

Practical Questions In Negotiable Instruments Act

Pr.1. State whether the following statements are promissory notes or not?

- a. "I promise to pay B or order Rs. 500".
- b. "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received".
- c. "Mr. B, I.O.U. Rs. 500".
- d. "I am liable to B, in a sum of Rs.500 to be paid by instalments.
- e. "I am bound to pay the sum of Rs.500 which I received from you."
- f. "I promise to pay B Rs. 500 and all other sums which shall be due to him".
- g. "I promise to pay B Rs. 1,000 and the fine according to the rules".
- h. "I promise to pay B Rs. 500, first deducting there out any money which he may owe me".
- i. "I promise to pay B Rs. 500 by instalments with a provision that no payment shall be made after my death". Master Minds.
- j. "I promise to pay B Rs. 500 first deducting there out any money which he may owe me".
- k. "I promise to pay B a sum of Rs.500 when convenient or able".
- l. "I promise to pay B Rs. 500 when he delivers the goods".
- m. "I promise to pay B Rs. 500 seven days after my marriage with C".
- n. "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum".
- o. "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next"
- p. "I promise to pay B Rs. 200 and deliver one quintal of paddy".
- q. "I promise to pay B in 20 shares and 10 bonds of XY Ltd".
- r. "I promise to deliver to B 100 bags of wheat".

Sol.:

- a. **Yes** – since it is an absolute promise to pay a specific sum of money to a specific person or his order.
- b. **Yes** – The maker is acknowledging his debt **and** also promises to pay for the value received.
- c. **No** - It is a mere acknowledgement of debt and there is not specific promise to pay the sum.
- d. **No** - It is a mere acknowledgement of debt and there is not specific promise to pay the sum.
- e. **No** – In this case drawer is agreeing that he is bound to pay. But he is promising to pay the sum.
- f. **No** –The amount is uncertain. (In commercial transactions the amount should be certain.)
- g. **No** – same as above.
- h. **No** – same as above.
- i. **No** – In this case death is a certain event and a negotiable can be drawn on the basis of such certain event. But this instrument is uncertain as to the amount. In commercial transactions certainty is very important.
- j. **No** – Since the amount is uncertain. ("")
- k. **No** – A negotiable instrument can't be drawn on the basis of future uncertain event. In this case it is uncertain as to date of payment.
- l. **No** – A negotiable instrument can't be drawn on the basis of future uncertain event. In this case it is uncertain as to the date of payment. The other party may never deliver the goods.
- m. **No** – Negotiable instruments can be drawn to be payable on the basis of some future certain event. But marriage with C is an uncertain event. Maker may never marry C.
- n. **No** – Negotiable instruments can be drawn to be payable on the basis of some future certain event. In this case D's death is a certain event. But D may not leave enough sum. This is an uncertain event. Master Minds.

- o. No** – A negotiable instrument must be drawn for money and money only. In this case it is written for partly cash and partly kind.
- p. No** – same as above.
- q. No** – same as above.
- r. No** – Same as above.

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

Sol.: In this case the drawer is acknowledging the receipt of money. But there is no specific promise to pay a specific sum of money. [Bal Mukand Vs. Munna Lal Ramji Lal]

Pr.3. "We have received the sum of Rs.9,000 from shri R.R.Sharma. This amount will be repaid on demand. We have received this amount in cash.

Sol.: In this case there is an acknowledgement of receipt of money. On the other hand drawer is also promising to pay a specific sum of money on demand. Held, this is a promissory note [Surjit Singh v. Ram Ratan]

Pr.4. "Mr. Little, Please let the bearer have \$7 and oblige." Signed by A. is this a bill of exchange?

Sol.: This is not a bill of exchange as it contains a request and not an order [Little Vs. Slackford]

Pr.5 'I promise to pay B Rs.550 and all other sums which shall be due to him'. Is it a promissory note? State reasons.

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Sol: It is not a promissory note since the amount payable is not a certain sum. The expression 'all other sums which shall be due to him' makes the amount indefinite or incapable of being made definite. Section 4 of the Negotiable Instruments Act which defines Promissory Note reads:

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

Thus, to constitute a valid promissory note, the amount payable must be a certain sum or capable of being made certain.

Pr.6. Mr. X executes a promissory note in the following form, 'I promise to pay a sum of Rs.10,000 after three months'. Decide whether the promissory note is a valid promissory note.

Sol: The promissory note is unconditional promise in writing. Amount is certain. It is not dated, but dating is not a mandatory requirement. Filling of date later will not be 'material alteration' as long as date put is not before the date of actual execution. Thus, the instrument fulfils all requirements of promissory note as per Negotiable Instruments Act.

However, name of payee is not mentioned and hence it is a bearer instrument. As per RBI Act, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per RBI Act and cannot be legally enforced.

Pr.7. Mr. X promises by way of a promissory note to pay Mr.Y his partner a sum of Rs.10,000 in the event of later's retirement from partnership firm. Decide giving reasons for your answer whether the Promissory Note is a valid promissory note.

Sol: The promise is conditional on an event which is not certain. Hence, it is not a promissory note.

Pr.8. Examine the validity of the following Promissory Notes: (a) I owe you a sum of Rs.1,000. 'A' tells 'B'. (b) 'X' promises to pay 'Y' a sum of Rs.10,000, six months after 'Y's marriage with 'Z'.

Sol:

- a. It is only acknowledgement of debt. It is not a promise to pay. Thus it is not a promissory note
- b. Promissory note can be based on future event. The event should be certain, but date on which it will happen need not be certain. In this case, the event of Y's marriage with 'Z' is not certain, as Y may not marry or marry some other person. Hence, this is not a promissory note.

Pr.9. S writes "I promise to pay 'B' a sum of Rs.500, seven days after my marriage with 'C'". Is this a promissory note?

Sol: Promissory note can be based on future event. The event should be certain, but date on which it will happen need not be certain. In this case, the event of S's marriage with 'C' is not certain, as S may not marry or marry some other person. Hence, this is not a promissory note.

Pr.10. State, giving reasons, whether the following instruments are valid promissory notes - (i) X promises to pay Y, by a promissory note, a sum of Rs.5,000, fifteen days after the death of B. (ii) X promises to pay Y, by a promissory note, Rs.500 and all other sums, which shall be due.

Sol:

- a. The future event i.e. death of B is certain, though date is uncertain. The instrument is valid.
- b. the sum payable is not certain. Hence, it is not a negotiable instrument.

Pr.11. A bill is drawn as "Pay to X or order the sum of ten thousand rupees". In the margin the amount stated is Rs 1,000. Discuss the legal position.

Sol: This bill is a valid bill for Rs 10,000 because in case of discrepancy between the amount stated in figure and in words, the amount stated in words shall be the amount of the instrument.

Pr.12. Which of the following is a bill of exchange? Give reasons.

- a. "To Anderson, Dear Sir, We hereby authorise you to pay on our account, to the order of Wolf, the sum of six thousand rupees."
- b. "Rs. 500." "Pay to my order the sum of five hundred rupees, for value received." It is neither signed by any person as drawer nor addressed to any person as drawee. It is accepted by Lam.

Sol: Sec.5 of the Negotiable Instruments Act reads as "A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money, only to, or to the order of a certain person or to the bearer of the instrument."

- a. In the given case there is no definite order to pay the sum of money. So, it is not a bill of exchange.
- b. In the given case, drawee is neither named nor indicated with certainty. So, it is not a bill of exchange.

Q.13. 'A' signs, as maker, a blank stamped paper and gives it to 'B', and authorises him to fill it as a note for Rs. 500, to secure an advance which 'C' is to make to 'B'. 'B' fraudulently fills it up as a note for Rs.2,000, payable to 'C', who has in good faith advanced Rs. 2,000. Decide, with reasons, whether 'C' is entitled to recover the amount, and if so, up to what extent?

Sol: Section 20 of the Negotiable Instruments Act, 1881 provides that when one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instrument then in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamps. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same to any holder in due course for such amount. A person other than holder in due course is not authorised to recover anything in excess of the amount intended by him to be paid thereunder.

The principle contained in section 20 is that a person who gives another possession of his signature on blank stamped paper prima facie authorises the latter as his agent to fill it up and give to the world the instrument as accepted by him. The principle is one of estoppel. In the given problem 'A' is estopped from setting up B's fraud, and 'C' is entitled to recover Rs. 2,000/- from 'A' because 'C' has obtained it as a holder in due course. This liability does not stand of a person other than the holder in due course. 'C' as a holder in due course is

entitled to enforce payment of the full amount even though the authority has been exceeded but it is necessary that the sum ought not to exceed the amount covered by the stamp. [Lloyds Bank vs. Cooke (1907) KB 794]

P.14. A signs, as the maker, a blank stamped paper and gives it to B and authorises him to fill it as a note for Rs. 2,000, it being the amount of advances made by B to A. B fraudulently fills it up as a note for Rs. 3,000 and then, for consideration, endorses it to C. Can C enforce the instrument?

OR

'A' signs, as maker, a blank stamped paper and gives it to 'B', and authorises him to fill it as a note for Rs. 500, to secure an advance which 'c' is to make to 'B'. 'B' fraudulently fills it up as a note for Rs. 2,000, payable to 'C', who has in good faith advanced Rs. 2,000. Decide, with reasons, whether 'c' is entitled to recover the amount, and if so, upto what extent?

Sol: A duly signed blank stamped instrument is called an **inchoate** instrument. According to Section 20 of the Negotiable Instruments Act an Inchoate instrument is an incomplete Instrument in some respect. When a person signs and delivers blank or incomplete stamped paper to another, such other is authorised to complete it for any amount not exceeding the amount covered by the stamp. The person so signing is liable upon such instrument, to any holder in due course for any amount. **But any other person can't claim more than the amount intended by the drawer of the instrument.**

Thus, for C's claim to be valid and enforceable, two things are important:

- That C is a holder in due course, i.e., there should be valid consideration and he would have obtained it in good faith and before maturity.
- The amount filled in i.e. Rs. 3,000 is covered by stamp amount.

In Negotiable Instruments act every holder is deemed to be a holder in due course. Thus the other party has to establish that C is not a holder in due course.

P.15. State with reasons whether each of the following instruments is bearer or order:

- A bill is drawn payable to X or bearer.
- A bill is drawn payable to X who endorses it in blank in favour of Y.
- A bill is drawn payable to X.
- A bill is drawn payable to X or order.
- A bill is drawn payable to X only.

Sol: First state the rules related bearer instrument and order instrument.

Case	Decision	Reason
(a)	Bearer instrument [Explanation II to Sec.13 (1)]	It is expressed to be so payable.
(b)	Bearer instrument [Explanation II to Sec.13(1)]	The last endorsement is an endorsement in blank.
(c)	Order instrument [Explanation I to Sec.13 (1)]	It is expressed to be payable to a particular person and does not contain any words which prohibit transfer or indicate any intention that it shall not be transferred.
(d)	Order instrument [Explanation I to Sec.13(1)]	It is expressed to be so payable.
(e)	Not a negotiable instrument at all [Explanation I to Sec. 13(1)]	The use of word 'only' prohibits or indicates an intention that bill shall not be transferred.

P.16. State with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instrument:

- A bill drawn in Delhi upon a merchant in Agra and accepted payable in London.

- b.** A bill drawn in Delhi upon a merchant in London and accepted payable in Agra.
- c.** A bill drawn in Delhi upon a merchant in London and accepted payable in London.
- d.** A bill drawn in London upon a merchant in Agra and accepted payable in Delhi.
- e.** A bill drawn in Delhi on a merchant in Agra but endorsed in London.
- f.** A bill drawn in London on a merchant in Agra and endorsed in Delhi.

Sol: First state the provisions related to Inland instrument and Foreign instrument.

Case	Decision	Reason
(a)	Inland instrument [Section 11]	It is drawn in India and the drawee is resident in India.
(b)	Inland instrument [Section 11]	It is drawn in India and is payable in India.
(c)	Foreign Instrument [Section 12]	It is not accepted payable in India and at the same time its drawee is not a resident of India.
(d)	Foreign instrument [Section 12]	It is not drawn in India.
(e)	Inland instrument [Section 11]	It is drawn in India and drawee is resident in India.
(f)	Foreign instrument [Section 12]	It is not drawn in India.

A bill should be drawn in India and should either be payable in India or drawee must be resident of India.

P.17. State with reasons whether each of the following instrument is an Ambiguous Instrument or Fictitious Instrument:

- a.** A bill is drawn by A, an agent, acting within the scope of his authority, upon his principle P.
- b.** X draws a bill on Y who is a fictitious person and negotiates it himself.
- c.** X draws a bill on Y who is a minor.
- d.** A bill is drawn by Delhi branch of Dena Bank upon its Bombay branch.
- e.** A bill is drawn upon Y who is a major person payable to Z who is a fictitious person.
- f.** A bill is drawn upon Y as payable to Z. The drawer is a fictitious person.

Sol: First state the provisions related to ambiguous instrument and fictitious instrument.

Case	Decision	Reason
(a)	Ambiguous instrument [Sec.17]	The drawer and the drawee are the same person.
(b)	Ambiguous instrument [Sec.17]	The drawee is a fictitious person.
(c)	Ambiguous instrument [Sec.17]	The drawee is not competent to contract.
(d)	Ambiguous instrument [Sec.17]	The drawer and the drawee are the same person.
(e)	Fictitious instrument [Sec.42]	The payee is a fictitious person.
(f)	Fictitious instrument [Sec.42]	The drawer is a fictitious person.

For fictitious drawee must be fictitious person or must be same as drawer or its agent or an incompetent person.

P.18. State with reasons whether each of the following instruments is an Inchoate Instrument or not:

- a.** X signs and delivers an unstamped and blank promissory note to Y.
- b.** X delivers a stamped and blank promissory note to Y without his signature.
- c.** X signs a stamped and blank promissory note and keeps in his safe.
- d.** X signs and delivers a stamped and blank promissory note to Y.
- e.** X signs and delivers a stamped and complete promissory note to Y.

Sol: First write the provisions related to Inchoate instrument (Section 20).

Case	Decision	Reason
(a)	No	It is not stamped.
(b)	No	It has not been signed by the maker.
(c)	No	It has not been delivered.
(d)	Yes	There is a delivery of a signed, stamped & blank instrument.
(e)	No	It is not incomplete.

For inchoate instrument there must be valid signatures, stamps, delivery only amount needs to be filled.

P.19. State with reasons whether each of the following instruments is a Time Instrument or Demand Instrument:

- I promise to pay B Rs 500.
- I promise to pay B Rs 500 on Demand.
- Pay Rs 500 at sight.
- Pay Rs 500 on presentment.
- I promise to pay B Rs 500 after 3months.
- I promise to pay B Rs 500 on 1st Jan. 1997.
- I promise to pay Rs 500 after sight.
- I promise to pay B Rs 500 after C' s Death.
- Pay B Rs 500 on or before 1st Jan. 1997.

Sol: First state the provisions related to order instruments and time instruments.

Case	Decision	Reason
(a)	Demand instrument [Sec.19 & 21]	No time for payment has been specified.
(b)	Demand instrument [Sec.19 & 21]	It is expressed to be so payable.
(c)	Demand instrument [Sec.19 & 21]	The expression 'at sight' means 'on demand'.
(d)	Demand instrument [Sec.19 & 21]	The expression 'on presentment' means 'on demand'.
(e)	Time instrument [Sec.21]	Fixed period has been specified.
(f)	Time instrument [Sec.21]	A particular day has been specified.
(g)	Time instrument [Sec.21]	After sight means after presentment for sight.
(h)	Time instrument [Sec.21]	It is payable on the happening of an event (i.e. death) which is certain to happen.
(i)	Not a negotiable instrument at all	Time is uncertain.

P.20. X accepts a bill for the accommodation of A (drawer). A transfers it to B, without consideration. B transfers it to C without consideration. C transfers it to D for value. D transfers it to E, without consideration. On the due date, the bill dishonored by X. Discuss the rights of A, B, C, D and E.

Sol:

- E cannot recover from D, C cannot recover from B, B cannot recover from A, and A cannot recover from X because a negotiable instrument without consideration creates no obligation of payment between the parties to the transaction.
- D and E can recover from X, A, B and C because any holder for consideration (D), and every subsequent holder deriving title from him (E) can recover the amount due from the transferor for consideration or any prior party thereto.**

P.21. X accepts a bill for the accommodation of A (drawer), A transfers it to B for value. The bill is dishonoured by X on the due date. B collects the amount from A. Can A sue X for the recovery of the amount?

Sol: In general, accommodating parties are liable on the bill to the same extent as that of an ordinary bill. However, they are not liable to the accommodated party - the person for whose benefit they signed the instrument. So, A cannot sue X for the recovery of the amount in view of the specific provision to that effect provided in Explanation I to section 43.

P.22. X accepts a bill for the accommodation of A (drawer). A transfers it to B for value after maturity. B becomes the holder in good faith. Discuss the rights of A and B.

- a. A cannot recover from X because an instrument without consideration creates no obligation between the parties to the transaction as per the provisions of Section 43.
- b. **B can recover from X and A, because a bonafide holder for value can recover from any prior party even though he acquires the instrument after maturity as per the provisions of Proviso to Sec.59.Only in accommodation instruments.**

P.23. A owes money to B. A makes a promissory note for the amount in favour of B. For safety of transmission he cuts the note in two halves and posts one half to B. He then changes his mind and calls upon B to return the half of the note which he had sent. B requires A to send the other half of the promissory note. Decides as to how the rights of the parties are to be adjusted.

Sol: The relevant question in the given situation is whether the making of the promissory note is complete when one half of the note was delivered to B. Under Section 46 of the Negotiable Instruments Act, 1881, the making of a promissory note is completed by delivery, actual or constructive. Delivery, of course, refers to the delivery of the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. Therefore, the claim of B to have the other half of the Promissory note sent to him is not maintainable. Thus A is justified in demanding the return of the first half sent by him.

P.24. X needs Rs.10,000 but cannot raise this amount because his credit is not good enough. Y whose credit is good, accommodates X by giving him a pronote made out in favour of X, though Y owes no money to X. X endorses the pronote to Z for value received. Z who is a holder in due course, demands payment from Y. Can Y refuse and plead the arrangement between him and X?

Sol: According to Section 120 of the Negotiable Instruments Act, in a suit by holder in due course, maker of a promissory note and no drawer of a bill of exchange or cheque are not permitted to deny the validity of the instrument, as originally made or drawn. Thus, Z is entitled to receive payment on the instrument.

P.25. What is meant by "Payment of Due Course" in respect of a negotiable instrument? A cheque originally expressed payable to bearer is subsequently made payable to order by endorsement in full. Is it in order for the drawee bank to pay the amount to the bearer of the cheque?

Sol: In the cases of an instrument payable to order the drawee of a bill or maker of a note is discharged by payment in due course if it is indorsed by or on behalf of the payee. But, in the case of a cheque there is an exception. The **rule is once a bearer instrument is always a bearer instrument**. Hence the banker will be discharged by payment in due course to the bearer of a cheque which was originally expressed payable to bearer even though it was subsequently endorsed in full [Section 85(2)].

P.26. A cheque originally expressed payable to bearer is subsequently made payable to order by endorsement in full. Is it an order for drawee bank to pay the amount to bearer of the cheque?

Or

Comment on the following statement with reference to provisions of Negotiable Instruments Act – 'Once a bearer instruments always a bearer instrument'.

Sol: A bearer instrument is one, which can change hands by mere delivery of the instrument. The instrument may be a promissory note or a bill of exchange, or a cheque. It should be expressed to be so payable or on which the last endorsement is in blank. (Explanation 2 to Section 13 of the Negotiable Instrument Act 1881). Under Section 46 where an instrument is made payable to bearer, it is transferable merely by delivery, i.e. without any further endorsement thereon. But this character of the instrument can be subsequently altered. Section 49 provides that a holder of negotiable instrument endorsed in blank (i.e. bearer) may, without signing his own name, by writing above the endorser's signature, direct that the payment of the instrument be made to another person. Thus the character of the instrument is changed and the instrument cannot be negotiated by mere delivery.

But in the case of a Cheque, however, the law is a little different from the one stated above. According to the provisions of Section 85 (2) where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, despite any endorsement whether in blank or full appearing thereon not with standing that any such instrument purported to restrict or exclude further negotiation. In other words, the original character of the cheque is not altered so far as the paying bank is concerned, provided the payment is made in due course. Hence the proposition that once a bearer instrument always a bearer instrument.

P.27. A of Calcutta drew a bill of exchange on B of Honkong payable sixty days after sight. The holder C kept the bill with him for five months and then presents it for acceptance before B. B in the meanwhile becomes insolvent. C sues A for payment. Will he succeed?

Sol: In the given case, the bill is payable 60 days after sight. First the holder C has to present the instrument for reckoning 60 days **within reasonable time**. In the given case there is unreasonable delay in presenting the instrument for sight. So, C can't succeed in receiving the payment.

P.28. Ascertain the date of maturity of a bill payable 100 days after sight and which is presented for sight on 4th May, 2000.

Sol: In case of bill payable after a certain period after sight, the date of maturity is calculated by adding three days of grace to the period after which the bill is payable. In case of bills payable after sight, the period is calculated from the date when the bill is presented for sight. In case the date of maturity happens to be a public holiday including Sunday, the bill falls due for payment on the day preceding the public holiday. In the given case, the bill is made payable 100 days after sight and the same was sighted on 4th May, 2000. 100 days from 4th of May, 2000 works out to 12th of August, 2000, adding three days of grace makes the bill due for payment on 15th of August, 2000 which happens to be a public holiday. Thus, the date of maturity of the bill shall be 14th of August, 2000 unless the same is also a public holiday (including Sunday).

P.29. A promissory note, executed on 31st July, 1997, is made payable 'One month after date. When does the note become payable?

Sol: 3rd September, 1997. It is calculated in the following manner: Date of Execution-31st July, 1997. Date of maturity-31st August + 3 days of grace = 3rd September, 1997.

P.30. Promissory Note dated 1st February 2001 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of maturity?

Sol: The date of maturity is 4th April, 2001 (1-4-2001 plus three days of grace).

P.31. Find out date of maturity in the following cases:

- a. A bill dated 1st January 1993 is made payable four months after date.
- b. A bill, dated 30th January 1993, is made payable one month after date.
- c. A bill, dated 31st July, 1993, is made payable two months after date.
- d. A bill dated 1st January 1993 is payable 60 days after date.
- e. A bill is payable on 28th February 1993.
- f. A bill is payable thirty days after sight is presented for sight on 1st March, 1993.
- g. A bill, dated 15 January, 1993, is payable three months after date.

Sol:

- a. It falls due on 4th May, 1993.
- b. The date of maturity falls on 3rd March, 1993.
- c. The bill is at maturity on 3rd October, 1993.
- d. It falls due on 5th March, 1993.
- e. It falls due on 3rd March, 1993.

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- f. It falls due on 3rd April, 1993.
- g. It falls due on 18th April, 1993 which happens to be a Sunday. As such it will fall due on 17th April, 1993, i.e., the preceding business day.

P.32. What will be the due dates of following instruments:

- a. A Bill of Exchange dated 10th November 1992, payable 4 months after date.
- b. A Promissory Note dated 27th November 1992, payable 60 days after date without grace.
- c. A Bill of Exchange dated 28th August 1992, payable 180 days after date.
- d. A Bill of Exchange dated 1st February 1992, payable 45 days after sight. The Bill was accepted on 6th February 1992.

Sol: (i) March 24, 1993.
 (ii) 25th January, 1992.
 (iii) 27th February, 1993
 (iv) 25th March, 1993.

P.33. Promissory note dated 1st February, 2001 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of Maturity? Explain with reference to the relevant provisions of the Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reasons of such delay.

Sol: If a promissory note is made payable a stated number of months after date, it becomes payable three days after the corresponding date of months after the stated number of months (Section 23 read with Section 22 Negotiable Instruments Act, 1881). Therefore, in this case the date of maturity of the promissory note is 4th April, 2001.

In this case the promissory note was presented for payment 10 days after maturity. According to Section 64 of Negotiable Instruments Act read with Section 66, a promissory note must be presented for payment at maturity by or on behalf of the holder. In default of such presentment, the other parties to the instrument (that is, parties other than the parties primarily liable) are not liable to such holder. The endorser is discharged by the delayed presentment for payment. **But the maker being the primary party liable on the instrument continues to be liable.**

P.34. A cheque is drawn upon Dena Bank. It is stolen by X who hands it over to Y who takes in good faith for valuable consideration. Y deposits the cheque into his own account in Canara Bank who presents it and obtains payment from Dena Bank. Discuss the legal position of paying banker, collecting banker, Y and true owner in each of the following alternative cases:

- a. If the cheque is payable to bearer.
- b. If the cheque is payable to bearer and is crossed generally.
- c. If the cheque is payable to bearer and is crossed generally with words 'not negotiable'.
- d. If the cheque is payable to bearer and is crossed specially with words 'Canara Bank'.
- e. If the cheque is payable to bearer and is crossed specially with words 'Allahabad Bank'.
- f. If the cheque is payable to B or order and X forges B's endorsement.
- g. If the drawer's signatures were forged.

Case	Paying banker	Collecting banker	Y	True owner
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(a)	Drawer is discharged by payment in due course (Sec 85(2))	Collecting banker does not incur any liability to the true owner [Section 131]	He is not liable to true owner.	He can recover from X and not from Y.
(b)	- do -	- do -	- do -	- do -
(c)	- do -	- do -	He is liable to true owner because he got a defective title.	He can recover from Y and X.
(d)	- do -	- do -	He is not liable to true owner.	He can recover from X only.
(e)	Drawee is liable to true owner [Sec.129]	Collecting banker is liable to true owner [Section 131]	He is not liable to true owner.	He can recover from X or paying banker or collecting banker.
(f)	Drawee is discharged by payment in due course [Sec. 85(1)]	Collecting banker does not incur any liability to the true owner [Section 131]	He is not liable to true owner.	He can recover from X only.
(g)	Drawee is liable to true owner because the payment is not in due course [Section 101]	Collecting banker is liable to the true owner [Section 131]	He is liable to true owner because forgery passes no title at all.	He can recover from paying banker, collecting banker or Y.

P.35. A cheque payable to bearer is crossed generally and is marked "not negotiable". The cheque is lost or stolen and comes into the possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which the cheque is drawn. (a) Can both the bankers, viz., banker paying the cheque and the banker collecting it plead exoneration from their liability. (b) Can B be compelled to refund the money to the true owner of the cheque.

Sol:

(a) Yes; A person who takes a cheque crossed 'not negotiable' has no better title to keep such a cheque than his immediate transferor, and the true owner can always reclaim it or the amount of it. On the other hand both collecting banker and paying banker will be protected under the act, provided the payment and the collection have been made in good faith and without negligence [Sec. 128 & 130].

(b) Yes. B can be compelled to refund the money as he was not entitled to receive payment upon instrument.

P.36. "It would be safer for the drawer to cross a cheque 'not negotiable' with the words 'account payee' added to it". Explain, how it is safer for the drawer in such case.

Sol: As per the instructions issued by Reserve Bank of India on 9.9.1992, it would be safer for the drawer to cross a cheque 'not negotiable' with the words 'account payee' added to it. The effect of the words 'not negotiable' on a crossed cheque is that the title of the transferee of such a cheque cannot be better than that of its transferor (Section 130 of Negotiable Instrument Act). The addition of the words 'not negotiable' does not restrict the further transferability of the cheque; it only takes away the main feature of negotiability, which is, that a holder with a defective title can give a good title to subsequent holder, in due course. Any one who takes a cheque marked 'not negotiable' takes it at his own risk. The object of crossing a cheque 'not negotiable' is to afford protection to the drawee or holder of the cheque against miscarriage or dishonesty in the course of transit by making it difficult to get the cheque so crossed cashed, until it reaches its destination.

The words 'Account Payee' on a cheque are a direction to the collecting banker that the amount collected on the cheque is to be credited to the account of the payee. If he credits the proceeds to a different account, he is prima facie guilty of negligence and will be liable to the true owner for the amount of the cheque. But such a crossing

does not affect the paying banker who is under no duty to ascertain that the cheque in fact has been collected for the account of the person named as the payee.

Thus the cheque crossed 'not negotiable' with the words 'account payee' added to it protects the drawer of the cheque in two ways. (1) The main feature of negotiability is lost i.e. the holder in due course cannot get a better title than that of the transferor. (2) The collecting banker must take utmost care to inquire into the title of its customer and satisfy itself that there is no defect in the title of the customer presenting such cheque of collection.

P.37. Can an acceptor of a bill avoid his liability against a person who is a holder in due course or who derives his title from a holder in due course, on the following grounds:

- a. That the instrument has not been filled in accordance with the authority given by him.
- b. That the other parties to the bill were fictitious.
- c. That the instrument was drawn without consideration.
- d. That the delivery of the instrument was conditional.
- e. That the instrument had been lost.
- f. That the instrument was obtained from him by means of fraud.
- g. That the instrument was obtained from him for an unlawful consideration.
- h. That his signature was forged.
- i. That payee had no capacity to endorse.

Sol: First state the privileges of holder in due course.

Ground	Decision	Explanation
(a)	No	Privilege given to holder in due course under Section 20 provided the stamp put on the instrument was sufficient to cover the amount.
(b)	No	Privilege given to a holder in due course u/s 42
(c)	No	Privilege given to a holder in due course u/s 43
(d)	No	Privilege given to a holder in due course u/s 46
(e)	No	Privilege given to a holder in due course u/s 58
(f)	No	Privilege given to a holder in due course u/s 58
(g)	No	Privilege given to a holder in due course u/s 58
(h)	Yes	Forgery passes no title to anyone at all.
(i)	No	Privilege given to a holder in due course u/s 121

Note: The aforesaid decisions also hold good for a holder who derives title from a holder in due course.

P.38. State whether a holder can refuse to take the following acceptance or not:

- a. Accepted payable when in funds.
- b. Accepted payable when a cargo consigned to me is sold.
- c. A bill drawn for Rs 5,000 but accepted for the 4,000 only.
- d. Accepted payable at Delhi when no place of payment is specified in the order.
- e. Accepted payable at Delhi only when no place of payment is specified in the order.
- f. Accepted payable at Delhi when place of payment specified in the order was Bombay.
- g. A bill drawn payable three months after date but accepted payable two months after date.
- h. A bill drawn on X, Y, and Z (who are not partners) but accepted by X only.
- i. A bill drawn on X, Y and Z (who are partners) but accepted by X.

Case	Decision	Reason
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(a)	Can refuse	It is a qualified acceptance because it is conditional acceptance.
(b)	Can refuse	It is a qualified acceptance because it is conditional acceptance.
(c)	Can refuse	It is a qualified acceptance because it is a partial acceptance for a part only.
(d)	Can't refuse	It is a general acceptance and not a qualified acceptance.
(e)	Can refuse	It is a qualified acceptance because of the use of the word 'only'.
(f)	Can refuse	It is a qualified acceptance because it is accepted payable at a place other than specified one.
(g)	Can refuse	It is a qualified acceptance because it is accepted payable at a time other than specified one.
(h)	Can refuse	It is a qualified acceptance because acceptance has not been made by all drawees.
(i)	Can't refuse	It is a general acceptance because acceptance has been made by a partner.

Note: First state when acceptance is valid.

P.39. H is the holder in due course of a bill of which A is the acceptor. D, the drawer of the bill, is fictitious. Can A escape from his liability to H?

Sol: Section 42 of the Negotiable Instruments Act provides that where a bill of exchange is drawn by a fictitious person and is payable to his order, the acceptor cannot be relieved from his liability to the holder in due course. Thus, H being holder in due course, A cannot escape liability. However, H shall have to establish that the bill was endorsed by the same hand as drawer's signature.

P.40. A draws a cheque for Rs. 100 and hands it over to B by way of gift. Is B a holder in due course? Explain the nature of his title, interest and rights to receive the proceeds of the cheque.

Sol: One of the requirements of Section 9 of the Negotiable Instruments Act to constitute a holder, as holder in due course is that he must have received the instrument for consideration. There are no exceptions to this condition. Thus B can't be treated as holder in due course. But he is certainly a holder with good title thereto and hence he will have every right to claim payment upon instrument.

P.41. X obtains Y's acceptance to bill by fraud. X endorses it to Z who takes it as holder in due course. Z endorses the bill to F who knows of the fraud. Can F recover from X?

Sol: Yes. When a document reaches the hands of holder in due course it will be cured from all defects. Even an ordinary holder deriving title from such holder in due course will get pure title. In the above case, X's title was defective as it was obtained by fraud. As Z is a holder in due course he gets pure or defective title and instrument will be cured of all defects. Now the instrument reaches the hands of F, who knowingly accepts the instrument. So F becomes holder. But he will also get pure title to the instrument and thus he can recover money from X.

P.42. J purchases some bills amounting to Rs.1,727 for a sum of Rs.200 only. He knows at the time of purchase that both drawer and the acceptor are in embarrassed circumstances but accepts them without enquiry and explanation. The bill proved to have been obtained by fraud. J insists that he is a holder in due course and is therefore entitled to get the full value of the instruments. Will he succeed?

Sol: No. According to Sec.9 of the Act - Holder in due course means any person who, for consideration, became the possessor of a promissory note, bill of exchange or cheque, if payable to the bearer, or the payee or endorsee thereof, if payable to the order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title."

In the given case there are clear grounds of suspicion and J has shown negligence in enquiring the validity of the instrument. So, he can't be considered as holder in due course.

P.43. A sells a radio to M, a minor, who pays for it by cheque. A indorses the cheque to B who takes it in good faith and for value. The cheque is dishonoured on presentation. Can B enforce payment of the cheque against A or M?

Sol: Payment can't be enforced against M as he is a minor. But the instrument can be enforced against A.

P.44. A bill is dishonoured by non-acceptance. The bill is endorsed to 'A'. 'A' endorses it to 'B'. As between 'A' and 'B', the bill is subject to an agreement as to the discharge of 'A'. The bill is afterwards endorsed to 'C', who takes it with notice of dishonour. Decide, with reasons, whether 'C' is entitled to accept the bill in the capacity of a holder in due course.

Sol: Section 59 of the Negotiable Instruments Act, 1881 states that the holder of negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor.

Accordingly where a negotiable instrument has been dishonoured, any person who takes it with notice of dishonour, takes it subject to any defect of title attaching thereto at the time of dishonour. The transferee of a dishonoured instrument takes it subject to any defect of title attaching thereto at the time of dishonour. The transferee of a dishonoured instrument, who takes it with notice of dishonour, cannot acquire a better title to it than that which his transferor had.

In the problem given here, the transferor 'A' has acquired the bill which has already been dishonoured by non-acceptance. Mr. 'A' has indorsed it to B subject to the agreement as to the discharge of 'A'. After endorsement 'C' takes it with notice of dishonour. 'C' who takes it with notice of dishonour cannot acquire a better title to it than that which his transferor 'B' had. 'C' takes the bill subject to the agreement between 'A' and 'B' and not a better title than this.

Further 'C' is also not a holder in due course under Section 9 of the Act because he has not acquired the instrument before it became payable. Although the holder in due course is not affected by the defect in the title of his transferor, but it is not so in the case of a holder who acquires the instrument after dishonour or after maturity. Hence 'C' is not entitled to accept the bill in the capacity of a holder in due course.

P.45. X by inducing Y obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the bill as a Holder-in-due-course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity the bill is dishonoured. X sues Y for the recovery of the money. With reference to the provisions of the Negotiable Instruments Act, decide whether X will succeed in the case?

Sol: The problem stated in the question is based on the provisions of the Negotiable Instruments Act as contained in Section 53. The section provides : 'Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some state of its journey. Thus any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud. (Section 53)

Thus applying the above provisions it is quite clear that X who originally induced Y in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as X himself was a party to the fraud.

P.46. X, on attaining the age of majority, makes a fresh promissory note in consideration of a promissory note made by him during his minority. Can a suit be maintained on the fresh promissory note?

Sol: A suit cannot be maintained on the fresh promissory note because the fresh promissory note is void in the absence of consideration. On the other hand a minor can't ratify the transactions entered by him during his minority.

P.47. X sells a TV to M, a minor, who pays for it by his cheque. X endorses the cheque to Y who in turn endorses it in favour of Z. The cheque is dishonoured. Discuss the legal position.

Sol:

a. Y can enforce payment of the cheque against X only and not against M because a minor cannot bind himself.

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b. Z can enforce payment of cheque against X and Y.

P.48. A draws a bill payable three months after sight on B. It passes through several hands before X becomes its holder. On presentation by X, B refuses to accept the bill. Discuss the right of X.

Sol: The effect of dishonour of a negotiable instrument, whether by non-acceptance or by non-payment, is to render the drawer and all the endorsers liable to the holder. Thus, in the present case, since the bill is payable certain months (3 months) after sight, acceptance is necessary for fixing its date of maturity. Non-acceptance by drawee (B) amounts to its dishonour. X may, therefore, hold the endorsers as well as the drawer liable thereon. **However, their liability can be invoked only if the holder (X) gives them notice of such dishonour.** The drawee (B) shall not be liable as he has not accepted the bill. He can be held liable only in the event of non-payment of an accepted bill.

P.49. M draws a cheque in favour of N, a minor. N endorses it in favour of P. The cheque is dishonoured by the banker on the ground of insufficiency of funds? Discuss the rights of P.

Sol: Section 26 of the Negotiable Instruments Act, 1981 provides that a minor may draw, endorse, deliver and negotiate instruments so as to bind all parties except himself. In the given problem, P shall have a right to proceed against M only. N, the minor, cannot be held liable.

P.50. A promissory note duly executed in favour of minor is void. (Correct/Incorrect)

Sol: As per section 26, a minor may draw, indorse, deliver and negotiate any negotiable instrument so as to bind all parties except himself. Hence, the instrument is valid. Minor can even indorse the instrument. He will not be bound by such indorsement, but other parties will be bound. Estoppel is not applicable against him. A minor can deny validity of Bill, even if he himself was drawer **[As per section 120, a maker cannot deny validity of instrument as originally made. However, minor can deny the validity of the instrument].**

P.51. X, a major, and M, a minor, executed a promissory note in favour of P. Examine with reference to the provisions of the Negotiable Instruments Act, the validity of the promissory note and whether it is binding on X and M.

Sol: Every person competent to contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a promissory note, bill of exchange or cheque (Section 26, para 1, Negotiable Instruments Act, 1881).

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

In view of the provisions of Section 26 explained above, the promissory note executed by X and M is valid even though a minor is a party to it. M, being a minor is not liable; but his immunity from liability does not absolve the other joint promisor, namely X from liability [Sulochana v. Pandiyan Bank Ltd., AIR (1975) Mad. 70].

P.52. A bill is addressed to Herbert Morris who is partner in the firm "Perkin and Partner". Herbert Morris accepts the bill in the firm's name. Explain whether he will be personally liable on the bill or not.

Sol: Yes. He is the drawee and has given his acceptance to the instrument. On the other hand a partnership firm has no separate legal identity and the liability of each partner is joint and several.

P.53. Shyam fraudulently encashed the cheque obtained from Kamal, crossed "Not negotiable" at a bank other than the drawee bank. Is the drawee bank liable for conversion? (Not liable) Explain the liability of a drawee of cheque.

Sol: As per section 31, a drawee of cheque (i.e. banker) must make payment of cheque, as long as drawer has sufficient balance in his account in the bank. If bank makes a default, it must compensate the drawer of cheque for any loss or damage caused by such default. Thus, banker is liable only if there is 'default' on his part. The liability is towards drawer and not the holder. Banker is obliged only to compensate for loss or damage. Thus, exemplary damages cannot be awarded, even if banker is found to be negligent. In some cases, bank can

refuse to honour a cheque and it will not be considered as default. 'Damage' is to the credit of drawer. Smaller the amount of cheque dishonoured, greater is damage to credit of drawer.

Section 85 specifically provides that banker is discharged if he makes payment in due course, if cheque payable to order is purported to be endorsed by or on behalf of payee. The protection is available only if Bank makes payment in due course. If payment is not in due course, Bank will be liable.

P.54. P, the holder of a bill of exchange, transfers it to Q without consideration. Q also transfers it to R without consideration. R transfers it to X for consideration. X transfers it to Y without consideration. State whether Y can recover the amount of such instrument from X or P.

Sol: As per Section 43, a negotiable instrument made, drawn, accepted, endorsed or transferred without consideration or where consideration fails, creates no obligation for payment between the immediate parties. Of course, holder who has obtained Bill for consideration can recover the consideration paid by him. Section 43 uses the words 'creates no obligation between the parties to the transaction'. Thus, the section applies only to immediate parties to transaction and not other parties.

In the above case, Y cannot recover from X as there is no consideration and X is 'immediate party'. However, Y can sue P, Q or R. The reason is Y holder, who is deriving title from X who is a holder in due course. He has all rights what X has.

P.55. B signs the following endorsements on different negotiable instruments payable to bearer. Classify the endorsements with reasons as Blank Endorsement or Full Endorsement or Restrictive Endorsement or Partial Endorsement or Conditional Endorsement. Also, state whether the following Endorsements are valid or invalid.

- a. No other words except B's signature.
- b. Pay C.
- c. Pay C or order.
- d. Pay C only.
- e. Pay C or order for the account of B.
- f. Pay C or order Rs 500 out of Rs.1,000.
- g. Pay C or order being the unpaid residue of the bill.
- h. Pay C or order on safe receipt of goods.
- i. Pay C sans Recourse.
- j. Pay C sans Frais.
- k. Pay C, notice of dishonour dispensed with.

Sol:

Case	Decision	Validity	Reason
(a)	Blank endorsement	Valid	No other words have been used.
(b)	Full endorsement	Valid	The use of word C.
(c)	Full endorsement	Valid	The use of word 'C or order'.
(d)	Restrictive endorsement	Valid	The use of word 'only'.
(e)	Restrictive endorsement	Valid	The use of word 'for the account of B'.
(f)	Partial endorsement	Invalid	The endorsement purports to transfer only a part of the amount due on instrument.
(g)	Partial endorsement	Valid	The endorsement is for the unpaid balance.
(h)	Conditional endorsement	Valid	Use of the words 'on safe receipt of goods'.
(i)	Conditional endorsement	Valid	The use of the words 'Sans Recourse'.
(j)	Conditional endorsement	Valid	The use of words the 'Sans Faris'.
(k)	Conditional endorsement	Valid	The use of words 'Notice of dishonour dispensed with'.

P.56. B signs the following endorsements on different negotiable instruments payable to bearer. State whether each of these alternative endorsement excludes the right of further negotiation by C or not:

- "Pay the contents to C only"
- "Pay C for my use"
- "Pay C or order for the account of B"
- "The within must be credited to C"
- "Pay C "
- "Pay C value in account with the State Bank "
- "Pay the contents to C, being part of the consideration in certain deed of assignment executed by the endorser and other".

Sol: Section 50 of the Negotiable Instruments Act, 1881 provides that the endorsement of a negotiable instrument followed by delivery, will transfer the property therein to the endorsee with the right of further negotiation. But the endorsement may, by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to indorse the instrument, or to receive its contents for the endorser, or for some other specified person.

(a)	Yes	The use of the word 'only' excludes the right of further negotiation.
(b)	Yes	The use of the words 'for my use', excludes the right of the further negotiation.
(c)	Yes	The use of words 'or order for the account of B' excludes right of further negotiation
(d)	Yes	The use of the words 'must be credited to C' excludes the right of further negotiation.
(e)	No	The endorsement does not contain words excluding the right or further negotiation.
(f)	No	The endorsement does not contain words excluding the right of further negotiation.
(g)	No	The use of the words 'others' gives the right of further negotiation.

P.57. B accepts a bill drawn upon by A who endorses it to C who in turn endorses it to D, who in turn endorses it to A. Discuss the legal position of A.

Sol: This is clearly a case of Negotiation back. In case of negotiation back, if any endorser subsequently becomes holder of the instrument then all intermediary parties are discharged from their liability. This is to avoid circuitry of action. In the given case A can sue B only because B is a prior party to his original endorsement. A cannot sue C or D because it will lead to circuitry of action (i.e., if A is allowed to sue C or D, then C or D in turn can sue A because A is a prior party).

P.58. B accepts a bill drawn upon A who endorses it with words 'Sans Recourse' to C, who in turn endorses it to D, who in turn endorses it to A. Discuss the legal position of A.

Sol: The holder of a bill may indorse it in such a way that he does not incur the liability of an endorser to the endorsee. He can do so by adding the words 'sans recourse' (without recourse) to the endorsement. Examples of such endorsement are 'Pay A or order without recourse to me' or 'Pay A or order sans recourse' or 'Pay A or order at his own risk'.

If the instrument is dishonoured the subsequent holder or endorsee can't claim the endorser for payment of the same. In the given case A can sue B, C or D because it will not lead to circuity of action as A at the time of first endorsement, expressly excludes his liability by using the words 'Sans recourse'.

P.59. P, the holder of a Bill of Exchange, transfers it to Q without consideration. Q also transfers it to R without consideration. R transfers it to X for consideration. X transfers it to Y without consideration. State giving reasons whether Y can recover the amount on such instrument from X or P.

Sol: In this case the bill of exchange has been transferred without consideration. Section 43 deals with rights of the parties in such a case. Section 43 lays down the following two rules regarding absence of consideration in negotiable instruments.

a. As between immediate parties: If a negotiable instrument is made, accepted endorsed or transferred without consideration or for a consideration which fails, it creates no obligation of payment between the parties to the transaction. As between the immediate parties the defendant can plead absence of consideration and avoid liability.

b. As between remote parties: If a holder acquires a negotiable instrument for consideration, every subsequent holder desiring title from him with or without consideration may recover the amount due on such instrument from the transferor for consideration or from any other party thereto. This means that once the instrument gets into the hands of a holder in due course, he or any subsequent holder deriving title from him can recover the amount from any or all of the prior parties thereto.

Here X and Y are immediate parties and no consideration passed from Y to X. Hence first rule applies and Y has no rights against X.

X is the holder for value. Hence X and every subsequent holder deriving title from him may recover the amount due on such instrument from the transferor for consideration or any prior party thereto. The second rule applies. Hence Y can recover the amount from P.

P.60. B accepts a bill drawn upon A who endorses it to C without consideration, and C endorses it to D in good faith for valuable consideration and D, in turn endorses it to E as a gift. E endorses it to A. Discuss the legal position of A.

Sol: A can sue B because B is a prior party to his original endorsement. A can sue C because A was not liable to C as the endorsement was without consideration [Section 43]. A cannot sue D or E because it will lead to circuity of action.

P.61. A bill is payable to X or order, X endorses the bill in blank. The bill is thereafter lost and comes into the hands of Y. Discuss the legal position in each of the following alternative cases:

- a. If Y receives the payment of the bill.
- b. If Y passes the bill by simple delivery to Z as a gift.
- c. If Y passes the bill after maturity by simple delivery to Z who takes the bill in good faith for valuable consideration.
- d. If Y passes the bill before maturity by simple delivery to Z who takes the bill in good faith for valuable consideration.

Sol:

- a. The true owner can recover the amount from Y because Y had no title to bill.
- b. The true owner can recover the amount from Y and Z because Y and Z (not being holders in due course) had no title to bill.
- c. The true owner can recover the amount from Y and Z because Y and Z (not being holders in due course) had no title to bill.
- d. The true owner can recover the amount from Y and not from Z because Z being a holder in due course had a good title to bill.

P.62. A bill is payable to X or order. The bill is thereafter lost and comes into the hands of Y, who forges X's signature to affect an endorsement in blank. Discuss the legal position in each of the following alternative cases:

- a. If Y passes the bill by simple delivery to Z as a gift.
- b. If Y passes the delivery before maturity by simple delivery to Z who takes the bill in good faith for valuable consideration.

Sol: In both the cases, the true owner can recover from Y and Z because under forged endorsement no person, whether he is a holder in due course or not, acquires any legal title to the bill.

P.63. A bill is payable to X or order, X endorses the bill in blank. It comes into the hands of Y who passes it on by simple delivery to Z, who forges Y's signature and transfers it to W. Can W sue any of the parties to the bill?

Sol: W can sue all the prior parties because he derives his title through genuine endorsement by X and not through forged endorsement by Z.

P.64. X obtains Y's acceptance to a bill by fraud. X endorses it to Z who takes it in good faith for valuable consideration. Z endorses the bill to F who knows of the fraud. Discuss the rights of X, Y and Z.

Sol:

- a. X cannot recover from Y because X is not a holder in due course.
- b. Z can recover from X or Y because Z is a holder in due course. [Section 58].
- c. F can recover from X, Y and Z because F derives the title from Z who is a holder in due course and at the same time Z is not a party to fraud. [Section 53]

There is a difference between fraud and forgery to the signatures.

P.65. A draws a bill in favour of B upon X, B endorses it to C who, in turn endorses it to D who, in turn, endorses it to E who, in turn, endorse to F. On presentment for acceptance, X refuses to accept the bill. Who has a right of action against whom in each of the following alternative cases:

- a. If F gives no notice of dishonour.
- b. If F gives notice of dishonour only to E.
- c. If F gives notice of dishonour only to E and A.

Sol: First state the provisions relating to Notice of dishonour.

Case	Decision
(a)	F has no right of action against any prior party because all prior parties who do not receive the notice of dishonour are discharged. [Section 93]
(b)	F has right of action against E only and not against A, B, C or D.
(c)	F has right of action against E and A only and not against B, C or D. [Section 93]

P.66. C, the payee of a bill, endorses it in blank and delivers it to D, who specially endorses it to E or order. E transfers the bill to F without endorsement. Discuss the rights of F in case of dishonour of the bill.

Sol: In the given problem, C has endorsed the bill to D in blank. In other words, just placed his signature on the back, leaving the name of endorsee D to be recorded. D endorses it specially to E. Thus, D would have written 'Pay E or order' above the signature of C. Thus, D's name or signature does not figure anywhere. E then transfers to F without endorsement. On dishonour, therefore, F can hold the immediate transferor E liable who shall be entitled to hold C, who in turn can make the drawer liable. F, if he is a holder in due course, can hold C and the drawer liable directly also.

P.67. A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement 'without recourse' he transfers the instrument to B, indorses it to C, who indorses it to A. State who is liable to A.

Sol: Section 52 of the Negotiable Instruments Act, 1881 specifically provides that where an endorser excludes his liability and afterwards becomes the holder of the instrument, all intermediate endorsers are liable to holder. Thus, in the given case, C as well as B shall be liable to A.

P.68. A is a payee holder of a bill of exchange. He endorses it in blank and delivers, it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. State giving reasons whether D as bearer of the bill of exchange is entitled to recover the payment from A or B or C.

Sol: Under Section 55 of the Negotiable Instrument Act, if an instrument after having been endorsed in blank is endorsed in full, the endorsee in full does not incur the liability of an endorser, so the amount of it cannot be claimed from him. It means if an endorsement in blank is followed by an endorsement in full, the instrument still remains payable to bear and negotiable by delivery as against all parties prior to the endorse in full, though the endorser in full is only liable to a holder who made title directly through his endorsement and the person deriving title through such holder. In the ensuing case, in view of section 55, D as the bearer of the instrument can receive payment of sue the drawer, acceptor, or A who endorsed the bill in blank; but he cannot sue B or C. But there is an exception to the above rule contained in Section 55. **The person to whom it has been endorsed in full, or any one who derives title through him, can claim the amount from the endorser in full.**

P.69. A cheque is drawn payable to 'B or order' and delivered to B in payment of a debt. B's agent without having any authority to endorse, endorses the cheque 'Per Pro' for B and obtains payment of the money and misappropriates it. Is the banker discharged by payment in due course?

Sol: Section 27 lays down that every person capable of binding himself or of being bound may so bind by himself or be bound by a duly authorised agent acting in his name.

But, it is essential that at the time of putting his signature to the instrument, the agent must have express or implied authority. A signature by procuration (per pro) operates as a notice that the agent has only a limited authority to sign and that the principal will only be bound if the agent is acting within the actual limits of his authority. The utmost care and caution is required in dealing with person who profess to act as agent on behalf of the principal. A prudent man will always call for proof that the alleged authority has been given. Hence, a person who takes or deals with bill or cheque signed per pro must take or deal with the greatest caution, and should satisfy himself that the authority really exists [Attwood vs. Munnings]. **If an agent endorses without authority a bill (or cheque) on behalf of his principal, the endorsement conveys no title to the person taking it (endorsee) [The Bank of Bengal vs. Fagan].**

Accordingly, in the given case the paying bank will not be entitled to any protection under Section 85 under which a banker is protected against forgery of endorsements if the payment is made in due course. In fact, the payment cannot be considered as a payment in due course.

P.70. A is holder of a Bill indorsed by B in blank. A writes over B's signature the words 'Pay to X or order'. On the dishonour of the Bill, X sues A as the endorser to recover the amount of Bill. Can A succeed?

Sol: As per section 49, the holder of a negotiable instrument indorsed in blank may simply write above the endorser's signature a direction to pay to any other person as endorsee. He will do so without signing his own name. This will convert the endorsement in blank into an endorsement in full. In such a case, the holder does not become endorser and does not incur the liability of an endorser. In this case, A has only written the words 'Pay X or order'. He has not signed the instrument. **Hence, he is not endorser of Bill and is not liable.**

P.71. A endorsed a bill to B, B to C, C to D and D to E. Lastly E endorsed it to A. Can A hold E liable if the bill is dishonoured.

Sol: As a general rule, each party to the instrument is liable to prior parties. e.g., A draws a Bill on B making it payable to C. Once the Bill is accepted by B, he becomes primarily liable. If C endorses to D, D to E and E to F, then 'D' is liable to E and F while previous parties A, B and C are liable to D. All parties i.e. A to E are liable to F, but F is liable to no one. Now, let us assume that F endorses the Bill to D. Thus, D who was an endorsee becomes a holder. This is termed as 'Negotiation Bank'. In such a case, D cannot hold prior endorsee i.e. E and F liable. The reason is that even if he holds so, the liability will come back to him, as E and F will in turn hold D liable as he was prior endorsee. Thus, liability will move in an endless circle. Hence, if a document is negotiated back, the holder cannot sue intermediate parties. This is an exception to the rule that a holder can sue all parties prior to the transaction. Of course, D can sue A, B and C.

However, if D had made first endorsement as a conditional endorsement, 'san recourse' (i.e. without liability), he can sue E and F and the liability will not come back to him as circle cannot be completed due to the conditional endorsement of 'san recourse'.

P.72. A bill of exchange is drawn payable to X or order. X endorses it to Y, Y to Z, Z to A, A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, Z, A and B, if he has originally endorsed the bill to Y by adding the words 'Sans Recourse'.

Sol: The endorser of a negotiable instrument may, by express words in the endorsement, exclude his own liability thereon. If the endorser writes the words 'sans recourse' or 'sans recourse', he excludes his liability on the instrument. Where an endorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate endorsers are liable to him [Section 52]. If endorser excludes his liability, further negotiation is not prohibited. It only excludes liability of endorser.

In the above case, normally, X cannot hold Y, Z, A and B, as if X holds them responsible, the responsibility will come back to him by circuitry of action. However, in this case, X had endorsed 'without recourse'. Hence, Y, Z, A and B cannot hold X liable and hence circle does not get complete. On the other hand, X is holder after Y, Z, A and B and can hold them liable, as provided in Section 52.

P.73. A is a payee of bill of exchange. He endorses it in blank and delivers it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. State giving reasons whether D as bearer of the bill of exchange is entitled to recover the payment from A or B or C.

Sol: As per explanation (ii) to section 13, a bearer instrument is one

- (a) which is expressed to be payable to bearer or
- (b) on which the only or last endorsement is in blank.

In the given case, the original instrument was payable to a particular person (A) and not to bearer. The instrument was converted into blank instrument by A. The blank instrument was converted into full by B and delivered to C. Thus, instrument is no more a blank instrument. Hence, C cannot transfer the instrument to another without endorsement. Thus, D has no title to the instrument and cannot sue anyone. D would get title only if C signs i.e. endorses in blank and delivers instrument to D.

P.74. A is the holder of a bill of exchange made payable to the order of 'B'. The bill of exchange contains the following endorsements in the blank. First endorsement 'B', second endorsement 'C', third endorsement 'D', fourth endorsement 'E'. - - 'A' strikes out, without E's consent, the endorsement by 'C' and 'D'. Decide with reasons whether 'A' is entitled to recover anything from 'E'.

Sol: Every endorser is entitled to recover amount of Bill from prior endorsers. Hence, Section 40 provides that if a holder of a negotiable instrument destroys or impairs the endorser's remedy against a prior party (without the consent of the endorser), the endorser is discharged from liability to the holder as if the instrument had been paid at maturity.

In the above case, A is a holder who has cancelled endorsement of C and D without consent of E. This has destroyed remedy which E had against C and D. Hence, E gets discharged from his liability towards A, as provided in section 40.

P.75. X is a holder of a bill of exchange made payable to the order of Y which contains the following endorsements in blank:

First endorsement	:	"Y"
Second endorsement	:	"G.T.Krishan"
Third endorsement	:	"T.P.Mathew"
Fourth endorsement	:	"K.L.Abdul."

On dishonour, the holder X puts in suit against K.L. Abdul and strikes out without K.L. Abdul's consent the endorsements of G.T.Krishan and T.P. Mathew. Is X entitled to recover anything from K.L.Abdul. State reasons for your answer.

Sol: No. This is so because X has destroyed Abdul's remedy against prior parties by deleting the endorsements of G.T.Krishnan and T.P.Mathew.

P.76. 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 intense?

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

Sol: Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

(i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to D with consideration. Therefore, D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration.

(ii) As regards to the second part of the problem, the prior parties before D i.e., A, B and C have no right of action inter se because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

P.77. State whether the following alterations are material or not:

- a. A bill dated 1st April 1999 is changed to a bill dated 1st May 1999.
- b. A bill payable 3 months after date is changed to a bill payable 3 months after sight.
- c. A bill payable at Delhi is changed to bill payable at Bombay.
- d. A bill for Rs.1,000 is changed into a bill for Rs.2,000.
- e. A bill is accepted payable at Dena Bank is changed to a bill accepted payable at Canara Bank.
- f. A bill payable to P is changed into a bill payable to P and Q.
- g. A bill was endorsed in blank and handed over to Y, who endorsed as 'Pay to Z or order'.
- h. The holder of a bill inserts the words 'or order'.
- i. A bill was dated 1989 instead of 1999 & subsequently the agent of the drawer corrected the mistake.
- j. A cheque payable to bearer was converted into a cheque payable to order.
- k. Crossing a cheque.

Sol: *First write the provisions related to 'Material Alteration'*

Cases (a) to (g): Material alterations.

Cases (h) to (j): Non-material alterations.

Case (k): Material alteration authorised by the Act without any authentication.

P.78. X draws a cheque for Rs 2,000 and Y, a holder without the consent of X alters the figure of Rs 2,000 to Rs 20,000 and makes the instrument look like a cheque drawn for Rs 20,000. The banker pays the cheque in due course. Discuss the legal position of the banker.

Sol: *First write the provisions related to 'Protection given to paying banker'*

The banker is discharged from all liabilities since the banker made the payment in due course and alteration was not apparent. The banker also gets protection under the act if he pays the cheque with due diligence and without any negligence. Master Minds.

P.79. A promissory note was made without mentioning any time for payment. The holder added the words 'on demand' on the face of the instrument. State whether it amounted to material alteration and explain the effect of such alteration.

Sol: In the given problem, addition of the words 'on demand' does not amount to material alteration since according to Section 19 of the Negotiable Instruments Act, a promissory note, in which no time for payment is specified, is payable on demand. Thus, since the instrument even without use of the words 'on demand', was

nevertheless payable on demand; the addition of these words does not amount to change of its tenor and hence it is not material alteration. The expression 'material alteration' is described to mean alteration which tends to speak a language different from the one intended originally.

Effect of material alteration: Section 87 of the Negotiable Instruments Act states that any material alteration of a negotiable instrument renders the same void as against anyone who is party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. Further, any such alteration, if made by endorsee, discharges his endorser from all liability to him in respect of the consideration thereof.

P.80. Do the following alterations of a negotiable instrument render the instrument void?

- (a) The holder of a bill alters the date of the instrument to accelerate or postpone the time of payment.
- (b) The drawer of a negotiable instrument draws a bill but forgets to write the words 'or order'. Subsequently, the holder of the instrument inserts these words.
- (c) A bill payable three months after date is altered into a bill payable three months after sight.
- (d) A bill was dated 1992 instead of 1993 and subsequently the agent of the drawer corrected the mistake.
- (e) A bill is accepted payable at the Union Bank, and the holder, without the consent of the acceptor, scores out the name of the Union Bank and inserts that of the Syndicate Bank.

Sol: (a) Yes. (b) No. (c) Yes. (d) No. (e) Yes.

According to Section 87 of the N.I. Act, 1881 any material alteration of a Negotiable Instrument renders the same void as against anyone who is party there to at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. If any such alteration is made by an endorsee, the endorser is discharged from all liability to him in respect of the consideration thereof. The alteration must be so material that it alters the character of the instrument, to a great extent. Generally, alteration of the date, amount payable, time, place of payment is regarded as material alteration.

P.81. When is an alteration made in negotiable instrument called 'Material Alteration'? State with reasons whether there is any 'Material Alteration' in the following cases:

- (i) the holder of a bill of exchange alters the date of the instrument to accelerate or prepone the time of payment;
- (ii) the drawer of a bill exchange forgets to write the words, 'or order' on the bill. Subsequently, the holder of the bill of exchange inserts these words on the bill.

Sol: After considering the given cases with respect to material alteration, the following conclusions can be drawn:

- (i) Yes, there is material alteration, since alteration in the date and time of payment is treated as material alteration in the eye of law. (A. Subba Reddy vs. N. Ramana Reddy, AIR, 1966 A.P. 267).
- (ii) No, there is no material alteration. Addition of the words 'or order' do not in any way affect the validity of the instrument. (Eyrton vs. Thompson (1839), 11 A. & E. 31)

P.82. State with reasons whether there is any 'material alteration' in following cases and whether to invalidate the instrument – Master Minds.

- a. D, in possession of an inchoate instrument where the amount has not been written on the instrument, writes himself the amount
- b. K, in possession of an uncrossed cheque received from A writes 'Payee's Account Only' on the face of instrument.

Sol:

- a. Such filling in is permitted u/s 20 of the Act and hence is not 'material alteration'
- b. Crossing of uncrossed cheque or converting general crossing to special crossing is permitted u/s 125. This is not material alteration. Thus, in both cases, instrument is valid and enforceable.

P.83. L had two promissory notes of Rs.500 each issued by S Banking Corporation. He placed them in the pocket of his coat and having forgotten, he washed, dried and starched the coat. He remembered of the notes while he was ironing his coat. He searched for them in the pocket of his coat and could find them in spoiled condition. The identity of the notes was rested to a certain extent except its numbers. Can he recover the money from the bank.

Sol: Yes. The principle of material alteration does not apply to mere accidents. L can prove his right of receiving payment through any other evidence and obtain payment on it.

P.84. A promissory note did not contain the rate of interest in the space provided for the purpose. The creditor puts in the rate. The debtor contends that it is a material alteration and, therefore, he is not liable to pay. Decide.

Sol: It amounts to material alteration. So, Debtor's contention is correct.

P.85. State with reasons whether the following shall amount to material alteration and invalidate the instrument.

- a. D, in possession of an inchoate instrument where the amount has not been written on the instrument, writes himself the amount.
- b. K, in possession of an uncrossed cheque received from A, write "Payee's A/C only" on the face of the instrument.

Sol:

- a. No material alteration as sec. 20 permits and
- b. No material alteration as section 125 permits it.

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P.86. A draws a cheque in favour of B. A's clerk forges B's endorsement and negotiates the cheque to C, who takes it in good faith and for value. C receives payment on the cheque. Discuss the rights of A and C.

Sol: In the given problem, issues involved are:

Can A claim the reimbursement of the payment from his bank for the payment having been made to a person under forged endorsement?

C having received the payment, does he enjoy the right of retaining the amount?

Regarding the first issue i.e., right of A, it may be stated that a paying banker is not expected to know the signature of the payee or endorsers. Therefore, if it makes the payment in due course and without negligence, Section 85 of the Negotiable Instruments Act offers the bank protection against any action for wrongful payment. Thus, A may have no claim unless negligence or connivance of the banker's staff can be established.

Regarding C's right, since it is stated that he took the cheque in good faith and for value, he is a holder in due course and he can get better title than that of transferor of the instrument. Therefore, he will have lawful right to retain the amount.

P.87. H is the holder in due course of a bill of which A is the acceptor. O, the drawer of the bill is fictitious. Can A escape from his liability to H?

Sol: Section 42 of the Negotiable Instruments Act provides that, where a bill of exchange is drawn by a fictitious person and is payable to his order, the acceptor cannot be relieved from his liability to the holder in due course. Thus, H being holder in due course, A cannot escape liability. However, H should establish that the bill was endorsed by the same hand as drawer's signature.

P.88. A cheque is payable to M or order. It is stolen and the thief forges M's signature and presents it to the banker who makes the payment in due course. Can M recover the amount from the banker?

Sol: M being the payee need not be a customer of the paying bank. The paying bank, therefore, is not expected to know M's signature. Section 85 of the Negotiable Instruments Act, therefore, grants protection to paying bankers in case of forged endorsements. The section provides that if a cheque payable to order purports to be indorsed by or on behalf of the payee, and the banker on whom it is drawn pays it in due course, the banker is discharged, even though the endorsement of the payee might turn out to be a forgery. However, to claim protection, the banker has to prove that the payment was a payment in due course.

P.89. B obtains A's acceptance to a bill by fraud. B indorses it to C who takes it as a holder in due course. C endorses the bill to D who knows the fraud. Can D recover from A?

Sol: Yes; D can recover the amount from A as he derived the title from C who is a holder in due course. Moreover, D is not a party to the fraud. Once, the title has been cleansed of the defect, notwithstanding notice of the fraud, D shall get a good title. According to Section 53 of the Negotiable Instruments Act, 1881 any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the previous defect provided he himself is not a party to the fraud.

P.90. Mr. Clever obtains fraudulently from J a cheque crossed 'Not Negotiable'. He later transfers the cheque to D, who gets the cheque encashed from ABC Bank, which is not the Drawee Bank. J, on coming to know about the fraudulent act of Clever, sues ABC Bank for the recovery of money. Examine with reference to the relevant provisions of the Negotiable Instruments Act, 1881, whether J will be successful in his claim. Would your answer be still the same in case Clever does not transfer the cheque and get the cheque encashed from ABC Bank himself?

Sol: According to Section 130 of the Negotiable Instruments Act, 1881 a person taking cheque crossed generally or specially bearing in the words 'Not Negotiable' can't get a better title than that of transferor. Thus, if the title of the transferor is defective, the title of the transferee will also be defective.

Basing on above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title, but if the transferor has a defective title, the transferee is affected by such defects, and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value.

In the given case Mr. Clever had obtained the cheque fraudulently. As his title is defective, he could not give good title to D and ABC Bank would be liable for the amount of the cheque for encashment. (Great Western Railway Co. vs. London and County Banking Co.)

The answer in the second case would not change and shall remain the same for the reasons given above. Thus in both cases, J will be successful in his claim from ABC Bank.

P.91. The drawer, 'D' is induced by 'A' to draw a cheque in favour of P, who is an existing person. 'A' instead of sending the cheque to 'P', forges his name and pays the cheque into his own bank. Whether 'D' can recover the amount of the cheque from 'A's banker. Decide.

Sol: As per section 131, if banker receives payment for a customer of a cheque crossed generally or specially in the name of that banker in good faith and without negligence, he shall not incur any liability to the true owner of the cheque just because he (i.e. bank) has received payment for customer. This would be so even if the title to the cheque was defective. Thus, Banker will not be liable if it has only collected the payment.

P.92. On a Bill of Exchange for Rs.10,000, X's acceptance to the Bill is forged. A takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether A can be considered as a 'holder in due course' and whether A can receive the amount of Bill from X.

Sol: The Negotiable Instruments Act makes no specific provision in respect of forgery. Hence, common law provisions apply. As per common law, a forgery is nullity of law and it passes no title to holder. It is not a mere defect in title but complete absence of title, which cannot be cured. Section 58 of Negotiable Instruments Act does not give protection against forgery, though it gives protection against offence or fraud. Hence, a person does not get good title even if he obtains Bill bona fide and for value, if the signature was forged. Hence, A is not holder in due course and cannot get amount from X.

P.93. X, by inducing Y, obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the Bill as a holder in due course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity, the bill is dishonoured. X sues Y for recovery of money. With reference to the provisions of Negotiable Instruments Act, decide whether X will succeed in the case.

Sol: Section 58 of Negotiable Instruments Act provides that when an instrument is obtained by fraud, offence or for unlawful consideration, possessor or endorsee cannot receive the amount of Instrument. Hence, normally, X would not be entitled to sue Y as X has obtained instrument through fraud.

However, as per section 53, a holder who derives title from holder in due course has all rights of a holder in due course. Since X derives his title from Z (who is a holder in due course), X has all rights of Z.

Second part of section 58 also makes it clear that even if a negotiable instrument is obtained by means of an offence or fraud or for unlawful consideration, the possessor or endorsee is entitled to receive the amount from the maker, if he is a holder in due course or claims through a person who was a holder in due course. Hence, X can sue Y as he is deriving his right from Z, who is holder in due course. Hence, X will succeed.

P.94. State whether the following shall amount to a valid acceptance:

- a. An oral acceptance;
- b. Acceptance by mere signature of the drawee without the addition of the word 'Accepted' on the negotiable instrument.

Sol:

- a. It is one of the essential elements of a valid acceptance that the acceptance must be written on the bill and signed by the drawee. An oral acceptance is not sufficient in law. Therefore, an oral acceptance does not stand to be a valid acceptance.
- b. The usual form in which the drawee accepts the instrument is by writing the word "accepted" across the face of the bill and signing his name underneath. The mere signature of the drawee without the addition of the words 'accepted' is a valid acceptance.

As the law prescribes no particular form for acceptance, there can be no difficulty in construing an acknowledgement as an acceptance but it must satisfy the requirements of Section 7 of Negotiable Instrument Act i.e. it must appear on the bill and must be signed by the drawee (Manackchand v. Chartered Bank, AIR 1961 and 653). Master Minds.

P.95. An acceptor accepts a "Bill of Exchange" but write on it "Accepted but payment will be made when goods delivered to me is sold." Decide the validity.

Sol: Acceptance may be either general or qualified. An acceptance is said to be general when the drawee assents without qualification order of the drawer. The qualification may relate to an event, amount, place, time etc. (Explanation to Section 86 of the Negotiable Instruments Act 1881). In the given case, the acceptance is a qualified acceptance since a condition has been attached declaring the payment to be dependent on the happening of an event therein stated.

As a rule, acceptance must be general acceptance and therefore, the holder is at liberty to refuse to take a qualified acceptance. Where, he refuse to take it, the bill shall be dishonoured by non-acceptance. But, if he accepts the qualified acceptance, even then it binds only him and the acceptor and not the other parties who do not consent thereto. (Section 86)

P.96. State whether a bill can be said to have accepted by B in each of the following cases:

- a. B delivers the bill confirming orally that he has accepted the bill.
- b. B delivers the bill after writing the words 'accepted' only.
- c. B delivers the bill without writing words 'accepted' but after putting his signature on the face of the bill.
- d. B delivers the bill without writing the words 'accepted' but after putting his signatures on the back of the bill.
- e. B's agent delivers the bill after putting his signature as an agent of the bill.
- f. B puts his signature on the bill and dies. Subsequently, the bill was delivered by B's heirs.
- g. B puts his signatures on the bill and informs the drawer that he has accepted the bill but does not deliver the bill to the drawer.

Case	Decision	Reason
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(a)	No	The acceptance must be in writing.
(b)	No	The acceptance has not been signed by the drawee.
(c)	Yes	The acceptance has been signed by the drawee. The use of the word 'accepted' is not compulsory.
(d)	Yes	The acceptance is on the bill. It is immaterial whether the acceptance is on the face or back of the bill.
(e)	Yes [Sec. 27]	The acceptance may also be signed by a duly authorised agent.
(f)	No [Sec. 46]	The acceptance would not complete until there is delivery thereof.
(g)	Yes [Sec. 46]	The acceptance has completed on giving notice of acceptance.

P.97. State whether presentment for acceptance is necessary in each of the following cases:

- a. A bill payable on demand. Master Minds.
- b. A bill payable 30 days after date.
- c. A bill payable on 1st Jan. 1997.
- d. A bill payable 3 months after sight.
- e. A bill payable 3 months after presentment.
- f. A bill in which there is an express provision that it shall be presented for acceptance before it is presented for payment.
- g. Where the drawee cannot after reasonable search be found.
- h. Where the drawee is a fictitious person.
- i. Where the drawee is a person incapable of contracting.

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Sol: First state the provisions relating to 'presentment for acceptance.'

Presentment is necessary in: (d), (e), (f).

Presentment is not necessary in: (a), (b), (c), (g), (h), (i).

P.98. State whether presentment for payment is necessary to charge the drawer of instrument in each of the following alternative cases:

- a. A promissory note payable on demand and is not payable at a specified place.
- b. A promissory note or bill of exchange payable at a specified period after date of sight thereof.
- c. A bill is not payable at a specified place and the acceptor cannot after due search be found.
- d. A bill is payable at a specified place and neither the acceptor *nor* any person authorised to pay is present at such place during the usual business hours.
- e. If the drawer cannot suffer any damage for want of presentment.

Sol: First state the provisions relating to 'presentment for acceptance.'

Presentment is necessary: (b).

Presentment is not necessary: (a), (c), (d), (e).

P.99. A signs a blank stamped paper and places it in his drawer from where it was stolen, completed and negotiated. Is A liable to a holder in due course of such instrument?

Sol: A person cannot be held liable on an instrument for merely having signed the same unless it is accompanied by its delivery. To constitute and create any obligation, delivery of the instrument is a must. Therefore, A will not be liable to the holder in due course of such instrument.

P.100. A bill is dishonoured by non-acceptance. The bill is endorsed to 'A'. 'A' endorses it to 'B'. As between 'A' and 'B', the bill is subject to an agreement as to the discharge of 'A'. The bill is afterwards endorsed to 'C', who takes it with notice of dishonour. Decide, with reasons, whether 'C' is entitled to accept the bill in the capacity of a holder in due course.

Sol: To constitute a holder in due course, Section 9 of the Negotiable Instruments Act requires the holder to have obtained the instrument in good faith.

However, Section 53 provides that a holder of a negotiable instrument, who derives title from a holder in due course, will also acquire the status of holder in due course.

If a document reaches the hands of holder in due course, it will be cleansed of all defects and it remains good even if the subsequent holder has the notice past defects provided that he was not a party to them. Thus, 'E' shall get a good title to the bill.

P.101. A draws a bill of exchange on B for Rs.1,000 payable to the order of A. B accepts the bill but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs.500 and as an accommodation to the plaintiff as to the residue. Can A recover Rs.1,000?

Sol: No. Consideration absent in part. Can recover only Rs.500.

P.102. A issues a cheque for Rs.25,000/- in favour of B. A has sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank, in the meantime, became bankrupt. Decide under the provisions of Negotiable Instruments Act, 1881, whether B can recover the money from A?

Sol: Section 84(1) provides that cheque should be presented to Bank within reasonable time. If cheque is not presented within reasonable time, meanwhile the drawer suffers actual damage, the drawer is discharged to the extent of such actual damage. This would be so if the cheque would have been passed if it was presented within reasonable time. As per section 84(2), in determining what is reasonable time, regard shall be had to (a) the nature of the instrument (b) the usage of trade and of bankers, and (c) facts of the particular case.

The drawer will get discharge, but the holder of the cheque will be treated as creditor of the bank, in place of drawer. He "Will be entitled to recover the amount from Bank. I [section 84(3)].

In the above case drawer i.e. A has suffered damage as cheque was not presented by B within reasonable time. Hence, A will get discharged but B will be the creditor of bank for amount of cheque and can recover the amount from bank.

P.103. Problem 3: C issues a cheque for Rs.15 without writing the word 'only' and gives it to D. D adds the words 'hundred only' after fifteen and adds two zeros after figure 15 as there is sufficient space for making these additions. The bank pays Rs. 1,500 to D who absconds. Is the bank liable to C for excess payment. Master Minds.

Sol: The problem relates to material alteration. In this regard, Section 87 of the Negotiable Instrument Act provides that "any material alteration of a negotiable instrument renders the same void as against anyone who is party thereto at the time of making such alteration and does not consent thereto". So, when a cheque is altered, as in the present case, a banker who makes the payment cannot debit the customer's account. However, Section 89 grants protection to a paying banker where the alteration is apparently not noticeable (similar to the given case) and the payment is made in due course as per Section 10. Thus, assuming that the bank made the payment in due course, it will enjoy protection under Section 89 and will not be liable to the customer (i.e. C).

P.104. A cheque was drawn by a customer on his Bank, marked 'Payee's Account only'. The cheque on the face of it was tampered by some one and converted into a bearer cheque. The bank was negligent in making payment to a bearer instead of payee. State with reference to provisions of Negotiable Instruments Act whether the Bank is liable to pay the amount to the customer.

Sol: Section 85 of Negotiable Instruments Act provides that banker is discharged if he makes payment in due course, if cheque payable to order is purported to be endorsed by or on behalf of payee. However, if there is obvious discrepancy between name of payee and his endorsement, bank will not be protected. Paying bank gets protection only when payment is 'in due course' and in accordance with apparent tenor of the cheque.

In this case, it is clear that payment made by Bank was not in due course in accordance with apparent tenor. Bank was negligent and will be liable to compensate the customer.

P.105. J stole a number of cheques belonging to G, indorsed them to himself and paid them into his account with C Bank. In each case, the money was immediately credited to his account and he was either allowed to

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withdraw the money or his overdrafts wiped out before the cheques could be cleared. G sues the bank for wrongful conversion of funds. Will he succeed?

Sol: Yes. The circumstances show that the banker was working as a holder and not as an agent. So bank is guilty of mistake and protection under the act will not be available.

P.106. A was a managing director and shareholder of a company. The cheque payable to the company were endorsed by him to himself in the capacity as managing director and deposited in personal account with B Bank. The bank collected the money and allowed him to withdraw. The company soon went into liquidation and the liquidator sues the bank for recovery of the money of the cheques payable to the company but credited to the account of A. Will he succeed?

Sol: Yes. Bank is guilty of negligence.

P.107. The drawer, 'D' is induced by 'A' to draw a cheque in favour 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.

Sol: The problem is based upon the privileges of a 'holder in due course'. Section 42 of the Negotiable Instrument Act, 1881, states that an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer. In this problem, P is not a fictitious payee and D, the drawer can recover the amount of the cheque from A's bankers [North and South Wales Bank B. Macketh (1908); Town and Country Advance Co. B, Provincial Bank].

P.108. A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through his Bankers. B the drawer wants to recover the amount from C's Bankers. Decide in the light of the provisions of Negotiable Instruments Act, 1881-

- a. Whether B the drawer, can recover the amount of the cheque from C's Bankers?
- b. Whether C is the Fictitious Payee?
- c. Would your answer be still the same in case C is a fictitious person?

Sol: According to Section 42 of the Negotiable Instruments Act, 1881 an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an instrument by the same hand as the drawer's signature, and purporting to be made by the drawer.

The word 'fictitious payee' means a person who is not in existence or being in existence, was never intended by the drawer to have the payment. Where drawer intends the payee to have the payment, then he is not a fictitious payee and the forgery of his signature will affect the validity of the cheque.

Applying the above, answers to the questions asked can be as under:

- a. In this case B, the drawer can recover the amount of the cheque from C's bankers because C's title was derived through forged endorsement.
- b. Here C is not a fictitious payee because the drawer intended him to receive payment.
- c. The result would be different if C is not a real person or is a fictitious person or was not intended to have the payment.

P.109. A cheque was dishonoured at the first instance and the payee did not initiate action. The cheque was presented for payment for the second time and again it was dishonoured. State in this connection whether the payee can subsequently initiate prosecution for dishonour of cheque.

Sol: Supreme Court in *Sadanandan Bhadrans Vs. Madhavan Sunil Kumar* case held that on a careful analysis of Section 138 of the Negotiable Instruments Act, 1981 it is seen that a cheque is said to be dishonoured when it is returned by the bank unpaid for any of the reasons mentioned therein. The said proviso lays down three conditions for the applicability of the above section. They are:

- a. the cheque should have been presented to the bank within six months of its issue or within the period of its validity whichever is earlier;

- b. the payee should have made a demand for payment by registered notice after the cheque is returned unpaid (within 30 days of receiving information that cheque was dishonoured); and
- c. the drawer should have failed to pay the amount within 15 days of the receipt of notice.

Prosecution under section 138 can be launched only when all the 3 conditions are satisfied.

So far as the first condition is concerned, clause (a) of the proviso to Section 138 does not put any restriction upon the payee to successively present a dishonoured cheque during the period of validity. It is common for a cheque being presented again and again within its validity period in the expectation that it would be encashed. The question whether dishonour of the cheque on each occasion of its presentation gives rise to a fresh cause of action, the following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138:

- a. that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;
- b. that the cheque was presented within the prescribed period; Master Minds.
- c. that the payee made demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and
- d. that the drawer failed to make the payment within 15 days of the receipt of the notice.

If one has to proceed on the basis of the generic meaning of the term 'cause of action', certainly each of the above facts would constitute a part of the cause of action, but it is significant to note that clause (b) of Section 142 gives a restrictive meaning in that it refers to only one fact which will give rise to the cause of action and that is failure to make the payment within 15 days from the date of receipt of the notice.

Therefore, the holder / payee of a cheque can initiate prosecution for an offence under Section 138 for its dishonour for the second time, if he had not initiated such prosecution on the earlier cause of action.

P.110. A finance company after having issued a cheque in favour of a depositor informs the depositor not to deposit cheque as well as informs the bank to stop payment. Examine with reference to the provisions of Negotiable instruments Act whether it is an offence under the Act.

Sol: Section 138 of Negotiable Instruments Act provides for penalty of imprisonment and fine if cheque issued by him bounces for insufficiency of funds.

After issue of cheque, drawee can give instructions to bank to stop payment of a cheque. This is termed as countermanding of payment. In such case, it was argued that there is no offence. This would have provided an escape route to unscrupulous people and made the section 138 a 'dead letter'.

Hence, in *Modi Cements Ltd. Vs. Kuchil Kumar Nandi* case, it was held that the drawer will be liable even if he issues 'stop payment' instructions after issue of cheque.

In *Goa Plast Pvt. Ltd. Vs. Chico Ursula D'Souza*, it was held that the drawee will be liable even if 'Stop Payment' instructions to Bank are issued before the cheque was due for payment.

P.111. Describe, in brief, the main amendments incorporated by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 in Sections 138, 141 and 142 of the Principal Act i.e. the Negotiable Instruments Act, 1881.

Sol: Amendments in the Negotiable Instruments Act, 1881

The main amendments made through the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 in Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 are as follows:

Section 138:

- a. To increase the punishment as prescribed under the Act from one year to two years.
- b. To increase the period for issue of notice by the payee to the drawer from 15 days to 30 days [Proviso(b) to Section 138].

Section 141: To exempt those directors from prosecution under Section 141 of the Act who are nominated as directors of a company by virtue of their holding any office or employment in the Central Government or State Government or a Financial Corporation owned or controlled by the Central Government, or the State Government, as the case may be [Proviso to Section 141(l)].

Section 142: To provide discretion to the court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act [Proviso to Section 142(b)].

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