

ANTI-BOUNCING CHECKS LAW

Clean TTS Copy

Anti-Bouncing Checks Law

ELEMENTS OF VIOLATION OF BOUNCING CHECKS LAW, BP 22

1. The making, drawing, and issuance of any check to apply for account or for value. The accused must be the drawer, maker and issuer. In negotiable instruments law, mas tama yung drawer siya dahil yung maker is the one who created the promissory note. Pag drawer, bill of exchange; a check is always a bill of exchange. And issuer siya at the same time. Hindi pwede na either lang at dapat siya mismo ang pumirma.
2. The knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment.
3. The subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. Nag-bounce ang check dahil na-dishonor ito for insufficiency of funds dahil walang laman ang checking account ng drawer, or nag-issue ng stop payment order pero it would have still bounced because of insufficiency of funds.

KNOWLEDGE OF THE MAKER OR DRAWER

The making, drawing and issuance of a check, payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit. If 91st day na prinesent ang check, kailangan pa magpresent ng evidence ng prosecutor. If presented within 90 days, may prima facie evidence na of knowledge, kaya the burden shifts to the accused.

VALID DEFENSE - PAYMENT; REQUIREMENT OF NOTICE

The maker or drawer will not be liable if he pays the holder the amount due, or makes arrangements for payment in full by the drawee, within five banking days after receiving notice that the check has not been paid. Dapat nagbigay ng notice of dishonor. The five banking days do not start until notice is given.

DUTY OF THE DRAWEE

When refusing to pay a check upon presentment, the drawee must write, print, or stamp in plain language on the check or attach to it the reason for dishonor or refusal to pay. Where there are insufficient funds or credit, that fact must always be explicitly stated. DAIF means Drawn Against Insufficient Funds.

In BP 22 prosecutions, an unpaid and dishonored check bearing the drawee's stamped or written refusal and reason is prima facie evidence of the making or issuance, due presentment, dishonor, and proper dishonor for the stated reason.

Even with a stop-payment order, the drawee shall state in the notice that there were insufficient funds or credit, if that is the fact.

CREDIT CONSTRUED

Credit means an arrangement or understanding with the bank for the payment of the check.

EFFECT OF ACQUITTAL ON CIVIL LIABILITY

An acquittal does not necessarily extinguish civil liability for dishonored checks. An acquittal based on lack of proof beyond reasonable doubt does not preclude civil damages. Criminal liability requires proof beyond reasonable doubt, while civil liability uses preponderance of evidence. If the court finds that the accused did not commit the act, civil liability may also be absent.

PENALTY

1. Imprisonment of not less than 30 days but not more than one year.
2. Fine of not less than, but not more than, double the amount of the check, not exceeding Pesos 200,000.
3. Both, at the discretion of the court.

Prescriptive period: four years from commission of the offense, or if not known at the time, from discovery.

DIFFERENCE WITH ESTAFA BY POST-DATING OR ISSUING A CHECK

A person may be accused of both Estafa and BP 22, but there is no double recovery as to civil liability.

Good faith is a defense in Estafa, but good faith is not a valid defense in BP 22.

Payment of a pre-existing obligation: no Estafa because there is no deceit, but there may still be BP 22 liability.

Estafa may be committed by merely issuing a worthless check, unlike BP 22 which requires that the accused both drew and issued the check.

Period to make good the check: three days in Estafa, five banking days in BP 22.

Estafa involves deceit plus economic damage under Article 315.

EXAMPLE

A drew a check for 10,000 and issued it to B for payment of services already rendered. B then issued the check to C, representing it as a good check, causing C to enter the transaction. The check was later dishonored for insufficiency of funds. Assuming notice was given and the three-day and five-day periods expired: A is not liable for Estafa because the check was issued for a pre-existing obligation, but A is liable for BP 22 for making and issuing a worthless check. B may be liable for Estafa, but not BP 22, because B only issued the check and was not its drawer.