

Economic Analysis of Negotiable Instruments as a Payment System

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Received: 04/04/2016

Accepted: 08/06/2016

Introduction

Payment system is any organized arrangement for transferring monetary value leading to discharge and settlement of obligation. Negotiable instruments in their special meaning are tradable documents that can be used as means of payment in commercial and consuming trades and are considered as non-cash payment system among the monetary transferring systems. The negotiable instruments hold some characteristics and principles whose concept and effects are reflected in some domestic rules, international conventions, doctrine, and judicial procedures. The significant characteristics of these instruments is in subject, formative description, negotiability and solidary obligations of signatories. The principle of independency of signatures, independency of “*obligation cambiaire*” from underlying obligation, non-attributing objections and defenses related to the previous relations as well as the principle of surviving the main legal relationship are among the most important principles governing negotiable instruments. The subject of this research is the economic analysis of negotiable instruments and analyzing features and principles governing them as a non-cash system of payment.

Theoretical Framework

If the parties to the payment, payment instrument, institutional arrangements, protocols and discharge are the main elements or bases of realization of one payment system, the negotiable instruments having these elements are payment systems. Among the characteristics of this payment system is that the negotiable instrument is in itself an instrument of payment and the means for transferring monetary value from the payer to the final holder of the instrument.

Discharge of obligation and settlement is a procedure that is the final goal and objective of any payment system and its essential element and the degree of

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efficiency depends on realizing such a function. When it is supposed that negotiable instruments are used as payment system, as long as the sum of the instrument is not paid, the process of payment is not realized. Hence, the practical and legal features of these instruments and the rules and principles governing them have to be in a way to facilitate the process of payment and remove the possibility of raising legal objections and creating legal obstacles on behalf of the parties that are liable of paying the sum of the instrument. Therefore, the efficiency of this system of payment depends on the degree of certainty of payment, its punctuality, and decrease of risk of not being dishonored.

Methodology

In this study, in addition to using descriptive and analytical methods, explanatory and inferring methods are also used to discover a logical relationship between features and attributes of negotiable instruments and their function as payment system, and to reveal clear causes of the existence of principles ruling them.

Results and Discussion

The subject of negotiable instrument is the unconditional obligation to pay or unconditional order to pay, and as a principle, all persons who sign the negotiable instrument are committed toward the holder of the negotiable instrument and those after themselves. This obligation is called “*obligation cambiaire*” in French legal literature and resulted from signing commercial paper. The philosophy of this principle is to increase the efficiency of this system of non-cash payment and decrease the risk of dishonor of the drawee.

Predicting the *obligation cambiaire* of the signatories of commercial paper and their solidary obligations for support of the holder of the instrument, unlike money, lacks the support of the government and governing authorities. To compensate this deficiency and to attain people’s trust to these papers, the legislator proposes solidary obligations of these signatories as an appropriate solution by relying on which the creditor assures, and in case of dishonor at maturity, the instrument will be paid by recourse to all or some of the signers. Undoubtedly, the object of this important character is that the negotiable instruments can be negotiated as an effective instrument of payment and can be used as a system of payment for transfer of monetary value and discharge and settlement of transactions.

The necessity of observing formative conditions in concluding, issuing, and transferring a negotiable instrument is hidden in its function as an instrument of payment. Existence of special formative conditions plays an effective role in regulating the relationships of parties of the negotiable instrument and increasing the probative value of it. The negotiability of commercial papers is the logical necessity of their economic function as the instrument or means of payment. The instrument of payment that has capability of negotiation in the interval between issuing to due date and can repeatedly be used as an instrument of payment in different transactions. Moreover, this character can help financing of firms.

The goal of enacting of principles and rules governing negotiable instruments is forming a special legal regime that secures the economic function of them as an instrument of payment and eventually as a non-cash payment system. As *security* and *trust* are among the most important and necessary bases and elements of payment system, the final goal of these rules is to reinforce the creditability of negotiable instruments by reducing the risk of non-payment and eventually increasing people’s reliance on negotiable instruments and accepting them in trades

as an instrument of payment. An efficient system of payment is one whose instrument of payment finally leads to delivery or transferring the monetary value to the creditor or holder of instrument, and due to the legal relations before issuing or endorsing the instrument, the rights of final holder and creditor is not endangered.

Conclusions and Suggestions

The conclusion of this research shows that proper interpretation of features of negotiable instruments and comprehensive and accurate analysis of principles that govern them and their effects on relations between parties and relationship between obligation arising from negotiable instrument and underlying contractual obligations is merely possible by considering main function of negotiable instrument as a payment system. In other words, legal analysis of negotiable instrument depends on the analysis of its economic function. Because, in the normal course and without these features and principles, these instruments are in themselves connecting the underlying contract and each party can recourse to contractual defenses and set-off. So, the realization of this economic function requires characteristics and governing principles that ensure and protect such functions.

Thus, the legislator is recommended to correct the deficiencies and ambiguities of current regulations of negotiable instruments based on the latest developments of law of negotiable instruments while considering its economic function as a payment system in a way that results in increasing the efficiency of this system, decreasing the risk of dishonor and other risks of non-payment of negotiable instruments, and decreasing the figures of dishonored checks.

Keywords: Negotiable instruments, Features, Principles, Payment instrument, Payment system

GEL Classification: K 10, K 14, G10

References (in Persian)

- Abdipour Fard, E. (2015). *Business law: Analytical discussions* (4th ed). Qom: Houzeh & University Research Press. [in Persian]
- Abdipour Fard, E. (2016). *Commercial law*. Tehran: Majd Publications. [in Persian]
- Akhlaghi, B. (2002). *Business law*. Tehran: Faculty of Law and Political Science, Tehran University Press. [in Persian]
- Bahrami, B. (2013). *Principles of negotiable instruments*. Tehran: Negahe Baieneh Publications. [in Persian]
- Fakhari, A. H. (2001). *Negotiable instruments*. Tehran: Faculty of Law, Shaheed Beheshti University Press. [in Persian]
- Elsan, M. (2013). *Banking law* (4th ed.). Tehran: Samt Publications. [in Persian]
- Eskini, R. (2014). Commercial law: Bill of exchange, promissory note, warrant, bearer bonds and check. Tehran: Samt Publications. [in Persian]
- Katouzian, N. (2008). *Civil law: Bilateral judicial act* (5th ed.). Tehran: Yalda Publications. [in Persian]
- Kavyani, K. (2010). *The Law of negotiable instruments* (3rd ed.). Tehran: Mizan Legal Foundation. [in Persian]
- Moein Persian dictionary.(2001).Tehran: Amir Kabir Publications.
- Mohseni, S. (2011). The concept of delay payment damage in negotiable instruments. *Journal of Justice Law*, 69, 102-121. [in Persian]

- Saghri, M. (2008). *Business law, commercial papers* (2nd ed.). Tehran: Enteshar Publications. [in Persian]
- Sardoueinassab, M. (2015). *Electronic commercial instruments* (Vol. 1). Tehran: Mizan Publications. [in Persian]
- Sokuti Nasimi, R. (2015). *Law of commercial instruments*. Tehran: Majd Publications. [in Persian]
- Vahid Khorasani, H. (2009). *Statement of sharia issues* (9th ed.). Qom: Imam Baqer School Publications. [in Persian]

References (in Arabic)

- Douydar, H. M. (1995). *An introduction to business law*. Lebanon, Beyrout: Dar Alnehzat Alarabia. [in Arabic]
- Khaslani, S. T. (2006). *Principles of negotiable instruments in Islam* (3rd ed.). Saudi Arabia, Dammam: Dar Ibn Aljouzi. [in Arabic]
- Khoei, S. A. (1992). *Minhaj o-Salehin* (28th ed.). Qom: Madinatol-elm Publications. [in Arabic]
- Mousavi Khomeini, S. R. (1984). *Tahrir- ol-Vasihah* (Vol. 2). Qom: Islamic Publications Institute. [in Arabic]
- Nasief, E. (1999). *Business law* (Vol. 1). Beirut: Ouyedat Publications. [in Arabic]
- Ripert, G. & Roblot, R.(2008), *Traite de droit commercial*. (Vol 2),Translated by Moghalled,A., Beirut :Majd Publications.[in Arabic]
- Sayed A. M. (2010). *Law of commercial instruments*. Beirut: Al Halabi Publications. [in Arabic]
- Talahemeh, K. E. (2012). *An introduction to business law*. Jordan, Amman: Dar Vaeil Publications. [in Arabic]

References (in English)

- Abrazhevich, D. (2004). *Electronic payment systems: A user-centered perspective and interaction design*. Eindhoven: Technische Universiteit Eindhoven.
- Ackaff, R. L. (1971). Towards a system of systems concepts. *Management Science*, 17(11), 661-672.
- BIS (Bank for International Settlements). (2001). *Core principles for systemically important payment systems*. Basel: Press &Library Services.
- Federal Reserve Bank of New York, Central Banking seminar. (2000). *Payments Systems Studies Staff*. Retrieved from www.newyorkfed.org/banking/centralbank_overview.htm
- Clarkson, K. A., Miller, R. L., & Cross, F. B. (2014). *Business law text and cases* (13th ed.). USA: Cengage Learning.
- Corley, R. N., & Shedd, P. J. (1989). *Principles of business law*. New Jersey: Prentice Hall.
- Furmeston, M. (2001). *Principles of commercial law* (2nd ed.). London: Cavandish Publishing.
- Haldane, A. G., Millard, S., & Saporta, V. (2008). *The future of payment systems*. New York: Routledge.
- Harris, S. L. (2008). *Payment systems electronic casebook*. New York: Wolters Clower Law & Business.

- Humphrey, D. (2015). *Payment systems principles, practice and improvement*. Washington DC: The World Bank.
- Lawrence, L. (2015). *Payment systems*. New York: Wolters Kluwer.
- Lawrence, W. H. (2002). *Understanding negotiable instruments and payment systems*. New York: Matthew Bender & Company.
- Maggs, G. E. (1999). New payment devices and general principles of payment law. *Notre Law Review*, 72(3), 752- 798.
- Mann, R. A., & Roberts, B. S. (2012). *Business law* (15th ed.). USA: South-Western Learning.
- Mcjohn, S. M. (2012). *The Glannon guide to commercial paper and payment systems* (2nd ed.). New York: Wolters Kluwer Law & Business.
- Nakajima, M. (2011). Payment system technologies and functions innovations and developments. USA: Business Science Reference.
- Nasief, E. (1999). *Business law* (Vol. 1). Beirout: Ouyedat Publications.
- Omahony, D., Pierce, M., & Tewari, H. (2001). *Electronic payment systems for e-commerce* (2nd ed.). London: Artech House Inc.
- Radu, C. (2003). Implementing electronic card payment systems. London: Artech House.
- Rogers, J. S (2004). *The early history of the law of bills and notes*. Cambridge: Cambridge University Press.
- Rambure, D., & Nacamuli, A. (2008). *Payment systems from the salt mine to the board room*. Great Britain: Palgrave Macmillan.
- Roark, M. (2015). Payment systems, consumer tragedy, and ineffective remedies. *St. John Law Review*, 88(1), 1-60.
- Turner, P., & Wunnicke, D. (2003). *Managing the risks of payment systems*. New Jersey: Wiley and Sons.