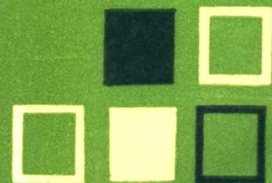
INTERNATIONAL PAYMENTS AND SETTLEMENTS

国际支付与结算



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SHEN JINCHANG
XU XIUQIONG
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上海外语教育出版社

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PREFACE

Since the end of the Second World War, international trade and investment the world over have, on the whole, expanded a great deal, despite the cyclical slowdown or recession occurred in some developed countries and the negative economic growth sustained by some developing countries. In the meantime, the internationalization of banking activity has entered upon a new stage. To be adapted to the developing circumstances, international payments and settlements through the financial intermediaries — banks have come to be more and more flexible, adaptable and innovative. For one thing, not only the traditional methods of payment are adopted more widely and with more flexibility than before, but quite a few innovations have been created out of necessity, in settlement of international economic transactions among different nations. For another, the services offered by international banks are of a great variety, to serve the purpose of safe and swift transfer of foreign exchange funds as well as receipt of correct documents of title to the goods.

As the saying goes, the responsibility for good communication rests with the teacher or author. In addition, as is known to all, to impart knowledge to the students is the teacher's sacred duty. Precisely because of this, the authors made up their minds to write a book covering the syllabus of the subject of international banking.

This book entitled "International Payments and Settlements", as the name implies, lays particular stress on banking and financial aspects of international economic transactions. Its primary aim is to provide an introductory exposition of and a practical guide to current foreign exchange operations conducted by international banks on behalf of their customers as well as themselves, with special emphasis on its basic concepts, characteristics, procedures and formalities, and points for attention. This book is designed for undergraduates majoring in International finance, so as to give them a good grounding for their studies at universities and colleges and for their work in banking and financial institutions after graduation. Actuated by these motives, the authors endeavour to arrange the subject matter in such a way that the book will remain comprehensible to all the readers, with the description and explanation proceeding in an orderly way and step by step. The authors also hope that this book will prove of interest to the staff of banks, financial institutions or trading firms, and to all others who are interested in the subject.

Finally, based on many years' teaching experience, the authors are confident that from the viewpoint of study for the purpose of application, using an English text for a subject of this nature will achieve better results than it is otherwise. That is the reason why this book is written in English.

Shen Jinchang
February, 1989

CONTENTS

PREFACE i
LIST OF EXHIBITS 1
CHAPTER ONE INTRODUCTION 3
CHAPTER TWO CREDIT INSTRUMENTS 8
CHAPTER THREE BILL OF EXCHANGE—DEFINITION, ACTS 12
CHAPTER FOUR BILL OF EXCHANGE—LOST BILL, DISCOUNTING, ACCEPTING AND FORFAITING OF A BILL, CLASSIFICATION 24
CHAPTER FIVE PROMISSORY NOTE 30
CHAPTER SIX CHEQUE 32
CHAPTER SEVEN CORRESPONDENT BANKING RELATIONSHIPS 36
CHAPTER EIGHT REMITTANCE 43
CHAPTER NINE TERMS AND METHODS OF PAYMENT IN INTERNATIONAL TRADE — PAYMENT IN ADVANCE, OPEN ACCOUNT BUSINESS, FACTORING, COLLECTION 50
CHAPTER TEN TERMS AND METHODS OF PAYMENT IN INTERNATIONAL TRADE — LETTERS OF CREDIT (L/C) 62
CHAPTER ELEVEN TERMS AND METHODS OF PAYMENT IN INTERPNATIONAL TRADE —LETTERS OF GUARANTEE(L/G) 100
CHAPTER TWELVE DOCUMENTS — DRAFT, INVOICE, INSURANCE POLICY 112
CHAPTER THIRTEEN DOCUMENTS —AIR WAYBILL, ROAD WAYBILL, CARGO RECEIPT, PARCEL POST RECEIPT, BILL OF LADING 127
CHAPTER FOURTEEN DOCUMENTS — COMBINED TRANSPORT DOCUMENTS, MISCELLANEOUS DOCUMENTS 138
CHAPTER FIFTEEN DOCUMENTS EXAMINATION AND REIMBURSEMENT 149
CHAPTER SIXTEEN SETTLEMENTS FOR NON-TRADE TRANSACTIONS 158
CHAPTER SEVENTEEN PAYMENT METHODS UNDER COMPENSATION TRADE, PROCESSING AND ASSEMBLING OF INCOMING MATERIALS AND PARTS 165
CHAPTER EIGHTEEN SETTLEMENTS UNDER PAYMENTS AGREE-

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MENTS 168
APPENDIX UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS — 1983 REVISION (Publication No. 400) 175
GLOSSARY 191

LIST OF EXHIBITS

Exhibit	4–1	Bill of Exchange
Exhibit	5–1	Promissory Note
Exhibit	6–1	Cheque
Exhibit	8–1	Application of Remittance
Exhibit	8–2	Payment Order
Exhibit	10–1	Revocable Letter of Credit
Exhibit	10–2	Irrevocable Letter of Credit
Exhibit	10–3	Confirmed Letter of Credit
Exhibit	10–4	Unconfirmed Letter of Credit
Exhibit	10–5	Payment Letter of Credit
Exhibit	10–6	Acceptance Letter of Credit
Exhibit	10–7	Negotiable Letter of Credit
Exhibit	10–8	Straight Letter of Credit
Exhibit	10–9	Revolving Letter of Credit
Exhibit	10–10	Transferable Letter of Credit
Exhibit	10–11	Red Clause Letter of Credit
Exhibit	10–12	Back to Back Letter of Credit
Exhibit	10–13	Application for Issuing Letter of Credit
Exhibit	11–1	Tender Guarantee
Exhibit	11–2	Performance Guarantee
Exhibit	11–3	Repayment Guarantee
Exhibit	11–4	Advanced Payment Guarantee
Exhibit	11–5	Overdraft Guarantee
Exhibit	11–6	Standby Letter of Credit (1)
Exhibit	11–7	Standby Letter of Credit (2)
Exhibit	11–8	Standby Letter of Credit (3)
Exhibit	12–1	Draft Drawn under Collection
Exhibit	12–2	Draft Drawn under Letter of Credit
Exhibit	12–3	Commercial Invoice
Exhibit	12–4	Insurance Policy
Exhibit	13–1	Air Waybill
Exhibit	13–2	Bill of Lading
Exhibit	14–1	Certificate of Origin (CCPIT)
Exhibit	14–2	Generailzed System of Preferences Certificate of Origin (Form A)
Exhibit	14–3	Inspection Certificate
Exhibit	14–4	Packing List
Exhibit	14–5	Shipping Company's Certificate

Exhibit 16–1 Traveller's Cheque
Exhibit 16–2 Credit Card

CHAPTER ONE INTRODUCTION

Ⅰ. What are international payments and settlements

International payments and settlements are a financial activity conducted among different countries in which payments are effected or funds are transferred from one country to another in order to settle accounts, debts, claims, etc. emerged in the course of political, economic or cultural contacts among them. As everyone knows, most of the international payments originate from transactions in world trade. For this reason, it is quite natural that this book will lay emphasis on dealing with commercial payments and settlements. To be more specific, international payments and settlements may arise from:

1. Commercial settlements, that is, trade payment.

In international trade importers in one country must make payment to exporters in another country for their imported goods.

2. Payments for the services rendered.

Services rendered by individuals or enterprises in one country to those in another country must also be paid, for example, insurance premium, freight, postage, cable charges, bank commission, etc.

3. Payments between governments.

The government of one country may make payment to that of another country for political, military, or economic reasons, such as extending loans, giving aids and grants, providing disaster relief, etc.

4. Transfer of funds among countries.

Following the general trend of capital internationalization in the world, capital is usually exported or imported among developed countries, among developed countries and developing countries, or even among developing countries by way of making investments, issuing loans, etc.

5. Others

Other international payments such as overseas remittances, educational expenses, inheritance, etc. should also be settled among countries.

Ⅱ. Evolution of international payments and settlements

1. From cash settlements to non-cash settlements.

Before the sixth century B.C., goods were exchanged between traders in different countries on a barter basis. A barter system put the trading parties great inconvenience. Then a medium of exchange was used in the form of coins in the beginning of the fifth century B.C. thereby ending the barter transactions. These coins were measured and exchanged by weight

and fineness among trading countries for settling international payments. Since then the international payments were effected by shipping precious metals taking the form of coins, bars or bullions to or from the trading countries. This was the so-called cash settlements.

However, the shipments of gold or silver across national boundaries were both expensive and risky. Freight costs were high, the risk of being lost, stolen or robbed was omnipresent and what is more, the speed of transferring funds would depend on the speed of transportation facilities, which would often slow down the turnover of funds. From the thirteenth century A.D. onwards, bills of exchange were created, gradually taking the place of coins in international payments and the bill of exchange market began to develop. With the establishment of foreign exchange banks at the end of the eighteenth century, international payments could be settled by way of transferring accounts in these banks. From then on, the non-cash settlements era began. Nowadays non-cash settlements are universally adopted all over the world. There is no denying the fact that the development of foreign exchange markets does play a very important role in non-cash settlements, for foreign exchange banks are allowed to buy and sell foreign exchange freely in these markets so as to meet the needs of international banking business.

2. From direct payment made between international traders to payment effected through a financial intermediary

As mentioned above, initially international trade payments were made by the buyers directly to the sellers by means of precious metal shipments. As foreign exchange banks were set up over time in different regions the world over, the payment channel did change, especially after a new means of payment, namely the bill of exchange, had been widely used in international payments and settlements. These banks acted as an intermediary effecting international payments by the buyers to the sellers. With worldwide banking network as well as modern banking techniques, they could not only make easier and quicker the transfer of funds needed for conducting international trade but also furnish their customers valuable economic and credit information so required. Nowadays they have become the centre of international settlements.

3. From payments under simple price terms to payments under more complex price terms

In the past, international trade payments were settled according to very simple price terms, such as cash on delivery, cash on shipment, cash with order, cash before shipment, etc. In modern international trade, its payments and settlements are done on the basis of different price terms.

As indicated in INCOTERMS (International Rules for the Interpretation of Trade Terms) ICC. No.350 the price terms available for use are multifarious and more complicated than before, including: Ex-Works, Free Carrier (named point), FOR-FOT, FOB Airport, FAS, FOB, C&F, CIF, Freight or Carriage (paid to), Freight or Carriage (and insurance paid to), Ex-Ship, Ex-Quay, Delivered At Frontier, Delivered Duty Paid.

The most common ones being used at present are:

(1) FAS (Free Alongside Ship)

The seller must arrange to deliver the goods alongside the ship at the port of loading named in the sales contract. The buyer is responsible for choosing the carrier to transport the goods abroad, paying the cost of carriage from the port of shipment,

arranging insurance and paying insurance premium, and arranging and paying for the export licence and export tax, if any.

(2) FOB (Free on Board)

The seller must deliver the goods on board ship, which means he must pay for the carriage to the port of loading, pay the loading cost, and arrange and pay for the export licence and export tax, if any. The place of delivery is the ship's rail. The buyer is responsible for choosing the carrier to transport the goods abroad, paying the cost of carriage from the port of shipment, and arranging and paying for the insurance of the goods from this point.

(3) C&F (Cost and Freight)

The seller is responsible for choosing the carrier to transport the goods abroad and paying the freight charges to the overseas destination. He is also responsible for obtaining an export licence, if necessary, paying the loading cost if it is separate from the freight charges. The buyer must arrange and pay for the insurance of the goods. He must also pay the unloading cost if it is not included in the freight charges already paid by the seller.

(4) CIF (Cost, Insurance and Freight)

The responsibilities and costs borne by the seller are same as C&F above. In addition, the seller must arrange and pay for the insurance of the goods from the port of shipment to the port of destination. The buyer must pay the unloading cost at the port of destination, if it is not included in the freight charges already paid by the seller.

The place of delivery by the seller under C&F and CIF is the ship's rail.

Ⅲ. Basic points for attention in international payments and settlements

Although the currency to be used, time and method of payment are all stipulated in trade contracts, attention should be paid to the following points in settling international payments.

1. As a rule, international traders would pay or receive such freely convertible currencies as U.S. dollar, pound sterling, Japanese yen, deutsche mark, Swiss franc, French franc, etc., widely used in all countries the world over, when buying or selling their goods and services. They will convert ultimately from the foreign exchange banks these currencies into their national currency, which can be legally circulated in their own country, or vice versa. But these currencies may become the so-called hard currency at one time, whose exchange rate is rather stable, or the so-called soft currency at another time, whose exchange rate is rather feeble. Thus the conversion may incur some exchange risks. That is to say, international traders may get or pay more national currency, or less national currency, for a given amount of the foreign currency at a given time. In order to minimize the exchange risk, they often buy from or sell to the foreign exchange banks the forward exchange, to be settled after a given period of time, such as one month, three months, six months, etc. On the other hand, the foreign exchange banks may avoid the exchange risks on their overbought or oversold currencies by squaring their position in the foreign exchange market. If there exists a payments agreement under a bilateral trade agreement signed between two countries for exchange of goods, matters are

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different. Such payments should then be effected as stipulated in that agreement, using the so-called clearing currency to settle their balance of trade.

2. Time of payment can be different in international payments and settlements as the case may be. Sometimes advance payment is required. Sometimes, payment can be postponed until a fixed future time. At times, there may be payment against documents, that is, payment is to be made upon receipt of the shipping documents. At other times, there may be payment on delivery, that is, payment is to be effected upon receipt of the goods. Different time of payment has different effects on the risk exposure and the turnover of funds on the part of the international traders. In point of these, exporters naturally expects to be paid as soon as possible, while importers wish to defer their payments.

3. Method of payment commonly used in international payments and settlements includes

(1) remittance, that is, payment is to be remitted by the buyer to the seller through the foreign exchange banks. This method is mostly used in the advance payment and open account terms.

(2) collection, that is, payment is to be collected from the buyer by the seller through the foreign exchange banks.

(3) letter of credit, that is, payment is to be made by a foreign exchange bank issuing a written document called a letter of credit provided the terms of the document are complied with. This method is widely used in international settlements.

(4) bank guarantee, this is, payment is to be guaranteed by a foreign exchange bank, issuing a written document called a letter of guarantee.

Each method has its advantages and disadvantages to the parties concerned respectively.

4. Foreign exchange control is being enforced in all the socialist countries, most developing countries, or even a few developed countries. Consequently, buying or selling foreign exchange in these countries and also transferring foreign exchange funds from or to these countries are subject to their foreign exchange control regulations in force, which should be carefully studied and strictly observed.

5. International traders should be aware that legal title to the exported goods passes from the exporter to his foreign buyer by means of documentation, regardless of whether the goods are physically in the possession of the buyer. It goes without saying that shipping documents play a very important role in international payments and settlements. For this reason, careful handling of these documents is necessary to all parties concerned.

IV. Characteristics of modern international payments and settlements

Modern international payments and settlements are characterized by:

1. Transfer of foreign exchange funds and convey of banking messages are very much facilitated. This is due to the formation of an international banking network in the world connected with electronic telecommunications. The establishment of the Society for Worldwide Interbank Financial Telecommunication (SWIFT) may be illustrative of this.

SWIFT is a cooperative society established in Brussels under Belgian law in May 1973 with nearly 250 member banks in West Europe and North America including the major banks in those regions. The aim of this society is to enable its members to transmit among

themselves interpayments, statements and other messages connected with international banking, so as to facilitate their operations. In fact, SWIFT also means a highly sophisticated message-switching or communications system. It should be pointed out that a SWIFT message does not transfer any title to money. When a financial institution receives a SWIFT message, it must act on its own to carry out the instructions contained therein. As the messages communicated among its member banks are computerized, international payment transfers among them can be greatly speeded up. SWIFT is developing and its membership is growing (up to now, there are 1046 member banks in more than forty countries). The Bank of China has become a member of SWIFT since February 1983. It can be predicted that with more and more banks admitted into SWIFT the use of mail transfer and telegraphic transfer in international payments and settlements will decline because SWIFT has its own methods of payment.

2. Vehicle currencies are more diversified than before. More key currencies are now used in international payments and settlements instead of being concentrated on one or two major international currencies such as pound sterling before the Second World War or U.S. dollar by 1970s.

3. International lending is often combined with international payments. In so doing, large amount transactions, such as the export business of capital goods can be promoted. The export credit extended to the sellers in the exporting country or to the buyers or banks in the importing country is a typical illustration.

4. Great importance is attached to high efficiency on the part of the foreign exchange bank. It is an urgent need for the bank to do best any international banking business on behalf of its client. High efficiency involves many aspects such as client reception, credit information, bank procedure, document handling, teller work, interbank connection, settlement tracing, etc. Faced with the keen competition among financial institutions at present this is indispensable for a foreign exchange bank to win against its rivals.

CHAPTER TWO   CREDIT INSTRUMENTS

What is meant by credit instruments? A credit instrument is a written or printed paper by means of which funds are transferred from one person to another. Credit instruments most commonly used in international payments and settlements are bills of exchange, promissory notes and cheques. These three are also known as negotiable instruments. Credit instruments may also take such forms as traveller's cheques, certificates of deposit, treasury bills, treasury bonds, etc.

Ⅰ. Characteristics of a negotiable instrument

1. A negotiable instrument and the right embodied therein are capable of being transferred by delivery, either with or without endorsement depending whether the instrument is in favour of order or bearer. An instrument thus transferred is said to be negotiated without informing the drawer or drawee.
2. The person to whom a negotiable instrument is negotiated can sue on it in his own name. He has the full right to the instrument.
3. The person to whom a current and apparently regular negotiable instrument has been negotiated and who takes it in good faith and for value, obtains a good title to it, even though his transferor had title defect or no title at all.
4. Mode of transfer for a negotiable instrument is unique. If the instrument is payable simply to bearer or to order bearer, it may be negotiated to another person by mere delivery, that is to say, by transfer of possession, actual or constructive, from one person to another. If the instrument is payable to a named person or order, it may be negotiated to another person by endorsement and delivery, that is to say, the person to whom the instrument is payable must write or endorse his name thereupon before delivering it to someone else.

To give an illustration, assume that a negotiable instrument described as a bank bill payable to A or bearer has been given to A, who has lost it. The bill has been found by a stranger, who has transferred it to C for value. A, the owner of the bill, may bring an action against the stranger, for he has a title to the bill, but he cannot do so against C by reason of C's having obtained a good title thereto, even though the stranger has no title at all.

Ⅱ. Functions of a negotiable instrument

1. As a means of payments

Under non-cash settlements, negotiable instruments to be commonly used as a payment instrument are bills of exchange. promissory notes and cheques, among which bills of exchange are most widely used in international payments and settlements. For example, a debtor may purchase a bank draft from a certain bank and send it to his creditor to settle a debt.

2. As a credit instrument

A bill of exchange, the typical negotiable instrument, has no value itself. It is the credit standing of such parties to a bill of exchange as the drawer, drawee and acceptor that provides the basis for serving as a payment instrument. In consideration of this, a time draft can even be discounted in the money market after acceptance. Thus a bill of exchange is not only used as a payment instrument between creditors and debtors but also as a credit instrument in financing operations.

3. As a negotiable instrument

As a negotiable instrument, it may be negotiated to another person either by mere delivery or by endorsement and delivery. All property embodied therein passes free from the transferor to the transferee, provided the latter takes the instrument in good faith and for value.

A complete transfer is generally made by mere delivery, although an endorsement by the transferor may often be necessary. No notice of transfer need be given to the party liable. The title to the instrument passes fully and legally from the transferor to the transferee at the time that the complete transfer is made. This means that the transferee can sue, if necessary, in his own name as he has possessed all rights to the instrument and to the property thus embodied. A bona-fide transferee for value can get a perfect title to the instrument even though the transferor has defects in title or no title at all.

Ⅲ. Parties to a negotiable instrument

1. Drawer

A drawer is the person who draws a bill of exchange or a cheque upon the drawee for the payment of a certain amount of money. (In the case of a promissory note, the person who issues the instrument is called the maker.) He will redeem and pay the instrument in the event that the drawee dishonours it by non-acceptance or by non-payment. Anyone who becomes the holder of the instrument as a result of a commercial transaction has the right of recourse against the drawer in the event of drawee's act of dishonour. The drawer is primarily liable to the holder of the instrument.

2. Drawee

A drawee is the person upon whom a bill of exchange or a cheque is drawn. (He is also known as the addressee of a draft.) He is the person who will honour the instrument by acceptance and by subsequent payment if it is a time bill or by immediate payment if it is payable at sight or on demand. The drawee cannot be compelled to pay or to accept the instrument because he is unable to prevent any person to whom he owes no debt from drawing upon him. He can only be sued in the court on the debt itself, not on the unpaid draft. The drawee of a time bill becomes liable for its payment only if and when he accepts it.

3. Payee

A payee is the person to whose order the drawee is to make payment or the person to whom the money is to be paid. If a time bill has been dishonoured by non-acceptance or a sight bill by non-payment, the payee has the right of recourse against the drawer and is entitled to claim payment from the latter. The payee is the only creditor to the instrument.

4. Acceptor

If and when the drawee agrees and assents to the order in writing addressed to him on a bill of exchange by signing his name on its face, indicating that he will pay on due date, the drawee will become an acceptor. By acceptance he warrants that he will pay when the draft falls due. As a rule, an acceptor is the drawee of a draft. The acceptor is primarily liable, and then the drawer becomes secondarily liable on the draft after it is accepted by the drawee.

5. Endorser

When a payee or a holder signs his name on the back of an instrument for the purpose of transferring it to another person, he is called an endorser. He is liable to his subsequent endorser, his endorsee or any subsequent holder of the instrument. His obligations are the same as those of the drawer. He warrants, by his endorsement, to his immediate endorsee or to a subsequent endorsee that the instrument was valid up to the time of his endorsement and that he had a good title thereto. He also engages that the drawee will pay or accept the draft on due presentation. If it so happens that there are more than one endorsers on the instrument, their liability is in order of their names appearing thereon, the first endorser is liable to the second, the second to the third, etc.

6. Endorsee

An endorsee is the person to whom an instrument is endorsed. He is the holder of an instrument which has been transferred by an endorser. If and when the endorsee endorses the instrument again to any other person, then he becomes a second endorser or a third as the case may be.

7. Acceptor for honour

An acceptor for honour is the person who himself is not a party liable on a bill of exchange but with the consent of the holder may intervene and accept the bill supra protest, for the honour of any party liable thereon and for the honour of the person for whose account the bill is drawn.

8. Guarantor

A guarantor is the person who guarantees the acceptance and the payment of a bill of exchange, though he is not a party liable thereon. The obligations of the guarantor are the same as those of the guaranteed.

9. Holder

A holder is the possessor of an instrument, namely the payee, endorsee or bearer. He may sue, if need be, on the instrument in his own name. A person who possesses an instrument by forgery or by theft is not a holder but a wrongful possessor.

10. Holder for value

A holder for value is the person who possesses an instrument for which value has been given by himself or by some other person. If the holder has a lien on the instrument either arising from a contract or by implication of law, he is deemed to be a holder for value to the amount of the sum for which he has a lien.

A holder for value may or may not be a holder in due course, but a holder in due course must be a holder for value.

11. Holder in due course

A holder in due course is the person who is in possession of an instrument that is (1)

complete and regular on its face, (2) taken before maturity without notice of its previous dishonour, (3) taken in good faith and for value and (4) taken without notice of any infirmity in the instrument or defect in the title of the person negotiating it. He is also called a bona fide holder, who may claim payment from all parties liable on the instrument. It should be noted that a payee can never be a holder in due course. For example, if a bill of exchange drawn by A on B payable to C has been accepted by B and endorsed by C, then C loses it in the street where it is found by D, who transfers it for value to E. As there is no forgery in any of act mentioned above, E can establish himself as a holder in due course. Thus, E has a perfect title to the bill and can sue all or any of A, B, C and D if the bill is dishonoured. The defect in title of this negotiable instrument on the part of D may be overlooked so long as E takes it in good faith and for value. Afterwards E gives the bill to F as a present. As F has not given any value for it to E, he is not a holder in due course but he is qualified to be a holder for value, because value has already been given for the bill by his prior parties. Therefore, he can sue all or any of the parties except E if the bill is not paid.

Here is another example, if A draws a cheque for £50, paying it to B, his tailor, for making a suit, then B endorses the cheque and delivers it to C for paying wages. C endorses the cheque again and gives it to his wife D as a birthday gift. Afterwards, D endorses it again, giving it to her niece E as a wedding present. As E gives no value for the cheque, she becomes a holder for value. If the cheque is dishonoured, she cannot sue D for the reason that no value has been given by her, nor can she sue C. E can only sue A or B.

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