

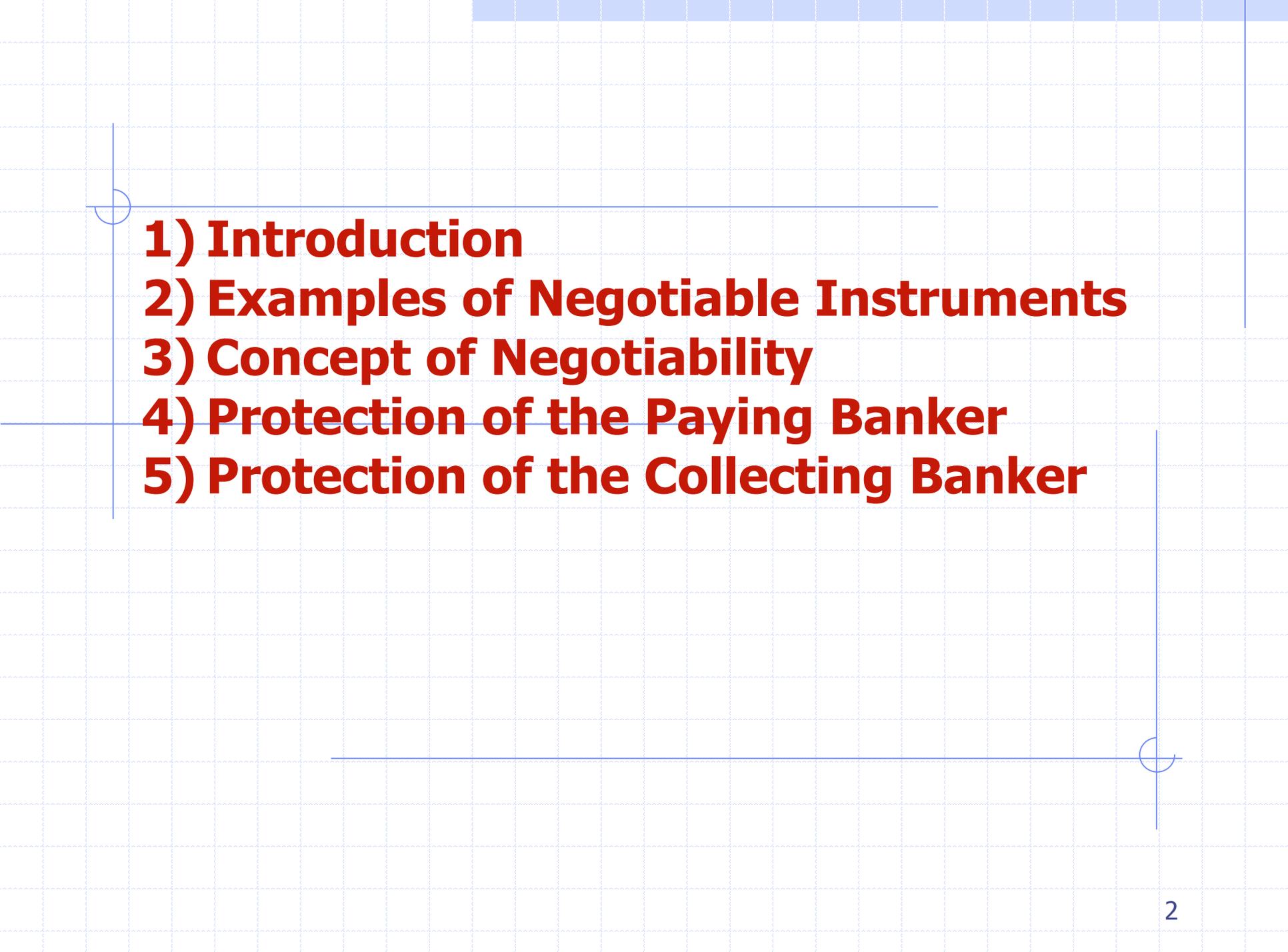
**LAW**

**OF**

**NEGOTIABLE**

**INSTRUMENTS**

**(Topic 5)**

- 
- 1) Introduction**
  - 2) Examples of Negotiable Instruments**
  - 3) Concept of Negotiability**
  - 4) Protection of the Paying Banker**
  - 5) Protection of the Collecting Banker**

# Introduction

- ◆ Negotiable instruments such as cheques, bankers' draft etc are documents used in commercial and financial transactions.
- ◆ The law of negotiable instruments is governed by the Bills of Exchange Act 1949 (Revised 1978).

# Examples of Negotiable Instrument

- ◆ Promissory Notes
- ◆ Cheques
- ◆ Bankers' draft
- ◆ Bank notes
- ◆ Traveler's cheques
- ◆ Treasury bills
- ◆ Share warrants
- ◆ Dividend warrants

# Concept of Negotiability

- ◆ It includes the quality of transferability i.e. transfer of property (ownership) from one person to another based on documents which represents a contractual obligation for payment of money.
- ◆ A negotiable instrument is a document containing an undertaking to pay a definite sum of money which may be transferred by several ways such as delivery or indorsement (signing on the back of the documents).

# CHEQUE SAMPLE

**Payee:** either name of individual or company

**Drawee**

**Date**

ABC BANK

Date: .....

Pay/Bayar: ..... atau pembayar/or bearer

Ringgit Malaysia:.....

RM

**Amount in number**

**Amount in words**

**Signature of drawer.** If it is drawn by company then stamp chop is necessary.



CIMB Bank Berhad (13491-P)  
Taman Maluri, Kuala Lumpur

Cukai Setem Sudah Dibayar

Akaun Penerima Sahaja  
Account Payee Only

35-14227

Tarikh  
Date

1	5	1	0	1	2
D	D	M	M	Y	Y

Bayar  
Pay

MAFUZAH BT MOHAMAD (790104-03-5494)

Atau Pembawa  
Or Bearer

Ringgit  
Malaysia

FIVE AND CENTS FORTY ONLY

RM 5.40XXXX

SFM 011364



SNE Marketing Sdn Bhd (237161-U)

Check Digit.

Cheque No.

Bank/Branch No.

Account No.

JANGAN TANDATANGAN DI BAWAH GARISAN INI • NO SIGNATURE BELOW THIS LINE

⑈00 ⑈616231⑈ 35⑈ 14227⑈ 0012735058⑈ 24

Al Rajhi Bank مصرف الراجحي



STAMP DUTY PAID

AL RAJHI BANKING & INVESTMENT CORPORATION (MALAYSIA) BHD 719057-X

50-14011

KUALA LUMPUR MAIN OFFICE

DATE  
TARIKH

2	3	1	0	1	2
D	D	M	M	Y	Y

NOT NEGOTIABLE  
ACCOUNT PAYEE ONLY

Pay by the Order of  
Bayar atas perintah

MAFUZAH BINTI MOHAMAD

OR BEARER  
ATAU PEMBAWA

586189

Ringgit  
Malaysia

FIFTEEN RINGGIT AND THIRTY SEN ONLY XXXXXXXXXXXXXXXX

RM 15.30 XXXXXXXXXXXXXXXX

for Al Rajhi Bank



TAKAFULmalaysia

SYARIKAT TAKAFUL MALAYSIA BERHAD (131646-K)

Cash Management  
This cheque is valid for 6 months from date of issuance.

For Bank's Use

Selamat Hj Sirat ARM 00054

00 588 239 50 140 11 060 10 1000 02



# Maybank

## BANKER'S CHEQUE

STAMP DUTY PAID

VALID FOR SIX MONTHS ONLY FROM DATE OF ISSUE

Muadzam Shah, Pahang

TARIKH  
DATE

08/11/12

DD/MM/YY

ATAU PERINTAH  
或指定人 OR ORDER

Malayan Banking Berhad (3813-K)

NOT NEGOTIABLE

606128777777 - 013246

BAYAR

折交 PAY TENAGA NASIONAL BERHAD \*\*\*\*\* 0 \*\*\*\*\*

馬幣 RINGGIT  
MALAYSIA

THIRTY TWO THOUSAND AND SEVEN HUNDRED

ONLY

RM \*\*\*\*\*32,700.00

For MALAYAN BANKING BERHAD

SHAHABUDDIN SMAIL  
P-0011983

MALAN OMAR  
P-0011983

(Authorised Signatures)

SFM

BC-1

JANGAN TANDATANGAN DI BAWAH GARISAN • 請勿在此線底下簽名 • DO NOT SIGNATURES BELOW THIS LINE

⑈00 ⑈013246⑈ 27⑈06128⑈ 0060777777⑈ 02



# Maybank

27-14011

KUALA LUMPUR MAIN

STAMP DUTY PAID

LAKU DALAM TEMPOH TIGA BULAN DARI TARIKH

Tarikh  
日期 Date

1 6 0 8 1 0

D D M M Y Y

Malayan Banking Berhad (3813-K)

A/C PAYEE ONLY

BAYAR/  
PAY 祈交  
MAFUZAH BINTI MOHAMAD \*\*\* NRIC  
NO:790104035494

ATAU PEMBAWA/ 或携票人取 /OR BEARER

RINGGIT  
MALAYSIA/ 馬幣  
TWO THOUSAND ONLY

RM \*\*\*\*\*2,000.00

SFM



A/C No: 514011010034

JANGAN TANDATANGAN DI BAWAH GARISAN INI 請勿在此線底下簽名 NO SIGNATURE BELOW THIS LINE

CHEQUE NO.

A/C NO.

1:83 109723 27 14011: 0050010034 25



# Maybank

KUALA LUMPUR MAIN

27-14011

STAMP DUTY PAID

Malayan Banking Berhad (3813-K)

AC PAYEE ONLY

BAYAR/ PAY 折交  
MAFUZAH BINTI MOHAMAD  
\*\*\*\*\* NRIC NO:790104035494

RINGGIT MALAYSIA/馬幣  
TWO THOUSAND ONLY

Tarikh  
日期 Date

1 5 0 4 1 0

D D M M Y Y

ATAU PEMBAWA/ 或携票人取 /OR BEARER

RM \*\*\*\*\*2,000.00



A/C No: 514011008759

JANGAN TANDATANGAN DI BAWAH GARISAN INI

请勿在此线底下签名

NO SIGNATURE BELOW THIS LINE

CHEQUE NO.

A/C NO.

⑆ 21 ⑈ 123964 ⑈ 27 ⑈ 14011⑆ 0050008759 ⑈ 25



# Maybank



PERBANKAN  
ISLAM

Cukai Setem Dibayar  
Stamp Duty Paid

27-14011

## KUALA LUMPUR MAIN

Tidak Boleh Diniaga/Not Negotiable  
Akaun Penerima Sahaja/A/C Payee Only

TARIKH  
DATE

2	5	0	5	0	9
D	D	M	M	Y	Y

BAYAR  
PAY

MAFUZAH BINTI MOHAMAD \*\*\* NRIC NO: 790104035494

ATAU PEMBAWA  
OR BEARER

RINGGIT  
MALAYSIA

TWO THOUSAND RINGGIT ONLY

RM\*\*\*\*\*2,000.00

Malayan Banking Bhd (3813-K)

629181



JCD9999-N

JANGAN TANDATANGAN DIBAWAH GARISAN INI • NO SIGNATURE BELOW THIS LINE

Cheque No.

Bank/Branch Code

Account No.

⑈88 ⑈057806⑈ 27⑈ 14011⑈ 0050005547⑈ 25



# Cheques

- ◆ Sec. 73(1) of the Bills of Exchange Act 1949
  - A cheque is a bill of exchange drawn on a banker payable on demand.

## Elements of a valid cheque :

1. It must be an unconditional order in writing.
  - The order must be without any conditions or qualifies and made in writing.
  - It must be in form of order and not request.
  - The word 'pay' and not 'please pay'.

# Cheques

## 2. The cheque must be signed.

- The person who gives the cheque should sign it.
- If no signature, the drawer would not be liable. (Sec 23. of BEA).

## 3. It is drawn in a banker.

- The drawer must give direction to a particular person, usually the bank. The name and address of the payee is stated on the face of the cheque.

# Cheques

4. The cheque instructed bank to pay money on demand.

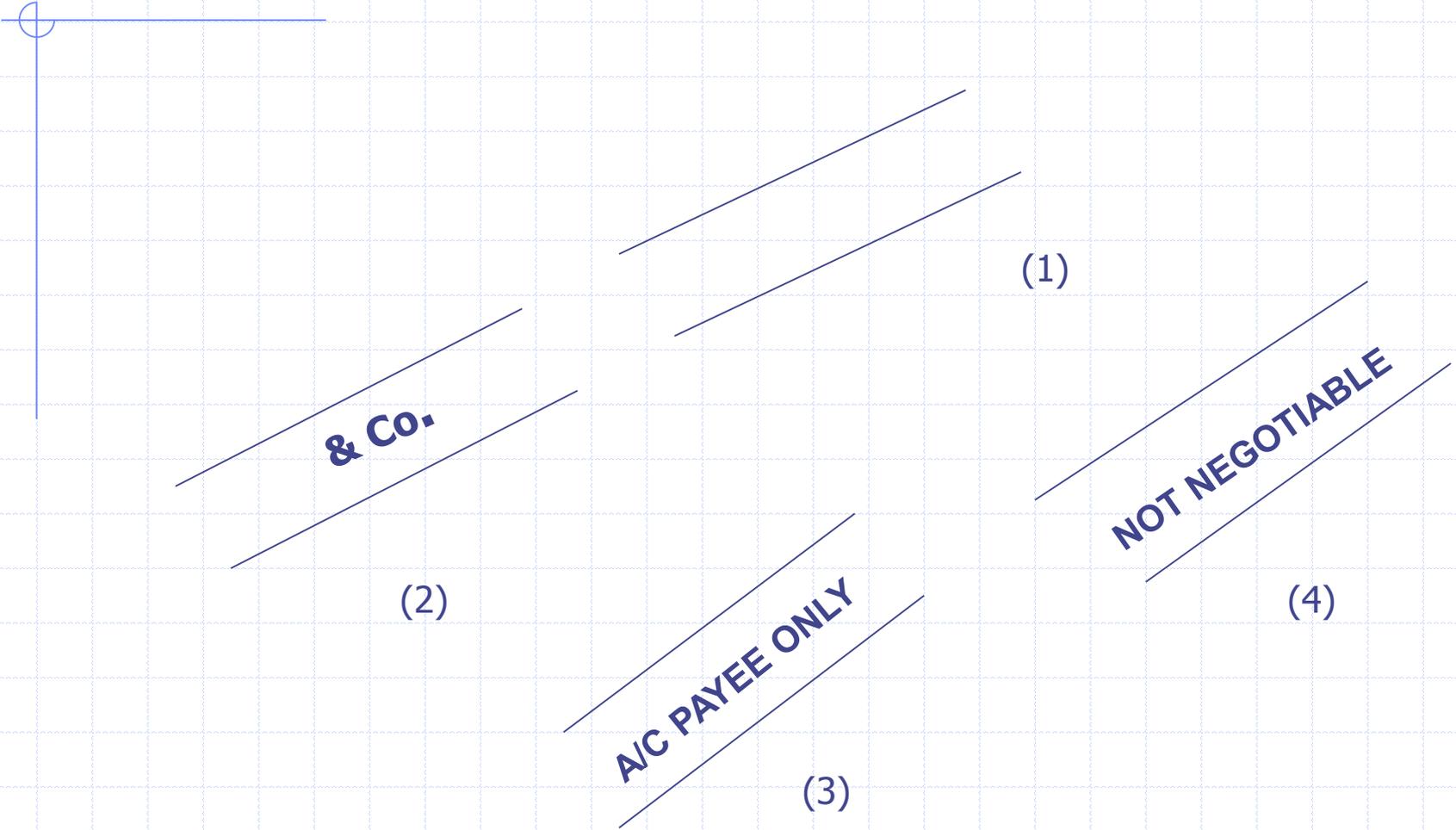
- Demand for payment is affected by presenting the cheque to the banker on whom it is drawn.

5. It is drawn for a specified person or in favour of a bearer.

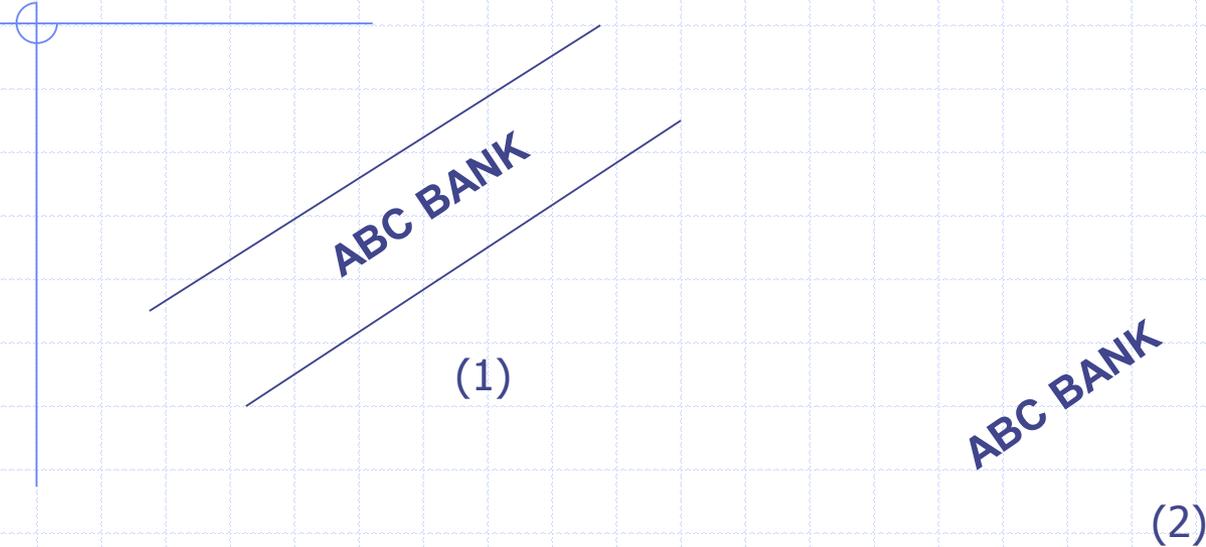
- The order must be a payment to a specified person or to a bearer.
- Bearer is the person who is in possession of the bill or note.

# TYPES OF CROSSINGS:

## 1) GENERAL CROSSING ( Sec. 76(1), BEA 1949.)



2) SPECIAL CROSSING (Sec. 76(2), BEA 1949.)



# Protection of the Paying Banker

- ◆ Paying banker (drawee bank) is the bank where a customer draws a cheque on it.
- ◆ The duty of a paying banker is to pay the right person according to the customer's mandate.
- ◆ If the bank pays to a wrong person, the bank must bear the loss.

# Protection of the Paying Banker

- ◆ The BEA provides protection to the paying banker :
  - (1) Payment in due course.
- ◆ Sec. 59 : A bearer is not liable if the banker pays a cheque in due course by or on behalf of the drawee or acceptor.
- ◆ **Payment in due course** means payment made at or after maturity of the bill to the holder in good faith and without notice that his title to the cheque is defective.

# Protection of the Paying Banker

## 2. Forged or unauthorized indorsement.

- ◆ Sec. 60 : if the banker pays in good faith and in the ordinary course of business a cheque drawn on him which bears a forged or unauthorized indorsement, he is not prejudiced by the forgery.
- ◆ e.g. A draws a cheque on Kredit Bank Bhd in favour of B. It is stolen by C who forges B's indorsement and negotiates it to D who in turns negotiates it to E who obtains payment from the bank. If the bank pays in good faith in the ordinary course of business, the bank will not be prejudiced by the forgery.

# Protection of the Paying Banker

## 3. No indorsement or irregular indorsement.

- ◆ Sec. 82 : The paying banker is protected if he pays a cheque, which is not indorsed or is irregularly indorsed, in good faith and in the ordinary course of business.

# Protection of the Paying Banker

## 4. crossed cheque.

- ◆ Sec. 80 : if the paying banker pays a crossed cheque in good faith, without negligence and according to the crossing, he is not liable.
- ◆ e.g. Amy draws a cheque on Bank Y Bhd in favour of Betty in order to repay a friendly loan. On receiving the cheque, Betty crosses it generally. The cheque is stolen by Cathy who goes into Bank Z Bhd and pretending to be Betty open an account in Betty's name. Bank Z Bhd presents the cheque to Bank Y Bhd who pays in good faith and without negligence. Bank Y Bhd is not liable to Betty by virtue of Sec 80.

# Protection of the Collecting Banker

- ◆ Collecting banker is the bank to whom a holder of a cheque presents the cheque for the credit of his account.
- ◆ Its duty : To collect the amount stated in the cheque from the paying banker.
- ◆ If the collecting bank fails to collect the amount as instructed by the customer, the collecting banker will be liable for breach of contract.

# Protection of the Collecting Banker

- ◆ The BEA gives protection for the collecting banker :-
- ◆ Sec. 85 : if a banker, in good faith and without negligence, receives payment of a cheque for a customer with no title or a defective title, he is not liable to the true owner.
- ◆ To get this protection, the collecting bank must prove the following :-
  - 1. the collecting banker acted for the customer.
  - 2. the collecting banker acted in good faith.
  - 3. the collecting banker acted without negligence.

# Protection of the Collecting Banker

- ◆ If the act is done in good faith though negligently the bank will not be protected.
- ◆ The test of negligence is stated in **Marfani & Co. Ltd v. Midland Bank Ltd.**
  - The court will have to look at the circumstances of the case complained, time of the act complained of and whether it is reasonable for banker to possess such information that a reasonable banker should have as to suspect that the customer is not the true owner of the cheque.

# Protection of the Collecting Banker

- ◆ From decided case, courts have held a collecting banker negligent in not making proper enquiries.

## **Woodland Development Sdn Bhd v. Chartered Bank.**

- ◆ Facts :
- ◆ The director of the plaintiff (payee) handed 3 cheques of which 2 were crossed with the words 'account payee' to Richard and Yap to open an account in a bank in the name of the plaintiff. However they persuaded the defendant's bank to collect the amount for the third party.

# **Woodland Development Sdn Bhd** **v. Chartered Bank.**

◆ Held :

- ◆ The defendant's bank was negligent in collecting cheques for the third party and was not protected under Sec. 85(1).
- ◆ The bank was ordered to return the amount of money with interest to the plaintiff.