ABOUT THE AUTHOR

Myself is Adithya Kiran. I cleared CA Final in November 2011 Attempt. I am a Certified Credit Officer from Indian Institute of Banking & Finance. I have cleared C.F.A (U.S.A) and I am one of the top 10% performers in the world rankings. I have cleared one group in CS Professional Programme with the elective of IPR Law & Practice.

Out of my academic achievements, notable ones are IPCC and Final Law papers. In both the papers though I have attempted 68 marks, I got 62 marks.

I am into teaching since 2010. My core subjects are:

a. Law and FM in CA Inter (erstwhile CA-IPCC).
b. Corporate and other Laws and Strategic Financial Management in CA Final.
c. All Legal subjects in CS Executive & Professional Programme.

I am doing my practice since September 2012

My suggestions to the students are:

1. Never Read any law subject without having Bare Act in Hand.
2. In Financial Management think logically and not just read the subject by standard step-by-step procedure. Have your own way of solving the problem.

If you like this notes, you can contact me in the below mentioned mail-id and mobile number for:

a. Complete notes,
b. Revision notes and
c. Classes

INTRODUCTION

- The law relating to negotiable instruments gives sanctity to to the instruments of credit which could be deemed to be:
  a. Convertible into money; and
  b. Easily passable from one person to another.
- The Law in India relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881.
- The main objective of the Act is to legalize the system by which instruments covered under the Act (i.e., Promissory Note, Bill of Exchange and Cheque) could pass from hand to hand by negotiation.

Act and Local Usage

- NI Act, 1881 does not affect any local usage relating to any instrument in an oriental language (i.e., languages used in Asia).
- Effect of local usage may be excluded by inserting specific words in the instrument. Insertion of such specific words indicates an intention of the parties to the instrument that the legal relationship between them shall be governed by NI Act, 1881.

1. Explain the concept of Negotiable Instruments [Sec.13]

A. **Instruments covered under the NI Act, 1881** - As per Sec.13, "A "Negotiable Instrument" means a promissory note, bill of exchange or cheque payable either to order or to bearer".

B. **Order Instruments**

- A Promissory Note, bill of exchange or Cheque can be treated as an Order Instrument If it is expressed to be payable:
  a. To a specified person and does not contain words prohibiting transfer.
  b. To a specified person or his order; or
  c. To the order of a specified person. When a PN/BE/Cheque is payable to the order of a specified person and not to him or his order, it is nevertheless payable to him at his option.
- A NI may be made payable to:
  a. 2 or more payees jointly; or
  b. Any one or some of several payees.

C. **Bearer Instruments**

- A Promissory Note, bill of exchange or Cheque can be treated as a bearer Instrument:
  i. If it is expressed to be payable to bearer; or
  ii. If the last endorsement on it is a blank endorsement.

As per Sec.31 of the RBI Act, 1934:
· A promissory cannot be made payable to bearer, whether demand or time; and
· A bill of exchange cannot be made payable to bearer on demand.

D. Negotiable Instruments by custom or usage

Following are some of the instruments which are negotiable by custom, usage or trade:

- Government promissory notes
- Shah Jog Hundies
- Delivery orders
- Railway receipts for goods
- Treasury Bills.
- Bearer Debentures

2. Definition of Promissory Note. [Sec.4]

- A Promissory Note is an instrument in writing.
- Bank Note or Currency Note is not Promissory Note.
- Promissory Note shall contain an unconditional undertaking.
- Such undertaking is to pay a certain sum of money:
    a. To a Certain person; or
    b. To the order of a certain person.
- Promissory Note must be signed by the maker.

A. Unconditional Promise – As per Para 2 of Sec.5, promise is not conditional, if the timing of payment depends upon the occurrence of a specified event, which is certain to happen, though time of its happening is uncertain.

B. Certain Sum – The sum payable in a promissory note may be 'certain sum' even it includes future interest or if it is payable at an indicated rate of exchange.

C. Certain Person – The person to whom the payment is to be made may be a 'certain person'; even he is mis-named or designated by description only.

As per Sec.31 of RBI Act, 1934 a PN cannot be made payable to bearer, whether demand or time.

Sl. No.	Description of Promissory Note	Reason for Validity/Invalidity
a.	I Promise to pay B or order Rs.500	Valid PN because it contains the express promise, unconditional promise and certain sum.
b.	I acknowledge myself to be indebted to B in Rs.1,000 to be paid on demand for the value received.	Valid PN. The words "Promise" is not necessary to constitute PN.
c.	"Mr B I.O.U ` 1,000."	It is not a valid PN because it does not contain an express promise or undertaking to pay.

d.	I promise to pay B Rs.500 and all other sums which shall be due to him	Not a valid PN because the sum undertaken to pay is not certain.
e.	"I promise to pay B ` 500 first deducting there out any money which he may owe me."	
f.	I Promise to pay B Rs.500, seven days after my marriage with C.	Not a valid PN because the promise/undertaking is conditional upon the happening of an uncertain event i.e., Marriage with C.
g.	I Promise to pay B Rs.500 on D's Death provided D leaves me enough to pay that sum.	Not a valid PN because the promise/undertaking is conditional upon the happening of an uncertain event i.e., D leaving enough cash at the time of his death.
h.	I promise to pay B Rs.500 and to deliver to him my black horse on 1st January next.	Not a Valid Promissory Note because Sec.4 specifies that promissory note shall contain an undertaking to pay certain sum of money only. But in the given case, it contains the promise to pay horse also.

3. Definition of bill of exchange. [Sec.5]

- A "bill of exchange" is an instrument in writing.
- It shall contain an unconditional order.
- Such order is a direction to a certain person.
- Such direction is to pay a certain sum:
  a. To a Certain Person;
  b. To the order of a Certain Person;
  c. To the bearer of the Instrument.
- It must be signed by the maker.

A. <u>Unconditional Order</u> – As per Para 2 of Sec.5, order is not conditional, if the timing of payment depends upon the occurrence of a specified event, which is certain to happen, though time of its happening is uncertain.

B. <u>Certain Sum</u> – The sum payable in a bill of exchange may be 'certain sum' even it includes future interest or if it is payable at an indicated rate of exchange.

C. <u>Certain Person</u> – The person to whom the direction is given and the person to whom the payment is to be made may be a 'certain person', even he is mis-named or designated by description only. As per Sec.31 of RBI Act, 1934 a bill of exchange cannot be made payable to bearer on demand.

4. Definition of Cheque [Sec.6]

- A "cheque" is a bill of exchange.
- Cheque must be drawn on a specified banker.
- Cheque shall be made payable only on demand.
- The term ‘cheque’ includes truncated cheque and cheque in electronic form.

A. <u>Truncated Cheque</u>

- It is a cheque which is truncated during the course of clearing cycle.
- Such truncation is done by clearing house or paying banker or receiving banker.
- Such truncation is done immediately on generation of electronic image.
- Electronic image is generated for transmission, substituting the further physical movement of the cheque in writing.

B. <u>Cheque in Electronic Form</u>

- It is a cheque drawn by using any computer resource.
- Such cheque is signed in a secure system:
  a. With Digital signature and asymmetric crypto system or
  b. With electronic signature.

5. Distinction between bill of exchange and Cheque

- A combined reading of section 5 and 6 tells us that:
  a. A bill of exchange is a negotiable instrument in writing containing an instruction to a third party to pay a stated sum of money at a designated future date or on demand.
  b. A cheque is also a bill of exchange but is drawn on a banker and payable on demand.

Cheque	*Bill of Exchange*
1. The Drawee must always be banker.	i. The Drawee may be any person.
2. It must be always be demand instrument.	ii. It May be time or demand instrument.
3. It need not be stamped.	ii. It must be stamped.
4. It may be crossed.	v. It cannot be crossed.
5. It cannot be noted or protested.	v. It can be noted or protested.
6. It cannot be drawn in sets.	vi. It can be drawn in sets.
7. It must be in the format prescribed by RBI	ii. There is no specific format.
8. All cheque are Bills of Exchange	ii. All Bills of Exchange are not Cheque.

6. Definition of Parties to a Negotiable Instrument [Secs. 7 & 8]

a) The maker of a bill of exchange or cheque is called the “**<u>Drawer</u>**”.
b) The person, to whom direction is given, to pay the amount in a bill of exchange or cheque, is called the “**<u>Drawee</u>**”.
c) When in the bill or in any endorsement thereon the name of any person is given in addition to the Drawee to be resorted to in case of need such person is called a “**<u>Drawee in case of need</u>**”.

d) <u>Acceptor</u>

After the Drawee of a bill has

1. <u>*SIGNED*</u> his assent:
   a. Upon the bill, or,
   b. If there are more parts thereof than one, upon one of such parts,

AND

2. (a) <u>*DELIVERED*</u> the bill, or (b) <u>*GIVEN NOTICE*</u> of such signing to the holder or to some person on his behalf,

Then such Drawee is called the "acceptor".

e) <u>Acceptor For Honour</u>

- When a bill of exchange has been noted or protested for non-acceptance or for better security,

and

- Any person accepts it,after protest, for honour of the Drawer or of any one of the endorsers;

such person is called an "acceptor for honour".

f) The person named in the instrument:
   a. To whom;
   b. To whose order

the amount mentioned on the instrument is payable is called **"Payee"**.

g) <u>Holder</u> of a Promissory Note, Bill of Exchange or Cheque means a person who is entitled in his own name:

- To the possession of the instrument; and
- To receive or recover the amount on the instrument from the parties mentioned on the instrument.

When a note, bill or cheque is lost or destroyed, then the holder means a person who is <u>*Entitled*</u>, to the possession of the instrument and the amount on the instrument, <u>*at the time such instrument is lost or destroyed*</u>.

Discuss with reasons, whether the following persons can be called as a 'holder' under the NI Act, 1881 :

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

Answer: X is a holder because he has a right of possession and right to receive the amount due on the instrument.

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

Answer: A is not a holder because he does not have right to receive the amount due on the instrument as it is prohibited by Court.

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

Answer: M is not a holder because though M is having the possession of the instrument but that possession is not in his own name. He was holding as a trustee for the true owner.

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

Answer: B is not a holder because though he has a right to receive the amount mentioned on the instrument but that right is not in his own. That right is in the name of his principal C. Since the instrument is not endorsed to B, he does not have a right to sue in his own name.

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

Answer: B is not a holder because his possession was not lawful possession.

7. Holder in Due Course. [Sec.9]

a. Holder in Due Course means any person who, for consideration, become the:
   - Possessor of a Bearer instrument; or
   - Payee or Endorsee of an Order Instrument.
b. Holder in Due course should obtain the instrument, before the amount mentioned on the instrument becomespayable (i.e., before the due date for payment).
c. Holder in Due course should obtain the instrument without knowing or ought to know, that there is a defect in the title of his transferor (i.e., the person from whom holder in due course obtained the instrument)

Case: A draws a cheque for ` 5,000 and hands it over to B by way of gift. State

i) Whether B is a Holder in Due Course.

ii) Whether B Can receive the amount on the Cheque.

Answer (i):

- Among other things, Sec.9 provides that, Holder in Due course means any person who for consideration becomes the Payee of an order instrument.
- In the given case, Mr.B has received the cheque as gift. He does not paid any consideration to get the cheque.
- Therefore he is not a Holder in Due Course.

Answer (ii):

- Among other things, Sec.8 provides that, Holder of a cheque means a person who has a right to receive the amount on the cheque.
- In the given case, Mr.B's title is good and bonafide. He is a holder.
- As a holder Mr.B is entitled to receive Rs.`5000 from the bank on whom the cheque is drawn.

Case: On a Bill of Exchange for ` 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:

a) **Whether 'A' can be considered as a 'Holder in due course' and**
b) **Whether 'A' can receive the amount of the Bill from 'X'.**

Answer (a):

- Among other things, Sec.9 provides that Holder in Due course means a person who, for consideration, becomes the endorsee of a bill of exchange payable to order, before the bill become payable and without knowing defect in the title of prior party.
- In the given case, Mr.A obtained the bill from his customer
  - ✈ Before it becomes payable;
  - ✈ For value; and
  - ✈ In good faith.

Therefore, Mr.A can be considered as Holder in Due Course.

Answer (b):

- Among other things, Sec.58 provides that when a negotiable instrument has been obtained by means of an offence, the holder in due course is entitled to receive the amount due on the instrument.
- The provision implies that holder in due course is protected when there is defect in the title. But holder in due course derives no title when there is entire absence of title (as opposed to defect in the title existing) as in the case of forgery. Forgery is a nullity.
- Therefore, where a signature on the negotiable instrument is forged, no person can enforce payment on the instrument. This principal is universal and even a holder in due course is not exempted from this principle.
- Accordingly, Mr.A cannot receive the amount on the bill from Mr.X.

8. Payment in Due Course [Sec.10]

- Payment in due course means payment in accordance with the apparent tenor of the instrument (i.e., tenure of the instrument or time for payment as appearing on the instrument)
- Such payment must be in good faith and without negligence.
- Such payment is made to any person who is in possession of the instrument.
- Such payment is made under circumstances which do not cast any doubt that the person receiving the payment is not entitled to recive.

9. Inland Instrument and Foreign Instrument [Secs.11 & 12]

A. <u>Inland Instrument [Sec.11]</u> – A promissory note, bill of exchange or cheque:

a. Drawn or Made in India;

AND

b. Made payable in India;

OR

c. Drawn upon any person resident in India,

Shall be deemed to be an Inland Instrument

B. <u>Foreign Instrument [Sec.12]</u> – Any instrument which is not made, drawn or made payable as Inland Instrument, shall be deemed to be Foreign Instrument.

10. Indorsement & its Types [Secs.15 & 16]

A. <u>Indorsement [Sec.15]</u>

- When the holder of a negotiable instrument signs the instrument:
    - i) On the Face of the instrument (i.e., front side);
    - ii) On the Back of the Instrument;
    - iii) On a Slip of paper annexed to the instrument; or
    - iv) On a stamped paper with a view to complete such instrument as a negotiable instrument,

Then such holder is said to have indorsed the instrument and he is called the "indorser".

B. <u>Blank Indorsement</u> [Sec.16]

- If the indorser sings only his name on the instrument, then the Indorsement is said to be 'Blank Indorsement.
- In Blank Indorsement, name of indorsee is not specified; it contains only the signature of the Indorser.
- An instrument indorsed in blank becomes payable to bearer.

C. <u>Full Indorsement [Sec.16]</u>

- In addition to signing his name, if the indorser also adds direction to pay the amount on the instrument to a specified person or the order of a specified person, then the Indorsement is said to be in "Full Indorsement" and the person so specified is called "Indorsee".
- The provisions of the NI Act, 1881 relating to payee shall also apply to Indorsee.
- In Full Indorsement, in addition to the signature of the indorser, the name of the indorsee also specified.

11. Ambiguous Instruments [Sec.17] – Ambiguity in the nature of the Instrument

- Where it not clear as to whether a particular instrument is a promissory note or bill of exchange, then the holder of such instrument has the choice to treat such instrument either as promissory note or bill of exchange.
- Thereafter, such instrument is treated as per the holder's choice.
- Following are the examples of Ambiguous Instruments:
  a. Demand Draft drawn by one Branch of a Bank on its Head Office;
  b. Bill of exchange, where the Drawee is Fictitious Person.

12. Ambiguity in the Amount payable on the Instrument [Sec.18]

- If the amount undertaken in a promissory note or the amount ordered to be paid in a bill of exchange or cheque is stated differently in figures and in words, then the amount stated in words shall be the amount payable on the instrument.

13. Instruments payable on Demand [Sec.19]

- A promissory note or Bill of Exchange, in which no time for payment is specified, are said to be instruments payable on Demand.
- Cheque is payable on demand. This is also evident from the definition of cheque in Sec.6. As per Sec.6, cheque is not expressed to be payable otherwise than on Demand.

14. Inchoate Stamped Instruments [Sec.20]

- If a person signs an instrument, which is wholly blank or incomplete, and delivers such instrument to another person, then such signer is said to have given authority, to the holder of such instrument, to complete such instrument, for any amount not exceeding the amount covered by the stamps on the instrument.
- Such signer is liable to:
  a. Holder in due course, for the amount specified on the instrument, provided such amount is covered by the stamps on the instrument;
  b. Any other person, only up to the amount intended by such signer.
- If the instrument is:
  i) Stamped in accordance with the prevailing law; and
  ii) Delivered,

Then the person signing on such blank or incomplete instrument cannot contend that the instrument was filled in excess of the authority given by him.

Case: Mr.A signed a blank acceptance and kept it in his locker. Mr.B stole the instrument and filled it up for Rs.20,000 and negotiated to Mr.C, an innocent person, for value. Examining the provisions of Negotiable Instrument Act, 1881, state Whether Mr.A is liable to C.

Applicable Provision

- As per Sec.20 of the NI Act, 1881, if a person signs an instrument, which is wholly blank or incomplete, and delivers such instrument to another person, then such signer is said to have given authority, to the holder of such instrument, to complete such instrument, for any amount not exceeding the amount covered by the stamps on the instrument.
- Such signer is liable to Holder in due course, for the amount specified on the instrument, provided such amount is covered by the stamps on the instrument

Analysis of the Case Facts

- As per Sec.20, it is clear that the person signing on the stamped incomplete instrument must deliver the instrument to the holder so as to complete the negotiation.
- In the given case, Mr.A has not delivered the instrument to Mr.B intending it to be used as a Negotiable Instrument.
- In the absence of delivery, such signer is not estopped from showing that the instrument was filled without his authority.

Conclusion – Mr.A is not liable to Mr.C

15. State briefly the rules laid down under the Negotiable Instruments Act for determining the date of maturity of a bill of exchange.

A. Bill or Note Payable after stated number of months [Sec.23]

1. Maturity date of a Promissory Note or bill of exchange payable after stated number of months is the day of the maturing month which corresponds to the day on which the instrument is:
   a. Dated,
   b. Presented for acceptance or sight,
   c. Noted for non-acceptance,
   d. Protested for non-acceptance,
   e. Accepted for Honur,
   f. Event happens,

   As the case may be.
2. If the month in which the period would terminate has no corresponding day, then the period shall be held to terminate on the last of the maturing month.

   Ex: *A negotiable instrument dated 29th January, 2017, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 2017.*

B. Bill or Note payable after stated number of days [Sec.24]

In calculating the date at which a promissory note or bill payable after certain days, the following days are excluded:

a. Date of the Instrument;
b. Date of presentment for sight or for acceptance;
c. Date of protest for non-acceptance;
d. Date of event.

C. Grace Days [Sec.22] - Every Promissory Note or Bill, which is not a demand instrument, are payable on third day after the day on which they are expressed to be payable.

D. Day of Maturity is a Holiday [Sec.25]

- When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.
- "Public Holiday" includes Sundays and any other day declared by the Central Government.

Bharat executed a promissory note in favor of Bhushan for ₹ 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

- As per Sec.24, if the Promissory note is payable after sight, then the date of presentment for sight shall be excluded for determining the due date for payment.
- As per Sec.22, Every Promissory Note or Bill, which is not a demand instrument, are payable on third day after the day on which they are expressed to be payable.
- In the given case, the Promissory note is payable 3 days after sight and is presented for sight on 01.01.2008.
- The date of presentment i.e., 01.01.2008 shall be excluded and the due date for payment shall be third after the date of presentment i.e., 04.01.2008
- Bharat has promptly made the payment on due date of 04.01.2008.
- Therefore the claim of Bhushan for interest for one day is not valid as it seems that he has not excluded the day of presentment and accordingly he might have calculated the due date as 03.01.2008 without excluding the day of presentment.

16. Capacity of the Parties [Sec.26]

A. Contractual Capacity - Every person having contractual capacity, according to the law applicable to him, may bind himself by making, drawing, accepting or indorsing a promissory note, bill of exchange or cheque.

B. Minor – A minor may draw, endorse a negotiable instrument so as to bind all parties except himself.

C. Corporation – A Corporation may make, accept or endorse a negotiable instrument, only if the law applicable to it, empowers it to do the said activities.

A draws a cheque in favor of M, a minor. M endorses the same in favor of X. The cheque is dishonored by the bank on grounds of inadequate funds. Discuss the rights of X.

- As per Sec.35, a person who endorses and delivers a negotiable instrument is bound to every subsequent holder, in case of dishonor of such instrument by Maker, Acceptor or Drawee.
- However, as per Para-2 of Sec.26, A minor may draw, endorse a negotiable instrument so as to bind all parties except himself.
- Therefore, in the given case, though M endorsed the Cheque to X, M is not liable to X by virtue of Sec.26, because he is a minor.
- X can proceed to recover the amount from A.

17. Agency

A. Agent's Authority [Sec.27]

- Every person capable of binding himself may be bound by a duly authorized agent acting in his name.
- A general authority:
  a. To transact business; and
  b. To received and discharge debts,

Does not confer upon an agent, the power to accept or indorse bills of exchange so as to bind his principal.

- An authority to draw bills of exchange does not by itself include an authority to endorse.

B. Agent's Liability [Sec.28]

- An agent who signs his name on a promissory note, bill or cheuqe without indicating that:
  a. He signed as an agent; or
  b. He does not intend to incur personal liability,

Is personally liable on the instrument.

- An Agent is not liable to those who:
  a. Induced the agent to sign on the instrument; and
  b. Assured that principal only would be held liable.

18. Liability of Parties

A. Legal Representative [Sec.29]

If a legal representative of a deceased person, signs his name on a promissory note, bill of exchange or cheque, then he is personally liable for the amount on the instrument.

However, when he expressly limits his liability, he is liable only to the extent of assets received by him as a legal representative.

B. Drawer [Sec.30] – If a bill of exchange is dishonored by acceptor or if a cheque is dishonored by drawee, then the drawer of such bill or cheque is liable to the holder, if notice of dishonor is given to such drawer or notice of dishonor is received by such drawer.

C. Drawee of Cheque [Sec.31]

1. If sufficient funds:
   a. Belonging to Drawer; are
   b. Lying in the hands of Drawee,

then drawee must pay the amount on the cheuqe.

2. If Drawee makes a default in payment, then such Drawee must compensate the drawer for any loss or damage caused by such default.

D. Collecting Banker

The drawer, 'D' is induced by 'A' to draw a cheque in favor of P, who is an existing person. 'A' instead of sending the cheque to 'P' forgoes his name and pays the cheque into his own bank. Whether 'D' can recover the amount of the cheque from 'A's banker. Decide.

A. Answer given in ICAI Study Material

- As per Sec.42, even if the name of the payee is fictitious, the amount mentioned on the instrument is required to be paid.
- "Fictitious Payee" means a person who is not in existence or was not intended by the drawer.
- In the given case, Mr.P is not a fictitious payee.
- Therefore, amount is not required to be paid on the instrument.
- Accordingly, Mr.D can recover the amount from A's banker.

B. Alternate Answer/view (Write both the above and below answers in the exam)

- As per Sec.131, a banker who received a cheque from customer, in good faith and without negligence, is not liable to the true owner, if the title of such customer proves to be defective.
- In the given case A's banker has received the cheque on behalf of A and therefore he is not liable to true owner i.e., D, provided the banker has acted in good faith and without negligence.

E. Maker of Note and Acceptor of Bill [Sec.32]

- The maker of a promissory note or acceptor of a bill (if he accepts before maturity) is liable to the pay the amount on the instrument at maturity as appearing on the instrument.
- If the acceptor accepts the bill at or after maturity, then he is liable to pay to the holder whenever holder demands.
- In case of default in payment, the maker or acceptor is bound to compensate the loss or damaged sustained by any party to the note or bill.

Acceptor Liable even if Endorsement is forged [Sec.41]

An acceptor of, a bill of exchange already endorsed, is liable even if such endorsement is forged, if he, at the time of acceptance, knows that such endorsement is forged

Acceptor Liable for bill drawn in fictitious name [Sec.42]

An acceptor of a bill of exchange which is:

a. Drawn in fictitious name;
b. Payable to drawer's order; and
c. Endorsed by the same hand as the drawer's signature

Is liable to a holder in due course claiming under such an endorsement appearing to be made by the drawer.

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.

Applicable Provisions – Sec.42 discussed above.

Analysis & Conclusion

- In the given case, M is a holder in due course, claiming under an endorsement made by same hand as drawer's signature (i.e., endorsed by X), appearing to be made by Drawer (i.e., Z)
- Therefore, by applying the provisions of Sec.42, Y cannot avoid the payment of the bill to M.

F. Endorser [Sec.35]

i. Liability - Every person who endorses and delivers an instrument before maturity, shall be liable to compensate loss or damage, caused to every subsequent holder, in case instrument is dishonored by maker, acceptor or drawee.

ii. Nature of Liability – After dishonour every endorser is liable as if the instrument is payable on demand.

iii. Conditions for Liability – Endorser is liable only if:
   a. There is no contract to the contrary.
   b. Notice of dishonour has been given to or received by such endorser.

iv. Exemption from Liability - Endorser is not liable,
  a. If the endorsee damages the rights of endorser against prior parties [Sec.40]
  b. If the blank endorsement is converted into full endorsement [Sec.49]
  c. If at the time of endorsement, he specifically excludes his liability or makes his liability conditional and such condition is not fulfilled. [Sec.52]

Conversion of Blank Endorsement into full endorsement - [Sec.49]

- The holder of a Negotiable Instrument endorsed in blank may, without signing his own name, add a direction, above the endorser's signature.
- Such direction is to pay the amount to the person specified above such signature.
- By writing such direction, the holder converts a blank endorsement into full endorsement.
- By such conversion the holder does not incur the responsibility of an endorser.

Exclusion of Endorser Liability - [Sec.52]

1. Endorser of a negotiable instrument may, by express words (e.g., without recourse):
   a. Excludes his own liability; or
   b. Make the liability dependent on the happening of a specified event which may never happen.
2. Where an endorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate endorsers are liable to him.

A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement, "without recourse", he transfers the instrument to B, and B endorses it to C, who endorses it to A. State the rights and liabilities of A

Applicable Provision
→ As per Sec.35, every endorser is liable to every subsequent holder.
→ However, as per Sec.52, an endorser may exclude his liability by express words.

Analysis & Conclusion –
→ In the given case, at the time of endorsement to B, Mr.A excludes his liability by writing the words 'Without recourse'.
→ Therefore, by applying the above provisions, it can be concluded that:
  a. A is not liable to subsequent holders i.e., B & C.
  b. Intermediate endorsers i.e., B & C are liable to A.

Discharge of Endorser Liability [Sec.40]

Where the holder of a negotiable instrument, without the consent of the endorser, destroys the endorser's remedy against a prior party,
Then the endorser is discharged from liability to the holder.

A is the holder of a bill of exchange made payable to the order of B, which contains the following endorsements in blank-
- → **First endorsement, "B".**
- → **Second endorsement, "P".**
- → **Third endorsement, "W.".**
- → **Fourth endorsement "J".**

This bill A puts in suit against J and strikes out, without J's consent, the endorsements by P and W.

Discuss with reasons whether A is entitled to recover anything from J under the provisions of Negotiable Instruments Act, 1881.

Applicable Provision – Sec.40 discussed above.

Analysis & Conclusion –
- → In the given Mr.A, without the consent of Mr.J, striked out the endorsements made by P & W, who are the prior parties to J. Due to such striking-off J's rights against P & W gets destroyed.
- → Therefore, by applying the provisions of Sec.40, it can be concluded that Mr.J is discharged from his liability that is to say, Mr.A cannot recover anything from J.

19. Negotiable Instruments without consideration [Sec.43]

A. **Obligation between parties without consideration** – If a Negotiable instrument is made, drawn, accepted or endorsed without consideration,
Then it creates no obligation between the parties.

B. **Obligation towards holder for consideration** – If any party transfers the instrument to a holder for consideration, then such party and all his prior parties are liable to such holder and all his subsequent parties.

C. **Obligation towards Accommodated Party** – If a person, for whose accommodation the bill is drawn, accepted or endorsed, pays the amount on the instrument, then he cannot recover such amount from a party who accommodated such person.

D. **Obligation to the extent of consideration** – If a person:
   a. Induces another person to draw, accept or endorse the instrument; but
   b. Fails to pay the full consideration,

   Then he can recover the amount only up to the extent of actual consideration.

A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide-.

(i) Whether D can sue the prior parties of the bill, and

(ii) Whether the prior parties other than D have any right of action inter se?

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.

Applicable Provision – Sec.43 of the NI Act, 1881 provides that:

a. Negotiable instrument made, drawn, accepted or endorsed without consideration creates no obligation between the parties; and
b. If any party transfers the instrument for consideration, then such party and parties prior to him shall be liable to holder for consideration and his subsequent parties.

Analysis & Conclusion

- In the given case-(i), C transferred the bill to D for consideration. Therefore, by applying sec.43 it can be said that between D (being the holder for consideration) can sue the prior parties that is to say C (transferor for consideration) and his prior parties i.e., A & B.
- In the given case – (ii), there is no consideration between A, B &C. Therefore, by applying Sec.43, it can be said that there is no obligation between them.

20. Partial Absence of Consideration [Sec.44]

- In case the consideration for which a person signed a promissory note, bill of exchange or cheque is partly missing, then the holder immediate to such signer can recover from such signer only to the extent to which consideration is present.

Immediate Parties

→ The drawer of a bill of exchange stands in immediate relation with the acceptor.
→ The maker of a PN, Bill of exchange or Cheque stands in immediate relation with the payee.
→ The endorser stands in immediate relation with his endorsee.

P draws a bill on Q for ` 10,000. Q accepts the bill. On maturity the bill was dishonored by non-payment. P files a suit against Q for payment of ` 10,000. Q proved that the bill was accepted for value of ` 7,000 and as an accommodation to the plaintiff for the balance amount i.e. ` 3,000. Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether P would succeed in recovering the whole amount of the bill?

Applicable Provision – Write the above Sec.44

Analysis & Conclusion

- In the given case, the consideration for which Mr.Q signed the bill of exchange was originally absent in part.
- Therefore, by applying above provision Sec.44, it can be said that the amount which P can receive from Q shall be proportionately reduced i.e., reduced to the extent of ₹ 7,000. In other words, P cannot recover the whole amount of the bill.
- This proportionate reduction is because, P, the drawer of a bill, stands in immediate relation with acceptor as per Explanation to Sec.44.

A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favor of B, signs and delivers it to B with a request to fill up the amount due, payable by him. B fills up fraudulently the amount larger than the amount due, payable by A and endorses the cheque to C in full payment of dues of B. Cheque of A is dishonored.

Referring to the provisions of the NI Act, 1881, discuss the rights of B and C.

- As per Sec.20, if a person signs a blank stamped instrument and delivers to any person for the purpose of negotiation, then he is liable to a holder in due course, for any amount stated in the instrument, subject to a maximum of amount covered by the stamp duty.
- The liability of such signer, to any person, other than holder in due course, shall not exceed the amount actually intended by him and authorized at the time of delivering a blank instrument.
- Sec.20 specifies a stamped instrument and cheque does not bear stamp. But in the case of S.Gopal vs D.Balachandran, it has been held that, if the drawer of a cheque gives authority to payee to fill up the cheque, the cheque is valid.
- Further, as per Sec.44, if the consideration is partly absent, then the liability of the person signing the instrument for part consideration is limited to the actual consideration.
- Therefore, in the given case, Mr.B can recover only the amount as intended by Mr.A i.e., the amount owed by A to B but not the full amount mentioned on the cheque. This is because, B, the payee of cheque, stands in immediate relation with A the drawer of Cheque.
- However, Mr.C being a holder in due course can recover from B and A, the full amount mentioned in the cheque. This is because, signer of incomplete instrument is debarred from asserting, as against the holder in due course, that the instrument is not filled in accordance with the authority given by him.

21. Holder's right to duplicate of lost bill [Section 45A]

- If a bill of exchange is lost before maturity, then the holder may apply to the drawer for a duplicate bill.
- The holder shall give security to the drawer, if required.
- Such security is to indemnify the drawer in case the lost bill is found again.
- If the drawer refuses to give a duplicate bill, then the holder may compel the drawer to do so.

22. Delivery & Negotiation [Sec.46 – to – Sec.48]

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

B. **Types of Delivery** – Delivery may be actual or constructive.

M owes money to N. Therefore, he makes a promissory note for the amount in favour of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return the half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how a rights of the parties are to be adjusted.

- As per Sec.46, the making, acceptance or Indorsement of a PN/BE/Cheque is completed by delivery.
- Delivery may be actual or constructive.
- Delivery must be of the whole instrument and not merely a part of it.
- Contract on a Negotiable Instrument is incomplete and revocable until delivery.
- In the given case, M has delivered only a part of the instrument i.e., one half of PN to N. therefore, the instrument cannot be said to be delivered and accordingly M has a right to revoke the instrument
- Therefore, the claim of N to have the other half of PN is not acceptable.
- The claim of M, to return the half of the PN already sent, is acceptable. This is because, since delivery is not completed and accordingly negotiation is not completed, M can change his mind and revoke the instrument.

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

Referring to the provisions of NI Act, 1881, determine whether the instrument is negotiated to B and B can be treated as a holder.

Applicable Provisions

→ As per Sec.46, The making, acceptance or endorsement of a promissory note, bill of exchange or cheque is completed by delivery.

→ Such delivery may be actual delivery or constructive delivery.

→ Constructive delivery happens by transfer of title.

Analysis & Conclusion

→ In the given case, the banker, who is in possession of the instrument belonging to A, consents to transfer the title of the instrument to B's account.

→ Therefore, constructive delivery happened in the given case.

→ Accordingly, it can be said that the instrument has been negotiated, and B has become the holder of it.

C. Conditional Delivery

a. As against any person, other than holder in due course, it may be shown that instrument is delivered conditionally or for special purpose only and not for the purpose of absolutely transferring the instrument.

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

D. Modes of Negotiation

a. A PN, bill of exchange or cheque payable to bearer is negotiable by the delivery.
b. A PN, Bill of exchange or Cheque payable to order is negotiable by the holder by endorsement and delivery.
c. Negotiation of instrument by delivery or by endorsement and delivery is subject to the provisions of Sec.58, which deals with the instrument obtained by unlawful means or for unlawful consideration.

E. Who may Negotiate [Sec.51]

→ Every maker, drawer, payee or endorsee may negotiate an instrument.
→ Only a person who is in lawful possession of the instrument or Only a person who is a holder of the instrument may negotiate an instrument.
→ Negotiation of an instrument is not permitted, if it is restricted in accordance with Sec.50.

F. Time-Limit for Negotiation [Sec.60]

A person, other than maker, drawee or acceptor, may negotiate an instrument:

a. At or after maturity; but
b. Before payment or satisfaction of the instrument.

23. Endorsement

M drew a cheque amounting to ` 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N endorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881?

- As per Sec.15, when a holder signs a negotiable instrument for the purpose of negotiation, then he is said to be endorsed the instrument and he is called as endorser.
- As per Sec.46, the making, acceptance or Indorsement of a PN/BE/Cheque is completed by delivery.
- Delivery may be actual or constructive.
- In the given case, N has not delivered the instrument to C, therefore there is no endorsement by N to C.

24. Effect of Endorsement [Sec.50]

The endorsement of a negotiable instrument followed by delivery:

a. Transfers the property in the instrument to the endorsee; and
b. Gives a right of further negotiation to endorsee.

Restrictive Endorsement – The endorsement may, by express words:

i. Restrict or exclude the further right of negotiation;
ii. Merely constitute the endorsee as an agent:
   a. To endorse the instrument; or
   b. To receive the amount on the instrument:
      → For the endorser; or
      → For some other specified person.

Exclusion of further negotiation	Non-Exclusion of further negotiation
(a) "pay the contents to C only".	(e) "pay C".
(b) "pay C for my use".	(f) "pay C value in account with the Oriental Bank".
(c) "pay C on order for the account to B".	(g) "pay the contents to C, bring part of the consideration in a certain deed of assignment executed by C to endorser and others".
(d) "the within must be credited to C".	

25. Instrument obtained by unlawful means or for unlawful consideration [Sec.58]

If a negotiable instrument is:

a. Lost; or
b. Obtained from maker, acceptor or holder by means of an offence, fraud or for unlawful consideration,

Then the possessor or endorsee can receive the amount from such maker, acceptor or holder, only if such possessor or endorsee is a holder in due course.

26. Instrument acquired after dishonour or when overdue [Section 59]

- If a person becomes the holder of a negotiable instrument:
  a. After dishonour of such instrument, with the knowledge of such dishonor; or
  b. After maturity of the instrument,

Then he will get same rights as that of his transferor

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

Referring to the provisions of Negotiable Instruments Act, 1881, determine the rights of A

Applicable Provision – Sec.59 discussed above

Analysis & Conclusion

- In the given case, drawer of a bill sold the collateral security in discharge of the instrument and accordingly he does not have any further rights from acceptor.
- A obtained the instrument after maturity. Therefore, by applying provisions of Sec.59, it can be said that A can get only those rights as that of the drawer that is to say he does not get any rights against the acceptor.

Accommodation note or bill

If an instrument is made, drawn or accepted without consideration and a person becomes holder of such instrument after maturity, then he may recover the amount on the instrument from any prior party.

27. Presentment for Acceptance [Sec.61]

A. Place of Presentment

- If the bill is directed to drawee at a particular place (i.e., if the place for presentment is specified in the bill), then bill must be presented for acceptance at that specified place.
- If the place for presentment is not specified, then bill must be presented, if drawee can be found after reasonable search.

B. Time for Presentment

- If time for presentment is specified, then bill must be presented within that time.
- If time for presentment is not specified, then bill must be presented at any reasonable time but before maturity.
- Bill must be presented during business hours on a business day.

C. Mode of Presentment - If authorized by agreement or usage, a bill can be presented for acceptance through registered post.

D. Effect of Non-Presentment – If the bill is not presented for acceptance, then the parties to the instrument (i.e., drawer and endorsers) are not liable to the holder.

E. Effect of Drawee not Found – If drawee cannot be found after reasonable search, then bill is said to be dishonored.

28. Presentment of Promissory Note for Sight [Sec.62]

A. Applicability - A PN payable at a certain period after sight must be presented for sight.

B. Presenter – A promissory note must be presented for payment by a person entitled to demand payment i.e., the holder of the instrument

C. Time for Presentment – PN must be presented for sight within reasonable time after it is made and during business hours on a business day.

D. **Effect of Non-Presentment** – If the PN is not presented for sight, then the parties to the instrument (i.e., endorsers) are not liable to the holder.

29. Presentment for Payment [Sec.64]

1. For payment, PN must be presented to the maker, bill of exchange to the acceptor and the cheque to the drawee.
   If the drawee bank is suspicious upon the electronic image of a truncated cheque as to fraud, forgery or tampering, and if it demands so, the truncated cheque itself must be presented for verification.
2. **Mode of Presentment** - If authorized by agreement or usage, a NI can be presented for payment through registered post.
3. **Time for Presentment**
   a. In order to charge the drawer, Cheque must be presented at the bank on which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer. This provision is subject to Sec.84 which deals with consequences of cheque not duly presented.
   b. A NI payable on demand must be presented for payment within reasonable time after it is received by holder. This provision is subject to Sec.31, which deals with the liability of Drawee.
   c. PN and Bill must be presented for payment during the usual business hours and cheque must be presented within banking hours.
4. **Exception to PN** - Where a promissory note is payable on demand and is not payable at a specified place, presentment is not necessary in order to charge the maker thereof.
5. **Effect of Default in Presentment** - If a NI is not presented for payment then; other parties (i.e., parties other than maker, acceptor or drawee) are not liable to the holder.

30. When presentment unnecessary [Sec.76]

In the following cases, present for payment is not necessary and the instrument is treated as dishonored on the due date for presentment:

1. If the maker, acceptor or drawee intentionally prevents the presentment.
2. If place for presentment is closed on a business day during business hours.
3. If person liable to pay is not found at that place during usual business hours.
4. If the person liable to pay cannot be found after reasonable search.
5. If a party agrees to pay regardless of non-presentment.
6. If a party makes part payment of the amount due on the instrument or agrees to pay, knowing that instrument is not presented for payment.
7. If a party waives his right to take advantage of default in presentment.
8. If the drawer could not suffer damage due to non-presentment.

31. Payment & Interest

A. Payment to whom

- In order to discharge the:
  a. Maker of a promissory note or cheque and
  b. Acceptor of a bill of exchange,

payment must be made to the HOLDER of the instrument.

- If the instrument is payable to bearer or if the instrument is endorsed in blank then, the maker, acceptor or endorser are discharged from their liability to all parties, if such maker, acceptor or endorser makes the PAYMENT IN DUE COURSE

B. Interest when rate specified

- If rate of interest is specified in the instrument, then interest shall be paid at such rate.
- Interest is paid on the principal amount due on the instrument.
- Interest is paid from the date of the instrument and:
  a. Until the realization of such amount or
  b. Until such date after filing a suit, as the court directs.

C. Interest when rate not specified

- If rate of interest is not specified in the instrument, then interest shall be payable at 18% p.a.
- Such rate is applicable irrespective of any agreement between the parties.
- Interest shall be paid from the date at which the payment is due and:
  a. Until the realization of such amount or
  b. Until such date after filing a suit, as the court directs.
- If the instrument is dishonored by non-payment and endorser is charged, then he is liable to pay interest from the date he receives notice of dishonor.

32. Modes of discharge from liability [Sec.82]

The maker, acceptor or endorser is discharged from their liability towards:

a. Holder and all parties claiming under him, if such holder cancels the acceptor or endorser's name with intent to discharge them.
b. Holder and all parties deriving title from him, if such holder renounces his rights against such maker, acceptor or endorser.
c. All parties, if the instrument is payable to bearer or is endorsed in blank and the payment is made in due course.

33. Discharge by allowing drawee more than 48 hours to accept [Section 83]

If the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holidays, to consider whether he will accept the bill or not,

Then all previous parties not consenting to such allowance of more than 48 hours, are thereby discharged from liability to such holder.

34. Discharge of Drawer if cheque is not duly presented and the drawer suffers damage [Sec.84]

1. Drawer of a cheque is discharged, if the:
a. The cheque is not presented within reasonable time from the date of its issue;
b. Drawer has balance with the banker at the time when the cheque is supposed to be presented; &
c. Drawer has suffered damages due to delay in presentment of cheque,
2. Reasonable time shall be determined considering the nature of the instrument, usage of trade and the facts of the case.
3. In case the drawer is discharged as discussed above, the holder becomes the creditor of the banker and is entitled to recover the amount from the banker.

A Draws a cheque for ₹ 1,000 and when the cheque ought to be presented, A has funds at the bank to meet the payment of the cheque. Then bank fails before the cheque is presented. Decide the liability of 'A' under the Negotiable Instruments Act, 1881. What would be your answer if the bank fails before the cheque could be presented in ordinary course.

Applicable Provision – Sec.84 discussed above.

Analysis & Conclusion

- In the given case, Holder does not present the cheque within reasonable time and bank becomes insolvent and because of such insolvency and delay in presentment of cheque, A has suffered damage.
- Therefore by applying Sec.84, it can be said that:
  a. A is discharged from liability to the holder; But
  b. The holder can prove against the banker for the amount of the cheque.
- If the bank fails before the cheque could be presented in ordinary course, A is not discharged because though he has suffered damage due to insolvency of banker but such damage is not due to delay in presentment of cheque as the banker becomes insolvent before the ordinary course for presentment.

35. Discharge of Drawee [Sec.85]

1. Where a cheque payable to order appears to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
2. Where a cheque is originally payable to bearer, the drawee is discharged by payment in due course to the bearer of the instrument, even if:
   a. There is an endorsement appearing on the instrument; and
   b. Such endorsement restricts or excludes further negotiation

A cheque is drawn payable to "B or order". It is stolen and the thief forges B's endorsement and endorses it to C. The banker pays the cheque in due course. Can B recover the money from the banker?

Applicable Provision – Sec.85 discussed above

Analysis & Conclusion –

- In the given case, the cheque is payable to B and the signature of B is forged. Therefore, by applying Sec.85, it can be said that Drawee bank is discharged from liability, if payment is made in due course.
- The true owner, B, cannot recover the money from the drawee bank.

36. Effect of Material Alteration [Sec.87]

A. Meaning of Material Alteration

- The term 'Material Alteration' is not defined in the NI Act, 1881.
- In judicial decisions, it has been held that "A material alteration is one which varies the rights, liabilities, legal position of the parties".

B. Effect of Material Alteration

- Any material alteration of a negotiable instrument makes the instrument void.
- Any material alteration made by endorsee, discharges the endorser from his liability towards the endorsee.

C. Exceptions to above effect

- Instrument does not become void against any persons who are parties at the time of alteration and consented for alteration.
- Instrument does not become void, if alteration is done to carry out the common intention of the original parties.

D. Material Alterations Authorized by Act – The following material alterations have been authorized by the Act and do not require any authentication:

1. Sec.20 – Filling of blanks in inchoate instrument.
2. Sec.49 – Conversion of blank endorsement into full endorsement.
3. Sec.86 – Qualified Acceptance.
4. Sec.125 – Crossing of Cheuqe.

Example-1: A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument.

Effect: As per Sec.19, A promissory note on which no time for payment is specified is payable on demand. Therefore insertion of the words "on demand" where no time is specified, is not a material alteration as it does not alter the business effect of the instrument.

Example-2: The holder of the bill inserts the word "or order" in the bill

Effect: As per Sec.13, A bill of exchange is payable to order, if it is expressed to be so payable or if it is expressed to be payable to a particular person. Therefore insertion of the words "or order" is not a material alteration as it does not alter the business effect of the instrument.

Example – 3: The holder of the bearer cheque converts it into account payee cheque.

Effect: Provisions of Sec.87 are subject to Sec.125 which provides for crossing of cheuqe. Therefore, conversion of bearer cheque into account payee cheque is authorized by the Act and as such the instrument does not become void and does not require the authentication from prior parties.

37. Payment of Instrument on which alteration is not apparent [Sec.89]

- Where a promissory note or bill of exchange has been materially altered but such alteration is not apparent on the instrument to a man of ordinary prudence then,
  If any person pays the amount on the instrument, he shall be discharged from his liability on the instrument.
- Where a cheque has been materially altered but such alteration is not apparent or where at the time of presentment, cheque does not appear to be crossed then,
  If the banker pays the amount on the cheque, he shall be discharged from his liability on the instrument.
- The banker or any other person is discharged as above if:
  a. The payment is made according to the apparent tenor; and
  b. The payment is made in due course.
- Such payment by a banker or any other person shall not be questioned by reason of such alteration or crossing.

38. Dishonor of Negotiable Instrument

A. Dishonor by Non-Acceptance [Sec.91]

1. A bill of exchange is said to be dishonored by non-acceptance, if:
   a. The drawee or one of several drawees not being partners makes default in acceptance.
   b. The presentment for acceptance is excused and the bill is not accepted.
2. A bill of exchange may be treated as dishonored, if:
   i. The drawee is incompetent to contract.
   ii. The acceptance is qualified

B. Dishonour by Non-Payment [Sec.92]

A promissory note, bill of exchange or cheque is said to be dishonored by non- payment, when

a. The maker of the note,
b. The Acceptor of the bill or
c. Drawee of the cheque,

makes default in payment when required to do so.

39. Notice of Dishonor [Sec.93]

- When a promissory note, bill of exchange or cheque is:
  a. Dishonored by non-acceptance; or
  b. Dishonored by non-payment,

Then, the:

i. Holder of the instrument; or
ii. Any other party liable on the instrument,

Must give notice of dishonor to all the parties whom they seeks to make liable on the instrument.

- Notice of dishonor is not required to be given to the:
  a. Maker of a promissory note.
  b. Acceptor of a bill.
  c. Drawee of Cheque.

When notice of dishonour is unnecessary [Section 98] – Notice of dishonor is not necessary:

1. If the party entitled to notice waives it.
2. If the drawer has countermanded the payment.
3. When no damages could be suffered due to lack of notice.
4. When the party entitled to notice cannot be found after due search.
5. When the party bound to give notice is unable to give notice without any fault of his own.
6. When the acceptor is also a drawer.
7. If the promissory note is not negotiable.
8. When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

X having a balance of ` 1,000 with his bankers and having no authority to over draw, drew a cheque for ` 5,000/-. The cheque was dishonored when duly presented for repayment. Is notice of dishonor necessary?

- As per Sec.98(c) notice of dishonor is not necessary, when the party could not suffer damage for want of notice.
- In the case of Sunmick Exports Pvt Ltd vs Deutsche Bank, it has been held that when from the conduct of the party, it is apparent that they were aware of the liability, then the case is covered by Sec.98(c).
- For this purpose, is sufficient if it is shown that at the time of drawing the instrument, there were no funds belonging to the drawer in the hands of the Drawee. [Subrao vs Sitaram]
- In the given case, X draws a cheque for an amount of ₹ 5,000 though he has balance of only ₹ 1,000 with his banker and does not have authority to over draw. Therefore, it can be said that he is aware of the possibility of dishonor of cheuqe and could not suffer damage due to lack of notice.
- Accordingly notice of dishonor is not necessary as per Sec.98(c).

X, drawer of a Bill informs Y, the holder of the bill that the bill would be dishonored on the presentment for payment. Is notice of dishonor necessary?

- As per Sec.98 (b), notice of dishonor is not necessary in order to charge the drawer, when such drawer has countermanded the payment.
- In the given case, X, the drawer informs Y, the holder, that bill will be dishonored when presented for payment. It seems that X has countermanded the payment.
- Therefore as per Sec.98(b), notice of dishonor is not necessary.

40. Noting & Protest

A. Noting [Sec.99]

1. When a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public.
2. Such noting is done:
   a. Upon the instrument, or
   b. Upon a paper attached thereto, or
   c. Partly upon each.
3. Noting must be made within a reasonable time after dishonour.
4. Noting must specify the:
   a. Date of dishonour,
   b. The reason assigned for such dishonour, or
   c. The reason why the holder treats it as dishonored, and
   d. The notary's charges.

B. Protest [Sec.100]

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

<u>Protest for Better security</u>

1. When the acceptor of a bill of exchange:
   a. Has become insolvent; or
   b. Credit has been publicly impeached (i.e., allegations of crime has been made against acceptor),

Then the holder may cause a notary public to demand better security from the acceptor.

2. Such security to be demanded within reasonable time.
3. If the acceptor refuses to give better security, then notary may note and certify the same.
4. Such a certificate is called protest for better security.

41. Presumptions as to negotiable instruments [Sec.118]

1. Every negotiable instrument was made, drawn, accepted or endorsed without consideration.
2. Every negotiable instrument was made on the date appearing on it.
3. Every bill of exchange was accepted within reasonable time after its date and before maturity.
4. Every transfer of negotiable instrument was made before its maturity.
5. Endorsements of negotiable instrument were made in the order as appearing on the instrument.
6. Lost promissory note or bill of exchange was duly stamped.
7. Every holder of a negotiable instrument is a holder in due course. If the instrument is obtained by means of an offence or fraud or for unlawful consideration, the burden lies on holder to prove that he is a holder in due course.

The above presumptions are made until the contrary is proved.

42. Dishonor of Cheque [Sec.138]

A. <u>Punishment for the offence</u> – A person who committed an offence shall be punishable:

a. With imprisonment for a period which may extend up to 2 years; or
b. With fine which may extend up to twice the amount of the cheque; or
c. With both.

B. <u>Pre-requisites for an offence</u> – A person shall be deemed to have committed an offence u/s 138, if the following conditions are satisfied:

1. Cheque is issued for discharge of whole or part of legally enforceable debt or other liability.
2. Cheque is presented to the bank:
   a. Within 3 months from the date of its issue; or
   b. Within the period of its validity,

Whichever is earlier.

3. Cheque is returned by bank as unpaid due to:
   a. Insufficient amount in the account of drawer maintained with the bank; or
   b. The cheque amount exceeds the drawer's arrangement with the bank.
4. Notice is given by payee or holder-in-due course to the drawer within 30 days of receipt of information from the bank regarding return of the cheque
5. Drawer fails to make the payment within 15 days of the receipt of said notice.

X issued a postdated cheque to Y on the account of discharge of its liability. Further, X instructed to the bank to make the stop payment due to unavailability of the adequate amount in the account. State whether Mr.X is liable for dishonor of Cheque.

Applicable Provision and Relevant Case Law

- As per Sec.138, a person is deemed to have committed an offence if the cheque drawn by him is returned by bank as unpaid due to insufficiency of funds.
- In the case of **Modi Cements Ltd vs Kuchil Kumar Nandi**'s case, it has been held that, once a cheque is issued by the drawer, he is bound by it and merely because he issued a notice for stoppage of payment, it will not preclude an action U/s 138. Therefore an offense U/s 138 is said to be committed, even if the customer informs the bank to stop payment and to the payee/holder not to present the cheque.
- To attract the punishment u/s 138, the cheque should have been presented to the bank within 3 months from the date of issue.
- In the case of **Anil Kumar vs Gulshan Rai**, the Supreme Court held that a post-dated cheque shall be deemed to have been issued on the date appearing on the cheque.

Analysis & Conclusion

- In the given case, Mr.X has issued post –dated cheque and instructed the bank to stop the payment on the cheque.
- Applying the judgment given in Modi Cements Ltd, it can be held punishment is attracted u/s 138, even if Mr.X has instructed the bank to stop the payment.
- Applying the judgment given in Anil Kumar case, 3 months' time limit for presenting the cheque should be calculated from the date appearing on the cheque.
- Therefore, in the given case, Mr.X will be liable for dishonor of cheque.

43. Offences by companies [Section 141]

Punishable Person

- If the person committing an offence u/s 138 is a company, then:

a. Every person who was in charge of and was responsible for the conduct of business of the company, at the time the offence was committed; and
b. The Company,

Shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

- If it is proved that the offence has been committed with the consent or connivance of any director, manager, secretary or other officer of the company,

  then such director, manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Exception from Punishment

1. The above said person is not punishable, if he proves that:
   a. The offence was committed without his knowledge; or
   b. He had exercised all due diligence to prevent the commission of such offence.
2. Where a person is nominated as a director of a company by virtue of his holding any office or employment in Government or Government Corporation, he shall not be liable for prosecution.

Definitions

- "Company" means anybody corporate and includes a firm or other association of individuals;
- "Director", in relating to a firm, means a partner in the firm.

A promoter who has borrowed a loan on behalf of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently, the cheque was dishonored and the compliant was lodged against him. Is he liable for an offence under section 138?

- According to Section 138, where any cheque drawn by a person on an account maintained by him is dishonored, such person shall be deemed to have committed an offence and is liable for action u/s 138.
- According to Sec.142, If the person committing an offence u/s 138 is a company, then:
  a. Every person who was in charge of and was responsible for the conduct of the business of the company, at the time the offence was committed;
  b. Director, manager, Secretary or other officer of the company with whose consent or connivance offence was committed,

Shall be deemed to be guilty of offence and shall be proceeded against and punished accordingly.

- In the given case:
  a. The cheque was not drawn on account maintained by him but was drawn on an account maintained by the company
  b. The promoter is neither a director nor a person-in-charge of the company.
- Therefore the promoter is not liable for an offence u/s 138.

44. Cognizance of offences [Sec.142]

1. Court shall take cognizance (consider or take note of) of offence punishable u/s 138, only upon a complaint made in writing by a payee or holder in due course.
2. Such complaint shall be made within 1 month from the expiry of 15 days referred to in clause (c) of proviso to sec.138.
3. A court inferior to Metropolitan Magistrate or a Judicial Magistrate of the first class shall not try an offence punishable u/s 138

4. In case of cheque **delivered for collection through an account**, the court having jurisdiction over the **place** where branch of the bank, **where the payee or holder in due course maintains the account**, is situated shall try an offence u/s 138.
5. In case of cheque **presented** for payment by the payee or holder in due course, **otherwise than through an account**, the court having jurisdiction over the place, where the branch of the drawee bank, **where the drawer maintains the account**, is situated shall try an offence u/s 138.

45. Power of court to try cases summarily [Sec.143]

1. For trial of offences under Chapter-XVII, the provisions of Sec.262 to Sec.265 of the Code of Criminal Procedure shall apply.
2. In the case of any conviction in a summary trial under this section, the Magistrate may pass a sentence of imprisonment for a term not exceeding 1 year and an amount of fine exceeding ₹ 5,000.
3. The trial of a case under this section shall, so far as practicable, be continued from day to day until its conclusion.
4. An endeavor shall be made to conclude the trial within six months from the date of filing of the complaint.
5. In the course of summary trial, if it appears to the magistrate that:
    a. The nature of the case is such that a sentence of imprisonment for a term exceeding 1 year may have to be passed; or
    b. It is, for any other reason, undesirable to try the case summarily,

the Magistrate shall after hearing the parties, record an order to that effect and rehear the case in the manner provided by Code of Criminal Procedure.

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