Bill of Exchange

A three-party negotiable instrument in which the first party, the drawer, presents an order for the payment of a sum certain on a second party, the drawee, for payment to a third party, the payee, on demand or at a fixed future date.

A bill of exchange is distinguishable from a promissory note, since it does not contain a promise and the drawer does not expressly pledge to pay it. It is similar to a note, however, since it is payable either on demand or at a specific time.

The terms bill of exchange and draft are synonymous; however, the former is generally used in International Law, whereas the latter is used in the Uniform Commercial Code.

See also: check, draft, instrument, security, stock
the back of a bill; the indorsee, (q. v.) is one to whom a bill is transferred by indorsement; and the holder, (q. v.) is in general any one of the parties who is in possession of the bill, and entitled to receive the money therein mentioned.

4. Some of the parties are sometimes fictitious persons. When a bill is made payable to a fictitious person, and indorsed in the name of the fictitious payee, it is in effect a bill to bearer, and a bona fide holder, ignorant of that fact, may recover on it, against all prior parties, who were privy to the transaction. 2 H. Bl. 178, 288; 3 T. R. 174, 182, 481; 1 Camp. 130; 19 Ves. 311. In a case where the drawer and payee were fictitious persons, the acceptor was held liable to a bona fide holder. 10 B. & C. 468; S. C. 11 E. C. L. R. 116. Vide, as to parties to a bill, Chit. Bills, 15 to 76, (ed. of 1836.)

5. - 2. The form of the bill. 1. The general requisites of a bill of exchange, are, 1st. that it be in writing. R. T. Hardw. 2; 2 Stra. 955; 1 Pardess. 344-5.

6.- 2d. That it be for the payment of money, and not for the payment of merchandise. 5 T. R. 485; 3 Wils. 213; 2 Bla. Rep. 782; 1 Burr. 325; 1 Dowd. & Ry. N. P. C. 33; 1 Bibb's R. 502; 3 Marsh. (Kty.) R. 184; 6 Cowen, 108; 1 Caines, R. 381; 4 Mass. 245; 10 S. & R. 64; 14 Pet. R. 293; 1, M'Cord, 115; 2 Nott & M'Cord, 519; 9 Watts, R. 102. But see 9 John. R. 120; and 19 John. R. 144, where it was held that a note payable in bank bills was a good negotiable note.

7. - 3d. That the money be payable at all events, not depending on any contingency, either with regard to the fund out of which payment is to be made, or the parties by or to whom payment is to be made. 8 Mod. 363; 4 Vin. Ab. 240, pl. 16; 1 Burr. 323; 4 Doug. 9; 4 Ves. 372; Russ. & Ry. C. C. 193; 4 Wend. R. 576; 2 Barn. & Ald. 417.

8. - 2. The particular requisites of a bill of exchange. It is proper here to remark that no particular form or set of words is necessary to be adopted. An order " to deliver money," or a promise that " A B shall receive money," or a promise " to be accountable" or " responsible" for it, have been severally held to be sufficient for a bill or note. 2 Ld. Raym. 1396; 8 Mod, 364.

9. The several parts of a bill of exchange are, 1st. that it be properly dated as to place

10.- 2d. That it be properly dated as to the time of making. As the time a bill, becomes due is generally regulated by the time when it was made, the date of the instrument ought to be clearly expressed. Beawes, pl. 3 1 B . & C. 398; 2 Pardess. n. 333.

11. - 3d. The superscription of the sum for which the bill is payable is not indispensable, but if it be not mentioned in the bill, the superscription will aid. the omission. 2 East, P. C. 951.

12. - 4th. The time of payment ought to be expressed in the bill; if no time be mentioned, it is considered as payable on demand. 7 T. R. 427; 2 Barn. & C. 157.

13. - 5th. Although it is proper for the drawer to name the place of payment, either in the body or subscription of the bill, it is not essential; and it is the common practice for the drawer merely to write the address of the drawee,
without pointing out any, place of payment; in such case the bill is considered payable, and to be presented at the residence of the drawee, where the bill was made, or to him personally any where. 2 Pardess. n. 337 10 B. & C. 4; Moody & M. 381; 4 Car. & Paine, 35. It is at the option of the drawer whether or not to prescribe a particular place of payment, and make the payment there part of the contract. Beawes, pl. 8. The drawee, unless restricted by the drawer, may also fix a place of payment by his acceptance. Chit. Bills, 172.

14. - 6th. There must be an order or request to pay and that must be a matter of right, and not of favor. Mood. & M. 171. But it seems that civility in the terms of request cannot alter the legal effect of the instrument. "il vous plair a de payer," is, in France, the proper language of a bill. Pailliet, Manuel de Droit Francais, 841. The word pay is not indispensable, for the word deliver is equally operative. Ld. Raym. 1397.

15. - 7th. Foreign bills of exchange consist, generally, of several parts; a party who has engaged to deliver a foreign bill, is bound to deliver as many parts as may be requested. 2 Pardess. n. 342. The several parts of a bill of exchange are called a set; each part should contain a condition that it shall be paid, provided the others remain unpaid. Id. The whole set make but one bill.

16. - 8th. The bill ought to specify to whom it is to be paid. 2 Pardess. n. 338; 1 H. Bl. 608; Russ. & Ry. C. C. 195. When the name of the payee is in blank, and the bill has been negotiated by indorsement, the holder may fill the blank with his own name. 2 M. & S. 90; 4 Camp. 97. It may, however, be drawn payable to bearer, and then it is assignable by delivery. 3 Burr. 1526.

17. - 9th. To make a bill negotiable, it must be made payable to order, or bearer, or there must be other operative and equivalent words of transfer. Beawes, pl. 3; Selw. N. P. 303, n. 16; Salk. 133. if, however, it is not intended to make the bill negotiable, these words need not be inserted, and the instrument will, nevertheless, be valid as a bill of exchange. 6 T. R. 123; 6 Taunt. 328; Russ. & Ry. C. C. 300; 3 Caines' R. 137; 9 John. It. 217. In France, a bill must be made payable to order. Code de Com. art. 110; 2 Pardess. n. 339.

18. - 10th. The sum for which the bill is drawn, must be clearly expressed in the body of it, in writing at length. The sum must be fixed and certain, and not contingent. 2 Stark. R. 375. And it may be in the money of any country. Payment of part of the bill, the residue being unpaid, cannot be indorsed. The, contract is indivisible, and the acceptor would thereby be compelled to make two payments instead of one. But when part of a bill has been paid the residue may be assigned, since then it becomes a contract for the residue only. 12 Mod. 213; 1 Salk. 65; Ld. Ray. 360.

19. - 11th. It is usual to insert the words, value received, but it is implied that every bill and indorsement has been made for value received, as much as if it had been expressed in totdem verbis. 3 M. & S. 352; Bayl. 40, n. 83.

20. - 12th. It is usual, when the drawer of the bill is debtor to the drawee, to insert in the bill these words: " and put it to my account but when the drawee, or
the person to whom it is directed, is debtor to the drawer, then he inserts these words: "and put it to your account;" and, sometimes, where a third person is debtor to the drawee, it may be expressed thus: "and put it to the account of A B;" Marius, 27; C, om. Dig. Merchant, F 5; R. T. Hardw. 1, 2, 3; but it is altogether unnecessary to insert any of these words. 1 B. & C. 398; S. C. 8 E. C. L. R. 108.

21. - 13th. When the drawer is desirous to inform the drawee that he has drawn a bill, he inserts in it the words, "as per advice;" but when he wishes the bill paid without any advice from him, he writes, "without further advice." In the former case the drawee is not authorized to pay the bill till he has received the advice; in the latter he may pay before he has received advice.

22. - 14th. The drawee must either subscribe the bill, or, it seems, his name may be simply inserted in the body of the instrument. Beawes, pl. 3; Ld. Raym. 1376 1 Stra. 609.

23. - 15th. The bill being a letter of request from the maker to a third person, should be addressed to that person by the Christian name and surname, or by the full style of their firm. 2 Pardess. n. 335 Beawes, pl. 3; Chit. Bills, 186, 7.

24. - 16th. The place of payment should be stated in the bill.

25. - 17th. As a matter of precaution, the drawer of a foreign bill may, in order to prevent expenses, require the holder to apply to a third person, named in the bill for that purpose, when the drawee refuses to accept the bill. This requisition is usually in these words, placed in a corner, under the drawee's address: " Au besoin chez Messrs. - at -;" in other words, ((In case of need apply to Messrs. at -.)

26. - 18th. The drawer may also add a request or direction, that in case the bill should not be honored by the drawee, it shall be returned without protest or without expense, by subscribing the words, " retour sans protet," or " sans frais;" in this case the omission of the holder to protest, having been induced by the drawer, he, and perhaps the indorsers, cannot resist the payment on that account, and thus the expense is avoided. Chit. Bills, 188.

27. - 19th. The drawer may also limit the amount of damages, by making a memorandum on the bill, that they shall be a definite sum; as, for example: "In case of non-acceptance or non-payment, re-exchange and expenses not to exceed dollars." Id.

28. - 3. Bills of exchange are either foreign or inland. Foreign, when drawn by a person out of, on another in, the United States, or vice versa; or by a person in a foreign country, on another person in another foreign country; or by a person in one state, on another in another of the United States. , 2 Pet. R. 589 .; 10 Pet. R. 572; 12 Pick. 483 15 Wend. 527; 3 Marsh. (Kty.) R. 488 1. Rep. Const.; Ct. 100 4 Leigh's R. 37 4 Wash. C. C. Rep. 148; 1 Whart. Dig. tit. Bills of Exchange, pl. 78. But see 5 John. R. 384, where it is said by Van Ness, Justice, that a bill drawn in the United States, upon any place within the United States, is an inland bill.

29. An inland bill is one drawn by a person in a state, on another in the same state. The principal difference between foreign and inland bills is, that the former
must be protested, and the latter need not. 6 Mod. 29; 2 B. & A. 656; Chit Bills, (ed. of 1836,) p. 14. The English rule requiring protest and notice of non-acceptance of foreign bills, has been adopted and followed as the true rule of mercantile law, in the states of Massachusetts, Connecticut, New York, Maryland, and South Carolina. 3 Mass. Rep. 557; 1 Day's R. 11; 3 John. Rep. 202; 4 John. R. 144; 1 Bay's Rep. 468; 1 Harr. & John. 187. But the supreme court of the United States, in Brown v. Berry, 3 Dall. R. 365, and in Clark v. Russell, cited in 6 Serg. & Rawle, 358, held, that in an action on a foreign bill of exchange, after a protest for non-payment, protest for non-acceptance, or notice of non-acceptance need not be shown, inasmuch as they were not required by the custom of merchants in this country; and those decisions have been followed in Pennsylvania. 6 Serg. & Rawle, 356. It becomes a little difficult, therefore, to know what is the true rule of the law-merchant in the United States, on this point, after such contrary decisions." 3 Kent's Com. 95. As to what will be considered a foreign or an inland bill, when part of the bill is made in one place and part in another, see 1 M. & S. 87; Gow. R. 56; S. c. 5 E. C. L. R. 460; 8 Taunt., 679; 4 E. C. L. R. 245; 5 Taunt. 529; 1 E. C. L. R. 179.

30. - 4. The indorsement. Vide articles Indorsement; Indorser; Indorsee.


32. - 6. The protest. Vide article, Protest. Vide, generally, Chitty on Bills; Bayley on Bills; Byles on Bills; Marius on Bills; Kyd on Bills; Cunningham on Bills; Pothier, h. t.; Pardess. Index, Lettre de Change; 4 Vin. Ab. 238; Bac. Ab. Merchant and Merchandise, M.; Com. Digest, Merchant; Dane's Ab. Index, h. t.; 1 Sup: to Ves. Jr. 86, 514; Smith on Mer. Law, Book 3, c. 1; Bouv. Inst. Index., h. t.

A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

**bill of exchange (BOE)**

**Definition**

A written, unconditional **order** by one **party** (the drawer) to another (the **drawee**) to **pay** a certain **sum**, either immediately (a **sight bill**) or on a fixed date (a **term bill**), for **payment** of **goods** and/or **services** received. The drawee accepts the bill by signing
it, thus converting it into a post-dated check and a binding contract.

A bill of exchange is also called a draft but, while all drafts are negotiable instruments, only "to order" bills of exchange can be negotiated. According to the 1930 Convention Providing A Uniform Law For Bills of Exchange and Promissory Notes held in Geneva (also called Geneva Convention) a bill of exchange contains: (1) The term bill of exchange 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 (drawer). (4) A statement of the time of payment. (5) A statement of the place where payment is to be made. (6) The name of the person to whom or to whose order payment is to be made. (7) A statement of the date and of the place where the bill is issued. (8) The signature of the person who issues the bill (drawer). A bill of exchange is the most often used form of payment in local and international trade, and has a long history-as long as that of writing.

Read more: http://www.businessdictionary.com/definition/bill-of-exchange-BOE.html#ixzz3DbCtLdsJ

Text Question Key words Vocabulary Literature Form Act

17. Requirements of Bills of Exchange

Requirements of bills of exchange are regulated by eight paragraphs of Article I, Section 1, BECA. The following elements can never be omitted: the term "bill of exchange" inserted in the text of the instrument (Article I, Section 1, Paragraph 1), an unconditional order to pay a certain sum of money (Article I, Section 1, Paragraph 2), the name of the person who is to pay (Article I, Section 1, Paragraph 3), the name of the person to whom or to whose order payment is to be made (Article I, Section 1, Paragraph 6), the date of the drawing of the bill of exchange (Article I, Section 1, Paragraph 7) and the signature of the drawer.
(Article I, Section 1, Paragraph 8). On the other hand, maturity need not be stated at all in the bill of exchange (Article I, Section 1, Paragraph 4). The place of payment (Article I, Section 1, Paragraph 5) and the place of the drawing of the bill of exchange (Article I, Section 1, Paragraph 7) need not result from the bill directly but they may be indirectly deduced from other pieces of information in the bill.

Notes on individual essential elements of the bill of exchange following the order of Article I, Paragraph 1, BECA:

a) Stipulation relating to bills of exchange

A bill of exchange must primarily include a designation that it is a bill of exchange, the so-called stipulation relating to bills of exchange. The stipulation must meet two cumulative preconditions: first, it must be part of the text of the bill of exchange. Therefore it is not enough to insert the term of "bill of exchange" only in the heading or as a decorative printed form on the margin of the form or in watermark. It is always necessary for the designation to be inserted directly in the text of the bill.

The second precondition is that the designation of bill of exchange must be written in the language in which the whole document is written. The bill should be drawn only in one language. The bill may be written in any of the existing languages and the participants are not restricted in any way as far as this is concerned. It does not matter who has drawn the bill and where it has been drawn, or when the bill is payable.

b) Unconditional payment order
The essence of the bill of exchange is a payment order of the drawer addressed to the drawee. The use of a certain form for this order is not prescribed but it must be clear from the text of the bill. In practice, we usually come across the mere imperative "Pay".

Pursuant to Article I, Section 1, Paragraph 2, BECA, this order must be unconditional and must be expressed in a certain sum of money. The amount requirement is important to the negotiability of draft and notes because they usually are sold at a discount, or less than face value.

The money relating to bills of exchange must be expressed in words or figures, or in both ways (it is actually required by all bill forms for security reasons). If the sum of money relating to bills of exchange is expressed differently in figures and words (for example, 100,000 and "one hundred and ten thousand") the bill of exchange is not invalid for the reason of contradicting pieces of information. In such cases the law reasonably states that if there are divergent data concerning the sum, it is the one expressed in words that holds. In case of the sum of money expressed several times in words or several times in figures, it is the sum that is the lowest one that holds and in no case the amounts may be added up.

The certainty of the sum of money relating to bills of exchange is also required by the statement of currency. It is not possible to pay interest on the sum of money relating to bills of exchange except for sight bills. When a bill of exchange is payable at sight, or at a fixed period after sight, the drawer may stipulate the sum payable shall bear interest. In the case of any other bill of exchange, this stipulation is deemed not to be written. The rate of interest must be specified in the bill of exchange; in default of such specification, the stipulation shall be deemed no to be written. Interest runs from the date of the bill of exchange, unless some other date is specified.
c) Name of the drawee

As already mentioned above, the drawee is a mere addressee of the payment order of the drawer. An obligation arises for him only by his acceptance (comp. Article I, Sections 21 - 29, BECA). The drawer may designate himself as the drawee (the so-called disguised bill of exchange). It is quite enough to state the name (designation, trade name) of the drawer. Other complementary data (birth identification number, residence, company registration number, seat, etc.) are only desirable from the practical point of view but the law does not require them for validity of the bill of exchange.

d) Indication of maturity

Maturity need not be indicated in the bill of exchange as such a bill is payable at sight pursuant to Article I, Section 2, BECA.

Pursuant to Article I, Section 33, Paragraph 1, the bill of exchange may be payable at sight, at a fixed period after sight, at a fixed period after the date of drawing and on a fixed day. Bills of exchange with another type of maturity are invalid. Bills of exchange payable by instalments are also null and void.

Bills of exchange payable at sight (sight drafts)

Maturity at sight is formally based on expressly using words "at sight", "at presentation", "after sight", etc. Another option consists in not stating the day of maturity as mentioned above. With bills of exchange at sight the due day is not determined clearly in advance. The due day is the day
when the bill of exchange is presented to the respective person for payment.

**Bills of exchange payable at a fixed period after sight (time drafts)**

An example of time draft is a bill of exchange which is due "one month after sight". The time stated in the bill runs from the day of acceptance of the bill or the protest. Therefore acceptance must bear a date. If the bill was not accepted, or the date of acceptance was not stated the bill must be protested.

**Bills of exchange payable at a fixed period after the date of drawing (time drafts)**

These are bills in which maturity is stated at a fixed period after the day of drawing, for example, "pay in a month after drawing".

**Bills of exchange payable on a fixed day (fixed time drafts)**

It is the usual determination of maturity date, for example, "on 21st August 2001".

Maturity of the bill of exchange may only be determined by the four methods mentioned above. Bills of exchange with a different maturity date are inadmissible. Now a few notes on various cases of invalid bills of exchange because of a defective determination of their maturity. The law expressly declares as invalid bills of exchange with successive maturity (installment bills of exchange).
The maturity date must be existing, otherwise the bill is invalid (for example, "on 31st November 2001"). A year must be unconditionally stated. Also, there must be only one maturity date clear from the bill. Therefore it is inadmissible to state the maturity date so that it will be more days, for example, "pay in August 2005", as such a bill would have 31 days of maturity in total. Also, bills of exchange with maturity "until 22nd August 2005" or "during ten days since the day of drawing" will be invalid. These data are defective because of the prepositions "until" and "during" as it is not clear on which concrete day from the remaining time such a bill would be mature. Inadmissible are also alternative determinations of maturity ("pay on 2/7/2001 or 5/11/2001", "pay at sight or in two weeks after sight") and also bills of exchange in which the maturity is determined not only by a concrete day but also by an hour ("pay on 4th January 2005 at 13.00").

Table: Indication of Maturity

<table>
<thead>
<tr>
<th>Maturity (Draft of Promissory Note payable)</th>
<th>Legal Regulation in Article I BECA</th>
<th>Model Clause</th>
</tr>
</thead>
<tbody>
<tr>
<td>At sight</td>
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</tr>
<tr>
<td>On a fixed day</td>
<td>Section 33</td>
<td>“on 4th January 2005”</td>
</tr>
</tbody>
</table>

**e) Place of payment**
The place of payment may be stated in the bill of exchange in two manners. Firstly, the drawer may determine it expressly. However, if the drawer omits to state the place in the bill it does not follow that the bill is invalid. In such a case the legal place of payment pursuant to Article I, Section 2, Paragraph 3, BECA, is the place stated with the name of the drawer. This second possibility of determining the place of payment presupposes, of course, that there is a certain place stated with his name (and not more different places). Otherwise, it is an invalid bill of exchange.

The place of payment may be stated in the bill also through the domicile, for example, "Payable at the Deutsche Bank, Brno branch".

**f) Designation of the payee**

As mentioned above, the bill of exchange cannot be issued as a security on bearer. The bill must always include the name of its first acquirer (payee).

The drawer and the payee may be identical (draft to one's own order).

**g) Day and place of drawing**

The bill of exchange must include the day and the place of drawing. As for the day of drawing, the same rules as mentioned about the maturity date apply, especially the rule that the day must be existing and must be clear enough (day, month, year). The date of drawing must always precede the date of payment. If the place of drawing is not stated in the bill, it is considered to be drawn in the place stated with the name of the
drawer (comp. Article I, Section 2, Paragraph 4, BECA). If no certain place is stated there, the bill is invalid.

**h) Signature of the drawer**

The last essential element of bill of exchange stated by the law is the signature of the drawer. It is the only element of bill of exchange stated in Article I, Section 1, BECA, for which it holds that the signature of the drawer must be made in one's own hand.

Examples of bills of exchange:

![Bill of exchange](image)

Bill of exchange, not accepted, payable on sight
<table>
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Bill of exchange upon name, accepted, with negative protest stipulation, payable on a fixed date