

**13. NEGOTIABLE INSTRUMENTS ACT, 1881****QUESTION - WISE ANALYSIS OF PREVIOUS EXAMINATIONS**

No.	ABC	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
1.	C	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
2.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1.5	-	-	-
3.	B	-	-	-	1	-	-	8	-	-	-	-	-	-	-	-	-	-	-
4.	B	-	-	5	8	8	-		-	-	-	-	4	-	-	-	-	-	-
5.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
6.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
9.	A	5	-	-	-	1	-	-	-	-	-	-	-	-	1	-	-	-	-
10.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
11.	C	-	-	1	-	-	-	-	-	-	-	-	-	-	4	-	-	-	-
12.	B	1	-	-	-	-	-	-	8	-	-	-	4	-	-	-	-	-	-
13.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
14.	A	-	5	-	-	-	-	-	-	-	-	-	-	4	4	-	-	-	-
15.	A	5	-	-	-	-	-	-	-	4	-	-	-	-	-	-	-	-	-
16.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	-	-
19.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
20.	B	-	-	-	-	-	-	-	-	-	-	4	-	-	-	-	-	-	-
21.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
23.	A	-	-	-	-	-	-	-	-	-	-	-	-	4	-	-	-	-	-
24.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
25.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
26.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
27.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
28.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
29.	B	-	-	-	-	-	8	-	-	-	8	-	-	-	-	-	-	-	-
30.	B	-	-	-	-	-	-	-	-	-	-	4	-	-	-	-	-	-	-
31.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
32.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
33.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5	-	-	-
34.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
35.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
36.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
37.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
38.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
39.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
40.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
41.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
42.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
43.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	-	-
44.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
45.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
46.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4
47.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
48.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
49.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

50.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
51.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
52.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
53.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
54.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
55.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

**Q.No.1. Define the term Negotiable instrument? Write about Negotiable Instruments Act, 1881 [NI ACT, 1881]. (C)**

**(SM, PM)**

### NEGOTIABLE INSTRUMENT:

1. The word 'Negotiable' means "Transferable from one person to another in return for consideration" and
2. "Instrument" means a written document by which a right is created in favour of some person".
3. It is an instrument which is transferable (by customs of trade) by delivery, like cash. It is also capable of being sued upon by the person holding it for the time being. The property in such an instrument passes to a bona fide transferee for value.
4. Section 13 of the Negotiable Instruments Act, 1881 does not define a negotiable instrument. It mentions only three kinds of negotiable instruments namely, Bills, Notes and Cheques.
5. Of course, it does not mean that there can be no other negotiable instruments other than those stated in the Act. Section 17 of the Transfer of Property Act, 1882 speaks of instruments that are negotiable by law of custom.

### SCOPE & EXTENT OF NI ACT: The Act applies to:

- The whole of India and
- All persons resident in India, whether foreigners or Indians.
- The main objective of the Act is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods.

### Note:

1. The provisions of this Act are also applicable to Hundis, unless there is a local usage to the contrary.
2. Government promissory notes, Shah Jog Hundis, delivery orders and railway receipts for goods have been held to be negotiable by usage or custom of trade.

**Q.No.2. State the characteristics of a Negotiable instrument? (C)**

**(SM, RTP - M14)**

**Note:** First briefly write what is 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. **Negotiable Instrument made or drawn for consideration:** It is presumed by law that every Negotiable Instrument is made or drawn for a consideration. So, it is not necessary to state it.
3. **Transfer / Negotiation:** A negotiable instrument can be transferred from one person to another
  - by endorsement and delivery, if it is an instrument payable to order, and
  - by mere delivery, if it is a bearer instrument.
4. **Bonafide and valuable consideration entitles good title to transferee:** The transferee, who takes the instrument bona fide and for valuable consideration, obtains a good title even if there any defects in the title of the transferor.

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

**Q.No.3. What is a promissory note? Who are the parties and state the essential features of a promissory note? (B)** (SM, M12 - 8M)

The term 'Promissory Note' denotes as a note containing 'certain promise'.

**DEFINITION:** As per Sec 4 of the NI Act, 1881, a 'Promissory note is an instrument (not being a bank note or currency note)

- in writing
- containing an unconditional undertaking
- signed by the maker,
- to pay a certain sum of money only:
  - a) to a certain person, or
  - b) to the order of a certain person, or
  - c) to the bearer of the instrument.'

Thus, a promissory note is a written and signed promise to pay a certain sum of money to some person or to his order.

#### **PARTIES TO A PROMISSORY NOTE:**

- a) **Maker:** The person who makes (i.e. prepares / draws) the promissory note and promises to pay the money stated therein is called 'maker' of the instrument.
- b) **Payee:** The person to whom the amount of promissory note is payable (i.e. to whom the promise of payment is made is called payee of the instrument.

#### **ESSENTIALS / REQUIREMENTS OF A VALID PROMISSORY NOTE:**

1. **Writing:** A Promissory note must be in Writing and cannot be in oral form. Of course, there is no prescribed form or language. Even the word 'promise' need not be used.
2. **Express promise to pay:** The instrument must contain an express promise to pay. Mere acknowledgement of debt is not a promissory note.
3. **Promise to pay must be Definite & Unconditional:** If it is uncertain or conditional, the instrument is invalid.
4. **Certain parties:** The instrument must point out with certainty as to who the maker is and who the payee is. When the maker and the payee cannot be identified with certainty from the instrument itself, the instrument, is not a promissory note.
5. **Certain sum of Money:** The amount promised must be certain and a definite sum of money and is not subject to additions or subtractions. *For example, where an instrument contains: "I promise to pay B Rs. 350 and all other sums which shall be due to him", is not a valid promissory note as the sum is not certain.*
6. **Money only:** The promise to pay must be in money and money only. Payment must be in legal tender money of India.
7. **Signed by the maker:** The instrument must be signed by the maker, otherwise it is incomplete and of no effect. Even if it is written by the maker himself and his name appears in the body of the instrument, his signature must be there on any part of the instrument.
8. It must be duly stamped.

#### **FOR ACADEMIC INTEREST:**

##### **a) Endorser & Endorsee:**

- In the course of negotiation, payee may endorse (i.e., transfer) the note to some other person and that other may endorse the note to some other person and so on.
- The party endorsing the instrument is known as 'endorser' and
- The party to whom the instrument has been endorsed is known as 'endorsee'.

- b) The promise to pay will not be conditional (i.e. Unconditional) where it depends upon an event which is certain to happen but the exact time of its occurrence is uncertain.

**Examples:**

"I promise to pay B Rs.2,000, 15 days after the death of C", it is not conditional as it is certain that C will die though the exact time of his death is uncertain.

A signs an instrument made out as follows, "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum". The instrument will not be a promissory note.

- c) The words 'or to the bearer of the instrument' have become inoperative in view of the provision contained u/s 31(2) of the RBI Act, which provides that no person in India other than RBI & The CG can make or issue promissory note payable to the bearer of the instrument.
- d) It is not necessary to use the words 'or order' after the name of the payee.
- e) Not necessary to insert in pro-note a statement of consideration that it is "for value received" because law itself presumes that every negotiable instrument is made for consideration ;
- f) It is usual and proper to state in a promissory note, the place where it is made and the date on which it is made. However, their omission does not render an instrument invalid.
- g) An undated instrument is valid and it will be treated as having been made on the date of its delivery; and
- h) An ante-dated or post-dated instrument is not invalid.
- i) Attestation is not required in a pro-note though attestation is not prohibited by law.
- j) The liability of maker of the promissory note is primary and absolute (unconditional).
- k) Remember that a promissory note cannot be made payable to the maker himself. Thus, a note which runs "I promise to pay myself" is not a promissory note and hence invalid. However, it would become valid when it is endorsed by the maker. This is because it then becomes payable to bearer, if endorsed in blank, or it becomes payable to the endorsee or his order, if endorsed specially.
- l) **SPECIMEN OR FORMAT:** K. Maruthi Rao Sells goods to V. Chandra Sekharam for Rs.50,000 to be paid in 3 months. Then the promissory note drawn by V. Chandra Sekharam on K. Maruthi Rao will be as follows:

Rs.50,000 only	123, HB Colony Guntur - 5
27-05-2015	
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	<div style="display: flex; align-items: center; justify-content: center;"> </div> <p style="text-align: center;">Sd/- [V. CHANDRA SEKHARAM]</p>

**SIMILAR QUESTIONS:**

1. Explain the essential elements of a promissory note. (PM, RTP - M13)
2. State, giving reasons, whether the given statements are correct or 'incorrect'
  - a) An undated negotiable instrument is not always invalid. (RTP – M13)
  - b) In a promissory note, the promise to pay must be conditional. (M16 – 1.5M)

A. Answers are as follows:



- a) Correct. If an undated instrument otherwise possesses all the essentials, it is considered as a valid instrument and the date of execution can be proved by oral / other evidence. Even a holder in due course may write the true date and such an insertion is not considered as a material alteration of the instrument. Such an instrument shall be always payable on mentioned date.
- b) Incorrect. Sec 4 of the NI Act, 1881 defines 'Promissory note' as an instrument in writing containing an unconditional undertaking, signed by the maker to pay money only to, or to the order of, a certain person, or to the bearer of the Instrument.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 1, 2, 3)**

**Q.No.4. What is meant by Bill of Exchange? Who are the parties and state its essential features. (B)**  
(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:
  - a) to a certain person, or
  - b) to the order of a certain person or
  - c) to the bearer of the instrument.'

**PARTIES TO A BILL OF EXCHANGE:** A bill of exchange is a '3 party instrument'.

1. **Drawer:** The party who draws a bill of exchange or a cheque or any other instrument is called drawer.
2. **Drawee / Acceptor:**
  - a) The party on whom such bill of exchange or cheque is drawn is called the drawee. In other words the person to whom direction is given to pay the amount is called the drawee.
  - b) The drawee of a bill of exchange who expressed his consent to the order of the drawer is called the acceptor. The acceptor becomes liable to the holder after he has expressed his consent but not before.
3. **Payee:** The person named in the instrument, to whom or to whose order the amount of a bill of exchange, cheque or promissory note is directed to be paid is the payee.


**ESSENTIALS OF A VALID BILL OF EXCHANGE:**

1. The bill of exchange must be in writing.
2. There must be an order to pay. Order does not mean a command, but a direction for payment.
3. The order must be unconditional. The order must not make the payment of the bill dependent on a contingent event. A conditional bill of exchange is invalid.
4. The drawer must sign the instrument. It is permissible to add the signature at any time after the issue of the bill. But if it is not so added, the instrument remains ineffectual.
5. The sum ordered must be certain sum of money. It must be payable to a definite person or to order the bearer.
6. The person to whom the order is made must be a definite person. i.e., drawee must be a certain person
7. The medium of payment must be in money and money only. The order to pay anything in kind will invalidate the bill.
8. The bill must be delivered to the payee, otherwise the bill will be ineffective.
9. It must be duly stamped as required by Indian Stamps Act.

**Other formalities:** Like a 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.

**SPECIMEN OR FORMAT OF A BILL:** The usual form of a Bill of Exchange is given below:

Chandra Sekharam sold goods to Maruthi Rao for Rs.50,000 to be paid 3 months after date.

Rs.50,000 only	New Delhi, 17-01-2015
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.	
ACCEPTED <i>k. Maruthi Rao</i> (K. MARUTHI RAO)	
To K. Maruthi Rao, D.No.1-2-3, Brodipet 3 <sup>rd</sup> line GUNTUR - 520004,	 Sd/- [V. CHANDRA SEKHARAM]

**SIMILAR QUESTION:**

1. State, giving reasons, whether the given statements are 'correct or incorrect'

"A bill of exchange may not be in writing".

(M16 – 1.5M)

- A. Incorrect. Sec.5 of the NI Act, 1881 clearly defines that it is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay money only to, or to the order of, a certain person, or to the bearer of the Instrument

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 4)

**Q.No.5. Distinguish between a "Bill of Exchange" and a "Promissory Note" with reference to the provisions of the NI Act, 1881. (A)** (M12 - 8M) (For Students Self - Study)

**DISTINCTION BETWEEN A PROMISSORY NOTE AND A BILL OF EXCHANGE:**

S.No.	Particulars	Promissory Note	Bill of Exchange
1.	<b>Contains</b>	It contains a <u>promise</u> to pay.	It contains an <u>order</u> to pay.
2.	<b>Presented for payment</b>	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 ( <u>either by drawee himself or by someone else on his behalf</u> ) <u>before</u> it can be presented for payment.
3.	<b>Liability</b>	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 would be liable if the drawee, after accepting the bill fails to pay the money due upon it.
4.	<b>Relationship</b>	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> .
5.	<b>Maker and payee</b>	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.
6.	<b>No. of parties</b>	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.

7.	<b>Drawn in sets</b>	A promissory note <u>cannot</u> be drawn in Sets	A bill of exchange can be drawn in Sets.
8.	<b>Conditional</b>	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> .
9.	<b>Notice of dishonour</b>	Notice of dishonour is not required to be given to <u>maker</u> .	Notice of dishonour shall be given to drawer.

**Q.No.6. Bearer Instruments and Order Instruments? (A)****(SM)**

As per Sec.13, an instrument may be made payable:

1. to bearer;
2. to a specified person or to his order.

**1. BEARER INSTRUMENTS:**

- a) A negotiable instrument is payable to bearer when -
- It is expressed to be so payable or
  - The only or last endorsement on the instrument is an endorsement in blank.

**2. ORDER INSTRUMENTS:** A negotiable instrument is payable to order:

- a) When it is expressed to be payable to order of a specified person; or  
*E.g., 'Pay to the order of A'.*

When an instrument is made payable to the order of a specified person and not to him, it is payable to him at his option.

- b) When it is payable to a specified person or his order  
*E.g., 'Pay to A or order' or*

- c) When it is payable to a specified person without the addition of the words 'or his order' and does not contain words Prohibiting or Restricting its transfer.  
*E.g. 'Pay to A one hundred rupees.*

When an instrument is not payable to bearer, the payee must be indicated with reasonable certainty.

**Q.No.7. Significance of Bearer Instruments? (or) Once a bearer instrument always a bearer instrument. Comment (A)****(SM)**

**MEANING:** A bearer instrument is one, which can change hands by simple delivery of the instrument. The instrument may be a promissory note or a bill of exchange or a cheque. It must be expressed to be so payable or the last endorsement on the instrument is a "blank endorsement" (*Explanation 2 to Sec 13 of the NI Act, 1881*).

Sec.49 states that a holder of negotiable instrument endorsed in blank, may, without signing his own name, by writing above the endorser's signature, instruct that payment must be made to another person. In such a case the feature of the instrument is changed and the instrument is treated as order instrument.

The law followed in the case of cheque is little bit different.

As per Sec.85(2) where a cheque is actually expressed to be payable to bearer, the drawee gets discharged by payment in due course to the bearer thereof, inspite of any endorsement whether in blank or full appearing thereon.

Thus, the given statement "once a bearer instrument always a bearer instrument" is correct relating to cheque but not to promissory notes and bills of exchange. In other words, the original character of the cheque is not altered so far as the paying bank is concerned, provided the payment is made in due course.

## Q.No.8. Inland Instruments and Foreign Instruments (A)

(SM)

1. **Inland Instrument (Sec 11):** A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.
2. **Foreign Instrument (Sec 12):** Any instrument which is not an inland instrument is a foreign instrument.

Thus, **the foreign bills are:**

- a) Bills drawn outside India and made payable in or drawn upon any person resident in any country outside India;
- b) Bills drawn outside India and made payable in India, or drawn upon any person resident in India;
- c) Bills drawn in India made payable outside India or drawn upon any resident outside India, but not made payable in India.

3. **Liability of Parties:**

In the absence of a contract to the contrary:

- a) The liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and
- b) The liabilities of the acceptor and endorser is regulated in all essential matters by the law of the place where the instrument is made payable. (Sec 134)

**Example:** A bill of exchange is drawn by A in California where the rate of interest is 25% and accepted by B payable in Washington where the rate of interest is 6%. The bill is endorsed in India and is dishonoured. An action on the bill is brought against B in India. He is liable to pay interest at the rate of 6% only. But if A is charged as drawer, he is liable to pay interest at 25%.

4. **Distinction between inland and foreign bills:**

- i) Inland bills need not be protested for dishonour; protest in this case is optional.
- ii) As per sec. 104, foreign bills must be protested for dishonour if the law of the place where these are drawn prescribes for such a protest.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 6)

## Q.No.9. Ambiguous and Inchoate Bills (A)

(SM)

1. **AMBIGUOUS INSTRUMENT:** According to section 17, an ambiguous bill means an instrument which can be considered either as a promissory note or as bill of exchange, at the option of the holder. In other words, the nature of such instrument is determined by the holder.

In the following cases an instrument may be treated as an ambiguous instrument:

- a) Where the drawer and the drawee of a bill are the same person
- b) Where the drawee of a bill is a fictitious person.
- c) Where the drawee of a bill is a person not having capacity to contract.

2. **INCHOATE INSTRUMENT [Sec.20]:**

- a) When one person signs and delivers blank or incomplete stamped paper to another, such other person is
  - authorised to complete it for any amount specified therein and
  - not exceeding the amount covered by the stamp.
- b) An Inchoate instrument is an incomplete instrument in some respect.
- c) The person so signing is liable upon such instrument, to any holder in due course for any amount specified in the instrument.

- d) But any other person can't claim more than the amount intended by the signatory i.e., the person who signs on the instrument.

*E.g.:* A bill of exchange upto the value of Rs.1,000 requires stamps worth 50 paise. A bill with a stamp of 50 paise on it is duly signed but the amount is not filled in. It is agreed that the payee will not fill in more than Rs.500.

Suppose, the payee fills in Rs.900, the person so signing shall be liable to any holder in due course for the full amount of the bill i.e. Rs.900, being the amount covered by the stamp. However, an ordinary holder cannot claim more than Rs.500 – the amount intended by the drawee.

- e) As a condition of liability, the signer must deliver the instrument to another. In the absence of delivery, the signer is not liable.

*Eg.:* a person signed a blank acceptance and kept it in his drawer and some person stole it and filled it up for Rs.2000 and negotiated it to an innocent person for value, it was held that the signer to the blank acceptance was not liable to the holder in due course because he never delivered the instrument intending it to be used as a negotiable instrument

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 5,8)**

**Q.No.10. Write about Demand Instruments and Time Instruments? (or) Sight and Time Bill? (A) (SM)**

Bills and notes are payable either on demand or at a fixed future time. Cheques are always payable on demand.

### 1. DEMAND / AT SIGHT / ON PRESENTMENT INSTRUMENT:

- a) A promissory note or bill is payable on demand when
- No time for payment is specified in it or
  - When it is expressed to be payable 'on demand' or 'at sight' or 'on presentment'.
- b) Such a bill or note may be presented for payment at any time at the option of holder, but it must be presented within a reasonable time.

*E.g.:* I promise to pay B Rs.500.

I promise to pay B Rs.500 on demand.

Pay B Rs.500 at sight.

Pay B Rs.500 on presentment.

### 2. TIME INSTRUMENTS: 'Time Instrument' means a bill or note which is payable:

- a) A promissory note or bill of exchange made payable at so many months or days after sight are called time instruments.
- b) The expression 'after sight' in a promissory note means after presentment for sight. This means that payment cannot be demanded on a note till it has been shown to the maker.
- c) The expression 'after sight' in a bill of exchange means after acceptance.

*E.g.:* I Promise to pay B Rs.500 after 3 months.

I promise to pay Rs.500 on 1<sup>st</sup> June 2017.

I promise to pay B Rs.500 after sight.

I promise to pay B Rs.500 after C's death.

### FOR ACADEMIC INTEREST:

A promissory note or bill of exchange can't be made payable to bearer on demand due to restrictions imposed by RBI

### SIMILAR QUESTIONS:

1. Distinguish between 'Bearer instrument' and 'Order instrument' under the NI Act, 1881. (PM)

**2. Cheque is a time instrument. Comment.**

(RTP – M13)

- A. Incorrect. A time instrument mentions the time for payment. A cheque can never be a time instrument as it cannot be payable otherwise than on demand.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 7)

**Q.No.11. Write down the provisions relating to maturity and days of grace with examples for negotiable instruments under the NI, Act, 1881? (C) (SM) (For Student Self-Study)**

**DATE OF MATURITY:**

1. Date of maturity of a promissory note or bill of exchange is the date on which it falls due.
2. Every instrument payable otherwise than 'on demand' is entitled to 3 grace days.

**The instruments which are 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'.

**The instruments which are 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 at a certain period after date, and
- d) A bill or note payable at a certain period after the happening of a certain event.
- e) Where an instrument is payable in installments, each installment is payable 3 days after the day fixed for the payment of each installment.

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

**RULES FOR FINDING OUT DATE OF MATURITY [SEC.23 and 24]:**

S. No.	SITUATION	DATE OF MATURITY	ILLUSTRATION
1	Instruments payable on a <u>specified day</u> .	3 <sup>rd</sup> day after specified day	A bill which specifies the date of payment on 22-03-2017 is payable on 25-03-2017.
2	Instruments payable <u>certain days after</u> the date of <u>preparation</u> of instrument.	Date of preparation of instrument + certain days + 3 <sup>rd</sup> 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 <sup>rd</sup> day)
3	Instruments payable <u>certain days after</u> the date of <u>happening</u> a certain <u>event</u> .	Date of happening of event + certain days + 3 <sup>rd</sup> day	<ul style="list-style-type: none"> <li>➤ A bill is payable after 7 days from the date of death of C.</li> <li>➤ If C died on 22-03-2017 then bill is payable on 01-04-2017. (22-03-2017 + 7 days + 3<sup>rd</sup> day)</li> </ul>
4	Instruments payable <u>after certain months</u> from the date of <u>preparation</u> of instrument.	Date of preparation of instrument + stated number of months + 3 <sup>rd</sup> day	<ul style="list-style-type: none"> <li>➤ A bill is prepared on 22-03-2017 and is payable after 3 months.</li> <li>➤ Then the due date for payment will be 25-06-2017. (22-3-2017 + 3 Months + 3<sup>rd</sup> day)</li> </ul>
5	Instruments payable <u>after certain months</u> from the date of <u>presentment</u> of instrument for sight.	Date of presentment of instrument + stated number of months + 3 <sup>rd</sup> day	<ul style="list-style-type: none"> <li>➤ A bill is prepared on 22-03-2017 and is payable 3 months from the date of presentment.</li> <li>➤ 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 + 3<sup>rd</sup> day)</li> </ul>

6	Instruments payable <u>after certain months</u> from the date of <u>happening</u> of certain <u>event</u> .	Date of happening of event + certain months + 3 <sup>rd</sup> day	<p>➤ A bill is payable after 3 months from the date of death of C.</p> <p>➤ If C died on 22-03-2017 then the due date for payment will be 25-06-2017 (22-03-2017 + 3 months + 3<sup>rd</sup> day)</p>
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**Note (Sec.25):**

- If the third day of grace days is a public holiday then, the amount mentioned on the instrument shall be payable on preceeding business day.  
*For e.g.: If maturity date of a bill is 26<sup>th</sup> January (i.e. Republic day), it falls due on 25<sup>th</sup> January, if 25<sup>th</sup> January is also a public holiday (i.e. Sunday), it will fall due on 24<sup>th</sup> January (Provided, 24<sup>th</sup> January is not a public holiday)*
- Public holiday includes Sundays.
- If the third day of grace days is an emergency holiday then, the amount mentioned on the instrument shall be payable on Succeeding business day.  
*For e.g.: If 9<sup>th</sup> September is emergency holiday then the instrument will be payable on 10<sup>th</sup> September. If 10<sup>th</sup> September is also holiday, then it is payable on 11<sup>th</sup> September.*

**SIMILAR QUESTIONS:**

- State briefly the rules laid down under the NI Act, 1881, for 'Determining the date of maturity' of a bill of exchange. (PM)
  - In what way does the NI Act, 1881 regulate the determination of the "Date of maturity" of a 'Bill of Exchange'. (PM)
- A. Refer the above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 11, 12, 13, 14)

**Q.No.12. What is meant by cheque? Who are the parties and state the essential features of a valid cheque? (B)** (PM, M11 - 8M, RTP - N13)

**CHEQUE [Sec.6]:** 'A Cheque is

- a bill of exchange
- drawn on a specified banker and
- not expressed to be payable otherwise than on demand and

It also includes the electronic image of a truncated cheque and cheque in the electronic form.

**ESSENTIALS OF A VALID CHEQUE:**

- Cheque is always drawn on a bank.
- Cheque is always payable on demand.
- Since cheque is primarily a bill of exchange drawn on a banker, it must have all the essentials of a bill of exchange but it differs from bill of exchange i.e.,:
  - It must be in writing and signed by the drawer.
  - It must contain an unconditional order to pay.
  - The order to pay must be certain sum of money.
  - The order is made to a certain person, or to the bearer of the instrument.

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**Q.No.13. Examine the Differences between 'Cheque' and a 'Bill of Exchange' under the provisions of the NI Act, 1881. (A)**  
(For Students Self-Study)

**DIFFERENCE BETWEEN CHEQUE AND BILL OF EXCHANGE ARE AS FOLLOWS:**

S.No.	Particulars	BILLS OF EXCHANGE	CHEQUE
1.	<b>Drawee</b>	Drawee may be Bank or any person.	Drawee is always a bank
2.	<b>Grace Days</b>	3 days of grace are allowed.	Days of grace are not allowed.
3.	<b>Notice of Dishonour</b>	Required	Not Necessary
4.	<b>Bearer</b>	A bill cannot be bearer, if it is made payable on demand	A cheque can be drawn to bearer and made payable on demand.
5.	<b>Acceptance</b>	Sometimes, bill requires present for acceptance	Cheque does not require presentment for acceptance
6.	<b>Stamping</b>	Bill must be stamped according to the law.	Cheque does not require stamping
7.	<b>Crossing</b>	Bill cannot be crossed	A cheque can be crossed
8.	<b>Revocation</b>	The order to pay cannot be revoked.	The order to pay may be revoked by countermanding payment.
9.	<b>Discharge</b>	The drawer of a bill is discharged from liability, if it is not duly presented for payment	The drawer of a cheque is not discharged by delay in presentment of the cheque unless the drawer has suffered loss due to delay.
10.	<b>Noting/Protest</b>	There can be noting and protesting to prove that the bill has been dishonored.	Bank gives only reason for dishonor of cheque. But there is not system of Noting or Protest.

**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.

**SIMILAR QUESTIONS:**

- Point out the differences between 'cheque' and a 'Bill of Exchange' under the Negotiable Instrument Act, 1881. (M11 – 5M)
  - "All cheques are bills of exchanges but all bills of exchanges are not cheques". Explain. (RTP -N13)
- A. On account of similarities and differences between the cheque and bill of exchange it can be said that 'all cheques are bills of exchanges but all bills of exchanges are not cheques'.
- The validity period of a cheque is 6 months. Comment. (RTP – N12)
- A. Incorrect. The validity period of cheque / pay order / banker's cheque have been 3 months from the date of such instruments w.e.f 01.04.2012.
- Define "cheque", under the Negotiable Instruments Act, 1881. What are the difference between a cheque and a bill of exchange? (PM)
- A. Refer above answer and Q.No.9 for definition.



**Q.No.14. State the legal provisions relating to Electronic cheques and Truncated Cheques? (A) (SM)**

**ELECTRONIC CHEQUE / CHEQUE IN THE ELECTRONIC FORM** - means a cheque

- Drawn in electronic form by using any computer resource, and
- Signed in a secure system with
  - A digital signature (with / without biometric signature) and
  - Asymmetric crypto system or electronic signature, as the case may be.

**Note:** For this purpose, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.

**TRUNCATED CHEQUE:** 'A truncated cheque' means a cheque which is truncated during the course of clearing cycle, either

- by the clearing house or
- by the bank,

whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of cheque in writing.

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 only by electronic means and not by physical movement.

**Paying bank can ask for further details:** Sec.64(2) provides that where electronic image is presented, the drawee bank (i.e. bank paying the amount) is entitled to demand any further information regarding truncated cheque from the bank holding the truncated cheque, if it has reasonable suspicion about genuineness of apparent (on the face of) tenor of instrument.

#### **SIMILAR QUESTION:**

1. Distinguish between 'Electronic cheque' and 'Truncated cheque'.

A. Refer the above answer.

**Q.No.15. What is meant by crossing of cheque? Write about different types of crossing. Also explain the provisions relating to crossing of a cheque after issue? (A) (SM)**

**TYPES OF CROSSING:** Broadly, crossing can be categorized as follows:

#### 1. General Crossing (Sec. 123):

**Meaning:** A cheque is said to be crossed generally by drawing 2 parallel transverse lines across the face of the cheque, with or without of certain words.

**Purpose:** The object of general crossing is to direct the drawee banker to pay the amount of the cheque only to a banker, to prevent the payment of the cheque being made to wrong person.

**Advantage:** It is used as a measure of safety.

#### 2. Special Crossing (Sec. 124):

**Meaning:** Where a cheque bears across its face an entry of the name of a banker either with or without the words "not negotiable", the cheque is considered to have been crossed specially to that banker.

**Example:** if the name of Canara Bank appears on the face of the cheque, it can be deposited in the Canara bank only for the purpose of collection.

- a) As per sec. 127, "Where a cheque is crossed specially to more than one banker, the banker on whom it is drawn shall refuse the payment thereon. This is because, in such a case, the instruction by the drawer would not be clear.
- b) However, two crossings with the names of 2 branches of the same bank are allowed.

**Canara Bank**  
Not Negotiable

**Example:** cheque is double crossed with the names of two different banks, namely "SBI" and "Andhra Bank", it is not payable. But if the two crossings are 'Andhra Bank, Brodipet branch', and 'Andhra Bank, Arundelpet branch', the cheque remains valid instrument and the payment can be obtained by depositing it into any of the specified branches.

### 3. Not Negotiable Crossing (Sec. 130):

- a) A person taking a cheque crossed generally or specially bearing in either cases the words 'not negotiable' shall not have or shall not be able to give a better title to the cheque than the title of the person from whom he took the instrument."
- In other words, the principle of the 'nemo dat quod non habet' - (that is, nobody can pass on a title better than what he himself has) will be applicable to a cheque with a "not negotiable" crossing.
- b) In consequence if the title of the transferor is defective, the title of the transferee is also affected by such defect.
- c) Cheque crossed 'not negotiable' does not affect the transferability of the negotiable instrument in anyway. The cheque still continues to be transferable but only the rights of the transferor, are passed on to transferee but no better rights, even if the transferee is a holder in due course.

**Not Negotiable**

**Not Negotiable**

**State Bank of India**  
Not Negotiable

**State Bank of India**  
Not Negotiable

- d) **Effect:** The effect of "not negotiable" is that it can't give to its transferee a better title than that of its transferor.
- e) Even when the transferee of a "not negotiable" cheque is a holder in due course, he cannot acquire any better title than its transferor.
- f) Cheque crossed 'not negotiable' does not affect the transferability of the negotiable instrument in anyway. The cheque still continues to be transferable but only those rights are conveyed to the transferee which the transferor has.

**CROSSING AFTER ISSUE:** As per sec. 125 of the NI Act,

If a cheque has not been crossed: the holder thereof may cross it either generally or specially.

#### a) If a cheque is crossed:

- **Generally:** the holder may cross it, specially.
- **Either generally or specially:** the holder may add the words "not negotiable".
- **Specially:** the banker to whom it is crossed, may again cross it specially to another banker, his agent, for collection.

#### **SIMILAR QUESTIONS:**

1. A cheque marked "Not negotiable" is not transferable. (M11, N15 – 1M)  
A. Incorrect. A cheque marked "not negotiable" is a transferable instrument. The inclusion of the words 'not negotiable' however makes a significant difference in the transferability of the cheques. The holder of such a cheque cannot acquire title better than that of the transferor.
2. In order to cross a cheque, two parallel transverse lines can be drawn anywhere on the face or back of the cheque. (RTP – N12)  
A. False. Crossing is made only on the face and cannot be made on the back of the cheque.

3. Is there any difference in the protection available to banker in respect of a cheque being 'crossed' or 'uncrossed'? (PM)
4. What is meant by 'Crossing a cheque? What is the advantage of crossing of a cheque from the point of view of the customer? What is the effect of crossing a cheque?
- A. Refer above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 15)

Q.No.16. What is Demand Draft or Bank Draft? (B)

(SM)

**BANK DRAFT / DEMAND DRAFT (D.D):**

- A bank draft is a bill of exchange
  - Drawn by one bank on another bank or on its own branch,
  - Instructing the latter to pay a specified sum of money to a specified person or his order.
- A draft is drawn either against cash deposited at the time of its purchase or against debit to the buyer's operational bank account with the banker.
- The buyer of the draft generally furnishes particulars of the person to whom the amount thereof should be paid.
- The banker charges a small commission for his services.

Q.No.17. Distinction between 'Cheque' and 'Draft'. (C)

(For Students self - study)

BASIS	CHEQUE	DRAFT
Drawer	Drawer of a cheque is a <u>private person</u> .	Drawer of a draft is a <u>banker</u> .
Stopping payment	Stop payment orders <u>can be given</u> for cheques issued	Payment of draft <u>cannot be stopped</u> . However, <u>before</u> presentment for payment, it can be <u>cancelled</u> .
Agency Relationship	Banker continues to be the <u>agent</u> of the drawer till payment of the cheque.	The Issuing Banker is <u>not an agent</u> of the person purchasing a draft.
Banker's Liability to payee	The Banker does <u>not</u> have any direct <u>liability</u> to payee.	The <u>Banker</u> undertakes the <u>liability</u> which he is <u>bound to discharge</u> at the instance of the person in whose favour it has issued the draft.

Q.No.18. Who is a holder? State the conditions to be satisfied to become a holder? (B)

(PM)

**HOLDER:** 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 the instrument; and
- To receive or recover the amount due on the instrument from the parties thereto."

**WHO IS NOT A HOLDER:** Sometimes a person may be in possession of a negotiable instrument but the law does not consider him as a holder Such instances are given below:

- A person who finds or steals a bearer instrument
- A person who takes an instrument under forged endorsement.
- A beneficial holder claiming through 'BENAMIDAR' is not a holder
- An agent holding an instrument for his principal is not a holder. The reason being that, although agent can receive payment of the instrument, he has no right to sue on the instrument in his own name.

e) A payee prohibited by an order of court from receiving the amount of the instrument

### **Academic Interest**

- Holder may be the person to whose order the instrument is payable i.e., payee.
- Holder may be the person to whom the instrument has been endorsed i.e., endorsee.
- If the instrument is payable to 'Bearer' then bearer of the instrument becomes holder.
- The legal heir of a deceased holder (*entitled by operation of law*) is a holder although he is not the payee or endorsee or bearer thereof.
- "Holder for value" means, as regards all parties prior to himself, a holder of an instrument for which value has at any time been given.
- Mr. A advanced Rs.500 to Mr. B, Mr. B executed a promissory note in the name of "C", a Benamidar, for the repayment of the same. On maturity, B failed to pay the amount due on the promissory note. A brought an action against B for its recovery. Court held that A could not recover the money because he was not a holder of the instrument.*

**(IMMEDIATELY REFER PRACTICAL QUESTION. NO. 17, 18)**

**Q.No.19. Who is a holder in due course? State the privileges available to a holder in due course?**  
**(A) (PM, MTP - M15)**

### **HOLDER IN DUE COURSE [Sec.9]:**

- In the case of an instrument payable to bearer "holder in due course" means any person who, for consideration became the possessor of the instrument, before the amount mentioned in it became payable.  
**Note:** In the case of accommodation bills or notes, a defect in the title of the transferor does not affect the title of the holder acquiring after maturity. **(Proviso to Section 59)**
- In the case of an instrument payable to order, "holder in due course" means any person who became the payee or endorsee of the instrument before the amount mentioned in it became payable.
- "Holder in due course" must receive the instrument without having 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:**

- Inchoate Instrument (Sec.20):** A person signing and delivering to another a stamped but otherwise incomplete instrument
  - is debarred (i.e. precluded) from asserting (i.e., contending), as against a holder in due course,
  - that the instrument has not been filled in accordance with the authority given by him,
  - the stamp being sufficient to cover the amount.
- 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
- Fictitious bill (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 acceptor to allege (i.e., contend or argue) as against the holder in due course that such name is fictitious.
- Conditional instrument / 'Escrow' (Sec 46 and 47):** In case a bill or note is negotiated to a holder in due course, 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 only.
- 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 holder in due course, 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.

- f) **Instrument obtained by unlawful means or for unlawful consideration (Sec 58):** The person liable in a negotiable instrument cannot contend against the holder in due course that the instrument had been lost or obtained from him, by means of an offence or fraud or for an unlawful consideration.
- g) **Original validity of the instrument is denied (Sec.120):** No maker of a promissory note, and no drawer of a bill or cheque and no acceptor of a bill for the honour of the drawer shall, in a suit thereon by a holder in due course be permitted to deny the validity of the instrument as originally made or drawn.
- h) **Payee's capacity to indorse is denied (Sec.121):** No maker of a promissory note and no acceptor of a bill payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to endorse the same.

**FOR ACADEMIC INTEREST:**

- i) When given as a gift or has been inherited, the transferee cannot be a holder in due course.
- ii) The holder must have obtained the instrument without sufficient cause to believe that any defect existed in the title of the person from whom he has derived his title:

*If a person has some suspicion about an instrument but has no actual knowledge of irregularity, he must make an enquiry to confirm his suspicion.*

*If he does not enquire and accepts a bad instrument, he cannot be granted the status of a holder in due course.*

**SIMILAR QUESTIONS:**

- Describe in brief the advantages and protections available to a "Holder in due course" under the provisions of the NI Act, 1881.
- Examine when a holder of a negotiable instrument is considered as a holder in due course under the provisions of the NI Act, 1881.
- 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. (PM, N12 – 8M, RTP - N16)
- Mr.E, a holder in due course can recover the amount from all the prior parties i.e., D & C (the endorsers), B (an acceptor) and A (the drawer). Refer the above privileges.

**(IMMEDIATELY REFER PRACTICAL Q.NO. 9, 10, 19, 20, 21, 22, 23, 24, 25, 26, 31)**

**Q.No.20. Distinction between a 'Holder' and a 'Holder in Due Course'. (B) (For Student Self-Study)**

**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. <i>bonafide</i>	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 all</u> 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.

**SIMILAR QUESTION:**

1. Who is holder in due course? How he is differing from holder? (PM)
- A. Refer "holder in due course" in Q.No.17 and "differences" in Q.No.18.

**Q.No.21. Write about the instruments without consideration or Partial consideration? (A)**

**(SM)**

**NEGOTIABLE INSTRUMENTS MADE ETC. WITHOUT CONSIDERATION:**

1. **Liabilities of parties (Sec 43):** An instrument made, drawn, accepted, endorsed or transferred without consideration creates no obligation of payment between the parties to the instrument.

*Similarly, if the consideration fails, there is no obligation on the parties to pay. For example, X makes a note in favour of Y in anticipation of Y's supplying a bale of cotton. Y fails to deliver the cotton cannot claim payment from X.*

2. **Rights of holder for consideration (Sec 44):** If any 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 from any party prior thereto.

*For Example, X and Z are the drawer and payee respectively, and the acceptor of a bill of exchange drawn without consideration; X transfer the bill to Y without consideration. Y transfers the bill to P for consideration. P can claim payment from Y and also from Z and X.*

3. **Acquiring the bill after maturity:** In the case of accommodation bills or notes, a defect in the title of the transferor does not affect the title of the holder acquiring after maturity.

**(IMMEDIATELY REFER PRACTICAL QUESTION. NO. 33, 34)**

**Q.No.22. Distinction between 'Negotiability' and 'Assignability'. (A)**

**(SM, M13 – 4M)**

Basis	NEGOTIATION	ASSIGNMENT
<b>Title</b>	Holder in due course can get the better title than that of the transferor	Assignee does not acquire the rights of a holder in due course. He gets the same rights as that of the assignor.
<b>Notice</b>	Notice of transfer is not necessary to any party	Notice of assignment must be served by the assignee on his debtor.
<b>consideration</b>	Consideration is presumed	Consideration needs to be proved.
<b>Transfer / endorsement</b>	Bearer instrument can be transferred by mere delivery. Order instrument can be transferred by endorsement and delivery.	Assignment has to be made by a written document and signed by the transferor. The procedure is same for both bearer and order instruments.
<b>Stamp duty</b>	Endorsement does not require payment of stamp duty.	Assignment requires payment of stamp duty.
<b>Applicability of Act</b>	If a negotiable instrument is transferred by way of negotiation, NI Act, 1881 applies.	Right to transfer by way of assignment was governed by, the Transfer of property Act, 1882.
<b>Scope</b>	Negotiation can be made for transferring negotiable instrument only.	Assignment can be made of any right.

**SIMILAR QUESTION:**

1. Point out the differences between "Transfer by negotiation" and "Transfer by assignment" under the provisions of the NI Act, 1881.
- A. Refer above answer.

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**Q.No.23. Define the term 'Endorsement'? Write down the essentials of valid endorsement? Write about the cancellation of endorsement? (A) (SM)**

### MEANING:

As per sec 15 of the NI Act, 1881, "when the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation,

- on the back or face thereof or
- on slip of paper annexed thereto, or
- so signs for the same purpose a stamped paper

intended to be completed as negotiable instrument, then it is called as an 'Endorsement'.

### PARTIES:

- The person who endorses the instrument is called 'Endorser'.
- The person to whom the instrument is endorsed is called 'Endorsee'.

### LAIBILITY OF ENDORSER [Sec.35]

Every endorser of a negotiable instrument is liable, under Section 35, to every subsequent party to it provided due notice of dishonour is given to or received by him.

**CANCELLATION OF ENDORSEMENT [SEC.40]:** Where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if it had been paid at maturity.

### SIMILAR QUESTIONS:

1. **What do you mean by an Endorsement? Briefly explain the types of an endorsement. (PM)**
  - A. Refer the above answer for definition and Q.No. 24 for types of endorsement.
2. **When and who can cancel an endorsement specified under the NI Act, 1881.**
3. **Write about "Allonge"**
  - A. An 'allonge' is a slip of paper annexed to an instrument on which extra endorsements are made. Sec.15 of the NI Act, 1881, permits the use of such annexed slips for the purpose of endorsements. In fact, such a slip forms part of the instrument.

**(IMMEDIATELY REFER PRACTICAL QUESTION. NO. 38)**

**Q.No.24. Write about different types / kinds of endorsement? (A) (SM)**

### KINDS OF ENDORSEMENT:

#### 1. **Blank or General endorsement:**

Endorsement is said to be blank or general

- If the endorser signs his name only on the face or back of the instrument,
- Without writing the name of the endorsee

And the instrument becomes a bearer instrument.

#### 2. **Full or Special endorsement:** If The endorser signs his name and adds a direction to pay the amount mentioned in the instrument to, or to the order of a specified person, the endorsement is said to be in full.

**E.g.:** 'Pay Raj or order' or 'Pay to Raj'.

#### 3. **Conditional or qualified endorsement:** Such an endorsement combines an order to pay with condition. An endorser may endorse an instrument in such a way that his liability depends upon the happening of a specified event which may or may not happen.

**E.g.:** Pay to A on safe receipt of goods. - V. Chopra.

**4. Sans recourse endorsement:**

a) The holder of a bill may endorse it in such a way that he does not incur the liability of an endorser to all subsequent endorsees.

b) He can do so by adding the words 'sans recourse' (without recourse) to the endorsement.

*E.g.: 'Pay A or order without recourse to me' or 'Pay A or order sans recourse' or 'Pay A or order at his own risk'.*

*Where an endorser who excludes his liability by adding the words 'sans recourse', afterwards become the holder of the same instrument, then all intermediate endorsers are liable to him.*

**5. Sans-Frais endorsement:** An endorsement is said to be Sans-frais endorsement if the endorser endorses the instrument in such a way that 'no expenses should be incurred on account of the bill'.

*E.g.: Pay B or his order sans frais.*

**6. Facultative endorsement:** Where an endorser, by express words abandons (waives) some right under an instrument, the endorsement is called facultative endorsement.

*E.g.: 'Pay A or order, notice of dishonour waived' is a facultative endorsement.*

**SIMILAR QUESTIONS:****1. What is meant by 'Sans Recours Endorsement' of a bill of exchange? How does it differ from 'Sans Frais Endorsement'? (PM, M15 - 4M)**

A. Refer above point 6 for Sans Recourse Endorsement and point 7 for Sans Frais Endorsement.

**Difference:** In "Sans recourse" endorsement, any endorser can exclude personal liability by endorsing "sans recourse" i.e. without recourse. However, "Sans Frais" endorsement indicate that no expenses should be incurred on account of the bill.

**2. Explain the concept and different forms of 'Restrictive & Qualified endorsement'. (PM, N15 – 4M)**

A. Refer above points 4 and 5.

**(IMMEDIATELY REFER PRACTICAL QUESTION. NO.35)**

**Q.No.25. Write about the conversion of endorsement in blank to endorsement in full? (A)**

**(SM)**

**CONVERSION OF ENDORSEMENT IN BLANK INTO ENDORSEMENT IN FULL (SEC.49):**

The holder of a negotiable instrument endorsed in blank may,

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

**Advantage:** The holder, though he transfers the instrument, does not incur the responsibility of an endorser.

*E.g.: A is the holder of a bill endorsed by B in blank. A writes over B's signature, the word 'Pay to C or order'. A is not liable as an endorser but such writing operates as an endorsement in full from B to C.*

**Q.No.26. What is the effect of endorsement? (A)**

**(SM)**

**EFFECT OF ENDORSEMENT (SEC. 50):**

1. The endorsement of an instrument, followed by delivery, transfers to the endorsee the property in the instrument with the right of further negotiation. (i.e. the endorsee may endorse it to some other person).
2. The endorsement may also contain express terms making it restrictive. The effect of restrictive endorsement is



- a) to prohibit or exclude the right of further negotiation, or
  - b) to constitute the endorsee an agent to endorse the instrument; or
  - c) to entitle the endorsee to receive the contents of the instrument for the endorser or for some other specified person.
3. A restrictive endorsement gives the endorsee:
- a) the right to receive payment of the instrument;
  - b) the same rights of action against any other party to the instrument as the endorser had;
  - c) power, under the express terms of his authority, to transfer the instruments and his right there on to another.

**EFFECT OF ENDORSEMENT FOR PART OF SUM DUE** (Section 56): An endorsement purporting to transfer only a part of the amount of instrument is invalid, and the endorsee, therefore cannot negotiate it. But when the amount due has been paid in part, a note to that effect may be endorsed on instrument and the instrument may then be negotiated for the balance.

(IMMEDIATELY REFER PRACTICAL QUESTION. NO. 36)

**Q.No.27. Define material alteration under the Negotiable Instruments Act, 1881 and give examples.**  
(A) (PM, M13 – 4M)

#### MEANING OF MATERIAL ALTERATION:

An alteration can be called a material alteration if it alters the character or operation (i.e. the legal effect) of the instrument. In other words, an alteration which effects the rights and liabilities of parties is called material alteration.

**Examples of Material Alteration:** Alteration regarding Date, Time of payment, Place of payment, Sum payable etc.

#### **Examples of Non-Material Alteration:**

- a) Conversion of instrument payable to order into instrument payable to bearer.
- b) Conversion of instrument payable to bearer into order.
- c) Elimination of the words "or" from an endorsement.
- d) Addition of the words 'on demand' to a note in which not time for payment is specified.

**MATERIAL ALTERATIONS AUTHORIZED BY NI ACT, 1881:** Following material alterations have been authorised by the Act and do not require any authentication -

- a) Filing blanks of inchoate instrument [Sec 20]
- b) Conversion of a blank endorsement into an endorsement in full [Sec 49]
- c) Crossing of cheques [Sec 125]

**EFFECT OF MATERIAL ALTERATION [SEC 87 & 88]:** An instrument which is materially altered becomes void against all persons who were parties to it at the time of alteration and did not consent to it,

Unless it was made in order to carry out the common intention of the original parties and any such alteration, if made by an endorsee, discharges his endorser from all liability to him in respect of the consideration thereof.

#### SIMILAR QUESTIONS:

1. Explain the effect of material alteration specified under the NI Act, 1881?
  2. When is an alteration in a negotiable instrument deemed to be a 'material alteration' under the NI Act, 1881? What are the consequences of such material alteration?
  3. What do you understand by "Material alteration" under the NI Act, 1881? State whether the following alterations are material alterations under the NI Act, 1881? (PM)
- A. Refer the above answer. Only (ii) and (iii) constitutes material alteration.

(IMMEDIATELY REFER PRACTICAL QUESTION NO.40,41)

**Q.No.28. Write down the legal provisions relating to 'Presentment of a bill for acceptance'? (B) (PM)**

**Meaning of Acceptance:**

- a) Only bills of exchange requires acceptance. Promissory note and Cheques does not require acceptance.
- b) A bill is said to be accepted when the drawee, after putting his signature on it, either delivers it or gives notice of such acceptance to the holder of the bill or to some person on his behalf.
- c) After the drawee has accepted the bill he is known as the acceptor

**THE ESSENTIALS OF A VALID ACCEPTANCE ARE AS FOLLOWS:**

1. **Acceptance must be written:** The drawee may use any words to convey his assent (i.e, acceptance). An oral acceptance is not valid in law.
2. **Acceptance must be signed:** A mere signature would be sufficient. Alternatively, the words 'accepted' may be written across the face of the bill with a signature below. It may be sufficient acceptance even if just signatures are put without additional words.
3. **Acceptance must be on the bill:** Normally, the acceptance is written on the face of the bill. But it is not necessary; an acceptance written on the back of a bill is also valid.
4. **Acceptance must be completed by delivery:** Acceptance would not be complete and the Drawee would not be bound until the Drawee has either actually delivered the accepted bill to the holder or tendered notice of such acceptance to the holder of the bill or some other person
5. **Where a bill is drawn in sets,** the acceptance should be put on one part only. Where the drawee signs his acceptance on two or more parts, he may become liable on each of them separately.
6. **Acceptance may be either general or qualified.** By a general acceptance, the acceptor assents without qualification to the order of the drawer. The acceptance of a bill is said to be qualified, when the drawee attaches some conditions or qualifications to his acceptance.

As a general rule, acceptance must be general acceptance and therefore, the holder is at liberty to refuse to take a qualified acceptance.

**Q.No.29. What is Qualified Acceptance. When an Acceptance is said to be Qualified Acceptance'? (B) (PM)**

- i) An acceptance is qualified where it is given subject to some condition or qualification.
- ii) The holder of a bill is entitled to require an absolute and unconditional acceptance.
- iii) If the bill is not accepted unconditionally, the holder may refuse to take qualified acceptance. In such as case, he can treat the bill as dishonoured by non-acceptance.
- iv) If the holder agrees to qualified acceptance, all the prior parties will be discharged, unless the holder obtains their consent.

***As per the explanation of Sec. 86 of the NI Act, an acceptance to be treated as qualified:***

1. Where it is conditional, declaring the payment to be dependent on the happening of an event therein stated,  
*E.g.:* "accepted payable when a cargo consigned to me is sold"
2. When it is partial i.e., when it undertakes to pay part only of the sum ordered to be paid by the drawer,  
*E.g.:* A bill drawn for 5,000 but "accepted for 4,000 only".
3. When it is qualified as to locality, i.e., when it is to pay only at a particular place, or to pay at a place different from the place mentioned in the instrument, and there only.
  - a) When no place of payment being specified on the order, if the acceptance makes the money payable at a particular place, it is treated as a general acceptance;

b) But where, it expressly states that the bill will be paid at the place noted in the acceptance and not otherwise or elsewhere, it amounts to a conditional acceptance.

**E.g.:** "accepted payable at the Diwala Bank". This is general acceptance, whereas "acceptance payable at the Diwala Bank and not elsewhere" is an instance of qualified acceptance.

4. Where it undertakes the payment at a time other than that at which under the order it would be legally due

**E.g.:** A bill drawn "payable three months after date" is accepted as "accepted, payable six months after date."

**PRESENTMENT FOR ACCEPTANCE TO WHOM (OR) WHO CAN BE ACCEPTORS:** The following persons can be acceptors:

- Drawee or
- All or some of the several drawees (When the bill is addressed to more than one drawee) or
- Drawee in case of need or
- All drawees, if there are several drawees, unless they are partners or agents of one another or
- Duly authorised agent of the drawee or
- If drawee has died, his legal representative or
- Official Receiver or Assignee, if drawee has been declared an insolvent.

**When:**

- If time for presentment of acceptance is specified in the bill, it must be presented within that time and before its maturity.
- Where presentment for acceptance is not obligatory, it may be presented at any time before payment. (i.e. within reasonable time)

**Where:**

- The bill should be presented at the place which is specified for presentment.
- If no place for presentment is specified, the bill should be presented at the drawee's place of business or residence.
- The holder must allow the drawee 48 hours (exclusive of public holidays) to consider the matter.
- He can't extend this time period as these are specified by the Act.

**Effect of non-presentment:** When the holder of a bill fails to present it for acceptance where it is obligatory, the drawer and all endorsers are discharged from liability to him.

**When presentment for acceptance is excused:**

(RTP - M16)

- The drawee cannot be found after reasonable search. (Sec.61)
- The drawee is a fictitious person or one incapable of contracting. (Sec.91)

**SIMILAR QUESTIONS:**

- What are the essential elements of a 'valid acceptance' of a bill of exchange? (PM)
  - under the provisions of the NI Act, 1881, examine the validity of the given case: (PM)  
'A bill of exchange originally drawn by M for a sum of Rs.10,000 but accepted by R only for Rs.7000.'
- A. Since it is a qualified acceptance, the drawer may treat it as dishonoured unless agreed by him. If the Drawer (M) agrees to acceptance, the drawee (R) is responsible for a sum of Rs.7000 only.

(IMMEDIATELY REFER PRACTICAL QUESTION NO.40, 44, 45)

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Q.No.30. Explain the following: (B)

(PM, N14 - 5M)

- 1) Drawee in case of need.
- 2) Acceptor for honour.

**1. DRAWEE IN CASE OF NEED (SEC.7):**

- a) When in the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need".
- b) As per sec 115, the bill will not consider to be dishonoured until it has been dishonoured by such drawee in case of need.

Thus, it is obligatory on the holder to present the bill to such drawee and non-presentment of the bill to such drawee discharges the drawer from liability.

**2. ACCEPTOR FOR HONOUR (SEC. 108):**

- a) If a bill has been dishonored by non-acceptance and has been duly noted or protested for such dishonour, any person, before it is overdue, who is not a party already liable under the bill may, with the consent of the holder of the bill, accept the bill for the honor of any of the parties liable on it.
- b) The object of such an acceptance for honor is to protect the party liable on the bill, and to prevent legal proceedings being taken against him.

Q.No.31. Write down the legal provisions relating to presentment for payment? (B)

(SM)

**PRESENTMENT FOR PAYMENT (SEC 64):**

1. Promissory notes, bills of exchange and cheques must be presented for payment
  - to the maker, acceptor or drawee thereof respectively,
  - by or on behalf of the holder.
2. Presentment may be made through post if it is authorised by agreement between the parties.
3. If default of presentment, the other parties to the instrument (i.e., other than maker, acceptor or drawee) are not liable to such holder.

**PRESENTMENT FOR PAYMENT NOT NECESSARY (SEC. 76):**

1. The instrument is payable at the place of business and such place is closed on due date during usual business hours. In such a case the presumption (*assumption*) is that person liable to pay wants to avoid payment.
2. The instrument is payable at a specified place and neither the maker, acceptor or drawee, nor any other person authorised to pay it, is present, during the usual business hours.
3. The instrument is not payable at a specified place, and the payer cannot be found even after due search.
4. Presentment for payment is waived either before or after maturity.
5. The bill is dishonoured by non-acceptance.
6. The drawee is fictitious person or the one incompetent to contract. E.g.: Minor.

In all these cases, instrument is deemed to be dishonoured on the due date for presentment.

**RULES REGARDING PRESENTMENT FOR PAYMENT:****1. By whom and to whom presentment is to be made:**

- a) Presentment is to be made either by the holder or by somebody on behalf of the holder.
- b) *Promissory notes, bills of exchange, cheques are to be presented to the maker, acceptor and drawee respectively.*
- c) Instrument may be presented to the duly authorised agent of the drawee, maker, or acceptor, as the case may be. However,



- If he died, it may be presented to his representative or
- If he has been declared as insolvent, it may be presented to his assignee.

## 2. Time of presentment:

- a) **General:** Presentment should be made during the usual business hours. (Sec. 65)
- b) **Specific period:** If the bill is made payable at a specified period after date or sight, it must be presented for payment on third day of grace days. (Sec. 66)  
  
Even little bit of delay discharges all prior parties other than those primarily liable. However, such delay in presentment for payment is excused only, if it is caused by circumstances beyond the control of the holder
- c) **On demand:** If the bill is payable on demand, it must be presented for payment within a reasonable time after its receipt by the holder. (Sec. 74)
- d) **Installments:** A note payable by installments must be presented for payment on the third day after the date fixed for payment of each installment. If any installment is not paid on such presentment, it has the same effect as non-payment of a note at maturity.

## 3. Place of presentment:

- a) At the place of payment specified in the instrument,
- b) If no place is specified, at the place of business (if any), or at the usual residence of the maker, drawee or acceptor as the case may be.
- c) In any other case (i.e., when the maker, drawee or acceptor has no known place of business or fixed residence and no place is specified in the instrument) wherever the maker, drawee or acceptor can be found.

## SIMILAR QUESTION:

1. What is meant by 'Presentment for payment' of a bill of exchange under the NI Act, 1881? When a bill of exchange presented for payment? State the circumstances when is the presentment not necessary.
- A. Refer the above answer.

**Q.No.32. Briefly explain the circumstances of dishonour of a Negotiable Instrument? (B)**  
(SM) (For Student self-study)

A bill may be dishonored either by non-acceptance or by non-payment.

**DISHONOUR BY NON-ACCEPTANCE (SEC.91):** A dishonour by non-acceptance may take place in any one of the following circumstances:

- a) If the drawee does not accept the bill within 48 hours from the time of presentment;
- b) If the drawee refuses to accept the bill
- c) When one of several drawees, not being partners, makes default in acceptance;
- d) When presentment for acceptance is excused, and the bill remains unaccepted;
- e) When the drawee is incompetent to contract;

**DISHONOUR BY NON-PAYMENT (SEC.92):** An instrument is said to be dishonoured by non-payment in any one of the following circumstances:

- a) When the party primarily liable makes default in payment. (i.e. the maker of the note or acceptor of the bill or drawee of the cheque).
- b) When presentment for payment is excused and the instrument remains unpaid on the due date. (Sec.76)

**Q.No.33. Distinguish between dishonour by non-acceptance and by non-payment under the NI Act, 1881? (B)**

**DISTINCTION BETWEEN DISHONOUR BY “NON-ACCEPTANCE” AND “BY NON-PAYMENT”:**

- a) If a bill is dishonoured by non-acceptance, there is no right of action against the drawee as he is not a party to the bill.  
i.e. The holder of the bill can proceed only against the drawer or endorser, if any.
- b) On dishonour by non-payment the drawee can be sued.

**Q.No.34. Write down the legal rules regarding ‘Notice of dishonor’ under the NI Act, 1881? (A) (SM)**

**NOTICE OF DISHONOUR:** When a negotiable instrument is dishonoured either

- By non-acceptance (Sec.91) or
- By non-payment, (Sec.92) then

the holder of the instrument must give a notice of dishonor.

If he does not give this notice, except in cases when notice of dishonor may be excused, all the prior parties liable thereon are discharged from their liability.

**Notice by Whom:**

- a) **Notice by holder or any prior party:** Notice of dishonour must be given by the holder or any of the parties liable on the instrument.

Notice of dishonour to the drawer is absolutely necessary and unless and until it is given, the holder has no cause of action against him.

- b) **Transmission of notice of dishonour by party receiving it:** A party receiving notice of dishonour must, in order to render any prior party liable to him, give notice of dishonour to such prior party within a reasonable time, unless such party otherwise receives due notice (Sec. 95).

**Notice to Whom:**

- a) Notice of dishonour must be given to all the parties whom the holder wants to make liable severally or jointly. However, Notice of dishonour need not be given to -

- the acceptor of a bill of exchange or
- to the maker of a promissory note or
- the drawee of a cheque (Sec.93),

because they are the parties primarily liable upon the instrument.

- b) Notice of dishonour may be given to

- the party liable or
- his duly authorised agent or
- where he died, to his legal representative or
- where he has been declared insolvent, to his assignee.

**Form of Notice:**

- a) The notice of dishonour may be oral or written.
- b) It may be in any form but it must clearly indicate that the instrument has been dishonoured and the reason for dishonour.
- c) **Mode of service:** The notice, if written, may be given by post ~~It must be given~~ within a reasonable time
  - at the place of business or
  - in case such party has no place of business at the residence of the party.

**WHEN NOTICE OF DISHONOUR NOT NECESSARY (SEC.98):** In the following cases, notice of dishonour for acceptance or payment is not necessary:

- When it is dispensed with by an express waiver by the party entitled thereto.
- When drawer has countermanded (revoked or cancelled) payment, it is not necessary to send notice to drawer in order to charge him, as he himself has countermanded payment.
- When the party charged could not suffer damage even if notice is not given.
- When the party entitled to notice cannot be found even after due search; or
- When it is not possible to give notice because of unavoidable reasons.
- When one of the drawer's is also acceptor.
- In the case of promissory note which is not negotiable.
- When the party entitled to notice, knowing the facts, promises unconditionally, to pay the amount due on the instrument.

**SIMILAR QUESTIONS:**

- Describe the circumstances where under notice of dishonour is excused under the NI Act, 1881.
  - X, drawer of a Bill informs Y, the holder of the bill that the bill would be dishonoured on the presentment for payment. Is notice of dishonour necessary in this case? (PM)
- A. Notice of dishonour is not necessary u/s 98. Refer the above provisions.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 46)**

**Q.No.35. Explain the provisions of 'Noting' and 'Protesting' under the NI Act, 1881? (B) (PM)**

**NOTING (SEC. 99):** When a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment the holder may cause such dishonour to be noted by a notary public. Noting is done within reasonable time after dishonour.

**Contents of Noting:**

- The fact of dishonour.
- The date of dishonour.
- The reasons, assigned for such dishonour.
- The Notary charges.

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**PROTEST (SEC. 100):** When an instrument is dishonored, the holder may cause the fact not only to be noted, but also to be certified by a Notary Public that the bill has been dishonored. Such a certificate is referred to as a protest.

**Notice of Protest:** When a promissory note or a bill of exchange is required by law to be protested, notice of such protest in lieu of notice of dishonour must be given in the same manner as notice of dishonour (Section 102). Notice of protest may be given either by the holder or by the notary who makes the protest.

**Advantages of protest:**

- It gives a prima-facie evidence of dishonour to the drawer and endorers.
- In a suit upon an instrument being dishonoured, the court shall, on proof of protest, presumed to be dishonoured, unless and until such fact is not proved.

**Note:** Neither noting nor protesting is compulsory in the case of inland bills. But u/s 104, every foreign bill must be protested for dishonour, when such protest is required by law of the country where the bill was drawn.

**SIMILAR QUESTIONS:**

- What is meant by 'Noting'? State the contents of noting.
- A bill of exchange is dishonoured by the acceptor. Explain the provisions of "Noting" and "Protest" under the Negotiable Instruments Act, 1881. (PM)

3. Distinguish between 'Noting' and 'Protest' under the NI Act, 1881?
4. State with reasons whether the given statement is correct or not.

"Notary Public is a government servant".

(RTP - N13)

- A. The statement is correct. A Notary public is appointed by the CG or SG. His functions are to attest deeds, contracts and other instruments that are to be used abroad and to give a certificate of due execution of such documents. He enjoys the confidence of the business world and any certificate given by him is presumed to be true by a court of law.

**Q.No.36. State the presumptions as to negotiable instruments? (A)**

**(SM)**

**PRESUMPTION AS TO NEGOTIABLE INSTRUMENT (SEC 118):** For deciding cases in respect of rights of parties, the Court is entitled to make certain presumptions which are stated as follows:

**a) Consideration:**

- i) Every negotiable instrument was made or drawn for consideration, and that every such instrument has been accepted, endorsed, negotiated, or transferred for consideration.
- ii) *The person who challenges the instrument has to prove the absence of consideration.*

**b) Date:** Every negotiable instrument bearing a date was made or drawn on such date.

**c) Time of acceptance:** Every bill of exchange was accepted before maturity.

**d) Time of transfer:** Every transfer of negotiable instrument was made before its maturity.

**e) Order of endorsement:** The endorsements appearing upon a negotiable instrument were made in order in which they appear on it.

**f) Stamp:** That a lost promissory note or bill of exchange was duly stamped.

**g) Every holder is a holder in due course:** This is a very important presumption. Holder of a negotiable instrument is presumed to be 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 above answer.

**Q.No.37. Discuss the 'Capacity' and 'Authority' of a person to be a party to a negotiable instrument. (B)**

**(SM, M15 - 4M)**

**MEANING OF CAPACITY:**

1. Every person competent to contract has capacity to bind himself and be bound by making, drawing, accepting, endorsing, delivering and negotiating an instrument.
2. A party having such capacity may himself put his signature or authorize some other person to do so.

**Position of Minor [Sec.26]:**

A minor may draw, indorse, deliver and negotiate an instrument so as to bind all the parties except himself. A minor may be the drawer where the instrument is drawn or endorsed by him.

In that case he does not incur any liability himself although other parties to the instrument can be made liable and the holder can receive payment from any other party thereto.

**Note:** *It is the estate of a minor (not the minor as person) which is liable for debts arising out of 'necessaries' supplied to minor.*

**Agent's authority [Sec.27]:**

1. Every person, capable of incurring liability, may bind himself or be bound by a duly authorised agent acting in his name.



2. A general authority to transact business given to an agent does not empower him to accept or endorse bills of exchange so as to bind the principal.
3. An agent may have authority to draw bills of exchange. An authority to draw does not, necessarily, imply an authority to endorse.

**Liability of Agent [Sec 28]:**

1. An agent, who signs his name on an instrument without indicating that he signs as agent, is personally liable.
2. The mere signature of an agent in his own name, with the word "agent" added, does not exempt him from personal liability (*Liverpool Bank Vs Walter*).

**Examples of agent's signature:**

When an agent is personally liable	When an agent is <b>not</b> personally liable
RAM Partner Ram & Co	For and on behalf of Ram & Co Ram Partner

**Liability of legal representatives signing (Sec 29):** A 'legal representative' of a deceased person, who signs his own name on an instrument, is personally liable for the entire amount; but he may expressly limit his liability to the extent of the assets received by him as legal representative.

**SIMILAR QUESTION:**

1. **A promissory note duly executed in favour of a minor is valid?** (N10, 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 parties except himself. (Sec. 26 of the NI Act, 1881)

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 40)

**Q.No.38. When does a negotiable instrument gets discharged? (B)**

**(SM)**

The term 'Discharge' in relation to a negotiable instrument is used in two senses, viz.

- a) Discharge of the instrument, and
- b) Discharge of one or more of the parties from their liability on the instrument.

An instrument is said to be discharged when all rights of action under it are completely extinguished and when it ceases to be negotiable.

**DISCHARGE OF INSTRUMENT:**

1. **Payment made in due course:** The instrument is discharged by payment made in due course by the party who is primarily liable to pay.
2. **Primarily liable becoming holder:** If the maker of a note or the acceptor of a bill becomes its holder at or after its maturity, the instrument gets discharged.
3. **By express waiver:**
  - a) When the holder of a negotiable instrument at or after its maturity absolutely and unconditionally renounces in writing or gives up his rights against all the parties to the instrument, the instrument is discharged.
4. **By cancellation:** Where an instrument is intentionally cancelled by the holder or his agent and the cancellation is apparent thereon, the instrument is discharged.
5. **By discharge as a simple contract:** Discharge of an instrument by novation or rescission or by expiry of period of limitation.

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Q.No.39. When do the parties to a negotiable instrument get discharged? (A)

(SM)

**A PARTY OR PARTIES TO A NEGOTIABLE INSTRUMENT IS/ARE DISCHARGED IN ANY ONE OF THE FOLLOWING WAYS:**

1. **By payment in due course:** When payment is made by any party liable on the instrument, such a party and all parties subsequent to him are discharged.
2. **By cancellation of acceptors or endorsers name:** When the holder of a negotiable instrument or his agent cancels the name of a party on the instrument with an intention to discharge him, such party and all subsequent parties, who have a right against the party whose name is cancelled, are discharged from liability to the holder.
3. **By allowing drawee more than 48 hours:** If the holder of a bill of exchange allows the drawee more than 48 hours (exclusive of public holidays), to consider whether he will accept the same, all previous parties not consenting to such allowance are discharged from liability to such holder.
4. **By non-presentment of cheque:** When the holder does not present the cheque within the reasonable time and the banker became insolvent then the drawer is discharged from his liability to the extent of such damage.
5. **Parties not consenting discharged by qualified acceptance (Sec.86):** If the holder of a bill of exchange acquiesces (agrees) to a qualified acceptance, all the previous parties whose consent is not obtained to such acceptance are discharged from liability.
6. **By operation of law:** This includes discharge
  - a) By an order of Insolvency Court: Discharges the insolvent.
  - b) By merger: When a judgment is obtained against the acceptor, maker or endorser, the debt under the bill is merged into the judgment debt.
  - c) By lapse of time: i.e., when the remedy becomes time-barred.
7. **By material alteration:** A material alteration of a negotiable instrument makes the instrument void against all prior parties unless they have consented to such alteration.

Q.No.40. How do you distinguish between 'Discharge of instrument' and 'Discharge of party' under the Negotiable Instruments Act, 1881? (B) (PM) (For Students Self-Study)

- a) An instrument is said to be discharged only when the party who is ultimately liable thereon is discharged from liability. Therefore, discharge of any other party to an instrument does not discharge the instrument itself. Consequently, the holder in due course may proceed against the other parties liable for the instrument. E.g., the endorser of a bill may be discharged from his liability, but even then acceptor may be proceeded against.
- b) On the other hand, when a bill has been discharged by payment, all rights there under are extinguished even a holder in due course cannot claim any amount under the bill.

Q.No.41. State, in brief, the grounds / circumstances on the basis of which a banker can dishonour a cheque under the provisions of the NI Act, 1881. (A) (PM, N11, N13 - 8M)

**CASES IN WHICH A BANKER JUSTIFIED / BOUND TO DISHONOUR A CUSTOMER'S CHEQUE:**

A banker will be justified or bound to dishonour a cheque in the following cases:

1. If there is no sufficient balance in the account of the drawer.
2. If a cheque is undated.
3. If it is stale cheque, i.e. if it has not been presented within reasonable period, which is 3 months from the date of issue (*or a lesser period as prescribed by the drawer*).
4. If the instrument is inchoate or not free from reasonable doubt.
5. If the cheque is post-dated and presented for payment before its ostensible date.

**Note:** *Ostensible date means the date appearing on it.*

6. If the customer's funds in the banker's hands are not 'properly applicable' to the payment of cheque drawn.
7. If the customer has credit with one branch of a bank and he draws a cheque upon another branch of the same bank in which he has account.
8. If the bankers receive notice of customer's insolvency or lunacy.
9. If the customer countermands the payment of cheque. In this case the banker's duty and authority to pay on a cheque ceases.
10. If a garnishee (attachment order) or other legal order from the Court attaching or otherwise dealing with the money in the hand of the banker, is served on the banker.
11. If the authority of the banker to honour a cheque of his customer is undermined by the notice of the latter's death. However, any payment made prior to the receipt of the notice of death is valid
12. If notice in respect of closure of the account is served by either party on the other
13. If it contains material alterations, irregular signature or irregular endorsement.

#### **SIMILAR QUESTIONS:**

1. **State the cases in which a banker is justified or bound to dishonour cheques.**
2. **State the circumstances under which the banker refuses payment on his customer's cheques?**
3. **State the grounds, on the basis of which a cheque may be dishonoured by a banker, inspite of the fact that there is sufficient amount in the account of the drawer.**
4. **PQR Ltd received a cheque for Rs. 50,000 from the customer Mr. LML. After a week, company came to know that the proceeds were not credited to the account of PQR Ltd. due to some 'defects', as informed by the banker. What according to you are the possible defects?**
  - A. Refer above answer.
5. **What is a stale cheque?**
  - A. **Stale cheque:** A cheque does not remain valid for an indefinite period of time. In India, payment on a cheque can be claimed within a period of 3 months from the date it bears. If the payment is not claimed within the above specified period, it becomes a stale cheque.

**Q.No.42. What are the consequences of a cheque being dishonoured for insufficiency of funds in the account. (A)** **(PM, N11, N13 - 8M)**

Where any cheque drawn by a person, on an account maintained by him, is dishonored due to insufficiency of funds, he shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to twice the amount of the cheque or with both [Sec.138].

#### **Conditions for attracting liability**

- a) cheque should have been presented to the bank within a period of 3 months of the date of drawn or within the period of its validity, whichever is earlier.
- b) The payee or holder in due course of such cheque had made a demand in writing for the payment of the said amount of money from the drawer within 30 days of the receipt of information by him from the bank regarding the return of the cheque unpaid; and
- c) The drawer of the cheque had failed to pay the money to the payee or holder in due course of the cheque within 15 days for the written demand for payment.

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**Q.43. What are the penalties prescribed under the NI Act, 1881 in case of dishonour of a cheque for insufficiency of funds in the account of the person issuing the cheque? (Or) Bouncing of cheques. (A) (SM)**

**CONDITIONS FOR CONSTITUTING AN OFFENCE U/S 138 OF THE NI ACT, 1881:**

1. The cheque should have been issued by the drawer to the payee in the discharge of (wholly or partly) any legally enforceable debt or other liability.
2. The cheque should have been presented by the payee to the banker within the period of its validity.  
*Note: The validity period is 3 months from the date of issue of a cheque, but if some validity period (less than 3 months) is specified on the cheque, that period is considered as validity period.*
3. The cheque should have been returned by the bank unpaid, because
  - a) the amount of money standing to the credit of the account is insufficient; or
  - b) when the payment is countermanded by drawer; or
  - c) if the account is closed.
4. If a cheque is dishonoured, even when presented before expiry of 3 months, the payee or holder in due course is required to give notice to drawer of cheque within 30 days from receiving information from bank.
5. The drawer should make payment within 15 days of receipt of notice. If he does not pay within 15 days, the payee can file a suit against drawer within 1 month from the last day on which drawer should have paid the amount.

**PENALTY:**

- a) The penalty can be
  - i) upto 2 years imprisonment or
  - ii) fine upto twice the amount of cheque or
  - iii) both.
- b) It must be noted that even if penalty is imposed on drawer, he is still liable to make payment of the cheque which was dishonoured.

**CHEQUE CANNOT BE PRESENTED AGAIN AFTER ISSUE OF NOTICE:**

- i) A cheque can be presented any number of times during its validity period by the payee.
- ii) At each presentation and its dishonour, a fresh right accrues in favour of the person to whom cheque is issued.
- iii) However, once he gives notice to the drawer, he forfeits his right to present cheque again.
- iv) Holder / payee of a cheque cannot initiate prosecution for an offence u/s 138 for its dishonour for the second time, if he had not initiated such prosecution on the earlier case of action.

**SIMILAR QUESTION:**

1. What are the consequences of a 'Cheque being dishonoured for insufficiency of funds' in the account? (PM)
  2. State the circumstances under which the drawer of a cheque will be liable for an offence relating to dishonour of the cheque under the NI Act, 1881.
  3. State the penalty to be borne by the person found to be guilty of dishonour of a cheque for insufficiency of funds in the accounts. (RTP - N12)
- A. Refer above answer.

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 51, 52, 53, 54)

**Q.No.44. Who will exercise jurisdiction for filing of complaints u/s 138 of the NI Act, 1881 as amended by the Negotiable Instruments (Amendment) Act, 2015. Explain? (A) (RTP - N16)**

As per sec 142 (2) of the NI Act, 1881, the offence u/s 138, which deals with the dishonour of cheque, shall be inquired into and tried only by a court within whose local jurisdiction, -

- i) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or
- ii) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the Account, is situated.

**Note:** For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

**Q.No.45. What is the extent of liability of / to the company and the person(s) incharge of the company in respect of an offence for dishonour of cheques? (C) (PM)**

As per Sec.141, In case where a company committed an offence u/s 138, then

- a) Not only the company, but also every person who at the time when the offence was committed, was in charge of and was responsible to the company, shall be
  - deemed to be guilty of the offence and
  - liable to be proceeded against under those provisions.
- b) The person will not be liable for punishment, if he proves that the offence was committed without his knowledge or he had exercised all due diligence to prevent the commission of such offence.

**SIMILAR QUESTION:**

1. Where an owner of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently the cheque was dishonoured and the complaint was lodged against him. Is he liable for an offence u/s 138?

A. No. Because he is not incharge of the affairs of the company. Refer above answer.

**(IMMEDIATELY REFER PRACTICAL QUESTION NO. 55, 56, 57)**

**Q.No. 46. What is "Negotiation back" with respect to a negotiable instrument? (B) (SM)**

**NEGOTIATION BACK:** An instrument is said to have been negotiated back to him and he is said to have taken up or taken back the negotiable instrument when a person who has been a party to the negotiable instrument takes it again.

For example, suppose that the endorsements on a negotiable instrument are as under:

P

A

B

X

Y

A

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- Here A is person who is a prior party to the instrument. He negotiated it to B, B to X, X to Y and Y again to A. On account of this last endorsement, A should have right to claim money from X, Y and B, because the rule is that every prior party is liable to every subsequent party.
- Due to the last endorsement, A will get rights to claim money from Y or X or B or all the three. However, Y or X or B in turn can sue A because of A's prior endorsement. This will lead to a circuitry of action.



- This rule is made to prevent multiplicity of actions and it is an exception to the general rule that a holder in due course can sue all prior parties.
- Thus A, in the above case cannot sue Y, X or B. But A can sue P since the latter is prior to A's original endorsement.
- If however A, in original endorsement, had signed "sans recourse" there could be no circuity of action and A could sue Y, X or B.

**Q.N.o.47. Write about International Law regarding Negotiable Instrument? (For Student Self Study)**

In the absence of a contract to the contrary (*i.e.*, unless the parties otherwise agree):

- The liability of the maker or drawer of a foreign promissory note, bill of exchange or cherub is governed in all essential matters by the law of the place where he made the instrument.
- The liability of the acceptor and endorser will be governed by the law of the place where the instrument is made payable (Section 134).
- For *example*, if a bill of exchange was drawn by A in California where the rate of interest was 25% it was accepted by B, payable in Washington, where the rate of interest was 6% and the bill was endorsed in India and was dishonored.

On an action on the bill being brought against B in India, B would be liable to pay interest @ 6% only; but if A was charged as drawer, A would be liable to pay interest @ 25%.

**Q.No.48. What is meant by payment in due course? (B) (SM) (For Student Self Study)**

**DEFINITION:** As per sec.10 of the NI Act, 1881, 'Payment in due course' means -

- payment in accordance with the apparent tenor of the instrument
- in good faith and without negligence
- to any person in possession thereof
- under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount mentioned therein.

**Analysis of sec.10 reveals that the following conditions must be satisfied before payment of a negotiable instrument can be called as a payment in due course:**

1. Payment must be in accordance with the apparent tenor of the instrument. Thus, a payment before maturity is not payment in due course.
2. Payment must be in good faith and without negligence.
3. Payment must be made to the person in possession of the instrument *i.e.* a person entitled to receive payment. For example, a thief is not said to be in possession of the instrument.
4. Payment must be made under circumstances which do not afford a reasonable ground for belief that he is not entitled to receive payment of the amount mentioned therein.
5. Payment must be made in money only.

**Note:** Money includes bank notes or currency notes but does not include cheque, bill of exchange, promissory note and goods.

**Q.No.49. Discuss the effects of forgery of a negotiable instrument under the NI Act, 1881? (B) (For Student Self Study)**

**MEANING OF FORGED ENDORSEMENT:** 'Forged signature' means imitating signature of another. Forgery is an offence under the Indian penal code.

**EFFECTS OF FORGERY:****1. In making of a negotiable instrument:**

- a) If the signature of the Maker of note, drawer of cheque, acceptor or drawer of a bill is forged, the true owner is entitled to get back the payment from the person who obtained illegally. (except in case of a paying banker)
- b) Even a bonafide Holder in due course cannot claim any protection because forgery amounts to nullity.

**2. In case of Full Endorsement of a negotiable instrument:**

- a) Title cannot be based upon a forged indorsement.
- b) Any person who claims under a forged indorsement will not be able to make out a good title.

**Example:** Where there is an indorsement in favour of K, can further negotiate it. A forged signature of K will not give title to the Holder.

**3. In case of Blank Indorsement of a negotiable instrument:**

- a) The Negotiable instrument is negotiated by mere delivery.
- b) When a Holder forges the signature of a holder and transfers it, the Transferee may ignore the forged endorsement and rely upon a prior endorsement in blank. He can make a good title through an earlier genuine endorsement in blank.

**Example:** A bill of exchange indorsed in favour of G or his order, G indorses it in bank. It reaches J's hands, who passes it on to K by mere delivery. However, K forges J's indorsement and transfers it to L. L does not derive any title through the forged indorsement of J' but through G's indorsement which is genuine, he can sue any of the parties to the bill without taking notice of the forged indorsement.

**Note:** Paying banker is discharged when payment is made as per apparent tenor u/s 10 payments in due course. Where the drawer's signature is forged it amounts to nullity, and the banker is not discharged from the liability.

**Q.No.50. What is meant by 'Dishonour by non-acceptance' and explain its circumstances. (B)**  
(For Student Self Study)

**DISHONOUR BY NON-ACCEPTANCE (SEC.91):** A bill is dishonoured by non-acceptance if it is duly presented for acceptance, but the bill is not accepted.

**A bill of exchange is dishonoured by non-acceptance in any one of the following ways:**

- a) If the drawee does not accept the bill within 48 hours from the time of presentment;
- b) When one of several drawees, not being partners, makes default in acceptance;
- c) When presentment for acceptance is excused, and the bill remains unaccepted;
- d) When the drawee is incompetent to contract;
- e) When the drawee gives a qualified acceptance;
- f) When the drawee is a fictitious person or
- g) When the drawee can't be found after reasonable search.

**Note:** If a 'drawee in case of need' is mentioned in a bill, the bill is not deemed to be dishonoured unless it is dishonoured by such 'drawee in case of need' also.

**SIMILAR QUESTIONS:**

1. When a bill of exchange may be dishonoured by 'Non-acceptance' and 'Non-payment' under the provisions of the NI Act, 1881.
  2. Briefly explain the circumstances of 'Dishonour of a Negotiable instrument'. (PM)
- A. Refer above answer and Q.No.32.

**Q.No.51. State the liability of a banker for wrongful dishonour of a cheque? (A)**  
(SM) (For Student Self Study)

1. Sometimes it may happen that a banker declines payment of a cheque without having valid grounds for doing so,

*Ex: Refusing payment for insufficient funds while there are sufficient funds in the customer's A/c.*

2. In such cases, the banker is liable for the wrongful dishonour of the cheque.

**Liability towards the drawer of the cheque:**

1. When a banker wrongfully dishonors a cheque, he is in breach of contract with its customer, and is liable to pay damages to him.
2. The drawer of a cheque may suffer from loss of reputation because of dishonour of his cheque.
3. In such a case, even if the drawer does not suffer any monetary loss, loss of reputation can be measured as a great damage. The principle is that "Smaller the amount of the cheque dishonoured, greater is the loss suffered by the drawer".

**Liability towards the payee (or holder) of the cheque:**

1. In the usual course, the banker is liable to the drawer of the cheque (drawer being his customer), and not to the payee in case of wrongful dishonour, since there is no privity of contract between the banker and the holder.
2. But there are 2 cases when a holder can take action against the banker. These are:
  - a) Where a banker pays a generally crossed cheque over the counter of the bank, or a specially crossed cheque otherwise than to the banker to whom it is crossed (i.e., payment out of due course).
  - b) Where the holder does not present the cheque with the banker within a reasonable time, and The bank fails in the meantime (Sec.84).

The holder of the cheque can directly prove his debt against the banker in its insolvency proceedings. Here the drawer stands discharged as against the holder.

**SIMILAR QUESTION:**

1. "Smaller the amount of the cheque dishonoured, greater is the loss suffered by the drawer". Comment?
- A. Refer above answer.

**QUESTIONS FOR ACADEMIC INTERST**

**Q.No.52. Write down the legal provisions relating to presentment for sight? (C)**

**PRESENTMENT FOR SIGHT [SEC.62]:**

1. In case of promissory note, there is no question of acceptance because the maker himself is the person primarily liable on it.
2. But in case of note payable at a certain period after sight, presentment to the maker is compulsory in order to fix its maturity.
3. If the maker cannot be found after reasonable search, presentment is excused and the instrument may be treated as dishonoured.
4. The presentment should be made during business hours on business day. In default of such presentment, no party thereto is liable thereon to the person making such default.



Q.No.53. Write about "Acceptor for honour". (C)

(SM)

**ACCEPTOR FOR HONOUR [SEC. 108]:**

**Meaning:** The person who accepts the bill for the honour of any other person is called as an 'Acceptor for honour'.

**Conditions:**

- a) The bill must have been noted / protested for non-acceptance or better security.
- b) The acceptance is given with the consent of the holder of the bill.
- c) The acceptance is given by who is not already liable under the bill.
- d) The acceptance is given for the honour of any party already liable under the bill.
- e) The acceptance must be made in writing on the bill.

**Liability:** He is liable to pay the amount of the bill, if the drawee does not pay on maturity. He is liable only to the parties subsequent to the party for whose honour the bill is accepted.

**Rights:** He is entitled to recover the amount paid by him from the party for whose honour the bill was accepted and from all the parties prior to such party.

**Q.No.54. What is meant by 'Payment for Honour' in respect of a Bill of Exchange? When can the 'Payment for Honour' be made? What are the rights of the 'Payer for Honour'? (C) (PM)**

**PAYMENT FOR HONOUR:** It means a payment which is made by any person for the honour of any party liable on the bill after it has been protested for non-payment.

**The following conditions are essential for the payment of honour:**

1. The bill must have been noted or protested for non-payment.
2. The person paying or his agent declares before Notary Public the party for whose honour he pays.
3. Such declaration must have been recorded by the Notary Public.
4. Payment must be made for the honour of any party liable on the bill or not. (Sec.113)

**Right of the payer for honour / Effect of Payment for Honour [Sec 114]:**

- a) All parties subsequent to the party for whose honor it is paid are discharged.
- b) The payer for honor acquires all the rights of a person who is a holder at the time of such payment in respect of the bill at the time of such payment.
- c) He can recover all sums paid by him with interest thereon and all expenses properly incurred in making such payment.

**Q.No.55. What is the protection given to a "Collecting banker" of a crossed cheque on behalf of a customer under the Negotiable Instruments Act, 1881? (C)**

As per sec.131, a banker who in good faith but without negligence receives payment for a customer of a cheque crossed generally or specially to himself, shall not, in the event of the title of the customer to the cheque proving to be defective, incur any liability to the true owner of the cheque for having received such payment.

This section provides protection to a collecting banker of a crossed cheque on behalf of the customer and is available to bank only if it acts in good faith but without negligence.

**Given below are a few illustrations of circumstances in which a banker has been deemed to have complied with these conditions:**

1. That the collecting banker has acted in good faith and without negligence.
2. That the collecting banker has received payment of the crossed cheque for a customer.

3. That the collecting banker acts only to receive payment of the crossed cheque for customer. The section will be restricted to a case where the banker is acting as an agent for collection but not to a case where the banker is himself the holder.
4. That the payment has been received only for a crossed cheque, and that crossing had been made before the cheque fell into the hands of the collecting bankers.

If the aforementioned conditions do not co-exist, this protection would be denied to the collecting banker. The protection can be claimed by the collecting banker even when he credited his customer's A/c with the amount of the cheque before receiving payment thereof. The protection is also available in respect of any draft as defined in sec. 85A.

### PRACTICAL QUESTIONS

- Q.No.1.** State whether the following statements are promissory notes or not? (PM)
- a. X promises to pay Y, by a promissory note, a sum of Rs.5,000, 15 days after the death of B.
  - b. X promises to pay Y, by a promissory note, Rs.5,000 and all other sums, which shall be due.
  - c. I owe you a sum of ` 1,000. 'A' tells 'B'.
  - d. 'X' promises to pay 'Y' a sum of ` 10,000, six months after 'Y's marriage with 'Z'
  - e. "I promise to pay B or order Rs.500".
  - f. "I acknowledge myself to be indebted to B in Rs.1,000 to be paid on demand, for value received".
  - g. Mr. B said, "I owe you Rs.500".
  - h. "I am liable to B, in a sum of Rs.500 to be paid by installments.
  - i. "I am bound to pay the sum of Rs.500 which I received from you."
  - j. "I promise to pay B Rs.500 and all other sums which shall be due to him". (RTP - M13)
  - k. "I promise to pay B Rs.1,000 and the fine according to the rules".
  - l. "I promise to pay B Rs.500, first deducting there out any money which he may owe me".
  - m. "I promise to pay B Rs.500 by installments with a provision that no payment shall be made after my death".
  - n. "I promise to pay B a sum of Rs.500 when convenient or able".
  - o. "I promise to pay B Rs. 500 when he delivers the goods".
  - p. "I promise to pay B Rs. 500 seven days after my marriage with C".
  - q. "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum".
  - r. "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next"
  - s. "I promise to pay B Rs. 200 and deliver one quintal of paddy".
  - t. "I promise to pay B in 20 shares and 10 bonds of XY Ltd".
  - u. "I promise to deliver to B 100 bags of wheat".
  - v. "I promise to pay ` 5,000 or 7,000 to Mr. Ram."
  - w. "I promise to pay to Mohan ` 500, if he secures 60% marks in the examination".
  - x. "I promise to pay ` 3,000 to Ravi after 15 days of the death of A." (RTP - M13)
  - y. A promises by way of Promissory note to pay B, his partner, a sum of Rs.1,00,000 in the event of the latter's son being appointed in the partnership firm.
  - z. A Promissory note containing an undertaking to pay the amount 2% above "Bank rate"
  - aa. Undated promissory note. (For students self-study)

- 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) It is not a promissory note, since there is probability that Y may not marry.
- e) Yes - since it is an absolute promise to pay a specific sum of money to a specific person or his order.
- f) Yes – The maker is acknowledging his debt and also promises to pay for the value received.

- g) No - It is a mere acknowledgement of debt and there is no specific promise to pay the sum.
- h) No - It is a mere acknowledgement of debt and there is no specific promise to pay the sum.
- i) No – In this case drawer is agreeing that he is bound to pay. But he is promising to pay the sum.
- j) No – The amount is uncertain. (In commercial transactions the amount should be certain.)
- k) No – same as above.
- l) No – same as above.
- m) 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.
- n) 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.
- o) 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.
- p) No – Negotiable instruments can be drawn to be payable on the basis of some future certain event. But marriage with C is an uncertain event. Maker may never marry C.
- q) 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.
- r) No – A negotiable instrument must be drawn for money and money only. In this case it is written for partly cash and partly kind.
- s) No – same as above.
- t) No – same as above.
- u) No – Same as above.
- v) No – Amount is not certain.
- w) No - it is conditional
- x) Yes - because death of A is a certainty even if time of death is not certain.
- y) Invalid PN - it is conditional and also the admission of son of B in the firm is not a certain event.
- z) Valid PN - Because there is only one bank rate at any given point of time. There is certainty of amount.
- aa) Valid PN – Since it is presumed on the date of its delivery.

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**Q.No.2.** Mr. X executes a promissory note in the following form, 'I promise to pay a sum of Rs.10,000 after 3 months'. Decide whether the promissory note is a valid promissory note.

In the given case, the promissory note has:

- a) an unconditional promise
- b) Promise is in writing.
- c) Amount is certain.
- d) It is not dated, but dating is not a mandatory requirement.

Thus, the instrument fulfills all requirements of promissory note as per NI Act, 1881.

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

**Q.No.3.** A owes money to B. A makes a promissory note for the amount in favour of B. For safety of transmission he cuts the note in two halves and posts one half to B. He then changes his mind and calls upon B to return the half of the note which he had sent. B requires A to send the other half of the promissory note. Decide as to how the rights of the parties are to be adjusted. (PM)

**Provision and analysis:**

- The relevant question in the given situation is whether the making of the promissory note is complete when one half of the note was delivered to B.
- As per sec 46 of the NI Act, 1881, the making of a promissory note is completed by delivery, actual or constructive.
- Delivery refers to the delivery of the whole of the instrument and not merely a part of it.
- Delivery of half instrument cannot be treated as constructive delivery of the whole.

**Conclusion:**

By applying the above provisions, the claim of B to have the other half of the Promissory note sent to him is not maintainable.

Thus, A is justified in demanding the return of the first half sent by him.

**Q.No.4.** 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?

(PM, RTP - N14)

(Or)

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.

(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.5.** State with reasons whether each of the following instrument is an Ambiguous Instrument or fictitious instrument:

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

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.6.** State with reasons whether each of the following instruments is an 'Inland Instrument' or a Foreign Instrument:

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

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.7.** 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 1<sup>st</sup> 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 1<sup>st</sup> Jan. 2018

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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.8.** State with reasons whether each of the following instruments is an 'Inchoate Instrument' or not:  
(For Students Self-Study)

- 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.

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.9.** 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? (PM)

**Provision:**

- Section 36 of the Negotiable Instruments Act, 1881 says that a holder in due course has privilege to hold every prior party to a negotiable instrument liable on it until the instrument is duly satisfied.
- In other words, all prior parties are jointly and severally liable to holder-in-due course.
- Prior parties include the maker or drawer, the acceptor and endorsers.

**Analysis & Conclusion:** In the given case, E is a holder in due course. Therefore by applying the above provision he can recover the amount from all the prior parties i.e., D & C (the endorsers), B (an acceptor) and A (the drawer).

**Q.No.10.** A signs, as the maker, a blank stamped paper and gives it to B and authorises him to fill it as a note for Rs.2,000, it being the amount of advances made by B to A. B fraudulently fills it up as a note for Rs.3,000 and then, for consideration, endorses it to C. Can C enforce the instrument?

'A' signs, as maker, a blank stamped paper and gives it to 'B', and authorises him to fill it as a note for Rs.500, to secure an advance which '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, upto what extent? (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 authorised to complete it for any amount not exceeding the amount covered by the stamp.

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

But any 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.3,000 is covered by stamp amount.

**Q.No.11.** Promissory note dated 1<sup>st</sup> 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. (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 4<sup>th</sup> 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 or 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.12.** Ascertain the date of maturity of a bill payable 100 days after sight and which is presented for sight on 4<sup>th</sup> May, 2017. **(PM) (For students self-study)**

**Provision:** Sec. 23, 24 and 25 of the NI Act, 1881 relating to calculation of 'Date of Maturity'. (Refer Th.Q.No.8)

- In case of bills payable after sight, the date of maturity is calculated from the date when the bill is presented for sight.
- Due date for payment is calculated by adding 3 days of grace to the maturity date calculated as above.
- In case the date of maturity happens to be a public holiday including Sunday, the bill falls due for payment on the business day proceeding the public holiday.

**Analysis:** In the given case, the bill is made payable 100 days after sight and the same was sighted on 4<sup>th</sup> May, 2017.

100 days from 4<sup>th</sup> of May, 2017 works out to 12<sup>th</sup> of Aug, 2017. Adding 3 days of grace makes the bill due for payment on 15<sup>th</sup> of Aug, 2017 which happens to be a public holiday.

**Conclusion:** Thus, the date of maturity of the bill shall be 14<sup>th</sup> of Aug, 2017 unless the same is also a public holiday (including Sunday).

**Q.No.13.** 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 4<sup>th</sup> 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? **(PM, RTP & MTP - M15)**

**Provision:** Sec 24 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 1<sup>st</sup> January, which is to be excluded for computing due date and the Promissory Note is payable on 4<sup>th</sup> January.

Bharat paid rightly paid on 04<sup>th</sup> 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.14.** State the law as to calculation of the maturity of negotiable instrument. What will be the due dates in the following cases of the instruments: **(RTP - N13) (For Student Self - Study)**

- A bill of exchange dated 20<sup>th</sup> Nov 2016, payable 4 months after date.
- A note is made payable 60 days after sight. The note is presented for sight on 15<sup>th</sup> Apr 2017.

**Provision:** Sec. 23, 24 and 25 of the NI Act, 1881 relating to calculation of 'Date of Maturity'. (refer Th.Q.No.8)

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

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

**Q.No.15.** A cheque payable to bearer is crossed generally and is marked "not negotiable". The cheque is lost or stolen and comes into the possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which, the cheque is drawn.

- a) Can both the bankers, viz., banker paying the cheque and the banker collecting it plead exoneration from their liability?
- b) Can B be compelled to refund the money to the true owner of the cheque? (RTP – M17, MTP - N15)

**Provision and Analysis:** As per sec 130 of the NI Act, 1881, a person taking cheque crossed generally or specially bearing in the words 'Not Negotiable' can't get a better title than that of transferor. Thus, if the title of the transferor is defective, the title of the transferee will also be defective.

On the other hand both collecting banker and paying banker will be protected under the Act, provided the payment and the collection have been made in good faith and without negligence [Sec.128 & 130].

**Conclusion:**

- a) Therefore, in the given case, both paying banker and collecting banker can plead exoneration (i.e., exemption) from liability.
- b) Yes. B can be compelled to refund the money as he was not entitled to receive payment upon instrument. This is because even though B was a holder in due course he did not acquire any title to the cheque as against its true owner.

**Q.No.16.** Mr. Clever obtains fraudulently from J a cheque crossed 'Not Negotiable'. He later transfers the cheque to D, who gets the cheque encashed from ABC Bank, which is not the Drawee Bank. J, on coming to know about the fraudulent Act of Clever, sues ABC Bank for the recovery of money.

Examine with reference to the relevant provisions of the NI Act, 1881, whether J will be successful in his claim. Would your answer be still the same in case Clever does not transfer the cheque and get the cheque encashed from ABC Bank himself? (PM, RTP - M15)

(Or)

Mr. Wise obtains from Mr. Decent, a cheque crossed 'Not Negotiable' fraudulently. He later transfers the cheque to Mr. T, who gets the cheque encashed from Bank, which is not the Drawee Bank. Mr. Decent comes to know about the fraudulent act of Mr. Wise, he sues Bank for the recovery of money.

Examine with reference to the relevant provisions of the NI Act, 1881, whether Mr. Decent will be successful in his claim. Would your answer be still the same in case Mr. Wise does not transfer the cheque and gets the cheque encashed from Bank himself? (RTP - M15)

(Or)

Mr. X, by means of fraud, obtained from Y a cheque crossed 'not negotiable' and got it encashed at a bank other than the drawee bank. Y sued the bank for conversion. Is the bank liable for conversion? (RTP N12)

**Answer as per ICAI – PM:**

**Provision:** As per sec 130 of the NI Act, 1881 a person taking cheque crossed generally or specially bearing in either case the words 'Not Negotiable' shall not have or shall not be able to give a better title to the cheque than the title the person from whom he took it had. In consequence, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect.

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

**Conclusion:** As Mr. Cleaver had obtained the cheque fraudulently, he had no title to it and could not give to the bank any title to the cheque or money; and the bank would be liable for the amount of the cheque for encashment. (*Great Western Railway Co. v. London and Country Banking Co.*)



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

**Alternate answer:**

**Provision and Analysis:** As per sec 130 of the NI Act, 1881, a person taking cheque crossed generally or specially bearing in the words 'Not Negotiable' can't get a better title than that of transferor. Thus, if the title of the transferor is defective, the title of the transferee will also be defective.

On the other hand both collecting banker and paying banker will be protected under the Act, provided the payment and the collection have been made in good faith and without negligence [Sec.128 & 130 of the NI Act, 1881].

**Conclusion:** Therefore, J cannot recover money from ABC Bank, as the bankers are protected u/s 128 and 130.

Even if Clever himself encashed the cheque, the answer would not change and shall remain the same for the reasons given above.

**Q.No.17.** 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 by way of gift.
- b. A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque. (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.

**Person to be called as a holder:** 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.

**On applying the above provision in the given cases:**

- a) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.
- b) No, 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.18.** Mr. A draws a cheque for Rs 100 and hands it over to Mr. B by way of gift. Is Mr. B a holder in due course? Explain the nature of his title, interest and right to receive the proceeds of the cheque.

- a) Mr. B is a holder but not a holder in due course as he does not get the cheque for value and consideration.
- b) His title is good and bonafide.
- c) As a holder he is entitled to receive Rs 100 from the bank on whom the cheque is drawn.

**Q.No.19.** 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 NI Act, 1881, discuss the rights of B and C. (PM)

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

**Analysis and conclusion:** As per sec 44, 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.

However 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.20.** 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. (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? (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.

**Q.No.21.** 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. (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.

### **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.22.** 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. (PM)

### **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]

**Q.No.23.** 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?

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

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

(N10 – 8M)

**Provision and Analysis:**

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."

In the given case, all the above conditions has been satisfied.

**Conclusion:** Thus, 'C' can take the bill in the capacity of a holder-in-due course.

**Q.No.26.** 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.

(For Students self-study)

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
c.	No	Privilege given to a holder in due course u/s 43
d.	No	Privilege given to a holder in due course u/s 46
e.	No	Privilege given to a holder in due course u/s 58
f.	No	Privilege given to a holder in due course u/s 58
g.	No	Privilege given to a holder in due course u/s 58
h.	Yes	Forgery passes no title to anyone at all.
i.	No	Privilege given to a holder in due course u/s 121

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

**Q.No.27.** The drawer, 'D' is induced by 'A' to draw a cheque in favour of P, who is an existing person. 'A' instead of sending the cheque to 'P', forgoes his name and pays the cheque into his own bank. Whether 'D' can recover the amount of the cheque from 'A's banker. Decide. (PM)

**Answer as per ICAI – PM:**

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

In the given case, Mr.P is not a fictitious payee. Therefore, Mr.D, the drawer can recover the amount of the cheque from A's banker.

**Alternate Answer:**

**Provision:** As per Sec.85 and 131 of the NI Act, 1881, when the payment is made in due course, the paying banker and collecting banker, is not liable even if the endorsement made on the cheque is forged.

**Analysis and Conclusions:**

In this case D, the drawer cannot recover the amount of the cheque from A's bankers because of special protection offered u/s 85 & 131.

**Q.No.28.** Mr. A induced Mr. B by fraud to draw a cheque payable to Mr. C or order. Mr. A obtained the cheque, forged Mr. C's endorsement and collected proceeds to the cheque through his Bankers. Mr. B the drawer wants to recover the amount from Mr. C's Bankers. Decide in the light of the provisions of Negotiable Instruments Act, 1881. **(RTP - M12, MTP – M17)**

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

**Answer as per ICAI – PM:**

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

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

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

**Alternate Answer:**

**Provision:** As per Sec.85 and 131 of the NI Act, 1881, when the payment is made in due course, the paying banker and collecting banker, is not liable even if the endorsement made on the cheque is forged.

**Analysis and Conclusions:**

- a) In this case B, the drawer cannot recover the amount of the cheque from C's bankers because of special protection offered u/s 85 & 131.
- b) Here C is not a fictitious payee because the drawer intended him to receive payment.
- c) The answer will not change, even if the C is fictitious person, because protection to the collecting banker and paying banker is available even if the payee is fictitious. Further, in the given case, C's banker is neither collected the cheque nor paid the cheque.

**Q.No.29.** On a Bill of Exchange for Rs.1 lakhs, X's acceptance to the Bill is forged. 'A' takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether 'A' can be considered as a 'Holder in due course' and whether he (A) can receive the amount of the Bill from 'X'. **(PM, RTP – N11)**

**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, inspite of forgery, he cannot retain the money. The true owner may sue the person who had received.

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

In the given problem, issues involved are:

- a) Can A claim the reimbursement of the payment from his bank for the payment having been made to a person under forged endorsement?
- b) C having received the payment, does he enjoy the right of retaining the amount?

**Provision and analysis:** As per Sec.85 & 126 of the NI Act, 1881, when the payment is made in due course, the paying banker and collecting banker, is not liable even if the endorsement made on the cheque is forged.

But the holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment, inspite of forgery, he cannot retain the money. The true owner may sue the person who had received.

**Conclusion:** Therefore:

- a) A cannot claim the reimbursement from his bank as it is protected u/s 85.
- b) C cannot retain the amount of the cheque and he is liable to repay the amount to the true owner of the cheque.

**Q.No.31.** 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. (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.32.** X drew a cheque payable to 'Y or on order'. Unfortunately it was lost and Y's endorsement was forged. Subsequently, the banker pays for the cheque. Is the banker discharged from liability? What will be the consequences if the drawer's signatures were forged? (PM)

(Or)

A banker made payment of a cheque in which the drawer's signature was forged. Can the banker claim protection in respect of such payment? What would be the protection if it was a case of forgery of endorsee's signature?

- In case of cheques, the paying banker is given statutory protection against the payment of cheques having forged endorsements. Therefore the banker cannot be held liable if it makes payment in good faith and without any negligence (Section 85, the Negotiable Instruments Act, 1881).
- But the banker will not be protected where the payment of a cheque is made on which the drawer's signature was forged.

**Conclusion**

- a) The banker is not liable if Y's signature (i.e., endorser's signature) is forged.
- b) The banker is liable if X's signature (i.e., drawer's signature) is forged.

**Q.No.33.** 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 dishonored by X. Discuss the rights of A, B, C, D and E.

**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.34** '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?

**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.35.** 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.

(PM, RTP – M16, M17)

**Problem on Negotiable Instrument made without consideration:** As per sec. 43, a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.

But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

- 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.

**Q.No.36.** A draws a bill of exchange on B for Rs.1,000 payable to the order of A. B accepts the bill but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs.800 and as an accommodation to the plaintiff as to the residue. Can A recover Rs.1,000

(PM, N10 - 8M)

(Or)

P draws a bill on Q for Rs.10,000. Q accepts the bill. On maturity the bill was dishonored by non-payment. P files a suit against Q for payment of Rs.10,000. Q proved that the bill was accepted for value of Rs.7,000 and as an accommodation to the plaintiff for the balance amount i.e. Rs.3,000. Referring to the provisions of the NI Act, 1881 decide whether P would succeed in recovering the whole amount of the bill?

(PM)

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

(PM)

### Provision and Analysis:

As per Sec.48 of the NI Act, 1881, a promissory note, bill of exchange or cheque payable to order,] is negotiable by the holder by endorsement and delivery thereof.



When a promissory note, bill or cheque is transferred in such a way that the transferee becomes holder thereof, the instrument is said to be negotiated.

To complete negotiation, delivery of instrument is essential whether it is payable to bearer or order and delivery must be voluntary.

**Conclusion:** P does not become the holder of the cheque as the negotiation was not completed by delivery of the Cheque to him.

**Q.No.38.** 'A' is the holder of a bill of exchange made payable to the order of 'B'. The bill of exchange contains the following endorsements in the blank. First endorsement 'B', second endorsement 'C', third endorsement 'D', fourth endorsement 'E' - 'A' strikes out, without E's consent, the endorsement by 'C' and 'D'. Decide with reasons whether 'A' is entitled to recover anything from 'E'.

(N09 - 5M, N12 - 8M, MTP - M15)

**Provision:** Sec.40 provides that if a holder of a negotiable instrument destroys or impairs the endorser's remedy against a prior party (without the consent of the endorser), the endorser is discharged from liability to the holder as if the instrument had been paid at maturity.

**Analysis:** In the above case, A is a holder who has cancelled endorsement of C and D without consent of E.

This has destroyed remedy which E had against C and D.

**Conclusion:** Hence, E gets discharged from his liability towards A, as provided in sec 40.

**Q.No.39.** A bill of exchange is drawn payable to X or order. X endorses it to Y, Y to Z, Z to A, A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, Z, A and B, if he has originally endorsed the bill to Y by adding the words 'Sans Recours or not?'

(RTP - N11)

**Provision:** Generally if the endorser becomes the holder after it is negotiated to several parties, none of the intermediate parties is liable to endorser. This is to prevent 'circuitry of action'.

However, as per sec 52, the holder of a bill may endorse it in such a way that he does not incur the liability of an endorser to all subsequent endorsees. He can do so by adding the words 'sans recourse' (*without recourse*) to the endorsement.

**Analysis and conclusion:** In the given case X, the endorser becomes the holder after it is negotiated to several parties. In such a case, none of the intermediate parties is liable to X.

But in this case X's original endorsement is 'sans recours' and therefore, he is not liable to Y, Z, A and B. But if the bill is negotiated back to X, all of them are liable to him and he can recover the amount from all or any of them (Sec. 52)

**Q.No.40.** An acceptor accepts a "Bill of Exchange" but write on it "Accepted but payment will be made when goods delivered to me is sold." Decide the validity.

(PM)

**Provision:** Sec. 86 of the NI Act - Parties not consenting discharged by qualified or limited acceptance

**Analysis:** In the given case, the acceptance is a qualified acceptance since a condition has been attached declaring the payment to be dependent on the happening of an event therein stated. (i.e. payment will be made when goods are sold)

As a rule, acceptance must be general acceptance and therefore, the holder is at liberty to refuse to take a qualified acceptance. Where, he refuse to take it, the bill shall be dishonoured by non-acceptance.

But, if he accepts the qualified acceptance, even then it binds only him and the acceptor and not the other parties who do not consent thereto.

**Conclusion:** Acceptance is valid and acceptor is liable.

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- Q.No.41.** Do the following alterations of a negotiable instrument render the instrument void? (PM)
- The holder of a bill alters the date of the instrument to accelerate or postpone the time of payment.
  - The drawer of a negotiable instrument draws a bill but forgets to write the words 'or order'. Subsequently, the holder of the instrument inserts these words.
  - A bill payable 3 months after date is altered into a bill payable three months after sight.
  - A bill was dated 2016 instead of 2017 & subsequently the agent of the drawer corrected the mistake.
  - A bill is accepted payable at the Union Bank, and the holder, without the consent of the acceptor, scores out the name of the Union Bank and inserts that of the Syndicate Bank.
  - A bill payable with 'lawful interest' is altered into one payable with 12% interest.
  - A bill is accepted payable at the Indian Bank, Sarita Vihar, New Delhi. The holder without the consent of the acceptor scores out Sarita Vihar and inserts Chandni Chowk instead.
  - D in possession of an inchoate instrument where the amount has not been written on the instrument writes the amount himself.
  - K in possession of an uncrossed cheque received from A writes "Payees Account only" on the face of the instrument.
  - A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument.
  - The holder of the bill inserts the word "or order" in the bill. (PM)
  - The holder of the bearer cheque converts it into account payee cheque. (PM)
  - A bill "payable to X" is converted into a bill "payable to X and Y". (PM)

### Provision and Analysis:

As per sec. 87 of the NI Act, 1881, any material alteration of a Negotiable Instrument renders the same void as against anyone who is party there to at the time of making such alteration and does not consent thereto.

However, an alteration made in order to carry out the common intention of the original parties does not affect the validity of the instrument and the parties remain liable.

If any such alteration is made by an endorser, the endorser is discharged from all liability to him in respect of the consideration thereof.

The alteration must be so material that it alters the character of the instrument, to a great extent.

Generally, alteration of the date, amount payable, time, place of payment is regarded as material alteration.

### Conclusion in the given cases:

(a) Yes. (b) No. (c) Yes. (d) No. (e) Yes. (f) Yes (Since lawful interest is 18% under the Banking, Public Financial Institutions & Negotiable Instruments (Amendment) Act, 1988) (g) Yes. (h) No. (i) No. (j) No. (k) No (l) No (m) Yes

- Q.No.42.** A issues an open 'bearer' cheque for Rs.10,000 in favour of B who strikes out the word 'bearer' and crosses the cheque. The cheque is thereafter negotiated to C and D. when it is finally presented by D's banker, it is returned with remarks "payment countermanded" by drawer. In response to a legal notice from D, A pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the NI Act, 1881 decide, whether A's argument is valid or not? (J09- 5M)

### Provision and Analysis:

The cheque bears two alterations when it is presented to the paying banker.

- The word 'bearer' has been struck off and.
- The cheque has been crossed.

Both of these alterations do not amount to material alteration under the provisions of the Act.

**Conclusion:** Therefore, the liability of the drawer is not at all affected. 'A' is liable to pay the amount of the cheque to the holder.

- Q.No.43.** Examine the validity of the following in the light of the provisions of the NI Act, 1881. (PM)  
 i) An oral acceptance given by drawee is valid in law. (RTP - N13)  
 ii) An acceptance by mere signature without writing the word "accepted".

**Case (i):** One of the essential elements of a valid acceptance is that the acceptance must be written on the bill and signed by the drawee. An oral acceptance is not sufficient in law. Therefore, an oral acceptance of the bill does not stand to be a valid acceptance.

**Case (ii):** The usual form in which the drawee accepts the Instrument is by writing the word 'accepted', across the face of the bill and signing his name underneath. The mere signature of the drawee without the addition of the words 'accepted' is a valid acceptance.

- Q.No.44.** A bill of exchange originally drawn by M for a sum of Rs.10,000 but accepted by R for only Rs.7,000. Examine the validity. (PM)

**Provision:** In accordance with the Explanation to Section 86 of the Act, when the drawee undertakes the payment of part only of the sum ordered to be paid, it is a qualified acceptance and the drawer may treat it as dishonored unless agreed by him.

**Analysis & Conclusion:** The Drawer M, may treat the bill as dishonored or may agree for qualified acceptance. If he agrees for qualified acceptance, the Drawee R is liable for only Rs.7,000

- Q.No.45.** 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.5,000  
 ii) Declares the payment to be independent of any other event  
 iii) Writes: "Accepted, payable at ABC Bank".

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.46.** Ram has Rs. 2000 in his bank account and has no authority to overdraft. He issued a cheque for Rs.5000 to Gopal which was dishonoured by the bank. Point out whether Gopal must necessary give notice of dishonoured to Ram under NI Act 1881. (PM, M14 - 4M)

**Provision and Analysis:** Sec.98 of the NI Act, 1881 prescribes the cases in which no notice of dishonor is necessary.

This includes and also states when drawer has not sufficient balance and issues cheque of excess amount and also not has authority to overdraft and if that cheque was dishonoured by bank then notice is not required to be given to drawer.

**Conclusion:** In the present case, the conditions mentioned in Sec.98 have been satisfied. Therefore, no notice is required.

- Q.No.47.** 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. (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? (PM)

(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. (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.48** A draws a cheque in favour of M, a minor. M endorses the same in favour of X. The cheque is dishonoured by the bank on grounds of inadequate funds. Discuss the rights of X. (PM)

**Provision:** As per Section 26, a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself.

**Analysis & Conclusion:** In the given case M is a minor. Therefore, he is not liable on the instrument. Accordingly, X can proceed only against A.

**Q.No.49.** Ram, a legal successor of Shyam, the deceased person, signs a Bill of Exchange in his own name admitted a liability of Rs.1,50,000 i.e. the extent to which he inherits the assets from the deceased payable to Mohan after 3 months from 1<sup>st</sup> January, 2015. On maturity, when Mohan presents the bill to Ram, he (Ram) refuses to pay for the bill on the ground that since the original liability was that of Shyam, the deceased, therefore he is not liable to pay for the bill. Referring to the provisions of the NI Act, 1881 decide whether Mohan can succeed in recovering Rs. 1,50,000 from Ram. (RTP – M16)

**Provision:** sec 29 of the NI Act, 1881 – Liability of legal representative signing.

As per sec 29, a legal representative of a deceased person who signs his own name on a negotiable instrument, is personally liable for the entire amount thereon, unless he expressly limits his liability to the extent of the assets received by him as such.

**Analysis:** Applying the above provisions to the given problem Mohan is entitled to recover Rs.1,50,000/- from Ram. Ram cannot refuse to pay the amount since he has inherited the assets of the deceased.

He will be liable to the extent of the full amount of the bill even if he inherits the property valued less than the amount of the bill.

**Conclusion:** Thus, in this case he will be liable to full amount of Rs.1,50,000/-.

**Q.No.50.** A issues a cheque for Rs.25,000 in favour of B. A has sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank, in the meantime, became bankrupt. Decide under the provisions of NI Act, 1881, whether B can recover the money from A? (PM, RTP – N15)

(Or)

A' issued a cheque for Rs.5,000/- to 'B'. 'B' did not present the cheque for payment within reasonable period. The Bank fails. However, when the cheque was ought to be presented to the bank, there was sufficient fund to make payment of the cheque. Now, 'B' demands payment from 'A'. Decide the liability of 'A' under the NI Act, 1881. (PM, M14 – 4M)

**Provision and analysis:** As per Sec 84 of the NI Act, 1881, where a cheque is not presented by the holder for payment within a reasonable time of its issue and the drawer suffers actual damage through the delay because of the failure of the bank, he is discharged from liability to the extent of such damage.

In determining what is reasonable time, regard shall be had to the nature of the instrument, the usage of trade and bankers, and the facts of the particular case.

But the holder of the cheque will be treated as creditor of the bank, in place of drawer. He will be entitled to recover the amount from Bank. [Sec 84(3)]

**Conclusion:** Hence, the drawer is discharged from the liability to pay the amount of cheque to B. However, B being a creditor of bank can recover the amount of cheque from bank.

**Q.No.51.** A cheque was dishonoured at the first instance and the payee did not initiate action. The cheque was presented for payment for the second time and again it was dishonoured. State in this connection whether the payee can subsequently initiate prosecution for dishonour of cheque. (PM)

**Relevant case law:** Sadanandan Bhadran v. Madhavan Sunil Kumar.

**Provision and Analysis:** In the above case, Supreme Court held that on a careful analysis of Sec. 138 of the NI Act, 1881 it is seen that a cheque is said to be dishonoured when it is returned by the bank unpaid for any of the reasons mentioned therein. The said proviso lays down 3 conditions for the applicability of the above section. They are:

1. The cheque should have been presented to the bank within 3 months;
2. The payee should have made a demand for payment by registered notice after the cheque is returned unpaid (within 30 days of receiving information that cheque was dishonoured); and
3. The drawer should have failed to pay the amount within 15 days of the receipt of notice.

Prosecution u/s 138 can be launched only when all the 3 conditions are satisfied.

So far as the first condition is concerned, proviso to sec 138(a) does not put any restriction upon the payee to successively present a dishonoured cheque during the period of validity.

It is not uncommon for a cheque being presented again and again within its validity period in the expectation that it would be encashed.

Sec. 138 apparently conflicts with sec 142(c) of the Act. Sec. 138 enables the payee to repeatedly present the cheque but Sec. 142(c) gives him only one opportunity to file a complaint for its dishonour and that too within one month from the date the cause of action arises.

The Court held that the 2 provisions can be harmonized with the interpretation that on each presentation of the cheque and its dishonour, a fresh right and not cause of action accrues in his favour.

**Conclusion:** Therefore, the holder / payee of a cheque cannot initiate prosecution for an offence u/s 138 for its dishonour for the second time, if he had not initiated such prosecution on the earlier cause of action.

**Q.No.52.** Whether giving of notice of dishonor itself constitutes receipt of notice for constituting offence u/s 138 of the Negotiable Instruments Act, 1881. (SM)

**Relevant Case law:** Dalmia Cement (Bharat) Ltd Vs. Galaxy Traders and Agencies Ltd

**Provision:** The Court observed that, the payee has to make a demand by giving notice in writing and it is a failure on the part of the drawer to pay the amount within 15 days of the receipt in writing of the said notice. Then the drawer of the Cheque is liable u/s 138 of the NI Act, 1881.

**Analysis:** Giving notice in writing is a process for which receipt is the accomplishment.

**Conclusion:** It is therefore clear that 'giving' of notice is not the same as 'receipt of notice' for constituting offence under this Act.

**Q.No.53.** X draws a cheque in favour of Y. After having issued the cheque he informs Y not to present the cheque for payment. He also informs the bank to stop payment. Decide, under provisions of the NI Act, 1881, whether the said acts of X constitute an offence against him? (Or)

Examine, whether there is an offence under the NI Act, 1881, if a drawer of a cheque after having issued the cheque, informs the drawee not to present the cheque as well as informs the bank to stop the payment. (Or)

Mr. D, a drawer issues the cheque in favour of the E. Later D informs the E not to present the cheque due to inadequacy of the fund in the account because of withdrawal of the money in urgency as well as informs the bank to stop payment. Does the act of D constitute an offence under the Act? (RTP - M13, M17)

**Relevant case law:** Modi Cements Ltd. Vs. Kuchil Kumar Nandi, 1998.

**Provision and Analysis: Offence under the NI Act, 1881:** In this case the Supreme Court held that once a cheque is issued by the drawer, a presumption u/s 139 of the NI Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action u/s 138.

The object of Sec 138 to 142 of the Act is to promote the efficacy of the banking operations and to ensure credibility in transacting business through cheques.

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

**Conclusion:** Thus, X (Drawer) is liable to have committed an offence u/s 138 of the NI Act, 1881.

**Q.No.54.** V makes a gift of Rs.10,000 to W through a cheque issued in favour of W. Later he (V) informs W not to present the cheque for payment and informs the bank also to stop payment. Examining the provisions of the NI Act, 1881, decide whether V's above acts constitute an offence.

**Provision:** Sec 138 of the NI Act - Dishonour of cheque for insufficiency, etc., of funds in the A/c.  
Sec 139 of the NI Act - Presumption in favour of holder.

**Analysis:** Since the drawer if a cheque is liable u/s 138 only if a cheque is issued to discharge a legally enforceable debt or other liability. In the present case, the cheque has been issued by V as a gift to W, and not for discharge of a legally enforceable debt or other liability. (Sec. 138)

Presumption of consideration is not applicable because it can be proved that the cheque was given as a gift (Sec.139)

**Conclusion:** V is not liable for an offence u/s 138.

**Q.No.55.** For cognizance of offence for the dishonour of cheque, should the cheque necessarily be presented to the drawee's (payee's) bank or can it be presented before any bank within the stipulated period? (A) (PM)

The "Bank" referred under proviso to sec 138 (a) of the NI Act, 1881, mean the 'drawee-bank' on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.

If the cheque is not presented to the drawee-bank within the specified period then the drawer of the cheques is not liable for punishment u/s 138. [Shri Ishar Alloy Steels Ltd. (v) Jayaswals Neco. Ltd.]

**Q.No.56.** A promoter who has borrowed a loan on behalf of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently the cheque was dishonoured and the complaint was lodged against him. Does he liable for an offence u/s 138? (PM, M16 - 5M)

**Provision:** Sec 138 - Dishonour of cheque for insufficiency, etc., of funds in the account.

**Analysis:** As per sec 138, where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from/out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable.

However, in this case, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company.

Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company.

**Conclusion:** Therefore, he has not committed an offence u/s 138.

**Q.No.57.** J, a shareholder of a Company purchased for his personal use certain goods from a Mall (Departmental Store) on credit. He sent a cheque drawn on the Company's account to the Mall (Departmental Store) towards the full payment of the bills. The cheque was dishonoured by the Company's Bank. J, the shareholder of the company was neither a Director nor a person in-charge of the company. Examining the provisions of the NI Act, 1881 state whether J has committed an offence u/s 138 of the Act and decide whether he (J) can be held liable for the payment, for the goods purchased from the Mall (Departmental Store) **(PM, RTP - N15)**

**Relevant Case law:** H.N.D. Mulla Feroze Vs. C.Y. Somayajulu

**Facts and analysis:** The Andhra Pradesh High Court held that although the petitioner has a legal liability to refund the amount to the appellant, petitioner is not the drawer of the cheque, which was dishonoured and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company.

Hence, it was held that the petitioner could not be said to have committed the offence u/s 138.

**Conclusion:** Hence, J is not liable for the cheque but legally liable for the payments for the goods.

**Q.No.58.** 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? **(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 indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

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 indorsee 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 indorsee 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.

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### PENALTY

DEFAULT	PENALTY
Penalty for dishonour of a cheque specified u/s 138 of the NI Act, 1881.	<p><u>Drawer</u> shall be punishable with:</p> <ul style="list-style-type: none"> <li>• The penalty can be upto 2 years imprisonment or</li> <li>• fine upto twice the amount of cheque or</li> <li>• Both.</li> </ul> <p>In addition to above penalty, Drawer still liable to make payment of the cheque which was dishonoured.</p>

### TIME - LIMITS

PARTICULARS	TIME-LIMIT
Maximum time limit for acceptance of bill	48 hours from the presentation of bill for acceptance
Maximum time limit for depositing cheque	3 months from the date mentioned in the cheque
Time limit for giving notice of dishonour by the holder of the cheque to the drawer	30 days from the date of receipt of intimation of dishonour of the cheque from the bank.
Time limit to the drawer for payment of money in respect of dishonour of cheque	15 days from the date of receipt of notice from the payee or the holder
Time limit for filing a case against the drawer for the dishonour of cheque	1 month from the expiry of above 15 days.

### TEST YOUR KNOWLEDGE

- Distinguish between the following:
  - Liability of a drawer of a bill of exchange and drawer of a promissory note.
  - Dishonour by non-acceptance and dishonour by non-payment.
- Ascertain the 'Date of maturity' of a bill payable 120 days after the date. The bill of exchange was drawn on 1<sup>st</sup> June, 2017. (PM)
- State the effects of non-presentment for acceptance.

4. Explain the rights and liabilities of an acceptor for honour & right of payer for honour.
5. State the contents of protest. Is noting equivalent to protest?
6. When presentment for payment is necessary and not necessary?
7. What is meant by dishonor by non-payment?
8. Explain the provisions relating to notice of dishonor. State the effect of omission to give notice of dishonor.
9. State the rights of holder in case of an instrument acquired after dishonor or after maturity.
10. State the time limit within which noting is to be done. Is noting compulsory?
11. Explain the various modes of discharge of an instrument.
12. What is meant by 'Discharge of a party'? Explain the various modes of discharge of a party.
13. Can there be more than one payee in a negotiable instrument?
14. To whom the payment of an instrument is required to be made?
15. Can a promissory note payable to bearer be issued by any person?
16. Can a bill of exchange payable to bearer be issued by any person?
17. Explain the provisions relating to the payment of interest.
18. Explain the meaning and effect of qualified acceptance with examples.
19. What is the effect of 'Not negotiable crossing'?
20. Explain the liabilities of a drawer and drawee on a dishonor of a cheque.
21. State the parties who can and who cannot be sued in case of negotiation back.
22. State the legal position of a person who obtained an instrument illegally and retains the instrument.
23. State the legal position of a person who obtained an instrument illegally and receives the payment of the instrument.
24. State the legal position of a person who obtained an instrument illegally and transfers a bearer instrument to a person who is not a holder in due course.
25. State the legal position of a person who obtained an instrument illegally and transfers a bearer instrument to a holder in due course.
26. State the legal position of a person who obtained an instrument illegally and transfers an order instrument by making a forged endorsement.
27. Pick out the correct answer from the following and give reason.  
Mr. P obtains a cheque drawn by Mr. M by way of gift. Here Mr. P is a:
  - a) holder in due course
  - b) holder for value
  - c) holder
  - d) None of the above

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To **MASTER MINDS**, Guntur

**THE END**