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L.L.B Part- 1st

Subject- Banking Law

Paper- 8th

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Topic- Define a Cheque and explain its essential elements.

Cheque

A cheque is an order to a bank to pay a stated sum from drawer's account, written on a specially printed form. There are three parties Drawer, Drawee and Payee. All the cheques are bills of exchange. But all the bills of exchange are not cheques.

Section 6 of the Negotiable Instrument Act 1881 defines A Cheque, According to Section 6 "a cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand." A cheque is payable always on demand. Here drawer and payee may be the same person.

or

A cheque, or check, is a document that orders a bank to pay a specific amount of money from a person's account to the person in whose name the cheque has been issued. The person writing the cheque, known as the drawer, has a transaction banking account (often called a current, cheque, chequing or checking account) where their money is held. The drawer writes the various details including the monetary amount, date, and a payee on the cheque, and signs it, ordering their bank, known as the drawee, to pay that person or company the amount of money stated.

A cheque is a negotiable instrument instructing a financial institution to pay a specific amount of a specific currency from a specified transactional account held in the drawer's name with that institution. Both the drawer and payee may be natural persons or legal entities. Cheques are order instruments, and are not in general payable simply to the bearer as bearer instruments are, but must be paid to the payee. In some countries, such as the US, the payee may endorse the cheque, allowing them to specify a third party to whom it should be paid.

Cheques are a type of bill of exchange that were developed as a way to make payments without the need to carry large amounts of money. Paper money evolved from promissory notes, another

form of negotiable instrument similar to cheques in that they were originally a written order to pay the given amount to whoever had it in their possession.

Essential elements of a cheque

If one takes a close look at the definition of a cheque, it becomes clear that a cheque has the following 10 essential elements or characteristics.

1. It must be in writing:

A cheque must be in writing. An oral order to pay does not constitute a cheque.

2. It should be drawn on banker:

It is always drawn on a specified banker. A cheque can be drawn on a bank where the drawer has an account, saving bank, or current.

3. It contains an unconditional order to pay:

A cheque cannot be drawn so as to be payable conditionally. The drawer's order to the drawee bank must be unconditional and should not make the cheque payable dependent on a contingency. A conditional cheque shall be invalid.

4. The check must have an order to pay a certain sum:

The cheque should contain an order to pay a certain sum of money only. If a cheque is drawn to do something in addition to, or other than to pay money, it cannot be a cheque. For example, if a cheque contains 'Pay USD 500 and a TV worth USD 500 to A' it is not a cheque.

5. It should be signed by the drawer and should be dated:

A cheque does not carry any validity unless signed by the original drawer. It should be dated as well.

6. It is payable on demand:

A cheque is always payable on demand.

7. Validity:

A cheque is normally valid for six months from the date it bears. Thereafter it is termed as stale cheque. A post-dated or antedated cheque will not be invalid. In both cases, the validity of the cheque is presumed to commence from the date mentioned on it.

8. It may be payable to the drawer himself:

Cheques may be payable to the drawer himself/herself. It may be drawn payable to bearer on demand unlike a bill or a pro-note.

9. Banker is liable only to the drawer:

The banker on whom the cheque is drawn shall be liable only to the drawer. A holder or bearer has no remedy against the banker if a cheque is dishonored.

10. It does not require acceptance and stamp:

Unlike a bill of exchange, a cheque does not require acceptance on part of the drawee. There is, however, a custom among banks to mark cheques as 'good' for the purpose of clearance. But this marking is not an acceptance. Similarly, no revenue stamp is required to be affixed on cheques.

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