

- (c) ...
- (d) ...
- (e) ...
- (f) ...

#### Article B

If a cheque shows on its face the obliteration either of a crossing or of the name of the banker to whom it is crossed, the obliteration is regarded as not having taken place.<sup>46</sup>

#### Article C

- (1) (a) ...
- (b) ...
- (c) ...

(2) The drawee who pays or the banker who takes a crossed cheque in violation of the provisions of paragraph (1) of this article incurs liability for any damages which a person may have suffered as a result of such violation, provided that such damages do not exceed the amount of the cheque.<sup>47</sup>

#### Article E

If the crossing on a cheque contains the words "not negotiable" the transferee becomes a holder but cannot become a protected holder in his own right.<sup>48</sup>

#### Article F

(1) (a) The drawer or the holder of a cheque may prohibit its payment in cash by writing transversally across the face of the cheque the words "payable in account" or words of similar import.

<sup>46</sup> *Ibid.*, para. 176.

<sup>47</sup> *Ibid.*, para. 180.

<sup>48</sup> *Ibid.*, para. 183.

(b) In such a case the cheque can only be paid by the drawee by means of a book-entry.<sup>49</sup>

(2) The drawee who pays such a cheque other than by means of a book-entry incurs liability for any damages which a person may have suffered as a result thereof, provided that such damages do not exceed the amount of the cheque.<sup>50</sup>

(3) If a cheque shows on its face the obliteration of the words "payable in account", the obliteration is regarded as not having taken place.<sup>51</sup>

#### Article a

If a cheque is drawn against insufficient funds, it is nevertheless valid as a cheque.<sup>52</sup>

#### Article β<sup>53</sup>

(1) A cheque which bears a date other than the date on which it was drawn is nevertheless valid as a cheque.

(2) If a cheque is presented before its stated date:

##### Variant A

- (a) Payment discharges parties liable on the cheque;
- (b) Refusal by the drawee to pay constitutes dishonour.

##### Variant B

- (a) Payment does not discharge parties liable on the cheque;
- (b) Refusal by the drawee to pay does not constitute dishonour.

<sup>49</sup> *Ibid.*, para. 187.

<sup>50</sup> *Ibid.*, para. 189.

<sup>51</sup> *Ibid.*, para. 190.

<sup>52</sup> *Ibid.*, para. 196.

<sup>53</sup> *Ibid.*, paras. 200-203.

(b) *Note by the Secretariat: draft Convention on International Bills of Exchange and International Promissory Notes: text of articles as redrafted by consultants to the Secretariat and by the Working Group at its tenth session (A/CN.9/WG.IV/WP.22)\**

#### Article 22

##### Variant A

(1) If an endorsement is forged, any person has against the forger, against the person who took the instrument directly from the forger and against the drawee

who paid the instrument to the forger the right to recover compensation for any damage that he may have suffered because of the forgery.<sup>1</sup>

\* 12 June 1981. The text of the articles set forth herein is of the following kinds: (a) text as re-drafted by Professors A. Barak and W. Vis, consultants to the Secretariat, in accordance with requests of the Working Group made at its tenth session (b) text as amended by the Working Group at its tenth session and (c) text aligned with amended text of the draft Uniform Rules applicable to International Cheques. References are given to relevant paragraphs in the report

of the tenth session (A/CN.9/196) (Yearbook . . . 1981, part two, II, A) and to the articles of the draft Uniform Rules applicable to International Cheques as re-drafted or amended (A/CN.9/WG.IV/WP.21) (reproduced in this volume, part two, II, A, 2, (a)). Points of ellipsis against a paragraph or subparagraph indicate that no change has been made to the text of that paragraph or subparagraph. (Footnote in original).

<sup>1</sup> A/CN.9/196, paras. 113-118 (Yearbook . . . 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 22, Variant A (reproduced in this volume, part two, II, A, 2, (a)).

(2) ...

*Note.* The effect of the above rule would be that, for purposes of the drawee's liability to pay compensation to the person who suffered loss because of a forged endorsement, it is immaterial whether the drawee paid with or without knowledge of the forgery.

#### Variant B

(1) If an endorsement is forged, any party has against the forger, against the person who took the instrument directly from the forger and against the drawee who paid the instrument to the forger with knowledge of the forgery the right to recover compensation for any damage that he may have suffered because of the forgery.<sup>2</sup>

(2) ...

*Note.* The effect of the above rule would be that an action for damages would not lie against a drawee who paid without knowledge of the forgery.<sup>3</sup>

#### Article 53

...

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) ...

(i) ...

(ii) ...

(iii) ...

(h) An instrument may be presented for payment at a clearing-house of which the drawee is a member.<sup>4</sup>

#### Article 58

(1) ...

(a) ...

(b) ...

(c) ...

(2) ...

(a) ...

(b) ...

(3) ...

(3 *bis*) Where an instrument is presented to a clearing-house, protest may be replaced by a dated declaration by the clearing-house to the effect that the instrument had been presented to it and has not been paid.<sup>5</sup>

(4) A declaration made in accordance with paragraph (3) or (3 *bis*) is deemed to be a protest for the purposes of this Convention.<sup>6</sup>

#### Article 61

(Paragraph (2), subparagraph (f), deleted)<sup>7</sup>

#### Article 67

(1) ...

(a) ...

(b) ...

(i) The amount of the instrument with interest, if interest has been stipulated for, from the date of presentment;<sup>8</sup>

(ii) ...

(iii) ...

(c) ...

(i) ...

(ii) ...

(2) ...

(3) ...

#### Article 70

(1) ...

(a) ...

(b) ...

(2) ...

(3) ...

(4) (a) A person receiving payment of an instrument must, unless agreed otherwise, deliver:

<sup>2</sup> A/CN.9/196, paras. 113–118 (Yearbook ... 1981, part two, II, A), A/CN.9/WG.IV/WP.21, article 22, Variant B (reproduced in this volume, part two, II, A, 2, (a)).

<sup>3</sup> One of these Variants could be adopted in both the draft Convention on International Bills of Exchange and International Promissory Notes and the draft Uniform Rules applicable to International Cheques. A further possibility would be that Variant A is adopted in the draft Convention and Variant B in the draft Uniform Rules.

<sup>4</sup> A/CN.9/196, para. 48 (Yearbook ... 1981, part two, II, A), A/CN.9/WG.IV/WP.21, article 53 (h) (reproduced in this volume, part two, II, A, 2, (a)).

<sup>5</sup> A/CN.9/196, para. 70 (Yearbook ... 1981, part two, II, A), A/CN.9/WG.IV/WP.21, article 58 (3 *bis*) (reproduced in this volume, part two, II, A, 2, (a)).

<sup>6</sup> A/CN.9/196, para. 72 (Yearbook ... 1981, part two, II, A), A/CN.9/WG.IV/WP.21, article 58 (4) (reproduced in this volume, part two, II, A, 2, (a)).

<sup>7</sup> A/CN.9/196, para. 159 (Yearbook ... 1981, part two, II, A), A/CN.9/WG.IV/WP.21, article 61 (paragraph 2 (f) deleted) (reproduced in this volume, part two, II, A, 2, (a)).

<sup>8</sup> A/CN.9/196, paras. 100–101 (Yearbook ... 1981, part two, II, A).

- (i) to the drawee making such payment the instrument [and a receipted account];
- (ii) to any other person making such payment, the instrument, a receipted account and any protest.<sup>9</sup>
- (b) ...
- (c) If payment is made but the person paying, other than the drawee, fails to obtain the instrument, such person is discharged but the discharge cannot be set up as a defence against a protected holder.<sup>10</sup>

#### Article 71

- (1) ...
- (2) If the holder who is offered partial payment does not take it, the instrument is dishonoured by non-payment.<sup>11</sup>
- (3) ...
- (a) ...
- (b) ...
- (4) ...
- (a) ...
- (b) ...
- (5) ...
- (6) The person receiving the unpaid amount who is in possession of the instrument must deliver to the payor the receipted instrument and any authenticated protest.<sup>12</sup>

#### Article 74 bis

- (1) ...<sup>13</sup>
- (2)(a) If, by virtue of the application of paragraph (1) of this article, an instrument drawn in a currency which is not that of the place of payment must be paid in local currency, the amount payable is to be calculated according to the rate of exchange for sight drafts on the date of presentment ruling at the place where the instrument must be presented for payment in accordance with article 53 (g);<sup>14</sup>

<sup>9</sup> A/CN.9/196, para. 109 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 70 (4) (a) (reproduced in this volume, part two, II, A, 2 (a)).

<sup>10</sup> A/CN.9/196, para. 111 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 70 (4) (c), and note thereto (reproduced in this volume, part two, II, A, 2 (a)).

<sup>11</sup> A/CN.9/196, para. 122 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 71 (2) (reproduced in this volume, part two, II, A, 2, (a)).

<sup>12</sup> A/CN.9/196, para. 131 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 71 (6) (reproduced in this volume, part two, II, A, 2, (a)).

<sup>13</sup> Paragraph 1 consists of the text of article 74 bis as appearing in A/CN.9/181, Annex (Yearbook ... 1980, part two, III, B).

<sup>14</sup> A/CN.9/196, paras. 135-139 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 74 bis (2) (a) (reproduced in this volume, part two, II, A, 2, (a)).

- (b) (i) If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated, at the option of the holder, at the rate of exchange ruling at the date of dishonour, or at the date of actual payment;
- (ii) If such an instrument is dishonoured by non-payment, the amount is to be calculated, at the option of the holder, according to the rate of exchange ruling at the date of presentment or at the date of actual payment.<sup>15</sup>
- (iii) Paragraphs (3) and (4) of article 74 are applicable where appropriate.<sup>16</sup>

#### Article 79<sup>17</sup>

- (1) ...
- (a) Against the maker, or his guarantor, of a note payable on demand, after the date of the note;
- (b) Against the acceptor or the maker or their guarantor of an instrument payable at a definite time, after the date of maturity;
- (c) Against the acceptor of a bill payable on demand, after the date on which it was accepted;
- (d) Against the drawer or an endorser or their guarantor, after the date of protest for dishonour, or where protest is dispensed with, the date of dishonour.
- (2) If a party has taken up and paid the instrument in accordance with article 67 or 68 within one year before the expiration of the period referred to in paragraph (1) of this article, such party may exercise his right of action against a party liable to him within one year after the date on which he took up and paid the instrument.

#### Article 82

- (1) A party who has paid a lost instrument in accordance with the provisions of article 80 and who is subsequently required to, and does, pay the instrument, or who then loses his right to recover from any party liable to him and such loss of right was due to the fact that the instrument was lost, has the right:<sup>18</sup>

- (a) ...
- (b) ...
- (2) ...

<sup>15</sup> A/CN.9/196, paras. 135-137 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 74 bis (2) (b) (i) (reproduced in this volume, part two, II, A, 2, (a)).

<sup>16</sup> A/CN.9/196, paras. 135-137 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 74 bis (2) (b) (ii) (reproduced in this volume, part two, II, A, 2, (a)).

<sup>17</sup> A/CN.9/196, paras. 148 and 151 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 79 (2) (reproduced in this volume, part two, II, A, 2, (a)).

<sup>18</sup> A/CN.9/196, para. 157 (Yearbook ... 1981, part two, II, A); A/CN.9/WG.IV/WP.21, article 82 (1) (reproduced in this volume, part two, II, A, 2, (a)).