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**INTERMEDIATE LEVEL
PAPER 2: CORPORATE AND OTHER LAWS**

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PART II: OTHER LAWS

NEGOTIABLE INSTRUMENTS ACT, 1881

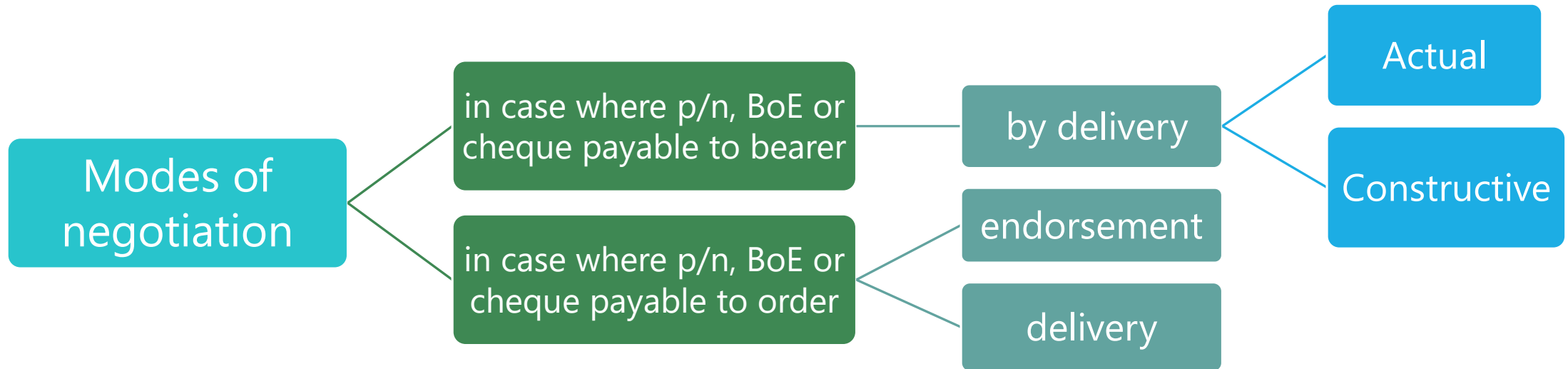
NEGOTIATION OF NEGOTIABLE INSTRUMENTS

According to **Section 14 of N.I act**, when a negotiable instrument is transferred to any person with a view to **constitute the person holder** thereof, the instrument is deemed to have been negotiated.

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

Negotiable instruments may be negotiated either **by delivery** when these are payable to bearer or **by endorsement and delivery** when these are payable to order.

MODES OF NEGOTIATION



MODES OF NEGOTIATION

Delivery [Section 46]: The making, acceptance or endorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

Modes of negotiation of instrument

- (i) A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof (Section 47).
- (ii) A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by endorsement and delivery thereof (Section 48).

IMPORTANCE OF DELIVERY IN NEGOTIATION

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

The delivery can be , **actual or constructive.** **Actual delivery** takes place when the instrument changes hand physically,

Constructive delivery take place when the instrument is delivered to the agent, clerk or servant of the endorsee on his behalf or when the endorser, after endorsement, holds the instrument as an agent of the endorsee.

ENDORSEMENT OF INSTRUMENT (SECTION 15)

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 a slip of paper annexed thereto known as **allonge** (a French word meaning a slip of paper attached to the end of a BoE to give room for further endorsements)- he is said to indorse the same and as called the **endorser**.

The person to whom the instrument is indorsed is called the **endorsee**.

The endorsement, therefore, means, signatures of the person which are generally made at the back of the instrument, for the purpose of negotiation ie. transfer of rights to another person.

VARIOUS KINDS OF ENDORSEMENT

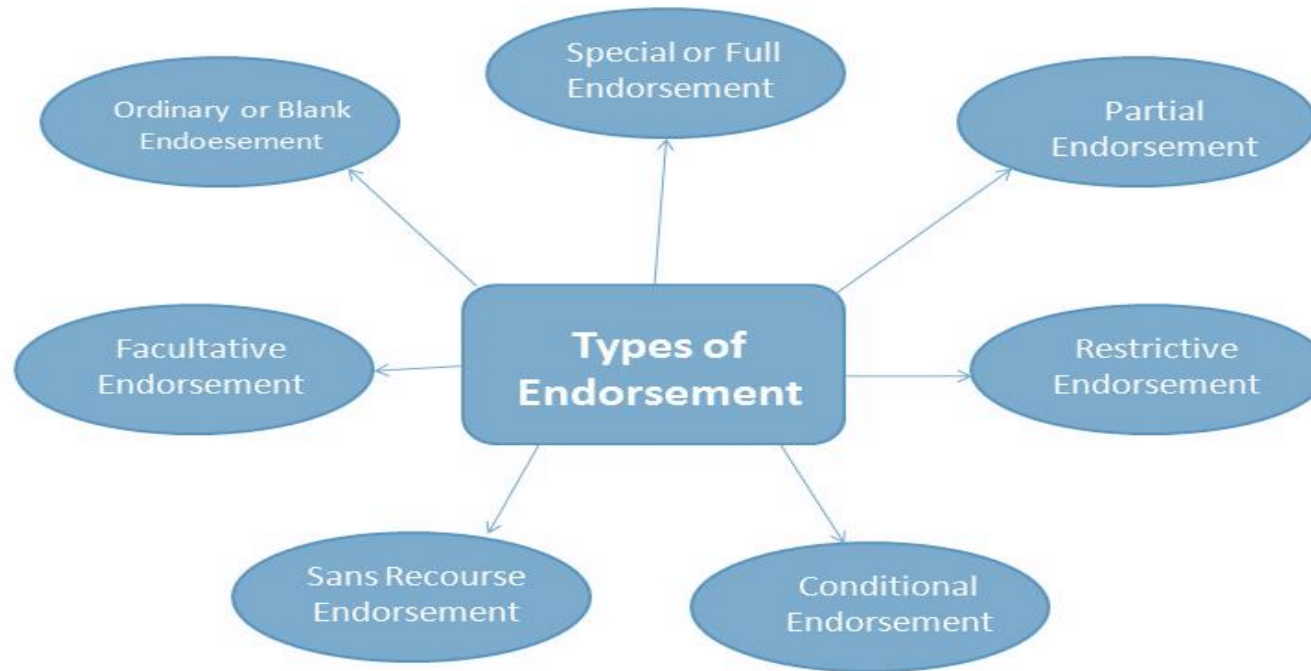


Fig : Types of Endorsement

VARIOUS KINDS OF endorsement

- 1. Endorsement in Blank (only signature):** Where the endorser just puts his signature without specifying the endorsee, the endorsement is said to be in blank (Section 16). The effect of such an endorsement is to render the instrument payable to bearer even though originally payable to order (Section 54).
- 2. Endorsement in Full (name and signature):** Where along with endorser's signature, the name of the endorsee is specified, the endorsement is called 'endorsement in full' (Section 16). Thus, where the instrument states, 'Pay X or order' and is signed by A, the payee, it constitutes 'endorsement in full'.

VARIOUS KINDS OF ENDORSEMENT

3. Partial endorsement: An endorsement which purports to transfer only a part of amount of the instrument is called as partial endorsement. As per section 56 such an endorsement is invalid under law.

Example: A is a holder of a bill of Rs. 10000. A indorses it thus: “Pay B or order Rs. 5000”. This is partial endorsement and invalid for the purpose of negotiation.

Exception: Second part of section 56 states that if a bill has been paid in part, the fact of the part payment may be indorsed on the instrument and it may then be negotiated for the residue.

Example: A bill may be endorses as: Pay A or order RS 5000 being the unpaid residue of the bill. It is a valid endorsement

VARIOUS KINDS OF ENDORSEMENT

4. Restrictive endorsement: An endorsement is restrictive when the endorser while making endorsement restricts or excludes the right of the endorsee to further transfer the instrument or constitutes the endorsee as an indorser of the instrument or to receive its content for the endorser or for some other specified person (Section 50).

An endorsement is “restrictive” when it prohibits or restricts the further negotiability of the instrument . It merely entitles the holder of the instrument to receive the amount on the instrument for a specific purpose.

Example: D signs the following endorsements on different negotiable instruments payable to bearer:

Pay the contents to G only ; Pay G for my use ; Pay G or order for the account of H. These endorsements exclude the right of further negotiation by G.

Contd...

5. Conditional endorsement: A conditional endorsement is an endorsement in which the endorser makes his liability on the instrument or the right of the endorsee to receive the payment of the instrument depend upon the happening of a specified event.

When an instrument bears a conditional endorsement, the liability of the endorser will arise, or the property in the instrument will pass to the endorsee only if the specified event takes place or if the particular condition is fulfilled.

Contd...

6. Sans recourse endorsement- When the endorser expressly excludes his own liability on the negotiable instrument to the endorsee or any subsequent holder in case of dishonour of the instrument, the endorsement is known as 'sans recourse' endorsement. Such an endorsement is generally made by adding the words 'sans recourse' or 'without recourse.'e.g. the holder of a bill may indorse it thus: 'Pay A or order without recourse to me, or Pay A or order sans recourse, or Pay A or order at his of own risk'. In these cases, the holder does not incur any liability on the bill as an endorser.

7. 'Sans frais' endorsement – A sans frais endorsement is an endorsement in which, by writing the words "Sans Frais"(without expense), the endorser makes it clear that no one should incur any expenses on his/her account in respect of the negotiable instrument.

Contd...

- **8. Facultative indorsment** –In the case of facultative endorsement, the endorser waives or surrenders his right to receive the notice of dishonour by writing the words “Notice Of Dishonour Waived”, after writing the name of the endorsee. When an instrument bears a facultative endorsement, the endorser will be liable on the instrument in case of dishonour, even if he is not given any notice of dishonour.

CONVERSION OF ENDORSEMENT IN BLANK TO ENDORSEMENT IN FULL [SECTION 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 thereby incur the responsibility of an endorser.

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

CONVERSION OF ENDORSEMENT IN BLANK TO ENDORSEMENT IN FULL [SECTION 49]

For example, A is the payee holder of a bill. A endorses it in blank and delivers it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. D as the bearer is entitled to receive payment or to sue drawer, acceptor, or A who endorsed the bill in blank, but he cannot sue B or C. C can sue B as he received the bill from B by endorsement in full. If, however, C instead of passing the bill to D without endorsement passes it by a regular endorsement, D can claim against all prior parties.

ESSENTIALS OF VALID ENDORSEMENT

Signature of endorser: The endorsement must be signed.

The endorsement may be made by the endorser either by merely signing his name on the instrument or by specifying in addition to his signature, the person to whom or to whose order the instrument is payable.

When, in a bill payable to order, the endorsee's name is wrongly spelled, he should when he indorses it, sign the name as spelled in the instrument and write the correct spelling within brackets after his endorsement.

ESSENTIALS OF VALID ENDORSEMENT

Who may indorse or negotiate- Every sole maker, drawer, payee or endorsee, or all of several joint makers, drawers, payees or endorsee's of a negotiable instrument may indorse and negotiate the same unless negotiability of such instrument has been restricted or excluded as mentioned in Sec. 50.

Explanation: It is however, necessary that such maker or drawer who wants to indorse is in lawful possession of the instrument. (section 51)

Example: A bill is drawn payable to A or order. A endorses it to B, the endorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Contd....

Effect of endorsement [Section 50] : The endorsement of a negotiable instrument followed by delivery transfers to the endorsee the property therein with the right of further negotiation, but the endorsement may by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to indorse the instrument, or to receive its contents for the endorser, or for some other specified person.

Examples: B signs the following endorsements on different negotiable instruments payable to bearer,—

- (a) “pay the contents to C only”.
- (b) “pay C for my use”.
- (c) “pay C on order for the account to B”.
- (d) “the within must be credited to C”.



These endorsements exclude the right of further negotiation by C.

Contd...

- (e) “pay C”.
- (f) “pay C value in account with the Oriental Bank”.
- (g) “pay the contents to C, bring part of the consideration in a certain deed of assignment executed by C to endorser and others”.

These endorsements do not exclude the right of further negotiation by C.

NEGOTIATION BACK

In the course of Negotiation, if a negotiable instrument is circulated/negotiated back by an Endorser to any of the prior party on the negotiable instruments it is termed as negotiation back. The person who becomes the holder in due course under this negotiation back cannot make any of the intermediate Endorsers liable on the instruments.

Exception: But where an Endorser had excluded his liability, by the use of the words 'sans recourse' or 'without recourse to me' and after that becomes the holder of the instrument in his own right under the 'negotiation back' all intermediate Endorsers are liable to him and in case of dishonour, he can recover the amount from all or any one of them.

SECTION 52- ENDORSER WHO EXCLUDES HIS OWN LIABILITY OR MAKES IT CONDITIONAL.

The endorser of a negotiable instrument may, by express words in the endorsement,

- **exclude his own liability** thereon, or
- **make such liability or the right of the endorsee to receive the amount due thereon depend upon the happening of a specified event**, although such event may never happen.

Where an endorser so excludes his liability and afterwards becomes the holder of the instrument all intermediates endorsers are liable to him.

Examples:

- (1) The endorser of a negotiable instrument signs his name, adding the words “without recourse”. Upon this endorsement he incurs no liability.
- (2) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement, “without recourse”, he transfers the instrument to B, and B endorses it to C, who endorses it to A. A is not only reinstated in his former rights, but has the rights of an endorsee against B and C.

INSTRUMENT OBTAINED BY UNLAWFUL MEANS [SECTION 58]

When a negotiable instrument

- has been **lost**, or
- has been obtained from any maker, acceptor or holder thereof by means of an **offence** or **fraud**, or for an **unlawful consideration**,

no possessor or endorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or endorsee is, or some person through whom he claims was, a holder thereof in due course.

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Instrument negotiable till payment or satisfaction [Section 60]

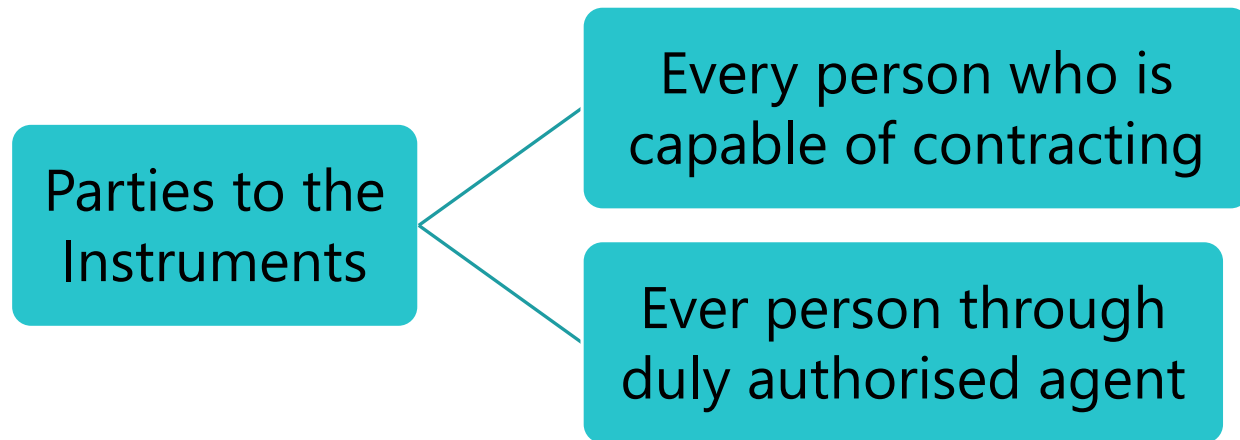
A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

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

Example.: A is the holder of a bill of exchange made payable to the order of B. which contains the following endorsements in blank: 1 st endorsement - 'B', 2nd endorsement - C, 3rd endorsement - D, 4th endorsement – E. A puts this bill in suit against C and strikes out, without E's consent, the endorsements by C and D. . A is not entitled to recover anything from E.

LIABILITY OF PARTIES

Capacity of the parties



Capacity to make, draw, accepts etc. of instruments (Section 26): Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque..

LIABILITY OF MINOR

Minor: A minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself. A minor's agreement is void and cannot be ratified when he attains the age of maturity. A minor cannot bind himself under a negotiable instrument as his contract is absolutely void. The instrument shall not become void by reason merely of the fact that minor is a party. The instrument shall be binding on all parties. Minors rights under the instrument remain unaffected.

LIABILITY OF MINOR

Example: 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. Here in this case, M being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. X can, thus, proceed against A.

LIABILITY OF DRAWER

Liability of drawer of a bill of exchange/ cheque[Section 30]

The **drawer of a bill of exchange or cheque is bound in case of dishonour** by the drawee or acceptor thereof, **to compensate the holder**, provided **due notice** of dishonor has been given to, or received by, the drawer as hereinafter provided.

The liability of the **maker of promissory note is primary**, while the liability of the drawer of a bill arises on dishonour by acceptance or non-acceptance by the drawee or acceptor respectively. The drawer of a bill, however, can exclude or limit his liability upon the bill.

The **liability of the drawer of a cheque is primary** as in case of dishonour the holder of the cheque has no remedy against the banker. He can only sue the drawer.

LIABILITY OF DRAWEE OF CHEQUE

Liability of drawee of cheque [Section 31]

The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

.The liability for such default is not towards the payee or the holder but towards the drawer. A bank is liable for dishonour of the cheque, to the drawer (his customer) only and not to the payee or the holder of the cheque as there is no privity of contract between the bank and the payee or the holder.

LIABILITY OF MAKER OF NOTE AND ACCEPTOR OF BILL [S.32]

In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

LAIBILITY OF ENDORSER [S.35]

In the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity, without, in such endorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such endorser as hereinafter provided. Every endorser after dishonour is liable as upon an instrument payable on demand.

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Liability of prior parties to holder in due course [Section 36]

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Prior party a principal in respect of each subsequent party [Section 38]

As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Example: A draws a bill payable to his own order on B, who accepts. A afterwards endorses the bill to C, C to D and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

DISCHARGE OF ENDORSERS LIABILITY

Where the holder of a negotiable instrument—

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

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

Example: A is the holder of a bill of exchange made payable to the order of B, which contains the following endorsements in blank-

First endorsement, “B”.

Second endorsement, “Peter Williams”.

Third endorsement, “Wright & Co.”.

Fourth endorsement “John Rozario”.

This bill A puts in suit against John Rozario and strikes out, without John Rozario’s consent, the endorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

ACCEPTOR BOUND, ALTHOUGH FORGED ENDORSEMENT [SECTION 41]

An acceptor of a bill of exchange already endorsed is not relieved from liability by reason that such endorsement is forged, if he knows or had reason to believe the endorsement to be forged when he accepted the bill.

ACCEPTANCE OF BILL DRAWN IN FICTITIOUS NAME [SECTION 42]

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 endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Example: 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 Negotiable Instruments Act, 1881.

Answer: Bill drawn in fictitious name: The problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. 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 as against the holder in due course that such name is fictitious. Accordingly, in the instant 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.

NEGOTIABLE INSTRUMENT MADE WITHOUT CONSIDERATION [SECTION 43]

A negotiable instrument—

- made, drawn, accepted, endorsed, or transferred without consideration, or
- for a consideration which fails,

creates no obligation of payment between the parties to the transaction.

But if any such party has transferred the instrument with or without endorsement to a holder for a 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.

LIABILITY OF AN AGENT & LEGAL REPRESENTATIVE

Authority to sign i.e. through Agency [Sections 27]: Every person, capable of incurring liability, may bind himself or be bound by a duly authorized agent acting in his name.

Legal representative A legal representative of a deceased person, who signs his name on a promissory note, bill exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him **(Sec 29)**.

Thus, in the absence of an express contract to the contrary, the liability of a legal representative is unlimited. However, a legal representative may, by an express agreement, limit his liability. Further, he may exclude his liability i.e. by adding the words “Sans recourse or without recourse.”

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NOTE: Endorsement by legal representative: The legal representative of a deceased person cannot negotiate by delivery only, a promissory note, bill of exchange or cheque payable to order and endorsed by the deceased but not delivered (sec 57)

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

For example, A, the holder of a bill to B, before delivering the bill died, the legal representative of a subsequently delivered the bill to B. The endorsement is invalid and B cannot sue on the bill.

A general authority given to an agent to transact business and to receive and discharge debts does not empower him to accept or endorse bills of exchange so as to bind his principal.

An agent may have authority to draw bills of exchange, but not endorse them. An authority to draw does not, necessarily, imply an authority to endorse.

PRESENTMENT of NEGOTIABLE INSTRUMENT

Presentment is simply a demand by which holder of the instruments is required to do as per direction of the instruments.

Direction may be either acceptance in case of bill of exchange or payment in case of all instruments.

There are three kinds of presentments:

- Presentment for acceptance.(section 61)
- Presentment of promissory notes for sight. (section 62)
- Presentment of negotiable instrument for payment. (Section 64)

PRESENTMENT FOR ACCEPTANCE

Section 61 reads as:

*“A **bill of exchange payable after sight must**, if no time or place is specified therein for presentment, be **presented to the drawee thereof for acceptance**, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.*

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search be found there, the Bill is dishonoured

[Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient”

The following bills must be presented for acceptance in order to make the parties to the bill liable thereon:

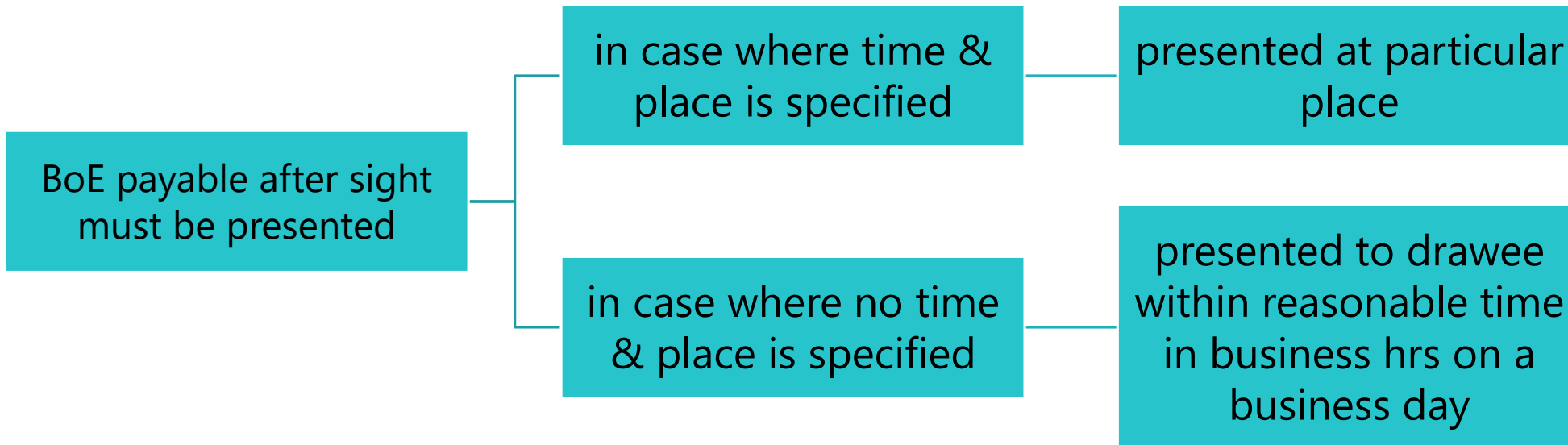
- **A bill payable after sight.** Bills payable after sight mean bills payable after acceptance. Such bills of exchange must be presented for acceptance in order to fix their date of maturity.
- A bill in which there is an express condition that it shall be presented for acceptance before it is presented for payment.

EXAMPLE

The date of drawing of the bill is 20.5.2019 and period for honoring the bill is 3 months so, the due date will be 23.8.2016 (including 3 grace days in case of bill of exchange) - **THIS IS FOR NORMAL BILL OF EXCHANGE CASE.** However, if it says **after sight** then, suppose the bill was drawn on 20.5.2019 and **accepted by the drawee on 25.5.2016** , the period of honoring the bill is 3 months. **Then, the due date will be 28.8.2019 (i.e the days will be counted from the DATE OF ACCEPTANCE OF THE BILL AND NOT FROM THE DATE ON WHICH THE BILL WAS DRAWN , including 3 grace days).**

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Sec. 63 provides that the holder of a bill must allow the drawee 48 hours (excluding of public holidays) to consider whether he will or will not accept the bill. It may be noted that as per Sec. 83 if the holder allows more time, all the previous parties not consenting to such allowance are discharged from liability to such holder



HOW ACCEPTANCE IS MADE

In order to make drawee liable, it is necessary that he should give his assent by signing on the face of the bill. It is immaterial that he may or may not write the word “accepted”. Oral acceptance is no acceptance

Essentials of a valid acceptance

- It must be given in writing.
- It must be signed by the drawee or his authorize agent.

CONTD..

- It must appear on the face of the bill of exchange.
- It should be presented for acceptance on specified time.
- If no time is specified it should be presented within a reasonable time.
- It should be presented for acceptance at a specified place.
- If no such place is specified, it should be presented at the business place or residence of the drawee.

MODES OF ACCEPTANCE

General or absolute acceptance- Where the drawee of a bill of exchange gives his acceptance without any condition, it is said to be a general or absolute acceptance.

Qualified acceptance- Where the drawee of the bill of exchange adds any condition while accepting it, it is said to be a qualified acceptance. If the holder refuses to take qualified acceptance he may treat the bill as dishonored. Where the holder accepts the qualified acceptance all parties shall stand discharged, if there consent was not taken on the qualified acceptance.

TO WHOM PRESENTMENT CAN BE MADE?

The person who can accept the bill are :-

- (i) drawee of the bill of exchange; or
- (ii) all or some of the several drawees; or
- (iii) a person named in the bill as a drawee in case of need; or
- (iv) an acceptor for honour; or
- (v) the duly authorised agent of the drawee; (Section 75)
- (vi) In case of death, to his legal representative; and
- (vii) In case insolvency of drawee, to his assignee.

EFFECT OF NON PRESENTMENT FOR ACCEPTANCE

To establish legal relation between the parties to a bill of exchange or privity of contract acceptance by drawee of the bill of exchange is required. If it is not presented the following consequences may arise.

- (i) Drawee's liability under the bill will not arise.
- (ii) There will be no privity of the contract between the parties.
- (iii) The bill of exchange will be deemed to be dishonoured.
- (iv) No party thereto liable thereon to the person making such default.

PRESENTMENT FOR ACCEPTANCE EXCUSED

The **drawee cannot be found** with reasonable search.

Where the **drawee is dead or insolvent**. Section 75 of the act, contemplates that the instrument may be presented to the legal representative of the deceased drawee or assignee of the insolvent, however it is not compulsory.

The **drawee is a fictitious person or incapable of contracting**.

PRESENTMENT OF PROMISSORY NOTE FOR SIGHT [S.62]

A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

PRESENTMENT FOR PAYMENT[SECTION 64]

According to section 64 of the Act,

“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 as hereinafter provided. In default of such presentment, the other parties there to are not liable thereon to such holder.

Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification: Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.]

PRESENTMENT FOR PAYMENT [S.64]

P/N, BoE & Cheques

- must be presented to the maker, acceptor or drawee

by or on behalf of holder

In default of presentment

- other parties thereto are not liable to such holder

TIME FOR PRESENTMENT

As per **sec. 65**, presentment for payment must be made during **usual (actual) hours of business** of the maker of acceptor and in case of banker presentment must be made within banking hours. Thus, a presentment made during unusual hours of business, though valid for the purposes of acceptance and sight, is valid for purposes of acceptance and sight, is valid for purpose of payment.

Sec. 66 lays down that a promissory note or bill of exchange **payable at a specified period after date or sight thereof**, must be **presented for payment at maturity**. Presentment before maturity is not a valid presentment.

TIME FOR PRESENTMENT

According to Sec. 67, a promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment (thus every instalment is entitled to three days of grace). Non-payment of single instalment has the same effect as non-payment of a note at maturity.

PLACE OF PRESENTMENT

A promissory note, bill of exchange or cheque made, drawn or accepted **payable at a specified place** and not elsewhere must, in order to charge any party thereto, be **presented for payment at that place (Sec. 68)**.

Thus, acceptor will also be discharged in case an instrument is not presented at the specified place. “specified place” implies the precise address of the place; the mere mention of a big city like ‘Madras’ is not sufficient [Sivaram v Jayaram AIR 1996 Mad 297].

PLACE OF PRESENTMENT

Sec. 69 provides for the presentment of a bill or note made payable at a specified place in order to charge the drawer or the maker.

Sec 70 provides that **where no place is specified**, the note or bill must be **presented for payment at the place of business** (if any) or at usual place of residence, of the maker drawee or acceptor thereof, as the case may be.

It has been held that if the place of business is closed or abandoned, and there is some other place where his business is conducted which can be ascertained from reasonable inquiries, presentment at the former place is not sufficient.

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Sec. 71 provides for cases when maker, etc. has no known place of business or residence. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument, presentment for acceptance for payment may be made to him in person wherever he can be found.

PRESENTMENT OF CHEQUE TO CHARGE DRAWER

Subject to the provisions of section 84, a cheque must, in order to charge the drawer, be presented at the bank on which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

PRESENTMENT OF INSTRUMENT PAYABLE AT DEMAND

Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

EXCUSE FOR DELAY IN PRESENTMENT FOR ACCEPTANCE OR PAYMENT

Delay in presentment for acceptance or payment is **excused if the delay is caused by circumstances beyond the control of holder and not imputable to his default, misconduct or negligence.**

When the cause of delay ceases to operate, presentment must be made within reasonable time.

WHEN PRESENTMENT UNNECESSARY

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

- if the maker, drawee or acceptor **intentionally prevents the presentment** of the instrument, or
- If the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
- If the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or
- If the instrument not being payable at any specified place, he cannot after due search be found;

Contd....

(B) as against any party sought to be charged therewith, if he has **engaged to pay notwithstanding non-presentment;**

(C) as against any party if, after maturity, with knowledge that the **instrument has not been presented—**

- he makes a part payment on account of the amount due on the instrument, or
- promises to pay the amount due therein whole or in part, or
- otherwise waives his right to take advantage of any default in presentment for payment;

(D) as against the drawer, if the **drawer could not suffer damage from the want of such presentment.**

LIABILITY OF BANKER FOR NEGLIGENTLY DEALING WITH BILL PRESENTED FOR PAYMENT [SECTION 77]

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

PAYMENT & INTEREST

To whom payment should be made [Section 78]

Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the **holder of the instrument**.

Section 82(c) of the Act provides that the maker, acceptor, or endorser respectively of a negotiable instrument is discharged from liability thereon by payment to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

Interest when rate specified

Where interest rate is expressly made payable on P/N, BoE—Interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the court directs.

Interest when no rate specified

When no rate of interest is specified in the instrument—Interest on the amount due thereon shall be **calculated at the rate of 18% per annum**, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the court directs.

Explanation: When the party charged is the endorser of an instrument dishonoured by non-payment- he is liable to pay interest only from the time that he receives notice of the dishonour.

DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

When a party, who is liable on a negotiable instrument, ceases to be liable he is said to be discharge from liability.

Discharge from liability of a party to an instrument is different from the discharge of negotiable instrument itself.

When only some of the parties to an instrument are discharged from liability but others continue to be liable thereon, it is only are discharge of some of the parties from liability.

DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

When the rights against all the parties on an instrument come to an end, the instrument is discharged. After the instrument is discharged no person, even a holder in due course, can claim the amount of the instrument from any party thereto.

Thus, when the maker of a promissory note or the acceptor of a bill discharged, all the other parties liable on the instrument are automatically discharged and in that case the instrument itself is deemed to be discharged. So long as the instrument is discharged it can continue to be negotiated.

Chapter VII(Sections 82 to 90) of the N.I act deal with the discharge of the parties on a negotiable instrument.

MODES OF DISCHARGE FROM LIABILITY ON INSTRUMENTS [SECTION 82]



- Cancellation
- Release
- Payment

Contd...

The parties to the negotiable instrument may be discharged in the following ways—

(a) **By cancellation (S. 82 (a))**— 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 of recourse against the party whose name is cancelled, are discharged from liability to the holder.

Contd..

b) **By release (S. 82 (b))**— Where the holder of a negotiable instrument releases any party to the instrument by any method other than cancellation, the party so released is discharged from liability.

For example discharge by an agreement between the parties, and includes waiver, release, accord and satisfaction.

The party so released and all parties subsequent to him who have a right of action against the party so released are discharged from liability. Thus, the effect of release is the same as that of cancelling a party's name.

Contd...

(c) By payment— When payment on an instrument is made in due course, both the instrument and the parties to it are discharged subject to the provision of Sec. 82 (c)[Sec. 78]. The payment on an instrument may be made by any party to the instrument. It may even be made by a stranger provided it is made on account of the party liable to pay

(d) By the holder allowing the drawee of a bill more than 48 hours to accept- If the holder of a bill of exchange allows the drawee more than forty eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.[Section 83]

Contd....

(e) By the holder agreeing to a qualified or limited acceptance of bill of exchange[Section 86] : If the holder of a bill agrees to a qualified acceptance all prior parties whose consent is not obtained to such an acceptance are discharged from liability. Acceptance of a bill is deemed to be qualified, for example, when the acceptance is conditional, declaring the payment to be dependent on the happening of an event therein stated, or where it alters the payment of the sum ordered to be paid, or when the acceptor accepts to pay at a specified place only and not elsewhere.

Contd..

(f) By the drawer not duly presenting a cheque for payment [Section 84]:

If a holder does not present a cheque within reasonable time after its issue, and the bank fails causing damage to the drawer, the drawer is discharged as against the holder to the extent of the actual damage suffered by him.

(g) By the bill coming to the acceptor's hands after maturity: If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished (Sec. 90). **This rule is based on the general principle that a present right and liability united in the same person cancel each other.**

Contd...

(h) Discharge by material alteration

“Any material alteration of negotiable instruments renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties” (First para, Sec. 87)

The second para of sec. 87 provides that “if a material alteration is made by an endorsee, the endorser will be discharged from his liability even in respect of the consideration thereof.”

If the holder of a negotiable instrument makes a material alteration of instrument he loses his right of action against those parties who would otherwise have been liable towards him.

Contd...

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

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The party who consents to the alteration as well as the party who makes the alteration are disentitled to complain against such alteration e.g. the drawer of the cheque himself altered the date of the cheque for validating or re-validating the same instrument, he cannot take advantage of it by saying that the cheque becomes void as there was a material alteration thereto. It is always open to a drawer to voluntarily re- validate a negotiable instrument including a cheque [*Veera Exports v T. Kalavathy (2002) 1 SCC97*].

Contd...

Alteration must be material: An alteration is **material** which in any way alters the operation of the instrument and affects the liability of parties thereto.

Any alteration is material

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

By material alteration, the liability of the parties is avoided, whether the change be prejudicial or beneficial to the parties. A material alteration is one which varies the rights, liabilities or legal position of the parties as ascertained by the original instrument [*Loonkaran sethiya v Ivan E. John (1977) SCC*].

“

Examples of Material Alteration

Alteration of date e.g. time of payment accelerated or postponed, or where date in the instrument inserted subsequent to the execution of instrument (*A. Subba Reddy v Neelapa Reddy AIR 1966 A.P. 267*).

Alteration of rate of interest (if specified) [*Seth Tulsidas Lalchand v Rajagopal (1967) 2 MLJ 66*].

Alteration of the sum payable, e.g. a bill for Rs. 5000 altered into a bill for Rs. 500.

Alteration in the time of payment, e.g. a bill payable 3 months after date is altered to be payable 1 month after date.

Contd...

Alteration of the place of payment e.g. change of bank at which the bill is payable [*Tidamarsh v Grover (1813) 23 LJ QB 261*].

alteration by addition of place for payment e.g. where a place of payment is not given but is subsequently added without the acceptor's consent.

Alteration by addition of parties (from one maker/payee to two makers/payees).

Alteration by tearing material part of the instrument.

Alteration by increasing or affixing stamps (*Challamma v Padmanabhan Nair 1970 KLR 682*).

Alteration by erasure of an “account payee” crossing (*J. Ladies Beauty v State Bank of Indian AIR 1984 Guj33*).

ALTERATIONS THAT DO NOT AFFECT LIABILITY OF PARTIES

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

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

An **alteration made to correct a clerical error or a mistake**, thus, if instead of 1823, the date entered was 1832, the agent of drawer held entitled to correct mistake

Alteration made to carry out common intention of original parties is permitted by Sec. 87. Alteration with the consent of the parties liable thereto.

ALTERATIONS THAT DO NOT AFFECT LIABILITY OF PARTIES

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

A material alteration doesn't affect the liability of those parties who become liable after the alteration is made. Sec. 88 provides that the acceptor or endorser is bound by his acceptance or endorsement notwithstanding any previous alteration of the instrument.

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

ALTERATIONS PERMITTED (EXCEPTIONS TO SEC. 87)

Sec. 20 – Incomplete instrument (e.g. column of sum left blank) can be filled up by the holder.

Sec. 49 – It enables the holder of an instrument indorsed in blank to convert it into endorsement in full (BY writing above the endorser's signature a direction to pay to any other person as endorsee). Thus, addition of parties allowed here.

Sec. 125- the holder of an uncrossed cheque may cross it, or may convert general into special crossing or may make it 'not negotiable'.

ALTERATIONS PERMITTED (EXCEPTIONS TO SEC. 87)

Apparent alteration – The alteration should be apparent on the face of the instrument otherwise it remains a valid security in the hands of a HDC. Sec. 89 provides that where a an instrument has been materially altered but doesn't appear to have been so altered, the party paying it will be discharged by payment in due course.

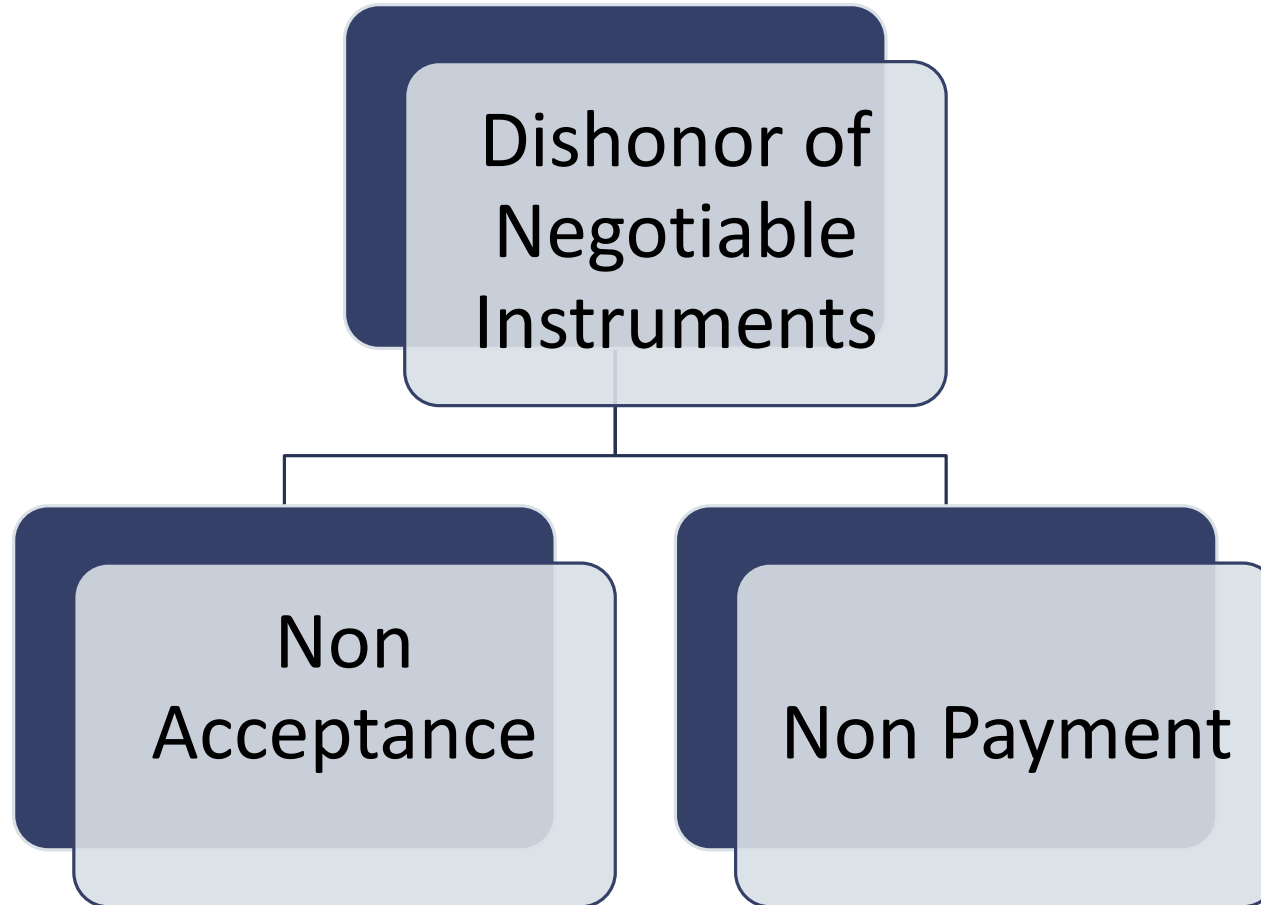
But in such case, the acceptor is liable only for the original tenor of the instrument and not for its altered tenor.

Similarly, where a cheque at the time of presentment is crossed but the crossing is not apparent, the banker will be discharged by payment in due course.

Contd...

Example 1: A promissory note was made without mentioning any time for payment. The holder added the words “on demand” on the face of the instrument. As per the above provision of the Negotiable Instruments Act, 1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence adding the words “on demand” does not alter the business effect of the instrument.

DISHONOR OF NEGOTIABLE INSTRUMENTS



DISHONOR BY NON ACCEPTANCE

A bill of exchange is said to be dishonoured by non-acceptance is any one of the following ways (Sec. 91):

- (a) When a **bill is duly presented for acceptance**, and the drawee, or one of several drawees not being partners, **refuse acceptance within forty eight hours form the time of presentment**, the bill is dishonoured.
- (b) Where the **drawee is incompetent to contract**, the bill may be treated as dishonoured.
- (c) When a **drawee gives a qualified acceptance**, the holder may treat the instrument dishonoured.

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Also, when the drawee is a fictitious person or after reasonably search cannot be found, the bill may be treated as dishonoured.

The effect of dishonoured by non-acceptance is that the holder of the bill can start an action against the drawer and the endorsers and need not wait for maturity of the bill.

DISHONOR BY NON PAYMENT

A promissory note, bill of exchange and cheque is said to be dishonoured by **non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon duly required to pay the same (Sec. 92).**

Again, a negotiable instrument is dishonoured by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid (Sec. 76).

Where a promissory note was sent by registered post and the party liable refused to receive the post, the bill was held to be dishonoured [*K. Venkatasubbayya v P.R. Rao Tobacco Co. AIR 1972 A.P.72*]

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Dishonour by non-acceptance of BoE

drawee makes defaults in acceptance

presentment is excused and

Bill not accepted

drawee is incompetent

acceptance is qualified



Dishonour by non-payment of P/N, BoE/ Cheque

maker/ acceptor /drawee makes default in payment

NOTICE OF DISHONOR

When negotiable instrument is dishonoured either by non-acceptance or by non payment, **the holder must give a notice of dishonour to the drawer or his previous holder** in order to make them liable on the instrument. If he fails to do so, except in cases when notice of dishonour maybe excused, he will forfeit his right of action against prior parties entitled to the notice of dishonour.

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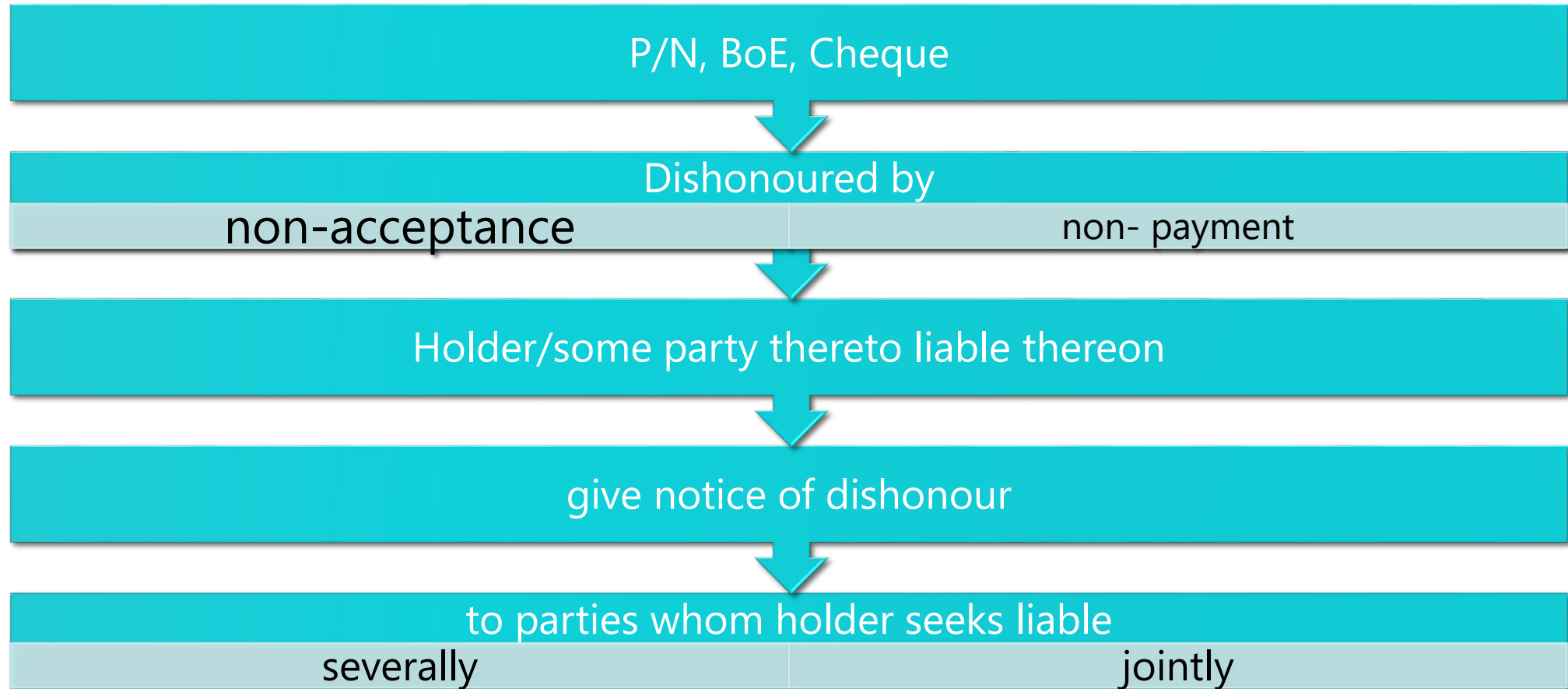
Object of notice of Dishonour

The object of notice of dishonour is to inform (or warn) the party or the person who is liable on instrument about the dishonour of the instrument. Also, in the case of drawer to enable him to protect himself as against the drawee or acceptor who has dishonoured his bill

The omission on the part of holder to give due notice of dishonour would discharge the drawer not only from his liability upon the cheque, but also upon the original debtor consideration.

The doctrine of notice of dishonour is based upon the principle of just and equity.

By And To Whom Notice Should Be Given [Section 93]



Contd.....

Notice by whom: Notice of dishonour must be given by the holder, or by a person liable on the instrument..

Notice to whom: Notice of dishonour must be given to all parties other than the maker or the acceptor or the drawee whom the holder seeks to make liable.

Notice of dishonour to the acceptor of a bill or to the maker of a note or the drawee of cheque is not necessary. They are the parties primarily liable upon the instrument, on the due date and at the proper place. It is they who dishonour the instrument by no-acceptance or non-payment, and notice to them will merely be notice of fact already known to them.

MODES OF GIVING NOTICE

Notice of dishonour may be –

- **given to a duly authorized agent of the person to** whom it is required to be given, or,
- where he has died, to his **legal representative** or,
- where he has been declared insolvent, to **his assignee**;
- may be **oral or written**; may, if written, be sent by post;
- and may be in any form.
- it must inform the party to whom it is given,
- either in express term or by reasonable intendment,

MODES OF GIVING NOTICE

- that the instrument has been dishonoured,
- and in what way, and that he will be held liable thereon;
- and it must be given within reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarried, such miscarriage does not render the notice invalid (Sec. 94).

PARTY RECEIVING MUST TRANSMIT NOTICE OF DISHONOR

Section 95 of the act states that,

“Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within reasonable time, unless such party otherwise receives due notice as provided by Sec. 93.”

Thus, a person receiving notice must transmit it to prior parties whom he wishes to make liable to himself because the holder may have omitted to give notice to some of the prior parties.

WHEN NOTICE OF DISHONOR IS UNNECESSARY [SECTION 98]

No notice of dishonour is necessary,-

- (a) **waiver:** when it is dispensed with by the party entitled thereto. A waiver by a party to receive notice ensures for the benefit of all the parties coming after him.
- (b) in order to charge the drawer, when he has **countermanded payment;**
- (c) **No damage:** when the party charged could not suffer damages for want of notice;
- (d) when the **party** entitled to notice **cannot** after due search **be found;** or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

Contd....

- (e) to charge the drawers, when **the acceptor is also a drawer**;
- (f) in the case of a promissory note which is not negotiable;
- (g) **Promise to pay**: when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

EXAMPLES

Examples: Is notice of dishonour necessary in the following cases:

- (1) X having a balance of ` 1,000 with his bankers and having no authority to over draw, drew a cheque for ` 5,000/-. The cheque was dishonored when duly presented for repayment.
- (2) X, drawer of a Bill informs Y, the holder of the bill that the bill would be dishonored on the presentment for payment.

Answer: Notice of dishonour is not necessary in both the cases. [Section 98 of the Negotiable Instruments Act, 1881].

NOTING AND PROTEST [SECTION 99]

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Contd...

‘Noting’ must contain the following particulars (Sec. 90):

- The fact of dishonour
- The date of dishonour,
- The reasons, if any, assigned for such dishonour,
- If the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured; and
- The notary’s charges.-‘Noting’ must be made by the notary within a reasonable time after dishonour (Sec. 99).

Noting is not compulsory in the case of an inland bill or note. The omission to get the instrument noted does not in any way affect the rights of the holder thereon. Noting is, however, compulsory in case of foreign bills.

PROTEST [Section 100]

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

CONTENT OF PROTEST

Contents of protest

Protest is based upon noting. A protest, in order to be valid, must contain all the following particulars:

- The instrument itself or a literal transcript of the instrument and of everything written or printed

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- The name of the person for whom and against whom the instrument has been protested.
- The fact and reasons for dishonour (a statement that payment or acceptance, or better security, as the case

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may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found). A notary public may make the demand either in person or by his clerk or, where authorized by agreement or usage, by registered letter.

The place and time of dishonour (and, when better security has been refused, the place and time of refusal).

The subscription (signature) of the notary public.

In case of acceptance for honor or payment for honor, the name of the person accepting or paying and the name of the person for whose honor it is accepted or paid (sec. 101)

DIFFERENCE BETWEEN NOTING AND PROTEST

Noting	Protest
<p>P/N, BoE, Cheque has been dishonoured by non-acceptance or non-payment—</p> <p>the holder may cause such dishonour to be noted by a notary public upon-</p> <ul style="list-style-type: none">a. the instrument, orb. upon a paper attached thereto, orc. partly upon each	<p>P/N or BoE has been dishonoured by non-acceptance or non-payment—</p> <p>the holder may, cause such dishonour to be</p> <ul style="list-style-type: none">a. noted, andb. certifiedc. by a notary public

NOTICE OF PROTEST

When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest (Sec. 102).

PROTEST OF FOREIGN BILLS

Foreign bills of exchange must be protested for dishonour when such protest is required by law of the place where they are drawn (Sec. 104). Thus, foreign bills must be protested as the law of most countries has made protest compulsory in case of dishonour of a bill.

REASONABLE TIME

In determining what is reasonable time of presentment for acceptance or payment, for giving notice of dishonour and for noting, regards shall be had to the nature of the instrument and the usual course of dealing with respect to similar instrument; and, in calculating such time, public holidays shall be excluded (Sec. 105).

Reasonable time of giving notice of dishonor

If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different place, such notice is given within a reasonable time if it is dispatched by the next post or on the day next after the day of dishonour

REASONABLE TIME

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is dispatched in time to reach its destination on the date next after the day of dishonour (Sec. 106).

Reasonable time for transmitting such notice

A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder (Sec. 107).

DISHONOR OF CHEQUES FOR INSUFFICIENCY OF FUNDS

Dishonor of cheque for insufficiency, etc., of funds in the accounts [Section 138]

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

- a. For payment of any amount of money
- b. to another person from out of that account
- c. For the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]

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d. is returned by the bank unpaid,

e. either because of the—

i. amount of money standing to the credit of that account is insufficient to honor the cheque, or

ii. that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

Such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Contd...

Provided that this section shall not apply, unless—

- (a) Cheque presented within validity period:** The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- (b) Demand for the payment through the notice:** the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

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(c) Failure of drawer to make payment: the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, “debt or other liability” means a legally enforceable debt or other liability.

Contd...

Example: X issued a post- dated cheque to Y on the account of discharge of its liability. Further, X instructed to the bank to make the stop payment due to unavailability of the adequate amount in the account. Here, in this instance section 138 of the Act is attracted as when a cheque is dishonoured on account of stop payment instructions sent by the drawer to his banker in respect of a post- dated cheque irrespective of insufficiency of funds in the account. A post- dated cheque is deemed to have been on the date it bears and the three months period for the purposes of section 138 is to be counted from that date. So, X will be liable for dishonour of cheque. Once a cheque is issued by the drawer a presumption under section 139 must follow.

Penalty: According to Section 138 of the Act, the dishonour of cheque is a criminal offence and is punishable with imprisonment upto 2 years or fine upto twice the amount of cheque or both.

PRESUMPTION IN FAVOR OF HOLDER

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

Presumption prescribed here is a “rebuttable presumption” as the provisions clearly provides that the person issuing the cheque is at liberty to prove to the contrary. The effect of this presumption is to place the evidential burden on the accused.

SECTION 140

Defence which may not be allowed in any prosecution under section 138.—It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

OFFENCES BY COMPANIES- SECTION 141

If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed—

- was in charge of, and
- as responsible to the company for the conduct of the business of the company,
- as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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Exception: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Where a person is nominated as a director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or State Government, as the case may be, he shall not be liable for prosecution under the chapter.

Contd...

(2) Where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purpose of this section

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relating to a firm, means a partner in the firm.

Contd...

Example: 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. Is he liable for an offence under section 138 ?

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Answer: According to Section 138 of the Negotiable Instruments Act, 1881 where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from/out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable. 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. Therefore, he has not committed an offence under section 138

COGNIZANCE OF OFFENCE [SECTION 142]

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

(a) **Cognizance on written complaint:** Notwithstanding anything contained in Code of Criminal Procedure, 1973, a **written complaint** should have been made to a metropolitan or a first class judicial magistrate by the payee, or HDC of the cheque.

(b) **Limitation for filing of complaint:** such complaint is made **within one month** of the date on which the cause of action arises under clause (c) of the proviso to section 138;

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Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(c) **Jurisdiction of court:** no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

Contd....

- (2) Jurisdiction of courts for the trial of offence [Section 142 (2)]:** The offence under section 138, which deals with the dishonor of cheque, shall be inquired into and tried only by a court within whose local jurisdiction,—
- (a) 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
 - (b) 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.

Explanation— 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.”

Example: Mr. A holds an account in Navrangpura Branch, Ahmedabad of “XYZ” Bank, issues a cheque payable in favor of B. B, who holds an account with the M.S University Road Branch, Vadodara of the “PQR” bank, deposits the said cheque at Surat Branch of ‘PQR bank’ and the cheque is dishonored. The complaint will have to be filed before the court having jurisdiction where the M.S University road branch is situated.

Power of Court to Try Cases Summarily [Section 143]

1) **Trial of Offence:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter shall be **tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate** and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials.

In case of summary trial: Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of **imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees.**

Contd...

In case where no summary trial can be made: Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) **Speedy Trial:** The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) **Speedy and efficient Disposal:** Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

Contd...

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.

Offences to be Compoundable [Section 147]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be compoundable

POWER OF APPELLATE COURT TO ORDER PAYMENT PENDING APPEAL [S.148]

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

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(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.



THANK YOU