

### EXTENDED SUMMARY

*The date of issuance is one of the mandatory elements of a cheque. On the other hand, falsification means the alteration, erasure, correction, crossing out or addition of the signatures or declarations on a cheque, which is filled out by the issuer and put into circulation, without the consent of those who are concerned. According to Article 748 of the Turkish Commercial Code, if the text of a draft is changed, the persons who put their signatures on the draft after the change shall be liable according to the changed text, and those who put their signatures before the change shall be liable according to the original text. This provision is also applicable to cheques due to the reference to subparagraph ö of paragraph 1 of Article 818 of the Turkish Commercial Code. Changing the date of issue, which is a mandatory element of the cheque, is an important form of alteration on the cheque. This alteration may be realised as voluntary and involuntary alteration (falsification).*

*In the event of a change in the date of issue of the cheque, this act shall not be qualified as a falsification if the persons concerned have consented to the change. In the absence of the consent of all cheque drawers, this act shall be considered as a falsification. In this case, Article 748 of the Turkish Commercial Code shall not apply to the persons who have consented by signing or initialing the change in the cheque. In respect of the persons who do not consent to the change made in the cheque, their liability shall continue within the scope of Article 748 of the Turkish Commercial Code within the scope of the text they have signed.*

*The falsification of the date of issuance of the cheque is encountered, especially in cases where the submission period has passed. By falsifying the date of issue, it is created as if the cheque's submission period has expired, although it has not. Even though the presentation period of the cheque has passed, if the cheque has not been withdrawn, it is possible for the addressee bank to make payment pursuant to paragraph 2 of Article 799 of the Turkish Commercial Code. However, even if the cheque has not been withdrawn, the payment of a falsified cheque by the addressee bank shall entail liability under Article 812 of the Turkish Commercial Code.*

*As per the general rule, the claimant shall bear the burden of proof in the allegation that the cheque has been falsified by the issuer. If it cannot be proved that the change in the date of issuance of the cheque was made by the issuer, the date before the falsification shall be accepted as the date of issuance. The allegation of falsification may be proved by all kinds of evidence, including witnesses, and in particular by an expert investigation to be conducted on the promissory note.*

*As a rule, falsification of the date of issuance of the cheque does not invalidate the cheque; the date before the falsification is accepted as the date of issuance. Nevertheless, if more than one date of issue is created after the falsification or if the date of issuance before the falsification cannot be determined, the cheque shall be deemed invalid.*

*The person who commits the act of falsification shall be held liable according to the provisions of tort if the conditions regarding the act of falsification exist. If the addressee bank fails to identify the person who committed the falsification, it shall bear the loss itself.*

*The liability of the addressee bank that pays a cheque that has been falsified is strict liability. Only when negligence can be attributed to the drawer, such as the drawer's negligence in not keeping the chequebook properly, may the correspondent bank be relieved from liability. If both the drawer and the addressee bank are negligent, the liability of the addressee bank is mitigated to the extent of the drawer's negligence.*

*The drawee bank, which has suffered a loss due to the payment of a cheque with a falsified date of issuance, may file a lawsuit against the person who committed the act of falsification and the issuer, who is at negligence, for the compensation of the loss suffered. The right of the addressee bank to claim from the bearer is possible only if the bearer knows or should have known that the date of issuance of the cheque has been falsified, in other words, with malicious intent.*

*The addressee bank cannot be relieved of its liability by the release of liability clause in the Cheque Agreement, regardless of whether it has paid a cheque that has been falsified on the date of issuance through gross negligence or slight negligence. The addressee bank, which pays a falsified cheque, cannot*

*be relieved from liability by the release of liability clause in the cheque agreement, whether it is slightly negligent or grossly negligent.*

*If the falsification made on the date of issuance of the cheque has not rendered the cheque invalid, an unjust enrichment action may be filed under Article 732 of the Turkish Commercial Code. In such a case, the one-year period shall be calculated based on the date prior to the falsification. If the change in the date of issuance has rendered the cheque invalid, it is no longer possible to file an unjust enrichment lawsuit as it is only a cheque in appearance. Notwithstanding, this situation does not eliminate the right to claim arising from the underlying legal relationship.*

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