

## ACCEPTANCE

**Definition**

A bill of exchange is said to be accepted when the drawee puts his signature on it, thereby acknowledging his liability under the bill. There are certain special cases where a bill need not be accepted. Except in these cases, the drawee is not liable on a bill until and unless he accepts the bill.

**Mode of Acceptance**

The usual mode of acceptance is writing the word "accepted" across the bill and signing under it. Writing the word "accepted" is not essential but the signature is. The signature may be put anywhere, on the face of the bill or on the back of it.

**Types of Acceptance**

Acceptance may be either (i) General or (ii) Qualified.

Acceptance is General when it is unconditional and unqualified, *i.e.*, when the drawee accepts liability to pay the amount mentioned in the bill in full, without any condition or limitation. The acceptor may mention the bank where payment will be made. This does not amount to putting a condition.

Acceptance is said to be Qualified when the acceptor puts some conditions on the acceptance. *Examples* : acceptance for an amount less than that mentioned in the bill ; stipulating a place of payment other than that mentioned in the bill etc.

A qualified acceptance may be refused by the holder. He can in such a case treat the bill as dishonoured by non-acceptance and take legal steps to recover his dues from the parties liable. The holder may, if he chooses, accept qualified acceptance. The acceptor thereupon becomes liable only to the extent, and subject to the conditions, mentioned in the qualified acceptance. If a qualified acceptance is accepted, all persons who were parties to the bill prior to such acceptance are discharged from their liabilities under the bill, excepting those if any, who consent to such acceptance.

**Presentment for Acceptance—by whom ?**

Acceptance can be demanded by the holder or his agent.

**When Acceptance is not necessary**

Acceptance is not necessary in the case of bills of exchange payable on demand or at sight, unless in any such bill it is specially mentioned that it is to be accepted before payment. All other bills require acceptance.

**The Presentment for Acceptance****The Time and Place of Presentment (Sec. 61)**

A Bill which requires to be accepted must be presented for acceptance before the drawee or his authorised agent.

Where acceptance is obligatory, it must be made within reasonable time. It must be within business day. If a bill is directed to the drawee at a particular place, it must be presented at that place. When authorised by agreement or usage, a presentment through the post office by a registered letter is sufficient.

The document must be presented for acceptance before the date of payment (before maturity) and within a reasonable time after it is drawn.

If the drawee after a reasonable search cannot be found, the bill can be treated as dishonoured.

If a bill, which requires acceptance, *is not* presented for acceptance in accordance with rules mentioned above, the drawer and all indorsers are discharged from their liability to the holder.

*Drawee's time for deliberation* : The drawee is not required to accept a bill immediately on presentation. He is entitled to have 48 hours time to think over it.—Sec. 63. After the 48 hours are over he must return the bill to the holder, with, or without acceptance as the case may be. If during his custody of the bill, it is mutilated, lost or destroyed, he must compensate the holder. If the holder allows the drawee more than 48 hours for deliberation, all prior parties to the bill are discharged from their liabilities under the bill.

**Negotiable Instruments must be shown**

Before acceptance and payment of a negotiable instrument, the person liable to pay is entitled to see the instrument.—Sec. 81.

### When Presentment for Acceptance is not necessary

Presentment for acceptance is not necessary (*i.e.*, excused) in the following cases :

1. When after a reasonable search the drawee cannot be found.—Sec. 61.
2. When the drawee is insolvent or dead.—Sec. 75.
3. When the bill is drawn on a non-existing or fictitious person or on a person who is incapable of entering into contracts (*e.g.*, a minor or a lunatic).—Sec. 91.

### Acceptance—to Whom ? Who can accept a bill ?

Only the following persons can accept a bill of exchange :

1. The drawee of the bill.
2. The drawee in case of need.
3. The legal representative, when the drawee is dead.—Sec. 75
4. The Official Assignee or Official Receiver, when the drawee has become involvement.—Sec. 75.
5. *Acceptance by several drawees not partners* : Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.—Sec. 34.
6. A bill may be accepted by a person for the honour of the drawee. This is known as acceptance for honour. This is the only case where a bill may be accepted by a stranger to the instrument. (See p. 349)

### Dishonour by non-acceptance

A bill of exchange is said to be dishonoured by non-acceptance when the drawees of one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

When the drawee is incompetent to contract or the acceptance is qualified, the bill may be treated as dishonoured.—Sec. 91.

### The effect of non-presentment

Where presentment must be made (*i.e.*, if it is compulsory) and it is not presented, "no party thereto is liable thereon to the person making such default."—Sec. 61.

## NEGOTIATION

### Definition

Negotiation of an instrument is the process by which the ownership of the instrument is transferred from one person to another.

When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.—Sec. 14.

### Delivery (Sec. 46)

The making acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

From Sec. 46 it follows that delivery may be actual or constructive. Actual delivery means giving actual possession. Delivery is a question of fact. Constructive delivery happens when a negotiable instrument is delivered to an agent, clerk or servant on his behalf.

### Negotiation by Delivery (Sec. 47)

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

*Exception*—A promissory note, bill of exchange or cheque, delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

#### *Examples :*

- (a) *A*. the holder of a negotiable instrument payable to bearer, delivers it to *B*'s agent to keep for *B*. The instrument has been negotiated.

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

The intention to transfer the ownership of the instrument must be present. If an instrument is handed over to another for safe custody or for a special purpose (*e.g.*, to a solicitor for filing a suit) the delivery does not amount to negotiation.

### **Negotiation by Indorsement**

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.—Sec. 48.

### **Who may Negotiate ?**

The sole maker, drawer, payee or endorsee and if there are several makers, drawers, payees or endorsees, all of them jointly can negotiate an instrument, provided its negotiability has not been restricted or excluded by a term used in the instrument.—Sec. 51.

The maker or drawer cannot endorse or negotiate an instrument unless he is in lawful possession of the instrument or is the holder thereof. A payee or indorsee cannot endorse or negotiate unless he is the holder thereof.

### **The duration of Negotiability**

*Instrument negotiable till payment or satisfaction* : 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.—Sec. 60.

### **Differences between Negotiation and Assignment**

1. *Procedure* : Negotiation means transfer of a negotiable instrument in accordance with the procedure laid down in the Negotiable Instruments Act. *i.e.*, by delivery in cases of bearer instruments and by delivery and indorsement in cases of order instruments. Assignment means the transfer of a right or an actionable claim, (chose in action) by deed or otherwise. (See p. 190)

2. *Title* : When a negotiable instrument is negotiated, the transferee, if he takes the instrument bonafide and for value, becomes a holder in due course. A holder in due course is not affected by any defect in the title of the transferor. He may therefore have a better title than the transferor. In the case of an assignment, the assignee gets the rights of the assignor and nothing more. If the title of the assignor was defective, the title of the assignee is also defective.

3. *Notice of transfer* : In the case of an assignment the assignee must give notice to the debtor. In the case of negotiation, no notice to the debtor is required to be given.

4. *Proof of consideration* : In the case of negotiation consideration is presumed. In an assignment, there is no presumption of consideration and the party claiming has to prove consideration.

## INDORSEMENT

### Definition

Endorsement or Indorsement means signature of the holder made with the object, of transferring the document. The person who makes the indorsement is called the Indorser.

“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, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the indorser.—Sec. 15.

### Effect of Indorsement

The indorsement of a negotiable instrument followed by the delivery thereof, transfers to the indorsee the property therein with the right of further negotiation; but the right of further negotiation may be restricted or excluded by express words.—Sec. 50.

### Types of Indorsement

There are two kinds of indorsement; (i) Indorsement in Full and (ii) Indorsement in Blank. When the indorser mentions the name of the person to whom the money due on an instrument

is to be paid, it is said to be indorsed in full. *Example* : "Pay to X or order". Sd/Y. Where the name of the party is not mentioned it is said to be indorsed in blank. *Example* : "Pay....." SD./Y.

*Conversion of indorsement in blank into indorsement in full* :

The holder of an instrument indorsed in blank is entitled to put in his own name or the name of any other person above the indorsement and thereby convert the indorsement in blank to an indorsement in full.

In such a case the amount due on the instrument cannot be claimed from the indorser in full except by the person to whom it has been indorsed in full or a person who derives title from such indorser in full.—Sec. 55.

### Rules of Indorsement

1. Indorsement may be made on the face of the instrument or on its back. If there is no space on the instrument, the endorsement may be made on an attached slip of paper. Such a slip is known as *Allonge*.

2. Mere signature without any words amounts to an indorsement in blank, provided the indorsement was made with the intention of transferring the instrument.

3. For an indorsement in full, no particular words are necessary. Any term indicating an intention to transfer the document to a particular person or to his order, accompanied by signature, is sufficient.

4. If the payee's or the indorsee's name is wrongly spelt, he should (when he again indorses it) sign the name as spelt in the instrument, and write the correct spelling within brackets after his indorsement.

5. A negotiable instrument indorsed blank is payable to the bearer thereof even although originally payable to order.—Sec. 54. But this rule does not apply to crossed cheques.

6. The indorsement must be signed by the holder or his duly authorised agent.

7. Usually indorsements are not accepted unless it is signed in ink. A rubber stamp is not accepted but the designation of the holder can be done by a rubber stamp.

8. Complimentary prefix, e.g., Sri or Sm. is usually not written in negotiable instruments, but it may be done.

9. An illiterate person may indorse a negotiable instrument by putting a thumb impression of his left hand with witnesses who must also sign.

10. It is presumed that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.—Sec. 118(e).

### **Instruments which are not Negotiable**

An instrument becomes non-negotiable when the indorsement on it contains express words which.

(a) restrict or exclude the right of further negotiation ; or

(b) merely constitute the indorsee an agent to indorse the instrument ; or

(c) merely entitle the indorsee to receive the contents for the indorser or for some other specified person.—Sec. 50.

#### *Examples :*

An instrument becomes non-negotiable if it contains the following words in the indorsement :

- (i) "Pay the contents to C only."
- (ii) "Pay C for my use."
- (iii) "Pay C or order for the account of B."
- (iv) "The within must be credited to C."

The following indorsements do not exclude the right of further negotiation by C : (i) "Pay C." (ii) "Pay C, value in account with the Oriental Bank." (iii) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and other."

Cheques which are marked "not negotiable" or "account payee" are nevertheless transferable but the transferee does not become a holder in due course. (See p. 296)

### **Indorser who excludes his own Liability or makes it Conditional**

The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon. He can also make his liability or the right of the indorsee to receive the amount due thereon depend on the happening of a specified event, although such event may never happen.—Sec. 52.

An agent signing a negotiable instrument may exclude his personal liability by using words to indicate that he is signing as agent only. The same rule applies to directors of a company signing instruments on behalf of a company. The intention to exclude personal liability must be clear.



*Examples :*

- (i) The indorser of a negotiable instrument signs his name adding the words, "without recourse" or "*sans recourse*". Upon this indorsement he incurs no liability.
- (ii) The indorsement on an instrument is "For and on behalf of *X* company. Sd/P. director." *P* has no personal liability.
- (iii) *A* is the payee and holder of a negotiable instrument. He transfers the instrument to *B sans recourse*. *B* transfers the instrument to *C* and *C* to *A*. *A* is not only reinstated in his former rights but has the rights of an indorsee against *B* and *C*.

### **Negotiation Back**

When an indorser excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him *i.e.*, he regains the position he occupied before he made the restrictive indorsement. This can be called "*negotiation back*".—Sec. 52, 2nd para.

### **Restrictive Indorsement**

An indorsement is said to be restrictive when the indorser, by express words, restricts the right of further negotiation of the instrument or merely entitles the indorsee of the instrument to receive the contents of the instrument for a specific purpose.

*Examples :*

"Pay *C* for my use". "Pay *C* or order for the account of *B*"

### **Facultative Indorsement**

When the indorser, by express words, abandons some right or increases his liability under a negotiable instrument, the indorsement is called Facultative.

*Example :*

An indorsement with the remark, "notice of dishonour not required".

### **Partial Indorsement**

An indorsement which purports to transfer only a part of the amount due on a negotiable instrument, is invalid. But where an instrument has been partly paid it can be negotiated, for the balance, provided the fact of part-payment is noted on the instrument.—Sec. 56.

*Examples :*

- (i). The holder of a promissory note for Rs. 1000 writes on it, "Pay *B* Rs. 500/-" and indorses the note. The indorsement is invalid for the purpose of negotiation.

- (ii) The maker of a promissory note for Rs. 1000 pays Rs. 500, and the fact is noted on the instrument. The holder can negotiate the note for the balance due on it.

### “ONCE A BEARER INSTRUMENT ALWAYS A BEARER INSTRUMENT”

If a negotiable instrument is endorsed in blank or is payable to bearer, it is a bearer instrument. The holder of such an instrument may negotiate it by delivery only. But suppose that the holder indorses it specially to a person and makes it payable to the order of such person. In such a case the indorser in full cannot be sued by any person except the person in whose favour he indorsed it, but as regards all parties prior to the indorser in full, the instrument remains transferable by delivery.—Sec. 55.

#### Example :

*X*, the payee of a bill, indorses it in blank and delivers it to *Y*. *Y* indorses it to *Z* or order. *Z* without any indorsement transfers it to *P*. *P* as the bearer is entitled to receive payment. In case of dishonour *P* is entitled to sue the drawer and the acceptor of the bill and also *X*, the indorser in blank and all indorsers prior to *X*. He cannot however sue *Y* or *Z*.

Where a cheque is originally expressed to be payable to bearer the drawee is discharged by payment in due course to the bearer thereof notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.—Sec. 85(2).

### EXERCISES

1. What do you understand by the “negotiability” of a Negotiable Instrument? What is the effect of crossing a cheque with the words “not negotiable” written across the face? (Pages 315, 297)
2. Who can accept a bill of exchange? (Pages 314, 315)
3. What are the rules regarding Indorsement? (Pages 317-318)
4. Distinguish between :
  - (a) General Acceptance and Qualified Acceptance. (Page 312)
  - (b) Negotiation and Assignment. (Page 316)
5. Discuss : “Once a bearer instrument always a bearer instrument.” (Page 321)
6. Write notes on :
  - (a) “Endorsement”
  - (b) Negotiation ;
  - (c) Restrictive endorsement ;
  - (d) Crossed cheque ;
  - (e) Not-negotiable instrument ;
  - (f) Acceptance.
 (Pages (a) 317 (b) 315 (c) 320 (d) 296 (e) 319 (f) 312)

**WHO CAN BE PARTIES TO A NEGOTIABLE  
INSTRUMENT ?****Capacity to make etc. of Negotiable Instruments**

The capacity to make, draw, accept, negotiate and indorse a negotiable instrument depends on the capacity to enter into contracts.

Every person capable of contracting may bind himself and be bound by a negotiable instrument. A person incapable of contracting cannot bind himself but may, under certain circumstances, bind others. When some of the parties to a negotiable instrument are capable of contracting and some are not, the capable parties are bound while the incapable parties are not. The provisions of law regarding the different cases of incapacity, as regards negotiable instruments are summarised below.

**Minor**

A minor may draw, indorse, deliver and negotiate a negotiable instrument so as to bind all parties except himself.—  
Sec. 26.

Thus a minor party to a negotiable instrument is not personally liable but the adult parties are. When an instrument is signed by a minor and an adult jointly, the minor is not liable but the adult is. The defence of minority can be taken by the minor even though he might have concealed his age deliberately or made a false representation concerning it. If a minor is the payee under a negotiable instrument, he can enforce payment.

**Lunatic, Idiot and Drunken Persons**

The legal position is the same as in the case of minors. A lunatic can, however, bind himself by a negotiable instrument if he signs it during a lucid interval.

**Insolvent**

After the order of adjudication is passed, the properties of the insolvent vest in the Official Assignee or the Official

**Receiver.** The insolvent therefore cannot draw, make, accept or indorse a negotiable instrument. A bill drawn upon the insolvent before he became insolvent may be presented to the Official Assignee for acceptance. An instrument executed after insolvency in favour of the insolvent, vests in the Official Assignee or the Official Receiver.

### **Corporation**

A corporation can incur liabilities under a negotiable instrument if it is so empowered by its memo and articles. A trading company has implied powers to borrow and can do so by executing negotiable instrument. A non-trading company has no implied powers to borrow and can executed negotiable instruments only if specifically empowered to do so.

### **Agent**

Every person capable of binding himself or of being bound, by a negotiable instrument, may so bind himself or be bound by a duly authorised agent acting in his name.—Sec. 27.

The authority to execute negotiable instruments must be given specifically. A general authority to act as agent does not include the authority to execute negotiable instruments. An authority to draw bills of exchange does not of itself import an authority to indorse.—Sec. 27.

The fact of agency may be indicated by using the following words : “for and on behalf of ” or “*per pro*” which is short for “*per procurationem*.”

*Liability of agent signing* : The agent must indicate that he is signing as agent, by using specific words to that effect ; otherwise he will be personally responsible. The personal responsibility cannot be enforced by persons who induced the agent to sign upon the belief that only the principal would be liable. Except in such cases, the agent is personally responsible if the fact of agency is not clearly indicated.—Sec. 28.

### **Legal Representative**

The estate of a deceased person vests in his legal representative (heir, executor etc.) The legal representative can deal with the negotiable instruments belonging to the deceased to the same extent as the deceased could have done.

The legal representative who signs his name to a negotiable instrument must use words to indicate that he is not personally responsible (e.g., *sans recourse*). If he does not use any such words, he becomes personally responsible.—Sec. 29.

If a person indorses a negotiable instrument payable to order but dies before he can deliver the instrument to the indorsee his legal representative cannot complete the transaction by delivering the instrument to the party intended to receive it. He must reindorse the instrument, signing it as the legal representative, and then deliver it.—Sec. 57.

### Joint Hindu Family

The *Karta* of a joint Mitakshara family can bind the joint family by executing a negotiable instrument provided the transaction is for the benefit of the family or is for legal necessity. The other members are bound to the extent of their shares in the joint family properties but are not liable personally.

## LIABILITY OF THE PARTIES

The liability of the parties to a negotiable instrument is determined by the following rules :

### Maker and Acceptor

The maker of a promissory note and the acceptor of a bill of exchange are primarily responsible for the payment due. Section 32 of the Act states that, in the absence of a contract to the contrary, the maker of a promissory note and acceptor of a bill of exchange before maturity are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively. The money must be paid at or after maturity to the holder as required. In default of such payment, the maker and the acceptor is bound to compensate and party to the note or bill for any loss or damage sustained by him and caused by such default.

### Drawer

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 dishonour has been given to, or received by the drawer.—Sec. 30.

Before acceptance, the drawer's liability is primary ; after

acceptance, the drawer's liability is secondary, *i.e.*, he is liable to pay only if the acceptor fails to pay.

### **Drawee of a Cheque**

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 to do so, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.—Sec. 31.

Cases where the drawee of a cheque can refuse payment.—See under "Banker and Customer", pages 355.

### **Indorser**

The indorser of a negotiable instrument is liable to all subsequent parties in case of dishonour of the instrument, provided (i) there is no contract to the contrary (ii) the indorser had not limited or qualified his liability by using appropriate words and expressions for the purpose and (iii) due notice of dishonour has been given to or received by, such indorser as hereinafter provided.—Sec. 35.

Every indorser after dishonour is liable as upon an instrument payable on demand.

### **General rule regarding liability : Principle of Suretyship**

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.—Sec. 36.

*Maker, drawer and acceptor principals* : The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.—Sec. 37.

*Prior party a principal in respect of each subsequent party* : 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.—Sec. 38.

#### *Example :*

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

**Suretyship** : When the holder of an accepted bill of exchange enters into a contract with the acceptor which, under Section 134 or 135 of the Indian Contract Act, 1872, would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.—Sec. 39.

## The Extent of Liability

### Rules regarding compensation (Sec. 117)

The compensation payable in case of dishonour of a negotiable instrument, by any party liable on the instrument, is determined by the following rules ;

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;
- (c) an indorser, who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per cent per annum from the date of payment until tender or realization thereof ; together with all expenses caused by the dishonour and payment ;
- (d) when the person charged and such indorser resides at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

The new bill given under clause (e) is known as *Redraft*.

## PRESENTMENT FOR PAYMENT

A negotiable instrument must be presented for payment. The person liable to pay is entitled *to see* the instrument and after payment he is entitled to have it delivered to him. (Sec. 81). The rules regarding presentation for payment are stated below :

### 1. Presentment of promissory note for sight

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.—Sec. 62.

### 2. Presentment for payment

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. In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.—Sec. 64.

### 3. Presentment by or to agent, representative of deceased or assignee of insolvent

Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or where the drawee, maker or acceptor has died, to his legal representative, or where he has been declared an insolvent, to his assignee.—Sec. 75.

### 4. The place of Presentment

(i) *Presentment for payment of instrument payable at specified place and not elsewhere* : 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.

(ii) *Instrument payable at specified place* : A promissory note



or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.—Sec. 69.

(iii) *Presentment where no exclusive place specified* : A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.—Sec. 70.

(iv) *Presentment when maker, etc., has no known places 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 for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.—Sec. 71.

(v) 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.—Exception to Sec. 64.

## 5. The Time of Presentment

(i) *Hours for presentment* : Presentment for payment must be made during the usual hours of business, and, if at a banker's within banking hours.—Sec. 65.

(ii) *Presentment for payment of instrument payable after date or sight* : A promissory note or bill of exchange made payable at a specified period after date or sight thereon, must be presented for payment at maturity.—Sec. 66.

(iii) *Presentment for payment of promissory note payable by instalments* : A promissory note payable by instalment must be presented for payment on the third day after the date fixed for payment of each instalment ; and non-payment on such presentment has the same effect as non-payment of a note at maturity.—Sec. 67.

(iv) *Presentment of cheque to charge drawer* : A cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.—Sec. 72.

(v) *Presentment of cheque to charge any other person* : A cheque must, in order to charge any person except the drawer,

be presented within a reasonable time after delivery thereof by such person.—Sec. 73.

(vi) *Presentment of instrument payable on demand* : A negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.—Sec. 74.

### **When Presentment for Payment is not necessary, or is excused (Sec. 76)**

Presentment for payment is not necessary in the following cases. In each case the instrument is deemed to be dishonoured at the due date for presentment :

- (1) if the maker, drawee, or acceptor intentionally prevents the presentment of the instrument, or,
- (2) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,
- (3) 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,
- (4) if the instrument not being payable at any specified place, he cannot after due search be found ;
- (5) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;
- (6) 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 ;
- (7) or promises to pay the amount due thereon in whole or in part ;
- (8) or otherwise waives his right to take advantage of any default in presentment for payment ;
- (9) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Presentment for payment is excused in the following cases also : (i) where a drawee is a fictitious person (ii) when a person is not competent to contract (iii) when a bill is dishonoured by non-acceptance and (iv) when it is impossible to present the instrument.

### Excuse for delay

Delay in presentment for acceptance of payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be within a reasonable time.—Sec. 75A.

## PAYMENT OF NEGOTIABLE INSTRUMENT

### Time of Payment

A promissory note or a bill of exchange may be payable on demand or on a specific date or after a specified period of time. The time of payment is usually mentioned in the instrument. If no time of payment is mentioned, the instrument is payable on demand. A cheque is always payable on demand.

In a promissory note or a bill of exchange the expressions, "at sight" or "on presentment" means on demand. The expression "after sight" means in a promissory note, after presentment for sight. In a bill of exchange it means, after acceptance or noting for non-acceptance, or protest for non-acceptance.—Sec.21.

A promissory note or a bill of exchange may be made payable by instalments.

### Maturity of a Note or Bill

The maturity of a bill or note is the date on which it falls due. A bill or note which is payable *on demand* becomes due immediately on presentation for payment. A bill or note which *is not payable on demand* becomes mature on the third day after the day on which it is expressed to be payable. The three days are known as the *Days of Grace*. The date of maturity of a bill or note is calculated in the following way. Sections 23 to 25 :

- (a) If it is payable a stated number of months after date or after sight, it becomes payable three days after the corresponding date of the month after the stated number of months.
- (b) If the month in which the stated number of months will terminate has no corresponding date, it becomes mature on the last day of the month.
- (c) In calculating the maturity of a bill or note payable a certain number of days after date or sight, the day on which it was drawn or presented for acceptance shall be excluded.

- (d) When the day on which a bill or note is at maturity is a holiday, the instrument shall be deemed to be due on the next preceding business day.

The expression "Public Holiday" includes Sundays, and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday.

*Examples :*

- (i) A negotiable instrument, dated 30th August 1978, is made payable three months after date. The instrument is at maturity on 3rd December 1978.
- (ii) A negotiable instrument, dated 29th January 1978, is made payable at one month after date. The instrument is at maturity on the 3rd day after the 28th February 1978.
- (iii) A negotiable instrument dated 31st August 1978, is made payable three months after date. The instrument is at maturity on the 3rd December 1978.

### Payment in Due Course

"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 therein mentioned."—Sec.10.

A negotiable instrument is "paid in due course" when the following conditions are satisfied :

1. The payment is according to the apparent tenor of the instrument. [*Tenor* means the prescribed time of payment.]
2. The payment is in good faith and without negligence.
3. The payment is to the possessor of the instrument.
4. There does not exist any ground for believing that the possessor is not entitled to receive payment.

Payment in due course completely discharges the obligation of the party liable to pay, even though it subsequently transpires that payment has been made to the wrong person. (See ch. 6, "Bankers and Customers.")

### Usance

The time allowed for the payment of bills drawn in one country and payable in another (foreign bills) is called usance. The time varies according to the distance between the countries and is determined by customary rules.

## INTEREST ON BILLS AND NOTES

### Interest when rate specified

When a promissory note or a bill of exchange specifically mentions the rate at which interest is payable, interest must be paid at the rate from the date of the instrument to the date of realisation of the money. If a suit is filed on the instrument interest is payable up to such date as the court may decide.—Sec. 79.

### Interest when no rate specified

When no rate of interest is specified in the instrument, interest is payable (notwithstanding any agreement between the parties regarding interest) at 6% per annum from the date on which the money ought to have been paid till the date of realisation. When a suit is filed, the court is to decide the date up to which interest is payable.—Sec. 80.

When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.—Sec. 80, Explanation.

## LOST NEGOTIABLE INSTRUMENTS

The following rules are applicable in the case of lost negotiable instruments :

### 1. Holder's right to duplicate of lost bill

Where a bill of exchange has been lost before it is overdue, the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required, to indemnify him against all persons in case the bill, alleged to have been lost, shall be found again. If the drawer on request refuses to give a duplicate, he may be compelled to do so.—Sec. 45A.

### 2. Delivery of instrument on payment or indemnity in case of loss

Before payment of a negotiable instrument, the person liable to pay is entitled to see the instrument and after payment he is entitled to have it delivered to him. If the document is lost

or for any reason cannot be produced he can refuse to pay. If he pays the holder of a lost instrument he can demand to be indemnified against any further claim thereon against him.—Sec. 81.

### 3. Title of the Finder

The finder of a lost instrument gets no title. The rightful holder is entitled to get it back from him.

### 4. Rights of holder in due course

If a negotiable instrument, payable to bearer or indorsed in blank, is lost and the finder negotiates it to a third party who takes it in good faith and for value, the third party becomes a holder in due course and is entitled to receive the amount due on the instrument from the parties liable to pay.

### 5. Effect of forgery

If a negotiable instrument payable to order is indorsed by the finder with a forged signature, the indorsee gets no title even though he might have taken it in good faith and for consideration. Forgery can confer no title. *Mercantile Bank of India v. Mascarenhas*.<sup>1</sup>

### 6. Effect of payment in due course

If the party liable on a negotiable instrument pays the amount due on it, to the person having it in his possession, under circumstances which makes the payment in due course, he is discharged from all liabilities under the instrument. But the true owner can recover the money from the person who obtained payment. *Burne v. Morris*.<sup>2</sup>

### 7. Information and notice

When a negotiable instrument is lost, the holder should inform all parties liable on it and should also give public notice.

## INSTRUMENTS OBTAINED ILLEGALLY

### Unlawful means and unlawful consideration

The rules stated above regarding lost instruments apply to

<sup>1</sup>(1932) P.C. 22. (Privy Council)

<sup>2</sup>(1834) 2 Cr. & M. 579

stolen instruments. A person who steals a negotiable instrument can get no rights upon it and the true owner can recover it from him. But if the instrument is negotiated under circumstances which make the transferee a holder in due course, he is entitled to receive payment on the instrument.

Any person who obtained an instrument by unlawful means or for unlawful consideration, is not entitled to receive the amount due thereon, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.—Sec. 58.

When an instrument is obtained by fraud, coercion, undue influence or by any illegal means the title of the receiver is defective and he cannot claim anything on the instrument. But if the document is transferred to a holder in due course, the latter gets a good title and is entitled to receive payment. The same rule applies if the consideration originally paid for the instrument was unlawful.

If an acceptance is procured by fraud, the acceptor is liable to the holder in due course and to nobody else. *Ayres v. Moore*.<sup>1</sup>

### FORGED INSTRUMENTS

If the signature on a negotiable instrument is forged, the document is invalid and cannot confer any right or create any liability.

#### **Acceptor bound although indorsement forged**

But the acceptor of a bill of exchange, already indorsed, is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.—Sec. 41.

If in an instrument payable to order, there is a forged indorsement, the indorsee gets no title.

If in a bearer instrument or in an instrument indorsed in blank, there is a forged indorsement, the holder gets a good title. The reason is that in such instruments the holder derives title by delivery and not through any indorsement. The forged indorsement is therefore immaterial.

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<sup>1</sup> (1940) 1. K.B. 278

## LACK OF CONSIDERATION

### Negotiable instrument made etc. without consideration

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 the instrument is transferred to a holder for a consideration, such holder and all persons deriving title from him, can recover the amount due from the transferor for consideration or any prior party thereto.—Sec. 43.

### Partial absence or failure of money-consideration

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 proportionately reduced.—Sec. 44.

### Partial failure of consideration not consisting of money

Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.—Sec. 45.

When there is a partial failure of consideration, the parties standing in immediate relation to each other cannot recover more than the actual consideration. But this rule does not apply to a holder in due course.

#### *Example :*

*P* makes a promissory note for Rs. 500 in favour of *Q* who pays him Rs. 400, promising to pay Rs. 100 later. *G* cannot recover from *P* more than Rs. 400. But if *Q* indorse the note to *R* for consideration, *R* can recover from *P* Rs. 500.

## DISCHARGE OF PARTIES FROM LIABILITY

The liability of a party to a negotiable instrument may be discharged or terminated in any of the following ways :



### 1. By Payment

The liability of a party to a negotiable instrument is discharged by payment of the instrument done in the due course of the amount due. 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.—Sections 10, 82(c) and 85.

### 2. By Release

The holder of the negotiable instrument may release the liability of the maker, acceptor or indorser as the case may be.—Sec. 82(b).

### 3. By Cancellation

If the holder strikes out the name of a person from a negotiable instrument and indorses it, the person whose name is cancelled is discharged from liability.—Sec. 82(a).

Where the effect of such cancellation is to impair any indorser's remedy against a prior party, the indorser is discharged from liability, unless the cancellation is made with the consent of such indorser.—Sec. 40.

*Example :*

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

First indorsement—*B*

Second

—Peter Williams

Third

—Wright & Co.

Fourth

—John Rozario

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

### 4. By Default of the Holder

(i) *Not presenting the bill for acceptance within due time.*

Where a bill of exchange is required to be accepted but the holder does not present it for acceptance within due time, no party to the bill is liable thereon on the person making such default.—Sec. 61.

- (ii) *Not presenting the bill for payment within due time.* Where a negotiable instrument is required to be presented for payment and it is not so presented in proper time by the holder the other parties to the instrument are not liable thereon to such holder.—Sec. 64.
- (iii) *Allowing more than 48 hours for deliberation.* If the holder allows more than 48 hours time to the drawee for deliberation, all prior parties not consenting to the extra time, are discharged from liability.—Sec. 83.
- (iv) *Delay in presenting the cheque.* If the holder of a cheque does not present it for payment within reasonable time and, as a result, the drawer of the cheque suffers damage, he is discharged from his liability to the extent of the damages.—Sec. 84.
- (v) *Qualified acceptance.* If the holder agrees to a qualified acceptance, all prior parties not consenting to such acceptance are discharged from liability.—Sec. 86.
- (vi) *Not sending notice of dishonour.* All parties to whom the holder does not send notice of dishonour, are discharged from liability unless the circumstances are such that no notice of dishonour is required to be sent.

## 5. By Material Alteration

“Any material alteration of a negotiable instrument renders the same void as against any one 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; and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof”.—Sec. 87.

The rule, regarding material alteration, is subject to certain limitation. (See below).

### MATERIAL ALTERATION

A material alteration is one,

- (a) which substantially changes the *rights and liabilities* of the parties, or any of the parties, to the instruments, or,
- (b) which changes the *identity and the legal character* of the instrument.

Changes in the following items are considered to be material alteration : amount of money payable ; date and time of payment ; rate of interest ; addition of a party ; the medium of payment, (See p. 127)

It has been held in English cases that an alteration by a stranger, if it is material, will avoid the instrument. The Madras High Court, however, has held that an alteration made by a stranger does not make the instrument invalid. *Gourochandro D. Sumanto v. Krushnacharana Padhi*.<sup>1</sup>

As regards the effect of alteration, a distinction must be made between persons who are parties to the instrument at the time when the alteration is made and persons who become parties subsequently. A material alteration discharges the liabilities of persons who are parties at the time when the alteration is made. Persons who become parties to the instrument after the alteration, are liable under the instrument as altered. Section 88 of the Act lays down that an acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

*Example :*

The plaintiff inserted the words 'per month' after the words, 'rate of interest' and after the promissory note was executed by the defendant. The alteration was without knowledge of the defendant.

Held that the promissory note had been materially altered and was therefore void and inoperative by virtue of Section 87. *Verco Private Ltd., Padi and others v. Newandram Naraindas and another*.<sup>2</sup>

### **Alteration allowed by Law**

An alteration which is the result of an accident does not affect the validity of an instrument. The Judicial Committee of the Privy Council in *Hongkong & Shanghai Banking Corporation v. Lo Lee Shi*<sup>3</sup> held that, in order to invalidate an instrument the alteration must be one effected by the will of the person by whom or under whose direction it is made. Thus accidental alterations do not render a document invalid. In English cases it has been held that alterations in a document brought about by the following causes do not affect its validity : mutilation by the washing and ironing of a garment in which the document was kept ; ravages

<sup>1</sup> I.L.R. (1941) Mad.295

<sup>2</sup> AIR (1974) Mad 5

<sup>3</sup> (1928) A.C. 181

of white ants or rats ; document torn by a child ; document burnt in part by accident.

An alteration made before the completion of the instrument does not affect its validity. Thus if a person strikes out the word "order" from a printed cheque form and substitutes the word "bearer" before issuing the cheque, it is a valid bearer cheque. Such alterations should be initialled by the person executing the instrument, in order to indicate that the alteration was made before the instrument became effective.

After an instrument is executed, it may be altered in certain ways without affecting the validity of the instrument. Alterations of the following types are permitted by law :

1. An alteration made with the consent of all parties.
2. Alterations made in order to carry out the common intention of the original parties. Such alterations include correction of a clerical error or accidental slips.
3. Completing an inchoate stamped instrument.—Sec.20 (See p. 306)
4. Conversion of an indorsement in blank into an indorsement in full.—Sec. 49.
5. The crossing of an uncrossed cheque, conversion of general crossing to special crossing, addition of words like "not negotiable" to a crossed cheque.—Sec. 125.
6. A note on the margin of an instrument is not necessarily a part of the instrument. If it is not a part of the instrument it can be altered without affecting the validity of the instrument. It has been held that the addition, in the margin of a mere statement of fact which is not covered by the signature is not a material alteration *Ede v. K.N. Shaw*<sup>1</sup>

## SPECIAL RULES OF EVIDENCE

### Presumption as to Negotiable Instruments

The Negotiable Instruments Act lays down certain rules of evidence regarding negotiable instruments. Section 118 provides that in a suit upon a negotiable instrument, the court can presume the following :

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<sup>1</sup> 3 Cal. 220

- (a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;
- (b) that every negotiable instrument bearing a date was made or drawn on such date ;
- (c) that every accepted bill of exchanges was accepted within a reasonable time after its date and before its maturity ;
- (d) that every transfer of a negotiable instrument was made before its maturity ;
- (e) that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon ;
- (f) that a lost promissory note, bill of exchange or cheque was duly stamped ;
- (g) that the holder of a negotiable instrument is a holder in due course : Provided that where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

### **Presumption on Proof of Protest**

Section 119 provides that in a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

### **Burden of Proof**

Any of the presumptions can be rebutted by evidence to the contrary. The effect of Sections 118 and 119 is to throw the burden of proof upon the party alleging anything contrary to the allowable presumptions. Thus in a suit on a promissory note, if the defendant alleges that there was no consideration, it is his duty to prove it. The plaintiff need not prove consideration because the court will, according to Section 118(a), presume that

consideration was paid. In an ordinary money suit, however, it is the plaintiff's duty to prove consideration.

### **Estoppel**

The Negotiable Instruments Act lays down the following rules of estoppel :

#### **1. Estoppel against denying original validity of instrument**

No maker of a promissory note, and no acceptor of a bill of exchange or cheque, and no acceptor of a bill of exchange 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.—Sec. 120.

#### **2. Estoppel against denying capacity of payee to indorse**

No maker of a promissory note and no acceptor of a bill of exchange 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 indorse the same.—Sec. 121.

#### **3. Estoppel against denying signature or capacity of prior party**

No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.—Sec. 122.

## **INTERNATIONAL LAW**

When a negotiable instrument is made or drawn in one country but is payable in another country, the question arises : by the law of which country will the instrument be governed ? The Negotiable Instruments Act contains the following rules on the subject :

#### **1. Liability of maker, acceptor or indorser**

For a foreign bill, in the absence of a contract to the contrary the liability is determined as follows. (Sec. 134) :

*Maker or Drawer*—by the law of the place where the instrument is made.

*Acceptor and Indorser*—by the law of the place where the instrument is payable.

*Example :*

A bill of exchange was drawn by *A* in California where the rate of interest is 25 per cent, and accepted by *B* payable in Washington where the rate of interest is 6 per cent. The bill is indorsed in India, and is dishonoured. An action on the bill is brought against *B* in India. He is liable to pay interest at the rate of 6 per cent only ; but if *A* is charged as drawer, *A*, is liable to pay interest at the rate of 25 per cent.

**2. Law of place of payment governs dishonour**

Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.—Sec. 135.

*Example :*

A bill of exchange drawn and indorsed in India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour and gives notice thereof in accordance with the law of France, though not in accordance with the rules of Indian law. The notice is sufficient.

**3. Instrument made, etc. out of India but in accordance with its law**

If a negotiable instrument is made, drawn, accepted or indorsed out of India, but in accordance with the law of India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in India.—Sec. 136.

**4. Presumption as to foreign law**

The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of India, unless and until the contrary is proved.—Sec. 137.

**EXERCISES**

1. State the different parties to a bill of exchange. Discuss their liabilities. (Pages 322-323, 324-325)
2. How would you distinguish between the liabilities of a Maker of a Promissory Note and those of a Drawer of a Bill of Exchange ? (Pages 324-325)

3. What is the nature and extent of the liability of a drawer, drawee and acceptor of a Bill of Exchange? (Pages 324-326)
4. Examine to what extent a minor can be a party to a negotiable instrument. (Page 322)
5. Examine the different modes of discharge of liability of parties to a negotiable instrument. (Pages 335-337)
6. State the rules regarding presentment for acceptance of bill of exchange. When can presentment for payment may be dispensed with? (Pages 327-330)
7. What are the cases when a negotiable instrument need not be presented for payment? When is a negotiable instrument said to be dishonoured? (Pages 328-330, 344)
8. What happens if a Negotiable Instrument : (a) is lost, (b) obtained illegally, (c) by fraud and (d) is forged. (Pages 332-334)
9. What are the rules relating to the maturity of negotiable instruments? (Pages 330-331)
10. Enumerate the presumptions which shall be made with reference to negotiable instruments. (Pages 339-340)
11. Write notes on : Presentment for payment ; Payment of Negotiable Instrument ; Maturity of a Note or Bill ; Payment in Due Course ; Usance ; Material Alteration. (Pges 327-330, 337-338)
12. Problems :
  - (a) A gets holds of B's cheque book and forges B's name on a cheque, A obtains money from B's bankers by presenting the forged cheque and then disappears. Who bears the loss, B or the banker? (Pages 334, 358)
  - (b) A promissory note, executed on the 31st Jan.'78, is made payable one month after date. When does the note become payable? (Pages 330-331)
  - (c) A negotiable instrument dated 29th January, 1967 is made payable at one month after date. When will the instrument mature? (Pages 330-331)



## Mode of Dishonour

A negotiable instrument may be dishonoured in two ways :  
(i) by non-acceptance and (ii) by non-payment. Only bills of exchange can be dishonoured by non-acceptance, since only bills require acceptance. Promissory notes, bills of exchange and cheques can be dishonoured by non-payment.

## Dishonour by Non-Acceptance

A bill of exchange is *dishonoured by non-acceptance* in the following cases :

1. "When after due presentation, the bill is not accepted by the drawee." When there are several drawees (who are not partners), refusal by any one of the drawees will amount to dishonour.

2. In cases where presentation for acceptance is excused, the bill is treated as dishonoured if it is not accepted without presentation.

3. Where the drawee is incompetent to contract, the bill may be treated as dishonoured.—Sec. 91.

4. If the acceptance is qualified, the bill may be treated as dishonoured.

5. *Drawee in case of need* : Where a drawee in case of need is named in a bill, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.—Sec. 115.

## Dishonour by Non-Payment

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

## Consequence of Dishonour

*Steps to be taken by the Holder* : When a negotiable instrument is dishonoured, the holder (1) becomes entitled to file

a suit for the recovery of the amount due from the parties liable to pay. (2) He must, subject to certain exception, give notice of dishonour to parties against whom he intends to proceed. (3) He may also have the instrument noted and protested before a notary public.

## NOTICE OF DISHONOUR

### Definition

Notice of dishonour means the notice which must be given by the holder of a dishonoured instrument to all parties liable to pay the amount due on the instrument.

### By and to whom notice should be given (Sections 93, 95-97)

1. Notice is to be sent to the party liable, or his duly authorised agent; if he is dead it is to be given to his legal representative; if he is insolvent it is to be given to the Official Assignee. The agent of the holder can give notice. A notice by a stranger is a nullity.

2. A party receiving notice of dishonour should, if he wishes to make a prior liable, send a similar notice to the prior party or parties, unless such prior party receives notice otherwise.

3. When the party to whom notice is sent is dead, but the party sending notice is ignorant of the fact, the notice is sufficient to bind the estate of the deceased.

4. It is not necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

### Mode in which notice may be given (Section 94)

1. The notice may be oral or written. If written it may be sent by post. A notice duly addressed and posted is good even though it may be miscarried.

2. The notice may be in any form; but the language used must indicate that the instrument has been dishonoured and that the party to whom notice is being given will be held liable hereon.

3. The notice must be sent to the place of business of the party or parties, unless such prior party receives notice otherwise.

4. The notice must be sent within a reasonable time after dishonour. (See p. 309-310 for the definition of reasonable time.)

### Consequence of not sending notice of Dishonour

Any person to whom notice of dishonour is not sent is discharged from his obligations under the instrument. He is not liable to pay and no suit can be filed against him.

### When notice of Dishonour need not be given

It is not necessary to give notice of dishonour in the cases, and to parties, mentioned below. In these cases, the parties are liable without any notice :

1. To the maker of a dishonoured promissory note.—Sec. 93.
2. To the drawee or acceptor of a dishonoured bill of exchange or cheque.—Sec. 93.
3. When it is dispensed with by the party entitled thereto.—Sec. 98(a). [*Example* : Where an endorser writes, "Notice of dishonour waived".]
4. In order to charge the drawer when he has countermanded payment.—Sec. 98(b).
5. When the party charged could not suffer damage for want of notice.—Sec. 98(c). [*Example* : Where the drawer does not have any money.]
6. 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.—Sec. 9(d). [*Example* : Death or serious illness.]
7. To charge the drawers when the acceptor is also a drawer.—Sec. 98(e). [*Example* : When a firm draws a bill on its branch.]
8. In the case of a promissory note which is not negotiable.—Sec. 98(f).
9. When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.—Sec. 98(g).

### NOTARY PUBLIC

The Notary Public is an officer appointed by the Government to exercise the functions of a Notary Public as laid down in the Negotiable Instruments Act. (Noting, Protest etc.). Formerly, Notaries Public used to be appointed by the State Government. Now, the Notaries Act of 1952 governs the profession of notaries.

Under Section 15 of this Act, the Central Government is empowered to frame rules concerning the appointment, removal and functions of notaries.

The term "Notary Public", includes the notary public of a foreign country also. *Gujrat Singh v. Jaswant Singh*.<sup>1</sup>

### NOTING

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 reasons, 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 charges.—Sec. 99.

*Advantages of Noting* : Noting a promissory note or bill of exchange is a convenient method of regarding the fact of dishonour. If a suit is subsequently filed in the instrument, the notary public may give evidence about presentment and dishonour. A bill of exchange may be accepted for honour and paid for honour after it is noted.

Noting (and protest) is not compulsory. The procedure is not applicable to cheques.

### PROTEST

#### Protest

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.—Sec. 100.

#### Protest for Better Security

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may within a reasonable time,

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<sup>1</sup> AIR (1971) Supreme Court 761

cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called Protest for Better Security.—Sec. 100.

### **Contents of Protest (Sec. 101)**

A Protest must contain the following particulars :

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon ;
- (b) the name of the person for whom and against whom the instrument has been protested ;
- (c) a statement that payment or acceptance, or better security, as the case 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 ;
- (d) when the note or bill has been dishonoured the place and time of dishonour, and, when better security has been refused, the place and time of refusal ;
- (e) the subscription of the notary public making the protest ;
- (f) in the event of an acceptance for honour or of a payment for honour, the name of the manner in which such acceptance or payment was offered and effected.

A notary public may make the demand mentioned in clause (c) above either in person or by his clerk, or, where authorized by agreement or usage, by registered letter.

### **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**

Protest is compulsory in the case of a foreign bill, if it is so provided by the law of the place where it is drawn. For inland bills protest is optional.—Sec. 104.

### **When noting is equivalent to Protest**

When a bill or note is required to be protested within a certain time or proceeding, it is sufficient if the bill or note is noted within that time or proceeding; the formal protest may be issued later.—Sec. 104A.

### **The difference between Noting and Protest**

Noting is merely a record of the fact of dishonour. When the notary public issues a certificate stating the particulars regarding the dishonour, it is called a Protest.

## **ACCEPTANCE FOR HONOUR**

### **Definition**

When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not already liable on the bill, may accept the bill for the honour of any party thereto.—Sec.108. This is called Acceptance for Honour.

### **Rules regarding Acceptance for Honour**

1. *Consent* : Consent of the holder is necessary before a bill can be accepted for honour.—Sec. 108.

2. *How acceptance for honour must be made* : The acceptor for honour must, by writing on the bill in his own hand, declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.—Sec. 109.

3. *Acceptance not specifying for whose honour it is made* : Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.—Sec. 110.

4. *Liability of acceptance for honour* : An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee does not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.—Sec. 111, para.1.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, (or in case the address given by

such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.—Sec. 111, para 2.

5. *When acceptor for honour may be charged* : An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.—Sec. 112.

## PAYMENT FOR HONOUR

### Definition

When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same. Such payment is called payment for honour.

*Declaration* : The person paying for honour or his agent must declare before a notary public the name of the party for whose honour he is paying. The notary public must record the declaration.—Sec. 113.

*Right of payer for honour* : Any person paying for honour is entitled to all the rights of the holder of the bill at the time of the payment. He may recover from the party for whose honour he pays, all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.—Sec. 114.

*Acceptance and payment without protest* : A drawee in case of need may accept and pay the bill of exchange without previous protest.—Sec. 116.

### EXERCISES

1. What is acceptance for honour? How must acceptance for honour be made? What are the liabilities of an acceptor for honour?  
(Page 349)
2. State the cases in which notice of dishonour is not necessary.  
(Page 346)
3. When is a negotiable instrument considered to be dishonoured? What are the duties of a holder upon such dishonour?  
(Page 344)
4. What is meant by 'payment for honour' and what are its peculiar features?  
(Page 350)

5. In what different ways may a negotiable instrument be dishonoured ?  
What steps should be taken by the holder of a dishonoured instrument ?  
(Page 344)
6. When is a Bill of Exchange said to be dishonoured ? When is notice of dishonour unnecessary ?  
(Page 344, 345-346)
7. What are the steps which a holder of a negotiable instrument may take to protect his interest when the instrument is dishonoured ?  
(Page 344)
8. What is understood by protest under the Negotiable Instrument Act ?  
(Pages 344-345)
9. Distinguish between :
  - (a) Dishonour by Non-Acceptance and Non-payment.(Page 344)
  - (b) Noting and Protest. (Page 347)
  - (c) Acceptance for Honour and Payment for Honour.  
(Pages 349-350)
10. Write Notes on : Notice of Dishonour ; Notary Public ; Noting ; Protest ; Acceptance for Honour ; Payment for Honour.  
(Pages 344, 346, 347, 347, 349, 350)



### DEFINITION

Indian merchants and indigenous bankers use various kinds of negotiable instruments written in Indian languages. Such instruments are known as Hundis.

There is evidence to show that Hundis were discovered by Hindu merchants and bankers in ancient India. The term Hundi comes from the Sanskrit word "Hund" which means "to collect".

### THE LAW APPLICABLE TO HUNDI

The Negotiable Instruments Act does not apply to Hundis. A Hundi is governed by the custom and usages of the locality in which it is intended to be used. In case of dispute, the court takes evidence of local usages and applies them. If, on a certain point, there is no customary rule the court can apply the rules of the Negotiable Instruments Act.

The parties may, by express writing on a Hundi, agree that in case of dispute on that Hundi, the customary rules shall be excluded and that the provisions of the Negotiable Instruments Act shall apply.

### TYPES OF HUNDI

By long usage various types of Hundis have been evolved. The principal types are described below.

#### **Shah Jog Hundi**

A Shah Jog Hundi is one which is payable only to a Shah. Shah means a respectable person, *i.e.*, a man of money, well known to the market. A Shah Jog Hundi may be transferred from one person to another by delivery. No indorsement is required, but it will not be paid to anybody other than a Shah. No acceptance is required. A Shah Jog Hundi is similar to a crossed cheque.

#### **Nam Jog Hundi**

A Nam Jog Hundi is one which is payable to the party named in the Hundi or according to his order.

### **Firman Jog Hundi**

A Firman Jog Hundi is one which is payable to the order of the holder.

### **Dhani Jog or Dekhander Hundi**

These are Hundis payable to bearer.

### **Jawabee Hundi**

A Jawabee Hundi is one through which money is remitted from one place to another. The person receiving the money has to send an answer or 'Jawab' to the remitter.

### **Jokhmi Hundi**

A Jokhmi Hundi is a combination of bill of exchange and insurance policy. By a Jokhmi Hundi the seller of goods calls upon buyer of goods to pay the value of the goods to the holder of the Hundi. In form the Hundi is similar to a bill of exchange. The buyer of goods accepts the Hundi subject to the condition that he will pay the money mentioned in the Hundi only if he receives the goods. The seller of goods (*i.e.*, the drawer of the Hundi) discounts the Hundi with a third party, who may be called the insurer. The third party pays to the drawer of the Hundi, the value of the Hundi less an amount calculated to be equal to the insurance premium payable for the risks involved in the carriage of the goods from the seller to the buyer. If the goods reach the buyer safely, the insurer becomes entitled to receive the full value of the Hundi from the buyer. If the goods are lost in transit, he gets nothing. Thus the insurer takes the risk of loss of goods during carriage.

A Jokhmi Hundi is advantageous to the seller of goods because he gets the purchase price (less insurance premium) immediately. It is also advantageous to the buyer because he incurs no liability unless he receives goods.

### **General Terms**

There are certain general terms applicable to all types of Hundis. Hundis payable at sight are called *Darshani Hundis*. Hundis payable after a specified period are called *Miadi* or *Muddati Hundis*. A Hundi paid up and cancelled is called *Khokha*. Sometimes a Hundi is accompanied with a letter written

by the drawer or any other prior party addressed to some respectable person requesting him to pay the amount due on the Hundi in case the drawee fails to pay. Such a letter is known as the *Zickri Chit* or the *Tickri Chit*. It is a procedure for protecting the holder against non-payment. The person to whom the letter is addressed, acts somewhat like an acceptor for honour. But he will pay the money without prior noting or protest. The provisions of Negotiable Instruments Act regarding noting and protest do not apply to Hundis.

The term *Peth* is sometimes used to denote the duplicate of a Hundi given when the original is lost. The duplicate of a duplicate is called *Perpeth*.

### EXERCISE

1. What is Hundi? Are Hundies governed by the Negotiable Instruments Act? (Page 352)

**Law**

The law relating to banking in India is contained in the following statutes : (1) Indian Contract Act (2) Negotiable Instruments Act (3) Companies Act and (4) Banking Companies Act.

The first two Acts contain the rules regulating the relationship between the banker and the customer and the last two deal with the organisational aspects of banking, *i.e.*, rules regarding the structure, constitution and control of banks. As regards the relationship between the banker and customer, the Indian statutes are not comprehensive. The courts apply rules of English common law to decide points not fully covered by the Indian Acts.

**Definition of Banking**

The Banking Companies Act of 1949 defines *banking* as, "accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft or otherwise." A *banking company* is defined by the Act as a company registered under the Companies Act and carrying on the business of banking. Industrial enterprises accepting deposits for finance, are expressly excluded from the definition of banking companies. The Act provides that banking companies must take out a licence from the Reserve Bank of India. An unlicensed company or firm cannot use the word Bank, Banker or Banking as a part of its name.

**Banker and the Customer**

There are conflicting judicial decisions on the definition of the term "customer of a bank". The prevailing opinion is that a customer is one who has an account with the bank in question or one who uses the services of the bank. The time period of the relationship is not important. But a casual service, *e.g.*, cashing a cheque for a friend of a customer, paying life insurance premium or to buy a draft, does not create the relationship of banker and customer. There must be some element of regularity or permanence.

### Duties of the Banker

Subject to the rules laid down in the Negotiable Instruments Act regarding the duties and liabilities of bank, the relationship between the banker and his customer is regulated by contract between them. The legal relationship is essentially contractual. The terms of the contract between the parties are to be found (i) in the rules and regulations of the bank notified to the customer at the time when an account is opened and (ii) from the course of dealings between the parties where such dealings have taken place for some time.

As regards moneys deposited by the customer, the banker is the debtor and the customer is the creditor. The reverse is the position as regards moneys lent by the bank to the customer.

A bank may, by agreement with his customer, undertake various duties on behalf of the latter. The important duties are the following :

1. The banker must honour cheques drawn by the customer.
2. The banker must collect cheques and drafts on behalf of the customer.
3. A banker is bound to act according to the directions given by the customer and in the absence of such directions according to the usage prevailing at the place where the banker conducts his business and applicable to the matter in hand.
4. The banker is also bound to use reasonable skill and diligence in his work. *Kesharichand v. Shillong Banking Corpn.*<sup>1</sup>
5. The banker must keep accurate records of all the transactions of the customer.
6. The banker must not disclose the customer's account and/or his affairs.
7. There is a general lien of the bankers. According to section 171 of the Contract Act the banker can retain the goods and securities of the customer for all the dues of the banker.
8. The banker can claim from the customer the incidental charges and expenses.
9. When the customer has two or more accounts in the bank, the banker can set-off the debit items from the credit items when payable.

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<sup>1</sup> AIR (1965) Supreme Court 1711

10. An overdraft arrangement between the Bank and its customer is a contract. It cannot be terminated by the Bank unilaterally, even if it is a temporary one. *Indian Overseas Bank, Madras and another v. M/s Narendraprasad Govindalal Patel, Ahmedabad.*<sup>1</sup>

## PAYMENT OF CHEQUES BY BANKS

### When Banker is bound to pay a Cheque

Section 31 of the Negotiable Instruments Act provides that, "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."

It follows from the above that the banker is bound to pay a cheque drawn by a customer provided the following conditions are satisfied.

1. There must be sufficient funds to the credit of the drawer. But if there is an overdraft arrangement, the cheque must be paid even though there is no fund, provided the amount drawn comes within the arrangement. If a bank has branches, the cheque must be on the branch where the account is. When a customer deposits cheques or drafts for collection, he cannot draw cheques on the amount to be collected until after a reasonable time has been given to the bank for collecting it.

2. The funds must be properly applicable of the payment of the cheque. An account for one purpose cannot be drawn upon for another purpose, e.g., a trust account cannot be drawn upon in the personal capacity of the trustee. If the account is subject to any limits as regards drawing (e.g., 100 cheques per annum, 10% of the balance or Rs. 1000) the cheque must be within these limits.

3. The bank must be *duly* required to pay the cheque. The cheque must be properly drawn and presented within the usual banking hours. The signature of the drawer must be identical with his specimen signature kept within the bank. The cheque must not be post-dated or stale and must not contain unsigned alterations.

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<sup>1</sup> AIR (1980) Guj 158

### **When Banker may refuse to pay a Cheque**

A banker may refuse to pay a customer's cheque under the following circumstances :

1. If there are insufficient funds of drawer and there is no overdraft arrangement.
2. If the cheque is not properly drawn, *e.g.*, if it is ambiguous or illegible or contains unsigned alterations or if the signature does not tally with the specimen signature of the drawer or if it is undated or post-dated or stale otherwise irregular.
3. If the cheque is not presented at the branch in which the customer has an account and within banking hours.
4. If the bank has a claim for a set off or a lien on the funds of the customer, the bank may refuse to pay any cheque in excess of the balance above the claim or lien.

### **When Banker must refuse to pay a Cheque**

Under the following circumstances a banker must refuse to pay a cheque :

1. If the customer countermands payment, *i.e.*, instructs the banker not to pay. The instructions countermanding payment must be properly communicated to the bank. *Courtice v. London City and Midland Bank*.<sup>1</sup>
2. If after the issue of a cheque the customer dies and the bank receives notice of the death. The same rule applies in the case of lunacy of the drawer.
3. If the bank receives notice of the insolvency of the customer. Upon insolvency a person loses the right to deal with his money and properties.
4. In the case of a cheque drawn by a company, if the bank receives notice of a winding up order against the company.
5. If the bank is served with a garnishee order or if the moneys of the customer are attached in execution of a decree of a court. (A garnishee order is an order by the court directing a person, having in his custody money belonging to another, to pay the money to some other person.)
6. If the customer has assigned his credit balance and the bank receives notice of that fact.

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<sup>1</sup> (1908) 1K.B. 293

7. If the drawer informs the bank that the cheque is lost.

8. If the banker has reason to believe that the title of the person presenting cheque is defective.

### **Liability of the Banker**

A banker is entitled to refuse to pay a customer's cheque only in the cases mentioned above. If the banker dishonours a customer's cheque without justification he is liable to pay damages to the customer. Only the customer is entitled to sue, not the holder or the payee. But where the banker admits to the holder that the customer has money or contracts with him to pay it, the holder may sue. The reason why the holder cannot sue (except under special circumstances) is that the drawing of a cheque does not operate as an assignment of money and the holder cannot claim to sue as an assignee.

The wrongful dishonour of a cheque amounts to a breach of contract on the part of the banker. It also injures the credit of the customer in the market and therefore amounts to a libel. The customer is entitled to damages on both these grounds.

Formerly heavy damages used to be awarded for wrongful dishonour of a cheque. In recent times the tendency is to limit damages to the actual injury suffered, except in the case of trader's cheques where substantial injury is presumed.

When a cheque is improperly paid, the customer's account cannot be debited with the payment and the banker will have to bear the loss.

#### *Example :*

A cheque was drawn by a customer on the bank marking 'payee's account'. The cheque on face of it was tempered and converted into a bearer cheque. The bank was negligent in making payment to bearer instead of payee. Held, the bank is bound to reimburse the customer. *Ladies Beauty v. State Bank of India.*<sup>1</sup>

### **Protection given to a paying banker**

#### **When is the Bank discharged ?**

A banker is protected if a cheque is paid under circumstances which makes the payment, "a payment in due course" as defined in Section 10 of the Negotiable Instruments Act. (See p. 331)

"Payment in due course means payment in accordance with

<sup>1</sup> AIR (1984) Guj 33



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 therein mentioned.”—Sec. 10.

When payment is made in due course, the customer's account can be debited with the money paid. The banker is not liable even if it subsequently transpires that payment has been made to the wrong person (*e.g.*, where the holder has obtained the cheque dishonestly).

Where a cheque payable to order purports to be endorsed by or on behalf of the payee the drawee is discharged by payment in due course.—Sec. 85(1).

Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.—Sec. 85(2). This section lays down the rule, “once a bearer cheque, always a bearer cheque”. (See p. 321).

In the case of a crossed cheque the liability of the paying bank is discharged by payment in due course to the bank presenting the cheque for payment. It is not the duty of the paying bank to see that the money reaches the true owner.—Sec. 128.

### **Forged Cheques**

A cheque, with the drawer's signature forged, is a nullity and if a bank pays such a cheque, the customer is not liable and his account cannot be debited with the payment. It has been held in several cases that a banker is expected to know his customer's signature.

### **Cheques with Alterations**

An alteration with is countersigned or initialled by the drawer is immaterial. But an unsigned alteration of a material part of a negotiable instrument makes it invalid. A banker, however, is protected if he pays a cheque with alterations under the following circumstances : (i) if the alteration is not apparent and (ii) if the payment is according to the apparent tenor of the instrument.—Sec. 89.

Therefore, where the alteration is noticeable on reasonable scrutiny and the banker pays the money, he is not entitled to debit the customer's account with the payment.

### Duties of Customers

In some English cases it has been held that the customer owes a duty to his bank not to do anything which will facilitate subsequent alterations or forgery and where the customer is guilty of facilitating such forgery or alteration, he is estopped from denying his liability to be debited with the payment. *Examples of negligence by customer* : keeping a blank space between the name of the payee and the expression "or order" or before and after figures ; not keeping the cheque book under lock and key, etc.

### COLLECTION OF CHEQUES AND DRAFTS

A customer may deposit a cheque or draft in his bank for collection or may negotiate it to the bank. In the latter event, the bank becomes the indorsee of the instrument and if it is dishonoured the loss falls on the bank. If, however, a cheque or draft is deposited for collection only, the bank becomes the agent of the customer and in case of dishonour the loss falls upon the customer. Whether in a particular case the bank is indorsee or merely agent for collection, depends on the circumstances of the case.

When a bank acts as the agent for collection it has certain duties to perform. It must exercise due diligence, *i.e.*, present the instrument for payment within reasonable time. What is reasonable time depends upon the circumstances of the case. In some English cases it has been held that for bankers in the same town, one day is reasonable time ; for places outside the town, the cheque must be forwarded for collection within one day. If for failure to present the cheque within reasonable time the customer suffers damage, the bank is liable. If the instrument deposited for collection is dishonoured, the banker must inform the customer.

A bank may collect bills of exchange on behalf of a customer. In such cases it must present the bills for acceptance and payment within reasonable time and must give due notice of dishonour if necessary.

If a cheque is negotiated to the bank by the customer, it becomes the owner of the cheque and can enjoy the protection afforded to the holder in due course in appropriate cases.

### Protection given to Collecting Bankers

Section 131 of the Negotiable Instrument Acts provides as follows :

“A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason of having received such payment.

*Explanation*—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.”

The meaning of the aforesaid section is that if it turns out that the customer depositing a cheque had no title to the money, the collecting bank is not liable to pay compensation to the true owner, provided the following conditions are satisfied :

1. The collecting bank acted in good faith and without negligence. The existence of any suspicious circumstances puts the bank upon enquiry and the absence of enquiry amounts to negligence and want of good faith.

2. The collecting bank must have been acting on behalf of a customer, *i.e.*, a person having an account with the bank or dealing regularly with it.

3. The cheque in question was a crossed cheque.

4. The bank was acting as agent for collecting and was not an indorsee of the cheque.

The explanation makes it clear that a bank may credit the customer with the amount of the cheque before collection and that such prior credit is immaterial to the question of the liability of the bank to the true owner.

### EXERCISES

1. Discuss the law relating to crossed cheques with special reference to the liabilities of the collecting bank in respect thereof.  
(Pages 358-361)
2. Enumerate the circumstances under which a banker can refuse to honour a customer's cheque.  
(Pages 357-359)
3. Discuss the circumstances under which a banker receiving payment of a cheque is protected.  
(Pages 359-360)
4. Under what circumstances can a banker refuse to honour his customer's cheques?  
(Pages 358-359)