Presentment of Instrument

Presentment means placing of a negotiable instrument before the drawee for any of the following purposes :

(a) Presentment of bills for acceptance

(b) Presentment of promissory note for sight.

(c) Presentment of instrument for payment

Presentment of bills for acceptance

Acceptance signifies the assent of the drawee of his liability. It is made by the drawee by signing his name across the face of the bill and its delivery.

Where presentment for acceptance is not necessary

A bill of exchange payable on demand or payable on a certain day etc. need not be presented for acceptance. But as a matter of common practice acceptance of the drawee is always obtained on a bill at the earliest opportunity after if it is drawn in order to:

a. To get additional security of the drawee's name on the bill, and

b. To get an immediate right of recourse against the drawer in case of dishonour for non-acceptance.

Where presentment for acceptance is necessary

Presentment of the bill for acceptance is necessary in the following two cases :

(i) where the bill is payable after sight – presentment for acceptance is with a view to fixing the maturity of the instrument;

(ii) where a bill expressly stipulates that it shall be presented for acceptance before being presented for payment.

Presentment – to whom

The bill shall be presented for acceptance to a person who is capable of accepting the bill i..e. to the following :

a. The drawee or his duly authorized agent,

b. All the drawees where there are several drawees except in the case where all the drawees are partners and accepting partner is duly authorized to do so,

c. The legal representative in case of the death of the drawee,

d. The official receiver or assignee in case the drawee has become insolvent,

e. The drawee in case of need,

f. An acceptor for honour.

Time for presentment

Time for presentment of the instrument may be divided into following categories :

a. Where the presentment is optional the bill may be presented at anytime before the time for payment.

b. Where the time has been specified in the bill for presentment in the bill, it shall be presented within the specified time.

c. In case of bill payable after sight, if no time is specified therein for presentment for acceptance, it shall be presented within a reasonable time after it is drawn.

The bill shall be presented for accepted during business hours on a business day.

Place of presentment

The bill should be presented either at the residence or at the normal place of business of the drawee unless some other place has been specified in the bill.

Proof of presentment

There must be a definite proof of presentment of the bill for acceptance to the drawee.

Drawee's time for deliberation

The drawee is entitled to have forty eight hours' time (exclusive of public holidays) to consider whether he should accept a bill presented to him for acceptance (Section 63). If the drawee gives his acceptance, it is effective from the date of presentment.

When presentment is excused

Presentment of the bill for acceptance is excused if:

(a) The drawee is a fictitious person (Section 91) or

(b) He cannot, after reasonable search, be found (Section 61) or

(c) Where the presentment is irregular, such irregularity is excused if the bill has been dishonoured by non-acceptance on some other ground.

Effect of non-presentment

Where the presentment of the bill is compulsory for acceptance and the holder fails to do so, the drawer and the all the endorsers are discharged from the liability to him.

Who can accept

Section 26 of the Act states "*that every person capable of legally entering into a contract, 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".*

As a rule a bill of exchange cannot be accepted by a person who is not a party to the bill, but as an exception to this general rule, a bill may be accepted by a stranger also for honour of any of the parties of the bill. Such person is known as acceptor for honour.

Acceptance by several drawees

It there are several drawees in 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 authority.

If all the drawees in a bill happen to be partners, one of them can accept the bill so as to bind all partners because a partner is deemed to be an agent for all other partners. But in case a non-trading firm the power to draw, endorse, or accept or otherwise deal in negotiable instruments must be given by the partnership agreement. If the partnership agreement does not give such power to the to the partners, then any partner cannot accept a bill so as to bind all the partners. However, in the case of non-trading firm the authority to draw, endorse, accept and negotiate bills of exchange, negotiable instruments, cheques, hundies, is implied and so a partner can accept so as to bind all the partners.

Acceptance through agent

Section 27 of the Act says that 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 authorized agent acting in his name.

The authority of an agent to make, draw, accept or endorse notes and bills depends on the general law of agency. Sections 27 and 28 indicate that a general authority to transact business and to discharge debits does not confer upon an agent the power to endorse bills of exchange so as to bind his principal; nor can an agent escape personal liability unless he indicates that he signs as an agent and does not intend to incur personal liability. *Parmode Kumar V. Damodar AIR, (1953) Orissa 179.*

Essentials of a valid acceptance

1. Acceptance must be in writing

The drawee may use any appropriate word to convey his assent. It may be sufficient acceptance even if just a bare signature is put without additional words. An oral acceptance is not valid in law.

2. Acceptance must be signed

A mere signature would be sufficient for the purpose. Alternatively, the words 'accepted' may be written across the face of the bill with a signature underneath. An unsigned acceptance is not a valid acceptance.

3. Acceptance must be on the bill

The acceptance of the bill either on the face or on the back of it has been held to be sufficient in law. But it is necessary that it is written on the bill failing which it does not create liability as acceptor on the part of the person who signs it. Therefore, an acceptance on any other paper attached to the bill is not sufficient acceptance.

4. Acceptance must be completed by delivery

The acceptance would be complete and the drawee would be bound only when the drawee has either actually delivered the accepted bill to the holder or tendered notice of such acceptance to the holder of the bill or some person on his behalf.

A bill of exchange drawn in set requires acceptance on any one part of it. If the drawee signs his acceptance on two or more parts, he may become liable on each of them separately.

5. Acceptance may be either general or qualified

In general acceptance, the acceptor assents to the order of the drawer, without qualification. On the other hand an acceptance of a bill is said to be qualified where the drawee does not accept it according to the apparent tenor of the bill but attaches some conditions or qualification which have the effect of either reducing his liability or acceptance or the liability subject to certain conditions.

Effect of qualified acceptance : The holder of a bill is entitled to require an absolute and unconditional acceptance. He also reserves a right to treat the bill dishonoured, if it is accepted subject to any qualification as may be imposed by the acceptor. However if the holder agrees to qualified acceptance he does so at his own peril, since thereby he discharges all parties prior to himself, unless he has obtained their consent.

Instances of qualified acceptance : According to the Explanation to Section 86 of the Act, an acceptance is to be treated as qualified.

(i) *Acceptance subject to event :*

(ii) *Acceptance for part payment:*

(iii) *Specific place :*

(iv) *Specific time :*

Presentment of promissory note for sight

A promissory note does not require acceptance since the payment is to be made by the maker himself. But, a promissory note payable at a certain period “after sight” must be presented to the maker for sight. The presentment is to be made by a person entitled to demand payment who is usually the holder. Again, the note must be presented within a reasonable time after it is made and in business hours on a business day. In default of such presentment, the maker is not liable to pay anything to the holder. In the case of such a note without presentment the maturity of the note cannot be fixed.

Presentment of instrument for payment

Presentment of a bill of exchange means its exhibition to the drawee or acceptor by the holder with a request for payment in accordance with its apparent tenor (Section 64 (1)). Presentment may be made through a registered letter if such a mode of presentment is authorized by agreement or usage. If the bill is paid, the holder would have to hand it over to the payer. In default of presentment by the holder, the drawer and all the endorsers would be discharged from their liability to the holder.

Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.".

(1) By whom and to whom presentment is to be made : Presentment is to be made either by the holder or by somebody on behalf of the holder. Promissory notes are to be presented to the maker; bills of exchange are to be presented to the acceptor; and cheques are to be presented to the drawee.

(2) Time of presentment for payment : Presentment should be made during the usual business hours (Section 65).

(a) If the bill is made payable a specified period after date of sight, it must be presented or payment at its maturity (Section 66).

(b) If the bill payable on demand, if must be presented for payment within a reasonable time after is receipt the holder (Section 74)

(3) Place of presentment for payment :

(a) If the bill is drawn is accepted payable at a specified place and not elsewhere, it must be presented for payment at such a place in order to charge any party to the bill (Section 68).

(b) If however the bill is accepted payable at a special place (the word" and not elsewhere" being omitted) then to charge the drawer (but not the acceptor), presentment should be made at the place specified (Section 69).

(c) If no place of payment is specified then the bill should be presented for payment at the place of business (if any) or the residence of the drawee or acceptor of (if he has no fixed place of business or residence) to him in person wherever he can be found (Section 70 and 71).

(4) Presentment of promissory note payable by installment : A promissory note payable by installments must be presented for payment on the third day after the day fixed for payment of each installment.

(5) Presentment of cheque to drawer : It is the duty of the holder of a cheque to present it at the bank upon which it drawn. If payment is refused by the bank, the holder may sue the drawer. If the holder sues the drawer without first presenting the cheque at the bank, the suit will be dismissed.

If the holder does not present the cheque at the bank in time, the position of the bank may become unsound and it may not be possible for the banker to honour the cheque; in this case, the drawer is not liable if the bank refuses payment on presentment. The rule is that the cheque must be presented before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

(6) Distinction between drawer of bills and drawer of cheques : If a bill is not presented in time, the drawer is absolutely discharged; but the drawer of a cheque, in case of delay in presentment is discharged only if he has suffered some loss or injury and that too, to the extent of such loss only. Therefore, if the bank remains solvent, the drawer will remain bound after presentment and refusal, although months (short of the period of limitation) have elapsed since the drawing.

(7) Presentment of cheque to charge any other person : In order to charge the drawer, the cheque must be presented before the relation between the drawer and his banker has been altered to the prejudice of the drawer, but in order to charge any person other than the drawer of cheque, it must be presented within a reasonable time (Section 73).

(8) Presentment of instrument to agents etc : Presentment for acceptance or payment may be made not only to the drawer maker of acceptor but also to his duly authorised agent or where he is dead to his legal representative, or where he has been declared an insolvent, to his assignee (Section 75).

When presentment is unnecessary

(a) Presentment for payment is not necessary in any of the following cases :

(1) if the maker, of acceptor intentionally prevent the presentment of the instrument;

(2) if the instrument being payable at his place of business, he (i.e. maker, drawer or acceptor) closes such place on a business day during the usual business hours;

(3) if the instrument being payable at some other specified place, neither he nor any person authorized to pay it at tends at such place during the usual business hours;

(4) if the instrument not being payable at any specified place, he (i.e. maker etc.) cannot after due search be found.

(b) No presentment for payment is necessary as against any party sought to be charged with payment if he has engaged to pay notwithstanding non-presentment.

(c) No presentment for payment is necessary as against any party if, after maturity and with the knowledge that instrument has been presented :

(1) he makes a part-payment on account of the amount due on the instrument; or

(2) he promises to pay the amount due thereon in whole or in part; or

(3) he otherwise waives his right to take advantage of any default in presentment for payment.

MATURITY

Section 22 of the Negotiable Instruments Act states: :

"*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 so payable.

Negotiable instruments, except cheques, may be made payable either on demand or on a specified date or after a specified period of time. Cheques are always payable on demand. The date on which a negotiable instrument falls due for payment is the date of maturity of the instrument.

An instrument payable on demand or on sight become payable immediately on the date of execution and there is no question of its maturity. Thus, the question of maturity arises only in case of instruments payable otherwise than on demand.

Time instruments are given three days of grace and should be presented for payment only on the last day of grace. Presentment of instrument earlier than third day will be premature. Thus, an instrument will be deemed to have been dishonoured only if it remains unpaid after the expiry of the grace period.

Rules for calculating maturity

1. *Payable after stated number of months :* If a note or bill is made payable a specified number of months after the date or after insight, or after a certain event, it matures or becomes payable three days after the corresponding date of the month after the stated month.

If the month in which the instrument becomes payable does not have a corresponding date, the period shall terminate on last day of the month.

2. *When made payable after stated number of days :* If a note or bill is made payable after a certain number of days after date or after sight or after a certain event, the maturity is calculated by excluding the day on which the instrument is drawn or presented for acceptance or sight or on which the event happens.

3. *If grace period ends on Sunday or another holiday :* If the date on which a bill or note is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day. Thus, if the maturity falls on Sunday, it shall be deemed to be payable on Saturday.

Payment in due course

Under Section 10 of the Negotiable Instrument Act –

"*Payment in due course" means payment in accordance with the apparent tenor of the instruments 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."*

he essentials for a payment in due course are:

(i) *Payment on or after the maturity :* The payment should be made in accordance with the apparent tenor of the instrument. A payment before maturity is not a payment in accordance with the apparent tenor of the instrument; and as such it is not a payment in due course.

(ii) *Payment in cash only :* The payment should be made in money only, because the instrument is expressed to be payable in money. A different form of payment may however be adopted but only with the consent of the holder of the instrument.

(iii) *Payment to a person in possession :* That the person to whom payment is made should be in possession of the instrument. Therefore, payment must be made to the "holder" or a person authorized to receive payment on his behalf. Suppose, the instrument is payable to a particular person or order and is not endorsed by him. Payment to any person in actual possession of the instrument in such case, will not amount to payment in due course. However, in the event of the instrument being payable to bearer or endorsed in blank, the payment to a person who possess the instrument is, in the absence of suspicious circumstances, payment in due course.

(iv) *Payment in good faith:* The payment should be made in good faith i.e. without negligence, and under circumstances which do not afford a reasonable ground for believing that the person to whom payment is made is not entitled to receive the amount. If suspicious circumstances are there, then person making the payment shall put on an enquiry. If he does not make the enquiry, the payment would not be in due course.

Payment of Interest

The Act lays down following principles under sections 79 and 80 regarding payment of interest :

1. *If rate is specified :* If the rate of interest has been specified in the Bill of Exchange or the promissory, the interest has to be calculated on the principal amount of the instrument at the specified rate from the date of the instrument till the date of actual payment or until such other date after the suit has been launched as the Court may direct (Section 76).

2. *If rate has not been specified :* As per section 80 of the Act, where the rate of interest has been specified in the Bill or the note, as the case may, it has to be calculated at the rate of 18% P.A. from the date it ought to have been paid.

3. *Endorser's liability to pay interest :* If an endorsed instrument is dishonoured the liability of the endorser to pay interest arises from the date he receives notice of dishonour.

Negotiation and Assignment

Who may negotiate

As per Section 51 of the Act a negotiable instrument may be negotiated by the following person :

(1) Sole maker,

(2) Drawer,

(3) Payee,

(4) Endorsee,

(5) All of several joint makers, drawers, payees or endorsees.

A maker of drawer can negotiate only when the instrument is drawn to his own order. In case of restrictive Endorsements the endorsee must exercise his power of negotiation strictly in accordance with the express terms of his authority. Therefore, if negotiability is excluded by the respective endorsement, the endorsee, as holder, cannot negotiate.

Further, explanation to section 51 provides that a maker or a drawer or endorsee or negotiate an instrument, only if –

1. the instrument falls into his possession in a lawful manner; or

2. he is the holder thereof.

Time of negotiation

Section 60 of the Act provides that a negotiable instrument may be negotiated until the payment or satisfaction thereof by the maker or drawer or acceptor or drawee, as the case may be, at or after the maturity but not after the payment. Thus, negotiability of a negotiable instruments terminates only on payment or satisfaction at or after maturity. Any payment before maturity does not stop negotiability of the instrument.

Types of negotiation

Under the Act, negotiable instruments may be negotiated either

1. by delivery when these are payable to bearer; or

2. by endorsement and delivery when these are payable to order.

Endorsement

As per section 15 of the Act Endorsement means –

"*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 of or on a slip of a 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.*"

Form of Endorsement

The Act does not lay down any directions about the form of Endorsement. Only requirement of Endorsement is that the transferor shall use appropriate writing on an instrument so as to transfer his right, title and interest therein to some other person.

Essentials of Endorsement

(a) *On the instrument :*

(b) *Endorser :*

(c) *Signed :*

(d) *Blank or full :*

(e) *Intention to transfer rights :*

(f) *Delivery :*

Different types of the endorsements

(a) Blank or general

(b) Special or in full

(c) Restrictive – Section 50 permits restrictive endorsements which take away the negotiability of such instruments. "Pay the contents to C only", "Pay C for my use."

(d) Conditional

(i) Sans Recourse – when endorser excludes his liability “pay to X or order at his own risk” or “Pay to C without recourse to me.”

(ii) Sans Frais When the endorser does not want the endorsee or any subsequent holder to incur any expenditure on his account on the instrument, all endorsers are liable to him.

(iii) Facultative – Endorsee must give notice of dishonour of the instrument to the endorser, but the latter may waive this duty of the endorsee by writing in the endorsement “ notice of dishonour waived.” The endorsee remains liable to the endorsee for the non payment of the instrument.

(iv) Contingent . The endorser may make an endorsement so as to make the endorsee entitled to receive the amount due under the instrument only in case of happening or non happening of a certain event. “Pay X on his marriage to Y”.

Liability of endorser on dishonour

Under Section 35 that except in the case of a contract to contrary, every endorser of a negotiable instrument is liable to every subsequent party to it provided due notice of dishonour is given to or received by him.

Illustration : A bill is drawn by A upon B and is payable to C or order. C endorses the bill to D, who in turn endorses it to E. If B dishonours the bill, the holder, E has a right of action against all the parties i.e. D, C and A.

Effect of endorsement

(a) The endorsement of an instrument, followed by delivery, transfers to the endorsee the property in the instrument with right of further negotiation i.e. the endorse may further endorse it to some other person.

(b) A holder of an instrument deriving title from a holder in due course has rights thereon of the holder in due course (Section 53).

Negotiation by unauthorized parties

Right and liabilities in case of loss of instrument

1. The holder of negotiable instrument shall give a notice to all parties liable on the instruments. He shall also give a public notice.

2. Under Section 45A, the loser of a bill of exchange has a right to apply to the drawer for a duplicate of the lost bill, giving security to the drawer to indemnify him against all persons. If the drawer does not grant the application the loser may compel him to provide him with a duplicate.

3. When a negotiable instrument payable to order has been lost, the finder or the endorsee from the finder, is not entitled to receive the amount of it from maker, acceptor or holder, or from any party prior to such holder. He is bound to return the instrument to the real owner.

4. If the instrument lost by one is payable to bearer or endorsed in blank, the third person acquiring it bona fide and for valuable consideration before maturity, is entitled both to retain the instrument against the real owner and to compel payment from the prior parties thereon i.e. if the possessor of a lost instrument is a holder of it in due course, he is entitled to receive the amount due thereon from the acceptor or holder or from any party prior to such holder.

5. The holder of the lost instrument shall give a notice for payment on maturity date to the drawer. If the drawer or acceptor refuses payment, he must give notice of dishonour to the drawer, acceptor as well as to all prior parties failing which he will lose his right to take against the person liable on the instrument.

Stolen instrument

The position in case of stolen instrument is same as in the case of lost instrument. The thief does not get any title to the instrument. But, if a stolen instrument, payable to bearer, is negotiated to a holder in due course, such holder in due course gets a good title.

Instruments obtained by fraud

Free consent of parties is one of the most important for a valid contract. Absence of consent or absence of free consent vitiates all contracts including contracts relating to negotiable instruments. Thus, if an instrument is obtained from any maker, acceptor or holder by means of an offence or fraud, the possessor is not ordinarily entitled to receive the amount under it from the acceptor or holder, or from any party prior to such holder. But if such instrument, payable to bearer is transferred to holder in due course he will get good title. Even if the instrument is negotiated by endorsement, the holder in due course gets good title. The endorsement will be valid though the title of the endorser is defective.

Rights and obligations of a person who has obtained an instrument by unlawful consideration

A negotiable instrument given for a consideration which is illegal either because it is immoral and contrary to public policy or because it is specially interdicted or prohibited by the statute is void and creates no obligations between the parties. If the possessor endorses it in favour of some other person, the endorsee also would not be entitled to claim payment, unless he is holder in due course. The endorsee would be regarded as a holder in due course if it is endorsed to him for valuable consideration without any notice having been received by him as to the consideration being unlawful.

Effect of forgery

Forged instrument : In relation to negotiable instruments forgery means fraudulent making or altering a writing on the instruments to the prejudice of another man’s right. If the signature of the maker, drawer or acceptor is forged on the instrument, it is said to be a forged instrument and, in the eyes of law, a negotiable instrument with forged signature is a null and void. Such an instrument fails to create any right or obligations. In the case of forged instrument even a holder in due course also does not get a good title. It is also to be noted here that a forgery cannot be ratified since the forger does not act and does not purport to act on behalf of the person whose signature he forges.

Forged Endorsement : When signature of the endorser is forged on the instrument it is said to be a forged endorsement. In the eyes of law, a forged endorsement is not an endorsement at all.

If the instrument is payable to a person or to his order, it cannot be negotiated except with the signature of the person. Therefore, if the instrument is negotiated under the forged signature of the person to whom the instrument has been made payable the endorsee does not receive any title even though he is a purchaser for value and in good faith, for the endorsement is a nullity. But in case of bearer instrument or instruments endorsed in blank which can be negotiated by mere delivery, a forged endorsement is immaterial and it does not affect the title of the holder because he derives his title through delivery and not through Endorsement.

Negotiation of over due and dishonoured instruments

The holder of an instrument, who has acquired it after dishonour, has as against the other parties only the rights thereon of his transferor. Negotiation after maturity does not convey a good title to the transferee because of defective title of the transferor himself. Only a holder in due course gets a good title even if title of the transferor is defective but to become holder in due the instrument should have been acquired before maturity.

However, in case of Accommodation Bills, the proviso to Section 59 lays down that, any person who becomes holder of an accommodation bill after maturity, in good faith for consideration becomes the holder in due course.

Negotiable instruments without consideration

A negotiable instruments made, drawn, accepted or negotiated without consideration or for a consideration which fails, creates no obligation of payment between the parties but if such an instrument is transferred for a valuable consideration, such holder and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor.

Discharge from liability on Notes, bills and cheques

Discharge of the Instrument

An instrument is said to be discharged when –

(a) All the rights under it are extinguished.

(b) It ceases to be negotiable.

(c) Even a holder in due course does not acquire any right under it.

In short, an instrument is discharged only when the part primarily and ultimately liable on the instrument is freed from liability.

Discharge of a party to an instrument does not discharge the instrument itself. Consequently, the holder in due course may proceed against the other parties liable for the instrument.

Different modes of discharge from liability

Parties to negotiable instruments are discharged from liabilities when the right of action on the instrument is extinguished. The right of action on a negotiable instrument is extinguished by the following methods :

a) By payment in due course : The parties primarily liable to make payment on an instrument are discharged from liability to all parties if the instrument is payable to bearer or endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon i.e. when the payments have been made to the holder of the instrument at or after maturity in good faith and without notice of any defect in the title to the instrument (Section 82).

(b) By cancellation of acceptor’s endorser’s name : The maker, acceptor and endorser respectively of a negotiable instrument are discharged from liability to a holder who cancels the acceptor’s or endorser’s name with the intent to discharge him and to all parties claiming under such holder i.e. if the holder of a bill cancels the signature of acceptor with an intention to discharge him, both maker and the acceptor of such negotiable instrument are discharged from the liability to the holder and to all parties claiming under such a holder [Clause (a) Section 82)]. However, it is to be noted that any cancellation under mistake or without the authority of the holder is inoperative.

(c) By release : the holder of an instrument may release any of the parties to the instrument by any method other than cancellation of names e.g. a separate agreement of waiver, or release. The release may be express or implied [Clause (b) of Section 82]. The party so released and all subsequent parties who have a right against the party so released will also stand released and discharged from the liability.

(d) By allowing more than 48 hours to the drawee for acceptance : If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holidays to decide whether he will accept the bill, all prior parties not consenting to such an allowance of more than 48 hours are discharged from liability to such holder. This is because the holder must treat the instrument as dishonoured if the drawee fails to signify his acceptance within forty-eight hours, and then the holder must give notice to the drawer and to all prior parties, and must not allow time unless they give their consent that more time should be allowed (Section 83).

(e) Dissenting parties discharged by qualified or a limited acceptance : The holder of a bill is entitled to unqualified acceptance. If he elects to take a qualified acceptance, he does so at his own peril and discharges all parties prior to himself unless he obtains their consent to such an acceptance are discharged. All previous parties are discharged in the following cases :

(1) when acceptance is qualified,

(2) when acceptance is for a part of the sum,

(3) when acceptance substitutes a different place or time of payment,

(4) when acceptance is not signed by the drawee not being partners.

But, if the prior parties subsequently approve of such acceptance by the holder, they will not be discharged.

(f) By payment, alteration not being apparent : If a person makes payment on an altered note, bill or cheque, and the alteration is such that it is not apparent the payment is deemed to have been made in due course and the person (banker or other person) who is liable to pay the amount is protected (Section 89).

Where the cheque is an electronic image of a truncated cheque, any difference in apparent tenor of such electronic image and the truncated cheque shall be a material alteration and it shall be the duty of the bank or the clearing house, as the case may be, to ensure the exactness of the apparent tenor of electronic image of the truncated cheque while truncating and transmitting the image.

Any bank or a clearing house which receives a transmitted electronic image of a truncated cheque, shall verify from the party who transmitted the image to it, that the image so transmitted to it and received by it, is exactly the same.".

(g) By negotiation back : If a bill of exchange which has been negotiated is, at or after maturity held by the acceptor in his own right all right to action thereon are extinguished (Section 90).

(h) By delay in presenting the cheque within a reasonable time : If a cheque is not presented for payment within a reasonable time after its issue the drawer is not liable for the delay. However, if the drawer suffers some loss due to failure of the bank, the drawer is discharged as against the holder to the extent of losses suffered by him.

For example, if X draws 10 cheques of Rs.250 each, but when the cheques ought to be presented, has only Rs.2,000 at the bank and subsequently the bank fails before the cheques are presented, X will be released from liability to the extent of Rs.2,000 but will remain liable for the balance. If he had the full amount of Rs.2,500 at the bank, he will be discharged in full.

(i) By operation of law : A negotiable instrument is also discharged by operation of law under any of the following circumstances :

(a) By lapse of time i.e., when the claim under the instrument becomes barred by the Limitation Act on the expiry of the period prescribed for the recovery of the amount due on the instrument; or

(b) By merger, i.e., when the debt, under the instrument is merged in the judgement debt obtained against the acceptor make or endorser.

(c) Under the law of insolvency i.e. when the acceptor, maker, or endorser, who becomes insolvent, is discharged by an order of the Court made in the insolvency proceedings.

(j) By payment by the drawee of a cheque payable to order or to bearer : Payment in due course discharges the bank from liability even if the payment is made to a wrong person. A cheque is said to have been paid in due course when it has been paid in good faith, after taking proper care to ascertain the genuineness of the endorsements. But if the drawer’s signatures is forged, the banker can, under no circumstances, claim discharge on payment.

The bank is discharged by payment in due course to the bearer notwithstanding any endorsement thereon, whether in full or in part and whether or not such endorsement purports to restrict or exclude further negotiation. The endorsee under an endorsement in full cannot recover the amount from the banker who has paid it to the bearer (Section 85).

The rule of the discharge applicable to a cheque payable to order also applies, to a draft drawn by one of the bank upon another payable to order or demand (Section 85A).

(k) By material alteration of the instrument without assent of all parties liable : Material alteration is that change in the negotiable instrument which affects the validity of the instrument or rights of the parties thereto. Validity of the instrument is affected only when the alteration is material. Any material alteration of a negotiable instrument renders the same void as against any one who is party thereto at the time of making such alterations. Following have been held to be material alterations :

1. Alterations of the date of the instrument

2. Alteration of the sum payable

3. Alteration of the time of payment

4. Alteration in the place of payment

5. Alteration in the rate of interest

6. Alteration by addition of new party

7. Alteration by adding the place of payment

8. Tearing off the material part of the instrument

A change is said to be material when –

(a) it changes the identity of the contract between the parties

(b) it changes the rights and liabilities of the parties of the parties or any of the parties of the instrument.

(c) It alters the operation of the instrument.

Alterations not considered as material alterations : Certain alterations, though material, do not have the effect of vitiating the instrument. Those are as under :

1. Alterations made before the issue of instrument

2. Alterations made to correct a mistake

3. Alterations made to carry out common intention of parties

4. Alterations made with the consent of the parties

5. Alterations which are not considered material e.g.

(a) Filing up of amount in an inchoate instrument

(b) Conversion of an Endorsement in blank into an Endorsement in full

(c) Crossing of a cheque after it has been issued.

Dishonour

A bill may be dishonoured for non-acceptance as well as non-payment. Cheques and promissory notes may be dishonoured by non-payment only. When a negotiable instrument is dishonoured the holder is required to give a notice to all the previous parties so as to make them liable to the instrument. Except in the cases where notice of dishonour is waived, the holder's failure to give notice of dishonour to previous parties, he loses his right to bring any action against them.

Kinds of Dishonour

1. Dishonour by non-acceptance

2. Dishonour by non-payment

Dishonour by non-acceptance : Section 91 provides that –

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

A dishonour by non-acceptance may take place in any one of the following circumstances :

(a) when the drawee either does not accept the bill within forty-eight hours of presentment or refuses to accept it;

(b) when one of several drawees, not being partners, makes default in acceptance;

(c) when the drawee gives a qualified acceptance;

(d) when presentment for acceptance is excused and the bill remains unaccepted;

(e) when the drawee is incompetent to contract;

(f) when the drawee is a fictitious person and could not be found after reasonable search.

Presentment for acceptance is not necessary : Presentment of the bill for acceptance is not necessary to treat an instrument as dishonoured in any of the following cases :

(i) Where the drawee cannot be found, or

(ii) Where the drawee is incompetent to contract, or

(iii) Where the drawee is a fictitious person.

Effect of dishonour for non-acceptance : In the case of dishonour by non-acceptance, the holder becomes entitled immediately to have recourse against the drawer or the endorser. Dishonour by non-acceptance constitutes a material ground entitling the holder to take action against the drawer and he need not wait till the maturity of the bill.

Dishonour by non-payment

In accordance with the provisions of Section 92 of the Act –

"A promissory note, bill of exchange or cheque is 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".

Thus, an instrument is said to have been dishonoured by non-payment only when the party primarily liable i.e.

(a) the acceptor of a bill,

(b) the maker of a note, and

(c) the drawee of a cheque,

make default in payment.

Distinction between dishonour by non-acceptance and by non-payment

In case of dishonour of a bill by non-acceptance no action lies against the drawee as he is not a party to the bill. The holder of the bill can proceed only against the drawer or endorser, if any. In the case of dishonour of a bill by non-payment action lies against the drawee also as he becomes a party to the instrument. On dishonour by non-payment the drawee can be sued.

Notice of dishonour

By whom notice to be given

When an instrument is dishonoured either by non-acceptance or by non-payment

1. The holder thereof or some party thereto who remains liable thereon must give notice of dishonour (Section 93).

2. Any party receiving notice of dishonour must also transmit it to within a reasonable time to all the parties prior to him in order to render them liable to himself unless such party otherwise received due notice as provided under Section 93 (Section 95).

Illustration : A draws a bill in favour of B on X : B endorses it to C; C endorses it to D; D endorses it to E; E endorses it to F.

If the bill is dishonoured by X, F, the holder, may give notice to all his prior parties to make all of them.liable to himself. But if he gives notice of dishonour only to E and A his right to claim will be valid against E and A only.

In this case if E does not transmit the notice to D, C, and B he will not have any claim against them. In order that E also has right of action against D, C and B, E must transmit to all his prior parties i.e. D, C and B.

Where several persons are required to give notice of dishonour to their prior parties, a person may take advantage of notice of dishonour served by other person to any person to whom he is also required to give notice. Thus, serving of notice of dishonour is necessary and not the fact that who serves the notice.

Notice by agent

Notice for dishonour can also be given by a duly authorized agent. When an instrument is deposited with the agent for presentment and if the instrument is dishonoured, the agent himself can give notice of dishonour to all prior parties on behalf of the holder. Further the agent may also give such notice to his principal who, in turn, may serve notice to all his prior parties (Section 96).

To whom notice is to be given

Notice must be given to all such parties to whom the holder proposes to charge with liability severally or jointly, e.g., the drawer and the endorsers. Notice may be given either to the party himself or to his agent, or to his legal representative on this death, or to the official assignee on his insolvency. It is not necessary to give notice to the maker of a note or the drawee or acceptor of a bill or cheque (Section 93).

Where the party to whom notice is to be given is dead, the notice addressed to him due to ignorance will not become invalid and such a notice is sufficient to bind the estate of the agent. However, where the holder or any other person who is giving notice is aware of the fact of the death of the party to whom notice is to be given, in that case the notice shall be addressed to his legal representative otherwise it will not be treated as a valid notice. Similarly, in case of insolvency the notice must be given to the Official Assignee.

Effect of non-service of notice

Notice of dishonour is so necessary that an omission to give notice discharges all parties. The parties are discharged not only on the bill but also in respect of the original consideration. Notice of dishonour is a condition precedent to the continuation of the liability of the drawer under Section 30 and of the endorsee under Section 35 of the Act.

Contents of notice

The notice of dishonour may be given in any form but it must inform the party to whom it is given, either in express terms or by reasonable intendment. The notice need not be signed but it must inform the party to whom it is given :

(a) that a specified instrument has been dishonoured

(b) that the instrument has been dishonoured by non-acceptance or non-payment

(c) that he will be held liable thereon.

The notice must give an exact description of the instrument dishonoured, for mis-description, which misleads the addressee, vitiates the notice.

Place of service of notice

The notice, if in writing, may be given by post at the place of business or at the residence of party for whom it is intended. The notice is not rendered invalid by miscarriage in post. Parties may also fix by an agreement a place to which notice of dishonour may be forwarded and a notice sent to such specified place is valid even if it takes longer time. If the holder does not know the place at which the notice of dishonour shall be served, he must exercise due diligence to ascertain the place.

Time of serving the notice

After dishonour of the instrument a notice of dishonour shall be given within a reasonable time. In determining what is reasonable time for giving notice of dishonour, regard must be had to the nature of the instrument and the usual course of dealing with respect to similar instrument. In calculating such time, public holidays are excluded.

Under section 106 of the Act, the reasonable time for giving notice of dishonour of an instrument is as under :

(a) Where the holder of the instrument and the party to whom notice is given carry on business or live in different places, the notice of dishonour must be posted by the next post, if there be one on the same day. In other case, on the next day after the day of the dishonour.

(b) If the parties live or carry on business in the same place, it is sufficient if the notice is dispatched so that it reaches its destination on the day next after the day of dishonour.

(c) A party receiving notice of dishonour, who seeks to enforce his right against the prior party, transmit 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 (Section 107).

When notice of dishonour is unnecessary (Section 98)

In a suit against the drawer or endorser on an instrument being dishonoured, the notice of dishonour is not necessary in the following cases :

(a) When it has been dispensed with by an express waiver by the party entitled to it.

(b) When the drawer has countermanded payment of a cheque.

(c) When the party charged would not suffer damage for want of notice.

(d) When the party entitled to notice after due search, cannot be found.

(e) Where there are been accidental omission to give the notice, provided the omission has been used by an unavoidable circumstances, e.g., death or dangerous malady of the holder or his agent, or other inevitable accident or over whelming catastrophe not attributable to the default, misconduct or negligence of the party tendering notice.

(f) When one of the drawers is acceptor.

(g) Where the drawer and the acceptor are the some person. However, any partnership between the drawer and drawee of a bill does not give rise to the presumption that they are partners in respect of the drawing of the bill, or that the bill was drawn by one of them on behalf of both. In this type of case the rule mentioned above does not apply.

(h) In the case of promissory not which is not negotiable.

(i) When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

Duties of holder on dishonour of an instrument

The holder shall take the following steps in case of dishonour of an instrument :

1. *Notice of dishonour :* The holder shall send a notice of dishonour to all the parties to whom he desires to charge in accordance with the provisions of the Act.

2. *Noting and protesting :* When a bill is dishonoured by non-acceptance and a promissory note is dishonoured by non-payment the holder may cause such dishonour to be noted and/or by the notary public.

3. *Suit for recovery :* After fulfilling the formalities of noting and protesting the holder may bring a suit against the parties liable to pay for the recovery of the amount due on the negotiable instrument.

Noting and Protesting

Noting

In this connection section 99 of the Act provides as under :

"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 the 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"

Mode of noting

Therefore, noting is a convenient mode of authenticating the fact that a bill or note has been dishonoured. When a bill is to be noted it is taken to the notary public who represents it for acceptance or payment, as the case may be, and if the drawee or acceptor still refuses to accept or pay the bill, the bill is noted.

Noting is optional

Noting is not required in case of cheques because in such a case the banker returning the cheque give reason in writing for the dishonour of the same, which is accepted as authentic evidence of dishonour. In case of inland bills noting is not compulsory.

Advantages of noting

1. Under section 104A, wherever protest is required to be made within a specified time, it is sufficient if noting is made within that time.

2. A bill of exchange may be accepted for honour after it has been noted.

3. A bill of exchange may be paid for honour after it has been noted.

Time for noting

As per section 105, the noting shall be made by the notary public within a reasonable time. It has been held that the noting shall take place on the day of dishonour or not later than the next business day unless the holder is prevented by circumstances beyond his control.

Protest

Section 100 of the Act provides that –

"*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."*

When an instrument is dishonoured, the holder may cause the fact not only to be noted, but also to be certified by a Notary Public that the bill has been dishonoured. Such a certificate is referred to as a protest.

Advantage of protest

Neither noting nor protesting is compulsory in the case of inland bills, But under Section 104 every foreign bill of exchange must be protested for dishonour when such a protest is required by the law of the country where the bill was drawn. The advantage of both noting and protesting is that this constitutes *prima facie* good evidence in the Court of the fact that instrument has been dishonoured in accordance with the provisions of section 119, the Court is bound to recognize a protest. Provisions of section 104A shall also be noted which provide that –

"*For the purpose 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 noting."*

Thus, where a document has been noted within the time required by law, legal proceeding cannot be vitiated on account of protest not having been made.

Protest in absence of notary public

The Act does not provide the place where the protest shall be made. The Act is also silent about the cases where services of notary public are not available at the place of dishonour of the bill. In this connection the Bill of Exchange Act provides that any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and such certificate operates as a formal protest of the bill.

Contents of protest

Section 101 provides that the protest must contain the following particulars :

1. The instrument itself or literal transcript of the instrument of everything written or printed thereon.

2. The name of the person for whom and against whom the instrument has been protested.

3. The fact and reasons of dishonour, i.e. a statement that payment or acceptance or better security, as the case may be, was demanded by the notary public from the person concerned and he refused to give it, or did not answer, or that he could not be found.

4. The time and place of dishonour.

5. The signature of the notary public.

6. In the case of acceptance for honour or payment for honour, the names of the persons by whom and for whom it is accepted or paid.

Notice of protest

When a promissory note or a bill of exchange is required by law to be protested, notice of such protest in lieu of notice of dishonour must be given in the same manner as notice of dishonour (Section 102).

Protest for better security

A bill may be protested even for better security before the maturity of the bill. In this connection section 101 of the Act provides as under :

"*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, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security."*