



ADDIS ABABA UNIVERSITY
COLLEGE OF LAW AND GOVERNANCE STUDIES
SCHOOL OF LAW

The Law and the Practice of Using a Cheque as a Means of Payment in Ethiopia

A THESIS SUBMITTED TO THE SCHOOL OF GRADUATE STUDIES OF ADDIS ABABA UNIVERSITY IN PARTIAL FULFILLMENT OF THE REQUIREMENTS OF THE DEGREE OF MASTERS OF LAW (LL.M) IN BUSINESS LAW

By: Haftom Kesete

Advisor: Fekadu Petros (Assistant Professor)

September 24, 2021

Addis Ababa

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Declaration

I, Haftom Kesete, hereby declare that the thesis titled “*The Law and the Practice of Using a Cheque as a Means of Payment in Ethiopia*” is my original work and has not been submitted before for any degree or examination in any other University. I also pledge that all the sources used or quoted have been indicated and duly acknowledged as complete references and cited.

Haftom Kesete

Signature: _____

Date: _____

Confirmation

This Thesis has been worked on by the student under my supervision, and guidance and submitted for examination with my approval as an advisor to the student.

Advisor: Fekadu Petros (Assistant Professor)

Signature: _____

Date: _____

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Approval sheet

Haftom Kesete's thesis titled "*The Law and the Practice of Using a Cheque as a Means of Payment in Ethiopia*" is approved by the undersigned members of the examining board.

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Dedication

This thesis is dedicated to those civilian victims of the ongoing war in Ethiopia who have suffered and are still suffering from horrible war crimes.

Acknowledgments

First of all, I would like to express my praise to Almighty God who granted me the potential to complete the research. My thanks go to my advisor, Assistant Professor Fekadu Petros, who has been a source of wise suggestions without which this work would never have seen the light of day in its present form.

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Haftom Kesete

September 24, 2021

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Acronyms and Abbreviations

CB - the cassation bench

CBE - the Commercial Bank of Ethiopia

CC - the Civil Code of Ethiopia

CFPB - the Consumer Financial Protection Bureau of the United States

ComC - the Commercial Code of Ethiopia

FSCCB - the Federal Supreme Court Cassation Bench

NBE - the National Bank of Ethiopia

PDCs – Post Dated Cheques

UCC - the Uniform Commercial Code of the United States

UK - the United Kingdom

USA - the United States of America

Abstract

A cheque should always be payable on demand without any precondition. The viability of using a cheque as a means of payment depends on the clarity of laws, consistency of court decisions, and the practice of banks. Despite this fact, the researcher, using both qualitative and quantitative methodologies, argues that cheques have been allowed to be used as an instrument of guarantee by court decisions including the federal cassation bench of Ethiopia as well as the malpractices of banks and the society at large. This gap in the law and anomalies of the practice can be filled by a canon of interpretation of laws and enacting a directive through the NBE. However, this approach alone doesn't warrant cheques to be served as a substitution of cash and the researcher recommends for a legislative measure to be taken.

Chapter One

Proposal of the Study

1.1 Background of the Research

When humans changed their living style to tribal or community-based units, the notion of private property that belongs to someone in exclusion of others became concomitant, which was followed by the idea of bartering and exchange of an excess of someone's for the shortage of another's.¹ Subsequently, common commodities, and later, metallic and paper money used as a standard and measurement of value and medium of exchange.²

As civilization and trade grew briskly, the time to send money to distant places by post or carrier, which is vulnerable to loss, theft, and damage by fire, floods, or other causes, became society's concern.³

Besides, the need to borrow money for present use against an assurance to pay it back at a future date; the trust and confidence among traders came up with certain documents like promises or orders to pay money that permit a speedy mobilization of resources, and secure efficient circulation of credit to meet the needs of commerce.⁴ These documents are bills of exchange, cheques, promissory notes, and other negotiable instruments developed to expedite business by substituting cash flow and currencies. This research focuses on a cheque otherwise known as a 'check' in common law countries concerning its acceptability as a means of payment in Ethiopia instead of cash.

1.2 Statement of the Problem

In Ethiopia, a cheque is payable at sight without any conditionality.⁵ In its cassation bench, the Federal Supreme Court (from now on referred to as FSC) gave a precedent decision on civil claim stating that a cheque given as a guaranty can be set up as a defense against the holder in

¹ Conde B. McCullough and John R. McCullough, *The Engineer at Law a Resume of Modern Engineering Jurisprudence* (Vol II, Ames Iowa 1946) 301

² Charles Francis Harding and Donald Treat Canfield, *Legal and Ethical Phases of Engineering* (1st edn, McGraw-Hill Book Co. 1936) 156

³ McCullough, (n 1) 302.

⁴ José T. Nabuco and Isidoro Zanotti, *Statement of the Laws of Brazil in Matters Affecting Business* (3rd edn, Pan American Union 1961) 196

⁵ The Commercial Code Proc No 166 Neg Gaz 1960 Art 827, 840, 854.

due course.⁶ The Cassation Bench (hereinafter referred to as CB) deliberated its decision based on Articles 717 and 850 of the Commercial Code (hereinafter ComC) that any contractual or legal relationships could be considered as a defense of personal relations. The ComC under these stated articles states that personal relations between the plaintiff (holder of the cheque) and the defendant can be set up as defense by the defendant. In nowhere, however, the ComC does not define nor exemplify what personal relations constitute. On the other hand, the CB has decided that the mere insufficiency of the fund at the time of drawing or presentment of the cheque is enough to convict the drawer charged by a crime for dishonored cheque irrespective of the drawer's defense the cheque was given as a guaranty.⁷ Thus, the interpretation and application of the laws about cheques in light of personal defenses are recurring problems to be explored in this research.

The Ethiopian ComC under Article 745 clearly stipulates that a Bill of Exchange can be ante or post dated. However, there is no explicit provision that allows or prohibits a cheque to be post-dated. Thus, the status of post-dated cheques (starting now referred to as PDCs) is questionable whether they are payable on demand or not before the date written thereof. Nevertheless, under the canons of legal interpretation of laws, one may say that if we take the definition and interpretation of a cheque as a bill of exchange drawn on a bank, the ComC acknowledges a bill of exchange to be postdated so that a cheque can be postdated. This way of interpreting may also be supported by asserting Article 855 of the ComC, which states that a cheque must be presented within six months from the date thereof regardless of when the cheque was issued. Accordingly, a cheque may have two different dates, i.e., the date of issuance when the cheque was handed over to the payee and the date written on the cheque. In this way, a cheque can be postdated from the date of issuance up to the date that is written on the cheque irrespective of whether it will be payable on the time span or not. Contrariwise, others may interpret that the ComC under Article 886 makes a cross-reference to some provisions of the Bill of Exchange part but not about the postdating of a cheque. So that means the intent of the lawmaker is clear that a cheque cannot be post-dated. This interpretation may also be substantiated as far as the cheque is payable on demand without any precondition; preventing a cheque not to being cashed before the arrival of some future date would be equal to putting a precondition which is against the nature and

⁶ *Mohamed Adem V Fitsum Girma* [2008] FSC 24435 Vol 12 521.

⁷ *Aduigna Anbelo V Federal Public Prosecutor* [2011] FSC 67947 Vol 12 246.

purpose of a cheque. Hence, the issue of post-dating of the cheque is still debatable. Besides, the adequacy of Ethiopian law regarding the post-dating of cheques and international practice will be examined in this study.

The ComC of Ethiopia under Article 857 permits a drawer to stop the payment order of a cheque. Nevertheless, the code does not set any grounds for nor means of countermanding a specific cheque. After this, the National Bank of Ethiopia (referred to as NBE) enacted a directive that prescribes only theft or loss of the cheque and countermanding with sufficient cover are eligible to stop payment order of a cheque. What about reasons other than those illustrated in the directive, like acts of intimidation, fraud, or coercion upon the drawer? Aren't these sufficient grounds to rescind a cheque? Both the code and the directive give the right to countermand only to the drawer. However, shouldn't he be entitled to an equal opportunity to a holder of a cheque who lost his cheque for reasons of theft, loss, acts of intimidation, fraud, or duress? The NBE directive doesn't stipulate means of countermanding like the ComC, whether to be in written, oral, telephone, email, or fax, as assessed in this research.

If a cheque is dishonored for mistakes of the drawer, the compensation to be paid to the holder shall be to the extent of the amount on the cheque, its legal interest, expenses, and a commission not exceeding one-third percent of the amount on the cheque.⁸ In case of dishonoring a cheque due to the mistake or negligence of the drawee, the ComC is silent as to measures to be taken and the amount of damages to be paid to the holder. Should the amount of damage to be paid to the holder be limited to the amounts predetermined under Article 873 of the code or should it include all actual damages that are questionable?

A person who draws a cheque, intentionally or negligently, without sufficient cover at the time of drawing or presentment for payment is criminally punishable in Ethiopia.⁹ But what about a person who intentionally or negligently participated in delivering, or passing the bad cheques that were dishonored due to insufficiency of a fund? This research assesses the protection of cheques in reference to some foreign criminal justice systems.

Any person who has contractual capacity is entitled to issue commercial papers, including a cheque under Article 733 of the ComC. Does this provision include persons with disabilities of eyesight and illiterates? This would be tested in relation to foreign bank procedures.

⁸ ComC (n 5) Art 873.

⁹ The Criminal Code 2004 Proc No 414/2004 Fed Neg Gaz Art 693

Banks in Ethiopia are obliged to verify the signature of an endorsee /holder of the cheque/ as per Article 860 of the ComC. In banking rules and procedures, is it practical and possible to verify the signature of an endorsee than the drawer would be scrutinized in the study.

A directive enacted by the NBE imposes an obligation on banks to register dishonored cheques, penalize the drawer and block the drawer's account on certain conditions, and report to the delinquent list of misusers of a cheque.¹⁰ In this directive, drawing a cheque for the first time does not have a penalty. However, the sufficiency of this directive to implement the laws specified in the ComC regarding cheques is dubious alongside solving different practical factors that influence the acceptability of cheques in Ethiopia. Consequently, the research conveys the sufficiency of the laws in addressing the above problems; how drawers, payees, holders in due course, and other stakeholders have been perceiving the acceptability of a cheque as a substitution and equivalence of cash.

1.3 Research Questions

Based on the above problems, this research is conducted to answer the following central questions:

- 1- Is the interpretation of the Federal Supreme Court Cassation Bench (FSCCB) in file No. 24435 contradictory with the nature of the cheque? Could cheques serve as an instrument of pledge or guaranty? What are the implications of this cassation decision in the acceptability of the cheques?
- 2- Could cheques be post-dated? If so, what would their fate be before their maturity date?
- 3- When a cheque is dishonored due to the mistake or negligence of the drawee, what would be the remedies and amount of damages to be paid to the holder?
- 4- Should a person who intentionally or negligently participated in delivering or transferring bad cheques be criminally liable like a drawer in Ethiopian law?
- 5- Does the ComC and the Cheque Account Operations Directive of the NBE regulate all banking activities concerning cheques? Does the directive allow blind and illiterate persons to open a cheque account? Is verifying the signature of an endorsee/holder of the cheque/ be possible and necessary? Does it have grounds and means of countermanding of cheques?

¹⁰ National Bank of Ethiopia (NBE), 'Cheque Account Operations Directive' [2016] No SBB/64/2016 Art 4-10.

1.4 Objective of the Research

The principal objective of the research is to examine the usage and perception level of acceptability of cheques as a substitution for cash in Ethiopia. The specific goals of the research are:

1. To evaluate the appropriateness of the technique used by the CB to interpret ‘personal relations’ in the context of defense against the holder in due course of cheque;
2. Assessing the impacts of the cassation decision on the acceptability of the cheque;
3. Exploring the sufficiency of the ComC and the directive of the NBE in protecting cheques;
4. Identifying the reasons that contribute to the reduction of the acceptability of cheques: and
5. Propose appropriate solutions and amendments on the directive of the NBE, the ComC of Ethiopia, and the CB decision of the FSC.

1.5 Literature Review

A notorious Judge, Willis, characterizes a negotiable instrument as a property acquired by every person who takes it bond fide and for value provided that the valid owner could transfer the contract or engagement contained therein by simply delivering the instrument.¹¹

The common law countries like England demonstrate a cheque as a bill of exchange drawn on a banker payable on demand that does not need acceptance, but the bank simply pays it on presentment.¹² A known commercial law jurist, Roy Goode, also defined a cheque as a direct payment, not a credit paper, to be presented and paid almost immediately.¹³ There are a lot of foreign literatures on cheques specifically and negotiable instruments, in general.

In the Ethiopian context, however, to the best knowledge of the researcher, the researcher couldn’t get plentiful literature on cheques. Among the few works of literature, Fasil Alemayehu and Merhatibeb Teklemedhn stated that a cheque is a vehicle for the transfer of money that helps to keep records and escape theft of currencies provided that their text is a teaching material that is silent about cheques’ legal and practical problems and their acceptability nowadays.¹⁴

Another worth mentioning and relevant literature on a cheque is a reflection and critique article,

¹¹ William Blake Odgers, *The Common Law of England* (2nd edn, Sweet and Maxwell 1920) 809-810

¹² Odgers, (n 11) 827.

¹³ Ewan Mckendrick, *Goode on Commercial law* (5th edn, Penguin UK 2017) 569

¹⁴ Fasil Alemayehu and Merhatibeb Teklemedhn, *Law of Banking, Negotiable Instruments and Insurance Teaching Material* (Justice and Legal System Research Institute, 2009) 78

written by Yosef Aemiro, on the decision of the FSCCB on File No. 24435.¹⁵ In his critique, he disagrees with the majority vote and binding decision of the cassation, and the way of interpretation and application of the law used by the minority vote in the dissenting opinion. However, Yosef accepted the conclusion of the dissenting opinion, which argues that a cheque couldn't be used as a guaranty, and concluded that the cassation did not give an interpretation but enacted a new law to the operations of a cheque. He also suggested that it may affect the acceptability of cheques but did not evaluate the actual acceptability of cheques since then. Moreover, Yosef's article is limited to whether a cheque can be given as a guaranty. Therefore, this study aims to evaluate the loopholes in the law and observe anomalies in the law of cheques. An additional writer, Gezu Ayele, in his book on the laws of Ethiopian Banking and Negotiable Instruments, stated that the FSCCB interpretation of cheques could harm the acceptability of cheques.¹⁶ Gezu pinpoints different issues of cheques based on his observations as a bank lawyer. However, his book does not evaluate the actual acceptability of cheques in society. Lastly, two undergraduate papers¹⁷ were conducted relating to cheques in Ethiopia. According to the researcher, the papers lack an in-depth analysis of the law, comprehensive methodological inquiry of the data, and recurring court cases.

1.6 Significance of the Research

The findings of the study will have the following contributions;

1. It may fill the literature gap in the cheques field under Ethiopian commercial law.
2. It may help to conduct a larger-scale empirical study on the area which could have sky-scraping importance to revise the law if need be.

¹⁵ Yosef Aemiro, 'ፎክና ዋስትና' (2012) Vol 25 No 2 Journal of Ethiopian Law 227.

¹⁶ Gezu Ayele, *Ethiopian Banking and Commercial Instruments law*, (Far East Trading PLC 2018) 161-195.

¹⁷ Aksumite Tesfaye, 'The Legal and Practical Problems Surrounding the Dishonoring of Cheque due to Insufficient Fund' (St. Mary's University College, June 2008) <<http://repository.smuc.edu.et/bitstream/123456789/712/1/Aksumite%20Tefaye.pdf>> accessed 04 August 2021: Eshetu Girma, 'Issuing of cheque as a guarantee; A critical analysis of the law and practice' (AAU, September 2019) <<https://www.academia.edu/42533462>> accessed 04 August 2021.

3. It can also serve as reference material to academicians, practitioners, the NBE, justice organs, and the people at large to critically understand the acceptability and legitimacy of the cheque in Ethiopia.

1.7 Scope of the Research

As elucidated in the topic and above works, this research will focus on the acceptability of cheques in Ethiopia since 2008, when the CB interpreted cheques usage as a guaranty. Thus, it excludes other negotiable instruments and commercial papers except cheques. Among the species of cheques, travelers' cheques are not part of this study. Likewise, this research doesn't include legal and practical problems about cheques that arose before 2008.

1.8 Limitation of the Research

The research was potentially constrained owing to different limitations. Among the limitations that affect the depth and content of the study include the absence of literature on the area and the eruption of instability in Ethiopia that hindered free passage to different regions of the country to collect court cases. Above all, the researcher faced a lack of separate or comprehensively organized data in the NBE, sampled banks, courts, and Addis Abeba Police Commission pertinent to cheques.

1.9 Methodology of Research

1.9.1 Research Design

This research contains both doctrinal and non-doctrinal (Socio-Legal) inquiry features using qualitative and quantitative methods. In analyzing the laws dealing with cheques, the researcher has explored the laws and interpretations of the law using the canons of interpretation and scholarly books. In search of model solutions, the research makes a comparative study of the laws of foreign jurisdictions with well-developed legal infrastructure that could help us guide. However, as this approach alone cannot show the practical problems beyond texts of the law, quantitative data to draw the finding of the degree of acceptability of cheques with the law has also been considered.

1.9.2 Research methods

As regards the qualitative aspect of the research, explaining laws and legal analysis have relied on primary sources of laws. Apart from this, secondary sources that lay the conceptual

framework of the cheque have been employed by reading books, journals, and other research to achieve the same purpose.

Assessing the acceptability of a cheque and its degree is a segment of the practice that requires quantitative data. Hence, to accomplish this task, questionnaires as primary data sources have been used to collect the information from respondents, which were selected in a purposive-random method and collected through interviews and questionnaires. The questionnaire is semi-structured to probe more information from the participants on their behavior and reasons for their behavior. The subjects to the questionnaire and interview are composed of three categories. The first group covers bank managers. The second group deals with parties to cheques, i.e., cheque drawers, holders in due courses, and payees other than the drawee bank. The last group consists of legal professionals: judges, prosecutors, detective police officers, and advocates. In addition, dozens of court cases have been assessed significantly.

1.9.3 Research Sampling

The sampling technique for each category is as follows:

- ✓ Concerning Banks, nine banks, namely the Commercial Bank of Ethiopia (CBE), Zemen, Dashin, Awash International, Bunna International, Abyssinia, Birhan International, United, Anbessa International Banks, and their regulator the NBE have been subjected to the research. To these banks, at least one questionnaire is distributed to and collected from one branch manager of the same bank.
- ✓ In the category of drawers and holders in due course, among those questionnaires that were distributed, physically and electronically, to different parts of the country, 46 respondents were used for the research.
- ✓ Regarding legal professionals, the researcher collected information from 9 judges, 17 senior advocates, 5 prosecutors, and 3 crime investigative police officers through interviews and questionnaires.
- ✓ 51 court cases [16 criminal cases, 19 civil cases, and 16 cassation cases] that are annexed at the end of the research have been deployed in the study.

1.9.4 Techniques of Data Analysis and Interpretation

After coding open-ended questions and cleaning for errors, the data analysis has been done in two ways. Firstly, the qualitative data were analyzed using the descriptive method considering the basic principles of laws and canons of interpreting statutes. Secondly, the quantitative data on

major issues were analyzed using percentages and other statistical tests.

1.9.5 Organization of Study

The research has four chapters. Chapter one deals with the proposal of the study consisting of *inter alia* background of the study, literature review, statement of the problem, and research questions. The second chapter explains the cheque's conceptual and legal frameworks globally and locally. The third chapter digs out the practical and legal problems about the cheque and the final chapter elucidates the result of the study which is conclusions and recommendations to respective bodies.

Chapter Two

The Conceptual and Legal Frameworks of Cheques: A Comparative Analysis

2.1 Historical Background of Cheques

In England, Professor Jenks figured out some documents showing negotiable instruments evolved during the 7th up to 10th centuries to avoid the strictness of the transfer law.¹⁸ Similarly, in India, during the Mauryan Empire between 321 BC and 185 BC, a commercial paper called the *adesha* was in use, an order to a banker ordering to pay the money written on the paper to a third party person.¹⁹

With regard to cheques, there is a piece of early evidence in the 11th century recorded by an Iranian traveler named Nasir-i Khosrau who visited the city of Basra (in Iraq) and ordered his bank to make a payment from his account.²⁰ The merchant's written instruction was called *sakk*, which was one of the first descriptions of a form of cheque payment.²¹ It's known that merchants of that time were long-distance traders who would confront the practical risk of losing or being stolen their money. This is because money, whether paper or coin, cannot be owned like a cloth or a piece of land, and the right to it passes by mere delivery. Hence, even if the owner of the lost money knows the serial number of the money or can identify his coins, he cannot claim them from the person who obtained them for value. Both theft and losing were the leading causes that tempted merchants to explore other mechanisms that would allow them to get money while traveling away without carrying their money with them.²² Cheque as a convenient form of payment between merchants became more versatile through the development of negotiability in the 16th century in Europe, the suppression of banknotes in the 18th century in England, and the 19th-century legislation of the USA that further promoted the use of cheques and eventually led to rapid expansion and nation's default payment method.²³ As the processing of cheques became

¹⁸ Ralph W. Aigler, 'Commercial Instruments, the Law Merchant and Negotiability' (1924) Minn L Rev Vol 8 No 5 361–362.

¹⁹ Reserve Bank of India, 'Evolution of Payment Systems in India' (1998) 1 <<https://m.rbi.org.in/scripts/PublicationsView.aspx?id=155>> accessed on July 15, 2021.

²⁰ Stephen Quinn and William Roberds, 'The Evolution of the Check as a Means of Payment: A Historical Survey' (2008) Federal Reserve Bank of Atlanta Economic Review, Vol 93 1.

²¹ *ibid.*

²² E.P. Ellinger, 'Travellers Cheque and the Law' (1969) University of Toronto Law Journal Vol 19 no 2 132.

²³ Quinn, (n 20) 2.

automated [in the 2nd half of the 20th century], the usage of the cheques was at its peak, and when electronic payments were introduced [in the early 1990s], the usage of the cheques decreased though it is still playing a pivotal role in the commerce.²⁴

There is no recorded and vivid history of cheque use in Ethiopia. However, some argue that the Bank of Abyssinia was allowed to engage in commercial banking, such as selling shares, accepting deposits and effecting cheque payments, and issuing currency notes in 1905.²⁵

2.2 The Definition of a Cheque

According to Gogna, the term cheque is defined as a bill of exchange, which is drawn upon a banker payable on demand.²⁶ Kuchhal and Harold Launtz also defined a cheque as a bill of exchange with two distinctive features: it is always drawn on a banker and payable on demand.²⁷ Thus, a cheque is an instrument instructing the banker to pay a specific amount of money from the cheque issuer's bank account to the person whose details are stated on the issued cheque or to the bearer. Another jurist, Ellinger, defined the term cheque as a negotiable instrument in writing containing an unconditional order, addressed to a banker, signed by the person who has deposited money with the banker, requiring him to pay on demand a certain sum of money only to or to the order of a particular person or the bearer of the instrument.²⁸

Relatedly, the Black's Law Dictionary defines a cheque as a written and signed document whereby a person, with available funds in a bank, orders the bank to pay a specific sum to a designated or entitled person.²⁹ Consequently, a cheque is a means of payment used in business, just like a cash payment or transfer. According to the Black's Law Dictionary, the person who directs a person or entity, usually a bank, to pay a sum of money stated in an instrument is called

²⁴ Payments NZ, 'Exploring the Use of Cheques in New Zealand' <<https://www.interest.co.nz/sites/default/files/Payments%20NZ%20cheques%20report.pdf>> accessed on July 17, 2021.

²⁵ Fasil Alemayohu, (n 14) 9.

²⁶ P.P.S. Gogna, *A Textbook of Mercantile Law* (3rd Edn, S. G and Company, 2005) 439

²⁷ M.C. Kuchal, *Mercantile Law* (5th edn, Vikas Publishing Private Ltd, 1999) 357; Harold Launtz, *Cheques as Mandates and as Bills*, (1997 University of Melbourne 1997) 2

²⁸ Ellinger, (n 22) 132.

²⁹ Bryan A. Garner, *Black's law dictionary* (2nd edn, West Publishing Co. 1910)

a *drawer*.³⁰ To put it differently, a drawer of a cheque means a bank customer who makes or issues the cheque against his cheque account in a bank. On the other hand, a *drawee* is defined by the Black's Law Dictionary as the person or entity that a cheque is directed to and that is requested to pay the amount stated on it. Therefore, the drawee is always a bank. Lastly, a *payee* has also been defined by the Black's Law Dictionary as the one to whom money is paid or payable. From this definition, it can be seen that in the instance of a cheque, the payee is usually the person whose name is on the cheque or the possessor of the cheque who may or may not be the bank's customer.

The above definition of a cheque goes in line with the definition of a cheque in most legal systems. The Bills of Exchange Act of the United Kingdom defines a cheque as a Bill of Exchange drawn on a banker payable on demand.³¹ In principle, statutory laws of negotiable instruments in Common Law Countries, and hence, their rules of cheques, are modeled on the Bill of Exchange Act of 1882.³² In Anglo-Saxon jurisdictions, the relevant laws precisely defined a cheque as an unconditional order in writing, addressed by one person (the drawer) payable on demand, in a sum certain in money, to the order of a specified person or the bearer.³³ According to Geva, the definition and usage of a cheque are similar worldwide though some countries make local variations.³⁴

In Ethiopian law, there is no clear definition of a cheque. However, the Ethiopian ComC defines negotiable instruments, in general, as a document incorporating a right to an entitlement that a person cannot enforce or transfer the right separately from the instrument.³⁵ The code also states that a negotiable instrument includes a promissory note, bill of exchange, and cheque. Looking into the requirements for the validity of a cheque under the ComC³⁶ stated as an *unconditional order to pay a sum certain in money* and the definition of the negotiable instrument mentioned earlier, one can reasonably deduce that the definition of a cheque in most legal systems is in line with the ComC of Ethiopia.

³⁰ Bryan A. Garner, *Black's law dictionary* (9th edn, West Publishing Co. 2009)

³¹ The Bills of Exchange Act 1882 sec III Art 73.

³² Benjamin Geva, 'Liability on a Cheque: A legal History' (2016) Osgoode Hall Law School, Vol 12 Paper 41 10.

³³ Benjamin Geva, *Bank Collection and Payment Transactions* (1st edn, Oxford University Press, 2012) 141

³⁴ *ibid.*

³⁵ ComC (n 5) Art 715(1).

³⁶ ComC (n 5) Art 827 - 828.

2.3 Features of Commercial Instruments vis-à-vis a Cheque: Similarities and Differences

Commercial Instruments, also known as Commercial Papers, are the most accepted and widely used type of negotiable instruments,³⁷ and for this reason, in most nations, the scope of negotiable instruments is restricted to commercial papers.³⁸ The Ethiopian ComC defines commercial papers as an instrument other than cash entitling the holder to pay a specified amount of money.³⁹ Thus, commercial papers are issued and transferred based on executing an agreement that can be achieved by payment of a certain sum of money to be used as a replacement for cash.

Under the Ethiopian ComC, commercial papers include bills of exchange, promissory notes, cheques, travelers' cheques, and warehouse goods deposit certificates.⁴⁰ However, the meaning of commercial instruments under the Ethiopian laws is much broader than those adopted by most legal systems, particularly those following the common law tradition. This is evident from the Uniform Commercial Code of the United States (UCC), the Bill of Exchanges Act of the UK, and the Negotiable Instruments Act of India, which restricts the concept to the bills of exchange, checks, and promissory notes, not to warehouse goods deposit certificate.⁴¹ Nevertheless, considering warehouse goods deposit certificates which evidence contracts of warehousing and the right to receive the goods warehoused, commercial instruments in Ethiopia do not seem to be under the meaning of commercial instruments, i.e., instruments containing the right to payment of money. Further, though prescribed in the Ethiopian law, it is not implemented so far.⁴²

³⁷ Though the ComC of Ethiopia under article 715(2) comprises transferable securities and documents of title to goods as a negotiable instrument, the holder of these instruments may be entitled to property or any other right than a sum of money that could not qualify as a commercial paper.

³⁸ Abraham Yohannes, 'Types of Negotiable Instruments' (2010) <<https://ethiopianlaw.weebly.com/blog/types-of-negotiable-instruments>> accessed on July 30, 2021.

³⁹ ComC (n 5) Art 732(1).

⁴⁰ ComC (n 5) Art 732(2).

⁴¹ The UCC (USA) 1963 Art 3: Bills of Exchange Act (UK) 1882 sec III: Negotiable Instruments Act (Indian) 1881 sec 13(1).

⁴² Bisrat Mulugeta, 'Warehouse Receipt System in Ethiopia' (AAU, 2011)

Due to the expensiveness and time-consuming process, and inbuilt security risk arising from the black market, travelers' cheques have been less used in the business arena.⁴³ Hence, the central standard features of most widely used commercial papers, i.e., bills of exchange, promissory notes, and cheques are enumerated as follows.

1 Negotiability

Generally, Commercial Papers are easily and freely transferable from one person to another several times before the final payment is made. Regularly, when we transfer property to someone, we have prerequisites to make a contract and a transfer deed, get it registered, pay stamp duty, etc. Nevertheless, such kind of formalities are not required while transferring a commercial instrument. When the paper is payable to the bearer, its ownership will be changed by mere delivery, and in the case of payable-to-order papers, its ownership will be changed by valid endorsement and delivery, without giving notice to the previous holder or a person liable to pay.⁴⁴

2 Holder's title free from all defects and presumption of a holder in due course

As far as the transferee has got the commercial paper in good faith and for consideration, he is called a *holder in due course* and will get a good title to the instrument notwithstanding any defect of title in the person from whom he took it.⁴⁵ In other words, it is not necessary to write in commercial papers the words like "for value received" or similar expressions because these instruments are presumed to have been made, drawn, accepted endorsed, negotiated, or transferred for consideration. Hence, consideration is presumed to have passed between the transferor and the transferee.

3 The right to Recovery

The transferee of a commercial paper is entitled to file a suit in his name for enforcing any right or claim based on the instrument by using a special procedure.⁴⁶

⁴³ Fritscher, Lisa. 'Disadvantages of Traveler's Checks When Traveling' (USA Today) <<https://traveltips.usatoday.com/disadvantages-travelers-checks-traveling-108262.html>> accessed on 6 September 2021.

⁴⁴ MBA knowledge base, 'Features of Negotiable Instruments' <<https://www.mbaknol.com/mercantile-law/features-of-negotiable-instruments/>> on August 10, 2021.

⁴⁵ QS Study, 'Features of Negotiable Instruments' <<https://qsstudy.com/business-studies/features-of-negotiable-instruments>> on August 10, 2021.

⁴⁶ MBA, (n 44).

4 It must be written and signed

Commercial papers must be in writing i.e., handwritten, typewritten, computer printout and engraving and signed by the drawer or the maker; if not, the instrument shall not be a valid one.⁴⁷

5 Exchange

Commercial papers are payable unconditionally at a time that is certain to arrive by a legal tender so that they are considered as a substitute for money and are accepted in exchange for goods because cash can be obtained at any moment by paying a small commission.⁴⁸ Even though commercial papers have identical features, they have some differences as well. From the above features, the main differences and similarities of commercial papers can be illustrated in the table below.

Features	Bill of Exchange	Promissory Note	Cheque
Parties	Drawer, Drawee, Payee	Promisor, Promisee	Drawer, Drawee, Payee
drawer and payee be same	Yes	No	Yes
Drawn by	Creditor	Debtor	Creditor
Drawn on	Any body	Any body	Only on a Banker
Order/promise	Order to pay	Promise to pay	Order to pay
Payable to bearer	Yes	No	Yes
Acceptance	Required	Required <i>iff</i> payable at a certain time after sight	Not Required
Liability of Maker	Secondary and conditional	Primary and absolute	Primary and absolute
Notice of dishonor	Necessary to be given to all parties involved	Not necessary	Not necessary
Stamp duty	Required	Required	Not Required

⁴⁷ MBA, (n 44).

⁴⁸ QS Study, (n 43).

Revocability	Not possible	Not possible	Possible
Can be Crossed	No	No	Yes
Printed form	Not necessary	Not necessary	Not necessary
Grace of period for payment	Yes	Yes	No
With Interest	Possible	Possible	Impossible
Usage as a pledge	Possible	Possible	Unclear (in Ethiopian Law)

2.4 Types of Cheques

In general, a cheque is versatile, legally certain, reasonably low cost, well understood, and widely accepted payment method accessible to anyone who can access a bank.⁴⁹ Nevertheless, there are different types of cheques based on the date written thereon, the time of presentment to the bank, the issuer, and the beneficiary of the cheque. Therefore, based on these essentials, let's explore the different types of cheques.

- 1. Bearer Cheques:-** This kind of cheque is payable to anyone whose name is specified in the cheque or who presents it to the bank for payment.⁵⁰ In this case, the bank will pay to the person bearing or carrying the cheque, notwithstanding the cheque was lost or stolen. Thus, if the cheque is lost or stolen, it will be as good as the loss or theft of cash for the founder or thief of the cheque, respectively. When a cheque has the word 'or bearer' printed on its front page and is not canceled, such cheque is called bearer cheque which is transferable by mere delivery.⁵¹ Bearer cheque is recognized under Article 833(1) (c), (2), and (3) of the Ethiopian ComC.
- 2. Order Cheques:-** is another type of cheque recognized in the Ethiopian ComC under Article 833(1) (a). If the word "bearer" does not appear on the face of a cheque or canceled and is

⁴⁹ Quinn, (n 18) 24-25.

⁵⁰ HDFC Bank, 'Types of Cheques: Know What are the Different Types of Cheques' <<https://www.hdfcbank.com/personal/resources/learning-centre/save/different-types-of-cheque-you-need-to-know>> accessed on July 30, 2021.

⁵¹ *ibid.*

replaced by the word "or order" on the face of the cheque, it becomes an order cheque.⁵² Such a cheque is payable to the person specified therein as a payee, or to anyone else to whom it is endorsed by signing on the back of it. Order cheque is safer than a bearer cheque but not as safe as any crossed cheque.⁵³

3. **Open Cheques:-** is an uncrossed bearer or order cheque that is payable at the bank's counter, but the drawer is required to put his signatures on the front and back sides of the cheque⁵⁴ that is not evidently recognized in Ethiopia.
4. **Crossed Cheques:-** if you see a cheque with two sloping parallel lines with or without words like 'not negotiable,⁵⁵ account payee,⁵⁶ payee only, & CO.' or any other similar words⁵⁷ placed either vertically across the cheque or on the top left-hand corner of the cheque, this is a cheque called generally crossed. However, if the cheque bears the banker's name between the two lines, with or without the aforementioned words, that addition shall be deemed to be a special crossing.⁵⁸ When a cheque is crossed it is a standard instruction for the banker to deposit the cheque directly to an account of the payee or the payment will only be made to an individual whose name is written on the cheque. In case of a special crossing, the paying banker will pay the amount of the cheque only to the banker whose name appears in the crossing or to his collecting agent.⁵⁹ The lines ensure that the cheque is mostly not endorsable and cannot be immediately cashed by the holder over the bank counter. By this, drawers can effectively protect the instrument from being stolen or cashed by unauthorized persons. A crossed cheque is the safer type of cheque because it ensures security to the payee as the banker credits only to the payee's account, and it reduces the danger of unentitled persons

⁵² Indian Money, 'Features of Cheque' <<https://indianmoney.com/articles/what-are-the-features-of-a-cheque>> accessed on July 30, 2021.

⁵³ Babakash, 'Types of Cheque' (GK Babaji, 2019) <<https://gkbabaji.com/types-of-cheque-pdf-download-banking-awareness/>> accessed on July 30, 2021.

⁵⁴ HDFC Bank, (n 50).

⁵⁵ ComC, (n 5) Art 865.

⁵⁶ ComC, (n 5) Art 867.

⁵⁷ ComC, (n 5) Art 863(3).

⁵⁸ ComC, (n 5) Art 863(3).

⁵⁹ HDFC Bank, (n 50); Babakash, (n 53).

cashing it. However, it has a disadvantage in its negotiability, especially when the cheque has words such as not negotiable, a/c payee, or payee only.

- 5. Ante-Dated Cheques:-** A cheque that has a date earlier than the drawing date or the date on which it is presented to the bank is considered an antedated cheque.⁶⁰ Suppose that today's date is July 20, 2021, but the drawer issued the cheque writing June 30, 2021, on it; this would be an ante-dated cheque. Such cheques have the possibility of shortening the validity period for being paid to the payee. A cheque can be cashed till six months expire from the date of drawing⁶¹ and issuing such an antedated cheque with the intent to expire the time for presentment would entail criminal liability.⁶² In other words, the mere fact that the cheque is antedated does not make it invalid unless otherwise, the issuer of the cheque intended to jeopardize the payee's interest by causing the rights contained in the cheque to lapse.
- 6. Post-Dated Cheques:-** A cheque that bears a date that is yet to come or, in simple words, a cheque that has a future date is known as a post-dated cheque.⁶³ The date written on it may be next week, month, year, or even years. Usually, PDCs have been drawn to effect advance payments, to secure future payments at a future time, to delay payments where a piece of work is not yet completed, to record the date of payment and the amount of the drawer's indebtedness or when the issuer of the PDC have less balance in his account but is bound by any future payment by any party.⁶⁴

Considering the date that appears on PDCs, whether PDCs are payable on demand or not, and the status of PDCs before their due date has been doubtful in many countries since many years ago.⁶⁵ In most Jurisdictions, PDCs can be presented to a bank for clearance or payment only on or after the date written on it. That means a PDCs cannot be honored earlier than the date on the cheque. Proponents of such an argument opine that since a cheque is a bill of exchange, drawn on a bank and payable on demand, it can be post-dated like a bill of

⁶⁰ Mahapatra S K, 'Types of Cheques' (Scribd , 2020) <<https://www.scribd.com/document/443306700/TYPES-OF-CHEQUES-docx>> accessed on July 20, 2021.

⁶¹ ComC, (n 5) Art 855.

⁶² Criminal Code (n 9) Art 692.

⁶³ Justin Pritchard, 'what is a post-dated check' (the balance, 2021) <<https://www.thebalance.com/postdated-checks-315335>> accessed on July 30, 2021.

⁶⁴ Philemon Makakaba, *The Status of Post-Dated Cheque Prior to the Post-Date* (2012) UNISA 627-628

⁶⁵ *ibid.*

exchange.⁶⁶ There is also a reason that the word “payable on demand” does not necessarily mean that a cheque can be cashed immediately but only on the date it bears or within a reasonable time from the date it bears so that a PDC can be a cheque on the arrival of the future date.⁶⁷ Though post-dated, a cheque is payable on demand, but it cannot be cashed until the date indicated on it arrives. If a bank makes a payment to favor the holder before the due date, it will not be permitted to deduct the drawer's account.

However, this tradition has been changing even in common law countries since 1978 when an Australian court ruled a case⁶⁸ that the true date of a PDC was the date of its issue, not the date written on it.⁶⁹ The court argued further that a valid cheque must have a date, but its validity should not be affected by the wrong [post] date being written upon it. This ruling was contradictory to the shared legal habits of that time in other common law countries such as the United States, England, New Zealand, and Canada.⁷⁰ The same is true, not only at that time but even now, in India⁷¹ and South Africa.⁷² Protagonists of such deliberation argue that if a cheque is not payable on demand, it violates the fundamental nature of a cheque in two ways. Firstly, payable on demand means an insistent and peremptory request that is made as of right⁷³ by the holder on the date that the PDC bears or within a reasonable time after the due date. Likely, those school of thought, advocating the free usage and commercial circulation of PDCs just like paper money, opposes the taught adhering of PDCs to formalism.⁷⁴ Secondly, if we draw a PDC and make it invalid before the date written on it,

⁶⁶ Vincent Verdun, 'Postdated Checks: An Old Problem with a New Solution in the Revised U.C.C.' (1991) Vol 14 UALR Law Journal 39, 39-40.

⁶⁷ James McLoughlin, *Introduction to Negotiable Instruments* (Butterworths 1975) 128–129; Leonard Cowen, Denis V. and Gering, *Crown on the Law of Negotiable Instruments in South Africa* (5edn, Juta 1985) 190.

⁶⁸ *Brien v Dwyer*, 141 C.L.R. 378 (Austl. 1978)

⁶⁹ Verdun, (n 66) 45.

⁷⁰ *ibid.*

⁷¹ Abhishek Sahoo, 'Sec. 138 NI Act Judgments of S.C. on Dishonor of Post Dated Cheques' (2019) <<https://www.myadvo.in/blog/dishonor-of-post-dated-cheques-supreme-courts-latest-judgment/>> accessed on July 30, 2021.

⁷² Makakaba, (n 62) 634-636.

⁷³ Catherine Soanes and Angus Stevenson, *Oxford Dictionary of English* (Oxford University Press 2003) 461.

⁷⁴ Bashar H. Malkawi, 'Contradictory Terms in Cheques: Formalism and Practice' (2018) BLJ 31 32-33.

thus we are changing the nature of the unconditional order of a cheque to be conditional, which is payable on the arrival of, either a long or short, future time.⁷⁵

In some countries such as the USA,⁷⁶ the debates are resolved by allowing certification of PDCs before the due date at the discretion of the holder to get assurance of future payment.⁷⁷

In this way, subsequent countermanding of the cheque by the drawer would be impossible, and payment is guaranteed. In Ethiopia, only the drawer is entitled to ask for certification of a cheque as per Article 832 of the ComC. The Revised Draft Uniform Commercial Code of the United States has also introduced a provision that:

- A. permits the banks to limit, contractually, their customer's right to issue PDCs;
- B. oblige the drawers to notify his issuance of PDCs to the drawee;
- C. relieve banks from liability for payment of premature PDCs unless the bank has received timely notice from the drawer that must arrive before the payee has brought the PDC to the bank.⁷⁸

In this way, PDCs are properly payable at the time they are presented without regard to the stated date unless the bank has notice of issuing a postdated cheque from the drawer. Under the Current working UCC of the USA, some states, including Georgia,⁷⁹ Kansas, Florida, Alabama, and Utah have their regional commercial laws that allow a bank to make payments for PDCs before the due date unless timely written notice is given to the bank.⁸⁰ Legal and bank professionals of pro payment of PDCs before the due date argue that PDCs must be paid as quickly as possible by enacting new laws or devising technological mechanisms that can make funds available to the payee faster. Currently, the CFPB of the USA gives banks

⁷⁵ Barkley Clark, *The Law of Bank Deposits Collections and* (3edn, 1990) 2.

⁷⁶ Oxford Reference, 'Marked Cheque' (2021) <<https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100134866>> accessed on August 29, 2021.

⁷⁷ Verdun, (n 66) 45.

⁷⁸ Verdun, (n 66) 54-57.

⁷⁹ Verdun, (n 66) 69-71.

⁸⁰ Peter Followill, 'What are the Consequences when a Recipient Cashes a Post-Dated Check Early?' (Nolo, Criminal Defense Lawyer) <<https://www.criminaldefenselawyer.com/resources/what-are-consequences-when-a-recipient-cashes-a-post->> accessed on July 30, 2021.

and credit unions the discretion to decide when to process PDCs without looking at their due date,⁸¹ and predominantly, banks are free to pay PDCs before the due date.⁸²

In the existing Ethiopian ComC, there is no explicit provision that governs whether PDCs are payable on demand or not, and the status of PDCs before their due date. If we take the definition and interpretation of a cheque as a bill of exchange drawn on a bank, the code acknowledges a bill of exchange to be post-dated⁸³ so that a cheque can be post-dated but will not be cashed before the due date. Some legal scholars and practitioners also assert Article 855 of the ComC, which states that a cheque must be presented within six months from the date thereof regardless of when the cheque was issued.⁸⁴ The latter provision shows that a cheque can be post-dated from the date of issuance up to the date that is written on the cheque. At the same time, other same persons argue that this provision is only to show the period of limitation for the presentment of a cheque and has nothing to do with PDCs as far as the code under Article 854 promulgated a cheque as payable at sight.⁸⁵

Finally, if we see the dilemma about the Geneva Convention Providing a Uniform Law for Cheques,⁸⁶ PDCs are payable on the date of presentment before their actual due date. However, the Convention gives broad discretion to nations to obey, limit, or expand the provisions of the Convention.

7. Stale Cheques:- When the validity period for presentment to a bank expires, a cheque becomes stale or too old.⁸⁷ After the expiry of such time, financial institutions don't cash a

⁸¹ Ashlee Kieler, 'Does Postdating a Check Prevent Anyone From Depositing It Early?' (CR Consumer Reports, 2015) <<https://www.consumerreports.org/consumerist/does-postdating-a-check-prevent-anyone-from-depositing-it-early/>> accessed on July 30, 2021; Consumer Financial Protection Bureau, 'Can a Bank or Credit Union Cash a Post-Dated Check Before the Date on the Check?' (CFPR, 2016) <<https://www.consumerfinance.gov/ask-cfpb/can-a-bank-or-credit-union-cash-a-post-dated-check-before-the-date-on-the-check-cn-967/>> accessed on July 30, 2021.

⁸² Pritchard, (n 63).

⁸³ com, (n 5) Art 855.

⁸⁴ Geza Ayele, (n 16) 165.

⁸⁵ Geza Ayele, (n 16) 166-167.

⁸⁶ U.N., 'The Geneva Convention Providing a Uniform Law for Cheques' (adopted March 19, 1931, entered into force January 1, 1934) Vol 143 p 355 Art 28

⁸⁷ All Banking Alerts, 'Difference between Stale Cheque, Ante Dated Cheque and Post Dated Cheque' (2020) <<http://allbankingalerts.com/difference-between-stale-cheque-ante-dated-cheque-and-post-dated-cheque/>> accessed on August 30, 2021.

cheque; instead, they return it to the holder, saying it is stale-dated. The validity period for the cheque is different in different countries. Most countries, including Ethiopia, prescribed six months as a validity period starting from the date shown on the cheque. But this trend seems to be changing in some countries like India that reduced from six months to three months.⁸⁸ In Ethiopia, concerned persons are seeking the same for which the longer validity period has exposed cheques to serve as a guaranty or security document for debts of the drawer or endorser.⁸⁹

8. Electronic Cheques:- These days, alternative payment methods to the commonly used paper money are to be seen in the light of the demand they have in daily business transactions. The issue of payment has already become a consumer behavior that concerns making choices among various payment technologies.⁹⁰ A cashless society is around the corner, as payments are becoming more digitalized like the other facets of life.⁹¹ Currently, financial institutions are investing more in technology and innovation with more flexible products and services to ensure their survival in the tough competition with mobile money-transferring companies. To this end, electronic cheques, also known as e-cheques, online cheques, internet cheques, and direct debit, have been introduced to perform the same function as conventional paper cheques.⁹² Such cheques use digital signatures that are based on public-key cryptography and replace handwritten signatures.⁹³ E-cheques are more beneficial than paper cheques in light of quick payment, controlling cash flow, saving money and time, safety and security of payments, compatibility with current accounting software, and ability to pay anytime from

⁸⁸ Reserve Bank of India, 'Payment of Cheques/Drafts/Pay Orders/Banker's Cheques' (R.B.I., 2011) <<https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=6805&Mode>> accessed on August 30, 2021.

⁸⁹ Geza Ayele, (n 16) 168.

⁹⁰ Xiao and others, 'Use of Payment Technology: A Perspective Based on Theory of Consumption Value' (ECIS Research in Progress Papers Paper 40, 2015) 4 <http://aisel.aisnet.org/ecis2015_rip/40?utm_source=aisel.aisnet.org%2Fecis2015_rip%2F40&utm_medium=PDF&utm_campaign=PDFCoverPages> accessed on August 29, 2021.

⁹¹ Fergal Carton and Jonas Hedman, 'The Second International Cashless Roundtable' (Research Gate, 2013) 53 <<https://www.researchgate.net/publication/256618008>> accessed on August 29, 2021.

⁹² Julia Kagan, 'Electronic Check' (Investopedia, 2020) <<https://www.investopedia.com/terms/e/electroniccheck.asp>> accessed on August 29, 2021.

⁹³ Dorin Haloca, 'Advantages of Electronic Cheques and their Adoption by the Elderly' (Research Gate, 2021) 1 <<https://www.researchgate.net/publication/348662661>> accessed on August 29, 2021.

anywhere.⁹⁴ Despite this reality, paper cheques continue to be the most commonly used type of non-cash payment instrument in the economies of developed countries such as the United States.⁹⁵ In developing countries like Ethiopia, payment through cash is still the most dominant medium of exchange, and electronic payment systems are at an embryonic stage.⁹⁶ Nonetheless, no law regulates e-cheques in Ethiopia.

2.5 Requirements for the Validity of Cheques

The drawer of a cheque creates a contractual relationship between himself and the recipient, and between himself and the banker that constitutes a cheque to be seen as having dual functions.⁹⁷ Firstly, it mandates the banker to debit the drawer's bank account with the amount of money written on the cheque. In this capacity, a cheque may be described as a mandate or authorization. Secondly, the issue of a cheque amounts to an undertaking by the drawer that up on presentment, the cheque will be paid, and if it is not, the drawer will compensate the holder of the cheque. In this capacity, the cheque functions as a species of commercial instrument.⁹⁸ Any person who has the contractual capacity and a certain amount of money in his bank account can engage in cheque transactions in Ethiopia through an agreement with the banker.⁹⁹

Though a cheque is not defined in the ComC of Ethiopia, there are specific requirements to be fulfilled to consider a cheque as a valid one. A cheque's primary goal is to serve as a vehicle for the transfer of money in addition to keeping records and minimizing the risk of loss, damage, and larceny of currencies, among others. In achieving the primary goal of the cheques, the Code illustrated the following requirements. These are:

- 1. Unconditional Order to Pay a Sum Certain in Money:** Since a cheque is payable at sight, it must be drawn as an unconditional order.¹⁰⁰ The drawer cannot attach any condition

⁹⁴ Haloca, (n 93) 2.

⁹⁵ Geoffrey R. Gerdes and Jack K. Walton, 'The Use of Checks and Other Non-cash Payment Instruments in the United States (Federal Reserve Bulletin, 2002) 1 <https://www.federalreserve.gov/pubs/bulletin/2002/0802_2nd.pdf> accessed August 29, 2021.

⁹⁶ Meaza Wondimu, 'The Practice of Electronic Banking in Ethiopia' (St. Merry University 2013) Viii.

⁹⁷ Ellinger and others, *Modern Banking Law* (2nd edn, Clarendon Press, Oxford 1994) 293-296 360.

⁹⁸ *ibid.*

⁹⁹ ComC, (n 5) Art 733.

¹⁰⁰ ComC, (n 5) Art 827(a).

whatsoever thereto or the cashing of a cheque should not be made dependent upon the happening or occurrence of a particular event or on the fulfillment of any condition. The words in the cheque must be like an order rather than a request, though the word 'order' doesn't need to be specifically mentioned therein. Moreover, the order to be written could not be anything else other than money, such as goods or securities. According to Article 835 of the ComC, the criterion of 'certain' extends to not writing interest on the amount on the cheque. When there is a discrepancy between the amount written in figure and words or expressed more than once that creates larger and smaller amounts, in both cases, the banker is entitled to pay the latter.¹⁰¹ Likewise, when there is no sufficient cover on the drawer's account, the banker may effect partial payment.¹⁰²

2. **Name of Drawee:** A cheque is always drawn on and is payable by a named bank¹⁰³ specified on the instrument itself. Therefore, only a customer of a recognized banker having a current or savings bank account is entitled to issue a cheque to his bank account. The name of the drawee banker must be indicated on the issued cheque. The drawee need not necessarily be a banker, but it may be an institution or establishment recognized by law as a banker.¹⁰⁴ However, some writers on the area argue that the Ethiopian law should be amended in such a way that a cheque should also be drawn on government and microfinance institutions to expand the usage of a cheque as a means of payment.¹⁰⁵
3. **Place of Payment:** The ComC requires a drawer to write the place of payment of the cheque. When it is not expressed, the cheque will not be invalid, but the place where the head office of the bank is situated will be deemed to be the place of payment. Nowadays, scholars are requesting for cancellation of this requirement from the commercial code as far as cheques are payable not only to the named bank but also to different commercial banks due to technological advancement¹⁰⁶ and The Ethiopian Automated Transfer System (EATS) that is implemented by the NBE and other commercial banks since 2011.

¹⁰¹ ComC, (n 5) Art 837.

¹⁰² ComC, (n 5) Art 859.

¹⁰³ com, (n 5) Art 827(b).

¹⁰⁴ ComC, (n 5) Art 829.

¹⁰⁵ Geza Ayele, (n 16) 166-170.

¹⁰⁶ Gezu Ayele, (n 16) 166-170.

- 4. Date and Place of Drawing:** A cheque should be dated at least to know whether it is stale or not. Furthermore, some writers argue that by pinpointing the date of the status of PDCs, a cheque will not be cashed before the date written on it, so it helps to know the cheque's validity. When the law says date, it must include the month, year, and specific date on which the cheque is drawn. Concerning the place of drawing, the law is silent as to the place of drawing. Some argue that it should be where the cheque has been handed over to the holder, while others argue that the drawer's bank account was opened should be a place of drawing by referring to Article 901 of the banking transactions part in the ComC.
- 5. Drawer's Signature:** A cheque does not have validity unless signed by the drawer.¹⁰⁷ The signature of the drawer on the cheque must tally with his specimen signature given to the bank at the time of opening his account. When unauthorized or fictitious persons sign a cheque, the cheque remains valid, and signatories would be liable just like the drawer.¹⁰⁸ The problem here is that the ComC does not clearly state how persons with a disability of eyesight or illiterates who cannot sign shall draw a cheque. Under Articles 733 and 734(3) of the ComC, any person who has contractual capacity is free to bind himself by commercial instruments and his consent should be evidenced by an authentic declaration on the instrument. In countries like India, banks are allowed to open cheque accounts with specific strict standards for illiterate and blind persons who are fully competent to enter into a contract like any other person.¹⁰⁹

2.6 Endorsement of Cheques

Endorsement is a special transfer of intangible rights in a negotiable instrument¹¹⁰ that entails the delivery of the cheque to a person who becomes a holder of the cheque. During endorsement, the nature of the unconditional order of cheque would not be changed.¹¹¹ A cheque can be endorsed

¹⁰⁷ ComC, (n 5) Art 734 827(e) 828.

¹⁰⁸ ComC, (n 5) Art 838.

¹⁰⁹ The Institute of Company Secretaries of India, 'Banking law and Practice' (module 3, 2019) 136 159 296 332 <https://www.icsi.edu/media/webmodules/BANKING_LAW_AND_PRACTISE_30112018.pdf> accessed on August 29, 2021.

¹¹⁰ James E. Byrne, 'Negotiation in Letter of Credit Practice and Law: The Evolution of the Doctrine' (2007) TILJ Vol 42 563-564: ComC Art 842.

¹¹¹ ComC, (n 5) Art 843.

by signing on the back of the cheque or a slip affixed to it.¹¹² In the course of endorsement, a cheque may not be endorsed partially, and bearer cheques may not be changed into an order cheque either.¹¹³ A cheque may be endorsed even to the drawer of a cheque or to any person liable under the cheque, who may re-endorse the cheque.¹¹⁴ However, an endorsement by the drawee is prohibited under the ComC.¹¹⁵ Endorsement of a cheque entitles the endorsee to claim the cheque as if it were payable directly to him.

2.7 Countermanding of Cheque Payment

If the drawee is ordered not to pay a particular cheque by the drawer before the cheque is born, it cannot be paid as per Article 857 of the ComC. The discretion of the bank to refuse the stop payment order of the drawer seems to have a different meaning in the English and Amharic versions of the ComC. In the English version, it looks compulsory for the bank to accept the order of the drawer. In contrast, in the Amharic version, the official working code seems optional for the bank to accept the stop payment order or reject it. The mechanical understanding of this provision creates difficulty in the use of cheques. Above all, the code doesn't set any grounds to make a stop payment order and the manner [written, oral, telephone, email, or fax...] in which the drawer should give the order to the bank. In this regard, the drawer may stop the cheque payment without sufficient cause to not pay to the holder or escape other liabilities. However, the drawer of a bill of exchange is entitled to oppose a payment of a bill only when the bill is lost or the holder becomes bankrupt.¹¹⁶ In some areas, the ComC refers to the provisions of the bill of exchange to be applicable to cheques.¹¹⁷ However, unless it is interpreted by pooling the principles of legal interpretation of laws, the code doesn't refer to the applicability of the provisions of the bill of exchange about stopping payment orders for cheques.

In 2016, the NBE enacted a directive¹¹⁸ to fill the gap in the ComC, stating that a bank may not

¹¹² ComC, (n 5) Art 844.

¹¹³ ComC, (n 5) Art 843.

¹¹⁴ ComC, (n 5) Art 842/3/

¹¹⁵ ComC, (n 5) Art 843/3/

¹¹⁶ ComC, (n 5) Art 779.

¹¹⁷ As per article 853 of the commercial code, provisions relating to acceptance for the honor of the bill of exchange stated under article 766 up to 768 shall also apply to the cheque.

¹¹⁸ NBE, (n 10) Art 6.

accept a stop payment order request for the mere purpose of evading the administrative punishments stipulated in the directive. Hence, a stop payment order request (1) without having sufficient cover at the issuing and/or presentment date, (2) fails to produce police evidence of theft or loss of the cheque within 15 working days from the date of presentment, will be considered to have been made to escape penalties. For this reason, banks are prohibited from accepting or rejecting an order based on any other reason other than those mentioned earlier. According to this scenario, anyone who contravenes the directive will be criminally liable¹¹⁹ on top of and in addition to administrative measures to be imposed on him/her. If the cheque was taken from the drawer for reasons of duress, fraud, or intimidation, the directive seems vague, and the request to accept or reject is subject to the interpretation of the bankers.

2.8 Liabilities and Remedies of Parties to Cheques

Different legal systems have their ways of handling the possible consequences of dishonoring cheques. There are two types of dishonoring of a cheque, i.e., rightful and wrongful dishonoring.¹²⁰ Where a cheque is rightfully dishonored, it may not entail any liability. However, where a cheque is dishonored wrongfully, it entails the liabilities of and remedies to parties which are dealt with herein below.

1 Drawer: The drawer is obliged to draw a cheque only if he has sufficient funds in his account¹²¹ and to this effect, he is compelled, legally, to guarantee the payment of the cheque.¹²² The law provides that payment in due course discharges a cheque. Payment in due course means payment by the drawee to the holder in good faith and without notice of any defect in the holder's title. The paid cheque thereupon ceases to be a negotiable and commercial instrument. However, once a cheque is presented for payment and dishonored by the drawee, the drawer is bound to compensate the holder.¹²³ In such cases, the holder is allowed, at his option, to lodge civil suits against the drawer and/or previous endorsers using

¹¹⁹ The Criminal Code (n 9) Art 787.

¹²⁰ Sindhu A, 'Legal remedies for dishonour of cheque' (I.T.J., 2020) <https://lawtimesjournal.in/legal-remedies-for-dishonour-of-cheque/#_edn1> accessed on September 1, 2021.

¹²¹ ComC, (n 5) Art 830(1).

¹²² ComC, (n 5) Art 840.

¹²³ ComC, (n 5) Art 868.

a special procedure.¹²⁴ When a cheque is dishonored due to insufficient funds, the drawer shall be criminally liable under Articles 693 and 787 of the Criminal Code. By these provisions, only the act of drawing a cheque without cover, intentionally or negligently, entails a punishable offense. What would be the fate of the transferor of the cheque who transferred it, knowingly, that it does not have a cover, or after he is well informed by the drawee that the cheque is bad? In some foreign jurisdictions, like the USA, their criminal justice system includes uttering, delivering, or passing bad cheques as an offense.¹²⁵ Furthermore, the drawer is subject to administrative measures that start with a fine, entering into the delinquency list, and then extend to preclusion from opening a cheque account in any commercial bank in Ethiopia.¹²⁶

- 2 Drawee:** The legal relationship that exists between the banker and its customer is that of a debtor and a creditor.¹²⁷ Regarding the drawing and payment of cheques against the customer's account, however, the legal relationship between the drawee and its customer is that of the principal and agent.¹²⁸ A bank on which the cheque was drawn has a liability both to the drawer and the payee. Therefore, the banker should ensure the cheque is regular in all respects and take the necessary precautions while paying his customer's cheque. By so doing, making payment in good faith, without negligence, and as per regular business practices would discharge the drawee from any liability,¹²⁹ and effecting payment contravening its legal duty would result in compensating the drawer up to the amount of the cheque.¹³⁰ Among the precautions that a drawee should take is examining whether the drawer signs the cheque. However, the Ethiopian ComC under Article 860 binds the drawee to verify the signature of the endorsee, omitting how the bank can verify a signature of someone who is not its previous customer.

¹²⁴ The Civil Procedure Code Ext Ord Dec No 165 Neg Gaz 1965 Art 284.

¹²⁵ James E. Crowe Jr. 'Insufficient Funds Checks in the Criminal Area: Elements, Issues, and Proposals and Proposals' (Mo L Rev, 1973) Vol 38 432 <<https://core.ac.uk/download/pdf/217042047.pdf>> accessed on August 30, 2021.

¹²⁶ NBE, (n 10).

¹²⁷ Hapgood, Mark, and John R. Paget, *Paget's Law of Banking* (13th edn, Butterworths 2007) 468.

¹²⁸ *ibid.*

¹²⁹ ComC, (n 5) Art 861, Art 866(2)(3).

¹³⁰ ComC, (n 5) Art 866(1).

Instead of a healthy banker-customer relationship, the drawee has a contractual and/or legal duty to dishonor its customer's cheques based on a valid reason. Therefore, when the drawee dishonored a cheque due to its [employee's] mistake or negligence, it reasonably attracts the liability to compensate for the loss suffered by the drawer.¹³¹ It's known that payment and collection of cheques are some of the significant functions that bankers perform for their customers. When they are doing so, bankers undertake risky and onerous responsibilities facing high perils. Thus, the banker is legally responsible to its customers for any damages caused by any wrongful dishonor of a duly issued and regular cheque. In such instances, the ComC of Ethiopia is silent about measures to be taken and the damages to be paid either to the drawer or the holder when the cheque is dishonored wrongly by the drawee. However, bankers would find it difficult to carry on their business if they had no legal protection against such unlimited and widespread legal liabilities, which might be criminal or civil. In recognition of this, some foreign laws, such as the UCC of the United States, include a provision that deals with the measurement of damages and its limitations for wrongful dishonor of a regular and duly presented cheque.¹³² In the Code, the legal liability of the drawee is limited to the results of actual damages due to the wrongful refusal of payment, be it partial or otherwise.

The same is true when the drawee affects a payment due to a fraudulent act of the payee; the ComC does not stipulate the amount to be claimed and the period of limitation to lodge such claims against the wrongdoer payee. One may argue that the general provisions of unlawful enrichment and undue payments of the Civil Code(CC)¹³³ could apply to the claims of the drawee. However, the problem is that the CC does not have a provision for a period of limitation in its unlawful enrichment section. For this reason, the Federal Supreme Court came up with different interpretations, firstly two years¹³⁴ and then ten years¹³⁵ at different times. Therefore, the ComC should prescribe its explicit provisions for such claims of the drawee.

¹³¹ Sindhu, (n 120).

¹³² The UCC (n 41).

¹³³ The Civil Code Proc No 165 Neg Gaz 1960 Art 2162-2178

¹³⁴ *Megertu Negasa V Tsehay Liga* [2008] FSC 34406 Vol 6 225.

¹³⁵ *Solomon Kassa V Ayalnesh Sifra* [2013] FSC 78629, Vol 22 395.

3 Payee: The holder of a cheque or any person who signed the cheque, has taken it up, and paid it is entitled to the right of recourse against the drawer, endorsers, and other parties on the cheque, be it jointly and severally.¹³⁶ This right of recourse includes the amount on the cheque, its legal interest, expenses, and a commission not exceeding one-third percent of the amount on the cheque. The rights of these claimants would be barred if they fail to lodge their claims within six months after the expiry date for the presentment of the cheque. However, this period is only applicable for cheques that are duly presented and dishonored by the drawee. The fate of cheques that are not presented on time to the bank would be claimed in a regular civil suit of unlawful enrichment by presenting the cheque as documentary evidence, not as a commercial paper.¹³⁷ Unlike the right of the drawee, according to Article 881(3) of the ComC, the right of the holder to lodge a suit against the bank is limited to three years from the expiry of the time for presentment.

¹³⁶ ComC, (n 5) Art 868-876.

¹³⁷ ComC, (n 5) Art 886, Art 799: *Ambasel Trade Works PLC V Abdulkadir Juhar* [2008] FSC 40173, Vol 12 491.

Chapter Three

Practical Application and Interpretations of Cheque: A Dissonance

3.1 Appropriateness of Cassation Decisions Vis-à-vis Opinion of Legal Professionals and Stands of Lower Courts

3.1.1 In Civil Cassation Bench Decisions

Almost ten years ago, Ethiopian judges had a deep-rooted common understanding that cheques do not serve as a guaranty, and defenses based on such assertions had no acceptance.¹³⁸ However, this trend has been changing after the CB of the FSC gave a binding interpretation in one case in 2008.¹³⁹ In that case, the plaintiff brought a court action against the defendant for a dishonored cheque due to insufficiency of cover. The defendant asked the Federal First Instance Court (FFIC) to permit him to raise as a defense that he gave the cheque to the defendant as a guaranty in an arbitration between her daughter and the plaintiff. The court rejected his request, stating that a cheque can not be given as a guaranty. The defendant appealed to the Federal High Court (FHC) but was unsuccessful and appealed to the FSCCB. The CB, by majority vote, ruled the case that a defendant who raised a defense stating that the cheque was given to the plaintiff as a guaranty is permissible under Articles 717 and 850 of the ComC. The ruling of the court was based on two reasons. Firstly, a defendant is not prohibited from invoking the issue of giving a cheque for security as a defense under Article 850. Secondly, Articles 827, 840, and 854 of the ComC do not prevent a cheque from being given as a guaranty for which personal relations typically mean a legal relationship arising from a law or a contract between the two parties. On the other hand, the dissenting ruling of the court was based on the nature and purpose of a cheque, i.e., a cheque is payable at sight, and making any conditionality to its payment is unacceptable as per Article 827(a) and 840 of the ComC. The dissenting opinion further noted that the defense of personal relations must be interpreted narrowly, unlike the majority's ruling. In 2009, the FSCCB reiterated the same holding, stating that a contract of sale, which was the reason for drawing the cheque, could be set up as a defense of personal relations among the litigants.¹⁴⁰

¹³⁸ Yosef Aemiro, (n 15).

¹³⁹ Mohamed Adem (n 7).

¹⁴⁰ *Brand New Technical and Vocational Training Center PLC V Mesfin Tadesse* [2009] FSC 43315 Vol 9 146.

Two years later, on 10th December 2010, however, the FSCCB decided in another case¹⁴¹ that defenses arising from a contractual agreement of construction on which the cheque is issued cannot be used as personal defenses under Article 717 of the ComC for payment of dishonored cheque, but rather the defendant could lodge a separate civil suit based on the contract which is the basis for the issuance of the cheque. In this decision, the court neither referred to nor reversed the previous cassation decisions. In a similar set of facts in India, the Indian Supreme Court ruled that a defendant who raised a defense of drawing the cheque for guaranty would be liable for dishonoring the cheque even if the cheque was issued in the discharge of his role as a guarantor.¹⁴²

The CB ruled on the same issue in 2014 to the effect that the existence of a contract of construction which was the reason for drawing the cheque as a guaranty, could be used as a defense under personal relations and courts should decide the case of dishonored cheque looking into the performance of the contract made between the litigants with no need to file a separate civil suit.¹⁴³

As per Articles 717 and 850 of the ComC, the defendant cannot set up against the plaintiff defenses founded on their relations unless the plaintiff, in acquiring the cheque, has knowingly acted to the defendant's detriment. These provisions of the Code are identical to Article 22 of The Geneva Convention Providing a Uniform Law for Cheques of 1931 and Article 17 of the Geneva Uniform Law on Bills of Exchange and Promissory Notes of 1930. However, neither the International Conventions nor the ComC define what constitutes personal relations and knowingly acting to the debtor's detriment, which is subject to the court's interpretation. In some pieces of literature, the defense of personal relations is deduced to denote the '*absence or failure of consideration*' that the plaintiff's act renders him prejudiced benefit.¹⁴⁴ Other scholars limit the same defenses to abuse of power, cheating, fraud, or any other illegal acts of the plaintiff only.¹⁴⁵

¹⁴¹ *Tiruwork Zegenu V Gidey Abraha* [2010] FSC 55077, Vol 12 501.

¹⁴² *ICDS Ltd. V Beena Shabeer*, [2002] India Supreme Court (6) SCC 426.

¹⁴³ *Luhan Engineering Construction PLC V Macro General Contractor PLC* [2014] FSC 90434, Vol 16 67.

¹⁴⁴ Francis M. Burdick, 'Real and Personal Defenses in Actions on Negotiable Paper' (1918), *Cornell Law Review*) Vol 3 no 3 171-177.

¹⁴⁵ Bruno H. Greene, 'Personal Defenses Under the Geneva Uniform Law on Bills of Exchange and Promissory Notes: A Comparison,' (Winter 1962-1963) *Marquette Law Review* Vol 46 no 3 282-287; C.J Nagel and JT

In Ethiopia, both a bill of exchange and a promissory note can serve as a pledge, and the term personal relations may have to be interpreted broadly. Still, there is no permissive or prohibitory provision concerning cheques, thus creating confusion among practitioners as to whether to be construed narrowly or broadly.

3.1.2 In Criminal Cassation Bench Decisions

Until recently, the defense of giving a cheque as a guaranty in the criminal justice system of Ethiopia has had a different interpretation. So far, the CB has decided on six¹⁴⁶ published cases. In all of them, the ruling seems the same, consistent and cogent. In those cases, the CB interpreted that insufficiency of the fund when the cheque was issued or presented to a bank is enough to convict a person accused of drawing a bad cheque, irrespective of the defense of drawing the cheque for a guaranty purpose. The response to questionnaires collected from three judges of the criminal bench showed that giving a cheque as a guaranty will not forgive the accused person for the crime of drawing a cheque without cover. Likewise, all the public prosecutors who responded to the questionnaire distributed have answered that rejecting the defense of the accused founded on the giving of the cheque as a guaranty is acceptable and in line with the law. When we see how lower criminal (first instance and appellate) courts decided the six criminal cassation cases, the researcher found that only one court¹⁴⁷ ruled by accepting the argument that giving the cheque as a guaranty would exonerate the accused from criminal liability, in addition to other reasons. However, this court's decision was reversed immediately by the CB's decision. From these criminal cases' perspective, a cheque is payable on sight and it cannot be issued for a guaranty purpose.

However, this long-standing stand of the CB was changed in a recent case¹⁴⁸ decided on 5th August 2021. In that case, as per Article 26 of the Federal Courts Proclamation No. 1234/2021, a

Pretorius, 'Countermanding bank and guaranteed cheques' in Visser C. and Pretorius JT, *Essays in honor of Frans Malan* (1st edn, LexisNexis 2014) 247-256

¹⁴⁶ *Adugna Ambel V Federal Public Prosecutor* [2011] FSC 67947 Vol 12 246; *Solomon Desalegn V South Region Public Prosecutor* [2014] FSC 95438 Vol 16 262; *Federal Public Prosecutor V Belachew Nigagie* [2015] FSC 98060 [25th May 2015]; *Shibeshi Gebru V Federal Public Prosecutor* [2017] FSC 126646 [7th December 2017]; *Federal Public Prosecutor V Asegid Ababore* [2018] FSC 149071 Vol 23 421; *Federal Public Prosecutor V Afrano Hylie* [2018] FSC 152755 Vol 23 439.

¹⁴⁷ *Belachew Nigagie V Federal Public Prosecutor* [2013] FSC 98060 [9th December 2013].

¹⁴⁸ *Federal Public Prosecutor V Yeshiemebet Tilahun* [2021] FSC 161448 Vol 25 450.

group of 7 judges presided over by the Chief of Justice (President) of the FSC, amended the interpretation previously given in file No. 67947. According to this recent ruling, a cheque given for a guaranty purpose that fulfills the requirements of a valid contract of pledge stated under Article 952 of the ComC, and Article 2864 up to 2866 of the CC could be raised as a personal defense, and ultimately, would exonerate the accused from criminal liability too.

3.1.3 Appropriateness of the Cassation Decisions: The Views of Practicing Lawyers

In his article, an ex-senior commercial bench judge, law school teacher, and currently a renowned advocate, Yosef Aemiro, opposed the CB decision in file No. 24435.¹⁴⁹ He also anticipated that this decision could harm the acceptability of cheques as a means of payment in place of cash. Yosef condemned the ruling of the CB based on three grounds. Primarily, as per Article 1920 and the following of the CC, a contract of guaranty or security, be it surety or pledge, could only be discharged if the debtor fails to perform his duty to his creditor. That means the guarantor's duty to pay depends on the condition of the debtor's failure to discharge his obligations. Yosef contends that putting any conditionality when the cheque is issued or endorsed shall have no effect as per Articles 827(a) and 840 of the ComC. Yosef further argued that once a cheque is payable at sight, it has the effect of prohibition not to be given as a guaranty.

Another writer, law school teacher, and Addis International Bank's legal head, Gezu Ayele, rejected the CB's decision.¹⁵⁰ He argued that the CB's decision led to raising every contractual dealing between the litigants as a defense and to the use of cheques as security instruments instead of its very nature as substitute money.

Among the 31 judges, prosecutors, and advocates sampled, 88% of them answered that they don't accept the interpretation of the CB. These respondents to the questionnaire further answered that the CB's ruling is against the nature and purpose of cheques, for cheques do not serve as a guaranty. They said that such a defense should be avoided from the very beginning of the trial. In addition to the respondents to the questionnaire, the writer interviewed ex-senior commercial bench judges, Sentayehu Zeleke¹⁵¹ and Mehari Gebremedhin¹⁵², and they both told

¹⁴⁹ Yosef Aemiro, (n 15).

¹⁵⁰ Gezu Ayele, (n 16) 148-149.

¹⁵¹ Interview with Sintayehu Zeleke, Advocate (Addis Abeba, 2nd September 2021)

¹⁵² Interview with Mehari Gebremedhin, Judge, FHC (Addis Abeba, 2nd September 2021)

me that there were cases decided against the ruling of the CB, though it is compulsory to be applicable as a precedent for similar cases throughout the country. The Interviewees further said that...

“The Commercial Code allows a bill of exchange to be used as a pledge under Article 754. The same is true for the promissory note by which the legislature makes a cross-reference from Article 825(1)(a) of the promissory note part to Article 754 of the bill of exchange part. However, the legislator did not intentionally make such a reference to the cheque under Article 886 while making another cross-reference to some other provisions of the bill of exchange. So that means the intent of the lawmaker was clear that it prohibited a cheque from being used as a pledge.”

Additionally, the interviewees noted that they agree with the conclusion of the dissenting opinion in the CB decision, along with the explanation given by Yosef Aemiro in his article mentioned above. Furthermore, they expressed that the ruling of the majority vote is not cogent, and nowadays it is disrupting the application of the ComC relating to the issue in lower courts.

3.1.4 The Binding Effect of the Cassation Bench Decision on Lower Courts

When we see how the lower courts have entertained the above controversial CB decision, out of 19 civil court cases that have been sampled, three courts have accepted the defense of using a cheque as a guaranty. On the other hand, nine courts have rejected the defendant's defense, mentioning Articles 827, 840, and 854 of the ComC, which instructs that the cheque is payable at sight with no conditions at all. The remaining 7 cases were decided on different issues.

3.2 Factors that Reduce the Acceptability of Cheques

3.2.1 Jurisdiction on Investigation of Cheque Fraud

Regarding the jurisdiction of criminal investigation for cheque fraud, neither the Criminal Procedure Code nor any subordinate legislation provides any particular regulation. According to Article 25 of the Criminal Code and Articles 99 to 102 of the Criminal Procedure Code,¹⁵³ offenses shall be tried by the court within the local limits of whose jurisdiction it was committed. If the court in whose jurisdiction has the power to adjudicate, someone can reasonably infer that a police station within that court's jurisdiction can have the ability to investigate the offense. The two independent material elements in cheque fraud are the place of drawing, where the cheque is

¹⁵³ The Criminal Procedure Code Proc No 185 Neg Gaz 1961 Art 99-102.

handed over to the payee, and the place of presentment, where the cheque is known as a bad cheque. Thus, the police station situated at the place where the cheque is issued and given to the holder or presented for payment and recognized as a bad cheque shall have the local jurisdiction to investigate the crime.

In practice, all prosecutors who responded to the questionnaire said that police officers do not accept an accusation made by the holder even if the cheque was issued and handed over to the payee within their locality. In other words, the holder can lodge his complaint only at the police station situated near the bank where the drawer has opened his cheque account. A trader called Yohanis Birhane,¹⁵⁴ in the field of rental of construction machinery in Addis Abeba, who experienced such an instance, remembers that he made a contract with a person who came from Negele Borena of the Oromia region. Yohanis received a PDC drawn on an account opened in the CBE Negele Borena branch instead of his excavator delivered to the lessee. The contract did not go well, and Yohanis asked his CBE bank in Addis Abeba to cash the cheque. The bank told Yohanis that there was no sufficient cover. Then, Yohanis asked for a certificate of dishonor of the cheque, but his bank advised him that to get that certificate, he had to go to the head office of the CBE or the Negele Borena branch, where the drawer's account was opened. Yohanis went to the head office of the CBE and got the certificate of dishonor. Next, Yohanis went to the Bole Sub City Police Department of the Addis Ababa Police Commission, a police station near his office, where the cheque was given to him, and the rental contract was signed. However, the Police Department rejected his complaint about a criminal investigation of a dishonored cheque. Instead, he was advised to submit to a police station found near the CBE Negele Borena branch, which is approximately 600 km away from Addis Abeba. In an interview with a person who served as a detective¹⁵⁵ for more than 20 years in Addis Abeba, he affirmed the above allegation made by Yohanis and the prosecutors. Inspector Zerihun mentioned that there is no written procedure to reject the complaints of the holders of a cheque. Still, it was because of an oral pronouncement decided ten years ago in a meeting with Addis Abeba Police Commissioners at a city level, and has now become a binding trend.

¹⁵⁴ Interview with Yohanis Birhane, businessman (Addis Abeba, 10th September 2021)

¹⁵⁵ Interview with Inspector Zerihun Tefera, Deputy Head of Crime Investigation Division, Yeka Police Department, Addis Abeba Police Commission (Addis Abeba, 9th September 2021)

3.2.2 Anomalies in Banks' Application of the Law

3.2.2.1 Status of PDCs

As the writer stated in chapter two, there is no clear provision that governs the status of PDCs before their due date as to whether PDCs are payable on demand or not. All the respondents to the questionnaire answered that in practice, banks don't cash PDCs before the date written thereon, nor a cheque issued without a date. Equally, the respondents said that there is, totally, no practice of certification of PDCs upon the holder's request before the maturity date, nor is there a directive of the NBE that allows doing so, let alone by the request of the holder, even upon the request of the drawer. In the questionnaire, most of the respondents from banks responded that PDCs are the most abused type of cheque, and the reason they mostly heard from drawers was that the cheques were given as a guaranty, not to be cashed by anyone. To this effect, 65% of them responded that drawing PDCs should be prohibited, while 35% of them said that it should continue as it is. When I triangulate the response of bank managers with that of two interviewed legal professionals, the interviewees confirm that it's PDCs that are misused in practice, and they shall be outlawed. In this regard, the data collected from the questionnaire of all legal professionals is 77% to 23%. More than three-quarters of them believe that it should be prohibited, while the remaining think that its continuation could facilitate commercial transactions in the field.

3.2.2.2 Asking for a Confirmation

Another point about PDCs that the writer got from some bank managers is that banks enter into a contract with their customers that compels the bank to get confirmation from their customers before honoring and paying a cheque. Likewise, the researcher asked them if they have a provision that limits their customer not to issuing PDCs or relieve the bank if it paid PDCs or due to the drawer's failure to notify the issuance of PDCs. They answered the question, stating that there is no such practice in the sampled banks. According to the bank managers, the mandate to ask for confirmation before payment derives from a contract. A few banks have an internal directive that forces them to ask for confirmation, provided that the payment is huge or the cheque seems suspicious to the teller. For example, 88% of the respondents answered that a cheque for the writing of which pens of different colors were used amounts to be suspicious cheque. All of the respondents also said that a cheque written in red ink is not entitled to be cashed. In both cases, the respondents endorsed that the practices of banks have an impact on

people's reliance on cheques. Among the sampled court cases, the case of Solomon¹⁵⁶ proves the practice perfectly. Solomon received a cheque from Seid and then presented it to the bank, but the bank asked him to bring a confirmation letter from Seid. Solomon went back and asked Seid to write the letter. Then, Seid wrote the letter and handed it over to Solomon. Solomon went back to the bank and asked for payment. The bank replied to Solomon that the letter had an error while mentioning Seid's account number. Then finally, Solomon thought that both Seid and the bank were tricking him and sued them to repay him, jointly and severally. The court decided against Seid but relieved the bank, stating that asking to bring a confirmation letter or correct that letter has been a regular banking practice and was conducted as per the contract signed between Seid and the bank.

3.2.2.3 Grounds and Means of Countermanding of Cheques

As per Article 857 of the ComC, it cannot be paid if a bank is ordered not to pay a particular cheque by the drawer. The Code neither specifies a reason for countermanding nor the way to countermand the cheque. According to the NBE's Cheque Account Operations Directive, countermanding with the mere purpose of evading the administrative punishments stipulated in the directive is unacceptable. For the Directive, countermanding with no sufficient cover or due to loss or theft of a cheque without police evidence within 15 working days shall amount to escaping from the administrative punishments. In practice, 53% of all bank managers responded that they also accept reasons other than loss or theft of the cheque, like a cheque taken away from the drawer by fraud, duress, or intimidation, as long as the drawer supported the allegation with evidence. However, the managers said that they don't accept countermanding of cheques from an endorser or a holder of a cheque based on the same reasons. In other words, banks only accept countermands made by the drawer. 91% of the bank managers also said that they accept countermanding made by phone call or email, but must be supported as quickly as possible by a written letter from the drawer. When the drawer's account is suspended for different reasons, most of the sampled managers of the banks said that they might notify drawers by any convenient means, including phone, email, fax, or text message. 35% of the bank managers witnessed that they occasionally encountered drawers who wrote a cheque unaware that their account had been suspended. Such drawers accuse the bank of failing to notify them properly.

¹⁵⁶ *Solomon Simachew V Seid Damitie* [2021] FHC 251776.

However, bank managers dismissed the drawers' accusation that the directive of the NBE doesn't require them to send a written letter to every drawer's office, other than notifying the drawer according to their agreement. The managers said that mostly they are duty-bound to make a call to inform the drawer to collect a letter of suspension from the bank. They further added that if any communication means fail to reach the drawer, it is up to the drawer's responsibility to be accessible.

3.2.2.4 Discrepancy of Amounts

Though the ComC stipulated a scheme to effect payment of cheques that have incongruity between the amount in words and figures or repetitive amounts, I found out that all sampled banks regularly return such cheques unpaid with an answer "words and figures differ, or amount is not clear." The bank managers said the refusal to make payment is because of the NBE's circular distributed to all banks. As the managers alleged, the NBE's circular prescribed that when there is a discrepancy, the cheque must be returned by giving a code of 02 for duplication of payment and 34 for a difference in the amount in words and figures.¹⁵⁷ Nevertheless, the ComC is clear that when there is a discrepancy between the amount written in the figure and in words or expressed more than once, that creates a more significant and smaller amount; in both cases, the banker is entitled to pay the latter one.¹⁵⁸ If we examine the NBE's circular in light of the NBE's Cheque Account Operations Directive, the latter prescribes reasons for making stoppage of payment of cheques, which the ComC failed to mention. In this way, we can say that the NBE came up with its reasons to fill the ComC's gap. Conversely, the circular distributed to all banks is found to be in clear contradiction with what the Code prescribed under Article 837.

3.2.2.5 Partial Payment

Although the ComC permits a holder who requested to be paid to the extent of the amount in the drawer's account, all bank managers who responded to my questionnaire answered that they refuse to make a partial payment; instead, they recommended the holder to change the cheque's amount corresponding to the amount in the account of the drawer or to make a deposit for the difference in the drawer's account so that they made the full payment.

¹⁵⁷ NBE, 'Ethiopian Cheque Truncation System Rules and Procedure Annexure II reason Codes for Return'.

¹⁵⁸ ComC (n 5) Art 837.

3.2.2.6 Giving a Certificate of Dishonor

Out of the cheques presented in one fiscal year, the respondents answered that nearly 5% to 25% would be dishonored due to insufficient funds, countermanding by the drawer, invalidity of the cheque, and suspension or closure of the cheque by the NBE. When there are insufficient funds in the drawer's account, the response given to holders is critical. As a result, the writer asked the bank managers, and 83% of the sampled managers answered that they don't provide the certificate of dishonor instantaneously to the holder to save their client from possible civil and criminal liabilities. Rather, they ask him either to come back in the next few days or to make a call and ask the drawer to deposit additional money in his account. The remaining 17% answered my question that it depends on the will of the holder. Suppose the holder requests to get the certificate immediately. In that case, they always give that certificate, but if he is willing to wait some time, banks always call the drawer to inform him to deposit an amount equal to the amount on the drawn cheque. Nevertheless, a few respondents criticized banks' treatment of giving a certificate for the dishonored cheque. When I compare the response of the bank managers to the sampled holders of cheques, though the reasons given are the same, the holders consistently answered that almost all bankers are reluctant to provide the certificate of dishonored cheque instantly.

Bank managers also asked how they interact with cheque accounts that are opened in another branch of the same bank. The response was different in different banks and within the same banks. For instance, the respondents from managers in Awash International Bank, Zemen Bank, and Abyssinia Bank answered that they always give a certificate of dishonor, whether the drawer's account is in their branch or not. However, the response collected from other sampled banks shows that they don't have a linear trend or procedure. For example, 62% of the respondents from these banks said that they don't give a certificate of dishonor due to insufficient funds for a cheque account opened in another branch of the same bank. Rather, they tell the holder to go to the headquarters of their bank or to the bank's branch where the drawer's cheque account was opened. However, the remaining 30% of the respondents said they give the certificate of dishonor even if the cheque account is opened in another branch.

3.2.2.7 Existence of Advanced Services

In their response to recommend factors that enable a cheque to be a credible payment instrument, most of them applauded that it should be replaced by an electronic cheque (e-cheque) or that

citizens should avoid using cheques, and instead use alternative electronic payment mechanisms. They substantiate their recommendations, starting from the malpractice of using cheques as a guaranty in society up to the emergence of technologically advanced payment devices, including e-cheques. The researcher asked them if they had an e-cheque service, and their answer was 'not yet.' A few of them said that their study is in progress alongside the NBE. Bank managers were asked if they have a service to open a cheque account for persons with disabilities of eyesight or illiteracy, and their answer was a solid no. The main reasons mentioned by the respondents were that their disability didn't entitle them to open a cheque account, they are prone to defraud, and the NBE directive doesn't allow or prescribe such services to such persons. A final question to these bank managers was whether they verify the signature of the last endorsee according to Article 860 of the ComC or if they have developed any tool to do so in practice. They answered that they always verify the identity of the last holder of the cheque who brought the cheque to the bank, but not the signature of persons other than the drawer. They further conclude that there is no way to verify the signature of the last endorsee unless the banker has obtained a specimen previously.

3.3 Perception of the Society for Cheques

Among the questionnaires distributed to drawers and recipients of cheques, 94% of them answered that they have been giving and receiving cheques as a guaranty. They think that using cheques as a guaranty instrument is usual and legal. The responses to the same questions from bank managers and lawyers were the same, irrespective of the variation in the ratio. The reason why those cheque users have been exploiting cheques to serve as a guaranty was *inter alia* its simplicity to afford and be cashed, the fear of drawers not being imprisoned by the police and punished by the NBE's directive, lack of awareness of the public, gaps in the law, and underprivileged application of the law to the practice were the main reasons.

81% of the litigants in all the court cases claimed that they gave the cheque as a guaranty. Unexpectedly, the tradition of using cheques as a guaranty is deep-rooted not only among traders but also in Micro Finance Institutions. An interview with one frequent borrower of money from Addis Credit and Saving Institution SC said that the institution has always demanded that he draw a post-dated cheque as a guaranty on top of other adequate assurances that cover the

loan.¹⁵⁹ Mr. Kinde also informed the researcher that he has been changing the cheque every three months to equal the first loan amount, though he made a partial payment to the institution. The writer cross-checked this practice by interviewing a lawyer of that institution¹⁶⁰, and the lawyer affirmed that the assertion of Mr. Kinde is a written working procedure of the institution.

A similar area of tradition in a society where using cheques as a guaranty has been normalized¹⁶¹ is in *Ekub*, a community-based customary saving and borrowing scheme of the society. Mr. Kinde primed the researcher that when someone takes money from the *Ekub*, of which he is a member, that person must give a PDC of his own or another person's cheque to the *Ekub* leaders. According to Kinde, the trend is the same in all *Ekubs*. To his knowledge, some of these *Ekubs* have stipulated, mandatorily, the usage of PDC as a guaranty in their Article of Association.

Among the sampled criminal court cases, three of them were charges of usury. According to the charges, in all of the instances of criminal usury,¹⁶² the act of usury was conducted by accepting PDCs from victims of the crime. One of the witnesses, Mamitu Alamrew, the biggest shareholder of Mame Steel Factory PLC and the wife of the drawer of the cheques, Fasil Zewdie, who was a well-known entrepreneur and exporter but fled at that time to the USA because of drawing bad cheques, said to the court that she had *two sacks of cheques in her house, voided by her husband*. Those cheques were given, first, being post-dated to the usurers, and on their due date, when her husband's account had no cover, they would become void and be replaced by a new PDC.

The NBE issued a directive requiring the drawer to ensure sufficient funds in his bank account when he issues a cheque. Despite all of these efforts, the data from traders proved that many people in society are still issuing cheques, knowing that they are without having sufficient funds or even after their bank account is closed, blocked, or suspended. In this regard, the directive of the NBE lacks a regulatory effect on the drawers completely. When we see its provisions,¹⁶³ though it penalizes the drawing of a cheque without cover, the penalty remains only progressive

¹⁵⁹ Interview with Kinde Belete, businessman (Addis Abeba, 12th September 2021)

¹⁶⁰ Interview with Mesfin Geremew, legal expert, Addis Credit and Saving Institution SC (Addis Abeba, 12th September 2021)

¹⁶¹ Kinde Belete, (n 159).

¹⁶² *Federal Public Prosecutor V Daniel Gizachew* [2019] FHC 149520: *Federal Public Prosecutor V Yeniesew Abraham* [2018] FHC 158030: *Federal Public Prosecutor V Daniel Gizachew* [2015] FHC 165307.

¹⁶³ NBE, (n 10) Art 5.

as the drawer repeatedly draws bad cheques. In simple words, drawing a bad cheque for the first time doesn't have a penalty. However, if one draws a cheque for the second time, s/he will face a 3% fine of the amount on the cheque, but not exceeding 25,000 birrs, and only if the drawer repeats for the third time in 12 months, his/her account will be suspended on top of an additional monetary penalty. In this scenario, the directive by itself is not prohibitory. Therefore, it seems that drawing a cheque without cover for the first time is normal, provided that an amount equal to the amount of the cheque will be suspended from the drawer's account.

Chapter Four

Conclusion and Recommendations

4.1 Conclusions

The term “Personal relations” is not defined nor exemplified under the ComC or other international conventions. A cheque is payable on sight, and making any conditionality to its payment is unacceptable. The FSCCB decision allows every legal or contractual dealing to be considered as a defense of personal relations, which is found to be an extremely broad interpretation. Hence, the interpretation of maintaining the defense of giving cheques as a guaranty not to be acceptable seemed in line with the law, and the defense of personal relations should be limited only to acts of illegality, such as abuse of power, cheating, fraud, and so on. The FSCCB’s legal interpretation in civil file No. 24435, 43315, 90434, and in criminal file No. 161448 that consents to defense of giving cheques as guaranty to be contemplated under the defense of personal relations has a contradiction with the FSCCB’s legal interpretation in civil file No. 55077 and criminal file No. 67947, 95438, 98060, 126646, 149071, and 152755. The viability of using a cheque as a means of payment depends on the clarity of laws and consistent court decisions. The FSCCB interpretations of cheques to be used as a guaranty lack consistency, violate the rules of interpretation of laws and contradict the nature and purpose of cheques, which creates an adverse effect on the acceptability of cheques in society.

Drawing a PDCs in the Ethiopian ComC is neither clearly permitted nor prohibited, unlike the bill of exchange. In practice, drawing a PDCs is usual but not payable before the date written on it. Similarly, though the law permits a certification and acceptance for the honor of PDCs, Ethiopian banks do not give such services nor limit their customers contractually to issue PDCs or insert a provision that relieves the bank if it cashes a PDCs. Henceforth, drawing a PDCs has frequently been prone to serving as a guaranty and to a crime of usury and cheque fraud. When the ComC cross-references to some provisions of the bill exchange part, its silence about post-dating of the cheque should be interpreted in line with the merit of the cheque and Article 28 of the Geneva Convention Providing a Uniform Law for Cheque, hence, PDCs should be payable on the date of their presentment even though their due date is in the future. Furthermore, the validity period of cheques under Article 855 of the ComC set at a time when banks and infrastructures were limited, exacerbating the usage of a cheque to serve as a security document. Nowadays, countries like India are shortening this period from six to three months.

Banks don't make a cheque payment without getting a confirmation from the drawer based on the bank's internal procedures, or the contract concluded between the bank and the drawer. This trend was outside what the ComC prescribed for cashing cheques on demand and even beyond the instructions in the directives of the NBE.

The ComC of Ethiopia does not set grounds for nor means of countermanding a cheque. The NBE's directive prescribes that only theft or loss of the cheque and stoppage of payment order with sufficient cover are eligible to countermand a cheque. In practice, however, Banks accepts reasons like acts of intimidation, fraud, or duress upon the drawer. In both laws, the right to countermand is given only to the drawer. However, on reasons for theft, loss, intimidation, fraud, or duress upon the holder, the right to countermand should equally work. The NBE directive doesn't stipulate means of countermanding to be in written, oral, telephone, email, or fax, and for this reason, banks accept any of the means first and request the drawer to submit a written letter later that allows the drawer or the bank to abuse their mandates.

When a cheque is dishonored due to the drawee's mistake or negligence, the ComC is silent as to measures to be taken and the amount of compensation to be paid to the drawer or holder. The extent of compensation to be paid to the holder or drawer where the cheque is dishonored due to the mistake of the bank should not be limited to amounts predetermined under Article 873 of the code; rather, it must include all actual damages similar to the UCC of the USA.

Any right of the holder against the drawee elapses after three years from the expiry of the time for presentment. Comparatively, the right of the drawee against payments effected to the holder due to fraudulent activities of the latter is unknown. Since there are undue payments and unlawful enrichment, referring to these provisions in the CC will not change, as these provisions of the CC do not have a period of limitation section. Though the CB of the FSC outlined different periods of limitations at different times, the three years given to the holder should equally be given to the drawee.

The Criminal Code of Ethiopia only penalizes a drawer of dishonored cheques due to the insufficiency of funds. However, foreign criminal justice systems, such as the USA, legislate that delivering or passing bad cheques has criminal liability. Hence, our laws in this regard fail to give substantial protection to cheques.

Though all persons are entitled to issue a cheque in Ethiopia, banks do not give such services to blind and illiterate persons. On the other hand, countries like India allow blind and illiterate

persons to open a cheque account with specific strict standards. Equally, there is no e-cheque service in Ethiopia.

All banks found that they dishonor cheques where there is a difference in the amounts written in the cheque, in contradiction to the ComC. Similarly, though the code allows partial payment to be made to the holder, banks don't pay partial payment unless the cheque is changed to an equal amount in the drawer's account. This custom was developed because the NBE issued and distributed a circular to all banks to follow the circular.

When there are insufficient funds in the drawer's account, except for a few, almost all banks, including the CBE, do not instantaneously give a certificate of dishonor to the holder. Instead, banks instruct the holder to ask the drawer to deposit the remaining amount or to come back after some time. Banks have taken these actions to protect their customer and, in between drawers, countermand the cheque, which affects the acceptability of the cheque.

In case of cheque fraud, holders have been deterred from complaining to a police station near where the cheque is issued and handed over to them. The local jurisdiction to investigate cheque crimes should either be on the place where the cheque is presented or drawn and handed over to the holder.

An obligation imposed on the banks to verify the signature of an endorsee as per Article 860 of the ComC was found to be impracticable. Banks usually verify the signature of the drawer and identity of the endorsee/holder of the cheque/ but not the latter's signature, and no means of verification in the law or practice, hence an unnecessary provision.

4.2 Recommendation

Based on the above conclusions and to address the drawbacks described above, the writer recommends the following.

1. The FSCCB should repeal its legal interpretation given on civil files No. 24435, 43315, 90434, and in criminal file No. 161448. The courts should continue to construe the defense of personal relations very narrowly in line with the purpose and nature of the cheque.
2. The ComC should be amended in a way to have a definition of defense of personal relations, grounds, and means of countermanding of cheque, to prohibit drawing of PDCs and to permit banks to cash PDCs before the maturity date, to reduce the validity period for presentment of the cheque to three months, to include the extent of compensations to be

paid to the drawer (holder) as a result of dishonoring of a valid cheque by the drawee, to incorporate a three years period of limitation that restricts the drawee's right against payments effected to the holder due to the fraudulent acts of the holder, and to revoke the provision that requires of verification of the signature of an endorsee.

3. The NBE should amend its directive in a way to shorten the validity period for the presentment of the cheque to three months, to have an exhaustive ground for and means of countermanding of cheque, to honor a cheque that has incongruity in amounts therein, to honor partial payments, to ban asking of confirmation, to enable blind and illiterate persons to open a cheque account, to compel banks to give a certificate of dishonor instantly when the cheque presented to the bank.
4. The Criminal Code should be revised to include a provision that penalizes a person who participates in delivering or passing bad cheques and in investigating cheque fraud at the place where the cheque is issued and handed over to the holder.

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Ambasel Trade Works PLC V Abdulkadir Juhar [2008] FSC 40173, Vol 12

Brand New Technical and Vocational Training Center PLC V Mesfin Tadesse [2009] FSC 43315
Vol 9

Elias Teferra v Aniwat Hussien [2015] FSCCB 103478 vol 20

Federal Public Prosecutor V Afrano Hulie [2018] FSC 152755 Vol 23

Federal Public Prosecutor V Asegid Ababore [2018] FSC 149071 Vol 23

Federal Public Prosecutor V Belachew Nigagie [2015] FSC 98060 [25th May 2015]
Federal Public Prosecutor V Yeshiemebet Tilahun [2021] FSC 161448 Vol 25 450
Luhan Engineering Construction PLC V Macro General Contractor PLC [2014] FSC 90434, Vol 16
Megertu Negasa V Tsehay Liga [2008] FSC 34406 Vol 6
Mohamed Adem V Fitsum Girma [2008] FSC 24435 Vol 12 521
Solomon Desalegn V South Region Public Prosecutor [2014] FSC 95438 Vol 16
Solomon Kassa V Ayalnesh Sifra [2013] FSC 78629, Vol 22
Shibeshi Gebru V Federal Public Prosecutor [2017] FSC 126646 [7th December 2017]
Tiegistu Bizane v Yiha Yibrie [2007] FSCCB 20232 vol 07
Tiruwork Zegenu V Gidey Abraha [2010] FSC 55077, Vol 12

Civil Cases

Aba Bunna SC v Tegene Agegnew [2021] FHC 264985
Afomia Mokonnen v Yeshibelay Dagnaw [2013] FHC 210100
Anwar Hussien v Elias Teferra [2014] FFIC 125412
Brand New Technical and Vocational Center PLC vs Mesfin [2009] FHC 74146
Elias Teferra v Anwar Hussien [2014] FHC 99239
Fitsum Girma v Haji Mohammed Aden [2006] FFIC 62028
Hadis Farah v Gezahegn Bizuye [2021] FHC 258401
Luhana Engineering Construction PLC v Macro General Trading PLC [2013] FHC 117557
Macro General Trading PLC v Luhana Engineering Construction PLC [2013] FFIC 200800
Melese Seyfu v Abebe Gizaw [2013] FHC 236954
Mesfin Tadese v Brand New PLC [2009] FFIC 123416
Mogose Chemere v Mimi Kassaye [2021] FHC 220928
Mohamed Adem V Fitsum Girma [2013] FHC 45409
National Oil Ethiopia PLC v Animaw Anajaw [2018] FHC 201242
Tsion Fitwi v Lielina Daniel [pending] FHC 25661
Tigstu Bizane v Yiha Yibirie [2005] FHC 327632
Solomon Simachew V Seid Damitie [2021] FHC 251776
Yiha Yibirie v Tigstu Bizane [2004] FFIC 05017
Yohannes Argu v kiflom Gebrehiwot [2021] FHC 210622

Criminal Cases

Belachew Nigagie V Federal Public Prosecutor [2013] FSC 98060
Belachew Nigagie v Federal Public Prosecutor [2013] FSC 93301
Federal Public Prosecutor V Daniel Gizachew [2019] FHC 149520
Federal Public Prosecutor V Yeniesew Abraham [2018] FHC 158030
Federal Public Prosecutor V Daniel Gizachew [2015] FHC 165307
Federal Public Prosecutor V Daniel Gizachew [2019] FHC 149520
Federal Public Prosecutor V Yeniesew Abraham [2018] FHC 158030
Federal Public Prosecutor V Daniel Gizachew [2015] FHC 165307.
Federal Public Prosecutor v Afrano Hullie [2017] Oromia Region Adama Special Zone High Court 25117
Federal Public Prosecutor v Adugna Anbel [2011] FSC 55773
Federal Public Prosecutor v Belachew Nigagie [2013] FHC 13335
Federal Public Prosecutor v Shibeshi Gebru [2015] FHC 152317
Federal Public Prosecutor v Asegid Aba Burie [2017] FHC 003731
Federal Public Prosecutor v Asegid Aba Burie [2017] FSC 145134
Shibeshi Gebru v Federal Public Prosecutor [2015] FSC 114171
Southern Region Public Prosecutor vs Solomon Dessalegn [2013] Southern Region Hawassa High Court 57677

Foreign Cases

Brien v Dwyer, 141 C.L.R. 378 (Austl. 1978)
I.C.D.S. Ltd. V Beena Shabeer, [2002] India Supreme Court (6) SCC 426

VII. Interviews

Interview with Sintayehu Zeleke, Advocate (Addis Abeba, September 2, 2021)
Interview with Mehari Gebremedhin, Judge, FHC (Addis Abeba, September 2, 2021)
Interview with Yohanis Birhane, businessman (Addis Abeba, September 10, 2021)
Interview with Inspector Zerihun Tefera, Deputy Head of Crime Investigation Division, Yeka Police Department, Addis Abeba Police Commission (Addis Abeba, September 09, 2021)
Interview with Kinde Belete, businessman (Addis Abeba, September 12, 2021)
Interview with Mesfin Geremew, legal expert, Addis Credit and Saving Institution S.C (Addis Abeba, September 12, 2021)

VIII. Questionnaires

Addis Ababa University

Law School

This questionnaire is designed to collect data for the fulfillment of a Master's Degree in Business Law titled *'The Law and the practices of using cheques/checks as a means of payment in Ethiopia.'* The information you provide will be used solely for academic purposes and will be treated with strict confidentiality. Thank you in advance for your valuable time and participation.

1. Your education level up to 8th 9th - 12th Diploma Degree Master's Degree Doctorate Degree Other: _____
2. Do you maintain a checking account? Yes No
3. If your answer is yes, have you ever issued a cheque as a guaranty rather than for payment? Yes No
4. If your answer to question No. 3 is yes, how many times? Once Sometimes Often if you have any other different answer: _____
5. If your answer to question No. 3 is yes, why do you prefer using a cheque as a guaranty instead of other guarantee methods? Other guaranty methods take a long process Cheques are more accessible I want to be trusted by the recipient Other reason: _____

6. If your answer to question No. 3 is Yes, has the cheque you issued as a guaranty ever been presented to the bank for payment? Yes No
7. If your answer to question No. 6 is Yes, how was the matter resolved? The cheque was paid by depositing money The cheque returned unpaid, an agreement was reached with the other party, and another cheque was issued Legal action was taken Other: _____

8. Do you believe giving a cheque as a guaranty is lawful? Yes No Unsure
9. Have you ever received a cheque as a guaranty from someone else? Yes No

Form 01: To cheque users only

10. If your answer to question No. 9 is yes, on whose initiative? At my request At the cheque provider's request

11. If your answer to question No. 9 is yes, why did you choose to accept a cheque as a guaranty? If the check drawer refused to pay, it is easy to make him criminally liable and he might pay me when imprisoned It is simple compared to other kinds of guaranty methods Other reasons, if any: _____

12. Have you presented a cheque for payment at a bank? Yes No

13. If you received such a cheque, what was the bank's response? (select all that apply and its frequency)

A/ Payment made immediately Every time Often Rarely

B/ Asked to wait for confirmation from the drawer Every time Often Rarely

C/ Informed that there were insufficient funds Every time Often Rarely

D/ Other reasons, if any: _____

14. When you are informed of insufficient funds, did the bank staff provide you with immediate written confirmation of insufficiency (non-payment)? Yes No

15. If your answer to question No. 14 is No, what response did bank staff provide? Advised to inform the drawer to deposit a sufficient amount Informed that the bank will call the drawer Asked me to return after a few days

16. If someone offers to pay you by cash or cheque for an amount below the threshold to be handled by cash as per the law, which do you prefer to receive? Cheque Cash

17. If someone offers to pay you by cheque, under what conditions are you hesitant to accept it?

A/ When the cheque is issued by a sole proprietor B/ When the cheque is issued by associations C/ When the cheque is issued by companies Other: _____

Form 01: To cheque users only

18. What recommendations would you make to promote the wider use of cheques in the market instead of cash? _____

19. Do you have any additional remarks regarding cheque use? _____

Thank you once again for your time and cooperation.

Addis Ababa University

Law School

This questionnaire is designed to collect data for the fulfillment of a Master's Degree in Business Law titled *'The Law and the practices of using cheques/checks as a means of payment in Ethiopia.'* The information you provide will be used solely for academic purposes and will be treated with strict confidentiality. Thank you in advance for your valuable time and participation.

1. Your education level up to 8th 9th - 12th Diploma Degree Master's Degree Doctorate Degree Other _____

2. Does your bank allow blind or illiterate individuals to open a checking account? Yes
No If No, please explain? _____

3. Does your bank offer electronic cheques (e-cheques) services? Yes No if No, why?

4. Based on your experience, how many cheques presented for payment are usually returned?
Most Half One-quarters

5. What are the main reasons for cheque returns in your bank? Please indicate frequency:
A/ Lack of deposit : Every time Most of the time Sometimes
B/ Suspension of account : Every time Most of the time Sometimes
C/ Stop payment order by the drawer : Every time Most of the time
Sometimes
D/ Failure to meet the cheque formalities : Every time Most of the time
Sometimes

6. When a client's account is suspended by the National Bank of Ethiopia or a court order, how do you notify the client? Telephone Email Letter Others _____

Form 02: To Bank Professionals Only

7. Have you encountered customers complaining that they issued a cheque without knowing their account was suspended, and the cheque was returned? Yes No
8. How does your bank accept a stop payment request from the drawer? Through Telephone
Email Letter All means
9. Does your bank accept stop-payment requests when the drawer claims the cheque was obtained through fraud, coercion, or abuse? Yes No If No, please explain? _____

10. Does your bank accept stop-payment requests from an endorsee/holder who claims the cheque was stolen or lost? Yes No
11. Does your bank verify the signature of the endorsee/holder of the check (other than the drawer)? Yes No means of verification
12. If a cheque is presented without a date, does your bank accept and pay it? Yes No way, it returns it to the holder
13. If there is a discrepancy between the amount written in words and numbers, what does your bank do?
A/The bank pays the figure written in words as per the Commercial Code of Article 837/1
B/ It returns notifying that there is a variation between the amount written in words and in numbers. Why? _____
14. If there is a repetition or variation between the amount in words and numbers, what does your bank do?
A/ The bank pays the smallest figure as per the Commercial Code of Article 837/2
B/ Returns the cheque, notifying the holder. Why? _____

15. If a cheque is presented with insufficient funds and the holder requests payment of the available balance, does your bank pay the existing deposit?

Form 02: To Bank Professionals Only

A/ Yes, pays the deposit and issues a confirmation for the unpaid amount as per the commercial code article 859

B/ No, returns the cheque stating that there is not a sufficient amount. Is there anything else the bank does? _____

16. Does your bank return cheques because the words and numbers are written in different inks or in red ink? Yes No If Yes, Why _____

17. When a cheque issued from another branch, which may be found in the peripheral area of the country, is presented, does your bank confirm insufficient funds? A/ Yes B/ Instructs the holder to present it at the issuing branch C/ Other: _____

18. Are there instances where your bank pays a cheque without obtaining confirmation from the client? Yes No

19. If yes, under what conditions is confirmation requested? A/ On all cheque payments B/ When contractually obligated not to pay above a threshold without confirmation C/ Other: _____

20. If confirmation is not obtained from the drawer, what does your bank tell the holder? A/ We effect the payment B/we instruct the holder to come back on another day C/We refuse payment without confirmation. D/ Other: _____

21. Does your bank pay cheques before their maturity date? A/ Yes, after verifying sufficient funds and obtaining the drawer's approval B/ No, payment refuses until maturity

22. If a cheque is presented before maturity, does your bank block the amount until maturity and issue certification? Yes Our bank does not give such a kind of service If it is not giving, why? _____

23. If a cheque is presented without sufficient funds, and the holder requests certification of non-payment, what does your bank do? A/ Issues confirmation immediately B/ Advises the

Form 02: To Bank Professionals Only

holder to request the drawer to deposit funds C/ Facilitates communication with the drawer and advises the holder to wait or return the next day D/ Other: _____

24. When opening a checking account, does your bank require clients to sign an obligation not to issue postdated cheques? Yes No

25. Do you think that drawers should be legally restricted from issuing postdated checks? Yes No

26. Do you think that giving a cheque as guaranty is allowed by the law? Yes No

27. How often do you encounter drawers who state that “they issue the check as a guaranty, not for payment”? Frequently Sometimes Never

28. What recommendations would you make to promote the wider use of cheques as a means of payment in commerce? _____

Once again, I would like to thank you for your time

Addis Ababa University
Law School

This questionnaire is designed to collect data for the fulfillment of a Master's Degree in Business Law titled *'The Law and the practices of using cheques/checks as a means of payment in Ethiopia.'* The information you provide will be used solely for academic purposes and will be treated with strict confidentiality. Thank you in advance for your valuable time and participation.

1. Your education level: Degree Master's Degree Doctorate Degree Other: _____
2. Your work experience: Less than 10 years 10–15 years More than 15 years
3. Do you believe that cheques should be allowed as a form of guaranty? Yes No
4. Do you agree with the Federal Supreme Court Cassation Bench decision (File No. 24435, Volume 12, Page 521), which, by majority vote, accepted objections claiming that a cheque issued for guaranty constitutes a personal relation under Commercial Code Article 717?
Yes No
5. Do you believe it is legally appropriate, under Article 857 of the Commercial Code, for the drawer to issue a stop-payment order after handing over a cheque to the holder, even without providing a reason? Yes No
6. Do you believe it is appropriate that the unrestricted right granted to the drawer under Article 857 of the Commercial Code has been limited by Directive No. 64/2016 of the National Bank, allowing a stop-payment request only when a police report is provided for a lost or stolen cheque, or when there are insufficient funds? Yes No, the law shall be amended
7. Should the drawer be allowed to make a stop payment order on a cheque claiming that it was obtained through force, intimidation, or deception, even if such grounds are not explicitly stated in the directive? Yes No your reason: _____

8. Should the endorsee or holder be allowed, like the drawer, to request a stop-payment order on the grounds that the cheque was lost or stolen? Yes No your reason: _____

9. Do you consider it legally acceptable for a cheque, like a bill of exchange, to be issued postdatedly? Yes it could not be postdated

Form 03: To Legal Professionals Only

10. Should a postdated cheque be paid before its postdated maturity date? Yes No
11. Should the law restrict individuals from issuing postdated cheques? Yes No
12. Do you believe that banks should accept a cheque that does not have a date written on it?
Yes No
13. Under Article 855 of the Commercial Code, a cheque must be presented within six months of its date. Do you believe this period is too long and should be shortened? Yes No, the current period is sufficient If you answered 'Yes,' how long do you think the period should be? _____
14. Do you believe Article 860 of the Commercial Code, which requires banks to verify not only the drawer's signature but also the endorsee/holder's signature, is relevant? Yes No, it is not necessary, so it shall be amended
15. When a cheque is presented at a branch different from where the account was originally opened (for example, in a peripheral area of the country) and there are insufficient funds, do you believe it is appropriate and legal for banks to refuse issuing a confirmation of non-payment, or for the police to instruct that cheque fraud complaints be filed only at the branch where the account was opened? A/ Yes B/ No, it is wrong. Why? _____
16. If a drawer knowingly issues a cheque without sufficient funds and transfers it to another holder, should the holder also be considered criminally liable when he/she transfers the cheque to another person knowing that the account does not have sufficient funds? Yes No, the holder should not be liable Why? _____
17. How often do you encounter litigation in your legal practice where the drawer claims the cheque was issued as a guarantee rather than for payment? Frequently Sometimes Rarely Never
18. What is your recommendation to vastly use check in the market rather than hard cash?
What recommendations would you make to promote the wider use of cheques in the market instead of cash? _____

Form 03: To Legal Professionals Only

19. Do you have any additional remarks regarding cheque use? _____

Thank you once again for your time and cooperation.

አዲስ አበባ ዩኒቨርሲቲ

የህግ ትምህርት ቤት

ይህ መጠየቅ በንግድ ህግ (Business Law) የማስተርስ ዲግሪ ለማግኘት ‘The Law and the Practice of Using Cheque/Check as a Means of Payment in Ethiopia’ በሚል ርዕስ ለማሟያነት አጥኚው ለሚሰራው ጥናት ለግብአት መሰብሰቢያነት የተዘጋጀ ነው። መጠይቁ ለጥናቱ የሚያገልግሉ መረጃዎችን ለመሰብሰብ ብቻ የሚያገለግል ሲሆን የተሰበሰበው መረጃም በሚስጥር የሚያዝ መሆኑን አጥኚው ያረጋግጣል። መጠይቁ ለመሙላት እና ጊዜዎን ለመስጠት ስለ ተባበሩኝ በቅድሚያ ከልብ አመሰግናለሁ።

1. የእርስዎ የትምህርት ደረጃ እስከ 8ኛ ከ9ኛ-12ኛ ዲፕሎማ ዲግሪ ማስተርስ ዲግሪ ዶክትሬት ዲግሪ ሌላ _____
 2. በቼክ የሚያንቀሳቅሱት ሒሳብ አለዎት? አዎ የለኝም
 3. መልሰዎት አዎ ከሆነ ቼክ ለክፍያ ሳይሆን ቼክ ለዋስትና ብለው ሰጥተው ያውቃሉ? አዎ አላውቅም
 4. መልሰዎት ሰጥቼ አውቃለሁ ከሆነ ምን ያህል ጊዜ? አንዴ አልፎ አልፎ ሁሉ ጊዜ እዚህ ያልተገለፀ ሌላ መጥቀስ የሚፈልጉት ጊዜ ካለ _____
 5. ለጥያቄ ቁጥር 3 መልሰዎት አዎ ከሆነ ቼክ ከሌሎች እንደ ዋስትና ሊሰጡ ከሚችሉ ነገሮች ለምን ይመርጡታል? ተቀባዩ ስለሚጠይቅ ሌሎች በዋስትና የሚሰጡ ነገሮች ረዥም ፕሮሰስ ስለአላቸው ቼክ ከሁሉም በበለጠ በቀላሉ ስለሚገኝ ተቀባዩ እንዲያምነኝ ስለምፈልግ ሌላ ምክንያት ካለዎት _____
 6. ለጥያቄ ቁጥር 3 መልሰዎት አዎ ከሆነ ለዋስትና ብለው የሰጡት ቼክ ለክፍያ ባንክ ቀርቦበት ያውቃል? አዎ ቀርቦብኝ አያውቅም
 7. መልሰዎት ቀርቦብኝ ያውቃል ከሆነ መጨረሻ እንዴት ጉዳዩ ቋጭት? ገንዘብ አስገብቼ ቼኩ ተከፍሏል ቼኩ ሳይከፈል ተመልሶ ሌላ ቼክ ተክቼለታለሁ በህግ ተጠይቄበታለሁ በሌላ ምክንያት ከሆነ _____
-
8. ቼክን እንደ ዋስትና መስጠት በህግ የተፈቀደ ተግባር ነው ብለው ያምናሉ? አዎ አላምንም እርግጠኛ አይደለሁም
 9. ቼክ በዋስትና መልኩ ተቀብለው ያውቃሉ? አዎ ተቀብሎ አላውቅም
 10. መልሰዎት አዎ ከሆነ በማን ጠያቂነት ነበር? በእኔ በሰጪው

11. ለጥያቄ ቁጥር 9 መልሰዎት አዎ ከሆነ በዋስትናነት ቼክ መቀበልን ለምን መረጡት? ሰጪው ካልከፈለኝ በወንጀል ከስሼ በማሳሰር እንዲከፍለኝ ለማስገደድ ስለምችል ከሌሎች የዋስትና ዓይነቶች ቀላል ስለሆነ ሌላ ምክንያት ካለ _____

12. ለክፍያ የሚሆን ቼክስ ተቀብለው ያውቃሉ? አዎ ተቀብዬ አላውቅም

13. ተቀብለው ከነበረ ቼኩን ለክፍያ ባንክ ይዘውት ሲሄዱ ምን ይባላሉ?

ሀ/ ቀጥታ ይከፈለኛል ምን ያህል ጊዜ? ሁሌ አብዛሐኛው የተወሰነ ጊዜ

ለ/ ኮንፎርሚሽን ከቼክ ሰጪው ስለምንፈልግ ጠብቅ እባላለሁ ምን ያህል ጊዜ? ሁሌ

አብዛሐኛው ጊዜ የተወሰነ ጊዜ

ሐ/ በቂ ስንቅ የለውም እባላለሁ ምን ያህል ጊዜ? ሁሌ አብዛሐኛው ጊዜ

የተወሰነ ጊዜ

መ/ ሌላ ካለዎት _____

14. ቼክ ለመመንዘር ባንክ ሂደው በቂ ስንቅ የለውም ተብለው ከነበረ የባንክ ሰራተኛው በቂ ስንቅ የለውም የሚል ማረጋገጫ ወዲያውኑ ይመታለዎታል? አዎ አይመታልኝም

15. ለጥያቄ ቁጥር 14 መልሰዎት ‘አይመታልኝም’ ከሆነ ምታልኝ ሲሉት ምን ይለዎታል? ለባለ ቼኩ ገንዘብ አሰገባ በለው ይለኛል እኛ እንደውልለታለን ይለኛል ከተወሰነ ቀናት በኋላ ተመለስ ይለኛል?

16. አንድ ሰው በጥሬ እንዳይያዝ በህግ ከተከለከለው መጠን ያነሰ ገንዘብ በጥሬ ልስጠዎት ወይስ በቼክ ቢለዎት የትኛውን ይመርጣሉ? በቼክ በጥሬ

17. አንድ ሰው ክፍያ በቼክ ልፈፅምልዎት ሲለዎት የበለጠ የሚጠራጠሩት ቼኩ የምን ሲሆን ነው? ሀ/ የግለሰብ ነጋዴ ለ/ የማሕበራት ሐ/ የኩባንያ ሌላ _____

18. ቼክ ጥሬ ገንዘብን ተክቶ በሰፊው ገበያ ላይ እንዲውል ምን መደረግ አለበት ብለው ያስባሉ? _____

19. ሌላ ከቼክ ጋር በተያያዘ ማለት የሚፈልጉት ካለ? _____

ቅፅ 01 በቴክ ተጠቃሚዎች ብቻ የሚሞላ መጠይቅ

ለሰጡኝ ጊዜ በድጋሜ አመሰግናለሁ።

አዲስ አበባ ዩኒቨርሲቲ

የህግ ትምህርት ቤት

ይህ መጠየቅ በንግድ ህግ (Business Law) የማስተርስ ዲግሪ ለማግኘት ‘The Law and the Practice of Using Cheque/Check as a Means of Payment in Ethiopia’ በሚል ርዕስ ለማሟያነት አጥኚው ለሚሰራው ጥናት ለግብአት መሰብሰቢያነት የተዘጋጀ ነው። መጠይቁ ለጥናቱ የሚያገልግሉ መረጃዎችን ለመሰብሰብ ብቻ የሚያገለግል ሲሆን የተሰበሰበው መረጃም በሚስጥር የሚያዝ መሆኑን አጥኚው ያረጋግጣል። መጠይቁ ለመሙላት እና ጊዜዎን ለመስጠት ስለ ተባበሩኝ በቅድሚያ ከልብ አመሰግናለሁ።

1. የእርስዎ የትምህርት ደረጃ እስከ 8^ኛ ከ9^ኛ-12^ኛ ዲፕሎማ ዲግሪ ማስተርስ ዲግሪ ዶክተሬት ዲግሪ ሌላ _____
2. ባንኮችሁ ዓይነትውን እና ያልተማሩ ሰዎች የቼክ አካውንት እንዲከፍቱ ይፈቅዳል? አዎ አይፈቅድም የማይፈቅድ ከሆነ ለምን _____
3. ባንኮችሁ የኤሌክትሮኒክ ቼክ (e-cheque) አገልግሎት ይሰጣል? አዎ አይሰጥም የማይሰጥ ከሆነ ለምን አይሰጥም? _____
4. ወደ ባንኮችሁ ተከፋይ ለመሆን ከሚመጡ ቼኮች ውስጥ በእርስዎ ግምት ምን ያህሉ ተመላሽ ይደረጋሉ? አብዛላኛው ግማሹ ሩብ ያህሉ
5. በባንኮችሁ ቼኮች በአብዛላኛው ጊዜ በምን በምን ምክንያቶች ተመላሽ ይደረጋሉ?
 - ሀ/ በቂ ስንቅ ባለመኖሩ ድግግሞሹስ? ሁሌ አብዛላኛው የተወሰነ ጊዜ
 - ለ/ ቼኩ በመታገዱ ድግግሞሹስ? ሁሌ አብዛላኛው ጊዜ የተወሰነ ጊዜ
 - ሐ/ ቼክ አውጪው እንዳይከፈል በማዘዙ ድግግሞሹስ? ሁሌ አብዛላኛው የተወሰነ ጊዜ
 - መ/ ቼክ መያዝ የሚገባውን ፎርማሊቲዎች ባለማሟላቱ ድግግሞሹስ? ሁሌ አብዛላኛው ጊዜ የተወሰነ ጊዜ
6. የደንበኞችሁ ሒሳብ በብሔራዊ ባንክ ወይም በፍርድ ቤት ሲታገድ በምን መልኩ ታሳውቁታላችሁ? በስልክ በኢሜይል በደብዳቤ በሌላ _____
7. ሒሳቤ መታገዱን ሳላውቅ ቼክ በመስጠቴ ቼክ ተመላሽ ሆኖብኛል የሚል ደንበኛ ገጥሞት ያውቃል? አዎ ገጥሞኝ አያውቅም

8. ባንካችሁ የቼክ ክፍያ ይቁምልኝ ጥያቄ ከቼክ አውጪው (Drawer) በምን መልኩ ይቀበላል?
በስልክ በኢሜይል በፅሁፍ ብቻ በሁሉም

9. ባንካችሁ ቼክ አውጪው 'ቼኩ ከእኔ የተወሰደው በማታለል፣ በዛቻና ማስፈራራት ወይም በኃይል ነው' የሚል ምክንያት ጠቅሶ የቼኩ ክፍያ እንዲቆምለት ቢጠይቅ እንዲህ አይነት ምክንያቶች ይቀበላል? አዎ አይቀበልም ለምን? _____

10. ከቼክ አውጪው (Drawer) ውጪ ቼኩ በጀርባው በመፈረም ተላልፎልኛል የሚል (Endorsee/holder) ወገን 'ቼኩ ስለተሰረቀብኝ፣ ስለጠፋብኝ እንዳይከፈል አቁሙልኝ' ብሎ ጥያቄ ቢያቀርብ ባንካችሁ እንዲህ አይነት ጥያቄ ይቀበላል? አዎ አይቀበልም

11. ባንካችሁ ቼክ ሲከፍል የቼክ አውጪው ፊርማ ሳይሆን ቼኩ የተላለፈለትን ሰው (Endorsee/holder) ፊርማ ያጣራል ወይ? አዎ የሚያጣራበት መንገድ የለውም

12. ቀን ያልተፃፈበት ቼክ ይዞ በመምጣት ክፍያ ለሚጠይቃችሁ ሰው ቀን ባለመፃፉ ብቻ ባንካችሁ ቼክን ተመላሽ ያደርገዎል? አዎ አያደርግም ይከፍላል

13. በቼኩ ላይ በአሃዝ እና በፊደል የተፃፈው የገንዘብ መጠን ልዩነት ካለው ባንካችሁ ምን ያደርጋል?
ሀ/ በንግድ ህጉ አንቀፅ 837(1) መሰረት በፊደል የተፃፈውን ይከፍላል ለ/ በአሃዝና በፊደል የተፃፈው ልዩነት አለው ብሎ ይመልሰዋል ለምን? _____

14. በቼኩ ላይ በአሃዝ ወይም በፊደል የተፃፈው ገንዘብ ድግግሞሽ እና የመጠን ልዩነት ካለው ባንካችሁ ምን ያደርጋል? ሀ/ በንግድ ህጉ አንቀፅ 837(2) መሰረት አነስተኛውን መጠን ይከፍላል
ለ/ በአሃዝና በፊደል የተፃፈው ልዩነት አለው ብሎ ይመልሰዋል ለምን? _____

15. ቼክ እንዲመነገርለት ከደንበኞችሁ የተሰጠውን ቼክ ይዞ የመጣ ሰው በደንበኞችሁ ሒሳብ ላይ ቼኩን የሚከፍል ያህል ሒሳብ ባይኖረውም ግማሹን ያህል ቢኖር እና ቼኩ አምጪው 'ያለውን ገንዘብ ክፈሉኝ' ቢላችሁ ትከፍሉታላችሁ? ሀ/ አዎ በንግድ ህጉ አንቀፅ 859 መሰረት በሒሳቡ ያለውን ከፍለን ላልተከፈለው መጠን ደግሞ ማረጋገጫ ፅፈን እንሰጠዋለን ለ/ በቂ ስንቅ የለውም ብለን እንመልሰዋለን ሌላ የሚያደርጉት ካለ? _____

16. ባንካችሁ በቼኩ ላይ የተፃፈው ፅሁፍ በአንድ አይነት የእስክርቢቶ ቀለም የተፃፈ አይደለም ወይም በቀይ ቀለም ተፅፏል ብሎ ቼኩ ተመላሽ ያደርገዎል? አዎ አያደርግም ተመላሽ የሚያደርግ ከሆነ ለምን? _____

17. ባንካችሁ የሌላ ቅርንጫፍ (በአገሪቱ ጠረፍ አከባቢ ያለ ሊሆን ይችላል) ቼክ እንዲከፍል አምጪው ጠይቆት በባለ ቼኩ ሒሳብ በቂ ገንዘብ ባይኖር ቼኩ በቂ ስንቅ የለውም የሚል ማረጋገጫ ለአምጪው ትሰጣላችሁ? ሀ/ አዎ ለ/ ባለ ቼኩ ሒሳብ የከፈተበት ቅርንጫፍ ሂደቱ አስመታው ብለን እንመልሰዋለን ሐ/ ሌላ የሚያደርጉት ካለ? _____

18. ባንካችሁ የደንበኞችሁ ማረጋገጫ (Confirmation) ሳያገኙ ቼክ የማይከፍልበት አጋጣሚ አለው? አዎ የለውም

19. በተራ ቁጥር 18 ለተጠየቀው ጥያቄ መልሰዎት አዎ ከሆነ በምን በምን ሁኔታዎች ማረጋገጫ ትጠይቃላችሁ? ሀ/ በማናቸውም የቼክ ክፍያዎች ለ/ ደንበኛው ሒሳብ ሲከፍት ከተወሰነ የገንዘብ መጠን በላይ ለሆነው ማረጋገጫ ሳይጠየቅ እንዳንከፍል በውል ግዴታ ሲያስገባን ሐ/ ሌላ ሁኔታ ካለ _____

20. በተራ ቁጥር 18 ለተጠየቀው ጥያቄ መልሰዎት አዎ ከሆነ እና ማረጋገጫው ባይገኝ ቼክ አምጪውን ምን ይሉታል? ሀ/ ክፍያ እንፈፅምለታልን ለ/ ነገ ተመለስ እንለዋለን ሐ/ ማረጋገጫ እስኪገኝ ክፍያ አንፈፅምለትም መ/ ሌላ የሚያደርጉት ካለ _____

21. በቼኩ የተፃፈው ቀን ሳይደርስ አምጪው ቼኩ እንዲከፈለው ባንካችሁ ድረስ ይዘት ቢመጣ ትከፍሉታላችሁ? ሀ/ አዎ ቢያንስ ባለቼኩ ሒሳብ ያለው መሆኑን አጣርተን ቼኩ ቀኑ ሳይደርስ እንክፈል ወይ ብለን ጠይቀን እንከፍለዋለን ለ/ ቀኑ አልደረሰም ብለን እንመልሰዋለን

22. ባንካችሁ በተራ ቁጥር 21 የተጠቀሰው ሁኔታ ሲያጋጥመው በቼኩ የተጠቀሰው ቀን እስኪደርስ ድረስ ወይም ከዛ ለበለጠ ውስን ጊዜ በቼኩ የተገለፀውን ገንዘብ ከባለቼኩ ሒሳብ ላይ ቀንሶ በማገድ /Certification of Cheque በማድረግ/ ቼኩን ለአምጪው ይመልስለታል? አዎ እንዲህ አይነት አገልግሎት አይሰጥም የማይሰጥ ከሆነ ለምን? _____

23. አንድ ሰው በቅርንጫፍ ባንካችሁ ከተከፈተ የቼክ አካውንት ላይ እንዲከፈለው ቼክ ይዞ ቢመጣ ነገር ግን በደንበኞችሁ ሒሳብ በቂ ገንዘብ ከሌለ እና ቼኩን ይዞ የመጣ ሰው አሁንኑ በቂ ስንቅ የለውም የሚል ማረጋገጫ ስጡኝ ቢላችሁ ባንካችሁ ምን ያደርጋል? ሀ/ ማረጋገጫ ወዲያውኑ እንሰጠዋለን ለ/ ባለቼኩ ሒሳብ እንዲያስገባ ንገረው እንለዋለን ሐ/ ደንበኞችን ስልክ ደውለን ገንዘብ እንዲያስገባ ለመንገር እንዲመኙን ቆይ ጠብቅ አንዳንዴም ነገ ብትመለስ እንለዋለን መ/ ሌላ የሚያደርጉት ካለ _____

24. ደንበኞችሁ የቼክ ሒሳብ ሲከፍት ወደፊት ተከፋይ የሚሆኑ ቼኮች (Postdated Cheques)

እንዳያወጣ የሚውል የውል ግዴታ ያስገባል? አዎ አያስገባም

25. ሰዎች ወደፊት ተከፋይ የሚሆኑ ቼኮች (Postdated Cheques) እንዳያወጡ በህግ መከላከል

አለባቸው ብለው ያምናሉ? አዎ አላምንም

26. ቼክን እንደ ዋስትና መስጠት በህግ የተፈቀደ ተግባር ነው ብለው ያምናሉ? አዎ አላምንም

27. በባንክ ቆይታዎ 'ቼኩ ለዋስትና እንጂ እንዲመነዘረው አልሰጠሁትም' የሚሉ ደንበኞች ምን ያህል

ይገጥሞታል? በተደጋጋሚ አልፎ አልፎ ገጥሞኝ አያውቅም

28. ቼክ ጥሬ ገንዘብን ተክቶ በሰፊው ገበያ ላይ እንዲውል ምን መደረግ አለበት ብለው ያስባሉ? .

ለሰጡኝ ጊዜ በድጋሜ አመሰግናለሁ።

አዲስ አበባ ዩኒቨርሲቲ

የህግ ትምህርት ቤት

ይህ መጠየቅ በንግድ ህግ (Business Law) የማስተርስ ዲግሪ ለማግኘት ‘The Law and the Practice of Using Cheque/Check as a Means of Payment in Ethiopia’ በሚል ርዕስ ለማሟያነት አጥኚው ለሚሰራው ጥናት ለግብአት መሰብሰቢያነት የተዘጋጀ ነው። መጠይቁ ለጥናቱ የሚያገልግሉ መረጃዎችን ለመሰብሰብ ብቻ የሚያገለግል ሲሆን የተሰበሰበው መረጃም በሚስጥር የሚያዝ መሆኑን አጥኚው ያረጋግጣል። መጠይቁ ለመሙላት እና ጊዜዎን ለመስጠት ስለ ተባበሩኝ በቅድሚያ ከልብ አመሰግናለሁ።

1. የእርስዎ የትምህርት ደረጃ ዲግሪ ማስተርስ ዶክትሬት ሌላ _____
2. የስራ ልምድዎ? እስከ 10 ዓመት እስከ 15 ዓመት ከ15 ዓመት በላይ
3. ቼክ ለዋስትና መስጠት ይችላል ብለው ያምናሉ? አዎ አላምንም
4. የፌዴራል ጠቅላይ ፍርድ ቤት ሰበር ሰሚ ችሎት በመ/ቁ 24435 ቅፅ 12 ገፅ 521 ላይ በአብላጫ ድምፅ ‘ቼኩ ለዋስትና የሰጠሁት ነው’ በሚል የሚቀርብ መቃወሚያ በንግድ ህጉ አንቀፅ 717 ሥር የግል ግንኙነቶች (Personal relations) በሚለው የሚወድቅ በመሆኑ በመቃወሚያነት መቅረብ ይቻላል ብሎ የተረጎመበት መንገድ ይቀበሉታል? አዎ አልቀበለውም
5. ለአንድ ሰው ቼክ ከተሰጠ በኋላ ባንኩ ክፍያ እንዳይፈፅምለት አውጪው ማዘዝ እንደሚችል በንግድ ህጉ አንቀፅ 857 ምንም ምክንያት ሳይጠቅስ መደንገጉ ትክክል ነው ይላሉ? አዎ አይደለም
6. በንግድ ህጉ አንቀፅ 857 ለአውጪው ያለ ገደብ የተሰጠ መብት ብሔራዊ ባንክ ባወጣው መመሪያ ቁጥር 64/2016 ‘ቼኩ ስለመጥፋቱ/መሰረቁ የፖሊስ ማረጋገጫ ካልቀረበ ወይም በቂ ስንቅ ከሌለው’ የክፍያ ይቁምልኝ ጥያቄ ተቀባይነት ሊኖረው አይገባም በማለት የአውጪው መብት በመመሪያ ማጥበቡ ትክክል ነው ይላሉ? አዎ ትክክል አይደለም ህጉ ነው መሻሻል ያለበት
7. በመመሪያው ባልተጠቀሰ ለምሳሌ ‘ቼኩ በኃይል፣ በዛቻ በማታለል ነው የተወሰደብኝ’ በሚል ምክንያት አውጪው የቼኩን መክፈል ማቆም ይችላል ይላሉ? አዎ አይችልም ምክንያትዎ? _____
8. ለቼክ አውጪው (Drawer) የተሰጠ መብት ቼኩ ተላልፎልኛል ለሚል (Endorsee/holder) ‘ቼኩ ስለተሰረቀብኝ፣ ስለጠፋብኝ እንዳይከፈል ይቁምልኝ’ ብሎ እንዲጠይቅ ሊፈቀድለት ይገባል ይላሉ? አዎ ሊፈቀድለት አይገባም ምክንያትዎ? _____

9. ቼክ ልክ እንደ የሐዋላ ወረቀት (Bill of Exchange) ቀኑ ወደፊት (postdated) ተደርጎ መፃፍ ይችላል ብለው ያምናሉ? አዎ መፃፍ የለበትም

10. ቼክ ቀኑ ወደፊት (postdated) ተደርጎ ከተፃፈ በኋላ ቀኑ ሳይደርስ ባንክ ቢቀርብ መክፈል አለበት ይላሉ? አዎ መክፈል የለበትም

11. ሰዎች ቀናቸው ወደፊት ተከፋይ የሚሆኑ ቼኮች (Postdated Cheques) እንዳያወጡ በህግ መከላከል አለባቸው ብለው ያምናሉ? አዎ አላምንም

12. ቀን ያልተፃፈበት ቼክ ባንኮች በቀረበላቸው ቀን መክፈል አለባቸው ይላሉ? አዎ የለባቸውም

13. በቼኩ ከተፃፈው ቀን አንስቶ ቼኩ ባንክ መቅረብ ያለበት እስከ 6 ወር ድረስ ነው ተብሎ በንግድ ህጉ አንቀፅ 855 የተቀመጠው ጊዜ በአሁኑ ሰዓት ‘ረዝሟል፣ ማጠር አለበት’ ይላሉ? አዎ በቂ ነው ማጠር አለበት ካሉ ስንት መሆን አለበት? _____

14. ባንኮች ቼክ ሲከፍሉ የቼክ አውጪው ፊርማ ሳይሆን ቼኩ የተላለፈለትን ሰው (Endorsee/holder) ፊርማ ጭምር ማጣራት አለባቸው ተብሎ በንግድ ህጉ አንቀፅ 860 የተደነገገው አስፈላጊ ነው ይላሉ? አዎ አስፈላጊ አይደለም መቅረት አለበት

15. ባንኮች የሌላ ቅርንጫፍ (በአገሪቱ ጠረፍ አከባቢ ያለም ሊሆን ይችላል) ቼክ ሒሳቡ የተከፈተበት ቦታ ድረስ ሂደህ አስመታው እንጂ እዚህ አንመታም ብለው ቼኩን መመለሳቸው፤ መርማሪ ፖሊሶችም የቼክ ሒሳቡ በወጣበት አከባቢ ባለው ፖሊስ ጣብያ ምርመራ እንዲጣራልህ አመልክት እያሉ የሚመልሱበት መንገድ ትክክልና ህጋዊ ነው ይላሉ? አዎ ትክክል አይደለም ምክንያትም _____

16. የቼክ አውጪው ሒሳብ ውስጥ ገንዘብ የሌለው መሆኑን እያወቀ ቼኩ ተቀብሎ ለሌላ ሰው ያስተላለፈ ልክ እንደ ቼክ አውጪው በወንጀል መጠየቅ አለበት ይላሉ? አዎ መጠየቅ የለበትም ምክንያትም _____

17. በህግ ስራ ቆይታዎ ‘ቼኩ ለዋስትና እንጂ ለክፍያ አልሰጠሁትም’ የሚሉ ክርክሮች ምን ያህል ይገጥሟል? በተደጋጋሚ አልፎ አልፎ በጣም ውሱን አልገጠመኝም

18. ቼክ ጥሬ ገንዘብን ተክቶ በሰፊው ጥቅም ላይ እንዲውል ምን መደረግ አለበት ብለው ያስባሉ?

19. ሌላ ከቼክ ጋር በተያያዘ ማንሳት የሚፈልጉት ካለ? _____

ቅፅ 03 በህግ ባለሞያዎች ብቻ የሚሞላ መጠይቅ

ለሰጡኝ ጊዜ በድጋሜ አመሰግናለሁ።