

NEGOTIABLE INSTRUMENTS ACT

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Class-room live lectures edited, enlarged
and updated**

NEGOTIABLE INSTRUMENTS ACT

1. Definitions : Promissory Note, Bill of Exchange, "Cheque" Drawer, Drawee, Acceptor, Holder, Holder in due course, Inland and foreign instrument, endorsement.
2. Ambiguous Instrument, Inchoate Instrument.
3. "At sight", Maturity, Days of grace.
4. Parties.
5. Negotiation.
6. Presentment.
7. Of payment.
8. Discharge of liability.
9. Notice of dishonour.
10. Noting and protest - Reasonable time.
11. Acceptance for honour.
12. Presumptions.
13. Crossed cheques.
14. Bills in sets.
15. Foreign Instrument, liability, etc.

QUESTIONS BANK

NEGOTIABLE INSTRUMENT ACT

1. State and Explain the essentials of Promissory Note, Bill of Exchange and Cheque. Distinguish P/N from B/E.
2. Who is a holder and a Holder in due course ? Distinguish between them.
3. State the circumstances when a banker may dishonour a cheque.
4. Explain 'Negotiability' and 'Assignability'.
5. Explain when presentment for payment is unnecessary.
6. What are the presumptions as to N/I.
7. Explain 'Noting' & 'Protest'. What are the contents of protest?
8. Write Short Notes on :

(i) Accommodation Bill (ii) Bills in Sets (iii) Drawee in case of need (iv) Inland and Foreign Instrument (v) Endorsement (vi) Inchoate

msrlawbooks N/I Act P T O

ate instrument (vii) Escrow (viii) Days of Grace (ix) Notary Public
(x) Negotiable Instrument (xi) Lost Instrument (xii) Notice of
dishonour (xiii) Material alteration.

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NEGOTIABLE INSTRUMENTS ACT

Ch. 1-1. Promissory Note (Pre-note):

Definition : Section 4 of the Negotiable Instruments Act defines a pro-note. A promissory Note is an instrument, in writing with an undertaking to pay, a certain sum of money and money only unconditionally, to the payee or his order or the bearer of the instrument.

A pronote requires the presence of two parties, viz., Maker and Payee. There may be two or more makers or two or more payees. The parties should be legally competent to create contractual obligation. The maker is the debtor, and the payee the creditor.

PRO-NOTE

New Delhi

15th March 2012

On demand, I promise to pay Sri..... or order
Rs.500/- (Rupees five hundred only) with interest at 12%
per annum for value received.

Signed (Maker) Stamps

Witnesses:

A.....

B...

Eg. : 1) 'I owe you Rs.1,000/-'. this is not a Pro-note

2) A agrees to pay to C Rs.1000/- unconditionally on demand made by C, the Creditor. This is a Pro-note.

3) 'I have received Rs.1,000/- from C'. This is not a Pro-note.

4) I have taken Rs. 10,000/- as loan today from C. I agree to pay Rs.2000/- and handover my cow for the balance of money and interest thereof. This is not a pro-note.

Essentials: i)

Writing :

The P/N must be in writing. This means oral agreements are not acceptable. The writing may be in ink or printed or in other modes. No proforma is prescribed by the act, but the instrument must have all the essentials.

ii) Undertaking to pay :

There must be an express promise to pay the amounts as specified in the P/N.

"Deposited with me Rs.10,000/- to be returned on demand" is not a P/N.

A mere receipt of money is not a P/N.

"Rs. 1,000 balance still due to you. I am indebted and do promise to pay". This is a P/N.

iii) Unconditional promise:

There must be a promise to pay without any conditions. It is not a P/N, if the promise to pay is based on the happening of an event, which may or may not happen, e.g.:

"I promise to pay Rs.1000/- when P my debtor returns it".

"I promise to pay according to my convenience".

These are not Pro-notes. Any condition to prevent negotiation makes the P/N invalid.

iv) Makers signature:

Signature or thumb impression is essential and must be on the instrument.

v) The maker must be certain :

There must be certainty of the maker of the P/N. There may be one person or jointly two or more persons. These persons may be jointly or severally liable. A, B and C may sign, making them-selves jointly and severally liable.

vi) Pay money and money on!y :

It is essential that the sum must be definitely stated on the face of the instrument. ""I promise to pay Rs.5000/- and all other moneys due" is not a P/N.

The undertaking to pay must be for a sum of money only, e.g., "I promise to pay Rs.1500/- and deliver my cycle towards interest" is not a P/N.

vii) The payee must be certain :

The P/N should specify the name of the payee who is entitled to the payment. If it is uncertain or doubtful, it is not a P/N. "I promise to pay to any persons who may be partners of the firm X and C. for

the time being" is not P/N as it leads to uncertainty.

But, a reference to "Son of A", as payee is valid, if the son is known definitely.

viii) Consideration :

The words "for value received" refer to the consideration. The presumption is that the consideration is valid and legal.

Ch. 20-2. Bill of exchange :

Definition : The bill of exchange is an instrument in writing drawn by a person known as Drawer (Seller) containing an unconditional order directing another person known as Drawee (Buyer), to pay a certain sum of money only to or to the order of a certain person

or to the bearer.

The person who accepts is the acceptor (Drawee). Hence, Drawee becomes acceptor. As such it requires the presence of the minimum of three parties. If the acceptor accepts, he incurs the responsibility of the principal debtor.

BILL OF EXCHANGE

Rs.6000/-

Date :

Thirty days after sight, please pay to Karnataka Bank or order, Rs.6,000/- in respect of goods received.

Sd. (Seller) Mysore. To

M/sD&Co., Bombay (Buyer)

..

This is a bill of exchange and according to amendment no stamps are required. Here, seller is the Drawer, Buyer is the Drawee and Karnataka Bank is the payee.

Essentials: 1)

Writing:

The B/E must be in writing. Oral agreements are not valid. The writing may be in ink, or printed or in other modes. Though no proforma is prescribed, the instrument must have all the essentials of a B/E.

ii) Order to pay :

The essential feature of the B/E is that the drawer should order the drawee to pay to the payee. However, the words 'please pay' may be used, but excessive politeness makes the bill invalid. e.g., "Mr. M. please oblige the bearer Rs.10000 and place it on my account and you

will kindly oblige". This is not a demand and hence, not a bill,

Hi) Unconditional order:

It is essential that the order to pay should not be subject to any contingency. However, conditions, like :~(a) to "pay after a lapse of time, (b) to pay by instalments (c) to pay on the happening of an event which in the ordinary expectation of life is certain to happen are valid.

Eg., "90 days after sight" But, the following conditions are invalid "When I marry"
"When I am in prosperous conditions"
"Pay on the sale of 3 bales of cotton"

iv) the drawee **and the payee must be certain :**

The name of the drawee must be named or indicated with certainty. The payee should be in a position to know to whom he must present the bill for acceptance or payment,

The payee must be named. If there is a misnamed person or a person is designated by description only, even then the person is ascertainable with certainty and hence, valid.

v) The sum **must be certain :**

It is essential that "Certain sum" must be stated definitely on the face of the bill. If after stating the amount, reference is made to interest or exchange rate of foreign currency ; it is certain and valid.

Ch. 20-3. Pronote and bill of exchange distinguished : •

Pronote	Bill of Exchange
1. Requires only two parties (maker and payee).	1. Requires the minimum of three parties, (Drawer, drawee, payee),
	2. It must be an unconditional
	2. The undertaking must be by the undertaking by the original- Drawee (buyer) who is not the tor, (maker) to pay. Originator (seller is the original Maker)

- | | |
|---|--|
| <p>3. It does not require acceptance^ understood in bill "oINxchange.</p> <p>4. Presentment for payment not necessary.</p> <p>5. Maker is the principal debtor.</p> | <p>3. It requires a valid acceptance by the drawee.</p> <p>4. Presentment for payment necessary.</p> <p>5. Acceptor is the principal debtor.</p> |
|---|--|

Ch. 20-4. Cheque : (Sn.5) :

A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Generally, cheques are drawn on forms supplied by the bankers.

No.

Bank

Branch.name ,

Date

Payor order

Rupees.....

.....Rs.....

(Signature)

Ch. 20.5) Cheque and bill of exchange distinguished :

Cheque	Bill of exchange
1. Drawn on the banker.	1. May be drawn on any perspn
2. Cheque is always payable on demand. No acceptance is required.	2. If not payable on demand, requires acceptance.
3. Presumption that the cheque is drawn by the drawer on his funds in the hands of the Drawee (Bank)	3. There is no such presumption,
4. Cheque is always payable on demand.	4. 3 days of grace allowed for payment.
5. Notice of dishonour not	5, Notice of dishonour is absolutely

necessary. essential.
 6. Drawer may countermand 6. After acceptance there can be no
 the cheque before pay- countermand by drawer.
 ment.

CHAPTER-21 HOLDER

Ch. 21.1. Holder:

The holder of a P/N, B/E or cheque means : any person who is entitled in his own name to the possession and to receive or recover the amount due from the parties thereto.

If the instrument is lost or destroyed its holder is the person who was entitled at the time of such loss or destruction.

The holder must have

- i) Possession of the instrument and ii) The right to recover the money.

Hence, a finder of a lost instrument, or a thief, or a person taking under a forged instrument etc. has no right to recover.

The holder is not protected against all defects in the title of the instrument, "He who has no title, cannot pass a title", applies, and the holder cannot have a better title (Nemo dat qui non habet).

The legal representative of a deceased holder or the official assignee would be the successor-holder of the instrument.

Ch. 21-2. Holder in due course :⁵

Holder in due course means any person who for consideration, became the possessor of a P/N, B/E or cheque, before the amount mentioned in it became payable, and in good faith.

Hence, to become a holder in due course he must be a holder for consideration, before the date of maturity, with bonafides.

He must have made a reasonable enquiry as to the title of the transferor. Any defect in the title of the transferor will

not in any way harm the interests of the holder in due course. Hence, all defects are cured, and he gets a better title than his predecessor.

Eg.: A obtains a B/E from B, by fraud under the contract Act. As this is voidable at the instance of B, there is a defect in the title.

If A transfers this by endorsement to C, for consideration, before the date of maturity and C takes with bonafides, without any reason to suspect the title^C is a holder in due course. C gets a better title than A.

English law requires mere good faith. But, it does not require that the holder should make a reasonable enquiry. But in India, the holder should make an enquiry diligently with all reasonable care.

Title becomes defective when the instrument is obtained by fraud duress, coercion, unlawful means arid for illegal consideration.

Every party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly paid.

However, a holder from a holder in due course gets the title of the holder in due course.

Case: In Arab Bank Ltd., V. Ross,

A bill was drawn in favour of F or F.N. Co., but was endorsed F & F.N. It was held, that as the endorsement was not complete and regular, its holder is not a holder in due course to get the protection under the law.

CHAPTER-22

DISHONORING OF CHEQUE

Bank's right to refuse to honour a cheque :

The drawee of the cheque i.e., the Bank, having sufficient funds of its customer, must honour his cheques when duly presented by the payee. In case of default, without reason, the bank will have to pay exemplary damages to the drawer (Merzette's case).

However, in the following circumstances the bank will be justified in dishonouring a cheque :

1. Insufficient funds of the drawer.
2. When the form of cheque is doubtful.
3. Post dated cheques.
4. Cheque not presented during banking hours.
5. When the funds cannot be applied to the cheque.
6. Material alterations, signature irregular etc. in the cheque.
7. Death of drawer of Cheque if bank has notice.
8. Insolvency of drawer, the bank getting notice.
9. Countermanding of cheque by drawer.

10. Different branch of the bank.i.e drawn on another branch
11. Court's order prohibiting payment (Garnishee order)
12. Bank's general lien.

Obligation to honour:

There is a contractual obligation on the part of the **bank to** honour the cheques of its customers. As per Sn. 31 of the N/I Act, there is a statutory obligation to pay if there are sufficient funds properly applicable. In default, the bank should compensate the drawer for any loss or damage caused by such default.

Wrongful dishonour:

If bank wrongfully refuses, it becomes liable to pay compensation for the "injury to his credit".

1. Marzette Vs. Williams.
2. Sterling Vs. Barclay's bank
3. Gibbon Vs. Westminster bank
4. Canara bank Vs. Rajgopal.

In some cases such wrongful dishonour by bank is held as defamatory (libel).

CHAPTER-23

TRANSFER AND DISCHARGE

Ch. 23-1. Transfer:

A Negotiable instrument may be transferred by two methods.

One according to Sec. 130 of Transfer of Property Act and another according to the provisions of Negotiable Instrument Act.

Sec. 130 Transfer of Property Act contemplates transfer of an actionable claim by means of executing an assignment deed. This method requires that notice must be" given to the debtor by the assignee.

Under Negotiable Instrument Act transfer by negotiation may be made either by delivery or by endorsement and delivery. An instrument which is payable to the bearer of an instrument containing a blank endorsement may be transferred by mere delivery. An instrument payable to the order of the payee or to the payee's order requires to be negotiated only by endorsement and delivery. . -

Ch. 23-2. Assignability and Negotiability distinguished :

Assignability	Negotiability
1. The instrument P/N, B/E or Cheque is a chose in action and may be transferred under an assignment according to the Transfer of Property Act.	The instrument P/N, B/E or cheque may be transferred by negotiation to the holder. This may be done by delivery or by endorsement and delivery.
2. Consideration must be proved.	Consideration is presumed under Sn. 118 N/I act. (Rebuttable).
3. Notice of assignment must be given by the assignee to the debtor.	Notice of transfer is not necessary.
4. The assignee, (even if he has taken in good faith and value) is subject to the equities and defenses between the assignor and the original debtor, i.e.,	The holder in due course gets a good title and, all defects are cured in his favour.

he cannot get a better title.

C. 23-3. Discharge :

The negotiable instrument may be discharged by the following modes :

1. By payment
2. By cancellation
3. By waiver

Any payment made by the principal debtor or his agent in favour of the ultimate holder in due course in accordance with section 13 of the act automatically discharges the instrument.

If any writing is made on the instrument followed by cancellation it indicates due discharge of the instrument. Such an act results in discharge of the instrument.

CHAPTER-24

STATUTORY PRESUMPTIONS

Section 118 of Negotiable Instruments Act deals with certain statutory presumptions. These presumptions lay down special rules of evidence. Ordinarily the burden of proof lies upon the person who seeks a relief in a court of law, whereas section 118 of negotiable instrument act is an exception to the ordinary rule of evidence as such it is termed special rules of evidence.

To illustrate, A goes to a court of law for specific performance of a contract alleged to have been breached by B. The burden of proof lies on the plaintiff. A must prove not only the validity of contract, but also the breach committed by defendant.

In negotiable instruments certain presumption are made in favour of the plaintiff until and unless the contrary is proved by the defendant. These are rebuttable presumption.

Eg. : As (regards, date, time or mode of payment, certain presumptions are made.

Section 118 of Negotiable Instrument Act comes under the category of rebuttable presumption. As such, a defendant is at liberty to impeach the presumption and contradict. Till then the plaintiff should be allowed to have the benefit of presumption.

1. Every negotiable instrument is presumed to be duly made, drawn, accepted, negotiated and transferred, for consideration.
2. In respect of date, the presumption is that it is duly drawn on that date.
3. In respect of acceptance, the presumption is that, it is accepted within a reasonable time and before maturity.
4. In respect of transfers, there is a presumption that the transfer was made before maturity.
5. In respect of endorsements, the presumption is that the endorsements are duly made in the same order.
6. If a promissory note or bill of exchange is lost, the presumption is that it was duly stamped.
7. In respect of a holder, the presumption is that he is the holder in due course.

CHAPTER-25
GENERAL TOPICS

Ch. 25-1. Drawee in case of used :

Ordinarily a bill of exchange requires the presence of 3 parties viz., drawer, drawee and payee..In addition to these three, one more person may be added under section 7 of the Act. He is called "Drawee in case of need". Under English law he is known as^x Referee in case of need'.

The drawer, as an abundant caution, may name another person in addition to a regular drawee to whom resort may be had in case, the original drawee happens to dishonour by nonacceptance or non-payment of the instrument. When need arises by such act of dishonour, the drawee in case of need may be resorted to by the holder.

Ch. 25-2. Acceptor for honour : Sn. 6 (2) :

In case the original acceptor has refused to make the payment on the maturity of the instrument, the holder may cause 'noting and protest'.

In this connection, if any stranger who is not already a party to the transaction, voluntarily accepts the bill for the honour of the drawer or any person who is already involved in the instrument he is called the acceptor for honour. He does so supra protest, thereby he makes himself responsible to the holder.

Ch. 25-3. Days of grace :

A negotiable instrument-may be payable either on demand or on the specified date or on the happening of the specified event. An instrument payable on demand does not enjoy, the benefit of the days of grace. Whereas the instrument payable otherwise than on demand viz., (1) payable three months after date or (2) one month after sight or (3) two months after death of X, etc enjoy the benefit of the days

of grace. Accordingly, every such instrument becomes matured on the completion of the third day from the date the instrument is payable. The addition of the extra 3 days is extended to all the instruments.

Illustration:

a) A bill is payable 3 months after date (26.3.2012). Bill is payable on 26.6.2012 and 3 days of grace to this. Therefore the bill is payable on 29.6.2012.

b) A bill is payable 30 days after sight (26.3.2012). The bill becomes payable on 25.4.2012 but has 3 days of grace. Therefore it is payable on 28.4.2012.

Ch. 25-4. Noting and protest by 'Notary public':

Notary public : A notary public is an official appointed by the State Govt. His duty is to receive acts and contracts for authentication, to confirm such acts and contracts, to preserve the originals, to record the details and to issue copies of authentic extracts. He charges a fee for his service (Notary charges).

If a negotiable instrument is dishonoured by the person primarily liable, the fact of dishonour is purely a question of fact. Such a fact requires to be established in a court of law. To facilitate due proof of the dishonour of an instrument, the holder may contact the 'Notary public'.

On receipt of the complaint, the notary public may either himself or through a clerk or by post contact the person who has dishonoured the instrument and thereafter note down in a register meant for the purpose, all the details of his interview with that person. This official recording is known as 'Noting'.

Instead of sending notice of dishonour, a copy of the noting may be transmitted to the other endorsers. A certificate in a prescribed form drawn up on the basis of noting is called 'Protest'.

When an instrument is dishonoured, the holder may cause, within a reasonable time, such dishonour to be noted and certified by a Notary public. Such a certificate is called a 'protest'.

Contents of protest:

- 1) The instrument itself, or a transcript of it.
- 2) Name of the person for whom and against whom the instrument has been protested.
- 3) The fact that the instrument has been dishonoured, also reasons thereof.
- 4) The place and the time of dishonour.
- 5) The signature of the Notary public, date and seal.
- 6) Particulars, if any, relating to acceptance for honour or payment for honour.

Notice of protest : Notice of protest must be given by the Notary public.

CHAPTER-26
MISCELLANEOUS

Ch. 26-1. Ambiguous instrument:

Where an instrument is capable of being construed as a promote, or, as a bill of exchange the holder may at his option treat it as either promote or bill of exchange. Where a drawer draws a bill on himself or where the drawee is a fictitious (not real) person, the instrument may be construed as promote or bill of exchange. Similarly if the drawee is a minor.

Ex : 1) A writes an instrument in the form of a promissory note to B who accepts it. The holder may treat this as promissory note or bill of exchange.

2) X draws a bill on Y and negotiates it away. Y is a fictitious drawee. The holder may treat this as promissory note or bill of exchange.

Ch. 26-2. Endorsement:

The maker or holder of a negotiable instrument may sign for the purpose of negotiation on the back of the instrument or on a stamped paper attached thereto, he is called an endorser and this mode is called endorsement. The endorsement, followed by delivery, has the legal effect of the transfer of the property therein to the endorsee, with a right to further negotiate (Sn. 50).

Endorsement makes the endorsee, a holder of the instrument.

Endorsement is of four kind :

1. Endorsement in blank : It signifies no endorsement but the endorser puts his signature only. This is payable to bearer.

2. Endorsement in full: If the endorser adds a direction to pay the amount mentioned in the instrument to, or to the order of a person etc., the endorsement is in full.

Pay to order of X :

Pay to Mr. X

The holder may convert an endorsement in blank to endorsement in full.

3. Conditional endorsement : This is also called qualified endorsement or sans recourse endorsement. There will be no liability of the endorser.

An instrument remains to be negotiable until it is endorsed restrictively or payment is made, but not afterwards.

4. Restrictive endorsement : This restricts the transfer and also further negotiation depending on the nature of the endorsement. Eg. Pay to A only Pay **to A for** the a/c of **B**.

Ch. 26-3. Crossed cheque :

A cheque is an instrument possessing all the features of the bill of exchange and is always payable on demand. There are two kinds of cheques viz., (1) open cheques and (2) crossed cheques. An open cheque is one which the holder may present it at the bank and demand the payment at the counter. But a crossed cheque is not payable to a party directly i.e., it is credited to the A/C of the holder. Payment is made only through a Bank. A crossed cheque may contain either a general crossing or a special crossing.

Examples : (General crossing):

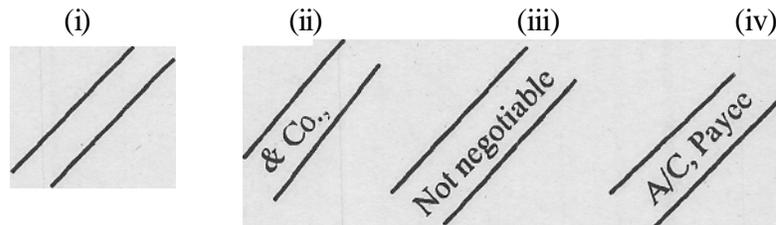


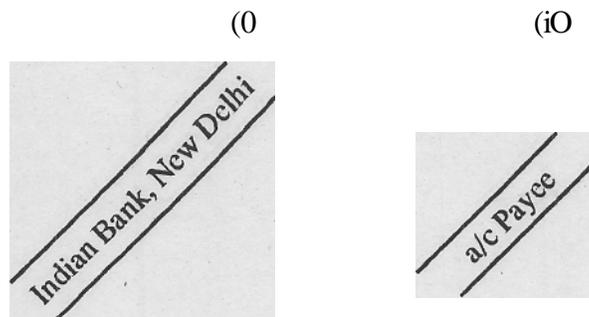
Illustration:

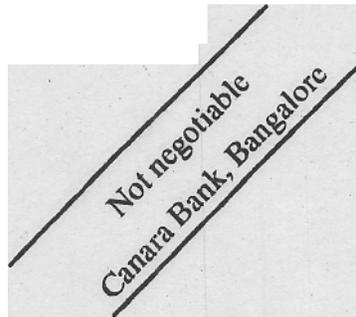
1. A draws a Cheque on Canara Bank. B is the payee. B endorses and presents it to the bank. He is entitled to get payment across the counter.

2. If A had crossed the cheque generally, B cannot get the amount across the counter. He can remit it to his account.

Special crossing:

Here, the name of the particular banker through whom the cheque is to be cashed is also specified on the face of the cheque. When a cheque is crossed generally it can be cashed through any bank. But, when it is specially crossed payment shall be obtained only through the particular bank so specified.





Ch. 26-4. Bills in sets :

With reference to foreign bills, the bill of exchange is drawn in sets by seller i.e., exporter. They are drawn in sets of two or more, each set being numbered and contains a provision that it shall continue to be payable only so long as the others remain unpaid. Of course, all these together make one set and the payment of one discharges the others. This is done to avoid the risk of the bill being lost in transit.

U.S. \$ 2000/-

Madras

Date : 1.3.2012

Three months after sight of first of this exchange (2nd and 3rd of the same tenor and data being unpaid),

pay or order the sum of U.S. \$20007-

Two thousand us dollars only, for value received.

To

M/s.

Sd/-

M/s.....

London

Madras

Only one set is to be accepted by the buyer. If he accepts more than one, he and his endorsees become liable as if they are separate bills. A holder in due course of the first part is entitled to all other sets.

Ch. 26-5. Inland and foreign instruments :

P/N, B/E or cheque drawn or made in India and payable in or drawn on and person resident in India is an Inland instrument (Sn. 11).

Any such instrument not so drawn, made or made payable is deemed to be a foreign instrument (Sn. 12).

Eg : Bill drawn in India on a merchant in London, payable in India. This is a foreign instrument.

Foreign B/E (Bills) are drawn in sets (two or more) to avoid any risk of being lost.

Kinds of foreign instruments :

Bill drawn	Payee	Payable
i) India	Outside India	Outside India
ii) Outside India	Outside India	Outside India
iii) Outside India	Outside India '	India
iv) Outside India	India	India
v) Outside India	India	Outside India

Ch. 26-6. Escrow :

Making or endorsing of a Negotiable Instrument (N/I) followed by delivery generally transfers the property in the instrument to the endorsee.

But, if it is delivered conditionally or for a special purpose without absolutely transferring the property, it is called 'Escrow'.

In such a case, the property passes only when the condition is fulfilled. However, a holder in due course is completely protected and the conditions do not apply to him.

Ch. 26-7. Inchoate instrument:

When a person delivers a stamped N/I which is wholly blank or partially written, he is giving thereby prima facie authority to the holder to fill up.

A holder in due course, has a right to recover the amount and all defects are cured in respect of him.

Legal recognition is given to this practice of merchants who lend credit on blank stamped paper. Only when the blanks are filled up, the liability arises, eg.

undated cheque, Blank B/E without stating amount etc,

Ch. 26-8. Presentment for payment when unnecessary :

An instrument need not be presented for payment and can be treated as dishonoured in the following cases :

- i) If the maker, drawer or acceptor intentionally prevents the presentment.
- ii) Instrument payable at a place of business, but closed on a business day during business hours.
- iii) If payable at some other place, but he or his agent does not attend during business hours.
- iv) If payable at no particular place and he cannot be found after due search.
- v) If part payment is made and there is a promise to pay the balance.
- vi) If the drawer is sought to be made liable and he has not suffered any damage from want of presentment.

Ch. 26-9. Material alteration :

Material alteration makes the N/I, void in the hands of an innocent holder. If such an alteration is made by an endorsee, it discharges the endorser *from* all liability to him even in respect of the consideration.

Filling up an inchoate N/I, converting an endorsement in blank to full, or crossing a cheque are not material alterations.

Change in date, time of drawing, place of payment, sum payable, medium of payment, rate of interest, number of parties to the instrument etc., are examples of material alterations.

Hong Kong Bank Vs. Lo Lee Shi, it was held that if an instrument is mutilated by wash and ironing of a garment in which the N/I, had been kept, the N/I was not void.

Hh. 26-10. Accommodation bill: (Sn. 43):

A N/I made, drawn, accepted or endorsed without consideration creates no obligation between the parties. This is the general rule.

There is an exception to this rule. This is the case of an "Accommodation bill". This is a bill on which 'A' a person without receiving any consideration, lends his name to oblige his friend, by signing his name as a drawer, acceptor or endorser. 'A' is called "Accommodation party" and his position is based on his commercial credit worthiness. He signs for the benefit of another called "B" who in fact raises the loan on the bill. He is like a surety for B the party accommodated.

According to N/I Act, B after paying off his loan bill, cannot sue A for the money.

Eg., B is the drawer of a bill. A accepts as accommodation party. H is the holder. H collects from B. B cannot recover from 'A'.

Holder in due course : The accommodation party 'A' is not liable to any person on the bill, except the holder in due course, who has taken the bill for consideration.

Ch. 26-11. Lost instrument: (Sn. 45 A):

If a bill of exchange is lost before it is overdue, the holder may apply to the drawer to give him a duplicate bill of the same tenor giving security if so required. This security is to indemnify the drawer against all persons or claims on the lost bill.

If the drawer on request refuses to give such a duplicate bill, he may be compelled through the court to issue the same (King Vs. Zimmerman).

The finder of the lost bill gets no title to it. If the finder endorses such a bill (payable to bearer), to a bona fide transferee for value, the transferee gets a good title and he can recover from the rightful owner or others liable thereon. Three conditions: i) The rule applies to bills only (ii) They must be lost before overdue iii) Only the holder of the lost bill may apply to the drawer.

Ch. 27-12. Negotiable instrument: N/I (Sn. 13):

A negotiable instrument means: i) a promissory note P/N, ii) Bill of exchange B/E or iii) Cheque payable to bearer or to order.

Negotiation is defined by N/I Act Sn. 14. It means that the P/N, B/E or cheque is to be transferred to any person so as to make him the holder of the instrument.

a) If the instrument is to be negotiable the form may be as follows : Payable 'to X' to X or order', 'to order of X', 'to bearer' or 'to X or bearers' When the instrument is payable to X, it means to X or order and hence, it is negotiable. If it says 'payable to P only', it is not negotiable.

b) If the N/I is endorsed in blank or is payable to bearer, it is payable to the bearer, and hence may be negotiated.

A bill is payable to Mr. Smith or order. Smith endorses it in blank and negotiates it. It is payable to bearer.

c) If a N/I is payable to the order of a specified person or his order it is nevertheless payable to the specified person or to his order.

d) The N/I may be made payable to two or more payees jointly or to one of two or more payees.

1) A share of a limited company is transferable but not negotiable as N/I. A share can be transferred only as per Companies Act and then only the transferee becomes the owner of the share. But a N/I is negotiable By delivery, or by endorsement and delivery, and the transferee gets rights of ownership*

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2) The transferee of N/I who takes as holder in due course is cured of defects and gets a better title. A bearer cheque is stolen and transferred by A to B. B is a holder in due course though the cheque is stolen.

Ch. 28-13. Notice of dishonour :

The N/I Act deals with two types of dishonour of an instrument.

Dishonour by non-acceptance :

When the drawee makes a default in accepting the bill when duly presented to him, the bill is said to be dishonoured.

ii) Dishonour by non-payment :

When the maker of the P/N, acceptor of a B/E or drawee or cheque being duly required to pay, makes default in payment.

iii) Notice of dishonour :

Must be given by the holder (or some one who remains Hat thereon) to all other parties who are liable jointly or severally.

Exception : No notice is necessary to the maker of a P/N which has been dishonoured ; or to the drawee or acceptor of the dishonored B/E or cheque.

iv) Notice unnecessary in the following :

a) When notice is dispensed with by the party entitled, no notice is necessary.

b) When the drawer has countermanded payment, no notice necessary if the drawer is to be sued.

c) When the drawer has countermanded payment, no notice necessary if the drawer is to be sued.

d) If the party cannot be found after a reasonable search, notice is required.

e) to charge a drawer, when he is also the acceptor, no notice required.

f) In the case of a P/N, which is not negotiable, no notice required.

g) When the party entitled to notice unconditionally promise to pay the amounts due, no notice is necessary.

h) Omission to give notice is excused in case of death, inevitable accident or dangerous illness etc., i.e., without any fault of the party who is to give notice.

CHAPTER

Dishonour of Cheques

. Dishonour of cheque for insufficiency, etc., of funds in the accounts

Sn 138 of the N I Act deals with dishonor of cheques by the Bank due to

insufficiency of funds in the accounts of the customer.

1. If any cheque drawn by a customer [drawer] on his account maintained with a Bank, for payment to another person [payee] from his account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid,

a) with the reason the amount standing to the **credit is insufficient to honour the cheque or**

b) **or that it exceeds the amount arranged for in the account**

---- such a person [drawer] is deemed to have committed an offence under Sn 138 of the N/I Act

Such a person is liable for punishment with imprisonment upto one year or fine upto double the amount of the dishonoured cheque or for both

Conditions:

Presentation within period of time:

(a) the cheque should have been presented to the bank within a period of six months from its date or within the period of its validity, whichever is earlier. [RBI has notified this to be 3 months.]

Notice of demand:

(b) the payee of the cheque, [or holder in due course], should make a demand for the payment of money by giving a **notice, in writing**, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the dishonoured cheque

Failure to pay:

(c) the drawer should have failed to make the payment of money to the payee or [holder in due course], within **fifteen days of the** receipt of the said notice.

Legal liability

The debt or liability should be enforceable in a court "

Presumption against drawer Sn139

The presumption is that the payee has received the dishonoured cheque in discharge of a legal liability. Hence the burden or onus of proof is on the drawer to prove the contrary that there was **no existing legal liability**

Prosecution :-

i. Only the Metropolitan Magistrate or First Class Judicial Magistrate can take jurisdiction

ii. The payee should file a **complaint ,in writing**

iv. this should be **within a month** from the date of cause of action under Sn 138.

Company liability

The offence of dishonor of cheque may be committed by the Company ,a partnership Firm or an association of persons. Not only the Company etc is liable but all those doing business of the Company/Firm/association are guilty of the offence under Sn 138. However, if the person proves that he had no knowledge and that he had exercised all due diligence to prevent the commission of such offence he will not be liable.

But if it is proved that the offence ,is committed by a company and with the consent or connivance , or negligence of, any director, manager, secretary etc then they shall be liable to be prosecuted and punished..

REFERENCE SECTION

Negotiable Instruments Act 1881

Selected Sections

CHAPTER II

4. "Promissory note" " is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations

A signs instruments in the following terms:

- (a) "I promise to Pay B or order Rs.500".
- (b) "I acknowledge myself to be indebted to B in Rs.1,000, to be paid on demand, for value received."
- (c) "Mr B I.O.U Rs.1,000."
- (d) "I promise to pay B Rs. 500 and all other sums which shall be due to him."
- (e) "I promise to pay B Rs. 500 first deducting there out any money which he may owe me."
- (f) I promise to pay B Rs. 500 seven days after my marriage with C.
- (g) I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum.
- (h) I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

5. "Bill of exchange" " is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not "conditional" within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be "certain", within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be "certain person", within the meaning of this section and section 4, although he is misnamed or designated by description only.

6. "Cheque"

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

7. "Drawer", "drawee"

The maker of a bill of exchange or cheque is called the "drawer"; the person thereby directed to pay is called the "drawee".

"Drawee in case of need": When the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need".

"Acceptor": After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the "acceptor".

"Acceptor for honour" : 8[When a bill of exchange has been noted or protested for non-acceptance or for better security], and any person accepts it supra protest for honour of the drawer or of any one of the endorser, such person is called an "acceptor for honour".

"Payee" : The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

8. "Holder" " of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course"

"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if 9[payable to order], before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" " means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. "Inland instrument"

A promissory note, bill of exchange or cheque drawn or made in 10[India] and made payable in, or drawn upon any person resident in 10[India] shall be deemed to be an inland instrument.

12. "Foreign instrument"

Any such instrument not so drawn, made or made payable shall be deemed to be foreign instrument.

13. "Negotiable instrument" " means a promissory note, bill of exchange or cheque payable either to order or to bearer.

Explanation 1 : A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

Explanation 2 : A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

Explanation 3 : Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

12[(2)] A negotiable instrument may be made payable to two or more payees jointly, or it may be

made payable in the alternative to one of two, or one or some of several payees.]

14. Negotiation

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute the person the holder thereof, the instrument is said to be negotiated.

15. Endorsement

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to endorse the same, and is called the "endorser".

16. Endorsement "in blank" and "in full"-"endorsee"

13[(1) If the endorser signs his name only, the endorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be "in full", and the person so specified is called the "endorsee" of the instrument.

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an endorsee.]

17. Ambiguous instruments

Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either and the instrument shall be thenceforward treated accordingly.

18. Where amount is stated differently in figures and words

If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

19. Instruments payable on demand

A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

20. Inchoate stamped instruments

Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in 14[India], and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

21. "At sight", "On presentment", "After sight"

In a promissory note or bill of exchange the expressions "at sight" and "on presentment" means on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non-acceptance, or protest for non-acceptance.

22. "Maturity"

The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace: Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

23. Calculating maturity of bill or note payable so many months after date or sight

In calculating the date at which a promissory note or bill of exchange, made payable at stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month, which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens or, where the instrument is a bill of exchange made payable at stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Illustrations

(a) A negotiable instrument dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(c) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. Calculating maturity of bill or note payable so many days after date or sight

In calculating the date at which a promissory note or bill of exchange made payable at certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded. 25. When day of maturity is a holiday. When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

CHAPTER III

PARTIES TO NOTES, BILLS AND CHEQUES

26. Capacity to make, etc., promissory notes, etc.

Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor: A minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, endorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

27. Agency

Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorised agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or endorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to endorse.

28. Liability of agent signing

An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

29. Liability of legal representative signing

A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

30. Liability of drawer

The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

31. Liability of drawee of cheque

The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

32. Liability of maker of note and acceptor of bill

In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. Only drawee can be acceptor except in need or for honour

No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

34. Acceptance by several drawees not partners

Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

35. Liability of endorser

In the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity, without, in such endorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such endorser as hereinafter provided.

Every endorser after dishonour is liable as upon an instrument payable on demand.

36. Liability of prior parties to holder in due course

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

37. Maker, drawer and acceptor principals

The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

38. Prior party a principal in respect of each subsequent party

As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Illustration

A draws a bill payable to his own order on B, who accepts. A afterwards endorses the bill to C, C to D and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

39. Suretyship

When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872 (9 of 1872), would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

40. Discharge of endorser's liability

Where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration

A is the holder of a bill of exchange made payable to the order of B, which contains the following endorsements in blank-

First endorsement, "B".

Second endorsement, "Peter Williams".

Third endorsement, "Wright & Co.".

Fourth endorsement "John Rozario".

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the endorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

41. Acceptor bound, although endorsement forged

An acceptor of a bill of exchange already endorsed is not relieved from liability by reason that such endorsement is forged, if he knows or had reason to believe the endorsement to be forged when he accepted the bill.

42. Acceptance of bill drawn in fictitious name

An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

43. Negotiable instrument made, etc. without consideration

A negotiable instrument made, drawn, accepted, endorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for a consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I: No party for whose accommodation a negotiable instrument has been made, drawn, accepted or endorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II: No party to the instrument who has induced any other party to make draw, accept, endorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover therein an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. Partial absence or failure of money-consideration

When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money and was originally absent in part, or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation: The drawer of a bill of exchange stands in immediate relation with the acceptor.

The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Partial failure of consideration not consisting of money

Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

17[45A. Holder's right to duplicate of lost bill

Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

OF NEGOTIATION

46. Delivery

The making, acceptance or endorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or endorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by endorsement and delivery thereof.

47. Negotiation by delivery

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustration

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

48. Negotiation by endorsement

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque [payable to order], is negotiable by the holder by endorsement and delivery thereof.

49. Conversion of endorsement in blank into endorsement in full

The holder of a negotiable instrument endorsed in blank may, without signing his own name, by writing above the endorser's signature a direction to pay to any other person as endorsee, convert the endorsement in blank into an endorsement in full; and the holder does not thereby incur the responsibility of an endorser.

50. Effect of endorsement

The endorsement of a negotiable instrument followed by delivery transfers to the endorsee the property therein with the right of further negotiation, but the endorsement may by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to endorse the instrument, or to receive its contents for the endorser, or for some other specified person.

Illustrations

B signs the following indorsements on different negotiable instruments payable to bearer,-

(a) "pay the contents to C only".

(b) "pay C for my use".

(c) "pay C on order for the account to B".

(d) "the within must be credited to C".

These endorsements exclude the right of further negotiation by C.

(e) "pay C".

(f) "pay C value in account with the Oriental Bank".

(g) "pay the contents to C, bring part of the consideration in a certain deed of assignment executed by C to endorser and others".

These endorsements do not exclude the right of further negotiation by C.

51. Who may negotiate

Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or endorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, endorse and negotiate the same.

Explanation : Nothing in this section enables a maker or drawer to endorse or negotiate an instrument, unless he is in lawful possession or is holder thereof, or enables a payee or endorsee to endorse or negotiate an instrument, unless he is holder thereof.

Illustration

A bill is drawn payable to A or order. A endorses it to B, the endorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

52. Endorser who excludes his own liability or makes it conditional

The endorser of a negotiable instrument may, by express words in the endorsement, exclude his own liability thereon, or make such liability or the right of the endorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an endorser so excludes his liability and afterwards becomes the holder of the instrument all intermediates endorsers are liable to him.

Illustrations

(a) The endorser of a negotiable instrument signs his name, adding the words "without recourse". Upon this endorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement, "without recourse", he transfers the instrument to B, and B endorses it to C, who endorses it to A. A is not only reinstated in his former rights, but has the rights of an endorsee against B and C.

53. Holder deriving title from holder in due course

A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Instrument endorsed in blank

Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument endorsed in blank is payable to the bearer thereof even although originally payable to order.

55. Conversion of endorsement in blank into endorsement in full

If a negotiable instrument, after having been endorsed in blank, is endorsed in full, the amount of it cannot be claimed from the endorser in full, except by the person to whom it has been endorsed in full, or by one who derives title through such person.

56. Endorsement for part of sum due

No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid a note to that effect may be endorsed on the instrument, which, may then be negotiated for the balance.

57. Legal representative cannot by delivery only negotiate instrument endorsed by deceased

The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and endorsed by the deceased but not delivered.

58. Instrument obtained by unlawful means or for unlawful consideration

When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or endorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or endorsee is, or some person through whom he claims was, a holder thereof in due course.

59. Instrument acquired after dishonour or when overdue

The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

Accommodation note or bill : Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Illustration

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been

paid at maturity, the drawer sold the goods and retained the proceeds, but endorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. Instrument negotiable till payment or satisfaction

A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

CHAPTER V

OF PRESENTMENT

61. Presentment for acceptance

A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to drawee at a particular place, it must be presented at that place, and if at the due- date for presentment he cannot, after reasonable search, be found thereon, the bill is dishonoured.

17[When authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

62. Presentment of promissory note for sight

A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

63. Drawee's time for deliberation

The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 19[forty-eight] hours (exclusive of public holidays) to consider whether he will accept it.

64. Presentment for payment

Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

20[Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception: Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

65. Hours for presentment

Presentment for payment must be made during the usual hours of business and, if at a banker's, within banking hours.

66. Presentment for payment of instrument payable after date or sight

A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

67. Presentment for payment of promissory note payable by instalments

A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the

same effect as non-payment of a note at maturity.

68. Presentment for payment of instrument payable at specified place and not elsewhere
A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

69. Instrument payable at specified place

A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at the place.

70. Presentment where no exclusive place specified

A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business(if any) or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

71. Presentment when maker, etc., has no known place of business or residence

If the maker, drawee, or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

72. Presentment of cheque to charge drawer

20[Subject to the provisions of section 84] a cheque must, in order to charge the drawer, be presented at the bank on which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

73. Presentment of cheque to charge any other person

A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

74. Presentment of instrument payable at demand

Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

75. Presentment by or to agent, representative of deceased, or assignee of insolvent

Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

21[75A. Excuse for delay in presentment for acceptance or payment

Delay in presentment 22[for acceptance or payment] is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of the delay ceases to operate, presentment must be made within a reasonable time.]

76. When presentment unnecessary

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or If the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

If the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or

If the instrument not being payable at any specified place, he cannot after due search be found;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented-

he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due therein whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment;

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. Liability of banker for negligently dealing with bill presented for payment

When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonored, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

CHAPTER VI OF PAYMENT AND INTEREST

78. To whom payment should be made

Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

79. Interest when rate specified

When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realisation of such amount, or until such date after the institution of a suit to recover such amount as the court directs.

80. Interest when no rate specified

When no rate of interest is specified in the instrument, interest on the amount due thereon shall, 23[notwithstanding any agreement relating to interest between any parties to the instrument], be calculated at the rate of 24[eighteen per centum] per annum, from the date at which the same ought to have been paid by the party charged, until tender or realisation of the amount due thereon, or until such date after the institution of a suit to recover such amount as the court directs.

Explanation: When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

81. Delivery of instrument on payment or indemnity in case of loss

Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

82. Discharge from liability

The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon-

(a) By cancellation-to a holder thereof who cancels such acceptor's or endorser's name with intent to discharge him, and to all parties claiming under such holder,

(b) By release- to a holder thereof who otherwise discharges such maker, acceptor or endorser,

and to all parties deriving title under such holder after notice of such discharge;

(c) By payment-to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

83. Discharge by allowing drawee more than forty-eight hours to accept

If the holder of a bill of exchange allows the drawee more than 19[forty eight] hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

84. When cheque not duly presented and drawer damaged thereby

25[(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheques as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations

(a) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

85. Cheque payable to order

26[(1) Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.]

21[85A. Drafts drawn by one branch of a bank on another payable to order

Where any draft, that is an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.]

86. Parties not consenting discharged by qualified or limited acceptance

If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation: An acceptance is qualified,-

(a) where it is conditional, declaring the payment to be dependent on the happening of an event

therein stated;

(b) where it undertakes the payment of part only of the sum ordered to be paid;

(c) where, no place of payment being specified on the order it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

(d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

87. Affect of material alteration

Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by endorsee:

and any such alteration, if made by an endorsee, discharges his endorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

88. Acceptor or endorser bound notwithstanding previous alteration

An acceptor or endorser of a negotiable instrument is bound by this acceptance or indorsement notwithstanding any previous alteration of the instrument.

89. Payment of instrument on which alteration is not apparent

Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such a person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

90. Extinguishment of rights of action on bill in acceptor's hands

If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

CHAPTER VIII

OF NOTICE OF DISHONOUR

91. Dishonour by non-acceptance

A bill of exchange is said to be dishonoured by non-acceptance when the drawees, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonoured.

92. Dishonour by non-payment

A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

93. By and to whom notice should be given

When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make

severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Mode in which notice may be given

Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

95. Party receiving must transmit notice of dishonour

Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

96. Agent for presentment

When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

97. When party to whom notice given is dead

When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

98. When, notice of dishonour is unnecessary

No notice of dishonour is necessary,-

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damages for want of notice;
- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- (e) to charge the drawers, when the acceptor is also a drawer;
- (f) in the case of a promissory note which is not negotiable;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX

OF NOTING AND PROTEST

99. Noting

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each, such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

100. Protest

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security : When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

101. Contents of protest

A protest under section 100 must contain,-

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;
- (b) the nature of the person for whom and against whom the instrument has been protested;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

17[A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorised by agreement or usage, by registered letter.]

102. Notice of protest

When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

103. Protest for non-payment after dishonour by non-acceptance

All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

104. Protest of foreign bills

Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

17[104A. When noting equivalent to protest

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.]

CHAPTER X

OF REASONABLE TIME

105. Reasonable time

In determining what is a reasonable time for presentment for acceptance or payment, for giving

notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

106. Reasonable time of giving notice of dishonour

If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the date next after the day of dishonour.

107. Reasonable time for transmitting such notice

A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED

108. Acceptance for honour

When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill accept the same for the honour of any party thereto 27[***].

109. How acceptance for honour must be made

A person desiring to accept for honour must, 28[by writing on the bill under his hand], declare that he accepts under protest the protested bill for the honour of the drawer or of a particular endorser whom he names, or generally for honour 29[***].

110. Acceptance not specifying for whose honour it is made

Where the acceptance does not express for whose honour it is made it shall be deemed to be made for the honour of the drawer.

111. Liability of acceptor for honour

An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee does not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bills is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

112. When acceptor for honour may be charged

An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

113. Payment for honour

When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same; provided that the person so paying 17[or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

114. Right of payer for honour

Any person so paying is entitled to all the rights in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

115. Drawee in case of need

Where a drawee in case of need is named in a bill of exchange, or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

116. Acceptance and payment without protest

A drawee in case of need may accept and pay the bill of exchange without previous protest

CHAPTER XII

OF COMPENSATION

117. Rules as to compensation

The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall 30[***] be determined by the following rules:

- (a) the holder is entitled to the amount due upon the instrument together with the expense properly incurred in presenting, noting and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 31[eighteen per centum] per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;
- (d) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII

SPECIAL RULES OF EVIDENCE

118. Presumptions as to negotiable instruments

Until the contrary is proved, the following presumption shall be made:-

- (a) of consideration-that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;
- (b) as to date-that every negotiable instrument bearing a date was made or drawn on such date;
- (c) as to time of acceptance-that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
- (d) as to time of transfer-that every transfer of a negotiable instrument was made before its maturity;
- (e) as to order of endorsements-that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- (f) as to stamps-that a lost promissory note, bill of exchange or cheque was duly stamped;
- (g) that holder is a holder in due course-that the holder of a negotiable instrument is a holder in

due course; provided that, where the instrument has been contained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

119. Presumption on proof of protest

In a suit upon an instrument which has been dishonoured, the court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

120. Estoppel against denying original validity of instrument

No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, on proof of the protest, presume the fact of dishonour, unless and until validity of the instrument as originally made or drawn.

121. Estoppel against denying capacity of payee to endorse

No maker of a promissory note, and no acceptor of a bill of exchange 32[payable to order] shall, in suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the rate of the note or bill, to endorse the same.

122. Estoppel against denying signature or capacity of prior party

No endorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instruments.

NEGOTIABLE INSTRUMENTS ACT, 1881

CHAPTER XIV

OF CROSSED CHEQUES

123. Cheque crossed generally

Where a cheque bears across its face an addition of the words "and company" or any abbreviation thereof, between two parallel transverse lines or of two parallel transverse lines simply, either with or without the word "not negotiable", that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

124. Cheque crossed specially

Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

125. Crossing after issue

Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

126. Payment of cheque crossed generally

Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of cheque crossed specially: Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

127. Payment of cheque crossed specially more than once

Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

128. Payment in due course of crossed cheque

Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

129. Payment of crossed cheque out of due course

Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

130. Cheque bearing "not negotiable"

A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable", shall not have and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

131. Non-liability of banker receiving payment of cheque

A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

33[Explanation: A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.]

34[131A. Application of chapter to drafts

The provisions of this chapter shall apply to any draft, as defined in section 85A, as if the draft were a cheque.

CHAPTER XV 132. Set of bills

Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts of a separates bill, would be extinguished.

Exception: When a person accepts or endorses different parts of the bill in favour of different person, he and the subsequent endorsers of each part are liable on such part as if it were a separate bill.

133. Holder of first acquired part entitled to all

As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

CHAPTER XVI

OF INTERNATIONAL LAW

134. Law governing liability of maker, acceptor or endorser of foreign instrument

In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and endorser by the law of the place where the instrument is made payable.

Illustration

A bill of exchange was drawn by A in California where the rate of interest is 25 per cent, and accepted by B, payable in Washington where the rate of interest is 6 per cent. The bill is

endorsed in 35[India], and is dishonoured. An action on the bill is brought against B in 14[India]. He is liable to pay interest at the rate of 6 per cent, only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Law of place of payment governs dishonour

Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or endorsed, the law of the place, where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration

A bill of exchange drawn and endorsed in 14[India], but accepted payable in France, is dishonoured. The endorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

136. Instrument made, etc. out of India, but in accordance with the law of India

If a negotiable instrument is made, drawn, accepted or endorsed 35[outside India], but in accordance with the 35[law of India], the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or endorsement made thereon 35[within India].

137. Presumption as to foreign law

The law of any foreign country 36[***] regarding promissory note, bills of exchange and cheques shall be presumed to be the same as that of 37[India], unless and until the contrary is proved.

38[CHAPTER XVII]

OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS

138. Dishonour of cheque for insufficiency, etc., of funds in the accounts

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

PROVIDED that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

139. Presumption in favour of holder

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability.

140. Defence which may not be allowed in any prosecution under section 138

It shall not be a defence in a prosecution of an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

141. Offences by companies

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relating to a firm, means a partner in the firm.

142. Cognisance of offences

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no court shall take cognisance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause -of- action arises under clause (c) of the proviso to section 138;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

THE END