

MEPL CLASSES
CA FOUNDATION

THE NEGOTIABLE INSTRUMENTS ACT, 1881

WEBSITE – www.meplclasses.com

MAIL-ID– d2hclasses@mohitsir.com

ADDRESS–59, JATINDRA MOHAN AVENUE,SOVABAZAR,KOLKATA–700005

(TIME ALLOTTED– 90 MINUTES)

(MARKS ALLOTTED– 40MARKS)

EACH QUESTION CARRIES 5 MARKS

Question1.

Mr. V draws a cheque of ₹11,000 and gives to Mr. B by way of gift. State with reason whether

- (1) Mr. B is a holder in due course as per the Negotiable Instrument Act, 1881?
- (2) Mr. B is entitled to receive the amount of ₹ 11,000 from the bank?

Answer to Question 1.

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

- any person
- who for consideration
- becomes the possessor of a promissory note, bill of exchange or cheque (if payable to bearer), or the payee or endorsee thereof, (if payable to order),
- before the amount mentioned in it became payable, and
- without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In the instant case, Mr. V draws a cheque of ₹ 11,000 and gives to Mr. B by way of gift.

- (i) Mr. B is holder but not a holder in due course since he did not get the cheque for value and consideration.
- (ii) Mr. B's title is good and bonafide. As a holder he is entitled to receive ₹ 11,000 from the bank on whom the cheque is drawn.

Question2.

State the rules laid down by the Negotiable Instruments Act, 1881 for ascertaining the date of maturity of a bill of exchange.

Answer to Question 2.

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

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

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

If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month (Section 23).

In calculating the date, a bill made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or the day of presentment for acceptance or sight or the day of protest for non-accordance, or the day on which the event happens shall be excluded (Section 24).

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

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

Question 3.

Mr. Muralidharan drew a cheque payable to Mr. Vyas or order. Mr.Vyas lost the cheque and was not aware of the loss of the cheque. The person who found the cheque forged the signature of Mr. Vyas and endorsed it to Mr. Parshwanath as the consideration for goods bought by him from Mr. Parshwanath. Mr. Parshwanath encashed the cheque, on the very same day from the drawee bank. Mr. Vyas intimated the drawee bank about the theft of the cheque after three days. Examine the liability of the drawee bank.

Answer to Question 3.

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

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

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

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

According to above stated section 85, the drawee banker is discharged when it has made a payment against the cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the signature of Mr. Vyas is forged, the banker is protected and is discharged. The true owner, Mr. Vyas, cannot recover the money from the drawee bank in this situation.

Question 4.

(i) Calculate the date of maturity of bill of exchange drawn on 1.6.2019, payable 120 days after considering the relevant provisions of the Negotiable Instruments Act, 1881.

(ii) Chandra issues a cheque for ₹ 50,000/- in favour of Daye. Chandra has sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank, in the meantime, became bankrupt.

Decide under the provisions of the Negotiable Instruments Act, 1881, whether Daye can recover the money from Chandra?

Answer to Question 4.

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

(ii) Section 84(1) of the Negotiable Instruments Act, 1881 provides that cheque should be presented to Bank within reasonable time. If cheque is not presented within reasonable time, meanwhile the drawer suffers actual damage, the drawer is discharged to the extent of such actual damage. This would be so if the cheque would have been passed if it was presented within reasonable time. As per section 84(2), in determining what is a reasonable time, regard shall be had to

- (a) the nature of the instrument
- (b) the usage of trade and of bankers, and
- (c) facts of the particular case.

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

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

Question 5.

Ram purchases some goods on credit from Singh, payable within 3 months. After 2 months, Ram makes out a blank cheque in favour of Singh, signs and delivers it to Singh with a request to fill up the amount due, as Ram does not now the exact amount payable by him. Singh fills up fraudulently the amount larger than the amount payable by Ram and endorses the cheque to Chandrani full payment of Singh's own due. Ram's cheques dishonoured.

Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of Singh and Chandra.

Answer to Question 5.

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

Explanation—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

In the given question, Singh is a party in immediate relation with the drawer (Ram) of the cheque and so he is entitled to recover only the exact amount due from Ram and not the amount entered in the cheque. However, the right of Chandra, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from Singh.

Question 6.

Explain the concept of 'Noting', 'Protest' and 'Protest for better security' as per the Negotiable Instruments Act, 1881.

Answer to Question 6.

Noting: When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonor 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 dishonor, and must specify the date of dishonor, the reason if any assigned for such dishonor, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured and the notary's charges.

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.

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, cause a notary public to demand better security of the acceptor, and on its being refused, may with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Question 7.

A promissory note specifies that three months after, A will pay ₹ 10,000 to B or his order for value received. It is to be noted that no rate of interest has been stipulated in the promissory note. The promissory note falls due for payment on 01.09.2019 and paid on 31.10.2019 without any interest. Explaining the relevant provisions under the Negotiable Instruments Act, 1881, state whether B shall be entitled to claim interest on the overdue amount?

Answer to Question 7.

When no rate of interest is specified in the instrument: As per the provisions of Section 80 of the Negotiable Instruments Act, 1881, when no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs. In the given question, the promissory note falls due for payment on 1.9.2019 and was paid on 31.10.2019. The note does not mention any rate of interest, hence interest will be charged @ 18% p.a.

Thus, B shall be entitled to claim interest on the overdue amount for the period from 01.09.2019 to 31.10.2019, @ 18% p.a.

Question 8.

Rahul drew a cheque in favour of Aman. After having issued the cheque; Rahul requested Aman not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Aman. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Rahul constitute an offence?

Answer to Question 8.

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

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

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

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

Section 140 states that it shall not be a defense in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

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

