The Concept of Payment Mechanism

Benjamin Geva

Osgoode Hall Law School of York University, bgeva@osgoode.yorku.ca

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Abstract
This article examines the legal nature of the payment mechanism and discusses the rationale for a unified
doctrine governing the legal relations arising in connection with the transmission of money. Against the
background of the fragmentary and inadequate laws governing the various payment mechanisms, it is
acknowledged that no one set of rules is to govern them all. It is nonetheless argued that there is a sufficiently
wide common denominator to all payment mechanisms that justifies their inclusion under a distinct branch of
law. Legal issues common to all payment mechanisms ought thus to be treated from a standpoint broadly
embracing the entire range of machineries for the transmission of money in payment of debts rather than
looked upon in isolation.

Keywords
Negotiable instruments
THE CONCEPT OF PAYMENT MECHANISM

BY BENJAMIN GEVA*

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I. INTRODUCTION

This article examines the legal nature of the payment mechanism as a vehicle for the transmission of money in payment of debts. It further discusses the rationale for a unified doctrine governing the legal relations

* LL.M., SJD, Harvard, Associate Professor of Law, Osgoode Hall Law School, York University. This article is part of a study on the law relating to the allocation of commercial risks in payment mechanisms, supported by a grant from the Foundation for Legal Research of the Canadian Bar Association. For research assistance, I am grateful to Ms. Stephanie Cheung, of the 1986 graduating class of Osgoode Hall Law School.
arising in connection with the transmission of money. The objectives
are pursued in the following manner. First, the basic concepts underlying
the transmission of money in payment of debts are set out. Secondly,
the legal issues arising in the course of the operation of payment
mechanisms under which moneys are transmitted are analysed. Finally,
the fragmentary nature and the inadequacy of the laws currently governing
payment mechanisms are described. It is argued that this fragmentation
and inadequacy is the outcome of the failure to recognize the law of
payment mechanisms as a distinct and cohesive branch of law governing
the transmission of money.

Part II is an exposition of the general framework applicable to the
transmission of money. It presents a basic model of ‘payment mechanism’
and examines its various applications. Part III examines the common
legal issues arising in the course of the transmission of money via payment
mechanisms. Part IV is an overview of the current laws governing payment
mechanisms. It highlights the absence of a recognized branch of law
governing the transmission of money in payment of debts.

The thesis of this article is that notwithstanding the various forms
and techniques for the transmission of money, ‘payment mechanism’,
namely the machinery for the transmission of money, is susceptible to
analysis as a single legal concept. While each payment mechanism might
have distinct features, the very term ‘payment mechanism’ in its generality
attests to the existence of common elements. The existence of a general
common concept of ‘payment mechanism’, embracing all machineries
for the transmission of money, is thus central to the thesis of this article.¹

Inasmuch as this article purports to explore the nature of the payment
mechanism, the emphasis is on the legal relations established in the course
of the transmission of money. Questions relating to the unauthorized
use or misuse of payment mechanisms are thus outside the present inquiry.
Likewise, treatment of pre-existing contractual relations between parties
to a payment mechanism is quite incomplete. Particular attention is rather
given to common elements and legal issues underlying the operation
of payment mechanisms from the initiation of the transmission of money
thereby, to the completion of payment.

In proposing to adopt a New Payments Code to cover all payment
systems so as to replace Article 4 and substantial parts of Article 3

¹ Cf. G. Tedeschi, “On The Concept of Tort” (1968) 3 Israel L. Rev. 161. Professor Tedeschi's
treatment of the relationship between “tort” and “torts,” while completely unrelated to the subject
matter of this article, inspired my own thinking on the generality of 'payment mechanism' as a
single concept, distinguished from the particularity of each of the diverse 'payment mechanisms'.

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of the American *Uniform Commercial Code*, the drafters purported "to identify functions and issues common to all payment systems, and to draft a code which deals with these issues in a consistent and integrated fashion. . . ." Professor Hal Scott analogized this endeavour "to the task faced by the drafters of the original version of Article 9 of the [*Uniform Commercial Code*] when faced with disparate types of secured transactions, with common problems treated in inconsistent fashion. . . ." In fact, this article, while less ambitious in its goals, purports to provide a doctrinal basis for such a project.

The article does not argue that one set of rules is to govern all payment mechanisms. Its central thesis is rather that there is a sufficiently wide common denominator to all payment mechanisms that justifies their inclusion under a distinct branch of law. The existence of such a common denominator, which transcends technological and institutional changes, is the primary point argued in this article. It posits that the fragmentary nature of the existing law governing payment mechanisms is an outcome of the failure to recognize the existence of this common denominator.

II. TRANSMISSION OF MONEY: GENERAL FRAMEWORK

A. The Basic Model: the Three Party Payment Mechanism

In its simplest sense, the payment of a debt contemplates the physical delivery of money from the debtor to the creditor. Such a method of payment requires the availability of money in the debtor's hands, side by side with its physical delivery or transportation to the creditor. Payment mechanisms have developed as a response to the scarcity of money, as well as a means to reduce, or even to eliminate altogether, costs and risks involved in the transportation of money in payment of debts.

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2 The current draft is Permanent Editorial Board of the UCC, *Uniform New Payments Code*, P.E.B. Draft No. 3 (marked-up version showing changes from Discussion Draft No. 8, June 2, 1983).


4 Ibid.

5 The *Uniform New Payments Code* has been criticised for trying to force too much uniformity among different payment systems, as well as being tailored to meet existing technology. A. Geary, "One Size Doesn't Fit All — Is a Uniform Payments Code a Good Idea?" (1982-83) 9 Rutgers Comp. & Tech. L.J. 337. The theoretical framework proposed in this article purports to meet these objections.


Whether scarcity of money produced payment mechanisms that resulted in the reduction of the transportation of money, or whether payment mechanisms were consciously set up to reduce the transportation of money so as to bring upon a reduction in the amount of actual money in circulation, is a kind of chicken-and-egg problem. Historically, the emergence of payment mechanisms addressed both concerns. In any event, even if their emergence was necessitated by the scarcity of money, the development and growth of payment mechanisms enhanced the objective of reduction or avoidance of the carriage or transportation of money. In the final analysis, this objective has served as the primary raison d'être of payment mechanisms.

Physical transportation of money in specie has two serious drawbacks. Firstly, large quantities of money are bulky and require space. This raises difficulties and increases costs in connection with storage as well as with transportation in commerce. Secondly, transportation of money gives rise to risks of accidental loss and theft. These two drawbacks, inherent in the possession of money, have been met in connection with payment of debts by the emergence and development of payment mechanisms.

A payment mechanism can be broadly described as any machinery facilitating the transmission of money in the payment of a debt, which enables the debtor to avoid the transportation of money and its physical delivery to the creditor in the discharge of the debt. Physical transportation and delivery of money is avoided by shifting the risks and administration involved therein to a third party. This third party may or may not be one who is in the business of taking such risks. Payment may or may not be in specie. In any event, as explained below, such payment may discharge more than one debt, thereby reducing instances of physical transportation of money and the risks and costs involved in this endeavour.

A payment mechanism does not involve the physical delivery of a bag of money from the debtor to the creditor via a third party carrier. Coins and bank notes, of which money consists, are fungible chattels. As such they are mutually interchangeable, namely replaceable by equal quantities and qualities. For that reason, transmission of money via a payment mechanism is not identical to the physical transfer (or transportation) of money. The coins and bank notes delivered by the

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8 For the purpose of this article, payment by way of gift is to be included in payment of a debt. Also, 'debt' is not necessarily a pre-existing debt. It can be created and discharged simultaneously.


10 Ibid. at 25, for the definition of fungible goods.
third party to the creditor need not be set aside or earmarked by the debtor.

The operation of a payment mechanism is premised on the discharge of a debt by virtue of an authorized payment made by a third party, frequently a debtor's debtor. Besides discharging the original debt, this payment discharges the debt of the debtor's debtor. Alternatively, where there is no such pre-existing debt owed by the third party to the debtor, this payment, besides discharging the original debt, creates a new debt owed by the original debtor to the third party. The specific mechanics, and the mode by which they facilitate the avoidance or elimination of the physical transportation of money, are to be discussed in this section.

A payment mechanism is fundamentally a three-party arrangement. Thereunder, where A owes money to B, A's discharge is to be effected by X's payment to B, made with A's authority. This payment either creates a new debt owed by A to X, or discharges X's existing debt to A. In the latter case, one actual payment, made by X to B, discharges two debts: one owed by A to B and the other owed by X to A. This is one instance whereby the carrying of money in specie is avoided. Further reduction in the transportation of money is achieved where X is a depositary of money owing A on account of money A entrusted with X. In such a case, payment by X to B need not necessarily be made in specie. It can rather be accomplished by a mere bookkeeping entry, namely by the creation of a new debt running from X in favour of B, in lieu of the old debt owed by X to A for that sum of money. In such a case, it is the face value of money, rather than money itself, that has been transmitted via the payment mechanism.

This model contains the basic elements of all payment mechanisms. This can be demonstrated by fitting into the model all types and classes

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11 In fact, no physical deliveries may occur at all. See the concluding portions of each of the paragraphs containing note 29 and note 35, as well as the text at notes 37-40, infra.

12 Multipartite payment mechanisms are extensions of three party mechanisms. See Part II.B., infra.

13 A functional terminology, while more elegant than that using the A, B, and X characters, is bound to be confusing and therefore has been abandoned. To demonstrate this confusion, while A is the debtor and B is the creditor, X may be the debtor's debtor. While A is the payor in law, X is the payor in fact. B may be described as the payee, but 'payee' is a term of art in the law of negotiable instruments. In the alternative, characterizing B as 'beneficiary' carries a heavy trust connotation. The A, B, X terminology, supplemented where necessary by other characters, is used consistently throughout this article.

14 For more on this type of payment mechanism, see the paragraph containing note 29, infra.

15 Indeed, payor's risk of transportation before payment, and payee's risk of carrying money after payment, are two sides of the same coin, namely of the risk of possessing money. For this risk, see the paragraph preceding the one containing note 8, supra.
of payment mechanisms presently used. In connection with the discussion that immediately follows, it is useful to keep in mind that terminology which has developed in connection with modern payment mechanisms contemplates that both A and B have bank accounts, that payment is accomplished by debiting A's account and crediting B's, that X is a depositary institution where A has his bank account, and that B has a bank account either with X or with another depositary institution. Nevertheless, this general description of modern payment mechanisms, while helpful in understanding the terms, is not required for establishing the terminology.

Thus, payment mechanisms are either credit or debit transfers. Where A's instructions are communicated directly to X, there is a credit transfer. Where A's instructions are communicated to X via B, there is a debit transfer. In the former, A's instructions communicated to X 'push' the money to B. In the latter, B's communication to X 'pulls' or 'draws' the money from A.

Payment mechanisms, whether credit or debit transfers, are either paper-based or electronic funds transfers. Where A's instructions are embodied in a piece of paper, there is a paper-based system. Where the instructions are recorded on a magnetic tape or any other electronic message medium, there is an electronic funds transfer system.

Paper embodying A's instructions may circulate so as to put its holder from time to time in B's shoes. It can be characterized then as paper currency. The most notable example of paper currency is the bill of exchange, including the cheque. Not every type of paper embodying A's instructions circulates as paper currency. As a rule, only paper used

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2 I purposefully avoid the giving of precise definitions to technical terms like 'bank account', 'account', or 'depositary institution'. The terms are used loosely in their colloquial meaning.

3 The involvement of B's bank, namely the depositary institution where B keeps his bank account, is discussed in Part I.B., infra.


5 Cf classes of payment items, defined under s. 14.02 of By-Law No. 3 — Clearing By-Law, Canada Gazette Part I, Vol. 117 (15 Jan. 1983), enacted in Canada under the Canadian Payments Association Act, being Part IV of the Banks and Banking Law Revision Act 1980, 29 Eliz. II, c.40. A system may also be mixed, as where A's instructions are embodied in a piece of paper but are subsequently recorded on a magnetic tape for further processing.
in a debit transfer system is capable of being paper currency. However, a paper-based debit system does not necessarily require paper currency.

A payment system, whether credit or debit transfer, whether paper-based or electronic funds transfer, where (i) B is not to be paid in specie, and (ii) A's payment instructions are not embodied in paper currency, is called a GIRO system. The term 'GIRO' is taken from the Greek word *gigros* meaning ring, revolve, circular, or cyclical. In practice, a credit transfer is likely to be a GIRO system.

Given the elasticity of the basic model and its resulting comprehensiveness, an examination of the basic features of the model will be made.

Inasmuch as the function of a payment mechanism is to reduce instances of carrying money in specie, and thereby to avoid the cost and risk associated with the physical transportation of money, X is likely to be either a debtor of A, or else one who expects to become A's debtor. Alternatively, payment by X to B may be a form of credit extension from X to A, designed to pay off A's indebtedness to B. In the latter case, X is a money lender. The proceeds of X's loan to A, rather than being paid from X to A, and then from A to B, are paid directly by X to B, thereby reducing the instances where money is to be carried in specie.

Now suppose X is neither extending credit to A, nor a debtor or a would-be debtor to A. Under those circumstances, inasmuch as X's payment to B results in the creation of a new debt owed by A to X, which has to be paid immediately in specie, no reduction in the transportation of money has resulted from the employment of X to pay A's debt to B. A payment mechanism is unlikely to be used in those circumstances. The only exception is the unusual case where X, who is in the business of transmitting money, contractually assumes A's risks involved in the physical transportation of money and undertakes to pay

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21 The reason being that a payment order embodied in paper currency is to be communicated to X by the holder, namely either B or any subsequent transferee.


24 Otherwise, if X is instructed by A to pay B in specie, X must look for B. But see Penney, & Baker, *ibid.* at 24-25, describing credit transfers completed otherwise than by crediting the payee's account.

25 By paying directly to B, X also secures that the proceeds of his loan are in fact used for payment to B. This is important to X where A's indebtedness to him is to be secured by goods to be purchased from B with the proceeds of the loan.
B, while neither extending credit to A, nor obtaining the money from A in advance.26

The typical commercial settings, which give rise to the use of payment mechanisms, wherein X is either a debtor or a would-be debtor of A, will now be examined.

Where X is a debtor of A, X's debt to A may have arisen from an ordinary transaction between them. Alternatively, X may be A's debtor by virtue of A's delivery of money to X.27 Such a delivery may be for the exact sum of money to be paid to B and particularly for transmitting that amount to B, in which case X is an exchanger. In such a case the reduction of the transportation of money is not immediately apparent, as rather than A paying directly to B, we have A paying to X who pays B. Nonetheless, where A and B are geographically far apart, by delivering the money to X in A's location, A has shifted to X the risk of the physical transportation of money. As an exchanger, X is in the business of taking this risk. Furthermore, as will be explained later in Part II.B., as an exchanger, X is likely to facilitate the transmission of money to B without the physical transportation of money from A's location. In any event, having received the money from A, X becomes indebted to A. Having paid B, X discharges A's debt to B as well as X's own debt to A.28

Another instance of X becoming a debtor of A by virtue of A's delivery of money to X is where X is a depositary of money, i.e. a banker.29 In such a case, A's deposit is likely to be in a larger amount than his debt to B and is to take place prior to, and irrespective of, A's instructions to X to pay B. X's debt to A, then, is in the amount of A's entire deposit. In paying B upon A's instructions, besides discharging A's debt to B,

26 The mechanism usually used in the payment to a party located in a different place than that of the debtor is described in the text that follows note 27, infra, and in the text around and in notes 33-36, infra.

27 The delivery of money, as opposed to the delivery of a specific chattel, gives rise to a debt: Core's Case (1537), 1 Dyer 20a at 22a, 73 E.R. 42 at 46. See also Bretton v. Barnet (1599), Owen 87, 74 E.R. 918.

28 For more on the operation of exchanger payment mechanisms, see the text and notes 33-36, infra.

29 This is not the place to elaborate on the emergence of the banker out of the depositary of money for safekeeping. In general, a banker is one who borrows in order to lend. People deposit their money with a banker for safekeeping, but from a legal perspective, they lend him the money. For the debt relationship created by the deposit of money with a banker, see Foley v. Hill (1848), 2 H.L.C. 28, 9 E.R. 1002. In the course of his judgment, Lord Cottenham said (at 36, H.L.C., 1005-6, E.R.) that "(t)he money placed in the custody of a banker is . . . the money of the banker . . . but he is of course answerable for the amount." Lord Brougham said (at 44, H.L.C., 1008, E.R.) that the "trade of a banker is to receive money, and use it as if it were his own, he becoming debtor to the person who has lent or deposited with him the money to use as his own . . . ." According to Lord Campbell, (at 45, H.L.C., 1009, E.R.) " . . . the relation between banker and customer . . . [is] that of debtor and creditor." (All emphasis added.)
X discharges part of X's own debt to A, in the amount of payment to B. Payment by X to B thus reduces the physical transportation of money in specie. X, rather than paying A who is to pay B, pays directly to B. Moreover, if B wishes, no actual payment needs to take place as X, a depositary of money, may accomplish payment by becoming B's debtor in the sum of the payment.

Where X is a banker, the reduction in the risk of transportation is a by-product of the elimination of the risk of possessing money in general, inherent in the idea of entrusting money to a banker. Where X is an exchanger, the delivery of money to X by A may also be designed to protect A from risks involved in the use of foreign currency in international trade. Thus, where the coin of payment to B in a foreign jurisdiction is not the one current in A's place, X, an exchanger, is the one who undertakes, in return to the delivery to him by A of money in A's home currency, to pay B in B's own currency. This way, A avoids the need to acquire the foreign currency in specie, and the incumbent risk of obtaining counterfeit coins of a currency A is not familiar with. In sum, the delivery of money to a banker or exchanger serves various purposes. Their implementation through the emergence of one X who is indebted to A, debtor of B, has been instrumental in the development of payment mechanisms.

Where X is not indebted to A at the time of carrying out A's instructions to pay B, X's payment, besides discharging A's debt to B, creates a new debt from A to X. This also remains true where X expects to become A's debtor in the future. Nonetheless, in terms of the universality of the theory underlying the mechanics of the payment mechanism, where X expects to be A's debtor, X's payment to B should not be regarded as creating a new debt owed by A to X. Rather, it is better to look upon it as a prepayment of the future debt X is to owe A. Not made in specie, such prepayment avoids the need to carry money in actual payment in the future. In fact, where X expects to be A's debtor, and sometimes where X is already indebted to A other than by taking delivery of money as an exchanger or banker, the utility of a payment mechanism, or the reduction of the transportation of money, is premised on the existence of a long term mutual business relationship between A and X with debits and credits going back and forth. Typically A and X are fellow merchants having mutual dealings producing a series of mercantile transactions between them, with purchases and sales as

30 See ibid. For this risk in general, see the paragraph preceding the one containing note 8, supra.
well as other debits and credits going in both directions. Payments by X on behalf of A to B are part of these mutual dealings. They may be treated as payments for X's indebtedness to A, past and future. In practice, both A and X contemplate a periodic net settlement between them, with one payment of the resulting balance reflecting the adjustment of their mutual debts. Such a single payment may be made in specie, or by using another payment mechanism, i.e. by employing one N, a debtor (or would-be debtor) of the one who is the ultimate debtor in the resulting net balance between A and X. Even when the final periodic net settlement between A and X is by payment in specie, inasmuch as such a single payment substitutes numerous payments in specie going back and forth between them, it represents a substantial saving in the amount of transportation of money. In effect, as was already indicated, the saving arises from the ability of X's payments to B to reduce X's indebtedness to A, both past and future.

It can thus be summarized that a reduction in the physical transportation of money takes place wherever the authorized payment by X to B discharges A's debt to B without creating a debt owed by A to X immediately payable separately in specie. The expansion of commerce has facilitated the emergence of an institutional X serving as a money lender, depositary of money (or banker), exchanger, or fellow merchant having mutual dealings with another merchant. The effect of a payment by this X to B, a creditor of A, on X's balance with A, where A is X's borrower, depositor, entruster, or fellow merchant, has been the cornerstone of the operation of a payment mechanism.

B. Multipartite Payment Mechanisms

Where X is either an exchanger or a banker, a three party payment mechanism can expand to form a four party arrangement, thereby bringing about a further reduction of the physical transportation of money.

First to be dealt with is a four party payment mechanism involving X, an exchanger, who is to transmit money for A to one B situated in another territory. Thus, where A and B are geographically apart from each other, in order to avoid the risk of physical transportation of money, X, who is normally situated in A's area, must employ one Y, located in B's territory. The payment to B is accordingly to be made by Y. Obviously, payment by Y to B, while discharging X's debt to A,

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32 N may pay in specie, by using another payment mechanism, or by crediting the payee's account with him.

33 See, in general, the text around note 28, supra.
as well as A's debt to B, creates a new debt owed by X to Y. But such a debt is not to be paid separately in specie. Typically, Y is an exchanger. X and Y are likely to have a long term mutual business relationship. There may be additional occasions where Y is to pay pursuant to X's instructions. At the same time, there are likely to be other occasions where the reverse occurs, namely where X is to pay pursuant to Y's instructions. Such payments by X are to discharge debts of those residing in Y's own area, owed to those located in X's territory. These payments made by X are also to discharge Y’s debts to those entrusting him with money and instructing him to accomplish payments to their creditors situated at X’s place. In turn, payments by X are to create debts owed by Y to X. These debts are not to be paid separately in specie. There will be a periodic net settlement between X and Y, with one payment of the resulting balance reflecting the adjustment of their mutual debts. Such a single repayment may be made in specie, or by using another payment mechanism, i.e. by employing one Z, a debtor of the one who is the ultimate debtor in the resulting net debt between X and Y.34

In the final analysis, it is in this fashion that the use of an exchange network reduces the physical transportation of money.35 True, in a four party payment mechanism we have A paying X, Y paying B, and an ultimate settlement between X and Y. This sounds more involved than one physical delivery of money from A to B. Yet, the use of a four party payment mechanism avoids the physical transportation of money between two distant locations. All physical deliveries in an exchange network take place in separate locations (A/X, Y/B). In general, the risk inherent in a single physical transportation from place to place is substantially higher than that involved in several local physical deliveries. Needless to say, all ad hoc local deliveries are avoided where X and Y, in addition to being exchangers, are also bankers. As a depositary of A’s money, X will instruct Y to pay B by merely reducing his (X’s) indebtedness to A. On his part, Y will pay B by merely becoming his debtor in the sum of the payment.

In fact, a four party payment mechanism involving X and Y as two exchangers (hereafter ‘four party exchanger payment mechanism’) consists of two separate three party mechanisms. One is initiated by A’s order to X to pay B. The other is initiated by X’s order to Y to pay B. Obviously these two mechanisms are closely related. The latter

34 Payment by Z is to be made in specie, by payment mechanism, or by crediting the payee's account. Cf. text and note 32, supra. For the historical foundations of this type of exchanger payment mechanism, see Holdsworth, supra, note 31 at 128-30.
35 Cf. text and note 28, supra.
is initiated in performance of the order contained in the former. Payment by Y to B discharges A’s debt to B as well as X’s debt to A.36

Where X acts solely as a banker and not as an exchanger, a four party payment mechanism is of an entirely different nature. Such a mechanism involves another banker who is either to collect for B, or to pay him. Thus, where A instructs X to pay B, B may appoint a banker K to collect the money.37 Alternatively, A’s own original instructions to X may be to pay to another banker, P, to the account of B.38 In each of these cases, either K or P, being B’s banker, is not to pay B in specie. As a depositary of money, each becomes B’s debtor in the sum of the payment. In addition, insofar as each of K and P is a fellow banker with X, payment by X is not to be made in specie but rather as part of a periodic settlement.39

By eliminating altogether an actual payment to B, a four party payment mechanism involving X and either K or P, as two bankers (hereafter ‘four party banker payment mechanism’), produces a further reduction in the physical transportation of money. In this respect, the effect of a four party banker payment mechanism is similar to that of a three party banker mechanism, where B does not take the money paid from X, but leaves it in X’s hands.40 Unlike a four party exchanger mechanism, a four party banker mechanism does not consist of two related mechanisms. Rather, it is truly an expanded three party system with either K or P forming B’s extension or long arm.

Four party payment mechanisms can expand to include further parties. For example, in a four party exchanger mechanism, B, who is to obtain payment from Y, may appoint another banker to collect on his behalf. Likewise, in a four party banker mechanism, X may transmit payment41 to K or P via intermediary bankers. Nonetheless, such multipartite payment mechanisms, while complicating the application of the present analysis to their facts, do not raise new conceptual issues. For this reason, they will not be further considered in this article.

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36 This is to be discussed in Part III.B., infra.
37 This is likely to happen in a debit transfer system. See the text around note 19, supra.
38 This occurs in a credit transfer system. See the text around note 19, supra. For the legal position of P, see R. King, “The Receiving Bank’s Role in Credit Transfer Transactions” (1982) 45 Mod. L. Rev. 369.
39 This occurs namely by a third party banker paying cash, using a payment mechanism, or crediting the payee’s account with him. See notes 32 and 34, supra.
40 See the concluding portion of the paragraph containing note 29, supra.
41 Not necessarily physically, compare note 39, supra.
III. TRANSMISSION OF MONEY: LEGAL ISSUES

In this Part, legal issues arising in the course of the transmission of money via payment mechanisms will be dealt with. Beginning with three party mechanisms, an outline of the primary issues involved and an attempt to suggest a framework for their resolution will be presented. This will be done by exploring the legal effect of the payment order. Secondly, the issues arising in the course of the operation of a four party exchanger payment mechanism will be outlined. Since the latter is a combination of two three party payment mechanisms, pertinent legal analysis will be quite sketchy.

It was previously noted that a four party banker payment mechanism is actually an expanded three party mechanism, with either K or P forming B's extension or long arm.42 From this viewpoint, no additional legal issues arise in connection with the operation of such mechanisms. For the purpose of the present discussion, the separate identity of K or P is to be disregarded.

It should also be noted that payment to B through a payment mechanism is not necessarily made in specie. As was already stated, where X,43 K, P,44 or Y45 are bankers, payment is invariably made by any of them becoming B's debtor. Likewise, where applicable, the transmission of money from X to Y,46 K, or P,47 is not necessarily made by the physical transportation of money. All cases involving payment not in specie give rise to a question relating to the time of payment via the payment mechanism. Generally speaking, payment occurs whenever the third party-payor becomes irrevocably and unconditionally accountable to the payee-creditor, directly or indirectly, in lieu of the original debtor. For example, in a three party payment mechanism, payment by X (the payor) to B (the payee), unless made in specie, takes place where X becomes irrevocably and unconditionally accountable to B. Likewise, in a four party exchanger payment mechanism, payment by Y (the payor) to B (the payee), unless made in specie, takes place where Y becomes irrevocably and unconditionally accountable to B. In practice, however, the determination of such an accountability time

42 See the text that follows note 40, supra.
43 See the concluding portion of the paragraph containing note 29, supra.
44 See the text around notes 37-40, supra (with respect to K in a debit transfer, and P in a credit transfer).
45 See the concluding portion of the paragraph containing note 35, supra. (X and Y are exchangers and bankers).
46 See the text and note 34, supra.
47 See the text and note 39, supra.
point requires a detailed analysis of banking practices and procedures. This inquiry is outside the scope of this article.

A. Three Party Payment Mechanisms

The operation of a three party payment mechanism gives rise to four legal issues. They are to be enumerated as follows:

1. X’s duty towards A.
2. B’s right against X.
3. A’s discharge towards B.
4. X’s discharge towards, or debt from, A.

The first two issues are concerned with X’s duty to comply with A’s instructions. The first of them relates to X’s duty towards A and the second to X’s duty towards B. The last two issues primarily deal with the timing aspects of the discharges achieved by the use of payment mechanisms.

The first issue is X’s duty towards A. It is principally concerned with the basis of this duty. It also involves questions as to the manner in which X’s duty towards A is put into force, and the result of its breach by X.

In dealing with the second issue relating to B’s right against X, it is to be assumed that A and B have agreed that B is to be paid by X. Stated otherwise, it is undisputed that as against A, B is entitled to recover from X in satisfaction of A’s debt to him. Under these circumstances, three questions arise in connection with B’s right against X: (a) Is B entitled to recover from X? (b) If yes, what is the basis of B’s entitlement from X, and when is it effective? Does B’s entitlement originate from the communication of A’s instructions to X to pay B, and is this entitlement effective as of then? In the alternative, is B’s entitlement based on some act or promise made by X subsequent to obtaining the payment instructions from A but prior to payment, and is it effective as of then? Finally, (c) if B is entitled to recover from X, what is the scope of B’s entitlement? This third question has two separate facets. First, may X raise against B defences available to him against A? Secondly, is B’s entitlement from X dependent on lack of defences on A’s part as against B?

The third issue is concerned with the time of A’s discharge towards B. Having instructed X to pay B, when is A discharged? Several alternatives may be considered. Is A discharged (a) merely upon instructing X to pay B, (b) upon actually being owed money by X and instructing him to pay B, (c) upon X’s assent to carry out A’s instructions, (d) upon
the notification to B of any of the foregoing, or (e) upon actual payment to B?48

Finally, the fourth issue deals with X's position against A after the former has received the latter's instructions. When does X get his discharge from A, or become A's creditor (so as to be discharged from his future debt to A49), as the case may be? Does it happen as a result of A's discharge towards B? Alternatively, does it happen upon the occurrence of any of the events enumerated above in connection with the third issue, irrespective of whether this is the event that also discharges A's indebtedness to B?

The starting point for discussing all four issues is the determination of the legal nature of the three party payment mechanism. As will be seen below, the analysis may give us some definite answers to some questions, along with some clues as to others. The answer to the few remaining questions is to be left to inter-party agreements, irrespective of the characterization of their legal relations. The ensuing discussion will present alternative characterizations and the sets of results flowing from them.

The payment order given by A to X may be characterized either as a mere mandate, that is, a mere authority to pay B on A's behalf, or else as an assignment to B of X's (existing or future) debt owed to A. First to be dealt with are the issues relating to X's duty towards A, as well as to B's right against X,50 under each alternative.

As a mere mandate, A's payment order binds X neither against A nor against B. Indeed, the mere authority given to X by A to pay B does not require X to abide by A's payment order, except that X may have bound himself under a separate agreement with A. Such a pre-existing agreement may easily be implied where X received money from A for the specific purpose of transmitting it to B.51 Needless to say, an undertaking by X to carry out A’s payment order may also be given to A in advance,52 under an express agreement between them.53 An obligation to honour A's payment order may also be fastened upon X and superadded to X’s contractual relation with A “according to the

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48 "Actual payment," is not necessarily payment in specie. For example, it may also occur by crediting B's account with X. See in general text around notes 43-47, supra.
49 See the text containing note 32, supra.
50 These are the first two issues enumerated at the beginning of this section, supra.
51 As where X is an exchanger. See the text following note 27, supra.
52 As per a subsequent undertaking, see the text around notes 62-63, infra.
53 Such an express agreement may be made under a bank account agreement where X is the custodian of A's money, namely A's banker. Alternatively, it can be made under a loan agreement where X is a lender to A, who is to give the proceeds of the loan directly to B. See, in general, the text around note 29 (X as a banker) and note 25 (X as a lender), supra.
custom of the trade.” Nevertheless, an explicit or implicit agreement between A and X requiring X to follow A’s instructions is by itself a matter between A and X only. In the absence of some kind of a third party beneficiary theory, such an agreement does not entitle B to recover from X.

Alternatively, A’s payment order may create an assignment. The effectiveness of an assignment depends on the manifestation of the assignor’s intention, and not upon its communication to the assignee. An equitable assignment “may be addressed to the debtor” and “couched in the language of command.” Accordingly, the communication of A’s order to X may be viewed as an assignment to B of X’s debt owed to A.

An assignment of a debt entitles the assignee as well as binds the obligor who has been notified of it. Inasmuch as it constitutes an assignment, A’s payment order thus entitles B as well as binds X. X can discharge his debt to A only by payment to B. X is put under a duty to pay B and such a duty may be enforced directly against X not only by A, but also by B.

Whether X is required to pay immediately to the assignee B may depend on whether the assigned debt (owed from X to A) is presently owed and payable. In such a case, X is required to follow A’s instructions as communicated to him. At the same time an assignment of a future debt, while binding the obligor and entitling the assignee, does not, by itself, require the obligor to pay the assignee prior to the maturity

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54 Foley v. Hill, supra, note 29 at 104, H.L.C.; argument in relation to the banker’s duty to honour the depositor’s cheques.
55 Strictly speaking, a third party beneficiary theory is not recognized in English contract law. But doctrines based on the assignment of choses in action, trust, quasi-contract, agency, or custom made some inroads. Under some circumstances, such doctrines give third parties remedies against promisors with whom they have no privity. See in general M.P. Furmston, Cheshire and Fifoot’s Law of Contract, 11th ed. (Toronto: Butterworths, 1986) at 437-513. A detailed analysis is outside the scope of the present discussion.
56 Furmston, ibid. at 493-94, particularly at n.12, where Comptroller of Stamps (Victoria) v. Howard-Smith (1936), 54 C.L.R. 614 at 622 is cited.
57 Brandt’s Sons & Co. v. Dunlop Rubber Co. (1905), [1905] A.C. 454 at 462 (H.L.) per Lord MacNaughten. The distinction between equitable and statutory assignments, referred to in the text as well as in the following note, is immaterial for the present discussion.
58 The assignment of choses in action was first recognized by courts of equity. These courts “admitted the title of an assignee of a debt, regarding it as a piece of property, an asset...” Fitzroy v. Cave (1905), [1905] 2 K.B. 364 at 372. This position gained a limited statutory recognition originally in s. 25(6) of the Judicature Act, 1873, 36 and 37 Vict. 66. The obligor is bound by the assignment upon receiving notice of it. Stocks v. Dobson (1853), 4 De G.M.G. 11, 43 E.R. 411. See e.g. B. Geva, Financing Consumer Sales and Product Defences (Toronto: Carswell, 1984) at 47-50. In a payment mechanism, the communication of A’s order to X constitutes the required notice to the obligor.
of the assigned debt. X is to pay B only upon the maturity of X's debt to A. Nonetheless, in such a case of a future debt owed by X to A, under a pre-existing agreement with A, implicit or explicit, X may undertake to follow A's instructions and pay B prior to the maturity of the assigned debt. But such an agreement is separate from the assignment of the debt, and is a matter between A and X. In the absence of a third party beneficiary theory, such an agreement will not benefit B.

Now, the effect of X's subsequent assent to carry out A's instructions will be considered. Indeed, having received A's instructions, whether or not required to abide by them, X may well indicate his assent to carry them out. X's assent is likely to be binding as against A. However, in the absence of a third party beneficiary theory, or unless it forms a direct agreement between X and B, X's assent does not furnish B with rights towards X. The assent does not entitle B as against X, to recover from X. Thus, by itself, and in the absence of a third party beneficiary theory or a direct agreement between X and B arising from X's assent, X's assent to carry out A's instructions does not advance B's position where B is not entitled against X on the basis of A's order alone.

The assignment by A to B of an existing and immediately payable debt owed by X to A is thus the only theory under which A's payment order, by itself, requires X, against A as well as against B, to pay B immediately. Nevertheless, whenever there is no such assignment, if because the law regards A's instructions as a mere mandate falling short of an assignment, or because at the time the order is to be carried out there is no existing and immediately payable debt owed by X to A, X may be bound towards A, either under a previous agreement or under a subsequent assent. On B's part, where B is not the assignee of an existing and immediately payable debt owed by X to A, B has no immediate grounds for a right against X to recover from X on demand. In general, such a right cannot be derived from A's bare order to X, from A and X's previous agreement, or from X's subsequent assent to carry out A's instructions. Nonetheless, there could be circumstances where such a right to recover from X will be conferred upon B on the basis of X's agreement or assent, and even in the absence of the assignment

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60 Such may be the case, in modern banking practice, where X (a banker) provides A (the customer) with an overdraft facility.
61 See note 55, supra.
62 Provided all the requisite elements for a binding contract have been fulfilled.
63 See note 55, supra.
of an existing and immediately payable debt. First, if any third party beneficiary theory applies, X's previous agreement with A or subsequent assent to carry out A's instructions may inure to the benefit of B. Secondly, X's assent may be viewed as forming a direct agreement with B, binding X towards B.

Stated otherwise, in the absence of the assignment of an existing and immediately payable debt owed by X to A, the bare order of A to X to pay B does not bind X against A as well as against B. However, in the absence of such an assignment, a previous agreement between A and X, as well as a subsequent assent by X, may bind X towards A. Under some circumstances, such an agreement or assent may also bind X towards B. Those circumstances occur where either the application of a third party beneficiary theory, or the existence of a direct contract between X and B arising from X's assent, is warranted.

This takes us to the third question raised in connection with the second issue: if B is entitled as against X, what is the scope of his entitlement? Can B recover from X, free from X's defences against A, as well as from A's defences against B?64

Whether B's right against X is based on A's assignment or on X's assent or agreement with A, no answer to that question is immediately available. Where B is regarded as A's assignee, B takes the debt owed by X to A subject to its equities, including X's defences towards A, except that the terms of X's indebtedness to A may call for full payment to an assignee notwithstanding such equities.65 Likewise, whether an assignment from A to B for value cannot be retracted upon B's failure to provide A with the agreed value depends on the terms of the assignment, the treatment by law of its nature, or the extent of B's breach, that is, of B's failure to supply A with the agreed value. Upon the successful retraction of his assignment on the basis of his defences towards B, A may effectively prevent B from recovering from X.

Alternatively, B's right against X is founded on X's assent or agreement. The scope of B's entitlement will depend then on the terms of this assent or agreement. Indeed, X may agree to pay B either unconditionally and irrevocably, or subject to A's right against X, or B's right against A. In the former case, where X unconditionally and irrevocably agrees to pay B, X in fact commits himself in B's hands. Under the mere mandate theory, only then may B recover from X free from X's defences against A, as well as from A's defences towards B.

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64 The issues and questions are enumerated in the opening part of this section.
65 See in general, Geva, supra, note 58 at 47-62.
66 See in general, ibid. at 93-101.
It is evident that B's freedom from X's defences against A is crucial to the effective operation of any payment mechanism, particularly if A is discharged from his debt to B prior to full payment by X to B.\textsuperscript{67} As for B's freedom from A's defences, or conversely, as to the question whether A can effectively prevent X from paying B on the basis of A's defences against B, policy considerations are quite equivocal. Applicable policies have to accommodate two defensible but conflicting viewpoints of A and B. Thus, B is concerned with the credibility of the payment mechanism, or with its being a viable substitute to payment \textit{in specie}. X is a middleman, ready and willing to pay B, provided that such payment be authorized, namely, that thereby X will either be discharged from his debt to A,\textsuperscript{68} or be entitled to recover from A. A, however, is concerned with maximizing his enforcement position against a breaching party B. Indeed, an authorized payment by X to B either discharges X's liability to A,\textsuperscript{69} or charges A with liability to X. As such, from A's perspective, an authorized payment by X to B has the same effect as cash payment by A to B. From A's viewpoint, the issue is then A's ability to prevent a breaching party (B) from having the benefit of actual payment.

The third legal issue arising in the course of the operation of a three party payment mechanism is the time of A's discharge towards B.\textsuperscript{70}

Needless to say, full payment by X discharges the debt owed by A to B. Under the mandate theory, X's payment is to be treated as A's payment, which inevitably leads to A's discharge. Under the assignment theory, X's payment to B primarily discharges the assigned debt, namely X's debt to A. Yet, the agreement between A and B must have provided, explicitly or implicitly, that the effect of X's payment is also to discharge A's debt to B. In fact, A's discharge towards B must have been the value received by A in return to the assignment to B of X's debt.

Whether A's debt to B is discharged prior to full payment by X to B is a matter to be agreed upon between A and B, irrespective of the characterization of A's payment order as a mere mandate or an assignment. In practical terms, B is unlikely to discharge A prior to full payment, unless and until B is entitled, as against X, to recover from X the entire amount of A's indebtedness. Furthermore, before releasing A, B must be convinced that X's solvency and credibility are undisputed. In any event, the agreement between A and B as to A's discharge is

\textsuperscript{67} A's discharge from his debt to B is discussed in the text that follows note 70, \textit{infra}.

\textsuperscript{68} For X's discharge towards A, see the text that follows note 71, \textit{infra}.

\textsuperscript{69} \textit{Ibid}.

\textsuperscript{70} The issues and questions are enumerated in the opening part of this section.
not dependent on the terms of A's payment order or on X's assent or agreement. Rather, it is a separate agreement between A and B.

Finally, the fourth issue is concerned with X's position against A after the former has received the latter's instructions.\textsuperscript{71} Under the assignment theory, X's payment to B is payment of X's debt to A.\textsuperscript{72} As such, it discharges X towards A. Under the mandate theory, X's payment to B is that of A's debt to B. As such it does not automatically discharge X's debt to A. Yet, X's agreement or assent must have provided, explicitly or implicitly, that X's payment to B will result in discharging X's indebtedness to A. Actual payment by X to B thus results in X's discharge towards A.

Whether X's debt to A is discharged prior to X's full payment to B is again a matter of agreement, this time between X and A. By the nature of things, A is not likely to agree with X on an early discharge of X, prior to full payment, unless A is assured of obtaining discharge from B not later than at that very point in time. Yet, in theory, the questions of X's discharge towards A, and of A's discharge towards B are separate. The former depends on an X-A agreement. The answer to the latter depends on the agreement between A and B.

In sum, it is very likely that A's discharge towards B will coincide with X's discharge towards A. Both may happen simultaneously with the accrual of B's right as against X. Yet, in the final analysis, as a matter of legal doctrine, A's discharge towards B, X's discharge towards A, and whether each occurs upon the accrual of B's right against X, constitute three separate issues.

\textbf{B. Four Party Exchanger Payment Mechanisms}

The operation of a four party exchanger payment mechanism\textsuperscript{73} raises seven legal issues which are enumerated as follows:

1. X's duty towards A.
2. B's right against X.
3. Y's duty towards X.
4. B's right against Y.
5. A's discharge towards B.
6. X's discharge towards, or debt from, A.
7. Y's discharge towards, or debt from, X.

\textsuperscript{71} \textit{Ibid.}
\textsuperscript{72} See the text following note 70, \textit{supra.}
\textsuperscript{73} Discussed in Part II.B., \textit{supra.}
The first two issues are identical to those existing under a three party mechanism and will not be elaborated on. The third issue, concerning Y's duty towards X, is analogous to the issue regarding X's duty towards A. It is concerned with the basis of Y's duty towards X, the manner in which it is put into force, and the result of its breach by Y.

The fourth issue, namely B's right against Y, is analogous to the subject of B's right against X. Three questions arise in this respect: (a) Is B entitled to recover from Y? (b) If yes, is it upon X's instructions to Y, upon Y's assent thereto, or upon the notification to B of any of the above? Finally, (c) if B is entitled to recover from Y, what is the scope of B's entitlement? Is it subject to Y's defences against X? To A's defences against B?

The fifth issue is concerned with A's discharge against B. Is A discharged upon the occurrence of any of the events enumerated under the third issue discussed in connection with the operation of a three party payment mechanism? These events were\(^74\) (a) A's instructions, (b) A's instructions to X who is indebted to A at that time, (c) X's assent, (d) the notification of B of any of the above, or (e) actual payment to B. Alternatively, is A discharged upon (i) X's instructions to Y, (ii) X's instructions to Y who is indebted to X at that time, (iii) Y's assent to carry out X's instructions, or (iv) the notification to B of any of the foregoing?

The sixth and the seventh issues raise questions similar to those raised in connection with the fourth issue of the three party payment mechanisms. Is either X's position towards A, or Y's position towards X, linked to A's discharge towards B? If no, which particular event, from all those enumerated in the preceding paragraph, determines X's position towards A, and Y's position towards X?

As was already stated, a four party exchanger payment mechanism consists of two separate but related three party systems.\(^75\) Indeed, the problems arising in connection with the exchanger mechanism are of the same nature as those arising under the three party mechanism. In the four party context, these problems are nonetheless amplified to accommodate the additional operational or factual complexities. Overall, they lack sufficient conceptual distinctiveness. For this reason, no further analysis of legal issues is required at this point.

\(^{74}\) See text and note 48, supra.

\(^{75}\) See text and note 36, supra.
IV. THE CURRENT LAWS OF PAYMENT MECHANISMS: AN OVERVIEW

No substantial body of law dealing directly with GIRO systems, whether credit or debit transfers, has developed. A learned discussion by Pennington, Hudson, and Mann is concerned with general principles applicable to the credit transfer, namely to the payment order ‘pushing’ funds which is directly communicated by A to X and not via B. The authors conclude that the credit transfer does not operate as an assignment from A to B of the debt A is owed by X. Stated otherwise, the typical payment order in a credit transfer system is to be treated as a mere mandate given by A to X, to pay on A’s behalf to B. But one American court, albeit in a less scholarly reasoning, was prepared to characterize the payment order initiating a credit transfer as an assignment to B of A’s deposit with X. Most existing cases relating to credit transfers deal with the completion of payment. They shed very little light on other issues, including that of the characterization.

An extensive body of law governs bills of exchange, or more generally, paper currency used in paper-based debit transfers. This body of law,

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1 For these terms, and in general for the classification of payment mechanisms, see the text and notes 16-24, supra.


3 For the definition of ‘credit transfer’, see the text around note 19, supra.

4 Supra, note 22 at 283-91. This is also Ellinger’s conclusion. Ellinger, supra, note 22 at 197-99.

5 For the mere mandate and assignment theories, see in general, Part III.A., supra.


8 But cf. e.g. Royal Products Ltd. v. Midland Bank Ltd. (1981), [1981] 2 L.I. L. Rep. 194 (Q.B.) and Evra Corp. v. Swiss Bank Corp. (1981), 522 F. Supp. 820 (U.S.D.C. N.D. Ill.), rev’d. (1982), 673 F. 2d 951 (U.S.C.A. 7th Cir.), primarily dealing with contract liability of participating banks. Also such cases were not concerned with issues arising in the course of a duly made transmission of money via a payment mechanism.

9 The term ‘paper currency’ in the context of payment mechanisms is explained in the text and note 21, supra.
statutory and judicial, is discussed below. It will be noticed that within this branch of law, most legal issues arising in the course of the transmission of money\footnote{For these legal issues, see Part III, supra.} are resolved. Nonetheless, resolution of these issues is done from a standpoint of the law governing paper currency, or negotiable instruments,\footnote{Species of 'paper currency' governed in the U.K. by the Bills of Exchange Act, 1882, 45-46 Vict., c. 61 as amended, and in Canada by the Bills of Exchange Act, R.S.C. 1970, C.B-5 as amended, are negotiable instruments.} and not necessarily that of a law governing payment mechanisms.\footnote{This is not the place to discuss how the 'law of negotiable instruments' took over the 'law of payment mechanisms' in relation to bills of exchange. Suffice it to say that during the eighteenth century, the negotiability of the bill of exchange overshadowed its character as a payment mechanism and became the focal point of the law governing it.} Indeed, there are statutory provisions dealing specifically with bills of exchange as payment mechanisms. Such provisions give straightforward answers. But the answer to questions not dealt with directly by statute is obscured by the preoccupation of this field of law with the negotiability of the bill of exchange, or paper currency in general, and not with its nature as a payment mechanism. Thus, not all issues are satisfactorily resolved as to bills of exchange. Furthermore, existing solutions are not automatically transformable to other payment mechanisms.

The law governing bills of exchange as applied to their use as payment mechanisms will now be examined.

Under the Imperial Bills of Exchange Act (hereafter the Act), as well as its Canadian counterpart,\footnote{Both cited in note 86, supra. Due to the applicability of the present analysis to Commonwealth jurisdictions in general, Bills of Exchange Act references are to the Imperial statute. References to the Canadian Act are provided in brackets.} a bill of exchange, or a bill,\footnote{See s. 2 of the Act (also Can. s. 2).} is a written unconditional order requiring the addressee to pay a sum certain of money to a specified person or bearer.\footnote{Under s. 3(1) (or Can. s. 17(1)),
A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.} The cheque is a sub-species of the bill. It is a bill drawn on a banker, payable on demand.\footnote{Under s. 73, (Can. s. 165(1)), "A cheque is a bill of exchange drawn on a banker and payable on demand..." (The Canadian Act replaces “banker” by “bank”).} Governed by the Act, the bill, including the cheque,\footnote{According to the concluding sentence of s. 73 (Can. s. 165(2)), except as otherwise provided, "the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque."} is transferable from one person
to another by delivery, with or without the last holder's endorsement. As such, the instrument is paper currency.

In its simplest form, the bill, including the cheque, is a three party payment mechanism. It is drawn by A (the 'drawer'), addressed to (or drawn on) X (the 'drawee'), requiring X to pay B (the 'payee'). In a cheque, X must be a banker. The bill may, however, also be used in a four party exchanger payment mechanism. In such a case, X and Y are normally bankers, and the instrument is drawn by X on Y, is payable to B, and purchased in advance by A from X, to be delivered to B in payment of A's debt to B. This kind of instrument, in modern banking terminology, is known as a 'bank draft' or sometimes as a 'banker's draft'.

Under s. 53(1) of the Act, Scotland excepted: "A bill, by itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof. . . ." The provision applies also to cheques. In the three party payment mechanism, the provision means that A's order on a bill does not operate as an assignment to B of X's debt owed

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93 Section 31 (Can. s. 60, which uses "endorsement" instead of "indorsement") provides, in part, as follows:
(1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.
(2) A bill payable to bearer is negotiable by delivery.
(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery. . . .

94 See text and note 21, supra.

95 These terms, while not defined by the Act, emerge from ss. 5-7, (Can. ss 19-21).

96 Under s. 2, "Banker' includes a body of persons whether incorporated or not who carry on the business of banking."

Under Can. s. 2, "bank' means an incorporated bank or savings bank carrying on business in Canada."

But under Can. s. 164.1, for the purpose of the provisions dealing with cheques, "bank" includes every depositary institution member of the Canadian Payments Association.

97 Frequently, X draws the instrument on himself, in which case we have, in fact, a three party payment mechanism. For the purpose of this article, the possibility of X drawing on himself will be disregarded, and the exchanger payment mechanism will be discussed as a four party arrangement.

98 The instrument may reflect a lender payment mechanism, under which X makes a loan to A, the proceeds of which are to be used in payment of A's debt to B. See text around note 25, supra.


100 Section 53(1) (Can. s. 127, which does not contain the concluding sentence) reads in full as follows:
A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This subsection shall not extend to Scotland.
The position in Scotland is discussed in the text and notes 137-42, infra.

101 See note 92, supra.
to A. In other words, the Act treats the bill as a mere mandate, that is, a mere authority given to X to pay B on A's behalf.\footnote{See, e.g., Barclays Bank Ltd. v. W.J. Simms Son & Cooke (Southern) Ltd. (1979), [1980] 2 W.L.R. 218 (Q.B.). For the bill as an assignment, see, e.g., I. Baxter, "The Bill of Exchange as an Assignment of Funds: A Comparative Study" (1953) 31 Can. B. Rev. 1131.} The result is that the bill, by itself, does not require X to abide by A's instructions. Nor does its delivery to B\footnote{Under s. 21 (Can. s. 39), delivery is required to make every contract on a bill enforceable. But no contract is binding in the absence of the signature of the party to be charged with liability. See text preceeding note 107, infra. Stated otherwise, delivery is a necessary but not sufficient condition to liability on a bill.} entitle B to recover from X.

The duty of X towards A is a matter of agreement between them. Such an agreement is likely to be linked, explicitly or implicitly, to the deposit of funds by A with X, but could arise otherwise.\footnote{See text around note 51-54, supra.} B's right against X depends on X's acceptance of A's order. Stated otherwise, X's agreement to carry out A's instructions does not inure to the benefit of B, unless such an agreement is made subsequent to these instructions\footnote{Cf. ibid. and text around notes 62-63, supra.} and as required by the Act. Thus, under s. 53(1), (Can. s. 127),\footnote{See note 100, supra.} "the drawee of a bill who does not accept as required by this Act is not liable on the instrument." Acceptance is defined in s. 17(1), (Can. s. 35(1)), as "the signification by the drawee of his assent to the order of the drawer." Under s. 17(2) (Can. s. 36(1)(a)), the drawee's acceptance "must be written on the bill and be signed by the drawee...," and contains no undertaking to perform the promise "by any other means than the payment of money." In fact, "[t]he mere signature of the drawee without additional words is sufficient."\footnote{Time for acceptance, and general and qualified acceptances, are respectively dealt with by ss 18 and 19 (Can. ss 37 and 38).} This is in line with the general rule of s. 23 (Can. s. 131) under which "No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such. . . ."

The content of the acceptor's liability is provided for by s. 54 (Can. s. 128). By accepting the bill, the acceptor, "(1) Engages that he will pay it according to the tenor of his acceptance. . . ." Liability on a bill runs in favour of its holder,\footnote{Under s. 38(1) (Can. s. 74(a)), it is the holder of a bill who "may sue on the bill in his own name." "Holder" is defined in s. 2 (also Can. s. 2), as "the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof."} in our case, B.\footnote{Needless to say, the holder B is not in privity with the acceptor X. Compare to text around notes 62-63, supra. For a historical account of the technical difficulties to establish the acceptor's liability towards the payee under the common law, see Holden, supra, note 99 at 28-29.} According to s. 59(2)(a), (Can. s. 140(a)), under certain circumstances, the acceptor's liability runs also in favour of the drawer. The section provides that a drawer who
has paid the bill, “may enforce payment thereof against the acceptor.” In fact, this acceptor’s liability is for the loss incurred by the drawer (who paid the bill upon the drawee’s breach of his contract with him by the non-payment to the holder). Liability under s. 59(2)(a) is thus in addition to the drawee’s indebtedness to the drawer, as for example, the one created by the deposit of the drawer’s funds in the drawee’s hands.

The scope of B’s right against X as an acceptor of the bill is not provided for directly by the Act. As recalled,1 the questions relating to the scope of B’s right has two facets: (i) may X raise against B defences available to X against A? and (ii) is B’s right against X dependent on lack of defences on A’s part as against B? As was stated earlier,2 the answer to these questions, namely whether B can recover from X free from X’s defences against A, as well as from A’s defences against B, does not automatically follow from the characterization of the nature of X’s liability towards B.

No general principles governing the scope of B’s right against X come out clearly and unequivocally from case law. The question whether B can recover from X free from X’s defences against A has been obscured by the fact that under the Act, the one who holds a bill free from prior parties’ contractual defences must be a holder in due course.3 A holder in due course must take the instrument by negotiation, namely by transfer from one holder to another.4 The payee takes the bill from the drawer so that he does not derive his title from a previous holder.5 Consequently, the prevailing view is that the payee cannot be a holder in due course.6 Proponents of this view are prepared to concede, however, that a payee who gave value for an instrument and received it in good faith and

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1 See in general the paragraph preceding the one containing note 48, supra.
2 See the detailed discussion in the text around notes 64-69, supra.
3 Under s. 38(2) (Can. s. 74(b)), a holder in due course “holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves.” For “defect of title,” “mere personal defences,” and contractual defences, see Geva, supra, note 58 at 125-37, and for the holder in due course’s freedom from contractual defences, ibid. at 83-93.
4 See note 93, supra, and, in connection with the payee’s position, cf. Herdman v. Wheeler (1901), [1902] 1 K.B. 361 at 376 where Channell J. expressed his opinion that “negotiated” in the proviso of s. 20(2) (Can. s. 32(1)), dealing with the defence of lack of an authorized completion, “meant transferred by one holder to another.” For the requirement of negotiation that a holder in due course must have taken the bill, see s. 29(1)(b) (Can. s. 56(1)(b)).
5 For the definition of “holder” see note 108, supra. It is obvious that the drawer is not “holder.”
without notice of the drawer’s defences against the drawee,¹ “has the same rights [as a holder in due course] vis-à-vis a remote party such as the acceptor.”² Such an exception, though quite defensible from a policy standpoint,³ is nonetheless unsupported by case law and hardly justifiable as a matter of statutory construction of the Act.⁴

The second aspect of the scope of B’s position towards X, namely B’s ability to recover from X irrespective of A’s defences against B, raises two questions. The first is concerned with the right of a party (X) sued on a bill to meet the action of the holder (B) by a defence based solely on defences of a third party (A). The second question is whether the third party (A) is to be allowed to restrain a party (X) liable on the bill from paying the holder (B) on the basis of A’s own defences against B. From a doctrinal standpoint, the issue is the availability of a third party’s right as a defence to an action brought by a holder of the bill, or the defence of jus tertii.⁵ Pre-Act cases held that a party sued on a bill may defend the action by challenging the plaintiff–holder’s right of ownership.⁶ Chalmers was of the opinion that the rule derived from this case law survived the passage of the Act, so that “[w]henever a bill is held adversely to the true owner, and there is privity between the true owner and the holder, a third party, if sued, may set up jus tertii.”⁷ As a matter of statutory interpretation, this conclusion is supported by s. 59 of the Act (Can. s. 139). Thereunder, payment by or on behalf of the drawee or acceptor, which discharges a bill, must be a payment to the holder made “in good faith and without notice that [the holder’s] title to the bill is defective.”⁸ Inasmuch as the Act cannot be construed to require the drawee to make a non-discharging

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¹ So that the payee substantially complied with the holding in due course conditions enumerated in s. 29 (Can. s. 56(1)).
³ As explained in text around note 67, supra.
⁴ The payee’s insulation from the drawer’s defences against the acceptor can perhaps be explained on the basis of estoppel. See Geva, supra, note 115 at 301.
⁵ For a comprehensive discussion and comparison between the English and the American positions, see, e.g., A. Barak, “The Uniform Commercial Code — Commercial Paper — An Outsider’s View,” Part I (1968) 3 Israel L. Rev. 7 at 21-26. For the origin of the expression ‘jus tertii’, as well as for the view that in the present context the term is “of doubtful application,” see Barak, ibid. at 22, n.5.
⁷ Ibid. at 102, text and n.12.
⁸ Section 59(1) (Can. s. 139(1)) reads in full as follows:
A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.
“Payment in due course” means payment made at or after maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.
payment so as to remain defenseless against a subsequent action for payment brought by the true owner, s. 59 must be taken to mean that the drawee's notice of the holder's defective title excuses the former from making payment to the latter. In other words, the effect of s. 59 is that the holder's defective title is by itself a defence in the drawee's hands, even where no equities attach to the drawee's own liability.\footnote{Barak, \textit{supra}, note 120 at 22, n.7.}

Nonetheless, the pre-Act cases dealt with a defence based on the third party's right of ownership.\footnote{One case dealt with negotiation to a holder, subject to a condition subsequent, that he has not fulfilled. The other dealt with negotiation to the holder in breach of trust. Cases are cited in note 121, \textit{supra}.} Also, Chalmers speaks of "a bill held adversely to the true owner."\footnote{See text and note 122, \textit{supra}.} On its part, s. 59 (Can. s. 139) speaks of defective title.\footnote{See note 123, \textit{supra}.} The Act's definition of "defective title" is not conclusive,\footnote{Under s. 29(2) (Can. s. 56(2)), in particular, the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. As the list is preceded by "in particular," it is overwhelmingly accepted that "the examples do not exhaust the category." See D.V. Cowen & L. Gering, \textit{Coven on the Law of Negotiable Instruments in South Africa}, 4th ed. (Cape Town: Juta, 1966) at 270.} and it is not self evident whether either every or any third party's contractual defence is a challenge to the holder's ownership right or is a defect in the holder's title.\footnote{In general, for "defect of title" and contractual defences, see Geva, \textit{supra}, note 58 at 125-37.} It may thus be observed that the availability of a third party's defence as a defence to an action on a bill does not easily fit into existing principles governing the defence of \textit{jus tertii}.

Needless to say, under general principles of property law, a holder of a bill may be sued by one claiming to be its true owner. Having been deprived of his possession as a result of such a successful action, the defendant ceases to be the holder of the bill,\footnote{The holder must be in possession of the bill, see the definition in note 108, \textit{supra}.} and consequently cannot enforce payment against any party liable thereon.\footnote{Under s. 38(1) (Can. s. 74(a)).} This way, the third party — 'true owner' — can effectively restrain the party liable on the bill from paying the wrongful possessor. But it does not follow that a similar power lies in the hands of a third party who has a contractual defence on the bill, where such a defence does not amount to a challenge to the holder's ownership or title.

In sum, a third party's rights, in our case A's, can be asserted by himself or by a party liable on the instrument, in our case X, as against
the holder B, if such rights are equities attaching to the ownership of
the bill.\textsuperscript{132} This is not so where the third party A's rights are equities
as to his liability, not affecting the holder's (B's) title. In the latter case,
the third party's rights cannot be asserted against the holder. The precise
classification of applicable 'equities', namely whether or not they attach
to the ownership of a bill, has not been conclusively settled yet.\textsuperscript{133}

The Act is silent on the last two issues raised in connection with
the operation of the three party payment mechanism, and relating to
the timing of the discharges achieved by the use of payment mechanisms.\textsuperscript{134}
Neither A's discharge towards B, nor X's discharge towards A, is treated
by the Act.

A's discharge towards B is governed by well-established general
principles. Thereunder, parties are at liberty to agree, explicitly or
implicitly, that a bill will operate as absolute payment of the debt for
which it is given.\textsuperscript{135} Nonetheless, the presumption is in favour of condi-
tional payment: unless otherwise agreed, when a bill is taken by a creditor
in payment of a debt, the debt is suspended. If the bill is paid, the debt
is absolutely discharged. If the bill is dishonoured, the original indebted-
ness is revived.\textsuperscript{136} Applied to our cast of characters, the conditional
payment principle means that unless otherwise agreed between them,
A's indebtedness to B is to be suspended by the bill, but is not to be
completely discharged until full payment is made.

X's discharge towards A is a contractual matter between them. No
general principles seem to have been established. Presumably, no dis-
charge ought to be given to X until A is fully discharged towards B.

In Scotland, under s. 53(2), “where the drawee of a bill has in his
hands funds available for the payment thereof, the bill operates as an
assignment of the sum for which it is drawn in favour of the holder,
from the time when the bill is presented to the drawee.”\textsuperscript{137} In such a
case, the bill requires X, against A as well as B, to pay B. Inasmuch

\textsuperscript{132} For the distinction between equities affecting ownership to a bill and equities affecting
liability on a bill, see Z. Chafee, "Rights in Overdue Paper" (1917-18) 31 Harv. L. Rev. 1104
at 1109-10.

\textsuperscript{133} For a discussion from an American perspective, see e.g. B. Geva, "Contractual Defenses
as Claims to the Instrument: The Right to Block Payment on a Banker's Instrument" (1979) 58
Oregon L. Rev. 283, particularly at 297-309.

\textsuperscript{134} The issues are enumerated at the beginning of Part III.A., supra.

\textsuperscript{135} In fact, the parties liable on the bill are A himself as a drawer, and X as an acceptor.
For the drawer's liability on the bill, see text, notes 146-51, infra. This liability is to be distinguished
from A's original indebtedness to B for which the bill was given.

\textsuperscript{136} See in general, A. Barak, "The Uniform Commercial Code Commercial Paper — An
Outsider's View," Part II (1968) 3 Israel L. Rev. 184 at 215. Megrah & Ryder, supra, note 117
at 406.

\textsuperscript{137} See also text and note 100, supra, in relation to s. 53(1). Section 53(2) has no counterpart
in Canada.
as X must have been indebted to A, this rule does not necessarily alter the substance of the relationship between A and X, since X, as A's debtor, might have explicitly or implicitly agreed in advance to discharge his debt by directing payment according to A's instructions. The departure embodied in the Scottish rule lies rather in furnishing B with a direct cause of action against X prior to X's acceptance.

As to the scope of B's right against X, Scottish case law suggests that A may prevent B from recovering from X free from A's defences against B. The statutory requirement that "the drawee [must have] in his hands funds available for the payment [of the bill]" may suggest that B's right under s. 53(2) is restricted to situations where X (the drawee) has no defence against A. Stated otherwise, B's right under s. 53(2) is subject to X's defences against A.

Where the drawee in Scotland accepts the bill, his rights are governed by the same statutory provisions applicable to acceptance outside Scotland.

An examination will now be made of the application of this body of law to the bank draft, or more generally, to the bill of exchange used in a four party exchanger payment mechanism. In the model fact situation, the instrument is drawn by X on Y, is payable to B, and is purchased from X in advance by A, to be delivered to B. Each of the seven issues raised in conjunction with the use of such a payment mechanism will now be discussed in turn.

1. The question of X's duty towards A is a contractual matter between them.
2. X, as the drawer of the bill, is liable to the holder B. Under s. 55(1) of the Act (Can. s. 130(a)), by signing a bill as a drawer, the signer: "Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he

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138 Or in the statutory language, for s. 53(2) to apply, X must have in his hands A's "funds available for the payment" for A's bill. Ibid.
139 See in general text around notes 51-54, supra.
140 See, e.g., Waterson v. City of Glasgow Bank (1873-74), 1 Sess. Cas. (4th series) 470 (Ct. Sess.).
141 See s. 53(2), text and note 137, supra.
142 In general for the position in Scotland, see D.J. Cusine, "The Cheque as an Assignation" (1977) 22 Jur. Rev. 98.
143 See text and notes 97-99, supra.
144 See Part II.B., supra.
145 These issues are enumerated at the beginning of Part III.B., supra.
146 Liability on a bill runs in favour of its holder. See text and note 108, supra.
147 Under s. 23 (Can. s. 131), "No person is liable as drawer ... who has not signed it as such...." Having signed the bill as its drawer, X is liable thereon.
will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken." This amounts to an undertaking by the drawer (X) that on due presentment\(^\text{148}\) of the bill by the holder (B or any subsequent endorsee), the drawee (Y) will accept and pay the bill, and that upon Y's failure to do so, subject to the fulfillment of statutory notice requirements by the holder,\(^\text{149}\) payment\(^\text{150}\) will be forthcoming from the drawer (X).\(^\text{151}\)

Questions relating to the scope of X's liability, namely whether B is entitled to recover from the drawer X free from X's defences against A, or from A's defences against B, are clouded with the same uncertainties discussed earlier in connection with B's right against X, the acceptor of a bill used in a three party payment mechanism.\(^\text{152}\) Obscurities hanging over the payee's holding in due course status, as well as over the holder's subjection to a defence based on *jus tertii*,\(^\text{153}\) preclude a clear-cut determination of the payee-holder B's position also in a bill used in a four party exchanger payment mechanism.

3. Y's duty towards X is a matter of agreement between them. In Scotland, where "the bill operates as an assignment of the sum for which it is drawn"\(^\text{154}\) out of the drawer's funds held by the drawee, the drawee Y is required to comply with the order given by the drawer X. Elsewhere, Y's contractual duty may arise in connection with X's deposit with Y,\(^\text{155}\) or from the mutuality of their relationship.\(^\text{156}\) Under s. 59(2)(a), (Can. s. 140(a)), as an acceptor of the bill, Y is liable to X where the latter has paid the bill.\(^\text{157}\)

4. B's right against Y is based on Y's engagement as the acceptor of the bill.\(^\text{158}\) In Scotland, B's right against Y may commence earlier, namely upon the assignment to B of Y's debt owed to

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\(^{148}\) The presentment requirement is dealt with by ss 39-47 and 52 (Can. ss 75-95).

\(^{149}\) Notice of dishonour and protest are governed by ss 48-52 (Can. ss 96-126).

\(^{150}\) Section 57 (Can. s. 135) speaks in terms of damages.

\(^{151}\) In those circumstances, the drawer is entitled to payment from the acceptor. See s. 59(2) (Can. s. 140) and the text which follows note 109, *supra*.

\(^{152}\) See text and notes 110-33, *supra*.

\(^{153}\) *Ibid*.

\(^{154}\) Section 53(2) (no Canadian counterpart). See text around note 137, *supra*.

\(^{155}\) Cf. text around notes 51-54, *supra*.

\(^{156}\) For the mutuality of the X = Y relationship, see the text around notes 33-34, *supra*.

\(^{157}\) See text which follows note 109, *supra*.

\(^{158}\) For the acceptor's liability to the holder, see the text and notes 106-109, *supra*. 
Elsewhere and in Scotland, the scope of Y's liability (as the acceptor of the bill) towards B, namely whether Y's liability to B is not burdened either with X's defences against Y, or with A's defences against B, is subject to the same uncertainties relating to the payee's holding in due course status, and the holder's subjection to jus tertii defences, discussed earlier in connection with B's right against X, the acceptor of a bill used in a three party payment mechanism.

5. A's discharge towards B is governed by general principles of law. As recalled, the general rule is that parties are at liberty to agree that a bill will operate as absolute payment for the debt for which it is given, but the usual presumption is in favour of conditional payment. Nevertheless, A is not a party to the bill used in a four party exchanger payment mechanism. Moreover, the drawer of a bank draft, the most typical bill currently forming such a mechanism, is a banker. There are doubts whether the conditional payment principle applies to such circumstances. Unlike the Act, which is completely silent on the point, the American Uniform Commercial Code is unambiguous. It provides that unless otherwise agreed, the effect of payment by a bill drawn by a bank on which the debtor himself is not liable, is to give an absolute discharge to the debt for which it is given. In England, in the absence of such a sweeping statutory provision or judicial authority, there is support for the proposition that "if a creditor prefers a bill of exchange accepted by a stranger to ready money from his debtor, he must abide by the hazard of the security he takes." Yet, this rule seems to deal only with situations where the creditor specifically rejects payment in cash ('ready money') in favour of a bill accepted by a third party. Chalmers was of the opinion that inasmuch as the intention of the parties as to the effect of payment by bill is a question of fact, "[w]here the debtor is not a party to the instrument, perhaps

159 See s. 53(2) and text around note 137, supra. According to its own terms, s. 53(2) applies only "where the drawee [Y] has in his hands [the drawer X's] funds available for the payment" of the bill.

160 See text and notes 110-33, supra. For the scope of the drawee's liability after acceptance in Scotland, see the text following note 142, supra.

161 See text around notes 135-36, supra.

162 See in general text and notes 97-99, supra.

163 Under UCC s. 3-802(1)(a),

Unless otherwise agreed where an instrument is taken for an underlying obligation —

(a) the obligation is pro tanto discharged if a bank is drawer... or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor;...

Under s. 1-201(4), "Bank" means any person engaged in the business of banking.

164 Everett v. Collins (1810), 2 Camp. 515 at 516, 170 E.R. 1226.
the inference of absolute payment more readily arises.” But according to Byles, “[i]f the debtor, instead of paying the creditor, directs him to take a bill of a third person, which the creditor does, and the bill is dishonoured, the liability of the original debtor revives.” Indeed, rules concerning a third party’s bill sold to a creditor by the debtor in consideration for an absolute discharge for the debt, and not given to the creditor by the debtor in payment thereof, are known to exist. Nonetheless, such rules have been limited to instruments “made or become payable to bearer.” In short, while being challenged, the conditional payment principle is not unequivocally rejected in relation to bills used in four party exchanger payment mechanisms.

6. X’s discharge towards A is a contractual matter between them. Under general principles of law, until delivery of the instrument to B, A may demand payment from X on the basis of A’s ownership in the bill. In general, no discharge ought to be given to X until A is fully discharged towards B.

7. Y’s discharge towards X is a matter to be agreed upon between them. It is likely to be linked under such an agreement to X’s discharge towards A. All three discharges are thus likely to occur simultaneously.

V. CONCLUSION

A payment mechanism is a machinery facilitating the transmission of money in payment of debts that enables a debtor to avoid the transportation of money and its physical delivery to his creditor. Thereunder, the debtor instructs a third party, frequently his own debtor, to pay the creditor in discharge of the debt. The third party is likely to be a lender, banker, exchanger, or a fellow merchant having an ongoing business relationship with the debtor. The operation of the payment mechanism does not involve the physical delivery of a bag of money from the debtor to the creditor via a third party carrier. Rather, the third party pays out of his own pocket, thereby either discharging his own debt to the debtor, or becoming his creditor for the sum paid. Payment by the third party need not be in specie but could take place by the third party becoming indebted to the creditor in lieu of the original debtor.

This model is sufficiently elastic to accommodate all machineries for the transmission of money, whether they are paper-based or electronic

165 Smout, supra, note 121 at 342 and n.30.
166 Megrah & Ryder, supra, note 117 at 409 and n.33.
167 Ibid. at 193.
fund transfers, whether debit or credit transfers, whether paper currency or GIRO systems, and regardless of the stage of technological progress. The model is also sufficiently broad to accommodate multipartite payment mechanisms using more intermediaries, besides the third party, for the transmission of money.

While each payment mechanism might have distinct features, the very term ‘payment mechanism’ in its generality attests to the existence of common elements. Notwithstanding the various forms and techniques for the transmission of money, ‘payment mechanism’ is susceptible to analysis as a single legal concept, embracing the totality of machineries for the transmission of money and forming the common denominator to legal doctrine applicable to them.

Indeed, the operation of each of the diverse payment mechanisms gives rise to the same types of legal issues. Nonetheless, under the present law, legal issues within each payment system are looked upon in isolation, and not from a standpoint broadly embracing the transmission of money under all payment mechanisms. In fact, the bill of exchange, including the cheque, is the only machinery wherein the legal issues concerning the transmission of money have been dealt with comprehensively. Most solutions are statutory, and in any event are part of a law relating to negotiable instruments. As such, they do not extend to other payment mechanisms. Furthermore, not all legal issues are resolved even in connection with bills of exchange. Where there is no direct resolution, as for example with respect to the scope of the creditor’s right against the third party who has assented to carry out the debtor’s payment order, discussion of legal principles is obscured by the preoccupation of the law of bills of exchange with the negotiable character of paper currency. This preoccupation is at the expense of a comprehensive treatment of the bill of exchange as a payment mechanism.

The thesis of this article is that legal issues common to all payment mechanisms should not be looked upon in isolation. The issues ought rather to be treated from a standpoint broadly embracing the entire range of machineries for the transmission of money in payment of debts. Stated otherwise, a sufficiently broad common denominator underlies all payment mechanisms and justifies their treatment in the framework of a single cohesive body of legal doctrine. While no one set of rules ought to apply uniformly to all payment mechanisms, their inclusion in a distinct branch of law governing the transmission of money is quite warranted. Resolution of legal issues within each mechanism, while taking into account its unique features, should be made in relation to a framework broadly embracing the entire range of machineries for the transmission of money in payment of debts. The fragmentary nature of the law currently governing payment mechanisms is unjustified.