

To or to the order of a specified person or to bearer

The bill must be payable to:

1. A specified person; for example “Pay X”; or
2. The order of a specified person; for example, “Pay X or order”; or
3. Bearer, for example, “Pay bearer” or “Pay X or bearer”

Of the above (1) and (2) are “order bills” and (3) is a “bearer bill”.

A bill may be drawn payable to, or to the order of the drawer himself. Here the payee and drawer are one and the same person, as happens when a person draws a cheque payable to “self”. Again, the bill may be drawn payable to or to the order of the drawee. This might occur where a person indebted to his banker pays the bank by a cheque drawn on the bank. Payee and drawee are here the same person.

Capacity of Parties

Capacity to incur liability as a party to a bill is coextensive with capacity to contract. Where such capacity is to be determined by the law of Sri Lanka, it shall be determined by Roman Dutch law as administered in Sri Lanka, subject to the provisions of the statute law, section 22(1) and (2).

Consideration

Valuable consideration for a bill may be constituted by-

- a) Any consideration which by the law of England is sufficient to support a simple contract;
- b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time. Section 27(1)

Generally the nature of the consideration is not mentioned on the fact of the bill. However, the absence of the mention that value was given does not render the bill invalid. Section 3(4)(b)

In this context, consideration means that a person issuing a bill of exchange or a cheque must receive something in return for issuing such bill of exchange or cheque. The decision of the Sri Lankan Supreme Court in *Letchime v Jamison* (1913) 16 NLR 286 is a good illustration. In that case the plaintiff was the defendant’s brother’s mistress and had two children by him. When the defendant’s brother was leaving Sri Lanka the defendant as a favour, gave a promissory note to the plaintiff to maintain the children. The defendant did not receive any consideration from his brother for making this arrangement, and gave the note of his own accord and not at his brother’s request.

The question before the Court was whether the plaintiff could sue the defendant on the promissory note. For the defendant it was argued the since no valuable consideration passed between the plaintiff and the defendant for the note, no action could be filed on the promissory note for lack of consideration. This view was in accordance with the principles of English law.