contracting.**



“Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties there to are not liable thereon to such holder.

Discharge of indorser's liability [Section 40]



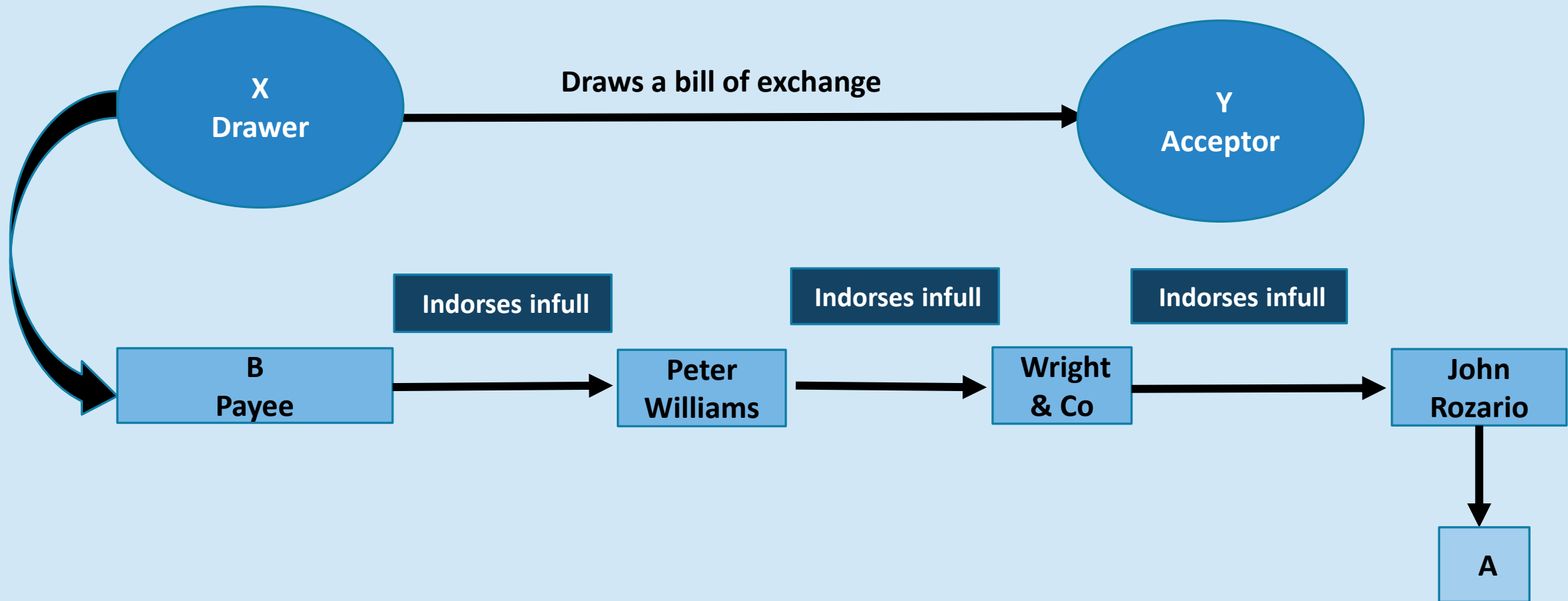
Where the holder of a negotiable instrument-

- without the consent of the indorser,
- destroys or impairs the indorser's remedy against a prior party,

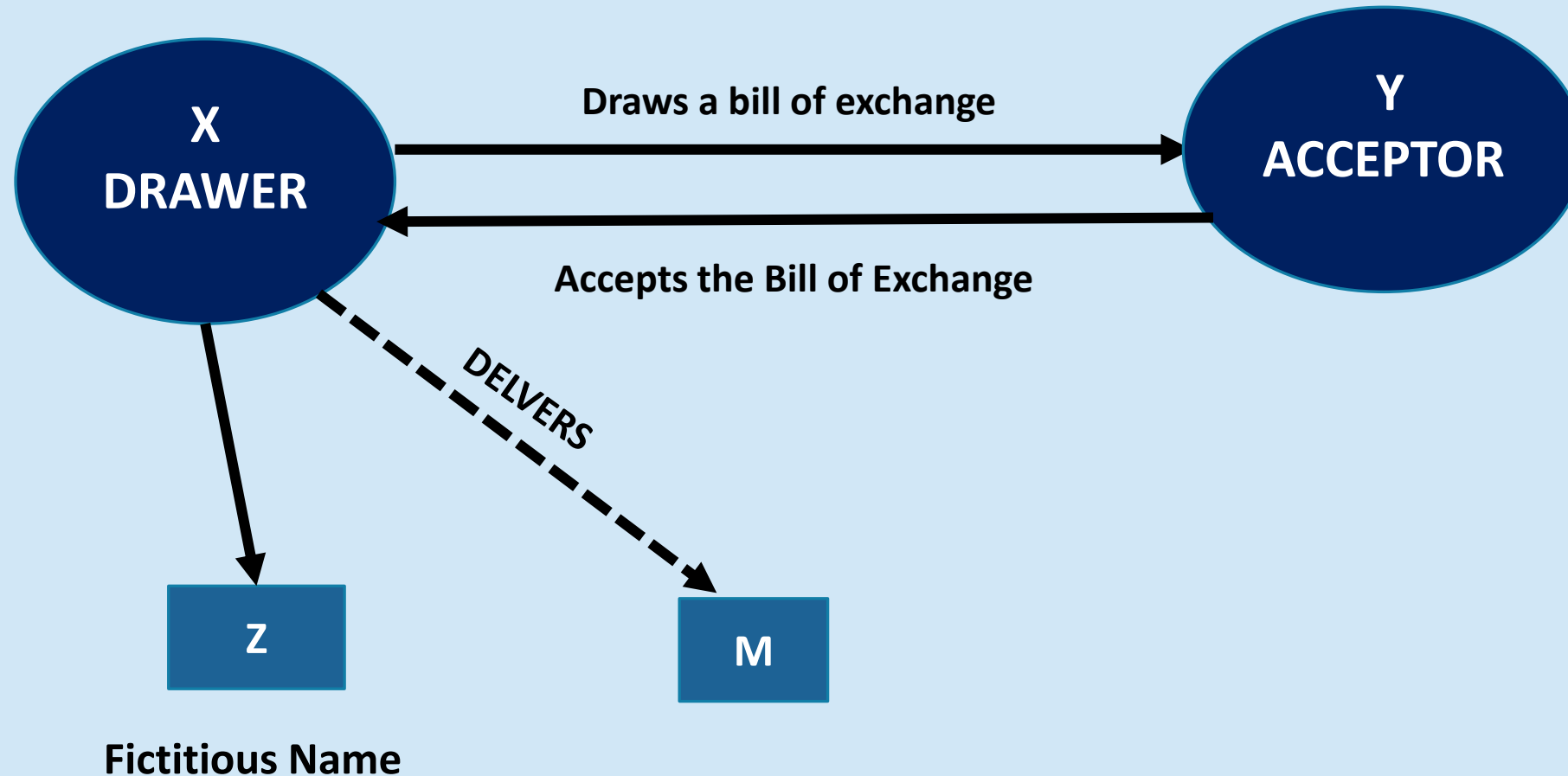
The indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.



Discharge of indorser's liability [Section 40]



Acceptance of bill drawn in fictitious name [Section 42]



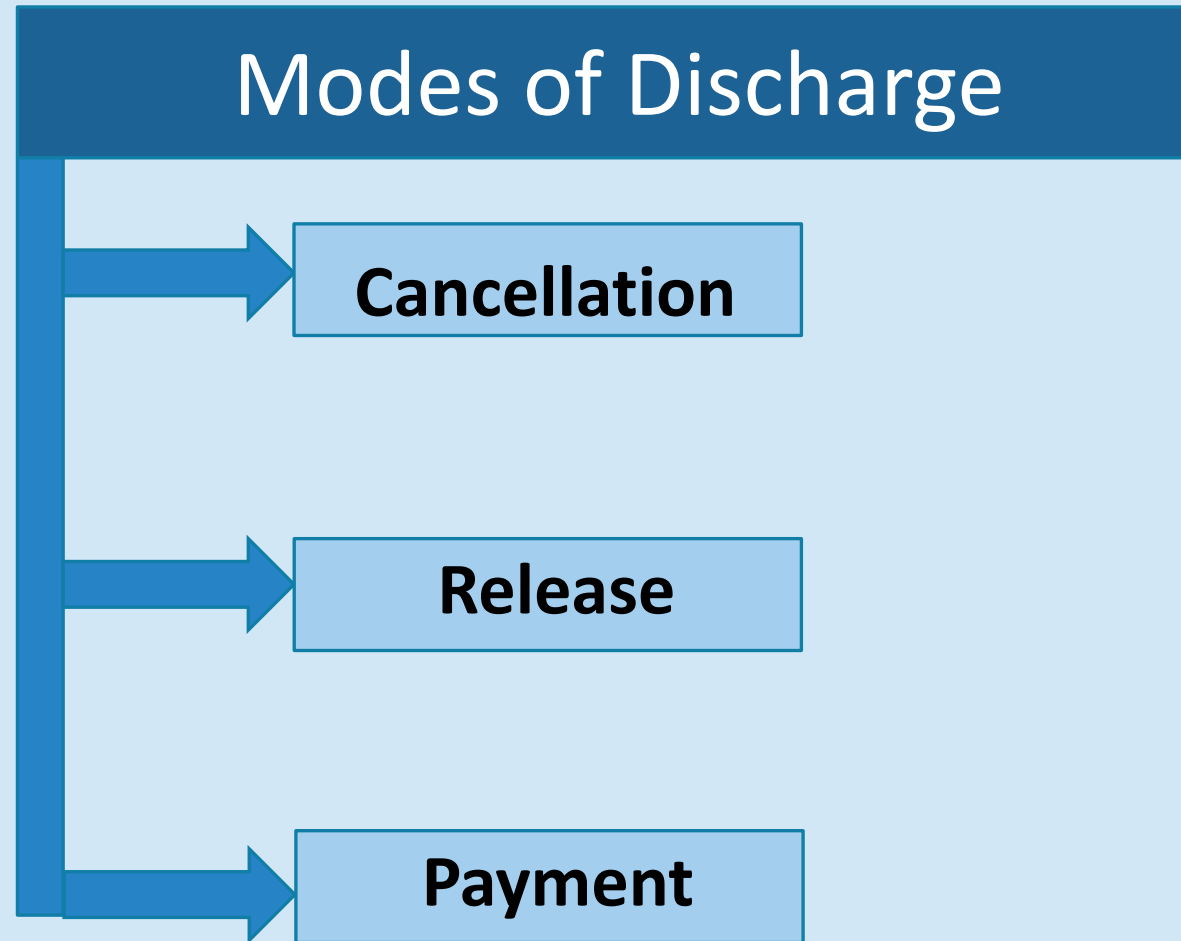


DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

DISCHARGE

Discharge of Parties

Discharge of instrument





By cancellation [Sec. 82 (a)]

When the holder of a negotiable instrument or his agent cancels the name of a party on the instrument with an intention to discharge him, such party and all subsequent parties, who have a right of recourse against the party whose name is cancelled, are discharged from liability to the holder.



DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

By release [Sec. 82 (b)]

Where the holder of a negotiable instrument releases any party to the instrument by any method other than cancellation, the party so released is discharged from liability.

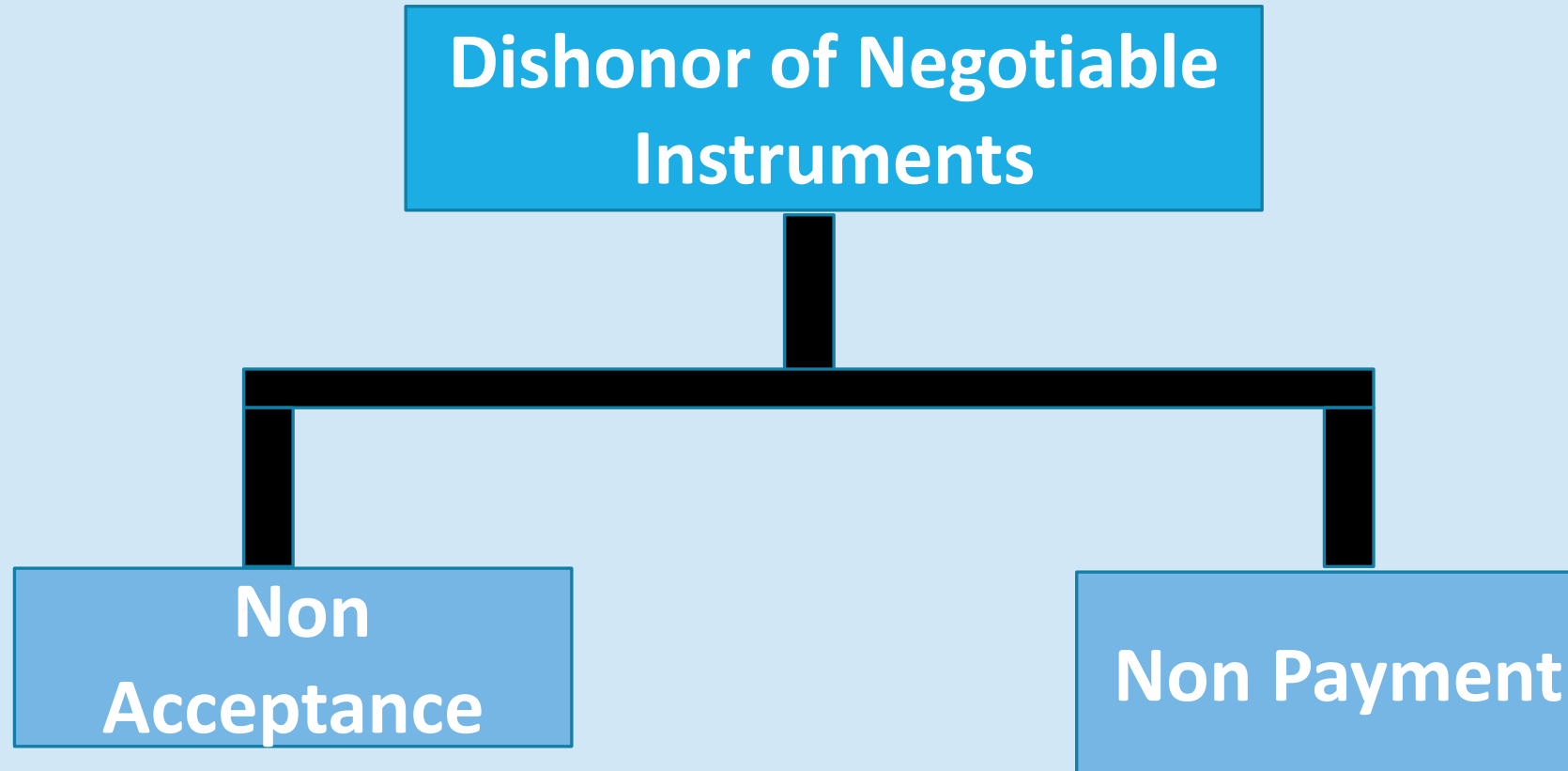
By payment [Section 78]

When payment on an instrument is made in due course, both the instrument and the parties to it are discharged subject to the provision of Sec. 82(c).



DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

- By the holder allowing the drawee of a bill more than 48 hours to accept [Section 83]
- By the holder agreeing to a qualified or limited acceptance of bill of exchange [Section 86]
- By the drawer not duly presenting a cheque for payment [Section 84]
- By the bill coming to the acceptor's hands after maturity (Section 90)
- Discharge by material alteration





Dishonour by Non-acceptance

A bill of exchange is said to be dishonoured by non-acceptance in any one of the following ways (Sec. 91):

- When a bill is duly presented for acceptance, and the drawee, or one of several drawees not being partners, refuse acceptance within forty eight hours from the time of presentment, the bill is dishonoured. In other words, when the drawee makes default in acceptance upon being duly required to accept the bill.



- where presentment is excused and the bill is not accepted.
- Where the drawee is incompetent to contract, the bill may be treated as dishonoured.
- Where the drawee is a fictitious person.
- Where the drawee could not be found even after reasonable search



- When a drawee gives a qualified acceptance, the holder may treat the instrument dishonoured.
- The effect of dishonoured by non-acceptance is that the holder of the bill can start an action against the drawer and the indorsers and need not wait for maturity of the bill.



A promissory note, bill of exchange and cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same (Sec. 92).

Again, a negotiable instrument is dishonoured by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid (Sec. 76).



Where a promissory note was sent by registered post and the party liable refused to receive the post, the bill was held to be dishonoured

[K. Venkatasubbayya V P.R. Rao Tobacco Co. AIR 1972 A.P.72]



Noting [Section 99]

- When a promissory note or bill of exchange has been dishonoured by non- acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.
- Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.



‘Noting’ must contain the following particulars (Sec. 90):

- The fact of dishonour
- The date of dishonour,
- The reasons, if any, assigned for such dishonour,
- If the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured; and
- The notary’s charges.

‘Noting’ must be made by the notary within a reasonable time after dishonour (Sec. 99).



Protest [Section 100]

- When a promissory note or bill of exchange has been dishonoured by non- acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.



Protest for better security: When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security

Dishonour of cheques for insufficiency of funds in the accounts [Section 138 to 142]



Where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,



- either because of the—
 - amount of money standing to the credit of that account is insufficient to honor the cheque, or
 - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,



such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.



Conditions

- Cheque presented within validity period
- Demand for payment through notice in writing within thirty days
- Failure of drawer to make payment within fifteen days



THANK YOU