

# CHEQUES IN LAW & PRACTICES

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LEGAL DISCUSSION

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# DISCUSSION MAPPING

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- Introduction:
- Definition of Checks:
- Formality:
  - I- Mandatory Data
  - II- Optional Data:
    - Substantial Requirements (Capacity, Subject and Reason)
    - Presentation of Checks:

# INTRODUCTION

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- What makes Checks Important? (CARE PRINCIPLES)

**C**reditability : → Checks are creditable bonds as it is well governed and organized

**A**ccessibility: → Checks are very accessible by merchants and entities

**R**egulated: → Checks are highly regulated by the law and banking norms.

**E**nforceable: → Checks are protected by the law.

# DEFINITION AND IMPORTANT ELEMENTS

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- Definition:

It is bill or commercial paper or note that contains an unconditional order to pay given by a customer (the drawer of the Paper) to a bank (Drawn On) with which the drawer maintains an account.

It is a paper instrument, embodying an unconditional order in writing, signed by a drawer, instructing a drawee bank to make payment to or to the order of a designated payee, or to the bearers

# DEFINITION AND IMPORTANT ELEMENTS

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- Elements of Checks according to the Unified Law :

- (1) The term "cheque" inserted in the body of the instrument and expressed in the language employed in drawing up the instrument;
- (2) An unconditional order to pay a determinate sum of money;
- (3) The name of the person who is to pay (drawee);
- (4) A statement of the place where payment is to be made;
- (5) A statement of the date when and the place where the cheque is drawn;
- (6) The signature of the person who draws the cheque (drawer).

# DEFINITION AND IMPORTANT ELEMENTS

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- Elements of Checks according to the Law of Commerce:

- (1) The term "cheque" inserted in the body of the instrument and expressed in the language employed in drawing up the instrument;
- (2) An unconditional order to pay a determinate sum of money;
- (3) The name of the “ Bank” where the check is drawn (the Drawn On Bank);
- (4) the place where payment is to be made;
- (5) A statement of the date when and the place where the cheque is drawn;
- (6) The signature of the person who draws the cheque (drawer).

# COLLATERALIZATION V. CHECKS

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- Risk Management , Collateralization and the Check as Payment Instrument :
  - Collateralization comes in the heart of the risk management for any financial instrument. The risk of default or credit risk is the central of any risk that financial institutions face.
  - Collateralization: means use the available assets of the customers to secure or reduce the default risk (credit risk).
  - The Weight of Collateral depends: (Liquidation, Enforcabilie, accesibility, regulations)
  - Here Check comes in the heart of this process.

# COLLATERALIZATION V. CHECKS

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- Checks are designed to be payment instruments not used as collateral.
- How to separate between Checks and Collateral?
  - 1) Dates of the Checks:
  - 2) Contractual Arrangements.
  - 3) Receiving Record of Checks
  - 4) Presentation of Checks.



# BILL OF EXCHANGE V. CHECKS

- Bills of Exchange (الكمبيالة): it is bill or bond or note issued by drawer to drawee (drawn on) to make payment of specified or to be specified amount for the order of the beneficiary.
- Bill of Exchange and Cheque share many common elements (like tripartite bond, formality, and same family of commercial papers).

What is the difference? The only difference is the Check word, the drawn on person, and the Law protection.

Why is it important to be able to differentiate? Practically it is very easy to differentiate

Should the financial institutions use Bill of Exchange? Bill of Exchange are not commonly used it is either PNs or Cheques

# PROMISSORY NOTE V. CHECKS

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- Promissory Note (السند لأمر): Normally the PN bilateral bond that contains an order of payment or a promise to make payment from the drawer directly to the Beneficiary.

What is the difference? Formality is different, the Legal protection, the value as creditability.

Why is it important to be able to differentiate? Practically this is not an issue.

Should the financial institutions use PN? This is should be a common practice.

# FORMALITY

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- Formality of Checks are crucial in the Law and Practice.
  - The mandatory Information and Data:
  - Cheque Word Written in the Bond “ the Law requires that the word “check” to be written in the form of the check. It has to be written in the same language which is used in the check.
  - The lack of this information will not be considered as checks.
  - Is this matter relevant in the current time?

# FORMALITY

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- Formality of Checks are crucial in the Law and Practice.
- The mandatory Information and Data:
- Unconditional Order to Pay: this is the order of the drawer to the drawee (Drawn On) to make the payment to the Beneficiary.
- The order can not be based on any condition,
- The Order has to specify the amount of money.
- The amount has to be written in letters and numbers.

# FORMALITY

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- Formality of Checks are crucial in the Law and Practice.
  - The mandatory Information and Data:
  - Unconditional Order to Pay: this is the order of the drawer to the drawee (Drawn On) to make the payment to the Beneficiary.

IN CASE ANY VARIATION BETWEEN NUMBERS AND LETTERS, THE LETTERS WILL PREVAIL.

# FORMALITY

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- Formality of Checks are crucial in the Law and Practice.
- The mandatory Information and Data:
- The name of the Drawn On Bank: the Law requires that the checks shall carry the name of the drawn on bank.

# FORMALITY

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- Formality of Checks are crucial in the Law and Practice.
- The mandatory Information and Data:
- The Issuance Date: Under the law of commerce and aligning with the International Law, the Check has to carry the issuance Date
- The Importance of the Issuance affects the time of presentation.
- Also it reflects the date of the establishment of the act of the checks.

# FORMALITY

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- Legal Capacity and Legal Authorization
- The Legal Capacity in the natural person:
  - Maturity (21 years)
  - Permitted to trade (18 years)
  - not less than 16 years.

Checks for natural guardians are only allowed if (i) it is based on donated money; or (ii) have court permission.



# FORMALITY

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- Legal Capacity and Legal Authorization
- The Legal authorization in Companies:
  - The company type
  - Checking the Commercial Registry (new extract not more than 3:6 months)
  - PoA (if Applicable)
  - S.V s from the account bank.

# FORMALITY

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- Formality of Checks are crucial in the Law and Practice.
- The Recovered Data:
- The Payment Place: the Place of the H.O of the Drawn On Bank.
- The Issuance Place: The domicile of the Drawer.
- The Beneficiary Name: the check holder.

# SUBSTANTIAL REQUIREMENTS

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- Reason of the Checks: the transactions behind the check. The transaction will affect the type of claims (Commercial or Civil). For financial agreements, the transactions are always Commercial .
- Subject : Shall be an amount of money

# PRESENTATION

- Presentation of Checks:

If the place is unknown the Bank will consider the place in the account opening contract

Outside Egypt  
8 Months from the Date of the Check

Inside Egypt  
6 months from the Date of the Check

# PRESENTATION

- Presentation of Checks:

