



Arjun Chhabra Tutorial

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Question 1:

Distinguish between holder and holder in due course. **[June 23 - 5 Marks (22)]**

Answer:

S No.	Holder	Holder-in-due course
1	Holder is entitled in his own name to possess the instrument and the amount thereon from parties involved.	Holder-in-due course possesses the instrument for consideration before maturity and in good faith.
2	Title of the holder is subject to title of the transfer.	Holder-in-due course gets a better title than transfer.
3	Holder may receive the instrument without consideration.	Holder-in-due course always receives the instrument for consideration.
4	Holder does not get certain privileges available to the Holder-in-due course.	Holder-in-due course always gets privileges not available to holder.

Question 2:

What are the different types of instruments mentioned in the Negotiable Instruments Act, 1881? **[June 23 - 6 Marks (16)] [Dec 24 - 7 Marks]**

Answer:

There are various types of instruments mentioned in the Negotiable Instruments Act, 1881 as follows:

1. Inland instrument – a promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in, India shall be deemed to be an inland instrument.

Example:

- (a) A promissory note made in Kolkata and payable in Mumbai.
- (b) A bill drawn in Varanasi on a person resident in Jodhpur (although it is stated to be payable in Singapore)
- (c) A, a resident of Agra, drew (i.e., made) a bill of exchange in Agra on B, a merchant in New York. And B accepted the bill of exchange as payable in Delhi. It is an inland bill of exchange. In this case, the bill of exchange was drawn in India and also payable in India.
- (d) A, resident of Mumbai, drew a bill of exchange in Mumbai on B, a merchant in Mathura. And B accepted the bill of exchange as payable in London. It is also an inland bill of exchange. In this case, the bill of exchange was drawn in India on a person resident in India. It is immaterial that the amount is payable in London. An inland instrument remains inland even if it has been endorsed in a foreign country.
- (e) If the bills of exchange mentioned in above two examples, are endorsed in France, they will remain inland bills.

2. Foreign instrument – a promissory note, bill of exchange or cheque not drawn, made or made payable, in India, shall be deemed to be a foreign instrument.

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

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

5. Inchoate stamped instruments –

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

Example: 'A' signs, as maker, a blank stamped (Sufficient to cover amount of Rs.1000) paper and gives it to 'B', and authorizes him to fill it as note for Rs. 500. 'B' fraudulently fills it up as note for Rs. 2,000, and endorsed to 'C' (B's brother) as gift who received it in good faith. Decide, with reasons whether 'C' is entitled to recover the amount and if so, up to what extent?

Mr. C is entitled to recover Rs.500 from Mr. A since:

1. Mr. C received such instrument as gift.
2. Which means Mr. C is holder and not in holder in due course.
3. Because to become holder in due course Mr. c must receive such instrument for consideration or value [Section 9]

Question 3:

Raju is the holder of a bill of exchange made payable to the order of Ram. The bill of exchange contains the following endorsements in blank:

- (i) First endorsement Ram
- (ii) Second endorsement Ganesh.
- (iii) Third endorsement Naresh and
- (iv) Fourth endorsement Bakul

Raju strikes out, without Bakul's consent, the endorsements by Ganesh and Naresh. Describe with reasons whether Raju is entitled to recover anything from Bakul under the provisions of Negotiable Instruments Act, 1881. [MQP_Paper5_Set2_Dec24 - 7 Marks]

Answer:

According to section 40 of the Negotiable Instruments Act, 1881, where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.

In the given question, Raju is the holder of a bill of exchange of which Ram is the payee and it contains the following endorsement in blank:

First endorsement = Ram

Second endorsement = Ganesh

Third endorsement = Naresh

Fourth endorsement = Bakul

Raju, the holder, may intentionally strike out the endorsement by Ganesh and Naresh, in that case the liability of Ganesh and Naresh upon the bill will come to an end. But if the endorsements of Ganesh and Naresh are struck out without the consent of Bakul, Raju will not be entitled to recover anything from Bakul. The reason being that as between Naresh and Bakul, Naresh is the principal debtor and Bakul is surety. If Naresh is released by the holder under Section 39 of the Act, Bakul, being surety, will be discharged. Hence, when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

Thus, if Raju strikes out, without Bakul's consent, the endorsements by Ganesh and Naresh, Bakul will also be discharged.

Question 4:

Anil draws a bill of exchange payable to himself on Sushil, who accepts the bill without consideration just to accommodate Anil. Anil transfers the bill to Ajay for good consideration. State the rights of Anil and Ajay. Would your answer be different if Anil transferred the bill to Ajay after maturity? **[June 18 - 7 Marks (16)] MTP 2016 Jun2023 Set1**

OR

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,
- 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. **[June 17 - 6 Marks (16)]**

OR

Lokesh draws a bill of exchange payable to himself on Prachi, who accepts the bill without consideration just to accommodate Lokesh. Lokesh transfers the bill to Govind for good consideration. State the rights of Lokesh and Govind. Would your answer be different if Lokesh transferred the bill to Govind after maturity? **MTP 2016 Jun 2020 Set1 – 8 Marks**

OR

Ajay draws a bill on Anoop. Anoop accepts the bill without any consideration. The bill is transferred to Udit without consideration. Udit transferred it to Vicky for value. Decide-

- (i)** Whether Vicky can sue the prior parties of the bill?
- (ii)** Whether the prior parties other than Vicky have any right of action intense? **[June 19 - 8 Marks (16)]**

Holder and Holder in due course [Section 9 and 9]

Holder:- Means a person entitled in his own name to the possession of a negotiable instrument and to receive the amount due on it. [Holder in Law]

Holder in Law	Holder in Facts
Person must be named in the instrument as - payee or - endorsee or - he must be the bearer.	Person who has obtained possession of an instrument by theft, or under a forged instrument. Not entitled to recover Posses the instrument.

Holder in due course

- (i) He must be the **holder** of the instrument.
- (ii) Obtained the instrument **For value or consideration**.
- (iii) Obtained before maturity.
- (iv) Obtained in good faith.

Note:- Holder in due course is in a **Privileged Position**

He is not only protected against all defects of persons from whom he received the instrument but also protect all subsequent holders.

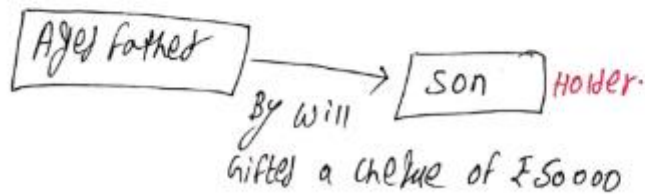
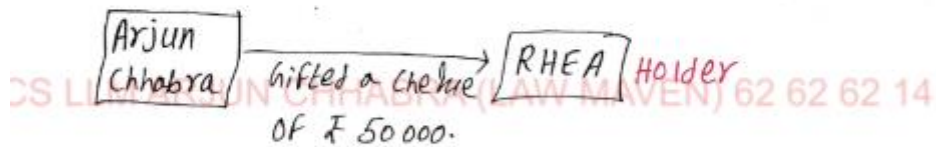
It does not matter whether consideration paid by some of the previous parties to the instrument

or

there was a defect of title from a party from whom he took it.

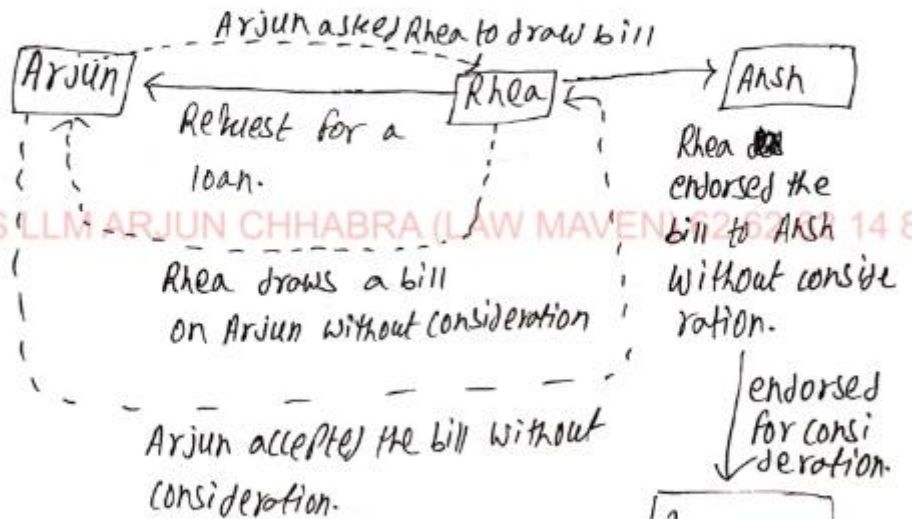
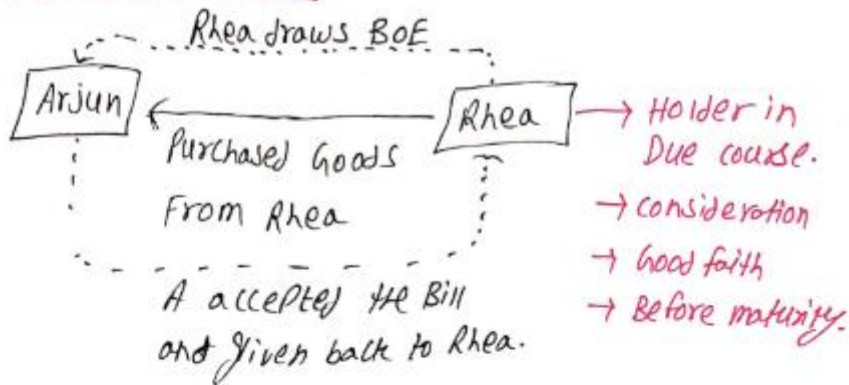
HE CAN RECOVER THE AMOUNT FROM ALL THE PREVIOUS PARTIES.

Important Note:- Holder in due course includes HOLDER.



Arjun having a cheque → not stolen by → Rhea Neither holder Nor H.I.D.C.

Holder in due course



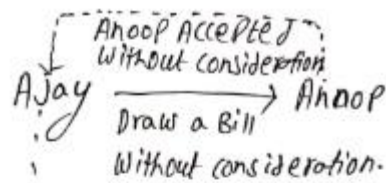
Conclusion: Rohul can claim the money from Ansh, Rhea and Arjun.

Rohul

↓
HIDC

- consideration
- Good faith
- Before maturity.

question 3(a) June 2019 [8 marks]



Udit Transferred to Udit without consideration
 Vicky Transferred for consideration.

Decide.

Q. Whether vicky can sue prior parties to bill.

Q. Whether prior parties other than vicky have any right??

Answer:-

Section 43 of Negotiable Instrument Act, 1881.

Where an instrument made, drawn, accepted, transferred without consideration creates no obligation of payment between the parties to the transaction.

But if any such party has transferred the instrument to a holder for consideration, such holder, and every subsequent holder may recover the amount due on such instrument from transferor or any prior party.

(i) In the instant case, Ajay has drawn a bill on Anoop and Anoop accepted the bill without consideration. Later on in the next transfer by Udit to

to vicky is for value.

According to the Above provision, the bill ultimately transferred to vicky with consideration.

Therefore, vicky can sue any of the parties i.e. Ajay, Anoop or Udit, as vicky derived a good title on it being taken with consideration.

(ii) As regards the second part of problem, the prior parties before vicky i.e. Ajay, Anoop and Udit have no right of action because first part of section 43 has clearly lays down that negotiable instrument, made, drawn, accepted or transferred without

consideration creates no obligation of payment between the parties to transaction prior to the parties who receive it on consideration.

Question 5:

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. **[Dec 17 - 7 Marks (16)]**

Answer:

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.

Question 6:

Discuss the special characteristics of "Negotiable Instruments." [Model Paper – Set 1 – June 23 – 7 Marks]

Answer:

Special characteristics of Negotiable Instruments are -

1. It must be in writing.
2. It should be signed by the maker or drawer.
3. There must be a promise or order to pay.
4. The promise or order must be unconditional.
5. It must call for payment in money and money only.
6. It should call for payment of a certain sum.
7. The property in the instrument may be passed in two ways:
 - a) by mere delivery; and
 - b) by indorsement and delivery.
8. The consideration is also presumed to have been passed

Question 7:

Distinguish between Bill of Exchange and Promissory Note. [Dec 17 - 7 Marks (12)]

Answer:

Distinguish between Bill of Exchange and Promissory Note. The following are the points of differences between a Bill of Exchange and Promissory note:

- 1. Number of Parties:** In a Bill of Exchange there are three parties - the drawer, the drawee and the payee. In a promissory note, there are 2 parties - the maker and the payee.
- 2. Promise and Order:** In a Bill of Exchange, there is an order to pay. In a Promissory note there is a promise to pay.
- 3. Acceptance:** A bill needs acceptance but a promissory note does not require acceptance.
- 4. Liability:** The drawer of a bill is liable only when the drawee does not accept the bill or pay the money due. But the maker of a Promissory note is primarily liable on the instrument.
- 5. Relationship:** In a Bill of Exchange, a drawer stands in an immediate relationship with the acceptor; But the maker of the Promissory note stands in an immediate relationship to the payee

6. Notice: In case of non-acceptance or non-payment of a bill of notice must be given to all persons liable to pay. This is called 'Notice of Dishonor'. In the case of a Promissory note, no 'Notice of Dishonor' is necessary.

Question 8:

Examine the validity of the acceptance by the term-

(i) "Acceptance by mere signature of the drawee without the addition of the word 'Accepted' on the negotiable instrument".

(ii) "An Oral Acceptance". **[Model Question Paper Set 2 – Dec 23 – 7 Marks]**

Answer:

Following are the essentials of a valid acceptance:

- Acceptance may be oral or in writing;
- It may be expressed or implied;
- If a particular method of acceptance is prescribed, the offer must be accepted in the prescribed manner;
- It must be unqualified and absolute and must correspond with all terms of the offer;
- The conditional acceptance will amount to rejection of offer;
- A counter offer for acceptance will also amount to reject of offer but the counter offer may be accepted or rejected by the other party;
- It must be communicated to the offerer, since acceptance is completed the moment it is communicated;
- Mere silence on the part of the offeree does not amount to acceptance;
- The acceptance should be given if there is a time limit is fixed or otherwise at a reasonable time and before he offers lapses or is revoked.

The given problem is answered as follows:

1) An **oral acceptance is not valid** since the acceptance must be in writing and signed.

2) Although it is usual to accept the bill by writing the word 'accepted', yet it is not a necessary condition to make the acceptance valid.

In other words, signature made by the drawee on the bill amounts valid acceptance even though such signature is not accompanied by the word 'Accepted'. Therefore, the acceptance in the given case is valid.

Question 9: Mr. X drew a cheque payable to Mr. Y on order. Mr. Y lost the cheque and was not aware of the loss of the cheque. The person who found the cheque forged the signature of Mr. Y and endorsed it to Mr. Z as the consideration for goods bought by him from Mr. Z. Mr. Z encashed the cheque, on the very same day from the drawee bank. Mr. Y intimated the drawee bank about the theft of the cheque after three days. Review the liability of the drawee bank. **[Dec 24 - 7 Marks]**

Answer:

Cheque payable to order **[Section 85 of the Negotiable Instruments Act, 1881]**

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

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

As per the given facts, cheque is drawn payable to “Mr. Y or order”. It was lost and Mr. Y was not aware of the same. The person found the cheque and forged and endorsed it to Mr. Z, who encashed the cheque from the drawee bank. After few days, Mr. Y intimated about the theft of the cheque, to the drawee bank, by which time, the drawee bank had already made the payment.

According to above stated section 85 of the Act, the drawee banker is discharged when it has made a payment against the cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the signature of Mr. Y is forged, the banker is protected and is discharged. The true owner, Mr. Y, cannot recover the money from the drawee bank in this situation.

Question 10:

Discuss the circumstances when a Bill of Exchange is dishonoured and the role of a notice in this regard. **[Model Question Paper Set 1 – Dec 24 – 7 Marks]**

Answer:

The dishonour may be due to the following reasons-

1. non acceptance; and
 2. by non-payment
1. **Section 91 provides that a bill of exchange is said to be dishonored by non- acceptance**
 - when the drawee, or one of several drawees, not being partners,
 - **makes default in acceptance** upon being duly required to accept the bill, or
 - where **presentment is excused** and the bill is not accepted.
 - When the **drawee is incompetent to contract**, or the **acceptance is qualified** the bill may be treated as dishonored.
 2. **Section 92 provides that an instrument is said to be dishonored by non-payment**
 - when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Role of a notice:

Section 93 provides that when an instrument is dishonoured the holder must give notice that the instrument has been dishonoured.

Section 94 provides that the notice may be **in writing or oral**.

- If it is in written form
- it must be sent by post and may be in any form
- but it must inform the party to whom it is given either in express term or by reasonable intendment
- that the instrument has been dishonored and he will be held liable thereon. It must be given within a reasonable

Question 11:

Vinit draws a cheque in favour of Pankaj, a minor, Pankaj endorses the same in favour of Vikas. The cheque is dishonoured by bank on grounds of inadequate funds. What legal remedy is available to Vikas under the provisions of the Negotiable Instruments Act, 1881?

[Dec 23 - 7 Marks (16)]

OR

Mr. S. K drew a cheque in favour of Mr. P. K who was seventeen years old. Mr. P. K settled his rental due by endorsing the cheque in favour of Mrs. R. K the owner of the house in which he stayed. The cheque was dishonoured when Mrs. R. K presented it for payment on the grounds of inadequacy of funds. Advice to Mrs. R. K how she can proceed to collect her dues. **[Dec 19 - 6 Marks (16)]**

Answer:

- Capacity to incur liability as a party to a negotiable instrument is **co-extensive** with capacity to contract.
- According to **Section 26** of the Negotiable Instruments Act, 1881, every person capable of contracting, may bind himself and be bound by making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.
- **Negatively, minors, lunatics, idiots, drunken person and persons otherwise disqualified by their personal law**, do not incur any liability as parties to negotiable instruments.

But in capacity of one or more of the parties to a negotiable instrument in no way, diminishes the liabilities of the competent parties to the said instrument.

Therefore, where a minor is the endorser or payee of an instrument which has been endorsed **all the parties excepting the minor are liable in the event of its dishonor**.

In the given case Vikas can recover the amount of cheque from Vinit who delivers the cheque in favour of Pankaj, a minor by resorting to the provisions of the Negotiable Instruments Act, 1881.

Dishonour of Cheque offence u/s 138

1. Cheque issued by Drawer to clear the liability
2. Presented within 3 months or validity period, whichever is earlier.
3. Returned due to insufficiency of funds
4. Payee serves notice of dishonour within 30 days
5. Drawer fails to make the payment with 15 days from the date of receipt of notice
6. Drawer deemed to have committed a offence liable for (a) fine - twice the amount of cheque; (b) Imprisonment for 2 years; (c) Both
7. Payee after the expiry of 15 days can file a suit within 1 month

Question 12:

Explain assignment of negotiation instruments. How would you differentiate between negotiation and assignment? **[June 24 - 7 Marks] [Dec 21 - 6 Marks (16)]**

Answer:

Assignment of Negotiation Instruments

- Assignment takes place where the holder of an instrument transfers it to another so as to confer a right on the transferee to receive the payment of the instrument.
- All negotiable instruments are transferable by assignment without endorsement under sections 130-132 of the Transfer of property act.
- Assignment of a negotiable instrument is effected **by writing without endorsement.**
- The main feature of assignment is that the assignee obtains the right of the assignor.
- Therefore, if the assignor's title is defective assignee title will also be defective.

S. No.	Negotiation	Assignment
1	Consideration is presumed until contrary is proved.	Consideration must be proved
2	If transferee is a holder in due course, he takes the instrument free from any defects.	Assignee's title is always subject to defences and equities between the original debtor and assignor.
3	Notice of transfer is not necessary.	Notice of assignment must be given
4	Negotiation is effected by delivery in case of instruments payable to bearer and by delivery and endorsement in case of instrument payable to order.	Assignment is effected only by writing
5	Transferee can sue the third party in his own name.	Assignee cannot sue the third party in his own name.
6	There are a number of presumptions in favour of holder in due courses	There are no such presumptions.

Question 13: Examine the validity of the condition "Issuing a cheque that bounces is an Offence". **MQP_Paper5_Set2_Dec24 - 7 Marks**

Section 138 provides penalty for dishonour of cheque for insufficiency etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any money to another person from out of that account for the discharge, in whole or in part, of any 'debt or other liability' (a legally enforceable debt or other liability) is returned by the bank unpaid, -

- either because of the amount of money standing to the credit of that account is insufficient to honor the cheque; or
- that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to 2 years or with fine which may extend to twice the amount of the cheque, or with both.

The penal provision in this cheque shall not apply unless-

- the cheque has been presented to the bank within a period of three months (with effect from 01.04.2012, before that it is six months) from the date on which it is drawn or within the period of its validity, whichever is earlier;
- the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheques as unpaid; and
- the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice. Conditions precedent

In 'Kusum Ingots & Alloys Limited V. Pennar Peterson Securities Limited' – AIR 2000 SC 954, the Supreme Court held that the ingredients which are to be satisfied for making out a case under Section 138 of the Act, are-

- a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for discharge of any debt or other liability;
- that cheque has been presented to the bank within a period of six months (now three months) from the date on which it is drawn or within the period its validity whichever is earlier;
- that the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
- the payee or holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within 15 days (now 30 days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
- the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Section 139 provides that it shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque, of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability.

In 'B. Mohan Krishna V. Union of India' 1996 CrLJ 683 (AP DB), the Andhra Pradesh High Court Division Bench held that the presumption in Section 139 in favor of the holder of a cheque is not violative of Article 20(3) of the Constitution which incorporates immunity against self-incrimination.

Section 140 provides that it shall not be a defence in a prosecution for an offence under Section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in the section.