CA Foundation
Paper 2 - Business Law

Chapter 7 (NIA)
The Negotiable Instruments Act, 1881

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Table of Contact for the Chapter

Chapter covers following headings

- Notes, Bills & Cheques-Types, Classification and its characterstics
- Modes of Negotiation
- Presentment of Instruments
- Rules of Compensation

INTRODUCTION

1. The main objective of the Act is to -
   - legalise the system by which instruments could pass from hand to hand by negotiation
   - like any other goods.
2. The Law in India relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881.
3. This is an Act to define and amend the law relating to promissory notes, bills of exchange and cheques.
4. The Act applies to the whole of India, but nothing herein contained affects the Reserve Bank of India Act, 1934, (section 21 which provides the Bank to have the right to transact Government business in India), or affects any local usage relating to any instrument in an oriental language.
5. The provisions of this Act are also applicable to Hundis, unless there is a local usage to the contrary.
6. Other native instruments like Treasury Bills, Bearer Debentures, Railway Receipts, Delivery Orders, Bill of Lading etc. are also considered as negotiable instruments either by mercantile custom or under other enactments.

The significant amendments made in the Negotiable Instruments Act, 1881 (N.I. Act):

- The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002;

- The Negotiable Instruments (Amendment) Act, 2015, and
- The Negotiable Instruments (Amendment) Act, 2018.

MEANING OF NEGOTIABLE INSTRUMENTS

- Negotiable Instruments is an instrument (Instrument = document)
- which is freely transferable (by customs of trade)
- from one person to another
- by -
  - mere delivery or
  - by indorsement and delivery.

- Property in such an instrument ———->> pass to a *bonafide* transferee ———->> for VALUE

The Act does not define the term 'Negotiable Instruments'.

However, Section 13 of the Act provides for only three kinds of negotiable instruments namely -

- Bills of exchange,
- Promissory notes and
- Cheques

payable either to order or bearer.

ORDER

1. A negotiable instrument is payable to order when:
   a. It is expressed to be so payable
   b. When it is expressed to be payable to a specified person and does not contain words prohibiting its transfer. (i.e. it is transferrable by indorsement and delivery)

BEARER

2. A negotiable instrument is payable to bearer when:

a. When it is expressed to be so payable e.g. pay bearer

b. When the only or last indorsement on the instrument is an indorsement in blank i.e., the person who possesses it can demand payment.

Indorsement = signing of the instrument

For example,. A cheque made payable to specified person and that cheque is endorsed by signing on the back of the cheque by that specified person

Essential Characteristics of Negotiable Instruments ★

1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
7. The sum payable, the time of payment, the payee, must be certain.
8. The instrument should be delivered. Mere drawing of instrument does not create liability.

Writing	Signed	Freely TRF	♾️Till Satisfaction	Promise or Order to Pay	रोकड़ा ONLY	Certain व्यक्ति रोकड़ा समय	Delivery

PROMISSORY NOTE

Meaning

- Section 4 of the NI Act, 1881,
- "A 'promissory note' is an instrument in writing

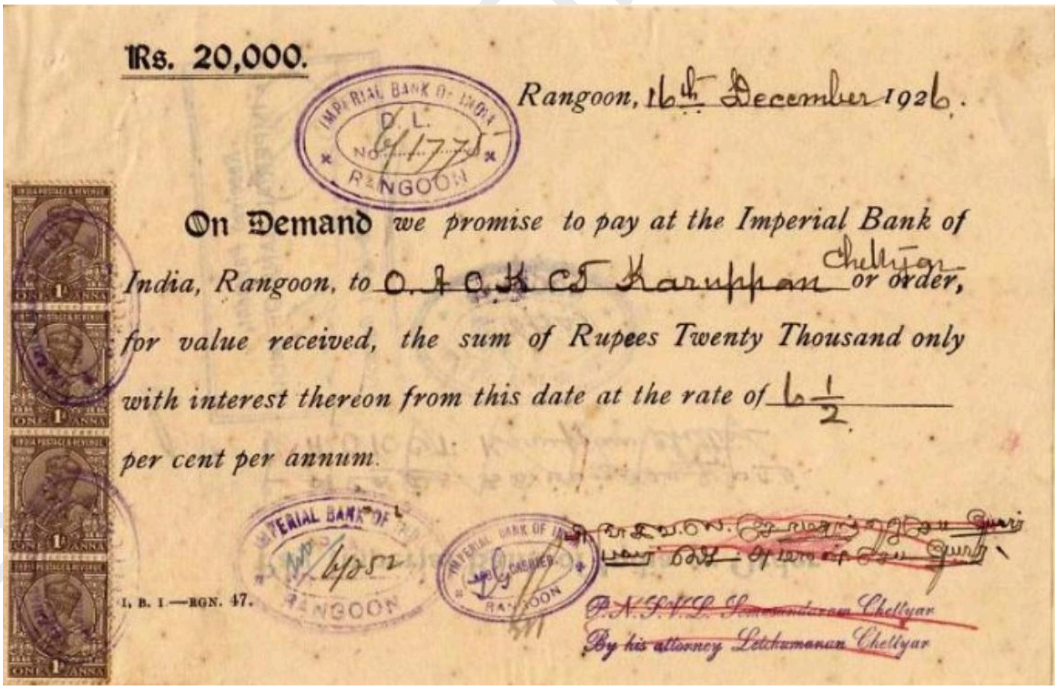
  Bank-note or a currency-note ≠ PN

- 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.

Specimen of Promissory note



Rs. 20,000.

Rangoon, 16th December 1926.

On Demand we promise to pay at the Imperial Bank of India, Rangoon, to ______ or order, for value received, the sum of Rupees Twenty Thousand only with interest thereon from this date at the rate of 6½ per cent per annum.

I. B. I.—RGN. 47.

By his attorney

Parties to promissory note

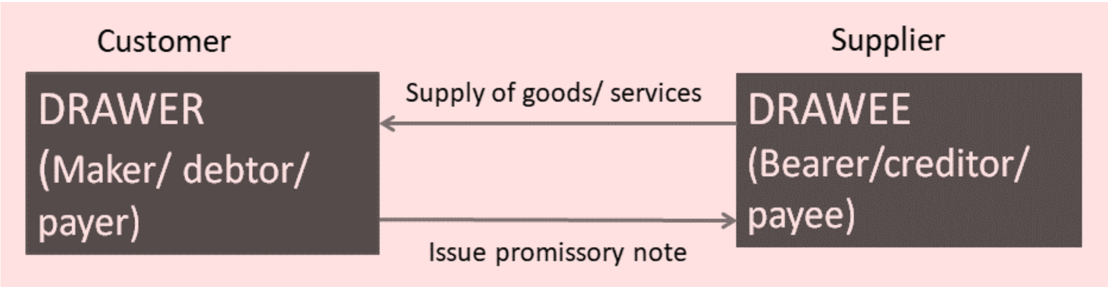
1. Maker: The person who makes the promise to pay is called the Maker. He is the debtor and must sign the instrument.

2. Payee: Payee is the person to whom the amount on the note is payable.

Maker (Drawer) ⇨⇨⇨⇨⇨⇨⇨⇨⇨ Drawee

Payer ⇨⇨⇨⇨⇨⇨⇨⇨⇨ Payee

Debtor ⇨⇨⇨⇨⇨⇨⇨⇨⇨ Creditor



Essential Characteristics of a Promissory Note

a. In writing- An oral promise to pay is not sufficient.

b. There must be an express promise to pay.

Mere acknowledgment of debt is insufficient ★

I.O.U - Rs 10,000 - ✗ PN ✗

As NO promise only Acknowledgement

Example 1: I acknowledge myself to be indebted to B in ` 1,000, to be paid on demand, for value received. (Valid promissory note as the promise to pay is definite)

c. No ifs and Buts

The promise to pay should be definite and unconditional.

- Therefore, instruments payable on performance or non-performance of a particular act or

- on the happening or non-happening of an event,
- are not promissory notes.

- However, the promise to pay may be subject to a condition, which according to the ordinary experience of mankind, is bound to happen. ★

Example 2: I promise to pay B Rs. 500 seven days after my marriage with C. (the promissory note is invalid as marriage with C may or may not happen.)

Example 3: I promise to pay B500 on D's death- as the death of D is certain, promise is unconditional. Thus, the promissory note is valid.

Example 4: I promise to pay B ` 500 on D's death, provided D leaves me enough to pay that sum. Invalid promissory note as promise is dependent on D's leaving behind money which is not certain.

d. A promissory note must be signed by the maker otherwise it is incomplete and ineffective.

e. Promise to pay money only. ★

गाड़ी ✗ रोकड़ा ✓

घोड़ा ✗ रोकड़ा ✓

बंगला ✗ रोकड़ा ✓

f. Promise to pay a certain sum. कुछ दूँगा ✗ बताओ कितना ✓

Example 5: "I promise to pay B ` 500 and all other sums which shall be due to him."- Promissory note invalid as the amount payable is not certain.

But sometimes, the language of a promissory note is such that the amount payable can be easily ascertained. In such cases, the promissory note will be valid. ★

> *Example 6: "I promise to pay B Rs. 500 alongwith simple interest at the rate of 12% per annum.*

g. The maker and payee must be certain, definite and different persons

   दो जिस्म एक जान X.

   ★ A promissory note cannot be made payable to the bearer [Section 31 of the Bank of India Act, 1934 (RBI Act)].

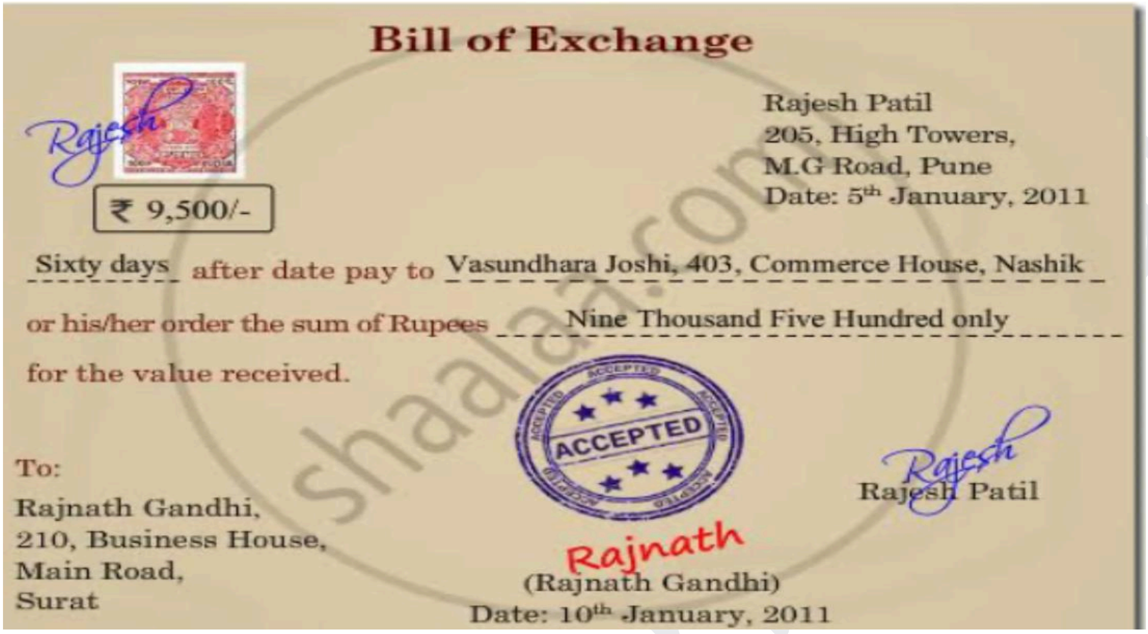
   Only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'.

h. Stamping: A promissory note must be properly stamped in accordance with the provisions of the Indian Stamp Act and such stamp must be duly cancelled by maker's signatures or initials on such stamp or otherwise

BILLS OF EXCHANGE -

A "bill of exchange" is an instrument in writing

1. containing an unconditional order,
2. signed by the maker,
3. directing a certain person हुक्म
4. to pay a certain sum of money
5. only to, or to the order of, a certain person or to the bearer of the instrument.



Bill of Exchange

Rajesh Patil
205, High Towers,
M.G Road, Pune
Date: 5th January, 2011

₹ 9,500/-

Sixty days after date pay to Vasundhara Joshi, 403, Commerce House, Nashik or his/her order the sum of Rupees Nine Thousand Five Hundred only for the value received.

ACCEPTED

Rajesh
Rajesh Patil

To:
Rajnath Gandhi,
210, Business House,
Main Road,
Surat

Rajnath
(Rajnath Gandhi)
Date: 10th January, 2011

Specimen of Bill of Exchange

Parties to the bill of exchange

1. Drawer: The maker of a bill of exchange.
2. Drawee: The person directed by the drawer to pay is called the 'drawee'. He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill. His liability is primary and unconditional.
3. Payee: The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.

Essential characteristics of bill of exchange

a. It must be in writing.
b. Must contain an express order to pay.
c. The order to pay must be definite and unconditional.
d. The drawer must sign the instrument
e. Drawer, drawee, and payee must be certain.

★ All these three parties may not necessarily be three different persons.

★ One can play the role of two.

★ But there must be two distinct persons in any case.

★ As per Section 31 of RBI Act, 1934, a bill of exchange cannot be made payable to bearer on demand.

Example 7: "On demand pay to the bearer the sum of rupees five hundred, for value received." It is invalid BOE.

★ However, a bill of exchange payable on demand, in which name of the payee is mentioned, is valid.

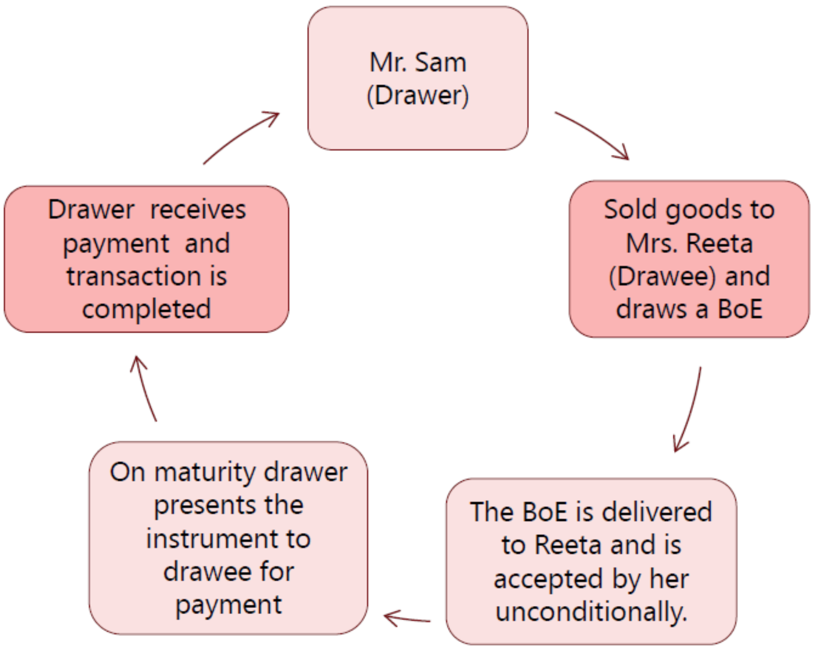
On Demand ✓ if payee name is mentioned

To Bearer + On Demand ✗ No - Not possible

Example 8: "On demand pay to A or order the sum of rupees five hundred for value received." It is valid BOE.

f. The sum must be certain.
g. The order must be to pay money only.
h. It must be stamped.

Process of bill of exchange



In above image, -

- firstly the seller sold goods to the buyer/customer and then draws a bill of exchange on him.
- The Bill of exchange is delivered by the buyer who accepts it without any condition.
- On maturity of bill of exchange, the buyer will pay the amount due to the payee. (The payee may be the drawer himself or a third party.)

Difference between promissory note and bill of exchange

Definitely जो	Nature है तुम्हारा	Party करने का	वो Accept कर लो	वरना bear नहीं कर पाओगे

Refer next page -

S.no	Basis	Promissory Note	Bill of Exchange
1.	**Definition**	"A Promissory Note" is an instrument in writing (not being a banknote 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.	"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.
2.	**Nature of Instrument**	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.
3.	**Parties**	In a promissory note, there are only 2 parties namely: i. the maker and ii. the payee	In a bill of exchange, there are 3 parties which are as under: i. the drawer ii. the drawee iii. the payee
4.	**Acceptance**	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bills of exchange needs acceptance from the drawee.
5.	**Payable to bearer**	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

CHEQUE [SECTION 6]

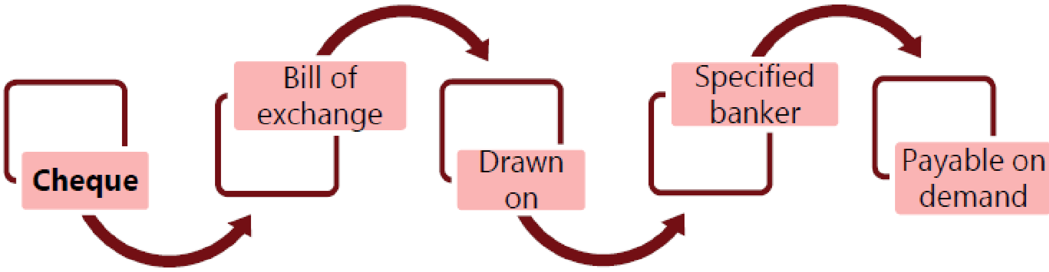
- Cheque = BOE
- drawn on a specified banker and

  (Drawee = Fixed = Banker) ★

- not expressed to be payable otherwise than on demand and

  (Payable = Fixed = Demand)

- it includes
  - the electronic image of a truncated cheque and
  - a cheque in the electronic form.



- ★ Payable on demand means-
- It should be payable whenever the holder chooses to present it to the drawee (the banker).

- Explanation I: For the purposes of this section, the expressions-

a. Cheque in the electronic form-means a cheque drawn in electronic form by using any computer resource, and signed in a secure system with a digital signature (with/without biometric signature) and asymmetric crypto system or electronic signature, as the case may be;

b. "a truncated cheque" means a cheque which is truncated during a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

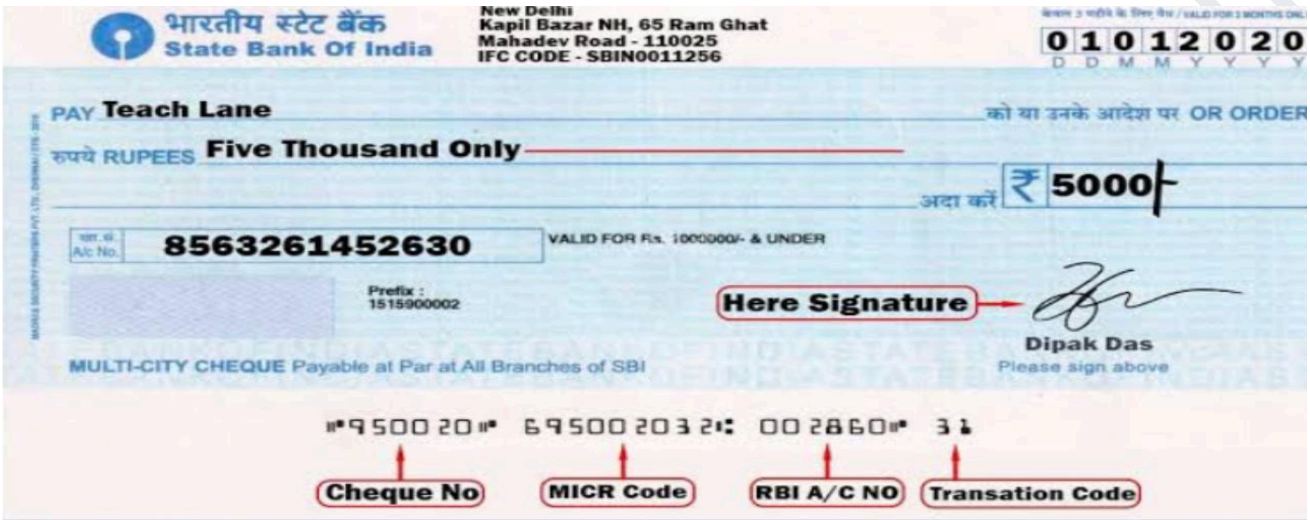
Physically बना था	B1 Image	Clearing house	B2 Image

Explanation II: For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India.

A combined reading of sections 5 and 6 tells us that a bill of exchange is a negotiable instrument in writing containing an instruction to a third party to pay a stated sum of money at a designated future date or on

demand. Whereas a cheque is also a bill of exchange but is drawn on a banker and payable on demand.

Specimen of Cheque



Parties to Cheque

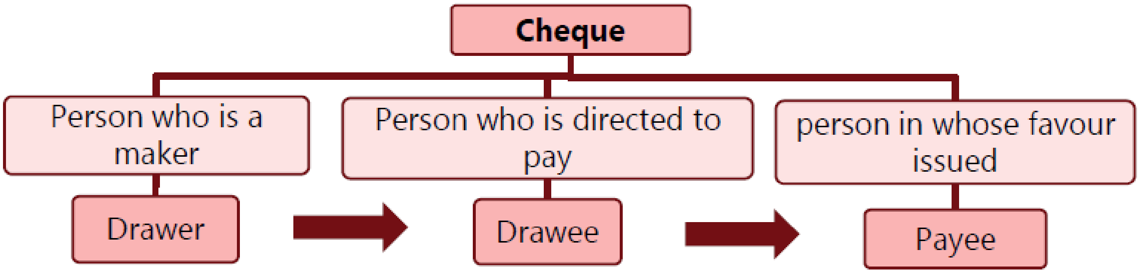
1. Drawer: The person who draws a cheque i.e., makes the cheque (Debtor). His liability is primary and conditional.

2. Drawee: The specific bank on whom cheque is drawn. He makes the payment of the cheque. In case of cheque, drawee is always banker.

   "drawee in case of need"— When in the bill or in any indorsement thereon, the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a "drawee in case of need".

3. Payee: The person named in the instrument (i.e., the person in whose favour cheque is issued), to whom or to whose order the money is to be paid, is called the payee.

   ★ 2 cases - Payee = Drawer and III Party.



Essential Characteristics of a cheque

According to the definition of cheque under section 6, a cheque is a species of bill of exchange. Thus, it should fulfil:

a. all the essential characteristics of a bill of exchange
b. Must be drawn on a specified banker.
c. It must be payable on demand.

> **Note**: These two additional features distinguish a cheque from bill. Thus, all cheques are bills while all bills are not cheques.

"Bearer instrument" and "order instrument" [Section 13]

Bearer Instrument:

- It is an instrument where the name of the payee
  - Is blank or
  - Is specified with the words "or bearer" or
  - where the last indorsement is blank.

Bearer = By mere Delivery

Order Instrument:

- It is an instrument which is payable to a person or
- Payable to a person or his order or
- Payable to order of a person or
- where the last indorsement is in full

Order = By Indorsement + Delivery

"Inland instrument" and "Foreign instrument" [Sections 11 & 12] ★

"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

Satisfy both the conditions

Example 9:

I. *A promissory note made in Kolkata and payable in Mumbai.*
II. *A bill drawn in Varanasi on a person resident in Jodhpur (although it is stated to be payable in Singapore)*
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. It is an inland bill of exchange. In this case, the bill of exchange was drawn in India and also payable in India.*
IV. *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.
V. *If the bills of exchange mentioned in above two examples, are endorsed in France, they will remain inland bills.*

"Foreign instrument":

जो Inland नहीं है

First check to satisfy both the conditions of the Inland. If not then come here.

A foreign instrument is one which is not an inland instrument. In other words, can be understood as follows:

Place where bill is drawn	Residence of Person on whom drawn and place where made payable	Nature of Instrument
P/N, BOE, C drawn/made outside India	on a person resident in or outside India + made payable in India	are foreign bills.
	on a person residing outside India + payable outside India.	
	on a person residing in India + payable outside India	

Liability of maker/ drawer of foreign bill

In the absence of a contract to the country, the liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable (Section 134)

Liability of Maker or Drawer	जहां बना वहाँ का law ऑफ़ the land	Liability of Acceptor or Indorser	जहां payable है वहाँ का law ऑफ़ the land

Example 10: A bill of exchange is drawn by A in Berkley where the rate of interest is 15% and accepted by B payable in Washington where the rate of interest is 6%. The bill is indorsed in India and is dishonoured. An

action on the bill is brought against B in India. He is liable to pay interest at the rate of 6% only. But if A is charged as drawer, he is liable to pay interest at 15%.

- **Inland instrument**-when B.o.E/ P/N, Cheque
  - drawn /made in India
  - made payable in/drawn upon person resident in India

- **Foreign instrument**-when B.o.E/ P/N, Cheque**, IS NOT**
  - Drawn in India
  - Made in India
  - Made payable in India

Before we understand the next concept, let's understand Holder and Holder in Due Course - ★

- Holder - Legally entitled to
  - Have possession of NI
  - Receive and recover the amount stated in the NI

- Holder in due course (HDC) -
  - Holder
  - Consideration
  - Before Maturity
  - In Good faith

Inchoate Instrument:

- It means an instrument that is incomplete in certain respects.
- The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity

leaving the instrument,

- either wholly blank or having written on it the word incomplete.
- Such an instrument is called an inchoate instrument and

- this gives a power to its holder to make it complete by writing any amount either within limits specified therein or
- within the limits specified by the stamp's affixed on it.

अधूरा Incomplete / Signed but left incomplete / Power with holder / Max Stamp

- The principle of this rule of an inchoate instrument is based on the

  principle of estoppel means The principle of estoppel is based on the idea that if someone (A) causes another person (B) to act on the basis of a particular state of affairs, then A cannot go back on their words or actions that led B to act in that way. (जो वादा किया वो निभाना पड़ेगा)

Liability on drawing inchoate instrument:

The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course. However, there is a difference in their respective rights:

- The holder of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor.
- The holder in due course can, however, recover any amount on such instrument provided it is covered by the stamp affixed on the instrument.

Holder	Only till intended amount	HDC	Till Stamp Value

Section 20 - "Where one person signs and delivers to another

- a paper stamped and
- either wholly blank or having written "incomplete",
- he thereby gives prima facie authority to the holder thereof

- to make or complete,
- 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 HDC 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 thereunder".

Signed and Delivered	Stamped	Wholly blank or Incomplete	Authprity to holder to complete

Example 11: NO delivery = No liability (refer delivery topic for the same)

A person signed a blank acceptance on a bill of exchange and kept it in his drawer.

The bill was stolen by X and he filled it up for `Rs 20,000 and negotiated it to an innocent person for value.

It was held that the signer to the blank acceptance was not liable to the holder in due course because he never delivered the instrument intending it to be used as a negotiable instrument.

Further, as a condition of liability, the signer as a maker, drawer, indorser or acceptor must deliver the instrument to another. In the absence of delivery, the signer is not liable.

Furthermore, the paper so signed and delivered must be stamped in accordance with the law prevalent at the time of signing and on delivering otherwise the signer is not estopped from showing that the instrument was filled without his authority.

Ambiguous Instrument:

अस्पष्ट - Vague / Not clear

Why ? because NI has the properties of both - PN & BOE

- Section 17
- 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."
- Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument.
- In other words, such an instrument may be construed either as promissory note, or as a bill of exchange.
- After exercising his option, the holder cannot change that it is the other kind of instrument.

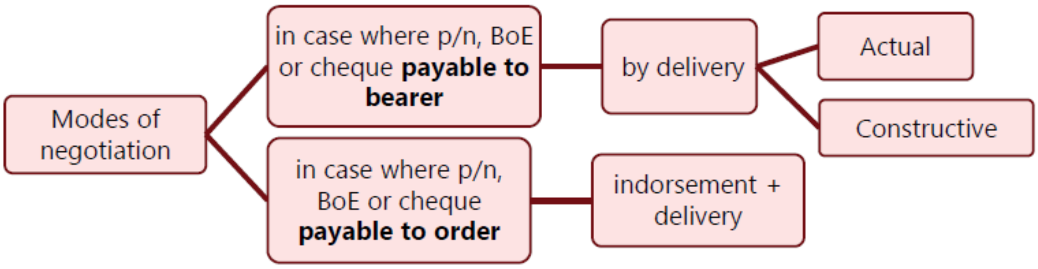
NEGOTIATION (TRANSFER) OF NEGOTIABLE INSTRUMENTS

- One of the essential characteristics of a negotiable instrument is that it is freely transferable from one person to another.
- The rights in a negotiable instrument can be transferred from one person to another by negotiation.
- According to Section 14 of the N.I. Act,
- when a negotiable instrument is transferred to any person with a view to constitute the person holder thereof,
- the instrument is deemed to have been negotiated.

  Thus, there is a transfer of ownership of the instrument.

- Negotiable instruments may be negotiated either by delivery when these are payable to bearer or
- by indorsement and delivery when these are payable to order

Modes of Negotiation



I. A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

II. A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

> *Example 12: X drew a cheque for Rs. 50,000 payable to Y and delivered it to him. Y indorsed the cheque in favour of Z but kept it in his table drawer. Subsequently, Y died, and cheque was found by Z in Y's table drawer. In this case, Z does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him.*

Negotiation by delivery [Section 47] - Payable to bearer

Subject to the provisions of section 58 [Instrument obtained by unlawful means or for unlawful consideration], a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception: Condition based NI -

- A promissory note, bill of exchange or cheque delivered on condition that
- it will take effect if a certain event take place.
- It is not negotiable unless such event happens.
- Except in the hands of a holder for value without notice of the condition = HDC

Example 13 - Actual and Constructive delivery

1. A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.
2. A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation by indorsement [Section 48] - Payable to Order

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

Importance of Delivery in Negotiation [Section 46]

- Delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation.
- The delivery must be voluntary, and
- the object of delivery should be to pass the property in the instrument to the person to whom it is delivered.
- The delivery can be, actual or constructive.

- Actual delivery =

  Takes place when the instrument changes hand physically.

- ★Constructive delivery =

  Takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is indorsed to him, unless the instrument is negotiated to a holder in due course.

The contract on a negotiable instrument until delivery remains incomplete and revocable.

★The delivery is essential not only -

- At the time of negotiation but also
- At the time of making or drawing of negotiable instrument.

★The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered.

If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57.

Explanation -

According to section 57, -

- The legal representative of a deceased person
- cannot negotiate by delivery only, a promissory note, bill of exchange or cheque
- payable to order and indorsed by the deceased
- but not delivered.
- A legal representative is not an agent of the deceased.
- Therefore, a legal representative cannot complete the instrument
- if the instrument was executed by the deceased but could not be delivered because of his death

DISHONOUR OF CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS [SECTION 138 TO 142]

DISHONOR OR BOUNCING OF CHEQUE - SECTION 138

Where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability,

A cheque given as - ★

GIFT	DONATION	SECURITY	MORAL OBLIGATION	ILLEGAL

would be outside the purview of this section

- is returned by the bank unpaid,
- either because of the—
    a. amount of money standing to the credit of that account is insufficient to honor the cheque, or
    b. 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 a criminal offence and shall, be punished with - Penalty -

Imprisonment for a term = May extend to Two years, or

With fine = May extend to twice the amount of the cheque, or

Both.

When section 138 shall be not apply:

unless the below given conditions are complied with—

a. Cheque presented within validity period - 3 months from the date on which it is drawn or within the period of its validity, whichever is earlier.

b. Demand Notice -
    i. For the payment by the payee or the holder in due course of the cheque for
    ii. the said amount of money by giving a notice, in writing,

iii. to the drawer of the cheque,
iv. within 30 days of the receipt of information by him
v. from the bank regarding the return of the cheque as unpaid, and

c. Failure of drawer to make payment:
   i. The drawer of such cheque fails to make the payment to the payee or the holder in due course of the cheque,
   ii. Within fifteen days of the receipt of the said notice.

To conclude - Compliant can be filed -

After 45 days of dishonor of the cheque =

30 days of notice period + 15 days of the receipt of the said notice.

Example 14: X issued a post-dated cheque to Y on the account of discharge of its liability.

Further, X instructed to the bank to stop the payment due to unavailability of the adequate amount in the account.

Here, in this instance section 138 of the Act is attracted as when a cheque is dishonoured on account of stop payment instructions sent by the drawer to his banker in respect of a post- dated cheque irrespective of insufficiency of funds in the account.

A post-dated cheque is deemed to have been drawn on the date it bears and the three months period for the purposes of section 138 is to be counted from that date.

So, X will be liable for dishonour of cheque. Once a cheque is issued by the drawer, a presumption under section 139 must follow.

PRESUMPTION IN FAVOR OF HOLDER [SECTION 139]

When a cheque is dishonoured, 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, or any debt or other liability.

Presumption prescribed here is a

"rebuttable presumption" CAN BE CHALLENGED IN THE COURT

as the provisions clearly provides that the person issuing the cheque is at liberty to prove to the contrary. The effect of this presumption is to place the evidential burden on the accused.

DEFENCE WHICH MAY NOT BE ALLOWED IN ANY PROSECUTION UNDER SECTION 138 [SECTION 140]

It shall not be a defence in a prosecution of 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 that section

PRESENTMENT OF INSTRUMENTS

PRESENTMENT FOR ACCEPTANCE

Some basics -

- *Acceptance required only for BOE not for PN and Cheque.* [Section 61] BOE
- *In default of such presentment, no party thereto is liable thereon to the person making such default.*
- *If the drawee cannot, after reasonable search, be found, the bill is dishonoured.*
- *If not mentioned anything about time and place its always REASONABLE time at Business hours on a business day & Place of Business*
- The holder must allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it. [Section 63]

- If the bill is directed to the drawee at a particular place = It must be presented at that place

- A presentment through the post office by means of a registered letter is sufficient.
- Must be presented to the MAKER. [Section 62] PN

PRESENTMENT FOR PAYMENT [Section 64]

Promissory notes ——---->> Maker

bill of exchange ——---->> Acceptor

cheques ——---->> Drawee

- If TIME instrument = At Maturity (Section 66)
- If DEMAND instrument = Reasonable
- Hours = Usual hours of business & Banker's within banking hours. (Section 65)
- A PN payable by instalments = Must be on the 3rd day after the date fixed for payment of each instalment (Section 67)
- Exception: Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.
- Payable at a specified place then be presented for payment at that place. (Section 68 & 69)
- If no exclusive place then at the place of business (if any) or at the usual residence (Section 70)
- When maker, etc., has no known place of business or residence then such presentment may be made to him in person wherever he can be found (Section 71)
- For acceptance or payment present to - (Section 75)
  - Agent
  - In case of death - Legal Representative
  - In case of insolvent - Assignee

- Excuse - Okay if delay is caused by circumstances beyond the control of the holder, and not because of his default, misconduct or negligence. (Section 75A)

When presentment unnecessary (Section 76)

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

A. If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
   - Place of business = Closes such place on a business day during the usual business hours, or
   - Some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or
   - He cannot after due search be found.

B. He has engaged some other party to pay

C. He himself makes a part payment or or promises to pay the amount due thereon in whole or in part,

D. Waives his right to take advantage of any default in presentment for payment.

E. As against the drawer, if the drawer could not suffer damage from the want of such presentment.

Liability of banker for negligently dealing with bill presented for payment (Section 77)

- When a bill of exchange, accepted payable at a specified bank,
- has been duly presented there for payment and dishonoured,
- if the banker so negligently or improperly keeps,
- deals with or delivers back such bill as to cause loss to the holder,
- he must compensate the holder for such loss.

RULES OF COMPENSATION

Rules as to compensation (Section 117)

- The compensation in case of dishonour of
- promissory note, bill of exchange or cheque,
- by any party liable
- to the holder or any endorsee,
- shall be determined by the following rules -
    a. Expenses properly incurred in presenting, noting and protesting it;
    b. If resides at a place different then entitled to receive such sum at the current rate of exchange between the two places;
    c. With interest at 18% per annum from the date of payment until payment

——————————xx——————————————xx——————————————

“ PROBLEM KYA HAI ? ”

Question Bank for the Chapter

This section is complied with questions and suggested answers for the chapter - The NIA, 1881

- *ICAI Study material*
- *Previous year Question Papers (PYQPs)*
- *Mock Test Papers (MTPs)*
- *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Module Questions

Question 1

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

Answer 1

No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. (Section 48, the Negotiable Instruments Act, 1881)

Question 2

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

Answer 2

The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a Promissory Note (P/N) is completed by delivery, actual or constructive. Delivery refers to 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.

So, the claim of N to have the other half of the P/N sent to him is not maintainable. M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.

Question 3

Bholenath drew a cheque in favour of Surendar. After having issued the cheque;

Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of the Negotiable Instruments Act, 1881

Answer 3

As per the facts stated in the question, Bholenath (drawer) after having issued the cheque, informs Surendar (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surendar.

Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Section 140 states that it shall notSome nder cat ace 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 that section.

Accordingly, the act of Bholenath, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

Question 4

Rama executes a promissory note in the following form, 'I promise to pay a sum of 710,000 after three months'. Decide whether the promissory note is a valid promissory note.

Answer 4

The promissory note is an unconditional promise in writing. In the above question the amount is certain but the date and name of payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.

Question 5

Discuss with reasons, whether the following persons can be called as a 'holder' underthe Negotiable Instruments Act, 1881:

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

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

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

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

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

Answer 5

Person to be called as a holder: As per section 8 of the Negotiable InstrumentsAct, 1881 'holder of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereonfrom the parties thereto.

To the ace provision in the given cases—

(i) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.

(ii) No, he is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.

(iii) No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name.

(iv) No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.

(v) No, B is not a holder because he is in wrongful possession of the instrument.

Question 6

State briefly the rules laid down under the Negotiable Instruments Act for determining the date of maturity of a bill of exchange. Ascertain the date of maturityof a bill payable hundred days after sight and which is presented for sight on 4thMay, 2020.

Answer 6

Calculation of maturity of a bill of exchange: The maturity of a bill, not payableon demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable (Section 22, of Negotiable InstrumentsAct, 1881). Three days are allowed as days of grace. No days of grace are allowed in the case of bill payable on demand, at sight, or presentment.

When a bill is made payable at stated number of months after date, the periodstated terminates on the day of the month which corresponds with the day on which the instrument is dated. When it is made payable after a stated number of months after sight the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance. When it is payable a stated number of months after a certain event, the period terminates on the day of the month which corresponds with the day on which the event happens (Section 23).

When a bill is made payable a stated number of months after sight and has been accepted for honour, the period terminates with the day of the month which corresponds with the day on which it was so accepted.

If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month (Section 23). In calculating the date a bill made payable a certain number of days after date rafter sight or after a certain event is at maturity, the day of the date, or the day of presentment for acceptance or sight or the day of protest for non-accordance, orthe day on which the event happens shall be excluded (Section 24).

Three days of grace are allowed to these instruments after the day on which theyare expressed to be payable (Section 22).

When the last day of grace falls on a day which is public holiday, the instrument isdue and payable on the next preceding business day (Section 25).

Answer to Problem: In this case the day of presentment for sight is to be excluded i.e. 4th May, 2020. The period of 100 days ends on 12th August, 2020 (May 27 days +June 30 days + July 31 days + August 12 days). Three days of grace are to be added. It falls due on 15th August, 2020 which happens to be a public holiday. As such it willfall due on 14th August, 2020 i.e. the next preceding business day.

Question 7

Mr. Muralidharan drew a cheque payable to Mr. Vyas or order. Mr. Vyas lost the cheque and was not aware of the loss of the cheque. The person who found the cheque forged the signature of Mr. Vyas and indorsed it to Mr. Parshwanath as the consideration for goods bought by him from Mr. Parshwanath.

Mr. Parshwanath encashed the cheque, on the very same day from the drawee bank. Mr. Vyas intimated the drawee bank about the theft of the cheque after three days. Examine the liabilityof the drawee bank.

Answer 7

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

1. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
2. Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

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

Even though the signature of Mr. Vyas is forged, the banker is protected and is discharged. The true owner, Mr. Vyas, cannot recover the money from the drawee bank in this situation.

Question 8

What are the circumstances under which a bill of exchange can be dishonored by non-acceptance? Also, explain the consequences if a cheque gets dishonored for insufficiency of funds in the account.

Answer 8

As per section 91 of the Negotiable Instruments Act, 1881, a bill may bedishonoured either by non-acceptance or by non-payment.

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

a. When a bill is duly presented for acceptance, and the drawee, or one ofseveral drawees not being partners, refuse acceptance within forty eight hours from the time of presentment, the bill is dishonoured. In other words, when the drawee makes default in acceptance upon being duly required to accept the bill.
b. where presentment is excused and the bill is not accepted.
c. Where the drawee is incompetent to contract, the bill may be treated asdishonoured.
d. Where the drawee is a fictitious person.
e. Where the drawee could not be found even after reasonable search
f. When a drawee gives a qualified acceptance, the holder may treat theinstrument dishonoured.

Dishonour of Cheque for insufficiency, etc. of funds in the account: As per section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn bya person on an account maintained by him with a banker for payment is dishonoured due to insufficiency of funds, he shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both.

MTPs, RTPs and PYQPs Questions

Question 1

Sachin bought 1000 Kg rice from Saurabh for * 1,50,000 on three months credit. For this purpose, Sachin issued a promissory note to Saurabh on the same date payable after 3 months. On the date of maturity, the promissory note was dishonoured. Saurabh filed suit for the recovery of the amount plus fees of advocate paid by him for defending the suit. Referring to the provisions of the Negotiable Instruments Act, 1881, what amount could be recovered by Saurabh from Sachin? (RTP Jun'24)

Answer 1

According to section 117 of the Negotiable Instruments Act, 1881, the compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

a. the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
b. when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
c. an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;

On the basis of the above provisions of law and facts of the case, Saurabh has right to claim price of rice plus fees of advocate plus interest @18% p.a. from the date of payment until tender or realisation thereof.

Question 2

A purchased a watch from B. He issued a promissory note to B which was payable on demand but no specific place for payment was mentioned on it.On maturity, B did not present the promissory note for payment. As the promissory note was not

duly presented for payment, whether A would be discharged from liability under the provisions of the Negotiable Instruments Act, 1881? (RTP Jun'24)

Answer 2

Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. Provided that where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof. On the basis of the above law provisions and facts of the case, although non-presentment of promissory note for payment results in discharge of maker from liability but the given case is covered under the exception to section 64. Hence, A would not be discharged from liability even if the non-presentment by B as the promissory note was payable on demand and no specific place for payment was mentioned.

Question 3

On a Bill of Exchange for Rs. 1 lakh, X's acceptance to the Bill is forged. A takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether 'A' can be considered as a 'Holder in due course' and whether he (A) can receive the amount of the Bill from 'X

(MTP Mar 19, 4 Marks, 3 Marks Oct 20, & March '23)

Answer 3

According to section 9 of the Negotiable Instruments Act, 1881 'holder in due course' means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount 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. As 'A' in this case prima facie became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

Question 4

Manoj owes money to Umesh. Therefore, he makes a promissory note for the amount in favour of Umesh, for safety of transmission he cuts the note in half and posts one half to Umesh. He then changes his mind and calls upon Umesh to return the half of the note which he had sent. Umesh requires Manoj to send the other half of the promissory note. Decide how rights of the parties are to be adjusted. Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.

(MTP Mar'21 4 Marks, May'20, March'19,3 Marks)

Answer 4

The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to Umesh. Under Section 46 of the Negotiable Instruments Act, 1881, the making of a promissory note is completed by delivery, actual or constructive. Delivery refers to 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. So, the claim of Umesh to have the other half of the promissory note sent to him is not maintainable. Manoj is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the promissory note.

Question 5

Mr. Manoj Malik, a major and Preet, a minor executed a promissory note in favour of Rimpy. Examine with reference to the provisions of the Negotiable Instruments Act, 1881, the validity of the promissory note and whether it is binding on Mr. Manoj Malik and Preet. (MTP 3 Marks March 21)

Answer 5

According to Section 26 of the Negotiable Instruments Act, 1881, every person competent to contract (according to the law to which he is subject to) has capacity to bind himself and be bound by making, drawing, accepting, endorsing delivering and negotiating an instrument. A party having such capacity may himself put his signature or authorize some other person to do so.

A minor may draw, endorse, deliver and negotiate an instrument so as to bind all the parties except himself. A minor may be a drawer where the instrument is drawn or endorsed by him. In that case he does not incur any liability himself although other parties to the instrument can be made liable and the holder can receive payment from any other party thereto.

Therefore, in the instant case, the promissory note is valid and it is binding on Mr. Manoj Malik but not on Preet, a minor.

Question 6

What is the meaning of Not negotiable crossing as per the Negotiable Instruments Act, 1881? **(MTP 3 Marks March 21)**

Answer 6

Not negotiable Crossing

This requires writing of words "not negotiable" in addition to the two parallel lines. These words may be written inside or outside these lines. According to Section 130, a person taking a cheque crossed generally or specially, bearing in either case the word "not negotiable" shall not have, and shall not be

capable of giving a better title to the cheque than that which the person from whom he took it. It is a statutory crossing. A cheque with such crossing is not negotiable, but continues to be transferable as before. Ordinarily, in a negotiable instrument, if the title of the transferor is defective, the transferee, if he is a Holder in Due Course, will have a good title. When the words "not negotiable" are written, even a Holder in Due Course will get the same title as that of transferor. Thus, if the title of the transferor is defective, the title of transferee will also be so.

Hence, the addition of the words not negotiable does not restrict the further transferability of the cheque, but it entirely takes away the main feature of negotiability, which is that a holder with a defective title can give a good title to the subsequent holder in due course.

Question 7

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

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

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

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

(MTP 3 Marks April 21)

Answer 7

Problem on Negotiable Instrument made without consideration: Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, endorsed 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 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.

Question 8

As per the Negotiable Instruments Act, 1881, what are the parties who may cross a cheque? (MTP 3 Marks Apr'21)

Answer 8

A cheque may be crossed by the following parties:

- By Drawer: A drawer may cross it generally or specially.
- By Holder: A holder may cross an uncrossed cheque generally or specially. If the cheque is crossed generally, the holder may cross specially. If cheque crossed generally or specially, he may add words "not negotiable".
- By Banker: A banker may cross an uncrossed cheque, or if a cheque is crossed generally he may cross it specially to himself. Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent; for collection.

Question 9

Give the answer of the following:

i. **A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. Does this amount to material alteration?**
ii. **Amit draws a cheque for Rs. 1000 and hands it over to Beena by way of gift. Is Beena a holder in due course?** (MTP 4 Marks April 21)

Answer 9

i. An alteration is material which in any way alters the operation of the instrument and affects the liability of parties thereto. Any alteration is material which alters the business effect of the instrument if used for any business purpose. In the given case, a promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. As per the provision of the Negotiable Instruments Act, 1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence, adding the words "on demand" does not alter the business effect of the instrument.
ii. The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof, and to receive or recover the amount due thereon from the parties thereto. "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 bearer), or the

payee or indorsee thereof, (if payable to 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 question, Beena is a holder but not a holder in due course as she does not get the cheque for value and consideration. Her title is good and bonafide. As a holder she is entitled to receive Rs. 1000 from the bank on whom the cheque is drawn.

Question 10

Rama executes a promissory note in the following form, 'I promise to pay a sum of 710,000 after three months'. Decide whether the promissory note is a valid promissory note. (MTP 3 Marks Oct 21) (SM)

Answer 10

The promissory note is an unconditional promise in writing. In the above question the amount is certain but the date and name of payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.

Question 11

What are the essential characteristics of Negotiable Instruments.

(MT 3 Marks Oct 21, Mar 22)

Answer 11

Essential Characteristics of Negotiable Instruments

1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.

6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.

7. The sum payable, the time of payment, the payee, must be certain.

8. The instrument should be delivered. Mere drawing of instrument does not create liability.

Question 12

Discuss with reasons, in the following given conditions, whether 'M' can be called as a "holder" under the Negotiable Instruments Act, 1881:

(1) 'M' the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.

(2)'M' the agent of 'Q' is entrusted with an instrument without endorsement by 'Q' who is the payee. **(MTP 4 Marks Oct'21)**

Answer 12

Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases-

(1) 'M' is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.

(2)No, 'M' is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.

Question 13

What are the parties to a bill of exchange. **(MTP 3 Marks Nov 21)**

Answer 13

The parties to a bill of exchange are:

1. Drawer: The maker of a bill of exchange.

2. Drawee: The person directed by the drawer to pay is called the 'drawee'. He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill. His liability is primary and unconditional.
3. Payee: The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.

Question 14

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

a. **Megha, who finds a cheque payable to bearer, on the road and retains it.**
b. **Bob, who steals a blank cheque of Alpa and forges Alpa's signature.**

(MT 4 Marks Nov 21)

Answer 14

Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases-

a. No, Megha is not a holder of the Instrument though she is in possession of the cheque, so is not entitled to the possession of it in his own name.
b. No, Bob is not a holder because he is in wrongful possession of the instrument.

Question 15

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

1. **Madan was going to office through metro rail. He found a cheque payable to bearer, on the floor of coach number 6 and retains it.**
2. **Preeti, the agent of Mr. Rajesh, is entrusted with an instrument without indorsement by Mr. Rajesh, who is the payee.**

(MTP 3 Marks March'22)

Answer 15

Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases —

1. In the given question, though Madan is in possession of the cheque but is not entitled to the possession of it in his own name (he got the cheque on the floor of metro coach). Hence, Madan is not a holder of the Instrument.
2. In the given question though the agent (i.e. Preeti) may receive payment of the amount mentioned in the cheque, yet she cannot be called the holder thereof because she has no right to sue on the instrument in her own name. Hence, Preeti is not a holder.

Question 16

A bill of exchange is drawn by 'A' in Berkley where the rate of interest is 15% and accepted by 'B' payable in Washington where the rate of interest is 6%. The bill is indorsed in India and is dishonoured. An action on the bill is brought against 'B' in India. Advise as per the provisions of the Negotiable Instruments Act, 1881, what rate of interest 'B' is liable to pay? **(MTP 4 Marks March 22)**

Answer 16

According to section 134 of the Negotiable Instruments Act, 1881, in the absence of a contract to the country, the liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

In the given case, since action on the bill is brought against B in India, he is liable to pay interest at the rate of 6% only.

Question 17

Mr. Mudit is the employee in Senior Research Analyst Private Limited. He went to a Super Mall, a departmental store, where he purchased some goods for his

personal use on credit. Mr. Mudit gave a cheque drawn on the Senior Research Analyst Private Limited's account to Super Mall towards the full payment of the dues. The cheque was dishonoured by the company's bank. Mr. Mudit was neither a director nor a person in-charge of the company. Explain under the provisions of the Negotiable Instruments Act, 1881, whether Mr. Mudit has committed an offence under section 138. **(MTP 4 Marks April 22)**

Answer 17

According to section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from/out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable.

According to section 141, if the person committing an offence under section 138 is a company, every person who, at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, in this case, Mudit is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, Mudit has not committed an offence under section 138.

Question 18

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

1. **Babita finds a cheque payable to bearer, on the road and retains it.**
2. **Biswas, the agent of Chandan, is entrusted with an instrument without indorsement by Chandan, who is the payee.**

(MTP 3 Marks April 22 &Sep'22)

Answer 18

Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto. On applying the above provision in the given

cases —

1. Babita is not a holder of the Instrument though she is in possession of the cheque. She is not entitled to the possession of it in her own name.
2. No, Biswas is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.

Question 19

What is the meaning of 'Acceptor for honour' and 'payment for honour'? Give your answer in terms of the Negotiable Instruments Act, 1881. (MTP 3 Marks Sep'22)

Answer 19

When a bill of exchange has been dishonoured by non-acceptance and any person accepts it for honour of the drawer or of any indorsers, such person is called 'an Acceptor for honour'.

The payment which he makes is known as 'payment for honour.

Question 20

Mr. Krishna draws a cheque of Rs. 20,000 and gives to Mr. Balram by way of gift. State with reason whether

1. **Mr. Balram is a holder in due course as per the Negotiable Instrument Act, 1881?**
2. **Mr. Balram is entitled to receive the amount of Rs. 20,000 from the bank?**

(MTP 4 Marks Sep'22)(SM)(MTP 3 Marks Nov 21)

Answer 20

According to section 9 of the Negotiable Instrument Act, 1881, "Holder in due course" means-

- any person
- who for consideration becomes the possessor of a promissory note, bill of exchange or cheque (if payable to bearer), or the payee or indorsee thereof, (if payable to 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 instant case, Mr. Krishna draws a cheque of Rs. 20,000 and gives to Mr. Balram by way of gift. Hence,

(1) Mr. Balram is holder but not a holder in due course since he did not get the cheque for value and consideration.

(2) Mr. Balram's title is good and bonafide. As a holder he is entitled to receive Rs. 20,000 from the bank on whom the cheque is drawn.

Question 21

Mr. Sridhar has issued a promissory note of 71000 to Mr. Mohan on 17th May 2022 payable 3 months after date. After that, a sudden holiday was declared on 20th August 2022 due to Moharram. As per the provisions of the General Clauses Act 1897, what should be the date of presentment of promissory note for payment? Whether it should be 19th August 2022 or 21st August 2022?

(MTP 4 Marks ,Sep'22)

Answer 21

Section10 of the General Clauses Act, 1897 provides where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

A promissory note of Rs. 1000 was issued by Mr. Sridhar to Mr. Mohan on 17th May 2022 which was payable 3 months after date. After that, a sudden holiday was declared on 20 th August 2022 due to Moharram.

In the given case, the period of 3 months ends on 17th August 2022. Three days of grace are to be added. It falls due on 20th August 2022 which declared to be a public holiday after the issue of Promissory Note. In the light of provisions of section 10 of the General Clauses Act 1897, the due date will be on next day when office is open i.e. 21st August 2022.

Question 22

Shama' made a promissory note for Rs. 4,500 payable to 'Vihari', and delivered the same to 'Vihari' on the condition that he ('Vihari') will demand payment only on the death of 'Kayah'. Before the death of 'Kayah', 'Vihari' indorsed and delivered the promissory note to 'Deepak', who receive the promissory note in good faith. On the date of maturity, 'Deepak' presented the promissory note for payment but 'Shama' denied for payment by stating that he issued this promissory note on the condition that it can be paid only on the death of 'Kayah'. Can 'Deepak' recover the amount due on the promissory note from 'Shama' under the provisions of the Negotiable Instrument Act 1881? ?

(MTP Oct'22) (RTP Nov '21)

Answer 22

By virtue of provisions of section 9 of the Negotiable Instrument Act 1881, any person who for consideration became the possessor of a negotiable instrument in good faith and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. Exception to section 47 provides if a negotiable instrument is delivered to a person, upon condition, i.e. it will be effective on the happening of a certain event, such negotiable instrument cannot be further negotiated unless such event happens. However, if it is transferred to a holder in due course, his rights will not be affected by such condition.

'Shama' issued a promissory note to 'Vihari' on the condition that he ('Vihari' will demand payment only on the death of 'Kayah'. Before the death of 'Kayah', 'Vihari' indorsed and delivered the promissory note to 'Deepak', who receive the promissory note in good faith. On due date, 'Deepak' presented the promissory note for payment but 'Shama' denied for payment.

From the above provisions and facts of the case, it can be said that 'Deepak' has received the promissory note in good faith, he is a holder in due course and his rights will not be affected by any condition attached to the instrument by any prior party. Therefore, 'Deepak' can recover the amount due on the promissory note from 'Shama'.

Question 23

A signs his name on a blank cheque with 'not negotiable crossing' which he gives to

B with an authority to fill up a sum of 7 3,000 only. But B fills it for * 5,000. B then endorsed it to C for a consideration of 7 5,000 who takes it in good faith. Examine whether C is entitled to recover the full amount of the instrument from B or A as per the provisions of the Negotiable Instruments Act, 1881.

(MTP 3 Marks Oct'22, PYP July'21, 3 Marks)

Answer 23

As per section 130 of the Negotiable Instruments Act, 1881, a cheque marked "not negotiable" is a transferable instrument. The inclusion of the words 'not negotiable' however makes a significant difference in the transferability of the cheques i.e., they cannot be negotiated. The holder of such a cheque cannot acquire title better than that of the transferor.

In the given question, A gave to B the blank cheque with 'not negotiable crossing'. B had an authority to fill only a sum of Rs. 3,000 but he filled it up Rs. 5,000. This makes B's title defective. B then endorsed it to C for consideration of Rs. 5,000.

Question 24

Examine the following cases with respect to their validity. State your answer with reasons.

1. **A bill of exchange is drawn, mentioning expressly as 'payable on demand'. The bill will be at maturity for payment on 04-01-2022, if presented on 01-01-2022.**
2. **A holder gives notice of dishonor of a bill to all the parties except the acceptor. The drawer claims that he is discharged from his liability as the holder fails to give notice of dishonour of the bill to all the parties thereto.**

(MTP 4 Marks Oct'22)

Answer 24

1. The bill of exchange is drawn, mentioning expressly as 'payable on demand'. The bill will be at maturity for payment on 04-1-2022, if presented on 01-01-2022:

   This statement is not valid as no days of grace are allowed in the case of bill payable on demand.

2. As per section 93 of the Negotiable Instruments Act, 1881, notice of dishonor must be given by the holder to all parties other than the maker or the

acceptor or the drawee whom the holder seeks to make liable. Accordingly, notice of dishonour to the acceptor of a bill is not necessary. Therefore, claim of drawer that he is discharged from his liability on account of holder's failure to give notice to all the parties thereto, is invalid.

Question 25

What are the parties to promissory note and a bill of exchange.

(MT 3 Marks March '23)

Answer 25

1. In a promissory note, there are only 2 parties namely: the maker and ii. the payee
2. In a bill of exchange, there are 3 parties which are as under: the drawer, the drawee and the payee

Question 26

Give three example when the alterations to an instrument do not effect the liabilities of parties thereto. (MTP 3 Marks April'23)

Answer 26

The following alterations do not affect the liability of parties thereto:

(1) If the alteration is unintentional and due to pure accident (e.g. accidental disfigurement of document).

(2) Alteration made by a stranger without the consent of holder and without any fraud and negligence on his part.

(3) An alteration made to correct a clerical error or a mistake, thus, if instead of 1823, the date entered was 1832, the agent of drawer held entitled to correct mistake [Brutt v pikard (1824) Ry & M 37]. Such correction is deemed to be giving effect to the original intention of the parties.

(4) Alteration made to carry out common intention of original parties is permitted by Section 87. For example, where the words "or order" after the name of payee, inserted subsequently [Byrom v Thomson (1839) 11 A&E 31].

(5) Alteration with the consent of the parties liable thereto

(6) An alteration made before the completion or the issue of negotiable Instrument.

(7) A material alteration doesn't affect the liability of those parties who become liable after the alteration is made. Section 88 provides that the acceptor or indorser is bound by his acceptance

(8) An alteration which is not material e.g. when a bill payable to bearer is converted to bill payable to order/or an incomplete name of a person converted into the complete name of same person.

Question 27

'A' draws a cheque for * 5,000 in favour of 'B'. 'A' had sufficient funds in his bank account to meet it, when the cheque ought to be presented in the bank. The bank fails before the cheque is presented. 'B' wants to claim it from 'A'. Decide, whether 'A' is liable as per the Negotiable Instruments Act, 1881.

(4 Marks April 23) (PYP 4 Marks May'22)

Answer 27

According to section 84 of the Negotiable Instruments Act, 1881, if a holder does not present a cheque within reasonable time after its issue, and the bank fails causing damage to the drawer, the drawer is discharged as against the holder to the extent of the actual damage suffered by him.

In the given situation, when the cheque ought to be presented, 'A' had sufficient funds at the bank to meet it. The bank failed before the cheque was presented. Thus, the drawer ('A') is discharged, but the holder (B) can prove against the bank for the amount of the cheque.

Question 28

The Negotiable Instruments Act, 1881

1. **Calculate the date of maturity of bill of exchange drawn on 1 6.2019, payable 120 days after considering the relevant provisions of the Negotiable Instruments Act, 1881.**
2. **Chandra issues a cheque for * 50,000/- in favour of Daye. Chandra 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 the Negotiable Instruments Act, 1881, whether Daye can recover the money from Chandra?**

(RTP May 21, MTP 3 Marks Apr'23)

Answer 28

1. Date of maturity of the bill of exchange: In this case the day of presentment for sight is to be excluded i.e. 1st June, 2019. The period of 120 days ends on 29th September, 2019 (June 29 days + July 31 days + August 31 Days + September 29 days = 120 days). Three days of grace are to be added. It falls due on 2nd October, 2019, which happens to be a public holiday. As such it will fall due on 1st October, 2019 i.e., the next preceding Business Day.
2. Section 84(1) of the Negotiable Instruments Act, 1881 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 a 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 [section 84(3)].

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

Question 29

'Anjum' drew a cheque for Rs. 20,000 payable to 'Babloo' and delivered it to him. 'Babloo' endorsed the cheque in favour of 'Rehansh' but kept it in his table drawer. Subsequently, 'Babloo' died, and cheque was found by 'Rehansh' in 'Babloo's table drawer. 'Rehansh' filed the suit for the recovery of cheque. Whether 'Rehansh' can recover cheque under the provisions of the Negotiable Instrument Act 1881?

(RTP May '22)

Answer 29

According to section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

The contract on a negotiable instrument until delivery remains incomplete and revocable. The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement

the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. [Section 57]

In the given case, cheque was indorsed properly but not delivered to indorsee i.e. 'Rehansh', Therefore, 'Rehansh' is not eligible to claim the payment of cheque.

Question 30

Mr. Zahid accepted a bill of exchange and gave it to Mr. Kamil for the purpose of getting it discounted and handing over the proceeds to Mr. Zahid. Mr. Kamil couldn't get the bill discounted and returned the bill to Mr. Zahid. Mr. Zahid cut the bill in two pieces for the purpose to cancel it and he threw the pieces on the street. Mr. Kamil picked up the pieces and joined those pieces in such manner that the bill seemed to have been folded for safe custody, rather than cancelled. Mr. Kamil put it into circulation and it finally reached to Mr. Salim, who took it in good faith and for value. Explain in the light of the provisions of the Negotiable Instruments Act, 1881, whether Mr. Zahid is liable to pay the bill to Mr. Salim?

(RTP Nov'22)

Answer 30

According to the section 9 of the Negotiable Instrument Act 1881, "Holder in due course" means any person who for consideration became the possessor of a negotiable instrument in good faith and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. Further, section 120 says that no maker of a promissory note and no drawer of a bill or cheque and no acceptor of a bill for the honour of the drawer shall, in a suit thereon by a holder in due course be permitted to deny the validity of the instrument as originally made or drawn. Thus, a holder in due course gets a good title to the bill.

In the given question, since Mr. Salim acquired the bill in good faith and for value, he becomes the holder in due course. Mr. Zahid cannot deny the original validity of the bill towards Mr. Salim (he being holder in due course). Hence, Mr. Salim has right to recover the amount of bill from Mr. Zahid.

Question 31

A bill of exchange is drawn payable to 'Amir' or order. 'Amir' endorses it to 'Rani', 'Rani' to 'Kajol',

'Kajol' to 'Sharukh', 'Sharukh' to 'Madhuri' and 'Madhuri' to 'Amir'. State with reasons under the provisions of the Negotiable Instrument Act, 1881 whether 'Amir' can recover the amount of the bill from 'Rani', 'Kajol', 'Sharukh' and 'Madhuri', if he has originally endorsed the bill to 'Rani' by adding the words 'Sans Recourse'.

(RTP May 23)

Answer 31

In the course of negotiation, if a negotiable instrument is circulated/negotiated back by an indorser to any of the prior party on the negotiable instruments, it is termed as negotiation back. The person who becomes the holder in due course under this negotiation back cannot make any of the intermediate indorsers liable on the instruments. But where an indorser had excluded his liability, by the use of the words 'sans recourse' or 'without recourse to me' and after that becomes the holder of the instrument in his own right under the 'negotiation back' all intermediate indorsers are liable to him and in case of dishonour, he can recover the amount from all or any one of them.

In the given question, on the basis of above facts it is clear that 'Amir', the endorser becomes the holder after it is negotiated to several parties. In normal situation none of the intermediate parties would be liable to 'Amir'. But in the given problem 'Amir's original endorsement is 'sans recourse' and therefore, he is not liable to 'Rani', 'Kajol', 'Sharukh' and 'Madhuri'. But if the bill is negotiated back to 'Amir', all of them are liable to him and he can recover the amount from all or any of them.

Question 32

Mr. Vibhav made endorsement of a bill of exchange amounting * 35,000 to Mr. Rishab. But, before the same could be delivered to Mr. Rishab, Mr. Vibhav passed away. Mr. Somesh, son of Mr. Vibhav, who was the only legal representative of Mr.

Vibhav approached Mr. Rishab and informed him about his father's death. Now, Mr. Somesh is willing to complete the instrument which was executed by his deceased father. Referring to the relevant provisions of the Negotiable Instruments Act, 1881, decide, whether Mr. Somesh can complete the instrument in the above scenario?

(RTP Nov'23, PYP 3 Marks Nov'22)

Answer 32

According to section 57 of the Negotiable Instruments Act, 1881, the legal representative of a deceased person cannot negotiate by delivery only, a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered. An agent can complete the instrument if he is authorized by the principal to do so. But, a legal representative is not an agent of the deceased.

The rights in the instrument are not transferred to the indorsee unless after the indorsement, the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee, the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof.

Therefore, a legal representative cannot complete the instrument if the instrument was executed by the deceased but could not be delivered because of his death.

Hence, in the said case, Mr. Somesh, son of Mr. Vibhav (the deceased) cannot complete the instrument which was executed by Mr. Vibhav but could not be delivered to Mr. Rishab, because of his death.

Question 33

Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following: A Bill of Exchange originally drawn by R for a sum of Rs. 10,000 but accepted by S only for Rs. 7,000. (PYP 3 Marks Jan' 21)

Answer 33

As per the provisions of Section 86 of the Negotiable Instruments Act, 1881, if the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the

bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation to the above section states that an acceptance is qualified where it undertakes the payment of part only of the sum ordered to be paid.

In view of the above provisions, the bill, which has been drawn by R for Rs. 10,000/-, has been accepted by S only for Rs. 7,000/-. It is a clear case of qualified acceptance, which may either be rejected by R or he may give assent to the acceptance of Rs. 7,000/- only.

Question 34

A promissory note specifies that three months after, A will pay Rs. 10,000 to B or his order for value received. It is to be noted that no rate of interest has been stipulated in the promissory note. The promissory note falls due for payment on 01.09.2019 and paid on 31.10.2019 without any interest.

Explaining the relevant provisions under the Negotiable Instruments Act, 1881, state whether B shall be entitled to claim interest on the overdue amount?

(PYP 3 Marks Jan 21)

Answer 34

When no rate of interest is specified in the instrument: As per the provisions of Section 80 of the Negotiable Instruments Act, 1881, when no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

In the given question, the promissory note falls due for payment on 1,9.2019 and was paid on 31.10.2019. The note does not mention any rate of interest, hence interest will be charged @ 18% p.a. Thus, B shall be entitled to claim interest on the overdue amount for the period from 01.09.2019 to 31.10.2019, @ 18% p.a.

Question 35

Gireesh, a legal successor of Ripun, the deceased person, signs a Bill of Exchange in his own name inherit the occate from the dereased payable to Mukund after 3 months from 1st January, 2019. On maturity, when Mukund presents the bill to Gireesh, he (Gireesh) refuses to pay for the bill on the ground that since the original liability was that of Ripun, the deceased, therefore, he is not liable to pay for the bill. Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether Mukund can succeed in recovering 50,000 from Gireesh. Would your answer be still the same in case Gireesh specified the limit of his liability in the bill and the value of his inheritance is more than the liability ? (PYP 4 Marks Jan 21)

Answer 35

Liability of a legal representative (Section 29 of the Negotiable Instruments Act, 1881): A legal representative of a deceased person, who signs his name on a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him.

Thus, in the absence of an express contract to the contrary, the liability of a legal representative is unlimited. However, a legal representative may, by an express agreement, limit his liability to the extent of the assets received by him.

In the light of the stated provision, Mukund can succeed in recovering rs 50,000 from Gireesh as he has admitted liability of rs 50,000 i.e. to the extent of the assets received by him from the Ripun, the deceased.

Yes, the limit of liability specified in the bill by Gireesh, will remain same even if value of his inheritance is more than the liability, in case he specified the liability by an express agreement.

Question 36

Mr. Harsha donated * 50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on he found that the NGO was a fraud and did not engage in philanthropic activities. He gave a "stop payment" instruction to his bankers and the cheque was not honoured by the bank as per his instruction. The NGO has sent a demand notice and threatened to file a case against Harsha. Advise Mr. Harsha about the course of action available under the Negotiable Instruments Act, 1881. (PYP 3 Marks July '21)

Answer 36

In the given instance, Mr. Harsha donated * 50,000 to NGO by cheque for sponsoring child education for 1 year. On founding that NGO was fraud, Mr. Harsha instructed bankers for stop payment. In lieu of that, NGO sent a demand notice and threatened to file a case against him.

Section 138 of the Negotiable Instruments Act, 1881 deals with dishonor of cheque which is issued for the discharge, in whole or in part, of any debt or other liability. However, any cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, would be considered outside the purview of section 138.

Here the cheque is given as a donation for the sponsoring child education for 1 year and is not legally enforceable debt or other liability on Mr. Harsha. Therefore, he is not liable for the donated amount which is not honoured by the bank to the NGO.

Question 37

Examine the following cases with respect to their validity. State your answer with reasons.

1. **A bill of exchange is drawn, mentioning expressly as 'payable on demand'. The bill will be at maturity for payment on 04-01-2021, if presented on 01-01-2021.**
2. **A holder gives notice of dishonor of a bill to all the parties except the acceptor. The drawer claims that he is discharged from his liability as the holder fails to give notice of dishonour of the bill to all the parties thereto.**

(PYP 3 Marks Jul'21)

Answer 37

a. The bill of exchange is drawn, mentioning expressly as 'payable on demand'. The bill will be at maturity for payment on 04-1-2021, if presented on 01-01-2021: This statement is not valid as no days of grace are allowed in the case of bill payable on demand.

b. A holder gives notice of dishonor of a bill to all the parties except the acceptor. The drawer claims that he is discharged form his liability as the holder fails to give notice of dishonour of the bill to all the parties thereto:

   As per section 93 of the Negotiable Instruments Act, 1881, notice of dishonor must be given by the holder to all parties other than the maker or the acceptor or the drawee whom the holder seeks to make liable. Accordingly, notice of dishonour to the acceptor of a bill is not necessary. Therefore, claim of drawer that he is discharged from his liability on account of holder's failure to give notice to all the parties thereto, is invalid.

Question 38

'M' is the holder of a bill of exchange made payable to the order of 'F'. The bill of exchange contains the following endorsements in blank:

First endorsement 'N'

Second endorsement 'O'

Third endorsement 'P' and Fourth endorsement 'Q'

'M' strikes out, without Q's consent, the endorsements by 'O' and 'P'. Decide, with reasons, whether 'M' is entitled to recover anything from 'Q' under the provisions of the Negotiable Instruments Act, 1881.

(PYP 3 Marks Dec'21)

Answer 38

According to section 40 of the Negotiable Instruments Act, 1881, Where the holder of a negotiable instrument—

- without the consent of the indorser,
- destroys or impairs the indorser's remedy against a prior party,

the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

In the given question, 'M' strikes out, without Q's consent, the endorsements by 'O' and 'P'. In the light of the above provision of law and facts of the question, 'M' is not entitled to recover anything from 'Q'.

make liable. Accordingly, notice of dishonour to the acceptor of a bill is not necessary. Therefore, claim of drawer that he is discharged from his liability on account of holder's failure to give notice to all the parties thereto, is invalid.

Question 39

A is a payee and 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.

(PYP 3 Marks Dec'21)

Answer 39

According to section 49 of the Negotiable Instruments Act, 1881, the holder of a negotiable instrument indorsed in blank may-

without signing his own name, by writing above the endorser's signature a direction to pay to any other person as endorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an endorser.

According to section 55, if a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the endorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

As per the facts of the question and above mentioned provisions of the Negotiable Instruments Act, 1881, Das the bearer of the Bill of Exchange, is entitled to receive payment or to sue drawer, acceptor, or A who indorsed the bill in blank, but he cannot sue B or C.

Question 40

Referring the provisions of the Negotiable Instruments Act, 1881 give the answer of the following.

1. **A promissory note was made without mentioning any time for payment. The holder added the words 'on demand' on the face of the instrument. Whether this may be treated as material alteration in the instrument?**
2. **Ankit draws a cheque for * 2,000 and hands it over to Shreya by way of gift. Whether Shreya is a holder in due course? (PYP 4 Marks Dec'21 ,March '23)**

Answer 40

1. Material alteration: An alteration is material which in any way alters the operation of the instrument and affects the liability of parties thereto.

Any alteration is material

- which alters the business effect of the instrument if used for any business purpose;
- which causes it to speak a different language in legal effect form that which it originally spoke or which changes the legal identity or character of the instrument.

  The following alteration are specifically declared to be material: any alteration of (i) the date, (ii) the sum payable, (i the time of payment, (iv) the place of payment, or the addition of a place of payment.

  A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. As per the above provision of the Negotiable Instruments Act, 1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence, adding the words "on demand" does not alter the business effect of the instrument.

2. Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

   Person holder in due course: 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 bearer) or the payee or endorsee there of (if payable to order) before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in title of the person from whom he derived his title.

   In the given case, Ankit draws a cheque for * 2,000 and hands it over to Shreya by way of gift. Hence, Shreya can be termed as a holder because she has a right to possession and to receive the amount due in her own name. But she cannot be termed as a holder in due course.

Question 41

Examine the validity of the following statements with reference to the Negotiable Instruments Act, 1881.

1. **When payment on an instrument is made in due course, both the instrument and the parties to it are discharged.**
2. **Alteration of rate of interest specified in the Promissory Note is not a material alteration.**
3. **Conversion of the blank indorsement into an indorsement in full is not a material alteration and it does not require authentication.**

(PYP 3 Marks, May '22)

Answer 41 (i)

1. When payment on an instrument is made in due course, both the instrument and the parties to it are discharged: Valid

   Reasoning: As per section 78 of the Negotiable Instrument Act, 1881, When payment on an instrument is made in due course, both the instrument and the parties to it are discharged subject to the provision of section 82(c). The payment on an instrument may be made by any party to the instrument. It may even be made by a stranger provided it is made on account of the party liable to pay.

2. Alteration of rate of interest specified in the Promissory Note is not a material alteration: Not valid

   Reasoning: An alteration is material which in any way alters the operation of the instrument and affects the liability of parties thereto. Hence, Alteration of rate of interest is material alteration.

3. Conversion of the blank indorsement into an indorsement in full is not a material alteration and it does not require authentication: Valid
   Reasoning: Conversion of a blank indorsement into an indorsement in full [under Section 49 of the Negotiable Instruments Act, 1881] is not a material alteration. It has been authorised by the Act and do not require any authentication.

Question 42

Examine the validity of the following statements under the provisions of the Indian Contract Act, 1872.

1. **Creditor should proceed legal action first against the Principal Debtor and later against the surety.**
2. **A guarantee which extends to a single debt/ specific transaction is called**

continuing Guarantee.

3. **Variation which is not material and beneficial to the surety will not discharge him of his liability.**
4. **If the bailee does not use the goods according to the terms and conditions of bailment, the contract of bailment becomes void.**

(PYP 4 Marks, May '22)

Answer 42

1. Creditor should proceed legal action first against the Principal Debtor and later against the surety:

   Invalid

   Reasoning: As per Section 128 of the Indian Contract Act, 1872, the surety's liability is co-extensive with that of Principal debtor. It's not mandatory that creditor should proceed legal action in case of default, first against the Principal debtor and later against the surety. It is on creditor to start action first either against the Principal debtor or the surety.

2. A guarantee which extends to a single debt/ specific transaction is called continuing Guarantee: Invalid

   Reasoning: Continuing Guarantee [Section 129 of the Indian Contract Act, 1872] - A guarantee which extends to a series of transaction is called a continuing guarantee. It applies not to a specific number of transactions but to any number of transactions and makes the surety liable for the unpaid balance at the end of the guarantee.

3. Variation which is not material and beneficial to the surety will not discharge him of his liability: Valid

   Reasoning: Based on the principle held in the M.S Anirudhan v Thomco's Bank Ltd. AIR 1963 SC 746 that the surety's liability will not be discharged where the alteration is for beneficial to him and is not substantial in nature.

4. If the bailee does not use the goods according to the terms and conditions of bailment, the contract of bailment becomes void: Invalid

   Reasoning: As per Section 153, a contract of bailment is voidable at the option of the bailor, if the bailee does not use the goods according to the terms and conditions of bailment.

Question 43

Healthcare Services Limited (the Bidder), bids the tender floated by Super Care Hospital (the Tenderer), attaching a cheque dated 01.04.2021 for * 5,00,000 towards earnest money deposit. Since the tender process was extended, the Tenderer returned the cheque expiring on 30.06.2021 to the Bidder for its resubmission after having revalidated by changing the date of the cheque to 01.07.2021. Accordingly, the revalidated cheque was resubmitted by the Bidder to the Tenderer. The cheque was presented by the Tenderer to the banker. It was dishonoured by the bank. Examine, whether the cheque altered with a new date shall be deemed to be a valid cheque binding the Bidder for payment as per the Negotiable Instruments Act, 1881? (PYP 3 Marks,May '22)

Answer 43

An alteration is material which in any way alters the operation of the instrument and affects the liability of parties thereto.

By material alteration the identity of original instrument is destroyed and those parties who had agreed to be liable on the original instrument cannot be made liable on the new contract contained in the altered instrument to which they never consented (Gour Chandra vs Prasanna Kumar 33 Cal 812). It makes no difference whether the alteration is made by a party who is in possession of the same, or by a stranger while the instrument was in the custody of a party, because the party in custody of instrument is bound to preserve it in its integrity. The rule is defended on the ground that no man shall be permitted to take the chance of committing a fraud without running any risk of loss by the event when it is detected.

The party who consents to the alteration as well as the party who makes the alteration are disentitled to complain against such alteration.

In the given Question, the tenderer (Super Care Hospital returned the cheque to the bidder (i.e. the drawer of cheque- Healthcare Services Limited) for its resubmission after having revalidated by changing the date of the cheque. The drawer himself altered the date of the cheque for re-validating the same instrument, he cannot take advantage of it by saying that the cheque becomes void as there was a material alteration thereto. It is always open to a drawer to voluntarily re-validate a negotiable instrument including a cheque [Veera Exports v T. Kalavathy (2002) 1 SCC97].

In the light of the above discussion, the cheque altered with a new date shall be deemed to be a valid cheque and thus, binding the Bidder for payment

Question 44

Venkat executed a promissory note in favour of Raman for *45 Lakhs. The amount was payable hundred days after sight. Raman presented the promissory note for sight on 4 th May 2021. Ascertain the date of maturity of the promissory note with reference to the relevant provisions of the Negotiable Instruments Act, 1881.

(PYP 3 Marks Nov '22)

Answer 44

Maturity of Negotiable Instrument

Where a bill or note is payable at a fixed period after sight, the maturity of a note or bill is the date on which it falls due. It's a time instrument and is at maturity on the third day after the day on which it is expressed to be payable. Thus, a time instrument payable after sight is allowed three days grace period. [Section 22 of the Negotiable Instrument Act, 1881 (the Act)].

Calculation of Maturity (Section 23 of the Act)

In calculating the date at which a promissory note or bill of exchange, made payable at stated number of months after date or after sight or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month, which corresponds with the day on which the instrument is dated. When it is made payable after a stated number of months after sight, the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight.

Section 24 of the Act states that where a bill or note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run.

In the present case, the day of presentment for sight is to be excluded i. e. 4th May, 2021. The period of 100 days will start from 5th May, 2021 i.e. May -27 days, June - 30 days July - 31 days and August 12 days (Total 100 days) and ends on 12th August. After 3 days of grace period added to it, it falls due on 15th August which is a public holiday. When the day on which a promissory note or bill of exchange

is at maturity is a Public holiday, the instrument shall be deemed to be due on the next preceding business day.

Accordingly, the date of maturity of the promissory note executed by Venkat will fall due on 14th August, 2021 (i.e. the next preceding business day.)

Note: The concept of after sight is not usually applied to Promissory notes. Therefore, a Promissory note payable 100 days after sight would have to be presented only after 100 days for payment. As per the question, it appears that promissory note is presented for payment (after 100 days) on 4th May 2021. Now the maker i.e. promisor would be required to pay it within the usual 3 grace days calculated from the 4th May 2021. This would be on 7th May 2021. Therefore, in the given case, the date of Maturity shall be 7th May 2021 (4th May 2021+ 3 days)."

Question 45

A bill of exchange was drawn by Mr. G on Mr. H for #50,000 towards the value of goods purchased by Mr. H from Mr. G. Mr. H accepted the bill and returned it back to Mr. G. After that Mr. G handed over the bill to his supplier Mr. K to settle the amount of a transaction. On the due date, Mr. K presented the bill before Mr. H for payment. Mr. H denied to make payment and the bill was dishonoured. After five days of the date of dishonour of the bill, Mr. K gave a written notice of dishonour by post with acknowledgement to Mr. G without knowing the fact that Mr. G had passed away one day back. After one month, thereafter, Mr. K claimed the amount from Mr. L, the only son of Mr. G, who was the only legal representative of Mr. G; Mr. L contended that the notice of dishonour was neither served to him nor he had received the notice of dishonour which was sent by Mr. K addressing to his father and therefore, he is not liable for the amount of the bill. Referring to the relevant provisions of the Negotiable Instruments Act, 1881, advise Mr. K., whether the contention of Mr. L is tenable. Would your answer differ in case Mr. L contended that even though he received the notice of dishonour addressed to his father, since it was not addressed to him, he is not liable for the amount of the bill?

(PYP 4 Marks Nov'22)

Answer 45

Dishonour by Non-Payment:

According to the Negotiable Instruments Act, 1881, a promissory note, bill of exchange and cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same (Section 92).

As per the requirement of the Negotiable Instruments Act, 1881, in line with the given facts, notice of dishonour must be given to all parties other than the acceptor of the bill, whom the holder seeks to make liable.

Notice of dishonour to the acceptor of a bill is not necessary as per Section 93 of the Act. Here the acceptor is primarily liable upon the instrument, on the due date and at the proper place. It is they who dishonour the instrument by no-acceptance or non-payment and notice to them will merely be notice of fact already known to them.

When negotiable instrument is dishonoured by non-payment, the holder must give a notice of dishonour to the drawer or his previous holder in order to make them liable on the instrument.

In order to make the drawer liable on dishonour by drawee/ acceptor, it is necessary that a notice of dishonour must have been given to him.

When the party to whom notice of dishonour is dispatched is dead, but the party dispatching the notice is ignorant of his death, the notice is sufficient (Section 97).

1st Part: In the given question, at the time of giving notice of dishonour by post with acknowledgement to Mr. G (the drawer), Mr. K (the holder of the bill) was not aware of the death of Mr. G. So, the notice served addressed to him, was sufficient as per Section 97 of the Negotiable Instruments Act, 1881. Hence, the contention of Mr. L (the legal representative of Mr. G) is not tenable and he is liable on the bill.

2nd Part: Where Mr. L, received the notice of dishonour addressed to his father though not addressed to Mr. L

In a case, where Mr. L, received the notice of dishonour addressed to his father though not addressed to Mr. L, then also he will remain liable for the amount of bill. Hence, the answer will not differ.

Question 46

'A drew a cheque for * 20,000 payable to 'B and delivered it to him. 'B' endorsed the cheque in favour of 'R' but kept it in his table drawer. Subsequently, 'B' died, and cheque was found by 'R' in 'B's table drawer. 'R' filed the suit for the recovery of cheque. Whether 'R' can recover cheque under the provisions of the Negotiable

Instruments Act, 1881? (PYP 3 Marks, May '23)

Answer 46

Negotiation by indorsement [Section 48 of the Negotiable Instruments Act, 1881]: Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

As per the given provision, as R does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. So, R cannot recover cheque, though endorsed in his favour.

Question 47

Mr. X draws a cheque in favour of Mr. R for payment of his outstanding dues of Rs. 5,00,000 on 26/07/2022 with date of 1/08/2022. At the time of issuing cheque, he was having sufficient balance in his account, but on 29/07/2022 he made payment for his taxes, now his bank account is left with only Rs. 4,50,000. So, Mr. X requested Mr. R not to present the cheque for payment, but he did not accept his request. So, Mr. X instructed the bank to stop payment of cheque issued for dated 01/08/2022 in favour of Mr. R. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Mr. constitute an offence? (PYP 3 Marks, May '23)

Answer 47

As per the facts stated in the question, Mr. X (drawer) issued the cheque to Mr. R for outstanding dues of Rs. 5,00,000 on 26/07/2022 with the postdated cheque of 1/08/2022. But on 29/07/2022, he made payment for his taxes and left with bank balance of Rs. 4,50,000.

Mr. X requested Mr. R not to present the cheque for payment. Later, he gave a stop payment request to the bank in respect of the cheque issued to Mr. R.

Where any cheque drawn by a person for consideration is returned by the bank unpaid because of the amount of money standing to the credit of that account is insufficient to honour the cheque such person shall be deemed to have committed an offence and shall be punishable. (Section 138)

Once a cheque is issued by the drawer, a presumption under section 139 of the

Negotiable Instruments

Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under section 138.

Also, section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under section 138 of the Act. Section 140 states 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 that section.

Accordingly, the act of Mr. X, for stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

Question 48

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

a. **X receives a promissory note drawn by his father by way of gift.**
b. **A received a cheque for full and final settlement of his dues from his client but, he is prohibited by a court order from receiving the amount of the cheque.**
c. **B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee**
d. **P works in a bank. He steals a blank cheque of A and forges A's signature.**

(PYP 4 Marks, May'23)

Answer 48

Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases -

a. Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.
b. No, A is not a 'holder' because to be called as a 'holder' he must be entitled

not only to the possession of the instrument but also to receive the amount mentioned therein.

c. No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.
d. No, P is not a holder because he is in wrongful possession of the instrument.

Question 49

Calculate the date of maturity of the following bill of exchange explaining the relevant rules relating to determination of the date of maturity, as provided in the Negotiable Instruments Act, 1881.

(i) The bill of exchange drawn on 21/06/2023. Date of maturity of a bill payable 100 days after date.

(ii) A bill of exchange drawn on 20/04/2023 is payable twenty days after sight and the bill is presented for acceptance on 30/04/2023.

(PYP 4 Marks Nov 23)

Answer 49

According to section 22 of the Negotiable Instruments Act, 1881, the maturity of a promissory note or bill of exchange is the date at which it falls due. Every promissory note or bill of exchange (which is not expressed to be payable on demand, at sight or on presentment) is at maturity on the third day after the day on which it is expressed to be payable.

Section 25 provides, when the last day of grace falls on a day which is public holiday, the instrument is due and payable on the next preceding business day.

I. As per section 24, in calculating the date at which a promissory note or bill of exchange made payable at certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded. A bill which is payable after sight is in the nature of time instrument.

Hence, in this case, the period of 100 days will start from 22nd June, 2023.

Month and No. of days in month to make 100 days

June —>> 9

July —>> 31

August —>> 31

September —>> 29

Thus, 100 days will end on 29th September, 2023. After 3 days of grace period are added to the bill of exchange, it falls due on 2nd October, 2023 which is a public holiday. Accordingly, the date of maturity of the bill of exchange will fall due on 1st October, 2023 (i.e. the next preceding business day.)

II. In this case, the day on which the bill of exchange is presented for acceptance is to be taken into consideration i.e. 30th April, 2023. The period of 20 days will start from 1st May, 2023 and will end on 20th May, 2023. Being a time instrument payable after sight is allowed three days grace pericka as per section 22. Accordingly said bill will become mature, after 3 days of grace period to the due date, therefore, bill will be said to be matured on 23rd May, 2023.

Question 50

Mr. Rama bought an electric watch of * 50,000 from SN Watch Co. For the purpose of making payment, he drew a cheque payable to Mr. SN Dhawan, owner of the watch company or ordered. Mr. SN Dhawan put the cheque in office drawer. One of the employee Mr. Joseph stole the cheque from office drawer, forged the signature of Mr. Dhawan and indorsed it to Mr. Parashar for goods he bought from him of * 50,000. Mr. Parashar encashed the cheque, on the very same day from Mr. Rama's account. After 3 days Mr. Dhawan came to know about the theft. He intimated Mr. Rama about the theft of the cheque. Examine the liability of the Mr. Rama in this case. (PYP 4 Marks Nov'23)

Answer 50

According to section 85(1) of the Negotiable Instruments Act, 1881, where a cheque payable to order purports to be indorsed by or on behalf of the payee, the banker is discharged by payment in due course.

The banker, in other words, can debit his customers account even though the indorsement by the payee might turn out to be forgery or the indorsement might have been placed by the payee's agent without his authority.

According to section 14 of the Negotiable Instruments Act, 1881, when a negotiable instrument is transferred to any person with a view to constitute the person holder thereof, the instrument is deemed to have been negotiated. Thus, there is a transfer of ownership of the instrument.

In the given case, the cheque is transferred to Mr. SN Dhawan by Mr. Rama whereby Mr. SN Dhawan becomes the holder in due course and the ownership of the cheque is transferred to him. The banker can debit Mr. Rama's account even though the indorsement by the payee is forged. Since, the account of Mr. Rama has already been debited, and ownership of the cheque towards payment of the purchase price of the electric watch was transferred to Mr. SN Dhawan he (Mr. Rama) does not have any further liability in this case.

Question 51

RNL Ltd. issued a post-dated cheque of * 5.50 Lakh to Mr. YR Gupta on account of full and final settlement of its liability for shares purchased of a renowned company. Company draws the cheque on 21.8.2023 and mentioned the cheque to be paid on 26.9.2023.

Further, Company instructed the bank, on which cheque was drawn to stop the payment of cheque, if at the time of presentment, Bank account has insufficient funds to make payment. Mr. YR Gupta presented the cheque to bank for payment on 30.11.2023. On 30.11.2023 bank account maintained by company was having only 7 4.90 lakh. Bank denied for payment.

The cheque was dishonored for non-payment. In the above case, who will be responsible for dishonor of cheque and payment of 7 5.50 lakh due to Mr. YR Gupta? (PYP 4 Marks Nov'23)

Answer 51

Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is returned/ informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

According to section 139 of the Act, when a cheque is dishonoured, it shall be presumed, unless the contrary prove, that a horder 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.

Section 140 states 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 presentation for the reasons stated in that section. As per the facts stated in the question, RNL Limited (drawer) after having issued the cheque to Mr. YR

Gupta (drawee), instructed the bank to stop payment of cheque, if at the time of presentment, Bank account of company has insufficient funds to make payment. In the given case, on presentment of cheque by Mr. YR Gupta, Bank denied payment and the cheque was dishonored.

In view of the facts of the question and the provisions of law, RNL Limited has committed an offence under section 138. Also, section 140 specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Accordingly, RNL Limited will be responsible for dishonor of cheque and payment of < 5.50 lakh due to Mr. YR Gupta.