

## UNIT – II

### CROSSING, ENDORSEMENT AND DUTIES OF BANKER

#### **CROSSING**

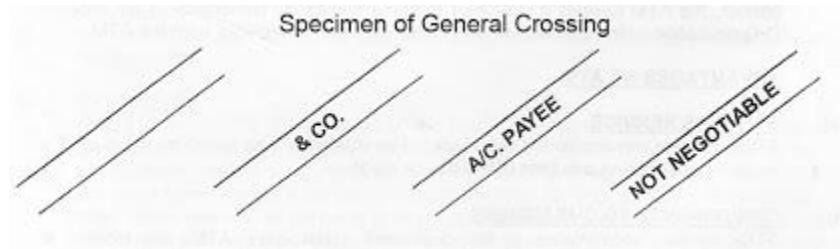
Crossing of a cheque means two transverse parallel lines are drawn on the left hand corner of the cheque. A crossing of the cheque is a direction to pay money to the banker and not to the holder at the counter. A cheque can be made safe by crossing it. Crossing prevents fraud and wrong payments.

#### **Types of Crossing**

**General Crossing:** In a general crossing, simply two parallel transverse lines, with or without the words 'not negotiable' in between, may be drawn. Such a cheque is crossed generally.

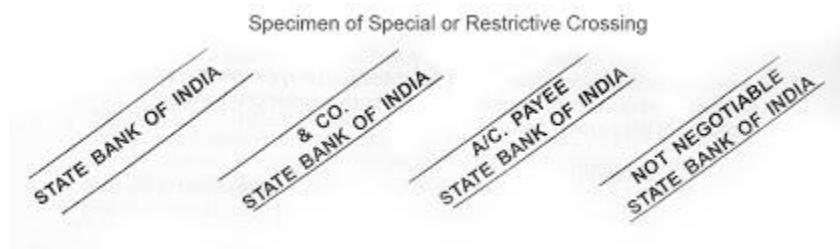
The effect of general crossing is that the payment of the cheque will not be made at the counter, it can be collected only through a banker.

#### **Specimen of General Crossing**



#### **2. Special Crossing :-**

It is a cheque in which the name of the bank is written between the two parallel lines and hence it can be paid to that specific banker only. Inclusion of the name of a banker is essential in special crossing . Special Crossing can never be converted to General Crossing. In Special Crossing paying banker to honour the cheque only when it is presented through the bank mentioned in the crossing and no other bank. Specimen of Special or Restrictive Crossing



The effect of special crossing is that the bank makes payment only to the banker whose name is written in the crossing. Specially crossed cheques are safer than a generally crossed cheque.

#### **3. Restrictive crossing:**

Besides the two statutory types of crossing discussed above, there is one more type of crossing namely, restrictive crossing. This type of crossing has been recognised by usage and custom of the trade.

In a restrictive crossing the words 'Account Payee' or Account Payee Only' are added to the general or special crossing.

The effect of restrictive crossing is that the payment of the cheque will be made by the bank to the collecting banker only for the account payee named. If the collecting banker collects the amount for any other person, he will be liable for wrongful conversion of funds.

It should be noted that the duty of the paying banker is only to ensure that the payment is made through the named bank, if there is any. He is not liable, in case the collecting banker collects the cheque for any other person than the account payee. In that case collecting banker will be liable to the true owner.

#### **4. Not negotiable Crossing (Sec. 130):**

A person taking is cheque crossed generally or specially, bearing in either case the words 'not negotiable' shall not be able to give a better title to the holder than that of the transferor.

The effect of a not negotiable crossing is that the cheque can be transferred but the transferee will not acquire a better title to the cheque. Thus a cheque is deprived of its essential feature of negotiability.

The objects of "not negotiable" crossing is to protect the drawer against loss or theft in the course of transit.

#### **Significance of General Crossing:**

- i. The effect of general crossing is that it gives a direction to the paying banker.
- ii. The direction is that, the paying banker should not pay the cheque at the counter. It should be paid only to a fellow banker. In other words, payment is made through an account and not at the counter.
- iii. If a crossed cheque is paid at the counter in contravention of the crossing:
  - a) The payment does not amount to payment in due course. So, the paying banker will lose his statutory protection;
  - b) He has not right to debit his customer's account, since, it will constitute a breach of his customer's mandate;
  - c) He will be liable to the drawer for any loss, which he may suffer;
  - d) He will be liable to the true owner of the cheque who may be a third party, irrespective of the fact, that, there is no contract between the banker and the third party.
- iv. The main intention of crossing a cheque is to give protection to it. When a cheque is crossed generally, a person who is not entitled to receive its payment, is prevented from getting that cheque cashed at the counter of the paying banker.

#### **Significance of Special Crossing:**

- i. It is also a direction to the paying banker. The direction, is the, that paying banker should pay the cheque only to the banker, whose name appears in the crossing or to his agent.
- ii. If a cheque specially crossed to a bank is presented by another bank, not in the capacity of its agent, the paying banker is justified in returning the cheque.
- iii. A special crossing gives more protection to the cheque than a general crossing. It makes a cheque still safer because a person, who does not have a real claim for it, would find it difficult to obtain payment. In special crossing, the cheque is specially crossed to the payee's banker.

### **Difference between General and Special Crossing**

<b>General Crossing</b>	<b>Special Crossing</b>
1. Drawing of two parallel transverse lines is a must.	1. Drawing of two parallel transverse lines is not essential.
2. Inclusion of the name of a banker is not essential.	2. Inclusion of the name of a banker is essential.
3. In General Crossing paying banker to honor the cheque from any bank A/C.	3. In Special Crossing paying banker to honor the cheque only when it is presented through the bank mentioned in the crossing and no other bank.
4. General Crossing can be converted into a Special Crossing.	4. Special Crossing can never be converted to General Crossing.
5. In case of General Crossing the words “And Company” or “& Company” or “Not Negotiable” between the transverse lines does not carry special significance.	5. In case of Special Crossing the name of a banker may be written within two parallel transverse lines or with the words “And Company” or “Account Payee Only” or “Not Negotiable” .

### **Endorsement or Indorsement :**

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

When holder signs the instrument with an intention to negotiate it, it is called an endorsement. A simple signature of the holder on a negotiable instrument without any additional word constitutes an endorsement. The endorsement confers the property in the instrument to the endorsee (transferee) with the right of further negotiation.

### **Regularity / Requirements of valid Endorsement :-**

1. It must be signed by the holder.
2. In case of illiterate, a thumb impression should be fixed.
3. It must be on the back of the cheque or bill or on an along of them.
4. It may be in ink, print or with a stamp.
5. Partial endorsement is not valid legally it must be of the entire value of the cheque or bill.
6. If the number of payee are more then one then all the payees will sign or that person who is authorized.
7. The endorsee can also add, the proper signatures if the endorse is not clear.
8. If the payee are more than two the endorsement should be in the same order which is opened down on the back of the bill.
9. It should be completed by the delivery.
10. The intention must be clearly expressed.

## **Kinds of Endorsement**

### **1. Conditional Endorsement :-**

If the endorsement makes the payment of a bill subject to the fulfillment of a condition the endorsement is called conditional. The bank or payee can disregard the condition and the payment will be considered valid.

Example :- Mr. James holder of the bill , makes an endorsement on the bill saying, pay to Miss. Reema if she wins the match.

### **2. Blank Endorsement :-**

If the endorser signs, but does not give his name to whom he wishes to transfer the cheque is called blank endorsement.

Example :- Bill is payable to "Y" "Y" signs and endorses it without mentioning the name of the endorsee. It is a blank endorsement.

### **3. Special Endorsement :-**

An endorsement which specifies the name of the transferee for the payment of the bill is called special endorsement.

Example :- Mr. Tanu makes endorsement by writing the word "Pay to Mr. Sidu or order and signs it. It is a special or full endorsement.

### **4. Restrictive Endorsement :-**

An endorsement which restrict the further negotiation of the bill.

Example :- "Y" the holder of the bill, makes an endorsement on the bill saying to pay "X" only. It means "X" cannot negotiate the bill further.

### **5. Partial Endorsement :-**

If the bill purposes to be endorsed for a part of the amount payable, the endorsement is called partial. It is legally ineffective.

Example :- Mr. Anthony holds the bill for ten thousands and endorses infavour of Mr. Qazi for Rs. 5 thousand and also in favour of Mr. Hyden for Rs. 5 thousand. It is a partial and invalid.

### **6. Facultative Endorsement :-**

Under the negotiable instrument, when an endorsee give up some of his rights it is called facultative endorsement.

The endorsee is relieved of his duty by giving the notice of dishonour to the endorser. The endorser remains liable to the endorsee for non-payment.

Example :- Pay Mr. Mash or order, notice of dishonour waived is a fluctative endorsement.

### **7. Sans Recourse Endorsement :-**

While endorsing the instrument endorser expresses that he would not be liable for any expenses incurred by indorsee or any holder, in case of dishonour of the instrument the endorsement is called sans recourse.

Example :- Mr. Jhon endorses a bill to Miss. Sarah by writing pay Miss. Sarah or order sans recourse.

## **Paying Banker**

### **Meaning**

A Paying banker is one who is a drawee of a cheque. He takes the responsibility of making payment on a cheque to the true owner. Any wrong payment will make the paying banker liable to the true owner of cheque and also to the drawer of the cheque.

### **Obligation of Paying Banker to Honour Cheques**

The paying banker is under an obligation to honour cheques subject to the fact that certain conditions are satisfied.

(a). There must be sufficient funds in the customer's account and only in the account on which the cheque is drawn. The amounts in the credit of the customer's account in other branches will not be considered.

(b). The funds should be properly applicable to the payment of such cheques.

(c). The cheque should be properly drawn and should not be irregular or ambiguous.

(d). Cheques should be presented during the banking hours of the bank.

(e). Cheques should be presented for payment within a reasonable time. They should be presented within six months of their issue. Usually, cheques presented after six months of their issue are considered stale.

### **Precautions before honouring a cheque**

#### **I. Presentation of cheque:**

(a) Type of the cheque: If it is an open one, the payment may be made at the counter. If it is crossed, the payment must be made only to fellow banker. If it is especially crossed, the payment must be specifically made to that banker, in whose favour it has been crossed.

(b) Branch: The Paying banker should see whether the cheque is drawn on the branch where the account is kept. If it is drawn on another branch, without any prior arrangement, the banker can safely return the cheque.

(c) Account: Even in the same branch, a customer might have opened two or more accounts. For each account, a separate cheque book would have been issued. Hence, the paying banker should see that the cheque of one account is not used for withdrawing money from another account.

(d) Banking hours: The paying banker should also note whether the cheque is presented during the banking hours on a business day. Payment outside the banking hours does not amount to payment in due course. The hours, of banking business are statutorily laid down.

(e) Mutilation: If the cheque is torn into pieces or canceled or mutilated, then, the paying banker should not honour it. He should return the cheque for the drawer's confirmation. In a case cheque is torn accidentally, the drawer must confirm it by writing such words as 'Accidentally torn by me' and affixing his full signature. A cheque torn into two or more pieces is generally returned with a remark Mutilated'.

#### **II. Form of cheque**

(a) Printed form: The cheque must be in proper form, It must satisfy all the requirements of law. The customers should draw cheques only on the printed leaves supplied by the bankers.

(b) Unconditional order: The cheque should not contain any condition. If it is a conditional one , the paying banker's position will become critical and he may not honor it.

(c) Date: Before honoring a cheque, the bank must see whether there is a date on the instrument. If it is undated, it cannot be regarded as a valid instrument. If a cheque is ante-dated, it may be paid if it has not become stale by that time. If a cheque is post- dated, he should honour it only on its due date.

(d) Amount: The next important precaution is that the banker should see whether the amount stated In the cheque, both in words and figures, agree with each other. If the amount is stated only in figures, the banker should return it with a remark 'Amount required to be stated in words'.

(e) Material alteration: A paying banker should be very cautious in finding out the alterations that may appear on a cheque. If there is any material alteration, the banker should return it with a memorandum 'Alteration requires drawer's confirmation.'

### **III. Sufficient Balance**

There must be sufficient balance to meet the cheque. If the funds available are not sufficient to honor a cheque, the paying banker is justified in returning it. So, before honoring a cheque , he must check up the present state of his customers' account.

### **IV. Signature of the Drawer**

The next important duty of a paying banker is to compare the signature of his customer found on the cheque with that of his specimen signature.

### **V. Endorsement.**

Before honoring a cheque, the banker must verify the regularity of endorsement, if any, that appears on the instrument. It is more so in the case of an order cheque, which requires an endorsement before its delivery.

For instance, if there is per pro endorsement, the banker must find out the existence of authority. Failure to do so constitutes negligence on the part of the paying banker.

### **VI. Legal Bar**

The existence of legal bar like Garnishee Order limits the duty of the banker to pay a cheque.

### **Circumstances under which a cheque can be dishonored.**

**(a) Countermanding:** Countermanding is the instruction given by the customer of a bank requesting the bank not to honor a particular cheque issued by him. When such an order is received, the banker must refuse to pay the cheque.

Countermanding, in order to be really effective, must be in writing. The written mandate should contain all the details of the cheque, viz: date, number of the cheque, name of the payee and the amount. The mandate must be signed by the customer.

**(b) Upon the receipt of notice of the death of a customer:** When a banker receives written information from an authoritative source, (preferably from the nearest relatives) regarding the death of a particular customer, he should not honor any cheque drawn by that deceased customer.

If the banker is unaware of the death of a customer, he may honor the cheque drawn by him. Death puts an automatic end to the contractual relationship between a banker and his customer. .

**(c) Upon the receipt of notice of insolvency:** Once a banker has knowledge of the insolvency of a customer, he must refuse to pay cheques drawn by him,

**(d) Upon the receipt of notice of insanity:** Where a banker receives notice of a customer's insanity, he is justified in refusing payment of the cheque drawn by him. The banker should make a careful note, when the lunacy order is received. It is advisable that the banker should act upon a definite proof of the customer's insanity like a doctor's certificate, a court order etc.

**(e) Upon the receipt of notice of assignment:** The bank balance of a customer constitutes an asset and it can be assigned to any person by giving a letter of assignment to the banker. Once an assignment has been made, the assignor has no legal rights over the bank balance and therefore, if any cheque is drawn by him, the banker should refuse to honour it.

**(f) When a breach of trust Is intended:** In the case of a trust account, mere knowledge of the customer's intention to use the trust funds for his personal use, is a sufficient reason to dishonour his cheque.

**(g) Defective title:** If a person who brings a cheque for payment has no title or his title is defective, the banker should refuse to honour the cheque presented by him. For instance, a person who brings a cheque, which has been countermanded or which has been forged, has no title to it.

### **Statutory Protection to a Paying Banker**

If a paying banker pays a cheque which bears a forged signature of the payee or endorsee, he is liable to the true owner of the cheque. But, it is quite unjustifiable to make the banker responsible for such errors. It is so because, he is not expected to know the signature

of the payee or the endorsee. Therefore, law relieves the paying banker from his liability to the true owner in such cases, This relief is known as 'statutory protection.'

To claim protection under the banker should have fulfilled the following conditions:

1. He should have paid an order cheque.
2. Such a cheque should have been endorsed by the payee or his order.
3. It should have been paid in due course.

### **Payment in due course**

Section 10 of the Negotiable Instruments Act, 1881 clearly mentions the manner in which the paying banker should make payment on a cheque when presented to him and demanded payment. The payment should be made in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

**(i) Payment in accordance with apparent tenor:** When a paying banker receives cheques, he has to carefully go through the instructions given by the drawer. For example, if the drawer has issued a cheque dated 10th June 2000, Payment cannot be made before the date. If the cheque is crossed, then the banker cannot make payment across the counter.

**(ii) In good faith :** The paying banker will make payment to a person whose ownership is certain. In other words, the person presenting the cheque creates absolute good faith in the minds of the banker regarding the ownership.

**(iii) Without negligence :** The paying banker has to go through the contents of cheque before making payment. If the cheque contains any alteration, overwriting or cancellation, payment cannot be made. Sometimes, the cheque may also contain — material alteration॥

**(iv) To the person in possession:** Paying banker can make payment to a holder in due course only when he is in possession of the instrument. Possession is a must for a holder in due course. For a holder it is not a must. Thus, a paying banker should make payment only to that person who is in possession and presents the cheque for payment

**(v) Circumstances :** Even though the person presenting the cheque may fulfils all conditions, but still creates a doubt in the minds of the paying banker at the time of making payment, the paying banker must get it clarified before making payment. There are instances where the amount of the cheque and the status of the presenting the cheque are inconsistent.

### **Collecting Banker:**

A Collecting banker is one who undertakes to collect cheques, drafts, bill, pay order, traveler cheque, letter of credit, documents such as lottery chits, dividend warrants, debenture interest, etc., on behalf of the customer. For undertaking this collection, the collecting banker will be charging commission.

### **Duties of a collecting banker**

**(I) Exercise reasonable care and diligence in his collection work:** When a banker collects a cheque for his customer, he acts only as an agent of the customer. He should exercise reasonable care, diligence and skill in collection work.

**(ii) Present the cheque for collection without any delay:** The banker must present the cheque for payment without any delay. If there is delay in presentment the customer may suffer losses due to the insolvency of the drawer or insufficiency of funds in the account of the drawer or insolvency of the banker himself. In all such cases, the banker should bear the loss.

**(iii) Notice to customer in the case of dishonor of a cheque:** The N.I. Act has prescribed a reasonable time for giving the notice of dishonor. If he fails to do so, and consequently, any loss arises to the customer, the banker has to bear the loss.

**(iv) Present the bill for acceptance at an early date:** As per sec.61 of the NI. Act, a bill of exchange must be accepted. If a banker undertakes to collect bills, it is his duty to present them for acceptance at an early date.

**(v) Present the bill for payment:** The banker should present the bills for payment in proper time and at proper place. If he fails to do so and if any loss occurs to the customer, then, the banker will be liable. According to Sec.66 of N.I Act a bill must be presented for payment on maturity. .

**(vi) protest and note a foreign bill for non-acceptance:** In case of dishonor of a bill by non-acceptance or non-payment, it is the duty of the collecting banker to inform the customer immediately. Generally he returns the bill to the customer. In the absence of specific instructions, collecting bankers do not get the inland bills noted and protested for dishonor. If the bill in question happens to be a foreign bill, the banker should have it protested and noted by a notary public and then forwarded it to the customer.

### **Statutory Protection:**

Section 131 of the Negotiable Instruments Act provides protection to a collecting banker who receives payment of a crossed cheque or draft on behalf of his customers. A collecting banker can claim protection against conversion if the following conditions are fulfilled.

#### **1. Good Faith and Without Negligence:**

Statutory protection is available to a collecting banker when he receives payment in good faith and without negligence. The phrase in “good faith” means honestly and without notice or interest of fraud and does necessarily require carefulness. Negligence means failure to exercise reasonable care.

#### **Following are a few examples which constitute negligence:**

- (a) Failure to obtain reference for a new customer at the time of opening the account.
- (b) Collection of cheques payable to ‘trust accounts’ for crediting to personal accounts of a trustee.
- (c) Collecting for the private accounts of partners, cheques payable to the partnership firms.
- (d) Omission to verify the correctness of endorsements on cheques payable to order.
- (e) Failure to pay attention to the crossing particularly the “not negotiable crossing.”

**2. Collection for a Customer:**

Statutory protection is available to a collecting banker if he collects on behalf of his customer only. If he collects for a stranger or noncustomer, he does not get such protection. A bank cannot get protection when he collects a cheque as holder for value.

**3. Acts as an Agent:** A collecting banker must act as an agent of the customer in order to get protection. He must receive the payment as an agent of the customer and not as a holder under independent title. The banker as a holder for value is not competent to claim protection from liability in conversion. In case of forgery, the holder for value is liable to the true owner of the cheque.

**4. Crossed Cheques:**

Statutory protection is available only in case of crossed cheques. It is not available in case uncrossed or open cheques because there is no need to collect them through a banker. Cheques, therefore, must be crossed prior to their presentment to the collecting banker for clearance. In other words, the crossing must have been made before it reached the hands of the banker for collection. If the cheque is crossed after it is received by the banker, protection is not available. Even drafts are covered by this protection.