

4. NEGOTIABLE INSTRUMENTS AND ITS TYPES

QUESTION - WISE ANALYSIS OF PREVIOUS EXAMINATIONS

No	M-09	N-09	M-10	N-10	M-11	N-11	M-12	N-12	M-13	N-13	M-14	N-14	M-15	N-15	M-16	N-16	M-17	N-17	M-18 (O)	M-18 (N)	N-18 (O)	N-18 (N)
THEORY QUESTIONS																						
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PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION																						
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- In India, Law relating to Negotiable Instruments is contained in the Negotiable Instruments Act, 1881¹.
- NI Act was enacted on 09/12/1881 and it came into force on 01/03/1882.
- The Act applies to the whole of India including the state of Jammu & Kashmir².
- Sec.21 of the RBI Act, 1934 provides that Banks have right to transact Government business in India. Anything contained in this Act will not affect that provision.
- The provisions of this Act are also applicable to Hundies (Hundi is a kind of Bill of exchange used in olden days).

INTRODUCTION

Q.No.1. Define the term Negotiable instrument? (C)

(NEW SM, OLD SM, OLD PM)

NEGOTIABLE INSTRUMENT:

1. The word 'Negotiable' means "transferable by delivery" and
2. "Instrument" means a written document by which a right is created in favour of some person".
3. Thus the term 'Negotiable Instrument' literally means "written document transferable by delivery".
4. According to Sec 13 of the Negotiable Instruments Act, 1881, "a negotiable instrument means a Promissory note, Bill of exchange, or Cheque payable either to order or to bearer".
5. A negotiable instrument may name more than one payee jointly or alternatively.³

¹ Negotiable Instruments Act, 1881 is enacted (i.e., passed) to facilitate the activities in trade and commerce.

- The Act contains provisions for giving sanctity (i.e. more importance) to the instruments of credit.
- Such instruments of credit can be converted to money and can easily be transferred from one person to another.

² NI act, 1881 was not applicable to the state of Jammu and Kashmir prior to 1956. However, the state of Jammu and Kashmir has been covered under the scope of NI act by the Jammu and Kashmir (Extension of Laws) Act, 1956.

³ In other words, A negotiable instrument may be made payable to two or more Payees jointly. It may even be made payable to one of the two Payees or some of the several Payees.

6. The holder of a negotiable instrument can sue on the instrument in his own name.
7. Transferee gets a good title even though the title of the transferor is defective if he takes the instrument in good faith and for consideration.

(IMMEDIATELY REFER ACADEMIC INTEREST QUESTION NO. 20)

Q.No.2. "NI Act has recognized only 3 instruments as negotiable". What is the legal status of other instruments that are not covered under the NI Act 1881 but still being negotiated in day to day business? What is the additional advantage being enjoyed by the 3 instruments that have been recognized by NI Act? (C)
(FOR STUDENTS SELF STUDY)

- NI ACT deals with 3 specific classes of negotiable instruments - Promissory Note, Bill of Exchange & Cheque.
- NI Act does not apply to:
 - Indian Paper Currency Act, 1871
 - The local usage relating to any instrument in a vernacular language. For example, Hundies. But where no such custom is established, the Act will apply to Hundies also.
- Instruments like Share warrant, Dividend Warrant, Bearer Debentures, Dock warrants, Railway Receipt, Bill of Lading, etc. are not recognized as negotiable instruments under the provisions of the NI Act.
- But these instruments are freely negotiated either as per the prevailing Customs of Trade or as per the provisions of some other Acts.
- Even though they are not recognized under the NI Act, they are still negotiable and the general principles of Indian Contract Act may apply to such instruments.
- The instruments covered under the NI Act will get a protection that the transferee gets a good title to the instrument, even though the title of the transferor is defective provided he takes the instrument in good faith and for consideration. Such protection is not available to other instruments which are not covered under this Act.

Q.No.3. State the essential characteristic features of a Negotiable instrument? (C)
(OLD SM, RTP - M14)

NEGOTIABLE INSTRUMENT: According to Sec 13 of the Negotiable Instruments Act, 1881, "A negotiable instrument means a Promissory note, Bill of exchange, or Cheque payable either to order or to bearer".

FOLLOWING ARE THE CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT:

1. **Written instrument with signature:** A Negotiable Instrument is a written document. It is considered as complete and effective only when it is duly signed.
2. **Presumption as to consideration:** It is presumed by law that every Negotiable Instrument is made or drawn for a consideration. So, it is not necessary to clearly state the consideration.
Exception: Accommodation bills.
3. **Transfer / Negotiation:** A negotiable instrument can be transferred from one person to another by
 - endorsement and delivery, if it is an order instrument, or
 - mere delivery, if it is a bearer instrument.
4. **Title of Holder, free from defects:** The transferee, who takes the instrument in good faith and for valuable consideration, obtains good title even though there are defects in the title of the transferor.

It is an exception to the general rule that "no one can give a better title than what he has".

NOTE: This concept is excluded in the New SM. But without this concept students can't understand further concepts. That is why we have decided to continue this question.

PROMISSORY NOTE

Q.No.4. Define promissory note? Who are the parties to a promissory note? (A)
(NEW SM, OLD SM, M12 - 8M)

DEFINITION: As per Sec 4 of the NI Act, 1881, a Promissory note is:

- a) An instrument in writing (not being a bank note or currency note)
- b) Containing an unconditional undertaking signed by the Maker,
- c) to pay a certain sum of money only
 - to a certain person, or
 - to the order of a certain person, or
 - to the bearer of the instrument.

PARTIES TO A PROMISSORY NOTE:

- a) **Maker⁴:**
 - The person who makes the promissory note is called 'maker' of the instrument.
 - Maker's liability is primary and unconditional.
- b) **Payee:** The person to whom money is to be paid is called Payee.

Q.No.5. State the essentials elements of a valid Promissory Note? (C)
(OLD SM, OLD PM, RTP- M13)

PROMISSORY NOTE: An instrument in writing (not being a bank note or currency note) containing an unconditional undertaking signed by the Maker, to pay a certain sum of money only to a certain person, or the order of a certain person, or the bearer of the instrument (*Refer Appendix 1*).

FOLLOWING ARE THE ESSENTIAL ELEMENTS OF PROMISSORY NOTE:

1. **In writing:** It must be in writing. An oral promise does not make a Promissory Note since it is not an instrument.
2. **Promise to Pay:** The Promissory note must contain an express promise to pay. Mere acknowledgement of indebtedness is not a Promissory Note.
3. **Definite and unconditional:** The Promise to pay must be definite and unconditional⁵. If it is uncertain or conditional, the instrument is invalid.
NOTE: A promise to pay will not be conditional, if it depends upon an event which is certain to happen but the time of its occurrence is uncertain.
4. **Certain sum of money:** The sum payable must be certain and definite. The amount payable must not be capable of contingent additions or subtractions⁶.

⁴ Maker is the person who promises to pay the money stated in the Promissory Note.

⁵ A signs an instrument, "I promise to pay B Rs. 500 on D's death". This is a valid Promissory Note. Death of D is certain to happen but the exact time of death is unknown. Such clause is not treated as conditional and hence the promissory note is valid.

A signs an instrument, "I promise to pay B Rs. 500 on D's death, provided D leaves me enough money to pay that sum". This is not a valid Promissory note because the clause "provided D leaves me enough money to pay that sum" is conditional in nature.

⁶ The sum payable is still treated as certain in the following cases:

- a) If it is payable along with interest and interest is expressed as an amount or as a percentage.
- b) Where it is payable at a specified rate of exchange.
- c) Where it is payable by instalments with a provision that on default the unpaid balance shall become due.

5. Signed by the Maker:

- Promissory note must be signed by the Maker.
- The signatures may be made on any part of the instrument.
- If the document is in written form and the name of the Maker appears on the instrument but it is not signed then it will not be considered as a valid Promissory Note.

6. Stamped: A promissory note must be stamped. Stamp duty is to be paid as per Indian Stamp Act, 1899.

7. Delivery: Promissory note must be delivered to the Payee; otherwise the note will be ineffective.

8. Payment to pay money only: There must be a promise to pay money and money only.

9. Certain parties:

- The instrument must certainly point out the Maker and the Payee.
- If we cannot identify the Maker and the Payee with certainty then it is not a promissory note even if it contains an unconditional promise to pay.

10. A promissory can be made payable on demand or after a definite period of time.

11. A Promissory Note can be made payable only to a certain person or to the order of a certain person. But it can't be made payable to the bearer in view of Sec. 31(2) of the RBI Act, 1934⁷.

NOTE: This concept is excluded in the New SM. But without this concept students can't understand further concepts. That is why we have decided to continue this question.

SIMILAR QUESTION:

1. A acknowledges himself to be indebted to B Rs.5000, to be paid on demand, for value received. Is this a valid promissory note?

A. Here the Promise made is definite and unconditional and hence it is a valid promissory note.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 1, SELF PRACTICE 1)

BILL OF EXCHANGE

Q.No.6. What is meant by Bill of Exchange? Who are the parties to a Bill of Exchange? (B)
(NEW SM, OLD SM, M11 - 8M, N14 - 4M, MTP N15)

DEFINITION: As per Sec 5 of the NI Act, 1881, '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 a certain person, or
 - to the order of a certain person or
 - to the bearer of the instrument.'

PARTIES TO A BILL OF EXCHANGE: A bill of exchange is a Tri party instrument.

1. Drawer: The party who draws a bill of exchange is known as Drawer. His liability is secondary and conditional.

⁷ Even though the words 'or to the bearer of the instrument' are there in the definition of Promissory Note they have become inoperative due to the provisions of Section 31(2) of the Reserve Bank of India Act. It provides that no person in India other than Reserve Bank of India and The Central Government can make or issue promissory note payable to the bearer of the instrument.

2. **Drawee:** The party on whom the bill is drawn and thereby directed to pay is called Drawee. After acceptance of the Bill, Drawee will be called as Acceptor. His liability is primary and unconditional.
3. **Payee:** The person to whom money is to be paid is known as Payee.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 2)

Q.No.7. State the essentials of a valid Bill of Exchange. (C)

(OLD SM, OLD PM)

DEFINITION: As per Sec 5 of the NI Act, 1881, '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 a certain person, or to the order of a certain person or to the bearer of the instrument.' (Refer Appendix 2).

FOLLOWING ARE THE ESSENTIAL ELEMENTS OF BILL OF EXCHANGE⁸:

1. It must be in writing.
2. It must be signed by the Drawer.
3. It must contain an express order to pay⁹.
4. The order to pay must be definite and unconditional. A conditional bill of exchange is invalid.
5. The order must be to pay money only¹⁰.
6. The sum contained in the order must be certain.
7. Drawer, Drawee and Payee must be certain.
8. It must be stamped as required by Indian Stamp Act, 1889.
9. Bill must be delivered to the Payee; otherwise it will be ineffective.
10. It can be made payable to bearer on demand or after a definite period of time.
11. A bill of exchange can't be made payable to the bearer on demand in view of Sec. 31(2) of the RBI Act, 1934.

Other formalities: Just like promissory note, a Bill may be dated and may mention the place where it is drawn. But mere absence of these things does not invalidate the bill.

NOTE: This concept is excluded in the New SM. But without this concept students can't understand further concepts. That is why we have decided to continue this question.

(IMMEDIATELY REFER ACADEMIC INTEREST QUESTION 21)

CHEQUE

Q.No.8. What is meant by cheque? State the essentials of a valid cheque (A)

(NEW SM, OLD PM, M11 - 8M, RTP N13)

CHEQUE [SEC.6]:

- A Cheque is a bill of exchange drawn on a specified banker and always payable on demand and
- It also includes the electronic image of a truncated cheque and a cheque in electronic form. (Refer Appendix 3)

⁸ We have not given these features in a detailed manner as they are very much similar to that of Promissory Note.

⁹ Order does not mean a command. It is a direction for payment. Since this is a distinctive feature of Bill as compared to Promissory Note. Hence, it is highlighted with grey background.

¹⁰ The order to pay anything in kind will invalidate the Negotiable instruments.

ESSENTIALS OF A VALID CHEQUE:

1. Cheque is always drawn on a specified banker.
2. Cheque is always payable on demand.
3. It must be in writing and signed by the Drawer.
4. It must contain an unconditional order to pay.
5. It must contain an express order to pay.
6. The order to pay must be a certain sum of money, to a certain person, or to the bearer of the instrument.

Since Cheque is primarily a bill of exchange drawn on a banker, it must have all the essentials of a bill of exchange. But following are the distinguish features of a Cheque:

- i) Cheque does not require acceptance.
- ii) Cheque does not require stamping.

PARTIES TO CHEQUE:

1. **Drawer:** The person who draws or makes the cheque is called Drawer. His liability is Primary and Conditional.
2. **Drawee:** The bank on whom cheque is drawn is called as Drawee Bank. Drawee Bank will pay the cheque.
3. **Payee:** The person to whom money is to be paid is called Payee. Payee can be a third party or the Drawer himself.

NOTE: If the amount undertaken or ordered to be paid is stated differently in figures and in words then the amount stated in words shall be the amount undertaken or ordered to be paid (Sec.18)

(IMMEDIATELY REFER PRACTICAL QUESTION SELF PRACTICE 4, 11)

Q.No.9. Classification of Negotiable Instruments (A)**(NEW SM, OLD SM)**

1. **Bearer Instrument:** A negotiable instrument
 - Which is expressed to be payable to bearer; or
 - On which the last endorsement is in blank.

Ex: i) 'Pay to R or bearer'; ii) 'a bill is drawn payable to X who endorses it in blank in favour of Y',
2. **Order Instrument:** A negotiable instrument -
 - Payable or expressed to be payable to a particular person, and
 - does not contain words prohibiting or restricting its transfer.

Ex: 'Pay to A or order Rs. 100'.
3. **Inland Instrument:** A Negotiable Instrument is said to be an Inland instrument,
 - If it is drawn or made in India and made payable in India, or
 - If it is drawn or made in India and drawn upon any person resident in India¹¹.

NOTE: An Inland instrument remains inland even if it is endorsed in a foreign country¹².
4. **Foreign Instrument:** Any instrument which is not an Inland instrument is deemed to be a Foreign instrument¹³.

¹¹ Ex 1: A bill drawn in Delhi on a merchant in Agra and accepted payable in London.

Ex 2: A bill drawn in Delhi on a merchant in London and accepted payable in Agra.

¹² Ex: A bill drawn in Delhi on a merchant in Agra and accepted payable in Agra, later the bill was endorsed to a person living in London

5. Demand Instrument / Instruments payable on demand:

- It is an instrument in which no time for payment is mentioned.
- A promissory note or bill of exchange is payable on demand –
 - When no time for payment is specified or
 - When it is expressed to be payable on demand or at sight or on presentment

Ex: i) "Pay B Rs. 500 on Presentment"; **ii)** "I promise to pay Rs. 500 on demand"; **iii)** "I promise to pay B Rs. 500".

- A cheque is always payable on demand.
- Such instruments can be presented for payment at any time.
- Such instruments are not entitled to any grace days.

6. Time Instruments: An instrument in which time for payment is specified and may be payable-

- On specified day (for e.g. "I promise to pay B Rs. 500 on 1st Jan, 2020") or
- After specified period (for e.g. "I promise to pay B Rs. 500 after 3 months") or
- Certain period after sight (for e.g. "I promise to pay B Rs. 500 after sight") or
- On happening of an event which is certain to happen (for e.g. "I promise to pay B Rs. 500 after C's death")

7. Accommodation Note or Bill:

- It means a promissory note or bill of exchange which is drawn, accepted without consideration.
- It creates no obligation between the parties in the absence of consideration.
- The purpose of this bill is to enable some party to the instrument to raise money based on such bill¹⁴.
- The person, who becomes the holder of such bill, in good faith and for consideration, after maturity, may recover the amount from the prior parties.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 4, 5)

Q.No.10. Ambiguous and Inchoate Instruments (A)**(NEW SM, OLD SM)****1. AMBIGUOUS INSTRUMENT:**

- An instrument which cannot be clearly identified either as a promissory note or bill of exchange is an ambiguous instrument.
- Holder may at his option treat it as either promissory note or bill of exchange and the instrument cannot be treated differently afterwards.

Ex: i) "A bill drawn by Head office on its Branch"; **ii)** "A bill drawn by an agent acting within his authority upon his principal"; **iii)** X draws a bill on Y who is a minor.

¹³ Ex 1: A bill drawn in Delhi on a merchant in London and accepted payable in London.

Ex 2: A bill drawn in London on a merchant in Agra and accepted payable in Agra.

¹⁴ Ex 1: While accepting a Bill of Exchange, the Acceptor deposited certain goods as collateral security with the drawer, for the payment of Bill. Drawer was given power to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. When the bill was not paid at maturity, the drawer sold the goods and retained the proceeds, but endorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Ex 2: X who needs funds, draw a bill on Y who accepts the bill and gets the bill discounted with his banker and on due date remits the requisite amount to Y to enable him to meet the bill. Such a bill is called Accommodation bill.

2. INCHOATE INSTRUMENT:

a) **Meaning:** An Inchoate instrument is an incomplete instrument in certain respects.

b) **Conditions:**

- A person signs an instrument
- The instrument is stamped
- The instrument is either wholly or partially blank
- The person signing such instrument delivers it to another person¹⁵.

c) **Legal Effect:**

- The maker authorizes the Holder to complete the Negotiable Instrument.
- The maker gives the authority to fill up any amount therein, but not exceeding the amount covered by the stamp.

d) **Rights of parties in case of an inchoate instrument:**

- A Holder in Due Course can recover the whole amount as specified in the instrument, but not exceeding the amount covered by the stamp.
- But others cannot recover anything in excess of the amount intended to be paid there under by the person delivering such instrument¹⁶.

SIMILAR QUESTIONS:

1. What is the extent of liability of Drawee or maker in case of Inchoate Instruments?

A. Refer point No.2 in the above answer.

2. A bill is drawn "Pay to A or order the sum of one thousand rupees". In the margin, the amount stated is Rs.10,000 in figures. (a) Is this a valid bill? (b) If so, for what amount?

A. (a) Yes. It is a valid bill;

(b) As per sec.18 of the NI Act, 1881, if the amount undertaken or ordered to be paid is stated differently in figures and in words then the amount stated in words shall be the amount undertaken or ordered to be paid. The Bill is valid for Rs.1000.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 3, 6, 7 SELF PRACTICE 2)

Q.No.11. Write about Fictitious bill and Conditional instrument / Escrow. (A) (NEW SM, OLD SM)

1. **Fictitious Bill (Sec.42):**

- A fictitious bill is a bill in which the name of the Drawer or the Payee or both is fictitious.
- In fictitious bill, the acceptor is liable to Holder in Due Course.

Note: *Acceptor cannot be relieved from his liability to the holder in due course. However, Holder in Due Course shall establish that the bill was endorsed by the same hand as drawer's signature.*

EX: i) A bill drawn upon X in favour of P and the drawer is a fictitious person; **ii)** X drawn a bill upon Y in favour of Z who is fictitious person.

¹⁵ As a condition of liability, the signatory must deliver the instrument to another. In the absence of delivery, the signatory is not liable.

Ex: Drawee of a Bill has accepted, signed the bill and kept it in his drawer. A thief has stolen it and filled it up for Rs.2,000 and negotiated it to an innocent person for value. It was held that the Drawer was not liable even to holder in due course because he never delivered the instrument intending it to be used as a negotiable instrument.

¹⁶ Ex: X signs and delivers a stamped and blank promissory note to Y.

2. Conditional instrument / 'Escrow':

- a. An Escrow is a Negotiable Instrument:
 - which is delivered conditionally, or for a special purpose as a collateral security, or for safe custody only, and
 - not for the purpose of transferring the property there in, absolutely.
- b. If a bill or a note is negotiated to a HDC, the other parties to the bill or note cannot avoid liability on the ground that the delivery of the instrument was conditional or for a special purpose only¹⁷.

CONCEPT OF MATURITY

Q.No.12. Write down the provisions relating to maturity and days of grace for negotiable instruments under the NI, Act, 1881? (B)
(NEW SM, OLD SM, OLD PM)

1. **Maturity:** The maturity of a negotiable instrument means the date on which it falls due for payment.
2. **Days of grace:** A negotiable instrument which is payable otherwise than on demand is entitled to three days of grace.
3. **Instruments entitled to 'days of grace' are:**
 - a) A bill or note payable on a specified day,
 - b) A bill or note payable 'after sight',
 - c) A bill or note payable after certain period of time,
 - d) A bill or note payable after a certain period or after the happening of a certain event.
 - e) Where a Note or Bill is payable in installments, days of grace are allowed on each installment.

NOTE: All those instruments which are entitled to grace days must be presented for payment on the last day of grace.

4. **Instruments not entitled to 'days of grace' are:**
 - a) A cheque (as it is intended for immediate payment),
 - b) A bill or note payable 'at sight' or 'on presentment' or 'on demand' and
 - c) A bill or note in which 'no time is mentioned'.
5. **Rules for finding out date of maturity in the following cases:**
 - a) If the day of maturity of a Note or Bill is a public holiday¹⁸ then date of maturity is immediately preceding business day.
 - b) If the day of maturity of a Note or Bill is an emergency or unforeseen holiday then date of maturity is immediately succeeding business day.

6. SOME ILLUSTRATIONS ON FINDING OF DATE OF MATURITY [SEC.23 and 24]:

No	SITUATION	DATE OF MATURITY	ILLUSTRATION
1.	Instruments payable on a <u>specified day</u> .	3 rd day after specified day	A bill which specifies the date of payment on 22-03-2017 is payable on 25-03-2017.

¹⁷ Ex: A, the holder a bill, endorses it to "B or order" for the purpose that B may get it discounted. B negotiates the bill to C who takes it bona fide and for value. C is a holder in course, and he acquires good title to the bill.

¹⁸ Sunday is also considered as Public holiday.

2.	Instruments payable <u>certain days after the date of preparation of instrument.</u> (after date)	Date of preparation of instrument + certain days + 3 rd day	A bill which is prepared on 22-03-2017 and payable after 15 days is due on 09-04-2017. (22-03-2017 + 15 days + 3 rd day)
3.	Instruments payable <u>certain days after the date of happening of a certain event.</u>	Date of happening of event + certain days + 3 rd day	<ul style="list-style-type: none"> A bill is payable after 7 days from the date of death of C. If C died on 22-03-2017 then bill is payable on 01-04-2017. (22-03-2017 + 7 days + 3rd day)
4.	Instruments payable <u>after certain months from the date of preparation of instrument.</u> (after date)	Date of preparation of instrument + stated number of months + 3 rd day	<ul style="list-style-type: none"> A bill is prepared on 22-03-2017 and is payable after 3 months. Then the due date for payment will be 25-06-2017. (22-3-2017 + 3 Months + 3rd day)
5.	Instruments payable <u>after certain months from the date of presentment of instrument for sight.</u> (after presentment)	Date of presentment of instrument + stated number of months + 3 rd day	<ul style="list-style-type: none"> A bill is prepared on 22-03-2017 and is payable 3 months from the date of presentment. If the bill is presented for sight on 25-06-2017 then the due date for payment will be 28-09-2017. (25-06-2017 + 3 Months + 3rd day)
6.	Instruments payable <u>after certain months from the date of happening of certain event.</u>	Date of happening of event + certain months + 3 rd day	<ul style="list-style-type: none"> A bill is payable after 3 months from the date of death of C. If C died on 22-03-2017 then the due date for payment will be 25-06-2017 (22-03-2017 + 3 months + 3rd day)
7.	If the day of maturity of a Note or Bill is a public holiday	Immediately preceding business day	If maturity date of a bill is 26th January (i.e. Republic day), it falls due on 25th January, if 25th January is also a public holiday (i.e. Sunday), it will fall due on 24th January (Provided, 24th January is not a public holiday)
8.	If the day of maturity of a Note or Bill is an Emergency or unforeseen holiday	Immediately succeeding business day	If 9th September is emergency holiday then the instrument will be payable on 10th September. If 10th September is also holiday, then it is payable on 11th September.

SIMILAR QUESTIONS:

- State briefly the rules laid down under the NI Act, 1881, for 'Determining the date of maturity' of a Bills of Exchange. (OLD PM, M18 (N) - 5M)
A. Refer the Point No.5 in the above answer.
- In what way does the NI Act, 1881 regulate the determination of the "Date of maturity" of a 'Bill of Exchange'. (OLD PM)
A. Refer the Point No.5 in the above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 8, 9, 10)

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To **MASTER MINDS**, Guntur

Q.No.13. Define Holder as per Negotiable Instruments act, 1881. (A)
(NEW SM, OLD SM, OLD PM)

1. HOLDER (Sec 8):

- Holder of a negotiable instrument means any person, who is entitled:
 - To the possession of the instrument; and
 - To receive the amount due thereon from the party who has transferred it.
- The party transferring the negotiable instrument to holder should be legally capable.

Ex: 1. X who obtains a cheque drawn by Y by way of gift. Here X is a holder.

Ex: 2. A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque – Here A is not a holder.

Ex: 3. B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee – Here B is not a holder.

2. Sometimes a person may be in possession of a negotiable instrument but the law does not consider him as a holder. Following are some of such instances:
- a) A person who finds or steals a bearer instrument.
 - b) A person who takes an instrument under forged endorsement.
 - c) A beneficial holder claiming through 'BENAMIDAR' is not a holder.
 - d) An agent holding an instrument for his principal is not a holder¹⁹.
 - e) A Payee prohibited by an order of court from receiving the amount of the instrument.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 11 & 28)

Q.No.14. Who is a holder in due course? (A) (NEW SM, OLD SM, OLD PM, RTP N16, MTP M15)

HOLDER IN DUE COURSE [Sec.9]: Every holder of negotiable instrument will be treated as "holder in due course", if he has obtained the instrument:

- For consideration
- Before maturity; and
- In good faith (i.e., without sufficient cause to believe that any defect existed in the title of the person from whom he derived his title).

Conditions: A Holder must satisfy the following conditions to call himself as Holder in Due Course

- a) He must be a holder,
- b) He must have received the instrument for consideration (Value),
- c) He must have obtained the possession of negotiable instrument before maturity, and
- d) He must have obtained the negotiable instrument in good faith.

Ex: 1. A draws a cheque for Rs. 5,000 and hands it over to B by way of gift. Here B is a holder but not holder in due course.

Ex: 2. X draws a bill of exchange for Rs. 20,000 and hands it over to Y. Later Y endorsed the bill to Z after maturity. Here Z is a holder but not holder in due course.

¹⁹ An agent can receive payment of the instrument, but he has no right to sue on the instrument in his own name.

Ex: 3. X, by inducing Y, obtains a bill of exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z for consideration. Z knowing about fraud between X and Y takes the Bill. Here Z is not holder in due course.

SIMILAR QUESTION:

1. 'A' draws a cheque for Rs. 1,000 and hands it over to 'B' by way of gift. Is 'B' a Holder-in-due course? Explain whether he has right to receive the proceeds of the cheque. (MTP N18 (N))
- A. Even though the title of B is good and bonafide, he is a holder but not a holder-in-due course as he does not get the cheque for value and consideration. As a holder he is entitled to receive Rs. 1,000 from the bank on whom the cheque is drawn.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 13, 16, 26 SELF PRACTICE 5, 6)

Q.No.15. Write about the Privileges of a holder in due course? (B)

(OLD SM, OLD PM)

HOLDER IN DUE COURSE [Sec.9]: Every holder of negotiable instrument will be treated as "holder in due course", if he has obtained instrument for consideration before maturity and in good faith i.e. without sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

PRIVILEGES OF A HOLDER IN DUE COURSE:

1. **Instrument cleared from all defects (sec.53):**
 - a) A holder who delivers title from a HDC²⁰ will get the rights similar to that of HDC.
 - b) Title of HDC is not subject to the defect in previous holder's title. In other words, once an instrument passes through the hands of a HDC, it is cleared from all defects.
 - c) Any person acquiring it takes the instrument free of all defects, unless he was himself a party to the fraud or illegality.
2. **Liability of parties to HDC (Sec.36):** Every prior party to an instrument is liable to a HDC until the instrument is duly satisfied²¹. Prior party may include Maker or Drawer or Acceptor and all intervening Endorsers.
3. **Can't deny the validity of the instrument (Sec.120):** In a suit by HDC, the following persons are not permitted to deny the validity of the instrument as originally made or drawn:
 - a) Maker of a promissory note,
 - b) Drawer of a bill of exchange or cheque,
 - c) Acceptor of a bill of exchange for the honour of the Drawer.
4. **Instrument obtained by unlawful means or for unlawful consideration (Sec 58):**
 - a) The person liable to pay an instrument cannot argue against a Holder in due course that the instrument was lost, or that it was obtained by means of fraud or for unlawful consideration.
 - b) Thus, HDC gets a valid title to the negotiable instrument even though the title of the transferor was defective.
5. **Protection in case of Fictitious bill (Sec.42):**
 - a) Where a Bill of exchange is drawn in a fictitious name and is payable to his order, the acceptor cannot be relieved from his liability to a HDC.
 - b) A HDC can claim that the instrument was endorsed by the same hand as the Drawer's signature.

²⁰ Don't use this kind of abbreviations in exams. We have given such abbreviations just to see that answer does not look lengthy to you.

²¹ All the prior parties of a negotiable instrument are jointly and severally liable for the payment and may be sued jointly by HDC.

6. Protection in case of instruments without consideration (Sec 43):

- a) A negotiable instrument made, drawn, endorsed without consideration does not give any right to intermediate parties.
- b) However, when it comes into the hands of HDC, he can recover an amount due on such instrument from prior parties.

7. Protection in case of Conditional instrument / 'Escrow' (Sec 46): No prior party can allege that negotiable instrument was delivered conditionally or for a special purpose only.**8. Capacity of the payee to endorse (Sec.121):** In case of suit by HDC, following persons are not permitted to deny the Payee's capacity to endorse the same as at the date of note or bill:

- a) Maker of a promissory note,
- b) Acceptor of a bill of exchange payable to order.

9. Protection in case of Inchoate Instrument (Sec.20): HDC can claim full amount of the negotiable instrument (but not exceeding the amount covered by the stamp) even though such amount is in excess of the amount intended by the person delivering an inchoate instrument.

NOTE: This concept is excluded in the New SM. But without this concept students can't understand further concepts. That is why we have decided to continue this question.

SIMILAR QUESTION:**1. Describe in brief the advantages and protections available to a "Holder in due course" under the provisions of the NI Act, 1881.**

A. Refer the above Answer

(IMMEDIATELY REFER PRACTICAL QUESTION CARD 12, 14, 15, 17, 18 & 19 SELF PRACTICE 9, 10)

Q.No.16. Discuss the 'Capacity' and 'Authority' of a person to be a party to a negotiable instrument. (A)
(NEW SM, OLD SM, OLD PM, M15 - 4M, N18 (N)- 4M)

CAPACITY [Sec.26]:

- Every person competent to contract 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.

1. Minor:

- a) Minor is incompetent to enter into contract. Therefore, he cannot bind himself by becoming a party to the negotiable instrument,
- b) However, a minor may draw, endorse, deliver and negotiate an instrument so as to bind all the parties except himself²².

2. Agent:

- a) The negotiable instrument can be drawn or accepted by duly authorised agent on behalf of his principal.
- b) Authority of an agent to draw, accept or endorse negotiable instrument must be expressed in clear terms²³.

²² When necessities are supplied to a Minor then the Minor is not personally liable but his estate is liable for such necessities supplied.

²³ Ex: The Managing Director of a company borrows Rs.10,000 on a Promissory Note. On the face of the promissory note there is no indication whether such money is borrowed in his individual capacity or on behalf of the company. Even if the company gets the benefit of money so borrowed, the Managing Director will be liable to repay the debt, personally.

3. Insolvent:

- a) An insolvent is not competent to enter into a valid contract. So, he cannot draw, make, accept or endorse a negotiable instrument.
- b) If he endorses an instrument to a holder in due course, of which he is payee, then holder in due course can recover the amount from all prior parties except the insolvent.

4. Partner:

- a) **Trading Firm:** Partner of a trading firm has implied authority to bind the firm and his co-partners by drawing, signing, making, accepting, or endorsing negotiable instrument in the name of firm.
- b) **Non-Trading firm:** Partner of a non-trading firm can bind co-partners provided he is expressly authorized for the same.

SIMILAR QUESTION:

1. A promissory note duly executed in favour of a minor is valid? (OLD PM, N10 - 1M, N15 - 1M)
- A. Correct. As minor's agreement is void, he cannot bind himself by becoming a party to a negotiable instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all other parties except himself. (Sec. 26 of the NI Act, 1881)

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 24, 25 SELF PRACTICE 3)

Q.No.17. State the presumptions as to negotiable instruments? (B)

(NEW SM, OLD SM)

PRESUMPTION AS TO NEGOTIABLE INSTRUMENT (SEC 118): Until the contrary is proved, following presumptions will apply:

1. **Of Consideration:** Every negotiable instrument was made, accepted, and endorsed for consideration. Exception: Accommodation Bill.
2. **As to Date:** Every negotiable instrument bearing a date, was made or drawn on that date.
3. **As to Time of acceptance:** Every bill of exchange was accepted within a reasonable time after its date and before maturity.
4. **As Time of transfer:** Every transfer of a negotiable instrument was made before its maturity.
5. **As to Order of endorsements:** The instrument is endorsed in the order in which it is appearing on the instrument.
6. **As to Stamp:** Every lost promissory note or bill of exchange was duly stamped.
7. **As to Holder in Due Course:** The holder of a Negotiable Instrument is a Holder in Due Course.

SIMILAR QUESTION:

1. State the special rules of evidence regarding the "Presumptions as to negotiable instruments" under the NI Act, 1881? (RTP M12)
- A. Refer the above answer.

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To **MASTER MINDS**, Guntur

DIFFERENCES FOR STUDENTS SELF STUDY

Q.No.18. Distinguish between a 'Bill of Exchange' and a 'Promissory Note' with reference to the provisions of the NI Act, 1881. (A) (OLD SM, M12 - 8M)

DISTINCTION BETWEEN A PROMISSORY NOTE AND A BILL OF EXCHANGE:

Particulars	Promissory Note	Bill of Exchange
Contains	It contains a <u>promise</u> to pay.	It contains an <u>order</u> to pay.
Presented for payment	It is presented for payment <u>without</u> any previous acceptance by maker.	If a bill is payable sometime after sight, it is required to be accepted (<i>either by Drawee himself or by someone else on his behalf</i>) <u>before</u> it can be presented for payment.
Liability	The liability of the <u>Maker</u> of a note is <u>primary</u> and <u>absolute</u> .	The liability of the <u>Drawer</u> of a bill is <u>secondary</u> and <u>conditional</u> . He will become liable if the Drawee, fails to pay the money due upon it, after accepting the bill.
Relationship	The maker of a promissory note stands in immediate relationship with the payee and is primarily liable to the <u>payee</u> or the <u>holder</u> .	The maker or Drawer of an accepted bill stands in immediate relationship with the <u>acceptor</u> and the <u>payee</u> .
Maker and payee	It cannot be made payable to the maker himself, that is the maker and the payee <u>cannot</u> be the same person.	In the case of bill, the drawer and payee or the Drawee and the payee may be the <u>same</u> person.
No. of parties	In the case of a promissory note there are only <u>two</u> parties, viz. the maker (debtor) and the payee (creditor).	In the case of a bill of exchange, there are 3 parties, viz., Drawer, Drawee and payee, and any <u>two</u> of these three capacities can be filled by one and the same person.
Drawn in sets	A promissory note <u>cannot</u> be drawn in Sets.	A bill of exchange can be drawn in Sets.
Conditional	A promissory note <u>cannot</u> be drawn conditionally.	A bill of exchange too <u>cannot</u> be drawn conditionally, but it can be <u>accepted</u> conditionally with the <u>consent</u> of the <u>holder</u> .

Q.No.19. Examine the Differences and Similarities between 'Cheque' and a 'Bill of Exchange' under the provisions of the NI Act, 1881. (A) (OLD SM) (M11 - 5M)

(or)

“All Cheques are Bills of exchange but all Bills of exchanges are not cheques”. Explain (RTP - N13)

SIMILARITIES BETWEEN BILLS OF EXCHANGE AND CHEQUE ARE AS FOLLOWS:

- Both are bills of exchange.
- Both have three parties, the Drawer, Drawee, and the payee.
- The drawer and the payee may be one and the same person in both the instruments.
- Both must be written and signed.
- Both must contain an unconditional order to pay a certain sum of money.
- Both may be endorsed.
- Whereas, a cheque is also a bill of exchange but is drawn on a banker and payable on demand.

Differences between a Cheque and a Bill of Exchange:

BASIS	BILLS OF EXCHANGE	CHEQUE
Drawee	Drawee may be Bank or any person.	Drawee is always a bank.
Acceptance	A bill requires acceptance if it is payable certain period after sight, or it contains an express term requiring acceptance.	Acceptance of a cheque is not required in any case.
Liability of Drawer	The liability of Drawer is secondary and conditional. However, until a bill is accepted, the liability of the drawer is primary.	The liability of Drawer is always primary. The Drawee bank is simply a custodian of moneys of the customer (i.e. Drawer).
Bearer	A bill cannot be bearer, if it is made payable on demand	A cheque can be drawn to bearer and made payable on demand.
Validity Period	There is no validity period in case of bill	The cheque remains valid only for 3 months from the date of its issue. A cheque becomes stale on the expiry of validity period
Stamping	Bill must be stamped according to the law.	Cheque does not require stamping
Crossing	Bill cannot be crossed	A cheque can be crossed
Revocation	The order to pay cannot be revoked.	The order to pay may be revoked by countermanding payment.
Discharge by non-presentment	If a bill is not presented for payment, the drawer is discharged from liability.	Even if a cheque is not presented for payment, the drawer is not discharged from liability. However, if the bank fails in the meantime, the drawer is not liable.
Noting/Protest	If a bill is dishonoured, it may be noted or protested.	A cheque cannot be noted or protested in case of dishonour.
Criminal liability for dishonour	In case of dishonour of a bill, Sec. 138 does not apply	The Drawer of a cheque is criminally liable for dishonour of a cheque, (sec. 138)
Drawn in Sets	<i>A bill can be drawn in sets</i>	<i>A cheque cannot be drawn in sets</i>
Grace Days	<i>3 days of grace are allowed.</i>	<i>Days of grace are not allowed.</i>
Notice of Dishonor	<i>Required</i>	<i>Not Necessary</i>
Maturity Date	<i>A bill may be payable on demand or otherwise than on demand.</i>	<i>A cheque is always payable on demand.</i>

Conclusion: On account of similarities and differences between Cheque and a Bill of exchange it can be said that 'all cheques are Bills of exchange but all Bills of exchanges are not cheques'.

Q.No.20. Distinction between a 'Holder' and 'Holder in Due Course' (A) (OLD SM, OLD PM)

DIFFERENCE BETWEEN HOLDER AND HOLDER IN DUE COURSE:

Basis	HOLDER	HOLDER IN DUE COURSE
Consideration	A holder may become the possessor or payee of an instrument even without Consideration.	A holder in due course acquires possession of an instrument for consideration.
Before maturity	A person becomes a holder even if he obtains the negotiable instrument <u>after</u> the <u>maturity</u> .	A holder in due course must become the possessor payee of the instrument before the amount thereon become payable.

Good faith i.e. Bona fide	A person becomes a holder, even if he <u>does not obtain</u> the negotiable instrument in good faith.	A holder in due course as against a holder must have become the payee of the instrument in good faith i.e., without having sufficient cause to believe that any defect existed in the transferor's title.
Right to sue	A holder <u>cannot sue</u> all the prior parties.	A holder in due course <u>can sue</u> all the prior parties.
Better title than transferor	<u>Never</u> get a better title than transferor.	<u>He can acquire</u> a better title than the transferor.
Privileges	A holder is not entitled to the privileges, which are available for HDC	A HDC is entitled to various privileges as specified under the Negotiable Instruments act, 1881.

SIMILAR QUESTION:

1. Who is holder in due course? How he is different from holder?

(OLD PM)

A. Refer 'Holder in due course' in Q. No. 9 and above answer

QUESTIONS FOR ACADEMIC INTEREST – FOR STUDENTS' SELF STUDY

Q.No.21. Define the words

1. Unconditional Promise/Order
2. Certain Amount
3. Certain Person (C)

(NEW SM)

1. **Unconditional Promise/Order:** A promise or order to pay is not "conditional", even if the time for payment of the amount is expressed as completion of a certain period after the occurrence of a specified event which, is certain to happen, although the time of its happening may be uncertain.
2. **Certain Amount:** The sum payable may be "certain", although it:
 - i) Includes future interest or
 - ii) Is payable at an indicated rate of exchange, or is according to the course of exchange, and
 - iii) Provides that, on default of payment of an installment, the balance unpaid shall become due.
3. Payee may be "certain person", although he is misnamed or designated by description only.

Q.No.22. Essentials of valid acceptance of Bill of exchange (C)

(OLD SM)

ACCEPTANCE: It is only the bill of exchange which requires acceptance. It is a process by which Drawee (buyer) accepts the Drawer's (Seller) Bill of exchange by signing under the words 'Accepted' on the face of the bill.

ESSENTIALS OF VALID ACCEPTANCE:

- a) **Written:** It must be in writing and not oral.
- b) **Signed:** It must be signed by the Drawee personally or through his duly authorised agent.
- c) **On the bill:** It must be on the bill either on the face or on the back of the bill.
- d) **Delivered:** Acceptance must be completed by delivery.

TYPES OF ACCEPTANCE (SEC. 86):

- a) **General** - Acceptance of bill without any qualification.

- b) **Qualified** - Acceptance of bill subject to some qualification (e.g., accepting the bill subject to the condition that the payment of bill shall be made only on happening of an event specified therein).²⁴

EFFECT OF QUALIFIED ACCEPTANCE (SEC. 86):

- a) The holder may object to the qualified acceptance. In such a case, it shall be treated that the bill is dishonoured due to non-acceptance.
- b) If Holder accepts a qualified acceptance without obtaining the consent of all the prior parties thereto, all prior parties whose consent is not obtained are discharged.

SOME INSTANCES OF QUALIFIED ACCEPTANCE:

- a) *Where it is conditional, declaring the payment to be dependent on the happening of an event therein stated.*
- b) *Where the Drawee accepts the bill only for a part of the sum ordered to be paid.*
- c) *Where, no place of payment being specified in the bill, the Drawee agrees to make the payment at a specified place, and not otherwise or elsewhere.*
- d) *Where, a place of payment being specified in the bill, the Drawee agrees to make payment at some other place and not otherwise or elsewhere.*
- e) *Where the Drawee agrees to make the payment at a time other than the time stated in the bill.*

NOTE: This concept is excluded in the New SM. But without this concept students can't understand further concepts. That is why we have decided to continue this question.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 20)

Q.No.23. State the legal provisions relating to Electronic cheques and Truncated Cheques? (C)
(NEW SM, OLD SM)

1. ELECTRONIC CHEQUE / CHEQUE IN ELECTRONIC FORM - means

- a) a cheque drawn in electronic form by using any computer resource, and
- b) a cheque signed in a secure system with
- the use of digital signature (*with / without biometric signature*) and
 - Asymmetric crypto system or electronic signature, as the case may be.

2. TRUNCATED CHEQUE: 'A truncated cheque' means a cheque which is truncated during the course of clearing cycle, either by the clearing house²⁵ or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of cheque in writing.

PRESENTMENT OF TRUNCATED CHEQUE [Sec. 64(2)]: In case of any reasonable suspicion about the genuineness of the electronic image of a truncated cheque, the paying banker is entitled to demand -

- Any further details relating to the truncated cheque;
- The presentment of truncated cheque itself for verification.

²⁴ SOME MORE EXAMPLES OR INSTANCES OF QUALIFIED ACCEPTANCE:

- (a) Accepted payable when in funds.
 (b) Accepted payable on giving up bill of lading.
 (c) Accepted payable when a cargo consigned to me is sold.
 (d) A bill drawn for Rs.1000 accepted for Rs.900 only.
 (e) Accepted payable at Delhi only where place of payment specified in the order was Bombay

²⁵ Clearing House: "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India. It is the place where paying banks and receiving banks exchange the cheques for money. The process of moving cash from the bank on which a cheque is drawn to the bank in which it was deposited, usually accompanied by the movement of the cheque to the paying bank.

NOTE:

- The collecting bank, instead of sending physical cheque, will send its electronic image for clearance.
- In order to ensure that the cheque is not presented again, the physical cheque (i.e. paper cheque) will be truncated. Once a paper cheque is 'truncated', its further movement can be done only by electronic means and not by physical movement.

Q.No.24. State the liabilities of parties of negotiable instruments, if they are issued or made without consideration or partial consideration? (C) (NEW SM, OLD SM, M16 - 5M)

LIABILITIES ON INSTRUMENT MADE, DRAWN WITHOUT CONSIDERATION:

1. **As between immediate parties:** If negotiable instrument is drawn without consideration or consideration fails then it creates no obligation of payment.²⁶
2. **As between remote parties:**
 - a) If any person receives a negotiable instrument without any consideration but transfers the instrument to a holder for consideration,
 - b) Then such holder and every subsequent holder may recover amount due from the transferor for consideration and from any prior party.
3. **Effect of partial absence or failure of money consideration:**
 - a) Where the consideration is originally absent in part, or subsequently fails in part, then
 - b) Parties standing in immediate relation to each other cannot recover more than actual consideration but this rule is not applicable to Holder in Due Course.²⁷
4. **Partial failure of consideration not consisting of money [Sec. 45]:**

Situation: Where a part of the consideration, though not consisting of money, is ascertainable in terms of money without collateral enquiry, and that party of consideration not consisting of money fails

Effect: Claim of the holder standing in immediate relation with the maker of the instrument, shall be proportionately reduced.

Exception: If ascertainment of part consideration not consisting of money is possible only with a collateral enquiry then sum cannot be proportionately reduced. It has to be paid in full.

SIMILAR QUESTION:

1. **Explain the rights and liabilities of parties in case of a bill drawn without or inadequate consideration?**

A. Refer above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 15, 20, 21, 22, 28 SELF PRACTICE 12)

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²⁶ Ex: X makes a note in favour of Y in anticipation of Y's supplying a bale of cotton. Y fails to deliver the cotton and hence he cannot claim payment from X.

²⁷ Ex: A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for a value of Rs. 400, and remaining Rs.100 is accepted as an accommodation to the plaintiff. A can recover Rs. 400 only.

PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION**Q.No.1.** State whether the following statements are promissory notes or not? (OLD PM)

- a. 'X' promises to pay 'Y' a sum of Rs. 10,000, six months after 'Y's marriage with 'Z'
- b. "I promise to pay B or order Rs.500".
- c. "I acknowledge myself to be indebted to B in Rs.1000 to be paid on demand, for value received".
- d. "I am liable to B, in a sum of Rs.500 to be paid by installments.
- e. "I promise to pay B Rs.500 and all other sums which shall be due to him". (RTP - M13)
- f. "I promise to pay B Rs.1000 and the fine according to the rules".
- g. "I promise to pay B Rs.500, first deducting there out any money which he may owe me".
- h. "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next"
- i. "I promise to pay B Rs. 200 and deliver one quintal of paddy".
- j. "I promise to pay to Mohan Rs. 500, if he secures 60% marks in the examination".
- k. Undated promissory note. (A)

- a) It is not a promissory note, since there is probability that Y may not marry.
- b) Yes - since it is an absolute promise to pay a specific sum of money to a specific person or his order.
- c) Yes – The maker is acknowledging his debt and also promises to pay for the value received.
- d) No - It is a mere acknowledgement of debt and there is no specific promise to pay the sum.
- e) No –The amount is uncertain. (In commercial transactions the amount should be certain.)
- f) No – same as above.
- g) No – same as above.
- h) No – A negotiable instrument must be drawn for money and money only. In this case it is written for partly cash and partly kind.
- i) No – same as above.
- j) No - it is conditional
- k) Valid PN – Since it is presumed on the date of its delivery.

Q.No.2. A Bill is drawn payable at No. A-17, CA apartments, Mayur Vihar, New Delhi, but does not contain Drawee's name. Mr.Vinay who resides at the above address accepts the bill. Is it a valid Bill? (Or) (OLD PM, RTP - N14)

X draws a bill of exchange payable at 1, Pitampura, New Delhi. It does not contain the name of any Drawee, although Y lives at the stated address. Y accepts the bill. Would Y be liable under the bill?

(OLD PM)

Provision: As per the provisions of the NI Act, 1881, Drawee may be named or otherwise indicated in the bill with reasonable certainty.

Analysis: In the present case, the description of the place of residence indicates the name of the Drawee and Mr.Vinay / Mr.Y, by his acceptance, acknowledges that he is the person to whom the bill is directed.

Conclusion: Therefore, it is a valid Bill and Mr.Vinay / Mr.Y is liable thereon.

Q.No.3. State with reasons whether each of the following instrument is an Ambiguous Instrument or fictitious instrument:

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

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

Q.No.4. State with reasons whether each of the following instruments is an 'Inland Instrument' or a Foreign Instrument:

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

First state the provisions related to Inland instrument and foreign instrument.

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

Q.No.5. State with reasons whether each of the following instruments is a Time Instrument or Demand Instrument:

- a. I promise to pay B Rs.500.
 b. I promise to pay B Rs.500 on Demand.
 c. Pay Rs.500 at sight.
 d. Pay Rs.500 on presentment.
 e. I promise to pay B Rs.500 after 3months.
 f. I promise to pay B Rs.500 on 1st Jan. 2018.

- g. I promise to pay Rs.500 after sight.
 h. I promise to pay B Rs.500 after C's Death.
 i. Pay B Rs.500 on or before 1st Jan. 2018. (C)

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

Q.No.6. State with reasons whether each of the following instruments is an 'Inchoate Instrument' or not:

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

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

Q.No.7. A signs, as the maker, a blank stamped paper and gives it to B and authorizes him to fill it as a note for Rs.2,000, it being the amount of advances made by B to A. B fraudulently fills it up as a note for Rs.3,000 and then, for consideration, endorses it to C. Can C enforce the instrument? (Or)

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

Provision and analysis: As per sec 20 of the NI Act, 1881, an inchoate instrument is an incomplete instrument in some respect.

When a person signs and delivers blank or incomplete stamped paper to another, such other is authorized to complete it for any amount not exceeding the amount covered by the stamp.

The person so signing is liable upon such instrument, to any holder in due course for any amount.

But any person, other than the holder-in-due course, can't claim more than the amount intended by the signer of the instrument.

Conclusion: Applying the above provisions, C can enforce the instrument, provided the following two conditions are satisfied:

1. C is a holder in due course. (In NI Act, 1881, every holder is deemed to be a holder in due course).
2. The amount filled in i.e. Rs.3000 is covered by stamp amount.

Q.No.8. Promissory note dated 1st Feb, 2017 payable two months after the date was presented to the maker for payment 10 days after maturity. What is the date of Maturity in this case? Explain with reference to the relevant provisions of the 'Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reasons of such delay. (A) (OLD PM)

Provision:

Date of Maturity: If a promissory note is made payable stated number of months after date, it becomes payable 3 days after the corresponding date of months after the stated number of months. (Sec 23 read with sec 22 NI Act, 1881)

Therefore, in this case the date of maturity of the promissory note is 4th April, 2017.

Delay in presentment for payment of a promissory note: As per sec 64 of NI Act read with sec 66, a promissory note must be presented for payment at maturity by on behalf of the holder.

In default of such presentment, the other parties of the instrument (that is, parties other than the parties primarily liable) are not liable to such holder.

Analysis: In the given case the promissory note was presented for payment was 10 days after maturity.

Conclusion: By applying the above provisions, the endorser is discharged by the delayed presentment for payment. But the maker being the primary party liable on the instrument continues to be liable.

Q.No.9. Bharat executed a promissory note in favour of Bhushan for Rs.5 Crores. The said amount was payable three days after sight. Bhushan, on maturity, presented the promissory note on 1st January, 2008 to Bharat. Bharat made the payments on 4th January, 2008. Bhushan wants to recover interest for one day from Bharat. Advise Bharat, in the light of provisions of the NI Act, 1881, whether he is liable to pay the interest for one day? (A)

(NEW SM, OLD PM, RTP - M15, N17, MTP M15, M16, N16)

Provision: Sec 25 of the NI Act, 1881 - Claim of Interest.

As per sec 24, 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.

Analysis: In the given Promissory note was presented for sight on 1st January, which is to be excluded for computing due date and the Promissory Note is payable on 4th January.

Bharat paid rightly paid on 04th January "three days after sight".

Conclusion: Therefore, in the given case, Bharat will succeed in objecting to Bhushan's claim for payment of interest for one day. (i.e. he need not pay interest for 1 day)

Q.No.10. State the law as to calculation of the maturity of negotiable instrument the due dates in the following cases of the instruments: (RTP - N13)

i) A bill of exchange dated 20th Nov 2016, payable 4 months after date.

ii) A note is made payable 60 days after sight. The note is presented for sight on 15th Apr 2017. (A)

Provision: Sec. 23, 24 and 25 of the NI Act, 1881 relating to calculation of 'Date of Maturity'. (Refer T.Q.No.11)

Analysis and conclusion: In the first case, where a bill of exchange dated 20th Nov 2016, is payable on 4 months after date, there the instrument falls due for payment on 23rd Mar, 2017.

Whereas in the second case, promissory note presented for sight on 15th Apr, 2017 made payable 60 days after sight, there the due date of the instrument will fall on third day after 14th Jun, 2017 i.e. 17th Jun, 2017.

Q.No.11. Discuss with reasons, whether the following persons can be called as a 'holder' under the Negotiable Instruments Act, 1881: (RTP N14)

- a. X who obtains a cheque drawn by Y of gift. (RTP N18 (O))
- b. A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque. (MTP M18 (N), N16 - 2M)
- c. M, who finds a cheque payable to bearer, on the road and retains it. (N16 - 2M)
- d. B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee.
- e. B, who steals a blank cheque of A and forges A's signature.

Provision: As per sec 8 of the NI 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.

By 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, 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.
- c) 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.
- d) 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.
- e) No, B is not a holder because he is in wrongful possession of the instrument.

Q.No.12. X draws a bill on Y but signs it in the fictitious name of Z. The bill is payable to the order of Z. The bill is duly accepted by Y. M obtains the bill from X thus becoming its holder in due course. Can Y avoid payment of the bill? Decide in the light of the provisions of the NI Act, 1881. (MTP M18(N))

(Or)

H is the holder in due course of a bill of which A is the acceptor. D, the drawer of the bill, is fictitious. Can 'A' escape from his liability to H? (A) (OLD PM, M17 - 4M)

Provision: Sec 42 of the NI Act, 1881 - Acceptance of bill drawn in fictitious name.

Analysis: As per sec 42, in case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege (i.e., to contend) as against the holder in due course that such name is fictitious.

Conclusion: In the given case, Y cannot avoid payment by raising the plea that the drawer (Z) is fictitious.

The only condition is that the signature of Z as drawer and as endorser must be in the same handwriting.

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Q.No.13. X, by inducing Y, obtains a bill of exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the Bill as a holder in due course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity, the bill is dishonoured. X sues Y for recovery of money. With reference to the provisions of NI Act, 1881 decide whether X will succeed in the case or not. (OLD PM)(N14, N16 - 4M)

(Or)

S, by inducing T obtains a bill of exchange from him fraudulently in his (S) favor. Later, he enters into a commercial deal and endorses the bill to U towards consideration to him (U) for the deal. U takes the bill as a Holder-in-due-course. U subsequently endorses the bill to S for value, as consideration to S for some other deal on maturity the bill is dishonoured. S sues T for the recovery of the money. With reference to the provisions of NI Act, 1881 decide whether S will succeed in the case or not. (A)

Provision and Analysis: As per Sec.53, a holder who derives title from holder in due course has all rights of a holder in due course. Provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. Since X derives his title from Z (who is a holder in due course), X has all rights of Z.

However, Sec 58 of NI Act, 1881, provides that when an instrument is obtained by fraud, offence or for unlawful consideration, possessor or endorsee cannot receive the amount of Instrument, if he is not a holder-in-due course.

Conclusion: Hence X would not be entitled to sue Y as X is not a holder-in-due course because he obtained instrument through fraud.

Q.No.14. X obtains Y's acceptance to a bill by fraud. X endorses it to Z who takes it in good faith for valuable consideration. Z endorses the bill to F who knows of the fraud. Discuss the rights of X, and Z. (Or)

B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1881, decide whether D can recover the money from A in the given case. (A)

(OLD PM, MTP N18)

Provision:

- a) **Liability of parties to holder in due course (Sec.36):** Every prior party (i.e., maker or drawer, acceptor and all intervening endorser) to an instrument is liable to a holder in due course until the instrument is satisfied. Thus prior parties of a note are jointly and severally liable for the payment and may be sued jointly.
- b) **A holder, who derives title from holder in due course has the same rights as of that holder in due course (Sec.53):** Once a negotiable instrument passes through the hands of a HDC, it gets cleansed of all its defects provided the holder himself is not a party to the fraud or illegality which affected the negotiable instrument in some stage of its journey.

Analysis and Conclusion: By applying the above provisions:

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

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Q.No.15. J accepted a bill of exchange and gave it to K for the purpose of getting it discounted and handing over the proceeds to J. K having failed to discount it, returned the bill to J. J tore the bill in two pieces with the intention of cancelling it and threw the pieces in the street. K picked up the pieces and pasted the two pieces together, in such manner that the bill seemed to have been folded for safe custody, rather than cancelled. K put it into circulation and it ultimately reached L, who took it in good faith and for value. Is J liable to pay for the bill under the provisions of the Negotiable Instruments Act, 1881? (A) (OLD PM, M10 – 5M)

Provision: Sec 9 of the NI Act - Holder in due course, Sec 120 of the NI Act - Estoppel against denying the original validity of the instrument

Analysis: As per Sec.9, 'Holder in due course' means any person who, for consideration, became the possessor of a promissory note, bill of exchange or cheque, if payable to the bearer, or the payee or endorsee thereof, if payable to the order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title."

As per Sec 120, no drawer of a bill, shall, in a suit thereon, by a holder in due course, be permitted to deny the validity of the instrument as originally drawn. A holder in due course gets a good title to the bill.

Conclusion: L is a holder in due course, who got the bill in good faith and for value. Therefore, in the given problem, J is liable to pay for the bill.

Q.No.16. J purchases some bills amounting to Rs.1727 for a sum of Rs. 200 only. He knows at the time of purchase that both drawer and the acceptor are in embarrassed circumstances but accepts them without enquiry and explanation. The bill proved to have been obtained by fraud. J insists that he is a holder in due course and is therefore entitled to get the full value of the instruments. Will he succeed? (B)

Provision:

As per sec.9 of the NI Act, Holder in due course means any person who,

- For consideration, became the possessor of a promissory note, bill of exchange or cheque, if payable to the bearer, or the payee or endorsee thereof, if payable to the order,
- Before the amount mentioned in it became payable, and
- Without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title."

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

Conclusion: J cannot get the value of the instrument as he is not a holder in due course.

Q.No.17. Can an acceptor of a bill avoid his liability against a person who is a holder in due course or who derives his title from a holder in due course, on the following grounds?

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

Ground	Decision	Explanation
a.	No	Privilege given to holder in due course u/s 20 provided the stamp put on the instrument was sufficient to cover the amount.
b.	No	Privilege given to a holder in due course u/s 42 provided HDC has to prove that instrument was endorsed by the same hand as drawers signature
c.	No	Protection in case of instruments without consideration is a privilege given to a holder in due course u/s 43
d.	No	Protection in case of conditional delivery is a privilege given to a holder in due course u/s 46
e.	No	The argument that the instrument was obtained by unlawful means cannot be set up against a HDC
f.	No	
g.	No	
h.	Yes	Forgery passes no title to anyone at all.
i.	No	Maker of note or acceptor of bill payable on instrument cannot deny capacity of payee.

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

Q.No.18. 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 can receive the amount of the Bill from 'X'. (A) (NEW SM, OLD PM, RTP N11, MTP M18 (N), MTP N18 (N))

Provision: Sec 9 of the NI Act - Holder in due course

As per Sec 9, 'holder in due course' means any person who for consideration because 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.

Analysis: In this case, Prima facie, 'A' became possessor of the bill for value and in good faith before the bill became payable. So, he can be considered as a holder in due course.

But 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.

Conclusion: As signature on the negotiable instrument is forged, it becomes a nullity. Hence 'A' cannot receive the amount on the bill even though he is a holder-in-due course.

Q.No.19. Raman is the payee of an order cheque. John steals the cheque and forges Raman's signatures and endorses the cheque in his own favour. John then further endorses the cheque to Anil, who takes the cheque in good faith and for valuable consideration.

Examine the validity of the cheque as per provisions of the Negotiable Instruments Act, 1881 and also state whether Anil can claim the privileges of a Holder in Due course. (A) (OLD PM, N15 - 4M)

Provision: Forgery confers no title and a holder acquires no title to a forged instrument. A forged document is a nullity. The property in the instrument remains vested in the person who is the holder at the time when the forged signatures were put on it. Forgery is also not capable of being ratified.

Analysis: In the case of forged endorsement, the person claiming under forged endorsement even if he is purchaser for value and in good faith, cannot acquire the rights of a holder in due course.

Conclusion: Therefore, Anil acquires no title on the cheque.

Q.No.20. X accepts a bill for the accommodation A (drawer). A transfers it to B, without consideration. B transfers it to C without consideration. C transfers it to D for value. D transfers it to E without consideration. On the due date, the bill dishonoured by X. Discuss the rights of A, B, C, D and E. (B)

Provision: Sec 43 of the NI Act, 1881 provides that a negotiable instrument made, drawn, accepted or indorsed without consideration, creates no obligation of payment between the parties to the transaction.

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

Analysis and Conclusion: By applying the above provisions:

- a) A cannot recover from X because a negotiable instrument without consideration creates no obligation of payment between the parties to the transaction.
- b) B cannot recover from X and A because a negotiable instrument without consideration creates no obligation of payment between the parties to the transaction.
- c) C cannot recover from B, X and A because a negotiable instrument without consideration creates no obligation of payment between the parties to the transaction.
- d) D can recover from X, A, B and C because all prior parties to the instrument are liable to holder-in-due course.
- e) E can recover from X, A, B and C because a person who derives the instrument from holder-in-due course will get the same rights as that of the holder-in-due course.

Q.No.21. 'A' draws a bill of exchange payable to himself on 'x' who accept the bill without consideration just to accommodate 'A' 'A' transfers the bill to "P" for good consideration.

1. State the rights of 'A' and 'P'
2. Would your answer be different if 'A' transferred the bill to 'P' after maturity? (B)

Provision and analysis: Sec 43 of the NI Act, 1881 - Negotiable instrument made etc., without consideration.

Sec 43 of the NI Act, 1881 provides that a negotiable instrument made, drawn, accepted or indorsed without consideration, creates no obligation of payment between the parties to the transaction.

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

Conclusion:

1. Rights of A and P:
 - a) A is not entitled to sue X: Because there is no consideration between A and X.
 - b) P is entitled to sue A and X: Since P is a holder for consideration, he can sue the transferor for consideration and every party prior to him.
2. The answer will remain same even if A had transferred the bill after maturity. Because the right to sue the transferor for consideration and every party prior to him, is available to 'holder for consideration', even though he is not a 'holder in due course' (i.e. even if the holder for consideration obtains the bill after maturity).

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Q.No.22. A draws a bill of exchange on B for Rs.1000 payable to the order of A. B accepts the bill but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs.800 and as an accommodation to the plaintiff as to the residue. Can A recover Rs.1000 (OLD PM, N10 - 8M) (Or)

P draws a bill on Q for Rs.10000. Q accepts the bill. On maturity the bill was dishonoured by non-payment. P files a suit against Q for payment of Rs.10000. Q proved that the bill was accepted for value of Rs.7000 and as an accommodation to the plaintiff for the balance amount i.e. Rs.3000. Referring to the provisions of the NI Act, 1881 decide whether P would succeed in recovering the whole amount of the bill? (A) (M18- 4M) (O) (OLD PM, MTP - M16)

Provision:

As per Section 44 of the Negotiable Instruments Act, 1881, when the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange, or cheque stands in immediate relation with the payee, and the endorser with his endorsee.

Analysis & Conclusion: On the basis of above provision, P would succeed to recover Rs. 7,000 only from Q and not the whole amount of the bill because it was accepted for value as to Rs.7,000 only and an accommodation to P for Rs.3,000.

Q.No.23. Referring to the provisions of the NI Act, 1881, examine whether acceptance of a bill of exchange in the following situations shall be treated as 'Qualified acceptance' where the acceptor:

- i) Undertakes to pay only Rs.2000 for a bill drawn for Rs.5000.
- ii) Declares the payment to be independent of any other event.
- iii) Writes: "Accepted, payable at ABC Bank". (B)

With reference to sec 86 of the NI Act, 1881, answers to above cases are as follows:

- i) Yes. Since the acceptance is given for a part of the sum mentioned in the bill.
- ii) No. Since the acceptance is given without any condition or qualification.
- iii) No. Since an acceptance to pay at a particular place amounts to general acceptance (But if it is expressly stated that the bill shall be paid at the specified place only and not elsewhere, it amounts to qualified acceptance)

Q.No.24. X a major, and M, a minor, executed a promissory note in favour of P. Examine with reference to the provisions of the Negotiable Instruments Act, the validity of the promissory note and Whether it is binding on X and M. (OLD PM, RTP N11, N15) (Or)

'A', a broker draws a cheque in favour of B, a minor. B endorses the cheque in favour of C, who in turn endorses it in favour of D. Subsequently, the bank dishonoured the cheque. State the rights of C and D and also state whether B can be made liable? (NEW SM, OLD PM, MTP M18 (N), MTP N18 (N)) (Or)

'P', a major and 'Q', a minor executed a promissory note in favour of 'R', Examine with reference to the provisions of the Negotiable Instruments Act, 1881, the validity of the promissory note and whether it is binding on 'P' and Q. (A) (MTP-M18)(O), OLD PM, M15 - 4M)

Provision and analysis: As per sec 26 of the NI 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 minor may draw, endorse, deliver, and negotiate an instrument so as to bind all the parties except himself.

Conclusion: Hence, the instrument is valid. So the instrument is binding on major but not on minor.

Q.No.25. A executed a promissory note in favour of B. Without B's demanding payment, A paid the money due on the note but left the note in his hands. Subsequently B indorsed it to C for consideration. C had knowledge of the payment made by A. C brings a suit against A and B for recovery of money on the note. Will he succeed against either or both? (A) (OLD PM)

Provision: Sec 9 of the NI Act, 1881 – Holder in due course.

Sec 58 of the NI Act, 1881 – Instrument obtained by unlawful means or for unlawful consideration.

As per sec.9, A "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 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.

As per sec 58, Instrument obtained by unlawful means or for unlawful consideration. When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or endorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or endorsee is, or some person through whom he claims was, a holder thereof in due course.

Conclusion: By applying the above provisions, He can succeed against A as well as against both as per Sec 9 and 58 of the NI Act, 1881.

Q.No.26. A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favour of B, signs and delivers it to B with a request to fill up the amount due, payable by him. B fills up fraudulently the amount larger than the amount due, payable by A and endorses the cheque to C in full payment of dues of B. Cheque of A is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C. (B) (NEW SM, OLD PM)

Provision: Section 44 of the Negotiable Instruments Act, 1881 is applicable in this case.

Analysis: According to Section 44 of this Act, B who is a party in immediate relation with the drawer of the cheque is entitled to recover from A only the exact amount due from A and not the amount entered in the cheque.

Conclusion: The right of C, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from B.

Q.No.27. Discuss with reasons, in the following had given conditions, whether 'M' can be called as a "holder" under the Negotiable Instruments Act, 1881:

- 'M' the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.
- 'M' the agent of 'Q' is entrusted with an instrument without endorsement by 'Q' who is the payee. (B)

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) '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.
- b) 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.

Q.No.28. A draws and B accepts the bill payable to C or order, C endorses the bill to D and D to E, who is a holder-in-due course. From whom E can recover the amount? Examining the right of E, state the privileges of the holder-in-due course provided under the Negotiable Instruments Act, 1881.

(OLD PM, N12 - 8M, RTP N16)

Provision: Section 36 of the NI Act, 1881 describes the liabilities of prior parties to the HDC. That is a HDC has privilege to hold every prior party to a negotiable instrument liable on it until the instrument is duly satisfied. Here the HDC can hold all the prior parties liable jointly and severally. Prior parties include the maker or drawer, the acceptor and endorser.

Analysis and Conclusion: Accordingly in the given problem, E, a HDC can recover the amount from all the prior parties i.e., D & C (the endorser), B (an acceptor) and A (the drawer). Privileges of a "HDC" : According to the provisions of the NI Act.

TRUE OR FALSE STATEMENTS - FOR CLASSROOM DISCUSSION

1. All negotiable instruments are governed by the Negotiable Instruments Act (F).
2. A promissory note can be made originally payable to bearer (F).
3. A bill of exchange can be made originally payable to bearer on demand (F).
4. A bill of exchange can be made payable to bearer on demand after endorsement in blank (T).
5. A cheque cannot be drawn originally payable to bearer on demand (F).
6. Every negotiable instrument is presumed by law to have been drawn for consideration (T).
7. A lost instrument is not presumed by law to have been duly stamped (F).
8. Generally, every holder of a negotiable instrument is presumed by law to be in holder in course (T).
9. Presumption in respect of negotiable instrument by law cannot be rebutted by the defendant (F).
10. In case of discrepancy between the amount written in figure and words, the amount stated in figures shall be the amount undertaken or ordered to be paid (F).
11. An unstamped negotiable instrument signed but blank in some respect is called an inchoate instrument (F).
12. A minor signing a note for necessities is personally liable (F).
13. An agent signing without disclosing the name of his principal is personally liable (T).
14. The donee of a negotiable instrument is a holder in due course (F).
15. A person mentioned by the designation will invalidate the negotiable instrument (F).
16. Bills in sets are used in all transactions (F).
17. A bill of exchange can be drawn upon a banker (T).

18. The acceptor would not be a prior party if he has signed the acceptance after the bill has come into the hands of the holder in due course (F).
19. An instrument can be negotiated by any person other than the maker of a note or the drawer or acceptor of a bill, until maturity (F).
20. A bona fide transferee for value shall get a good title even to an instrument transferred by making in a forged instrument (F).

PRACTICAL QUESTIONS FOR STUDENT'S SELF PRACTICE

- Q.No.1.** State whether the following statements are promissory notes or not? (OLD PM)
- a) X promises to pay Y, by a promissory note, a sum of Rs.5000, 15 days after the death of B.
 - b) X promises to pay Y, by a promissory note, Rs.5000 and all other sums, which shall be due.
 - c) I owe you a sum of Rs. 1,000. 'A' tells 'B'.
 - d) Mr. B said, "I owe you Rs.500".
 - e) "I am bound to pay the sum of Rs.500 which I received from you."
 - f) "I promise to pay B Rs.500 by installments with a provision that no payment shall be made after my death".
 - g) "I promise to pay B a sum of Rs.500 when convenient or able".
 - h) "I promise to pay B Rs. 500 when he delivers the goods".
 - i) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum".
 - j) "I promise to pay B in 20 shares and 10 bonds of XY Ltd".
 - k) "I promise to pay Rs. 5,000 or 7,000 to Mr. Ram."
 - l) A promise by way of Promissory note to pay B, his partner, a sum of Rs.100000 in the event of the latter's son being appointed in the partnership firm.
 - m) A Promissory note containing an undertaking to pay the amount 2% above "Bank rate" (A)

- a) Though the date of death is uncertain, it is certain that B shall die. Therefore the instrument is valid.
- b) The sum payable is not certain. Hence the promissory note is not valid.
- c) It is not a promissory note, since there is no promise to pay.
- d) No - It is a mere acknowledgement of debt and there is no specific promise to pay the sum.
- e) No – In this case drawer is agreeing that he is bound to pay. But he is not promising to pay the sum.
- f) No – In this case death is a certain event and a negotiable instrument can be drawn on the basis of such certain event. But this instrument is uncertain as to the amount. In commercial transactions certainty is very important. But here amount of installments is not certain.
- g) No – A negotiable instrument can't be drawn on the basis of future uncertain event. In this case it is uncertain as to date of payment.
- h) No – A negotiable instrument can't be drawn on the basis of future uncertain event. In this case it is uncertain as to the date of payment. The other party may never deliver the goods.
- i) No – Negotiable instruments can be drawn to be payable on the basis of some future certain event. In this case D's death is a certain event. But D may not leave enough sum. This is an uncertain event.
- j) No – A negotiable instrument must be drawn for money and money only. In this case it is written for partly cash and partly kind.
- k) No – Amount is not certain.
- l) Invalid PN - it is conditional and also the admission of son of B in the firm is not a certain event.

m) Valid PN - Because there is only one bank rate at any given point of time. There is certainty of amount.

Q.No.2. X signs his name on a blank but stamped instrument (stamp was sufficient to cover Rs. 1,00,000). He delivers the instrument to Y with authority to fill upon a promissory note for Rs. 8,000 only. Y fills the note for Rs.10,000 and endorses it to Z who takes in good faith for valuable consideration. Discuss the legal position.

Provision: Applicable section 20

Hint and Reason: Z (being a holder in due course) can recover Rs.10,000 from X and Y. But Y (not being a holder in due course) can recover Rs.8,000 only from X.

Q.No.3. X, on attaining the age of majority, makes a fresh promissory note in consideration of a promissory note made by him during his minority. Can a suit be maintained on the fresh promissory note?

Provision: Applicable section 43

Hint and Reason: A suit cannot be maintained on the fresh promissory note because the fresh promissory note is void in the absence of consideration.

Q.No.4. X draws a cheque for Rs.2,000 and Y, a holder without consent of X alters the figure of Rs.2,000 to Rs.20,000 and makes the instrument look like a cheque drawn for Rs.20,000. The banker pays the cheque in due course. Discuss the legal position of the banker.

Provision: Applicable section 89

Hint and Reason: The banker is discharged from all liabilities. The banker made the payment in due course and alteration was not apparent.

Q.No.5. X accepted a bill of exchange and gave it to Y for the purpose of getting it discounted and handing over the proceeds to X. Y having failed to discount it returned the bill to X. X tore the bill in two pieces with the intention of cancelling it and threw the pieces in the street. Y picked up the pieces and pasted the two pieces together, in such manner that the bill seemed to have been folded for the safe custody, rather than cancelled. Y put into circulation and it ultimately reached Z, who took it in good faith and for value. Is Y liable to pay the bill under the provisions of the N.I Act, 1881?

Provision: Applicable section 120

Hint and Reason: X can be made liable to Z (Holder in due course)

Q.No.6. A bill of exchange purports to be drawn by A on B and is accepted by B. The Bill is payable to C or Order. C negotiates it to D who takes it as holder in due course. In a suit by D on the bill, can B disclaim liability on the ground that A's signature is forged.

Provision: Applicable section 120

Hint and Reason: In the given situation B being an acceptor of the bill for honour of the Drawer, cannot deny the validity of the bill, and therefore liable to D.

Q.No.7. M a legal successor of N (a deceased person) signs a bill of exchange in his own name admitted a liability of Rs. 50,000, i.e. the extent to which he inherits the assets from the deceased person, payable to P, after 3 months from 1st January. On maturity, when P presents the bill to M, he (M) refuses to pay for the bill on the ground that since the original liability was that of N, the deceased

therefore he is not liable to pay for the bill. Decide whether P can succeed in recovering Rs. 50,000 from M.

Provision: Applicable section 29

Hint and Reason: M cannot refuse to pay the amount since he has inherited the assets of the deceased. He will be liable to the extent of full amount of the bill, even if he has inherited the property valued less than the amount of the bill. M will be liable for the amount of Rs. 50,000.

Q.No.8. A Bill is dishonoured by non-acceptance. The bill is endorsed to A. A endorsed it to be B. As between A and B, the bill is subject to an agreement as to discharge of A. The bill is afterwards endorsed to C, who takes it with notice of dishonour. Decide, with reason, whether C is entitled to accept the bill in the capacity of a holder in due course.

Provision: Applicable section 59

Hint and Reason: C is not entitled to accept the bill in the capacity of a Holder in due course. The holder in due course is not affected by the defect in the title of his transferor, but it is not so in the case of a holder who acquires the instrument after dishonour or after maturity.

Q.No.9. A owes money to B. A makes a promissory note for the amount in favour of B. For safety of transmission, he cuts the note in half and posts one half to B. He then changes his mind and calls upon B to return the half of the note which he had sent. B requires A to send the other half of the promissory note. Decide how the rights of the parties are to be adjusted.

Provision: Applicable section 46

Hint and Reason: The claim of B to have the other half of the promissory note sent to him is not maintainable. A 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. The matter is now at the discretion of A.

Q.No.10. The Drawer D is induced by A to draw a cheque in favour of P who is an existing person. A instead of sending the cheque to P, forges his name and pays the cheque into his own bank. Can D recover the amount of the cheque from A's Banker? Decide.

Provision: Applicable section 42

Hint and Reason: P is not a fictitious payee. D, the Drawer can recover the amount of the cheque from A's banker.

Q.No.11. A drew a cheque for Rs. 5000 in favour of B on 1st January 2009, and gave it to him on the same day. The cheque was presented for payment on the 5th June 2009. In the meantime the bank had failed in May 2009. Discuss the legal position of B's recourse against A and the bank for recovering the amount.

Provision: Applicable section 6

Hint and Reason: As B presented the cheque for payment after more than five months, which cannot be considered as reasonable period, and the drawer suffered loss due to this long delay, the drawer is discharged from his liability to the extent of the actual damages suffered by him. B, however, can claim as a creditor in the insolvency of the bank for the balance.

Q.No.12. 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 NI Act, 1881. (A)

(RTP - M18)(O)(OLD PM, RTP – M16, M17, MTP – M16)

Problem on Negotiable Instrument made without consideration: As per sec. 43, 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.

- a) In the problem, 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 sec 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.
- b) 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 sec.43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

TRUE OR FALSE STATEMENTS- FOR STUDENTS' SELF PRACTICE

- All negotiable instruments are entitled to three days of grace (F).
- A bill of exchange can be made originally payable to bearer (T).
- A cheque is always payable on demand (T).
- An instrument can be negotiated by the maker of a note or the drawer or acceptor of a bill until payment (F).
- The liability of the drawer of a bill is secondary and conditional (T).
- The liability of the maker of a note is primary and unconditional (T).
- All the parts of the whole set (in case of bill in sets) must be accepted (F).
- Omission of the date will invalidate the negotiable instrument (F).
- Bill payable on demand must be presented for acceptance (F).
- A bill can be accepted for honour even without the consent of holder (F).
- A promissory note can be accepted for honour (F).
- Promissory notes drawn jointly by X a minor and Y a major is valid but can be enforced only against Y (T).

IMPORTANT SECTION NUMBERS

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TEST YOUR KNOWLEDGE


1. Ascertain the 'Date of maturity' of a bill payable 120 days after the date. The bill of exchange was drawn on 1st June, 2017. **(OLD PM)**
2. Can there be more than one payee in a negotiable instrument?
3. To whom the payment of an instrument is required to be made?
4. Can a promissory note payable to bearer be issued by any person?
5. Can a bill of exchange payable to bearer be issued by any person?
6. An acceptor of accepts the bill of exchange but wrote on it "Accepted but payment will be made when goods delivered to me is sold". Decide the validity of the statement.
7. X draws a bill on Y and negotiates it to Z. Y is a fictitious person. Can Z treat it as a promissory Note made by X?
8. A draws a bill of exchange payable after 60 days on B. B accepts it payable after three months. Is it a valid acceptance?
9. X draws a bill of exchange on Y. Z writes an acceptance on it. Is it a valid acceptance?
10. A promissory note is presented for payment five days after its maturity. Are the
 - a) Maker and
 - b) Endorser discharged by such delay?

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

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To **MASTER MINDS**, Guntur

APPENDIX**APPENDIX 1: SPECIMEN OR FORMAT OF PROMISSORY NOTE**


K. Maruthi Rao Sells goods to V. Chandra Sekharam for Rs.50000 to be paid in 3 months. Then the promissory note drawn by V. Chandra Sekharam on K. Maruthi Rao will be as follows:

Rs.50000 only	123, HB Colony Guntur - 5 27-05-2018
Three months after date I promise to pay <u>K. MARUTHI RAO</u> or his order the sum of Rupees Fifty Thousand only, for the value received.	
To K. Maruthi Rao, D.No. 7-17-21/12, 7/5, Srinagar, Guntur-522002	 Sd/- [V. CHANDRA SEKHARAM]

APPENDIX 2: SPECIMEN OR FORMAT OF BILL OF EXCHANGE

The usual form of a bill of exchange is given below:

Chandra Sekharam sold goods to Maruthi Rao for Rs.50000 to be paid 3 months after date.

Rs.50,000 only	New Delhi, 17-01-2018
Three months after date pay to me (i.e., <u>V. CHANDRA SEKHARAM</u>) or order the sum of Rupees Fifty Thousand only, for the value received.	
<p style="text-align: center;">ACCEPTED <i>k. Maruthi Rao</i> (K. MARUTHI RAO)</p>	
To K. Maruthi Rao, D.No.1-2-3, Brodipet 3 rd line GUNTUR - 520004,	 Sd/- [V. CHANDRA SEKHARAM]

Specimen of Cheque

Pay	Date :.....
a sum of Rupees.....	Rs. <input type="text"/>
<input type="text" value="A/C No. 12345678910"/>	
ABC Bank 622, Vijay Nagar, Indore (M. P.)	Signature
01212 1125864 000053 38	

THE END