

Chapter 7: The Negotiable Instruments Act, 1881

Wisdom Notes

Question: 1

X signs instruments in the following terms:

- 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. 1,000.
- d) I promise to pay B Rs. 500 and all other sums which shall be due to him.
- e) I promise to pay B Rs. 500, first deducting any money which he may owe me.
- f) I promise to pay B Rs. 500 seven days after my marriage with C.
- g) I, promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum.
- h) I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.

Answer:

Promissory Note [Section 4]: A promissory note is an instrument in writing (not being a bank-note or a 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.

The instruments respectively marked (a) and (b) are promissory notes.

The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

Question: 2

Rama 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. [MTP I Sep 24 - 3 Marks]

Answer:

Although it fulfils **Section 4 of the Negotiable Instruments Act, 1881** (unconditional written promise for a certain sum), it is **illegal and unenforceable** because under the **Reserve Bank of India Act, 1934**, a **promissory note cannot be made payable to bearer**, whether payable on demand or after a fixed period.

Question: 3

Classify the following instruments as inland or foreign instruments as per the Negotiable Instruments Act, 1881 and justify your classification with proper reasoning.

- (i) A promissory note is made in Kolkata and is payable in Mumbai.
- (ii) A bill is drawn in Varanasi on a person resident in Jodhpur, but it is made payable in Singapore.
- (iii) A, resident of Agra, draws a bill of exchange in Agra on B, a merchant in New York, and B accepts it as payable in Delhi.
- (iv) A promissory note is made in New York by A, a resident of New York, and made payable to B in Delhi, India.
- (v) A bill of exchange is drawn in London on a person residing in Dubai, and it is payable in Dubai.

(MTP Sep 1-7 Marks)

Answer:

"Inland instrument" and "Foreign instrument" [Sections 11 & 12 of the Negotiable Instruments Act, 1881]

"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.

"Foreign instrument": A foreign instrument is one which is not an inland instrument.

In the instant case,

(i) A promissory note made in Kolkata and payable in Mumbai is an Inland instrument.

(ii) A bill drawn in Varanasi on a person resident in Jodhpur (although it is stated to be payable in Singapore) is an Inland instrument.

(iii) 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. In this case, the bill of exchange was drawn in India and also payable in India. Hence, it is an inland instrument.

(iv) A promissory note is made in New York by A, a resident of New York, and made payable to B in Delhi, India. It is a Foreign instrument as it is Drawn outside India, payable in India.

(v) A bill of exchange is drawn in London on a person residing in Dubai, and it is payable in Dubai. It is a Foreign instrument as it is Drawn outside India, on a person residing outside India, payable outside India.

Question: 4

Whether C can recover the amount on a **blank but stamped promissory note** where **A (maker)** authorised **B** to fill **₹500**, but **B fraudulently filled ₹2,000** and **endorsed it as a gift** to **C**, who received it **in good faith but without consideration**. It is to be noted that the amount of **₹2,000** is covered by the stamp affixed on it. [ACT]

Answer:

Under **Section 20** read with **Section 9 of the Negotiable Instruments Act, 1881**, **C is not a holder in due course** (instrument received as **gift, without consideration**) and hence can recover **only ₹500 (amount intended by A)**, and **not ₹2,000**, from **A**.

If **C is a holder in due course**, **C can recover the entire ₹2,000 from A**, since the stamp covers ₹2,000 and A is liable to a holder in due course for the full amount completed on the instrument.

Question: 5

Whether **mere endorsement without delivery** amounts to valid negotiation when

(i) **N endorsed a cheque to C but kept it in his locker and later died**, P found the cheque in N's safe locker.

(ii) **Sahdev endorsed a promissory note to Arjun and delivered it to Arjun's agent**, who later died, after which the instrument was found with Arjun. [MTP II Sep 24 – 4 Marks]

Answer:

As per **Section 48 of the Negotiable Instruments Act, 1881**, **endorsement must be followed by delivery** to complete negotiation: hence,

- in the first case **no valid negotiation occurred and P/C is not a holder**,
- whereas in the second case **delivery to Arjun's agent amounts to constructive delivery**, completing negotiation, and **Arjun can recover ₹10,000 from Nakul**.

Question: 6

Whether **Akash** can enforce payment of a **bill of exchange** where **Aman** drew the bill on **Baban (accepted)**, payable to **Magan or order, endorsed to Gagan**, then **endorsed by Gagan to Akash but not delivered**, and after **Gagan's death**, the bill was **delivered by his son Ankit** to Akash before maturity. (Sep 24 - 4 Marks) (MTP II Jan 25 - 4 Marks) (RTP Sep 25)

Answer:

Under **Section 46** read with **Section 57** of the **Negotiable Instruments Act, 1881**, **delivery is essential to complete negotiation** and a **legal representative cannot negotiate by mere delivery after the indorser's death**; therefore, the post-death delivery by Ankit is **invalid**, and **Akash cannot enforce payment against Baban or any prior party**.

Question: 7

Whether a **bill of exchange for ₹50,000** drawn by **Saksham** on **Utkarsh** on **14th August at 3:00 pm**, and sent for acceptance, can be treated as **dishonoured for non-acceptance** when **Utkarsh sought 48 hours for consideration** but did not accept it by **16th August at 3:00 pm**, with **15th August being a public holiday**. [MTP II Sep 24 - 3 Marks]

Answer:

As per **Sections 61 and 63** of the **Negotiable Instruments Act, 1881**, the drawee is entitled to **48 hours exclusive of public holidays** to consider acceptance; therefore, the 48 hours would expire on **17th August**, and the bill was **not dishonoured for non-acceptance on 16th August**.

Question: 8

When the **maturity period** of a **bill of exchange payable 60 days after sight** begins, where **Mr. K draws the bill in favour of Mr. J**, **Mr. J holds it for 30 days**, and then **presents it to Mr. N (drawee)** who **accepts it upon presentation**. [Sep 25 - 3 Marks]

Answer:

As per **Section 61** of the **Negotiable Instruments Act, 1881**, for a bill payable **"after sight"**, the maturity period **commences from the date of acceptance by the drawee**; hence, the **60 days are counted from the date Mr. N accepts the bill**, and the 30-day delay in presentation is irrelevant.

Question: 9

Whether **A (maker)** is **discharged from liability** when **B (payee)** does **not present a promissory note payable on demand**—issued by A for purchase of a watch—**where no specific place of payment is mentioned**. (RTP June 24)

Answer:

Under **Section 64** of the **Negotiable Instruments Act, 1881**, although presentment is generally required, **no presentment is necessary** to charge the maker when a **promissory note is payable on demand and not payable at a specified place**; hence, **A is not discharged from liability despite non-presentment**.

Question: 10

Whether **Priya's presentment for payment** of a **bill of exchange due on 15th October**, made on **12th October during business hours** at **Sanjay's office** by leaving the bill with **Sanjay's assistant in his absence**, constitutes a **valid presentment under law**, when payment was not made and the bill was dishonoured. [Jan 25 – 3 Marks]

Answer:

As per **Section 64 of the Negotiable Instruments Act, 1881**, presentment must be made to the **drawee/acceptor or an authorised representative**; leaving the bill with an **unauthorised assistant** does **not amount to valid presentment**, hence **Priya's presentment is invalid under law**.

Question: 11

Whether **Mr. Mohan's right to recover** on a **promissory note payable at a specified place on a fixed date** is affected when he **presents it two days after the due date due to unforeseen circumstances**, and **in what situations delay in presentment can be excused** under the Act. [Sep 25 - 4 Marks]

Answer:

Under **Section 75A of the Negotiable Instruments Act, 1881**, **delay in presentment is excused** if caused by **circumstances beyond the holder's control** and not due to his **default, misconduct or negligence**, provided presentment is made **within a reasonable time after the cause ceases**; hence, **Mr. Mohan's right to recover is not affected**, though **Section 64** generally requires presentment at maturity and may discharge the maker **only to the extent of loss caused by delay**.

Question: 12

What amount **Saurabh** can recover from **Sachin** when a **promissory note for ₹1,50,000**, issued for **1,000 kg rice on 3 months' credit**, is **dishonoured on maturity**, and Saurabh also incurs **advocate's fees** in filing the recovery suit. (RTP June 24) (MTP I May 25, 7 Marks)

Answer:

As per **Section 117 of the Negotiable Instruments Act, 1881**, Saurabh can recover **₹1,50,000 (amount due on the instrument)** along with **expenses properly incurred for presenting, noting and protesting (including advocate's fees)**, and **interest @18% p.a. from the date of payment till tender/realisation**; provisions relating to **rate of exchange and endorser's rights** exist under Section 117 but are **not attracted on these facts**.

Question: 13

Whether **Shiva's act** of issuing a **cheque of ₹21,000 as a gift** to his sister on **Raksha Bandhan**, and thereafter **instructing her not to present it** and giving a **stop-payment instruction to the bank**, constitutes an **offence under Section 138 of the Negotiable Instruments Act, 1881**. (MTP 1 June 24 - 3 Marks)

Answer:

As per **Section 138 of the Negotiable Instruments Act, 1881**, criminal liability arises only when a cheque is issued for discharge of a **legally enforceable debt or liability**; since the cheque of **₹21,000** was issued **purely as a gift**, **Section 138 is not attracted**, and **Shiva has committed no offence**, despite the stop-payment instruction.

Question: 14

Whether **Ram** is liable under **Section 138 of the Negotiable Instruments Act, 1881** when a **cheque of ₹51,000** sent as a **wedding gift** to **Rohan** (after purchase of a second-hand car for **₹5 lakh on 10-11-2022**, with **₹4 lakh paid immediately** and **₹1 lakh outstanding**) is **dishonoured due to insufficient funds**, and whether **Rohan was justified** in treating it as an offence. (May 25 - 7 Marks)

Answer:

As per **Section 138**, liability arises only when a cheque is issued for a **legally enforceable debt or liability**; since the **₹51,000 cheque was issued purely as a voluntary gift and not towards the ₹1 lakh outstanding**, **Section 138 is not attracted**, **Ram is not liable**, and **Rohan was not justified** in treating the dishonour as an offence.

Question: 15

Whether **Mr. Y**, who issued a **cheque of ₹10,000 to Mr. Z**, is **liable for dishonour** when the cheque is returned unpaid due to **insufficiency of funds and no overdraft authority**, and what would be the legal position **if the cheque was issued as a donation**. (June 24 - 7 Marks) (RTP Jan 25) (MTP I Jan 25 – 7 Marks)

Answer:

Under **Section 138 of the Negotiable Instruments Act, 1881**, dishonour of a cheque issued for discharge of a **legally enforceable debt or liability** constitutes an offence (subject to presentation within **3 months/validity, notice within 30 days, and non-payment within 15 days**), punishable with **imprisonment up to 2 years or fine up to twice the cheque amount (₹20,000) or both**; however, if the **₹10,000 cheque was issued as a donation**, it falls **outside Section 138**, and **Mr. Y incurs no liability**.

Question: 16

Whether **Mr. Harsha**, who issued a **cheque of ₹50,000 as a donation to an NGO for sponsoring one child's education for one year**, and later issued a **stop-payment instruction** upon discovering the NGO to be fraudulent, can be **held liable under the Negotiable Instruments Act, 1881** despite the NGO issuing a **demand notice**. (3 Marks)

Answer:

As per **Section 138 of the Negotiable Instruments Act, 1881**, criminal liability arises only when a cheque is issued for discharge of a **legally enforceable debt or liability**; since the **₹50,000 cheque was issued as a donation (gift)** and not towards any enforceable obligation, **Section 138 is not attracted**, and **Mr. Harsha is not liable**, even after issuing stop-payment instructions.

Question: 17

Whether **Sumit's suit under Section 138** is maintainable when **Priyansh issued a cheque for sale price on 14-06-2023**, which was **presented and dishonoured on 19-06-2023 due to insufficiency of funds**, and whether the **statutory notice and waiting periods** have been complied with. (RTP Sep 24) (RTP May 25)

Answer:

Under **Section 138 of the Negotiable Instruments Act, 1881**, the suit is **maintainable only if Sumit issues a written demand notice within 30 days** of dishonour (i.e., **on or before 18-07-2023**) and **Priyansh fails to pay within 15 days of receipt of notice**; upon such failure, Sumit can validly prosecute, with punishment up to **2 years' imprisonment or fine up to twice the cheque amount or both**.

Question: 18

Whether **Bholenath**, after **issuing a cheque in favour of Surendar**, by **requesting Surendar not to present the cheque** and by giving a **stop-payment instruction to the bank**, commits an **offence under the Negotiable Instruments Act, 1881**.

Answer:

Under **Section 138** read with **Sections 139 and 140 of the Negotiable Instruments Act, 1881**, **stop-payment instructions after issuance of a cheque do not absolve the drawer**; once a cheque is issued for discharge of a **debt or liability**, **dishonour due to stop payment attracts Section 138**, and such acts **constitute an offence**, subject to fulfilment of statutory conditions.

Question: 19

Whether **Mr. X** commits an offence when he issues a **post-dated cheque dated 01-08-2022 for ₹5,00,000** in favour of **Mr. R** towards **outstanding dues on 26-07-2022**, later reduces his bank balance to **₹4,50,000** by paying taxes on **29-07-2022**, **requests stop-presentation**, and finally gives a **stop-payment instruction** to the bank.

Answer:

Under **Sections 138, 139 and 140 of the Negotiable Instruments Act, 1881**, issuance of a cheque for a **legally enforceable debt** followed by **dishonour due to insufficiency of funds or stop-payment** constitutes an **offence**; the law **presumes liability (s.139)** and **does not allow the defence of lack of intention (s.140)**, hence **Mr. X's acts amount to an offence under Section 138**, subject to compliance with statutory notice and timelines.