



CHAPTER THREE

LAW OF NEGOTIABLE INSTRUMENTS

3.1 Definition of Negotiable Instrument

- ▶ Negotiable + instrument
- ▶ The word negotiable means 'transferable by delivery' and the word 'instruments' means a written document by which a right is created in favor of a person.
- ▶ Therefore, the term negotiable instruments literally refer to a document containing rights that can be transferred by delivery.
- ▶ Article 715(1) of Ethiopian Commercial Code also define the term negotiable instruments as any document incorporating a right to an entitlement in such a manner that it is not possible to enforce or transfer the right separately from the instrument.

what type of rights will be transferred through N.I?

- ▶ Any rights for payment of money arising out of various contracts such as the contract of loan, sale, lease, or any other contract performed by payment of a certain amount of money can be transferred through N.I.
- ▶ the holder of negotiable instruments can transfer the rights incorporated in the instrument by transferring the instrument.
- ▶ Similarly, a person who claims the rights incorporated in negotiable instruments may enforce or exercise them only if he has possession of the instrument, i.e., he should be a holder to whom the instrument is issued or transferred following the rules governing its transfer.

The need for prior contracts

- ▶ Negotiable instruments are issued or negotiated based on other contracts.
- ▶ For instance, a person may issue a bill of exchange to repay the money he has borrowed from the payee.
- ▶ the company issues a share certificate or debenture certificate as evidence of the person's right arising out of contract of partnership creating the company or a contract of loan respectively. / Art 211 and 429
- ▶ Based on the purpose and rights incorporated in the instruments, Article 715(2) of the Commercial Code categorizes negotiable instruments into three main types, i.e., Commercial Instruments, Transferable Securities and Documents of Title to Goods.

3.2 Nature and purpose of N.I

- ▶ Negotiable instrument is a signed writing that contains an unconditional promise or order to pay an exact sum of money on demand at an exact future time to a specific person or order, or to bearer.
- ▶ Transporting large amount of money usually exposes oneself to risk such as looting and destruction due to natural calamities.
- ▶ Additionally, it causes inconvenience, delay and a waste of time and energy.
- ▶ Hence, using N.I as a mode of payment relieves any trader and business of the above worries and difficulties.
- ▶ Generally, they serve as a substitute for money and as a credit device.

validity of N.I contract

- ▶ As like the general contract, in N.I contract, elements of contract should be fulfilled. (consent, capacity and object).
- ▶ Furthermore, the transfer of negotiable instruments has a special effect compared to the transfer of other forms of property and other contracts.
- ▶ A person to whom such instrument is transferred, following the rules governing its negotiation or transfer, in good faith, before its over due and before it is dishonored / a holder in due course/ will have a better right on the instrument than the transferor.
- ▶ because he acquires it free from claims and defenses that could have been raised against the transferor.

Cont'd...

- ▶ Similarly, a person who has lost or who is dispossessed of a negotiable instrument may not recover it from the holder in due course.
- ▶ Why???
- ▶ Because, the general principle governing contracts which transfer rights to other forms of property, particularly immovable properties and special movable properties, i.e., no one may transfer a better title than he has, does not apply in the case of transfer of negotiable instruments. **See Article 717 /3/, 751/2/, 752, 849 and 850 of the Commercial Code.**

Types of Negotiable Instruments

3.2.1 Commercial Instruments

- ❖ **Bills of exchange.** It is any instrument drawn on drawee that orders the drawee to pay a certain sum of money usually to a third party (the payee) on demand or at a definite future time.
- ❖ Hence, from the definition we understand that there are three parties in BoE i.e. the **drawer, drawee and payee.**
- ▶ The Commercial Code of Ethiopia does not provide a definition of bills of exchange
- ▶ However, Art 735 enumerates the requirements to be fulfilled for drawing a valid bill of exchange from which one may deduce the definition of the term under Ethiopian law.
- ▶ Accordingly, a bill of exchange must contain;

Cont'd...

- ▶ The term “bill of exchange”
- ▶ An unconditional order to pay a certain sum in money
- ▶ The name of the person who is to pay (the **drawee**)
- ▶ The time of payment
- ▶ The place of payment
- ▶ The name of the person to whom or to whose order payment is made or an indication that it shall be payable to bearer.
- ▶ The date when and the place where the bill is issued.
- ▶ The signature of the person who issues the bill (drawer)

Cont'd...

- ▶ A bill of exchange that does not contain any one of the above requirements shall not be valid and the drawer or any other party to the instrument can raise defect of form against any person who claims based on the bill.
- ▶ However, based on Art 717(1), a bill which does not contain the time of payment is presumed to be payable at sight or on demand.
- ▶ A bill which does not mention the place of payment, shall be deemed to be payable at the domicile or at the address of the drawee. And
- ▶ a bill which does not provide place of issue, is deemed to have been drawn at the place mentioned beside the name of the drawer.

Specimen of a Bill of Exchange

1-1-1999

To Denbegnaw Hisabu (Drawee)
Jiggiga

Pay to Fitsum Fiker order (payee)

2,000.00 Br (Birr two thousand) one
month after Date.

Genanaw

Tibebu (Drawer)

Dire Dawa

(Signed)

3.2.2 Promissory Note

- ▶ Similar to the cases of bills of exchange, the Commercial Code of Ethiopia does not provide the definition of a promissory note.
- ▶ A promissory note is a written promise made by one person (the maker) to pay a fixed amount of money to another person (the payee or a subsequent holder) on demand or a specified date.
- ▶ Article 823 simply provided the requirements for a valid promissory note. Those are the following:
 - ❖ The term “promissory note”
 - ❖ An unconditional promise to pay a sum certain in money
 - ❖ The time of payment
 - ❖ The place of payment

Cont'd...

- ▶ The name of the person to whom or to whose order payment is to be made or a statement that the note is payable to bearer
- ▶ The date when and the place where the note is issued
- ▶ The signature of the person who issues the instrument
- ▶ The person who makes the promise to pay is called the maker (or the promissory). He is the one who promises to pay a fixed amount of money to the holder. He is the debtor and must sign the instrument. The person who will get The money (the creditor) is called the payee (or promisee).

Cont'd...

- ▶ These requirements should be observed for promissory note to be negotiable instrument. Failure to comply with these requirements results in the invalidity of the instrument except in the cases provided by Art 824, which fills gaps in case of absence of time of payment, place of payment and the place of issuance.
- ▶ a promissory note which does not specify time of payment, shall be deemed to be payable at sight or on demand.
- ▶ a promissory note which fails to indicate the place of payment is presumed payable at the address of the maker of the promise and a promissory note which does not indicate the place of issuance deemed to have been drawn at the place indicated beside the name of the maker.

difference between B.E and P.N

- ▶ a promissory note contains promise to pay whereas a bill of exchange contains an order to pay.
- ▶ The maker of promissory note is always primarily liable and its liability is the same as the acceptor of a bill of exchange, but in case of drawer of bill of exchange once the bill is accepted he is only liable as surety in the event of dishonoring of bill of exchange.
- ▶ The concept of acceptance is not applicable to promissory notes unlike bills of exchange that may be accepted.
- ▶ Finally, promissory notes involve two parties only as opposed to bills of exchange that under normal circumstances involve three parties.

Specimen of Promissory Note

2014 E.C.

1-1-

I promise to pay to Tinishu Yibelatel
Or order the sum of Birr 750 on 6-5-

2000 E.C

Tileku Ashenafi

(signed)

3.2.3 Checks

- ▶ A check is the most widely used form of commercial instrument.
- ▶ A cheque is a bill of exchange drawn by a drawer ordering the drawee bank or financial institution to pay a certain amount of money to the holder on demand.
- ▶ But there are some difference between checks and bills of exchange.
- ▶ The following are the main differences between checks and bills of exchange.

Cont'd...

1. A check is always drawn on a banker (the drawee is always a Bank) and is always payable on demand while a bill of exchange may be drawn on any one and may be made payable on demand or at fixed or a determinable future time.
2. a check can be crossed in several ways but bills cannot be crossed.
3. Acceptance is not necessary for a check since it is payable on demand as opposed to bills of exchange which may be made payable at fixed or determinable future time.

Specimen of a check

	14-12-1996 E.C
	Commercial Bank of Ethiopia (Drawee)
	Pay Fatuma Yusuf (Payee) or order
Birr	
	3,500 (three thousand five hundred
Birr)	
	Zelalem
Yirge (Drawer)	
(Signed)	

Crossed Checks and Checks Payable into Account

- ▶ A crossed check is a check containing two parallel lines drawn across its face by the drawer or holder.
- ▶ A check may be crossed generally or specially.
- ▶ A check is crossed generally where it bears the two parallel lines only or where the word “bank’ or ‘banker’ is inserted between the lines.
- ▶ The crossing shall be special where the name of a specific bank is inserted between the lines.
- ▶ A check crossed generally can only be paid to a bank, which is the banker of the payee or holder, or to a person who is the customer of the drawee.

Cont'd...

- ▶ If the payee or holder of a generally crossed check is not a customer of the drawee bank or does not have a bank account in any bank, he must hand it over to a friend or relative who has a bank account will be credited with the amount of the cheque.
- ▶ A check crossed specially can only be paid to the bank specified in the crossing.
- ▶ Where the bank whose name appears in a special crossing is the drawee itself, the check may be paid to a person who is the customer of the drawee.
- ▶ The whole purpose of crossing checks is to make sure that the check is paid to the intended person by preventing payment to other persons into whose hands the check might fall.

Certificates of Deposit

- A certificate of deposit is a form of commercial instrument issued by a bank to acknowledge that a bank has received a sum of money on deposit and promised to repay it.
- ▶ When a person deposits money in a bank he will be given the document showing the deposit of money which could be withdrawn by the depositor

Agreements as to Payment of Interest

- ▶ According to Arts 739 and 825, bills of exchange and promissory notes payable at sight or at a fixed period after sight may contain a provision regarding payment of interest.
- ▶ It also clearly prohibits agreements as to interest made in relation to bills and notes payable at a fixed period after date and those payable on a fixed future date.

Opposition, Payment and Discharge

- ▶ The drawer or an endorser of a bill of exchange may oppose the payment of the value of the bill at any time before payment on the grounds of the bankruptcy of the holder.
- ▶ Similarly, the holder of a bill may oppose payment of a bill on the ground of loss or theft of bill before payment is made. /Art 779. /
- ▶ Opposition on these grounds may be made by notifying the drawee about the grounds of opposition either in writing or orally.
- ▶ However, payment of a check may be stopped by the instruction of the drawer at anytime before payment without the need to prove the existence of a valid ground to do so. / Art 857. /

Payment and Discharge

- ▶ The drawee who pays a bill at maturity or a check is validly discharged and cannot be held liable unless he has violated the opposition of payment or 'stop payment' order respectively (Article 861 and 776).
- ▶ The drawee must verify the signature of the drawer but not the signature of endorsers, as it does not have the specimen of signatures of all the potential endorser of the bill or check . /Art 776(3) and Art 860/
- ▶ The drawee who fully pays the amount for the holder of the instrument can take the instrument from the holder (Art 859(1) and Art 775(1).

partial payment

- ▶ Where the cover held by the drawer is lesser than the amount of the instrument, the holder cannot refuse partial payment if the drawee decides to effect partial payment.
- ▶ In such a case the drawee cannot demand the surrender of the instrument as the holder cannot enforce the remaining rights without instrument / Art 715(1) 716(1) /
- ▶ However, the drawee can demand the holder to specify such payment in the instrument and to give a receipt. / Art 859(4) and Art 775(3)/

3.2.5 Negotiation of Negotiable Instruments.

- ▶ The term 'negotiability' here refers to the capacity of the instrument being transferred by delivery or endorsement and simultaneously entitling the transferee rights and entitlements emanating from the instrument.
- ▶ According to article 723 an instrument in a specified name may be transferred either by the entry of the name of the transferee both in the instrument and in the register held by a person issuing the said instrument or it may be transferred by delivering new instrument to the holder specifying his name on such instrument and in the register.
- ▶ The person in possession of such instrument is deemed to be a holder or rightful owner of the instrument if his name is specified simultaneously in the instrument and the register kept by the person issuing such instrument (Art 722).

Cont'd...

- ▶ The holder of a commercial instrument registered in the name of a specified person shall establish the fact that he is a lawful possessor of the instrument by producing evidence confirming that he is the person whose name appears in the instrument as well as in the register kept by the person issuing the instrument.
- ▶ For instance, a person may produce documents such as identity cards and passports to show that he is the person whose name appears on the instrument. Art 722.

Cont'd...

- ▶ Negotiable instruments to order are transferred by endorsement followed by delivery of the instrument to the transferee called the endorsee.
- ▶ Endorsement should consist the signature of the transferor (endorser) usually on the back of the instrument with or without the word “pay”, the name of the endorsee, and the date of endorsement.
- ▶ Endorsement should not contain conditions, because, this would be contrary to the main features of negotiable instruments; particularly commercial instruments which always contain unconditional order or promise to pay a specified amount of money and affect their transferability

Cont'd...

- ▶ In addition to this, endorsement should be made to the full value of the instrument, i.e., endorsement for part of the value of the instrument is not possible.
- ▶ Why????
- ▶ because, rights contained in such instruments cannot be exercised, enforced and transferred separately from the document and it would be impossible for the endorser to transfer part of the right to the endorsee and retain the remaining at the same time.
- ✓ See Art 724, 725, 746/2/ 747, 748, 842, 843, and 844 of the Commercial Code.

Cont'd...

- ▶ Endorsement made according to the above requirements shall transfer all the rights arising out of the instrument from the endorser to the endorsee.
- ▶ The endorsee, as an owner of the rights, may enforce the rights by presenting it to the person who is supposed to pay /drawee/ where it is a check or a bill of exchange and to the maker where the instrument is promissory note and to the company where it is a stock or share or a debenture.
- ▶ see Arts 726(1), 749(1), and 845(1) of the Commercial Code.

Negotiable Instrument to bearer

- ❖ Where the endorsement does not contain the name of the endorsee (where it is endorsed in blank); thus making the instrument payable to the bearer and negotiable by delivery only.
 1. the endorsee may fill up the blank with his own name and exercise the rights or
 2. he may fill it with the name of another person and deliver it thereby transferring all his rights to the transferee or
 3. he may re-endorse it blank or to a specified person or
 4. he may transfer it and all his rights without filling up the blank and without re-endorsing it.

see Arts 726/2/, 749/2/ 845/2/ of the Commercial Code.

Blank endorsement advantages

- transferring such instrument without re- endorsing it, has a significant legal effect on the transferor.
- ▶ Because, he will not be a party to the instrument and no action for recovery may be made against him based on Arts 727, 750, 846 and 790 of the Commercial Code which makes the endorser jointly and severally liable on the instrument with the drawee and acceptor where the person who is supposed to pay the instrument fails to pay.

Endorsement for other purposes

- ▶ However, not all endorsements have the effect of transferring the rights and obligations arising out of negotiable instruments from the endorser to the endorsee.
- ▶ Endorsement may have other purposes such as creating agency and pledge contracts between the endorser and the endorsee.
- ▶ Where an endorsement is accompanied by words such as “value in collection”, “for collection”, “by attorney”... or any other word implying agency, it creates a contract of agency between the endorser and the endorsee.

Cont'd...

- ▶ the latter may exercise all the rights arising out of the instrument including the right to re-endorse and transfer it on behalf of the former without becoming a signatory of or a party to the instrument.
- ▶ In other words, endorsement of negotiable instruments with such words constitutes a special way forming a contract of agency. (the principal is liable in this case)
- ▶ In such cases, a party liable on the instrument and who is sued may not refuse payment or raise defenses based on his relations with the endorsee who is acting as an agent of the endorser.
- ▶ He may refuse payment or raise defenses only based on his relations with the endorser (the principal).

Cont'd...

- ▶ Similarly, where an endorsement is accompanied by words such as “value in security”, “value in pledge” or any similar word indicating pledge, it is intended to create a contract of pledge between the endorser and the endorsee.
- ▶ Therefore, the latter (the pledgee) may exercise all the rights arising out of the instrument including the right to re-endorse and transfer it on behalf of the former (the pledgor) without becoming a party to or signatory of the instrument.
- ▶ See Arts 729 and 754 of the Commercial Code.

Transfer of N.I to bearer

- ▶ Negotiable instruments to bearer are transferable by simple delivery of the instrument to the transferee (Article 721(1).
- ▶ The holder of such instrument shall prove the fact that he has acquired the instrument in accordance with the rules governing the transfer of bearer instruments i.e. simple delivery or handing over from the transferor by the sole fact of his possession and presentment of the instrument to drawee or maker for payment.
- ▶ In other words, the holder of such instrument is presumed to be its lawful holder unless the person challenging it produces evidence showing that the holder found a lost instrument or stole the instrument from a lawful holder. See Art 721 (2) and 340(2) of the Commercial Code.

3.2.6 Maturity of Commercial Instruments

- ▶ Bills of exchange and promissory notes may be made payable either at sight or on demand, at fixed date, at a fixed period after sight/acceptance or at a fixed period date. See Arts 769 and 825 (1) (b).
- ▶ Bills of exchange and promissory notes payable at sight or on demand are mature starting from the time of issuance and are payable on presentment.
- ▶ The holder of such instrument should present it for payment within a period of one year from the date of their drawing.
- ▶ The drawer or maker of the instrument may shorten or extend this period by a provision made in the instrument.

Cont'd...

- ▶ The drawer or maker of instruments payable at sight or demand may also stipulate that the instrument shall not be presented before a certain date where the drawer of the bill or maker of the note doesn't have sufficient amount of money to pay the instrument before such date. Art 770/2/ and 825 (1) /b/.
- ▶ The maturity of bills of exchange payable at a fixed period after sight shall be determined by the date of acceptance or the date of protest, where acceptance is refused.
- ▶ Regarding promissory notes payable at a fixed period after sight, their maturity shall be determined based on the date on which it is presented for the Visa of the maker. Because, acceptance is not applicable to promissory notes as they do not involve a person who makes acceptance i.e. the drawee see Arts 823, and 826 /2/.

Cont'd...

- ▶ On the other hand, the maturity of bills of exchange and promissory notes payable at a fixed date after date shall be determined based on the date of drawing or making.
- ▶ For instance if a promissory note is made on 01/01/07 and is made payable 15 days after its date, it matures or it becomes payable 15 days after its date of making, i.e., 01/01/07 and matures on 17/01/07.
- ▶ Note that the date on which the instrument is drawn or made or the date of acceptance or protest shall not be taken into account in calculating the date of maturity. / See Arts 821 and 884 of the Commercial Code./

Cont'd...

- ▶ Regarding the maturity of bills of exchange and promissory notes payable on a fixed date, such instruments shall mature on the date specified on the instrument.
- ▶ E.g. if a bill of exchange is drawn on 01/01/07 and is made payable on 01/07/07, it matures on march 1, 2007.
- ▶ Regarding the time within which bills of exchange and promissory notes payable at a fixed period after sight, at a fixed period after date and those payable on a fixed date, Art 774/1/ requires that they be presented for payment either on the date on which it matures or on one of the two working days following the date of maturity.

Cont'd...

- ▶ In other words, these instruments should be presented for payment within a period of three days including the date of maturity.
- ▶ failure to present the instrument to the drawer or maker for payment within this period results in loss of right of the holder to claim payment on the instrument 796 (1) .
- ▶ Art 774, which determines the period within which bills of exchange except those payable at sight should be presented for payment, is not made applicable to promissory notes by the reference provision /Art 825/.
- ▶ Is that intentional???
- ▶ No. because the legislature has not provided any other alternative and this would leave promissory notes other than those payable at sight without a period for presentment for payment.

Maturity of checks

- ▶ The maturity of checks and the period within which they must be presented for payment are different from those of the bills of exchange and promissory notes.
- ▶ This is because checks are always payable at sight or on demand.
- ▶ Furthermore, checks have to be presented for payment within a period of six months from the date of their drawing irrespective of the date of their issuance. /Art 854 and 855 of the Commercial Code /
- ▶ This provision implies that a check may contain a date of drawing which is different from the date of issuance, i.e., the date on which the check is actually written and signed.

3.2.7 Acceptance of Commercial Instruments

- ▶ Acceptance of commercial instruments refers to the agreement of the drawee to pay the value of the instrument to the holder at its maturity.
- ▶ Acceptance shall be made on the instrument and may be expressed by words such as 'accepted' 'agreed' or any other similar expression implying agreement of the drawee and signed by the latter.
- ▶ A mere signature of the drawee on the bill shall also constitute acceptance.
- ▶ Acceptance should also indicate the date when it is given, particularly in cases where the instrument is required by the drawer to be presented for acceptance within the time specified in the bill of exchange and in cases where a bill is payable at a fixed period after sight.

Why date of acceptances is necessary???

- ▶ This is because, in the first type bill, the date when acceptance is given is essential, as failure to present the instrument for acceptance within the period stipulated might result in the loss of right of the holder.
- ▶ In the second type of bills, such date is important to determine the maturity of the bill.
- ▶ Where the date of acceptance is not shown on these types of bills, the holder must authenticate the omission of the date of acceptance. See Art 761 and 764.

cont'd...

- ▶ The drawee who wants to consult with the drawer regarding the bill may demand the holder who presented the bill for acceptance to present the bill on the next day.
- ▶ This is intended to enable the drawee to consult the drawer and ascertain facts contained in the instrument.
- ▶ Where the holder fails to present the bill on the next day as instructed by the drawee, a party sued on such bill may raise such failure as a defense where such demand is mentioned on the bill and on the protest.
- ▶ Furthermore, if the drawee accepts such a bill the holder may demand that the date of presentment and not the date of acceptance be written on the bill, particularly where the bill is payable at a fixed period after sight or a bill which is required to be presented for acceptance within a time specified by the drawer or endorser. Art 760/1/ and 761/2/

Types of B.E and appropriate acceptance.

- ▶ From Art 757, we can understand that acceptance may be required in cases of bills which are payable on a definite future date.
- ▶ acceptance will not be necessary with respect to bills which are payable at sight or on demand.
- ▶ Because, in such cases acceptance does not make any sense as the bill has already matured and the drawee should pay it right away rather than promising to pay in the future.
- ▶ Therefore, we can conclude that acceptance may be required by the drawer in any type of bill of exchange except those payable at sight or demand.

Cont'd...

- ▶ The drawer may also prohibit the acceptance of a bill or may stipulate that the holder may not present the bill for acceptance before a fixed date if the drawer wants to push the date of maturity further ahead and to be able to consult with the drawee and reach an agreement as to the payment.
- ▶ Endorsers may also require that the bill be presented for acceptance with or without fixing the period of time within which it must be presented provided that the drawer has not prohibited the presentment of bill for acceptance.
- ▶ See Arts 757 and 758 of the Commercial Code.

Cont'd...

- ▶ However, the drawer may not prohibit the presentment for acceptance in the following two types of bill of exchange. /Art 758/2/.
 1. Bills of exchange payable at a fixed period after sight because acceptance is necessary to determine their maturity of this type of bills, and
 2. Domiciled bills, i.e., bills made payable not at the domicile of the drawee which is the normal place of payment but at the address of another person.
- ❖ The drawer of a domiciled bill is not allowed to insert provisions prohibiting acceptance of this type of bill because such prohibition may prevent the holder from acquiring the promise of the drawee to pay and the guarantee acceptance provides to the holder if the holder could not find the place of payment.

Cont'd...

- ▶ Acceptance of a domiciled bill will also help the holder to ascertain the exact place / address of payment before hand and to avoid any risk of loss of right that may result from failure to present the bill within the period within which the bill should be presented for payment, in case where he is not able to locate the exact place of payment.
- ▶ Finally, acceptance of a bill by the drawee makes him a party to the instrument that is jointly and severally liable to the holder together with the drawer, endorsers and other parties enumerated under Art 790 in case of non-payment. /Art 764/

Acceptance is not necessary for checks and P.N.

- ▶ The concept of acceptance applies to bills of exchange and not to promissory notes and checks because of the following reasons.
- ▶ A promissory note shall not be accepted as it does not involve a drawee whose agreement constitutes acceptance and the maker of a promissory note is considered as an acceptor of a bill of exchange who has already expressed his agreement to pay the agreed amount on a future date.
- ▶ On the other hand, a check cannot be accepted because it is always payable at sight or on demand and the drawee shall pay the value of the check on presentment.
- ▶ Note that acceptance is applicable to bills with a future date of payment.

3.2.8 Certification of checks

- ▶ As we have seen above the concept of acceptance does not apply to commercial instruments payable at sight and hence to checks.
- ▶ However, checks may be certified by the drawee, upon the request of the drawer, provided that it has a sufficient cover.
- ▶ Where checks are so certified, the drawee will have the obligation to keep the amount of such check in a separate blocked account for the benefit of the holder of the check until the expiry of the period provided for presentment for payment i.e., six months from the date of drawing. /Art 832. /
- ▶ In effect, the drawee, which certified the check, is considered as the acceptor of a bill of exchange who has agreed to pay the value of the instrument on maturity

3.2.9 Acceptance for Honor

- ▶ Acceptance for honor represents a guarantee to pay the value of commercial instruments by any person who may even be a signatory of the instrument.
- ▶ A person may guarantee the payment of the whole or part of the value of a commercial instrument on its maturity by accepting it for the honor of any one of the parties liable to the holder.
- ▶ In other words, acceptance for honor constitutes a special way of forming a contract of surety ship guarantee in which a person guarantees the performance of obligations arising out of commercial instruments.
- ▶ Such acceptance may be given either on the commercial instrument or a separate piece of paper attached to it, called an along or by a separate act or contract Article 766.

Cont'd...

- ▶ Expressions such as 'accepted for honor' or 'good as acceptance for honor' or any other word implying guarantee plus the signature of the acceptor constitute acceptance for honor.
- ▶ Furthermore, it may also indicate the person for whose honor it is given.
- ▶ Where the acceptance does not indicate the person for whose honor it is given, the law presumes that it has been given for the honor of the drawer or maker.

Degree of liability for acceptors

- ▶ The person who accepts a commercial instrument shall be liable on the instrument in the same manner as the person for whom he has become a guarantor.
- ▶ For instance, where such acceptance is given for the honor of the drawer of a bill of exchange or check, the acceptor shall be treated in the same manner as the drawer and would be obliged to pay the amount he guaranteed where the drawee fails to pay the check.
- ▶ Upon payment the acceptor will acquire the right to proceed against other persons liable on the bill or indemnity right of the guarantor against the person guaranteed. (Art 768 (1)).

3.2.10 Intervention for honor

- ▶ A person may accept or pay a commercial instrument by intervention for the honor of any person against whom the holder may have a right of recourse.
- ▶ Acceptance or payment by intervention may be made by any person including persons who have already signed the instrument and are liable on it except the acceptor.
- ▶ The person who pays or accepts the instrument by intervention shall have to give notice of his intervention to the person for whose honor he has intervened within two working days from the date of such intervention.
- ▶ This seems to be intended to avoid double payment by debtor.

Cont'd...

- ▶ Acceptance by intervention for honor may be given according to Art 803(1) in case where the holder has a right of recourse (the right to institute legal action based on the commercial instrument) before maturity on any type of bill except those payable at sight or on demand.
- ▶ As a result, this type of acceptance is not applicable to checks, which are always payable at sight, and to promissory notes, which are not capable of acceptance.