PRACTICAL QUESTION & ANSWERS – NEGOTIABLE INSTRUMENT ACT,1881 FOR IPCC/PCC

1. *'A' draws a bill of exchange payable to himself on 'X'. Who accepts the bill without consideration just to accommodate 'A'. 'A' transfers the bill to 'P' for good consideration. State the rights of 'A' and 'P'. Would your answer be different if 'A' transferred the bill to 'P' after maturity ?*

SOLUTION

The problem is based on the provisions of Sections 43 and 59 of the Negotiable Instruments Act, 1881. 'A' cannot recover from 'X' because it is an accommodation bill drawn by 'A' and accepted by 'X' without consideration. According to Section 43, an instrument without consideration creates no obligation between the parties to the transaction i.e. 'A; and 'X' in this case. Section 43 also provides that if such a bill is transferred to a holder for consideration, such holder may recover the amount due on such instrument from the transferor for consideration or any prior party thereto. Hence 'P' in this case can recover the amount from 'X' and 'A'. According to Section 59, in the case of accommodation bills, a defect in the title of the transferor does not affect the title of holder acquiring after maturity. Hence the answer will be the same even if 'P' has acquired the bill for consideration after maturity.

2. *B issued a cheque for Rs.1,25,000 in favour of S. B had sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank in the meantime, became insolvent. Decide, under the provisions of the Negotiable Instrument Act, 1881 whether S can recover the money from B.*

SOLUTION

The problem as asked in the question is based on Sections 72 and 74 of the Negotiable Instrument Act,1881. As per Section 72, it is the duty of the holder of a cheque to present the same to the bank for payment before the relationship between the bank and drawer is spoilt. It is only if he does so that he can hold the drawer liable in case of non payment and not otherwise. As per Section 74, if the cheque is not presented by the holder for payment within reasonable time and meanwhile the relation between drawer/customer of the bank is spoilt and if the bank refuses to make payment or is incapable of making such payment, then the drawer cannot be held liable for such dishonour. Hence applying the above provisions, S cannot recover the money from B.

3. *Mr. 'Wise' obtains fraudulently from 'R' a crossed cheque "Not Negotiable". He transfers the cheque to 'V', who gets the cheque encashed from ANS Bank Limited which is not the drawee bank. 'R' on coming to know about the fraudulent act of Mr. 'Wise' sues ANS Bank for the recovery of the money. Examine with reference to the relevant provisions of The Negotiable Instruments Act, 1881, whether 'R' will succeed in his claim. Would your answer be still the same in case Mr. 'Wise' does not transfer the cheque and gets the cheque encashed from ANS Bank himself?*

SOLUTION

According to Section 130 of the Negotiable Instruments Act 1881, a person taking a cheque crossed generally or specially bearing in either case the words 'not negotiable' shall not have or shall not be able to give a better title to the cheque than the title the person from whom he took had. In consequence, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect.

Thus, based on the above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title; but if the transferor has a defective title, the transferee is affected by such

defects and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value. As Mr. Wise in the given case had obtained the cheque fraudulently, he had no title to it and could not give to the bank any title to the cheque or money and the bank would be liable for the amount of the cheque for encashment (*Great Western Railway Co. Ltd. vs. London and County Banking Co*).
The answer in the second case would not change and shall remain the same for the reasons given above. Thus R in both the cases shall succeed is his claim from ANS Bank.

4. *A issues an open 'bearer' cheque for Rs.10,000 in favour of B who strikes out the word 'bearer' and crosses the cheque. The cheque is thereafter negotiated to C and D. When it is finally presented by D's banker, it is returned with remarks "payment countermanded" by drawer. In response to a legal notice from D, A pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881 decide, whether A's argument is valid or not?*

SOLUTION

The cheque bears two alterations when it is presented to the paying banker. One, the word 'bearer' has been struck off and two, the cheque has been crossed. Both of these alterations do not amount to material alteration under the provisions of the Act and hence the liability of any including the drawer is not at all affected. 'A' is liable to pay the amount of the cheque to the holder.

5. *PQR Limited received a cheque for Rs. 50,000 from its customer Mr. LML After a week company came to know that the proceeds were not credited to the account of PQR Limited due to some 'defects', as informed by the Banker. What according to you are the possible effects?*

SOLUTION

A Cheque is a Bill of Exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in electronic form.
Possible defects are;

1. Cheque undated.
2. Cheque becomes stale
3. Instrument inchoate
4. Cheque may be post dated
5. inadequate funds position of the customer
6. Customer might have credit in one branch and cheque drawn on another branch.
7. Bank might have received insolvency/lunacy of customer.
8. Counter-manding / stop payment instruction of customer.
9. Bank receiving attachment order by a court
10. Bank receiving notice of customer's death
11. Closure of account by customer.
12. Material alterations like irregular signature, difference of amount in words and figure etc.

6. *State the circumstances under which the drawer of a cheque will be liable for an offence relating to dishonour of the cheque under the Negotiable Instrument Act, 1881. Examine, whether there is an offence under the Negotiable Instrument Act, 1881, if a Drawer of a cheque after having issued the cheque, informs the Drawee not to present the cheque as well as informs the Bank to stop the payment.*

SOLUTION

Dishonour of cheque: On dishonour of a cheque the drawer is punishable with imprisonment for a term not exceeding two years or with a fine not exceeding twice the amount of a cheque or with both of the following conditions is fulfilled:

(i) If the cheque is returned by the bank unpaid due to insufficiency of funds in the account of drawer

(ii) If the cheque was drawn to discharge a legally enforceable debt or other liability.

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

(iv) if the payee or the holder in due course of the cheque has given a written notice demanding payment within 30 days from the drawer on receipt of information of dishonour of cheque from the bank.

(v) If the drawer has failed to make payment within 15 days of the receipt of the said notice. (Section 138)

(vi) If the payee or a holder in due course has made a complaint within one moth of cause of action arising under Section 138 (Section 142)

Problem

The Supreme Court held in *Modi Cements ltd. Vs. Kuchil Kumar Nandi* held that once a cheque is issued by the drawer, a presumption under Section 139 follows (i.e. the cheque has been issued for the discharge of any debt or other liability) and merely because the drawer issued a notice thereafter to the drawee as to the bank for stoppage of payment, it will not preclude an action under Section 138. Hence, the drawer of the cheque will be liable for the offence under Section 138 for dishonour of cheque.

7. *What is meant by maturity of a Bill of Exchange or Promissory Note? Calculate the date of maturity of the following bills of exchange explaining the relevant rules relating to determination of the date of maturity as provided in the Negotiable Instruments Act, 1881:*

(i) A Bill of Exchange dated 31st August, 2007 is made payable three months after date.

(ii) A Bill of Exchange drawn on 15th October, 2007 is payable twenty days after sight and the bill is presented for acceptance on 31st October, 2007.

SOLUTION

The maturity of a promissory note or bill of exchange is the date on which it falls due for payment (Sec 22). Sec 22 of the Negotiable Instruments Act, 1881 further adds that for payment in calculating the maturity of a promissory note or a bill of exchange which is not payable on demand, at sight or on presentment, three days, called the days of grace, must be added to the date on which the instrument is expressed to be payable.

Bill of exchange dated 31st August, 2007: 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 (Sec 23). In this case the bill of exchange is dated *31st* August, 2007 and it is made payable 3 months this after date. Hence it falls due on 3rd day after November, 2007 (the last day of the month) i.e. on 3rd December,2007.

Bill of exchange payable 20 days after sight: The bill is presented for acceptance on *31st* October, 2007. The date of presentment for acceptance is to be excluded. Hence the instrument is at maturity on the 3rd day after 20th November, 2007 i.e. 23rd November, 2007.

8. *'N' is the holder of a bill of exchange made payable to the order of 'P'. The bill of exchange contains the following endorsements in blank:*

First endorsement ‘P’

Second endorsement 'Q'

Third endorsement 'R'

Fourth endorsement 'S'

'N' strikes out, without S's consent, the endorsements by 'Q' and 'R'. Decide with reasons whether 'N' is entitled to recover anything from 'S' under the provisions of Negotiable Instruments Act, 1881.

SOLUTION

According to Section 40 of the Negotiable Instruments Act,1881, 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. Therefore if the endorsements of 'R' and 'Q' are struck out without the consent of 'S', 'N' will not be entitled to recover anything from 'S', the reason being that as between 'R' and 'S' 'R' is the principal debtor and 'S' is the surety. If 'R' is released by the holder under Section 39 of the Act, 'S' being surety will be discharged. In this given problem, the rule may be stated thus that when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

9. *Discuss with reasons, whether the following persons can be called as a 'holder' under the Negotiable Instruments Act, 1881:*

(i) X who obtains a cheque drawn by Y by way of gift.

(ii) A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.

(iii) M, who finds a cheque payable to bearer, on the road and retains it.

(iv) B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee.

(v) B, who steals a blank cheque of A and forges A's signature.

SOLUTION

As per section 8 of the Negotiable Instruments Act,1881 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto. On applying the above provision in the given cases-

(i) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.

(ii) No, he is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.

(iii) No ,M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name.

(iv) No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.

(v) No, B is not a holder because he is in wrongful possession of the instrument.

10. *X draws a bill on Y but signs it in the fictitious name of Z. The bill is payable to the order of Z. The bill is duly accepted by Y. M obtains the bill from X thus becoming its holder in due course. Can Y avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881.*

SOLUTION

Bill drawn in fictitious name **:** The problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege as against the holder in due course that such name is fictitious.

Accordingly, in the instant case, Y cannot avoid payment by raising the plea that the drawer (Z) is fictitious. The only condition is that the signature of Z as drawer and as endorser must be in the same handwriting.

11. *Whether the following notes may be considered as valid Promissory notes:*

(i) "I promise to pay Rs. 5,000 or 7,000 to Mr. Ram."

(ii) I promise to pay to Mohan Rs. 500, if he secures 60% marks in the examination.

(iii) I promise to pay Rs. 3,000 to Ravi after 15 days of the death of A.

SOLUTION

A promissory note is an instrument (not being a bank note or currency note) in writing containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or the holder of, a certain person or to the bearer of the instrument, (Section 4 of the Negotiable Instruments Act, 1881).

In view of the above provision of the said Act, following are the essential elements of a promissory note-

1. It must be in writing.
2. The promise to pay must be unconditional.
3. The amount promised must be a certain and a definite sum of money.
4. The instrument must be signed by the maker.
5. The person to whom the promise is made must be a definite person.

Thus:

(i) In case (i) it is not a valid promissory note because the amount is not certain.

(ii) In case (ii) it is not a valid promissory note because it is conditional. .

(iii) In case (iii) it is a valid promissory note because death of A is a certainty even if time of death is not certain.

12. *C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability ?*

SOLUTION

According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence A is not discharged.

13. *B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1882, decide whether D can recover the money from A in the given case.*

SOLUTION

Section 53 of the Negotiable Instrument Act, 1881 provides that a holder of negotiable instrument who derives title from a holder in due course has the right thereon of that holder in due course. Such holder of the bill who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards to the acceptor and all parties to the bill prior to that holder. In this case, it is clear that though D was aware of the fraud, he was himself not a party to it. He obtained the instrument from C who was a holder in due course. So D gets a good title and can recover from A.

14. *A, a major, and B, a minor, executed a Promissory Note in favour of C. Examine with reference to the provisions of the negotiable Instruments Act, 1881 the validity of the Promissory Note and state whether it is binding on A and B.*

SOLUTION

<u>Minor being a party to Negotiable Instrument</u>: Every person competent to enter into contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a Promissory Note, Bill of Exchange or clearance (Section 26, Para 1, Negotiable Instrument Act, 1881).

As a Minor's agreement is void, he cannot bind himself by becoming a party to a Negotiable Instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself (Section 26, para 2).

In view of the provisions of Section 26 explained above, the promissory note executed by A and B is valid even though a minor is a party to it. B, being a minor is not liable; but his immunity from liability does not absolve the other joint promissory, viz., A from liability *[Sulochona v. Pondiyan Bank Ltd.,]*.

***15**. In what way does the Negotiable Instruments Act, 1881 regulate the determination of the 'Date of maturity' of a Bill of Exchange. Ascertain the 'Date of maturity' of a bill payable 120 days after the date. The Bill of exchange was drawn on 1st June, 2005.*

SOLUTION

Calculation of maturity of a Bill of Exchange**:** The maturity of a bill, not 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 (Section 22, para 2 of Negotiable Instruments Act, 1881). Three days are allowed as days of grace. No days of grace are allowed in the case of a bill payable on demand, at sight, or presentment. When a bill is made payable as stated number of months after date, the period stated terminates on the day of the month, which corresponds with the day on which the instrument is dated. When it is made payable after a stated number of months after sight the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance on protested for Non-acceptance when it is payable a stated number of months after a certain event, the period terminates on the day of the month which corresponds with the day on which the event happens. (Section 23).

When a bill is made payable a stated number of months after sight and has been accepted for honour, the period terminates which the day of the month which corresponds with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month (Section 23).

In calculating the date a bill made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or the day of protest for non-accordance, or the day on which the event happens shall be excluded (Section 24).

Three days of grace are allowed to these instruments after the day on which they are expressed to be payable. (Section 22). When the last day of grace falls on a day, which is public holiday, the instrument is due and payable on the preceding business day (Section 25).

Answer to Problem**:** In this case the day of presentment for sight is to be excluded i.e. 1st June, 2005. The period of 120 days ends on 21st September, 2005 (June 29 days + July 31 days + August 31 Days + September 29 days = 120 days). Three days of grace are to be added. It falls due on 2nd October, 2005, which happens to be a public holiday. As such it will fall due on 1st October, 2005 i.e., the preceding Business Day.

***16**. V makes a gift of Rs.10,000 to W through a cheque issued in favour of W. Later he (V) informs W not to present the cheque for payment and informs the bank also to stop payment. Examining the provisions of the Negotiable Instruments Act,1881, decide whether V's above acts constitute an offence.*

SOLUTION

Dishonoured cheque to be treated as an offence : As per the provisions of the Negotiable Instruments(Amendment Miscellaneous and Provisions)Act,2002, a person issuing a cheque will be committing an offence if the cheque is dishonoured for insufficiency of funds. The offence will be punishable with imprisonment for a term up to two years or with a fine twice the amount of the cheque or both. The cheque in question should be issued in discharge of a liability and therefore a cheque given as gift will not fall in this category.

The Supreme Court in Modi Cements Ltd. Vs. Kuchil Kumar[1998] held that once a cheque is issued by the drawer, a presumption under Section 139 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment ,it will not preclude an action under Section 138.

Section 138 is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his 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 other liability, is informed by the bank unpaid either because of insufficiency of amount to honour the cheque or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence .

But in the present problem V shall not be deemed to have committed an offence because V gifts the cheque to W. The Section 138 of the Act does not apply to the cheques given as gift.

17. *Referring to the provisions of the Negotiable Instruments Act,1881, examine whether acceptance of a bill of exchange in the following situation shall be treated as 'qualified' acceptance where the acceptor:*

(i) undertakes to pay only Rs.2,000 for a bill drawn for Rs.5,000;

(ii) declares the payment to be independent of any other event;

(iii) Writes : "Accepted, payable at ABC Bank".

SOLUTION

Acceptance of the Bill of Exchange : Acceptance of a Bill of Exchange can be either "general" or "qualified". It is qualified when the drawee does not accept the bill according to the apparent terms of the bill but attaches some conditions or qualification which have the effect of either reducing his (acceptor's) liability or acceptance of the liability subject to certain conditions. The holder of the bill is entitled to require an absolute and unconditional acceptance as well as to treat it as dishonoured, if it is not so accepted. However, he may agree to 'qualified acceptance'. But such an act will discharge all parties prior to himself, unless he has obtained the consent of prior parties

Thus, applying the above in the given case answers to the sub-parts are as under:

(i) The acceptance shall be treated as 'qualified'.

(ii) Acceptance shall not be treated as 'qualified'.

(iii) It is not qualified acceptance.

18. *Bharat executed a promissory note in favour of Bhushan for Rs. 5 crores. The said amount was payable three days after sight. Bhushan, on maturity, presented the promissory note on 1st January, 2008 to Bharat. Bharat made the payments on 4th January, 2008. Bhushan wants to recover interest for one day from Bharat. Advise Bharat, in the light of provisions of the Negotiable Instruments Act, 1881, whether he is liable to pay the interest for one day ?*

SOLUTION

Claim of Interest **:** Section 24 of the Negotiable Instruments Act, 1881 states that where a bill or note is payable after or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run. Therefore, in the given case, Bharat will succeed in objecting to Bhushan's claim. Bharat paid rightly "three days after sight". Since the bill was presented on 1st January, Bharat was required to pay only on the 4th and not on 3rd April, as contended by Bharat.

19. *X draws a cheque in favour of Y. After having issued the cheque he informs Y not to present the cheque for payment. He also informs the bank to stop payment. Decide, under provisions of the Negotiable Instruments Act, 1881, whether the said acts of X constitute an offence against him ?*

SOLUTION

Problem: Offence under the Negotiable Instruments Act, 1881 : This problem is based on the case of *Modi Cements ltd. Vs. Kuchil Kumar Nandi, 1998*. In this case the Supreme Court held that once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138. The object of

Section 138 to 142 of the Act is to promote the efficacy of the banking operations and to ensure credibility in transacting business through cheques. Section 138 is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawn with his 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 the liability, is informed by the bank unpaid either because of insufficient of amount to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

20. *M, the holder of a bill, endorses it "without recourse" to N. N endorses it to P, P to Q, Q to R and R endorses it again to M. Can M recover the amount of the bill from N, P, Q and R, or any of them? Discuss with reference to the provisions of the Negotiable Instruments Act, 1881.*

SOLUTION

Problem on the Negotiable Instruments Act, 1881 relating to endorser's liability(Section 52) **:** As per Section 52 of the Negotiable Instruments Act, 1881 the endorser of a negotiable instrument may, by express words in the endorsement, exclude his own liability thereon, as M does in the present case, by using the words "without Recourse". Where an endorser excludes or limits his liability in this manner and afterwards becomes the holder of the same instrument, all intermediate endorsers continue to be liable to him. M can therefore enforce payment against all intermediate parties, i.e., N, P, Q and R because he was not liable to them as a prior party.

21. *A Cheque is drawn "payable to N or order". It is stolen and N's endorsement is forged. The banker pays the cheque in due course. Is the banker discharged from liability? Would it make any difference if the drawers' signature were forged? Discuss with reference to the provisions of the Negotiable Instruments Act, 1881.*

SOLUTION

Problem based on Section 85(1) of the Negotiable Instruments Act, 1881 relating to the protection **to a** collecting banker **:** Section 85(1) of the Negotiable Instruments Act, 1881 provides that where a cheque payable to order, purports to be endorsed by or on behalf of the payee, the drawee, who always is a banker, is discharged by payment in due course. A cheque is said to have been paid in due course, when it has been paid in good faith, after proper care had been taken to ascertain the genuineness of the endorsement. Even if the payment is made to a wrong person or even if the endorsement of the payee is forged, the banker is discharged from the payment in good faith and without negligence. But if the drawer's signature is forged, the banker can, under no circumstances, claim discharge on payment, for, the banker is presumed to know the signature of his customer i.e., the drawer.

22. *B obtains A's acceptance to a bill by fraud. B endorses it to C who takes it as a holder in due course. C endorses the bill to D who knows of the fraud. Can D recover from A?*

SOLUTION

Yes, D can recover the amount from A as he derived his title from C who is a holder in due course. Moreover, D is not a party to the fraud. Once the title has been cleansed of the defect, notwithstanding notice of the fraud, D gets a good title [*Guildford Trust v. Gloss, (1926) 43 T.L.R. 167; Sec. 53)*.]

23. *What will be the effect of the following alterations on the validity of a bill?*

(i) A bill payable with 'lawful interest' is altered into one payable with 12%interest.

(ii) A bill is accepted payable at the Indian Bank, Sarita Vihar, New Delhi. The holder without the consent of the acceptor scores out Sarita Vihar and inserts Chandni Chowk instead.

SOLUTION

(i) The following alterations are material, i.e., the alteration of –

(1) the date,
(2) the sum payable,
(3) the time of payment,
(4) the place of payment,
(5) inclusion of place of payment,
(6) the rate of interest.

These alterations vitiate the instrument. So, in the given case alteration in the interest rate vitiates the validity of the bill, since lawful interest is 18% under the Banking, Public Financial Institutions & Negotiable Instruments (Amendment) Act, 1988.

(ii) In this case, the alteration is material. It renders the instrument void against persons who were parties thereto before such alteration, unless they have consented to the alteration (Sec. 87).]

24. *Calculate the date of maturity in the following cases:*

(i) A bill of exchange dated 15th February, 2008 payable two months after date.

(ii) A promissory note dated 29th January, 2008 made payable one moth afterdate.

(iii) A bill of exchange dated 2nd March, 2008 was made payable one month after date. It falls due on 5th April, 2008, which happens to be a public holiday. If in the instant case, it is a cheque what shall be the date of maturity?

SOLUTION

(i). The maturity date is on third day after April 15th, 2008 i.e., 18 April, 2008.

(ii). The date of maturity is 3rd March, 2008.

(iii). The maturity date will be 4th April, 2008 i.e., the previous working day which is not a public holiday. However, if the instrument is a cheque there is no question of calculation of date of maturity as it is always payable on demand.

25. *A Bill is drawn payable at No. 19J, Pkt-2, Mayur Vihar, New Delhi, but does not contain the drawee's name. Mr. Mehta who resides at the above address accepts the bill. Is it a valid Bill?*

SOLUTION

Yes, it is a valid Bill and Mr. Mehta is liable thereon. The drawee may be named or otherwise indicated in the Bill with reasonable certainty. In the present case, the description of the place of residence indicates the name of the drawee and Mr. Mehta, by his acceptance, acknowledges that he is the person to whom the bill is directed (*Gray vs. Milner 1819, 2 Taunt 739*).

26. *A cheque was dishonoured at the first instance and the payee did not initiate action. The cheque was presented for payment for the second time and again it was dishonoured. State in this connection whether the payee can subsequently initiate prosecution for dishonour of cheque.*

SOLUTION

The holder/payee of a cheque cannot initiate prosecution for an offence under section 138 of the Negotiable Instruments Act, 1881 for its dishonour for the second time, if he had not initiated such prosecution on the earlier cause of action.

27. *Examine the validity of the following instruments.*

(i) W drew a cheque crossed not negotiable in blank and handed it to his clerk tofill in the amount and the name of the payee. The clerk inserted a sum in excess of her authority and delivered the cheque to P in payment of a debt ofher own.

(ii) An instrument that reads: "I of my own free will and accord approached B and borrowed from him the sum of Rs. 100 bearing interest at the rate of 2 per cent per mensem. I have therefore executed these few presents by way of a promissory note so that it may serve as evidence and be of use when needed."

(iii) An instrument that reads: "I promise to pay Rs. 1,000 to B, 30 days after his marriage with C."

SOLUTION

(i) The given problem is based on the facts of Wilson & Meeson vs. Pickering case. In that case, it was held that the clerk had no title to the cheque and as such P had no better title and therefore W was not liable.

(ii) The given problem is based on Bal Mukand Vs Lal Ramji Lal case. The position of law is that the instant instrument is not a promissory note as it does not contain an express undertaking to pay the amount mentioned in it.

(iii) This is not a promissory note as it is probable that B may marry somebody other than C or may not marry at all.

28.(i) *A bill of exchange purport to be drawn by A on B and is accepted by B. The bill is payable to C or order. C negotiates it to D who takes it as a holder in due course. In a suit by D on the bill, can B disclaim liability on the ground that A's signature is forged?*

(ii) B obtains A's acceptance to a bill by fraud. B indorses it to C who takes it as a holder in due course. C indorses the bill to D who knows of the fraud. Can D recover from A?

(iii) A draws on B a bill payable three months after sight. It passes through several hands before X becomes its holder. On presentation by X, B refuses to pay. Discuss the rights of X on the bill.

SOLUTION

(i) Section 120 of the Negotiable Instruments Act,1882 states that 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, is in a suit thereon by a holder in due course permitted to deny the validity of the instrument as originally made or drawn. Therefore in the given problem B being an acceptor of the bill for the honour of the drawn cannot deny the validity of the bill and is therefore liable to D.

(ii) Yes D can recover the amount from A as he derived his title from C who is a holder in due course. Moreover D is not a party to the fraud. Once the title has been cleansed of the defect notwithstanding notice of the fraud D gets a good title. It was also so held in Guildford Trust Vs Gloss.

(iii) X is entitled to recover money on the bill from all the prior parties. A, the drawer of the bill and B the acceptor of the bill are liable to X as principal debtors whereas the intervening indorsers are liable as sureties.

29. *M a broker draws a cheque in favour of N, a minor. N indorses the cheque in favour of O, who in turn indorses it in favour of P. Subsequently, the bank dishonoured the cheque. State the rights of O and P and whether N, can be made liable?*

SOLUTION

According to section 26 of the Negotiable Instruments Act, 1881 a minor may draw, indorse, deliver and negotiate a negotiable instrument to bind all parties except himself. Therefore, O and P cannot claim from B, who being a minor does not incur any liability on the cheque. O can claim payment from M, the Drawer, only and P can claim against O, the indorser and M, the drawer.

30. *On a Bill of Exchange for Rs.1 lakh, X's acceptance to the Bill is forged. 'A' takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether 'A' can be considered as a 'Holder in due course' and whether he (A) can receive the amount of the Bill from 'X'.*

SOLUTION

According to section 9 of the Negotiable Instruments Act, 1881 ‘holder in due course’ means any person who for consideration because the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount 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.

As ‘A’ in this case prima facie became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence ‘A’ cannot receive the amount on the bill.