



Viksit Bharat Sankalp Yatra



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Exchange

Basis	Cheque	Bill of Exchange
1. On whom the instrument must be drawn?	It must be drawn only on a banker.	It can be drawn on any person including a banker.
2. Acceptance.	Acceptance is not needed.	A bill payable after sight must be accepted.
3. Payable on	The amount is always payable on demand.	The amount may be payable on demand or after a specified period.
4. Crossing	A cheque may	Crossing of a bill of



Question 9.

Explain the meaning of 'Holder' and 'Holder in due course' of a negotiable instrument.

The drawer, 'D' is induced by A to draw a cheque in favour of P, who is an existing person. A instead of sending the cheque to 'P', for goes in his name and pays the cheque into his own bank. Whether 'D' can recover the amount of the cheque from 'A's bank. Decide. (Nov 2002, 4 marks)

Answer:

Meaning of 'Holder':

A holder is a person who is entitled in his own name, to the possession of the negotiable instrument and the right to recover or receive the amount due thereon from the parties thereto. (Sec. 8).

Meaning of Holder in due course: In case of a bearer instrument, a holder in due course means any person who for consideration became its possessor or before the amount mentioned in it became due.



Yatra



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In case of an instrument payable to order, a holder in due course means any person who became the payee or endorsee before the amount mentioned in it became due. The problem is based on the 'priviledges of a holder in due course'.

Section 42 of the Act states that an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawers order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an endorsement by the same hand as the drawee's signature and thinking to be made by the drawer.

In this Problem P is not a fictitious payee and 'D' the drawer can recover the amount of the cheque from A's banker [North & South Wales Bank B Macks (1908)].



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ession includes the electronic image of a truncated cheque and a cheque in the electronic form.”

Question 13.

In what way does the Negotiable Instruments Act. 1881 regulate the determination of the 'Date of maturity' of a Bill of exchange.

Ascertain the 'Date of maturity' of a bill payable 120 after the date. The Bill of exchange was drawn on 1st June, 2005. (Nov 2005, 6 marks)

Answer:

The maturity of a bill of exchange or promissory note is the date on which it falls due. The question of maturity becomes important where a bill or note is payable at fixed period after sight. A note or bill not payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is payable. Three day are allowed as days of grace (Sec. 22). In case of a note or bills payable on demand at sight on presentment, no. days of grace are allowed.

Calculation of maturity: In the cases where a bill is payable at a fixed period after sight, the time is to be calculated from the date of the acceptance if it is accepted and from the date of noting or protest if the bill is noted or protested for non-acceptance.

Instrument payable so many months after date or sight (Section 23):

If the instrument is made payable at stated number of months after date or after sight or after a certain event, it becomes payable three days after the corresponding date of the month. If the month in which the period would change has no corresponding day, the period shall be liable to change on the last day of such month. Three days of grace must be added to it.

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

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

When day of maturity is a holiday (Section 25):
When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument will be deemed to be due on the next preceding business day. In case it is an emergency holiday, than on the next succeeding day.

Answer to Problem: In this case, the day of presentment for sight is to be excluded i.e. 1st June 2005. The period of 120 clays ends on 29th September 2005 (June, 29 days + July, 31 days + August, 31 days + 31 days + September, 29 days = 120 days). Three days of grace are to be added. Therefore, it falls due on 2nd October 2005, which is a public holiday. As such, it falls due on 1st October 2005.



4. None of the above. (May 2010, 1 mark)

Answer:

3. Holder: Yes. P can be termed as a holder because he has a right to possession and to receive the amount due in his own name.

Question 21.

A draws and B accepts the bill payable to C on order, C endorses the bill to D and D to E, who is a holder-in-due course. From whom E can recover the amount? Examining the right of E, state the privileges of the holder. In. due course provided under the Negotiable Instruments Act, 1881. (Nov 2012, 8 marks)

Answer:

According to Sec. 36 of Negotiable Instruments Act, 1881, every prior party to a negotiable instrument is liable to holder in due course until the instrument is duly satisfied. E being a holder in due course, can recover the amount from all the prior parties.

Privileges of the Holder-In-due course:

Please refer 2008- Nov(7) on page no. 601

Question 22



Question 26.

Explain the provisions of the aw relating to 'ambiguous' and 'inchoate' instruments under the Negotiable Instruments Act, 1881. A' signs, as maker, a blank stamped paper and gives it to 'B', and authorises him to fill it as a note for ₹ 500, to secure an advance which 'C' is to make to 'B'. 'B' fraudulently fills it up as a note for ₹ 2,000. payable to 'C', who has in good faith advanced ₹ 2,000. Declde, with reasons, whether 'C' is entitled lo recover the amount, and if so, up to what extent? (Nov 1999, 8 marks)

Answer:

Ambiguous Instrument: An instrument which can be formed either as a promissory note or bill of exchange is called an ambiguous instrument (Section 17). The cases where the instruments will be treated as ambiguous are, "Where in a bill the drawer and the drawee are the same persons or where the drawee is a fictitious person, or a person not competent to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note The nature of the instrument will be determined by the holder.

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Inchoate Instruments (Section 20):

1. An inchoate instrument is one which is an incomplete instrument, for example, one not specifying the amount payable or leaving blank the name of the payee or one without date.
2. When a person gives to another person a blank signed and stamped paper, the latter may change it into a negotiable instrument by filling the blanks
3. When the instruments is so filled up, the signor becomes liable in the capacity in which he signs.
4. The liability of the signer is restricted to the amount stated therein but no exceeding the amount covered by the stamp.
5. No person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under.



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The following must be considered In connection with an Inchoate Instruments:

- The liability of a person who signs and delivery a blank or incomplete instrument arises only when the blanks are filled in and the instrument is completed. Before it the instrument will not be valid negotiable instrument.
- Delivery is must to fix up the liability, a signer does not incur any liability as maker, drawer or acceptor until the instruments are delivered to another.
- The incomplete instrument must be filled up strictly in reference with the authority given.
- The blanks must be filled up within a reasonable time.
- Instruments which do not require stamp duty are not covered by the above provisions.



reasonable time.

- Instruments which do not require stamp duty are not covered by the above provisions.

Problem: According to Section 20, when a person signs and delivers to another a paper stamped in accordance with the law relating to the instrument then in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima-facie authority to the holder to complete the instrument of any amount mentioned therein and not exceeding the amount covered by the stamps. The person who signed the instrument will be liable for it. A person other than holder in due course is not authorised to recover anything in excess of the amount intended by him to be paid.

The principle followed by Section 20 is that a person who gives another possession of his signature on a blank stamped paper allows his agent to fill it up and give to the world the instrument as accepted by him. Principle of estoppel is followed.



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In the given problem, A is estopped from setting up B is fraud and V is entitled to recover ₹ 2000/- from A' because C has obtained it as a holder in due course. This liability does not stand of a person other than the holder in due course C as a holder in due course is entitled to enforce payment of the full amount even though the authority has been exceeded but it is necessary that the sum ought not to exceed the amount covered by the stamp.

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Question 27



Question 27.

Explain the essential elements of a Promissory note. State, giving reasons, whether the following instruments are valid Promissory notes:

- (i) X promises to pay Y, by a Promissory note, a sum of ₹ 5,000, fifteen days after the death of B.
- (ii) X promises to pay Y, by a Promissory note, ₹ 500 and all other sums, which shall be due.

(Nov 2000, 8 marks)

Answer:

Essential Elements of a Promissory Note:

1. It must always, take the form of written document.
2. The instrument must contain an express promise to pay.
3. It must contain an unconditional promise to pay. The promise to pay must not depend upon the happening of a contingency.
4. The signature of the maker must be their on the face of the promissory note.
5. The instrument must point out with certainty as to who the maker is and who the payee is. The maker is taken as

promise to pay.

3. It must contain an unconditional promise to pay. The promise to pay must not depend upon the happening of a contingency.
4. The signature of the maker must be their own on the face of the promissory note.
5. The instrument must point out with certainty as to who the maker is and who the payee is. The maker is taken as certain if from the description of the maker, sufficient indication follows about his identity.
6. The amount promised to be paid must be certain and definite.

Therefore:

- In the first case, the payment to be made is 15 days after the death of B. Though the date of death is uncertain, it is certain that B shall die. Hence, the instrument is valid.
- In the second case, the sum to be paid is not certain within the meaning of Sec. 4 of the Act. Thus, it is not a valid promissory note.



Question 28.

Promissory note dated 1st February, 2001 payable two months alter date was presented to the maker for payment 10 days after maturity. What is the date of Maturity? Explain with reference to the relevant provisions of the Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reason of such delay. (May 2001, 7 marks)

Answer:

Delay in presentment for payment of a promissory note: If a promissory note is made payable a stated number of months, it becomes payable three days after the corresponding date of month after the given number of month (Sec. 23). Therefore in the given case the date of maturity of the promissory note is 4th April, 2001.

In this case the promissory note was presented for payment 10 days after maturity. According to Sec. 64 of the Act read with Sec. 66 a promissory note must be presented for payment at maturity on behalf of the holder. In default of such presentment, the other parties of the instrument are not liable to such holder.



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Question 29.

Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following Promissory Notes:

- (i) I owe you a sum of ₹ 1,000. 'A' tells 'B'.
- (ii) 'X' promises to pay 'Y' a sum of ₹ 10,000, six months after 'V's marriage with 'Z'. (Nov 2002, 6 marks)

Answer:

1. In the first case, it is not a promissory note, because there is no promise to pay.
2. In the second case also, it is not a promissory note because it is probable that Y may not marry.

Question 30.



marry.

Question 30.

What is a Promissory Note and what are its elements? S writes "I promise to pay 'B' a sum of ₹ 500, seven days after my marriage with 'C'." Is this a promissory note? (May 2004, 6 marks)

Answer:

Meaning: Sec. 4 defines Promissory note as, 'an instrument in writing containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to or to the order of, a certain person, or to the bearer of the instrument.'

Essential of a promissory note are:

1. It must be in writing
2. It must contain an express promise to pay.
3. The promise to pay must be unconditional.
4. It must be signed by the maker.
5. The parties must be certain.
6. The sum payable must also be certain.
7. It must contain a promise to pay money or money's worth i.e. the current money.

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Problem: In the given case S promises to pay ₹ 500. It is possible that 'S' may never marry 'C' and the sum may never become payable. Hence the promise to pay is conditional as it depends upon an event which may not happen. Hence, it is not a promissory note.

Question 31.

State the privileges of a "Holder in due course" under the Negotiable Instruments Act, 1881. A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through his Bankers. B the drawer wants to recover the amount from C's Bankers. Decide in the light of the provisions of Negotiable Instruments Act, 1881-

- (i) Whether B the drawer, can recover the amount of the cheque from C's Bankers?
- (ii) Whether C is the Fictitious Payee?
- (iii) Would your answer be still the same in case C is a fictitious person? (Nov 2004, 6 marks)



▼ a fictitious person? (Nov 2004, 6 marks)

Answer:

Priviledges of a "Holder in due Course":

1. Every holder is a holder in due course.
2. An inchoate instrument, if property stamped. is valid, if it subsequently comes in the hands of a holder in due course. (Sec. 20)
3. Every prior party to a negotiable instrument is liable to holder in due course untill the instrument is duly satisfied. (Sec. 6)
4. The acceptor of a bill of exchange cannot plead against a holder in due course that the bill is drawn on a fictitious name. (Sec 42)
5. No effect of conditional delivery. (Sec. 46)
6. Once a negotiable instrument passes through the hands of a holder in due course it is purged of all the detects. (Sec. 53).
7. The persons liable on an instrument cannot plead against the holder in due course that the instrument had been lost



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7. The persons liable on an instrument cannot plead against the holder in due course that the instrument had been lost or was obtained by means of fraud or unlawful means. (Sec. 58)
8. No one can deny the original validity of the instrument. (Sec 120)
9. No one can deny against a holder in due course the capacity of the payee to endorse. (Sec. 121)
10. The drawer is estopped from denying the signature or capacity of the prior party. (Sec. 122)

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



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The word fictitious payee mean a person who is not in existence or being in existence was never intended by the drawer to have the payment.

Where the drawer intend payee to have the payment then he is not a fictitious payee and the forgery of his signature will affect the validity of the cheque.

The answers to the question asked are:

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



intended to have the payment.

Question 32.

Answer the following:

A cheque payable to bearer is crossed generally and marked not negotiable. The cheque is lost or stolen and comes into possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from B. Discuss the liability of the banker collecting the cheque and the banker paying the cheque and B to the true owner of the cheque referring to the provisions of the Negotiable Instruments Act, 1881. (May 2005, 4 marks)

Answer:

1. The cheque in the stated case was crossed generally and marked 'No Negotiable'. Thereafter, the cheque was lost and stolen and came into the possession of B, who takes it in good faith and gives value for it.
2. According to Sec. 130 of the Negotiable

possession of B, who takes it in good

faith and gives value for it.

2. According to Sec. 130 of the Negotiable Instrument Act, 1881, provides that a person taking a cheque crossed generally or especially, bearing in any case the words 'not negotiable' shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it.
3. In view of these provisions B, even though he was a holder In due course, did not had any title to the cheque as against its true owner.
4. The addition of the words 'not negotiable' actually takes away the main elements of negotiability, which is that a holder with a defective title can give a good title to a subsequent holder in due course.
5. B did not obtain any better title than his immediate transferor, who had either stolen or found the cheque and was not the true owner of the cheque.
6. Therefore, as per the true owner, B was in no better position than the transferor. B is also liable to repay the amount of the cheque to the true owner.



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5. B did not obtain any better title than his immediate transferor, who had either stolen or found the cheque and was not the true owner of the cheque.
6. Therefore, as per the true owner, B was in no better position than the transferor. B is also liable to repay the amount of the cheque to the true owner.
7. He can, however, proceed against the person Rani whom he took the cheque.

In the stated case above, both the collecting banker and the paying banker will be exonerated. Since the collecting banker, in good faith and without negligence, had received payment from B, who was its customer of the cheque which was crossed generally, the banker would not be liable, in case the title proved to be defective, to the true owner by reason only of having received the payment of the cheque for his customer (Sec. 131). According to Sec. 128. the paying banker on whom the crossed cheque was drawn, had paid the same in due course, the banker would also not be liable to the true owner.

Question 33.

B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1882, decide whether D can recover the money from A in the given case. (Nov 2006, 5 marks)

Answer:

According to Sec. 5301 the Negotiable Instruments Act, 1881. A holder of an instrument deriving title from a holder in due course has rights thereon of the holder in due course. A holder in due course serves as a channel to protect all subsequent holders.

Once a negotiable instrument passes through the hands of a holder in due course it is purged of defects. An instrument once free from defects is always true. Therefore, a holder deriving title from a holder in due course can claim the amount of a bill drawn and accepted without consideration. It has been held that a title, which has been cleansed of defects by passing through the hands of a holder in due course remains immune from those defects



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Once a negotiable instrument passes through the hands of a holder in due course it is purged of defects. An instrument once free from defects is always true. Therefore, a holder deriving title from a holder in due course can claim the amount of a bill drawn and accepted without consideration. It has been held that a title, which has been cleansed of defects by passing through the hands of a holder in due course remains immune from those defects in spite of the fact that a subsequent holder may have noticed that the defects once existed provided he was not a party to them [Guidford Trust Vs. Goss, Credit Bank Vs. Schenkess]. Hence, in the present case D derives title from C who is holder in due course and D is not party to fraud,
∴ D gets a good title to the bill and can recover the money from A in the given case.

Question 34.

What is meant by maturity of a Bill of Exchange or Promissory Note? Calculate the date of maturity of the following bills of exchange explaining the relevant rules relating to determination of the date of maturity as provided in the Negotiable Instruments Act, 1881:

- (i) A Bill of Exchange dated 31st August, 2007 is made payable three months after date.
- (ii) A Bill of Exchange drawn on 1st October, 2007 is payable twenty days after sight and the bill is presented to acceptance on 31st October 2007. (Nov 2007, 5 marks)

Answer:

Provisions:

Maturity of BOE or PN:

Date of maturity: The maturity of a bill of exchange or promissory note is the date on which it falls due. The question of maturity becomes important where a bill or note is payable at fixed period after sight. A note or bill not payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is payable. Three days are allowed as days of grace (Sec. 22). In case of a

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When it falls due. The question of maturity

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Calculation of maturity: In the cases where a bill is payable at a fixed period after sight, the time is to be calculated from the date of the acceptance it is accepted and from the date of noting or protest if the bill is noted or protested for non-acceptance.

Instrument payable so many months after date or sight (Sec. 23): If the instrument is made payable at stated number of months after date or after sight or after a certain event, it becomes payable three days after the corresponding date of the month. If the month in which the period would change has no corresponding day, the period shall be liable to change on the last day of such month. Three days of grace must be added to it.



added to it.

An instrument payable after certain days (Sec. 24): In calculating the date at which promissory note or bill of exchange made payable a certain number of days after sight or after a certain event is at maturity, the day of the date of presentment for acceptance or of protest or non-acceptance or on which the event happened shall be excluded.

When day of maturity is a holiday (Sec. 25):

When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument will be deemed to be due on the next preceding business day. In case it is an emergency holiday, then on the next succeeding day.

Present Case: In this case the day of presentment for sight is to be excluded i.e. 1st June, 2005. The period of 120 days ends on 29th September, 2005 (June, 29 days + July, 31 days + August, 31 days + September, 29 days = 120 days). Three days of grace are to be added.



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When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument will be deemed to be due on the next preceding business day. In case it is an emergency holiday, then on the next succeeding day.

Present Case: In this case the day of presentment for sight is to be excluded i.e. 1st June, 2005. The period of 120 days ends on 29th September, 2005 (June, 29 days + July, 31 days + August, 31 days + September, 29 days = 120 days). Three days of grace are to be added. Therefore, it falls due on 2nd October, 2005, which is a public holiday. As such, it falls due on 1st October, 2005.

Answer to given problem

(i) 30th Nov 2007 +3 days of grace i.e. 3rd Dec 2007

(ii) 20 days after 31st Oct = 20th November 2007

Add: 3 days of grace i.e. – 23rd Nov 2007.



3 days of grace i.e. – 23rd Nov 2007.

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Question 35.

Mr. A is the payee of an order cheque. Mr. B steals the cheque and forges Mr. A signatures and endorses the cheque in his own favour. Mr. B then further endorses the cheque to Mr. C, who takes the cheque in good faith and for valuable consideration. Examine the validity of the cheque as per the provisions of the Negotiable Instruments Act, 1881 and also state whether Mr. C can claim the privileges of a Holder-in-Due course? (Nov 2015, 4 marks)

Answer:

Provisions: A forged NI is a nullity. Forgery confers no title. A holder of forged instrument acquires no title. Thus in case of forged endorsement, the person claiming under forged endorsement even if he is a holder in due course cannot acquire rights of holder in due course.

Present Case: Therefore, Mr. C acquires no title on the cheque.



Question 36.

(i) Discuss with reasons, in the following given conditions, whether 'M' can be called as a holder" under the Negotiable Instruments Act, 1881:

(1). 'M', the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.

(2) 'M' the agent of 'Q', is entrusted with an instrument without endorsement by 'Q' who is the payee. (Nov 2016, 4 marks)

Answer:

(i) Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto. On applying the above provision in the given cases-

1. 'M' is not a 'holder because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.

2. No, 'M' is not a holder. While the agent may

Answer:

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1. 'M' is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.

2. No, 'M' is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.

Question 37.

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? (May 2018. 4 marks)

Question 37.

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? (May 2018, 4 marks)

Answer:

Holder In due course:

In the words of Section 8 of the Negotiable Instruments Act, 1881, 'Holder in due course' means any person who for consideration became the possessor of the negotiable instrument, if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it becomes payable and without having sufficient cause to believe that defect existed in the title of the person from whom he delivered his title.

The Consideration to be fulfilled by the person named holder In due course are as follows:

1. he must be a holder
2. He must have become the holder of the instrument before its maturity



out having sufficient cause to believe that defect existed in the title of the person from whom he delivered his title.

The Consideration to be fulfilled by the person named holder In due course are as follows:

1. he must be a holder
2. He must have become the holder of the instrument before its maturity.
3. The instrument must be received by the holder in good faith.
4. He must have become the holder for valuable consideration.
5. The instrument must be complete and regular on the face of it.

Present Case:

1. Mr. B is not a holder in due course as he does not get the cheque for value and consideration.
2. Although not a holder in due course yet Mr. B is a holder. This title is good and bonafide. Thus, as a holder he is entitled to receive ₹ 11,000 from the bank on whom the cheque is drawn.

Question 38





Inchoate Instruments (Section 20):

1. An inchoate instrument is one which is an incomplete instrument, for example, one not specifying the amount payable or leaving blank the name of the payee or one without date.
2. When a person gives to another person a blank signed and stamped paper, the latter may change it into a negotiable instrument by filling the blanks
3. When the instruments is so filled up, the signor becomes liable in the capacity in which he signs.
4. The liability of the signer is restricted to the amount stated therein but no exceeding the amount covered by the stamp.
5. No person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid there under.

The following must be considered in connection

The following must be considered In connection with an Inchoate Instruments:

- The liability of a person who signs and delivery a blank or incomplete instrument arises only when the blanks are tilled in and the instrument is completed. Before it the instrument will not bo valid negotiable instrument.
- Delivery is must to fix up the liability, a signer does not incur any liability as maker, drawer a acceptor until the instruments are delivered to another.
- The incomplete instrument must be filled up strictly in reference with the authority given.
- The blanks must be filled up within a reasonable time.
- Instruments which do no require stamp duty are not covered by the above provisions.

Problem: According to Section 20, when are person signs and delivers to another a paper stamped. In accordance with the law relating to the instrument then in force in India and either wholly blank or having written thereon an



- Instruments which do not require stamp duty are not covered by the above provisions.

Problem: According to Section 20, when a person signs and delivers to another a paper stamped. In accordance with the law relating to the instrument then in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby permits prima-facie authority to the holder to complete the instrument of: any amount mentioned therein and not exceeding the amount covered by the stamps. The person who signed the instrument will be liable for it. A person other than holder in due course is not authorised to recover anything in excess of the amount intended by him to be paid.

The principle followed by Section 20 is that a person who gives another possession of his signature on a blank stamped paper allows his agent to fill it up and give to the world the instrument as accepted by him. Principle of estoppel is followed.



person other than holder in due course is not authorised to recover anything in excess of the amount intended by him to be paid.

The principle followed by Section 20 is that a person who gives another possession of his signature on a blank stamped paper allows his agent to fill it up and give to the world the instrument as accepted by him Principle of estoppel is followed.

In the given problem, A is estopped from setting up B is fraud and V is entitled to recover ₹ 2000/- from A' because C has obtained it as a holder in due course. This liability does not stand of a person other than the holder in due course C as a holder in due course is entitled to enforce payment of the full amount even though the authority has been exceeded but it is necessary that the sum ought not to exceed the amount covered by the stamp.

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Question 27.



Question 27.

Explain the essential elements of a Promissory note. State, giving reasons, whether the following instruments are valid Promissory notes:

- (i) X promises to pay Y, by a Promissory note, a sum of ₹ 5,000, fifteen days after the death of B.
- (ii) X promises to pay Y, by a Promissory note, ₹ 500 and all other sums, which shall be due.

(Nov 2000, 8 marks)

Answer:

Essential Elements of a Promissory Note:

1. It must always, take the form of written document.
2. The instrument must contain an express promise to pay.
3. It must contain an unconditional promise to pay. The promise to pay must not depend upon the happening of a contingency.
4. The signature of the maker must be there on the face of the promissory note.
5. The instrument must point out with certainty as to who the maker is and who the payee is. The maker is taken as certain if from the description of the

promise to pay.

3. It must contain an unconditional promise to pay. The promise to pay must not depend upon the happening of a contingency.
4. The signature of the maker must be there on the face of the promissory note.
5. The instrument must point out with certainty as to who the maker is and who the payee is. The maker is taken as certain if from the description of the maker, sufficient indication follows about his identity.
6. The amount promised to be paid must be certain and definite.

Therefore:

- In the first case, the payment to be made as 15 days after the death of B. Though the date of death is uncertain, it is certain that B shall die. Hence, the instrument is valid.
- In the second case, the sum to be paid is not certain within the meaning of Sec. 4 of the Act. Thus, it is not a valid promissory note.



Question 28.

Promissory note dated 1st February, 2001 payable two months alter date was presented to the maker for payment 10 days after maturity.

What is the date of Maturity? Explain with reference to the relevant provisions of the Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reason of such delay. (May 2001, 7 marks)

Answer:

Delay in presentment for payment of a promissory note: If a promissory note is made payable a stated number of months, it becomes payable three days after the corresponding date of month after the given number of month (Sec. 23). Therefore in the given case the date of maturity of the promissory note is 4th April, 2001.

In this case the promissory note was presented for payment 10 days after maturity. According to Sec. 64 of the Act read with Sec. 66 a promissory note must be presented for payment at maturity on behalf of the holder. In

reference to the relevant provisions of the Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reason of such delay. (May 2001, 7 marks)

Answer:

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In this case the promissory note was presented for payment 10 days after maturity. According to Sec. 64 of the Act read with Sec. 66 a promissory note must be presented for payment at maturity on behalf of the holder. In default of such presentment, the other parties of the instrument are not liable to such holder. The endorser get discharged by the delayed presentment for payment. But the maker being the primary party continues to be liable.

Question 29.

Referring to the provisions of the Negotiable

✓ Payment 10 days after maturity. According to Sec. 64 of the Act read with Sec. 66 a promissory note must be presented for payment at maturity on behalf of the holder. In default of such presentment, the other parties of the instrument are not liable to such holder. The endorser get discharged by the delayed presentment for payment. But the maker being the primary party continues to be liable.

Question 29.

Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following Promissory Notes:

- (i) I owe you a sum of ₹ 1,000. 'A' tells 'B'.
- (ii) 'X' promises to pay 'Y' a sum of ₹ 10,000, six months after 'V's marriage with 'Z'. (Nov 2002, 6 marks)

Answer:

1. In the first case, it is not a promissory note, because there is no promise to pay.
2. In the second case also, it is not a promissory note because it is probable that Y may not marry.

Question 30.

What is a Promissory Note and what are its



marfy.

Question 30.

What is a Promissory Note and what are its elements? S writes "I promise to pay 'B' a sum of ₹ 500, seven days after my marriage with 'C'." Is this a promissory note? (May 2004, 6 marks)

Answer:

Meaning: Sec. 4 defines Promissory note as, 'an instrument in writing containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to or to the order of, a certain person, or to the bearer of the instrument.'

Essential of a promissory note are:

1. It must be in writing.
2. It must contain an express promise to pay.
3. The promise to pay must be unconditional.
4. It must be signed by the maker.
5. The parties must be certain.
6. The sum payable must also be certain.
7. It must contain a promise to pay money or money's worth i.e. the current money.



ver:

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4. It must be signed by the maker.
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6. The sum payable must also be certain.
7. It must contain a promise to pay money or moneys worth i.e. the current money.

Problem: In the given case S promises to pay ₹ 500. It is possible that 'S' may never marry 'C' and the sum may never become payable. Hence the promise to pay is conditional as it depends upon an event which may not happen. Hence, it is not a promissory note.



Question 31.

State the privileges of a "Holder in due course" under the Negotiable Instruments Act, 1881. A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through his Bankers. B the drawer wants to recover the amount from C's Bankers. Decide in the light of the provisions of Negotiable Instruments Act, 1881-

- (i) Whether B the drawer, can recover the amount of the cheque from C's Bankers?
- (ii) Whether C s the Fictitious Payee?
- (iii) Would your .nswer be still the same in case C is a fictitious person? (Nov 2004, 6 marks)

Answer:

Priviledges of a "Holder in due Course":

1. Every holder is a holder in due course.
2. An inchoate instrument, if property stamped. is valid, if it subsequently comes in the hands of a holder in due course. (Sec. 20)
3. Every prior party to a negotiable instrument is liable to holder in due



stamped. is valid, if it subsequently comes in the hands of a holder in due course. (Sec. 20)

3. Every prior party to a negotiable instrument is liable to holder in due course until the instrument is duly satisfied. (Sec. 6)
4. The acceptor of a bill of exchange cannot plead against a holder in due course that the bill is drawn on a fictitious name. (Sec 42)
5. No effect of conditional delivery. (Sec. 46)
6. Once a negotiable instrument passes through the hands of a holder in due course it is purged of all the defects. (Sec. 53).
7. The persons liable on an instrument cannot plead against the holder in due course that the instrument had been lost or was obtained by means of fraud or unlawful means. (Sec. 58)
8. No one can deny the original validity of the instrument. (Sec 120)
9. No one can deny against a holder in due course the capacity of the payee to endorse. (Sec. 121)

signature or capacity of the prior party.

(Sec. 122)

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

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

The answers to the question asked are:

- In this case the drawer can recover the amount of the cheque from C's bankers because C's title was derived through forged endorsement.
- Here, C is not a fictitious payee because

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fictitious, relieved from liability to any holder in due course claiming under an instrument by the same hand as the drawer's signature and pretends to be made by drawer.

The word fictitious payee mean a person who is not in existence or being in existence was never intended by the drawer to have the payment.

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The answers to the question asked are:

- In this case 8 the drawer can recover the amount of the cheque from C's bankers because C's title was derived through forged endorsement.
- Here, C is not a fictitious payee because the drawer intends him to receive the payment.
- The result would differ if C is not a real person or is a fictitious person or was not intended to have the payment.

Question 32.



Question 32.

Answer the following:

A cheque payable to bearer is crossed generally and marked not negotiable. The cheque is lost or stolen and comes into possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from B. Discuss the liability of the banker collecting the cheque and the banker paying the cheque and B to the true owner of the cheque referring to the provisions of the Negotiable Instruments Act, 1881. (May 2005, 4 marks)

Answer:

1. The cheque in the stated case was crossed generally and marked 'No Negotiable'. Thereafter, the cheque was lost and stolen and came into the possession of B, who takes it in good faith and gives value for it.



fair and gives value for it.

2. According to Sec. 130 of the Negotiable Instrument Act, 1881, provides that a person taking a cheque crossed generally or especially, bearing in any case the words 'not negotiable' shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it.
3. In view of these provisions B, even though he was a holder In due course, did not had any title to the cheque as against its true owner.
4. The addition of the words 'not negotiable' actually takes away the main elements of negotiability, which is that a holder with a defective title can give a good title to a subsequent holder in due course.
5. B did not obtain any better title than his immediate transferor, who had either stolen or found the cheque and was not the true owner of the cheque.
6. Therefore, as per the true owner, B was in no better position than the transferor. B is also liable to repay the amount of the



immediate transferor, who had either stolen or found the cheque and was not the true owner of the cheque.

6. Therefore, as per the true owner, B was in no better position than the transferor. B is also liable to repay the amount of the cheque to the true owner.
7. He can, however, proceed against the person Rani whom he took the cheque.

In the stated case above, both the collecting banker and the paying banker will be exonerated. Since the collecting banker, in good faith and without negligence, had received payment from B, who was its customer of the cheque which was crossed generally, the banker would not be liable, in case the title proved to be defective, to the true owner by reason only of having received the payment of the cheque for his customer (Sec. 131). According to Sec. 128. the paying banker on whom the crossed cheque was drawn, had paid the same in due course, the banker would also not be liable to the true owner.

Question 33.

B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1882, decide whether D can recover the money from A in the given case. (Nov 2006, 5 marks)

Answer:

According to Sec. 5301 the Negotiable Instruments Act, 1881. A holder of an instrument deriving title from a holder in due course has rights thereon of the holder in due course. A holder in due course serves as a channel to protect all subsequent holders.

Once a negotiable instrument passes through the hands of a holder in due course it is purged of defects. An instrument once free from defects is always true. Therefore, a holder deriving title from a holder in due course can claim the amount of a bill drawn and accepted without consideration. It has been held that a title, which has been cleansed of defects by passing through the hands of a holder in due course remains immune from those defects

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 \therefore D gets a good title to the bill and can recover the money from A in the given case.



Question 34.

What is meant by maturity of a Bill of Exchange or Promissory Note? Calculate the date of maturity of the following bills of exchange explaining the relevant rules relating to determination of the date of maturity as Provided in the Negotiable Instruments Act, 1881:

(i) A Bill of Exchange dated 31st August, 2007 is made payable three months after date.

(ii) A Bill of Exchange drawn on 1st October, 2007 is payable twenty days after sight and the bill is presented to acceptance on 31st October 2007. (Nov 2007, 5 marks)

Answer:

Provisions:

Maturity of BOE or PN:

Date of maturity: The maturity of a bill of exchange or promissory note is the date on which it falls due. The question of maturity becomes important where a bill or note is payable at fixed period after sight. A note or bill not payable on demand, at sight or on presentment is at maturity on the third day after

becomes important where a bill or note is payable at fixed period after sight. A note or bill not payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is payable. Three days are allowed as days of grace (Sec. 22). In case of a note or bills payable on demand at sight on presentment, number days of grace are allowed.

Calculation of maturity: In the cases where a bill is payable at a fixed period after sight, the time is to be calculated from the date of the acceptance it is accepted and from the date of noting or protest if the bill is noted or protested for non-acceptance.

Instrument payable so many months after date or sight (Sec. 23): If the instrument is made payable at stated number of months after date or after sight or after a certain event, it becomes payable three days after the corresponding date of the month. If the month in which the period would change has no corresponding day, the period shall be hable to change on the last day of such month. Three days of grace must be added to it.

Instrument payable so many months after date or sight (Sec. 23): If the instrument is made payable at stated number of months after date or after sight or after a certain event, it becomes payable three days after the corresponding date of the month. If the month in which the period would change has no corresponding day, the period shall be able to change on the last day of such month. Three days of grace must be added to it.

An instrument payable after certain days (Sec. 24): In calculating the date at which promissory note or bill of exchange made payable a certain number of days after sight or after a certain event is at maturity, the day of the date of presentment for acceptance or of protest or non-acceptance or on which the event happened shall be excluded.

When day of maturity is a holiday (Sec. 25):
When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument will be deemed to be due on the next preceding business day. In case it is an emergency holiday, then on the next succeeding day.



When the day of maturity is a holiday (Sec. 20).

When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument will be deemed to be due on the next preceding business day. In case it is an emergency holiday, then on the next succeeding day.

Present Case: In this case the day of presentment for sight is to be excluded i.e. 1st June, 2005. The period of 120 days ends on 29th September, 2005 (June, 29 days + July, 31 days + August, 31 days + September, 29 days = 120 days). Three days of grace are to be added. Therefore, it falls due on 2nd October, 2005, which is a public holiday. As such, it falls due on 1st October, 2005.

Answer to given problem

(i) 30th Nov 2007 +3 days of grace i.e. 3rd Dec 2007

(ii) 20 days after 31st Oct = 20th November 2007

Add: 3 days of grace i.e. – 23rd Nov 2007.

Add: 3 days of grace i.e. – 23rd Nov 2007.

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Question 35.

Mr. A is the payee of an order cheque. Mr. B steals the cheque and forges Mr. A signatures and endorses the cheque in his own favour. Mr. B then further endorses the cheque to Mr. C, who takes the cheque in good faith and for valuable consideration. Examine the validity of the cheque as per the provisions of the Negotiable Instruments Act, 1881 and also state whether Mr. C can claim the privileges of a Holder-in-Due course? (Nov 2015, 4 marks)

Answer:

Provisions: A forged NI is a nullity. Forgery confers no title. A holder of forged instrument acquires no title. Thus in case of forged endorsement, the person claiming under forged endorsement even if he is a holder in due course cannot acquire rights of holder in due course.

Present Case: Therefore, Mr. C acquires no title on the cheque.



Question 36.

(i) Discuss with reasons, in the following given conditions, whether 'M' can be called as a holder" under the Negotiable Instruments Act, 1881:

(1). 'M', the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.

(2) 'M' the agent of 'Q', is entrusted with an instrument without endorsement by 'Q' who is the payee. (Nov 2016, 4 marks)

Answer:

(i) Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto. On applying the above provision in the given cases-

1. 'M' is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.



2. No, 'M' is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.

Question 37.

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? (May 2018, 4 marks)

Answer:

Holder In due course:

In the words of Section 8 of the Negotiable Instruments Act, 1881, 'Holder in due course' means any person who for consideration became the possessor of the negotiable instrument, if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it becomes payable and without having sufficient cause to believe that defect existed in the title of the person from whom he delivered his title.

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whom he delivered his title.

The Consideration to be fulfilled by the person named holder In due course are as follows:

1. he must be a holder
2. He must have become the holder of the instrument before its maturity.
3. The instrument must be received by the holder in good faith.
4. He must have become the holder for valuable consideration.
5. The instrument must be complete and regular on the face of it.

Present Case:

1. Mr. B is not a holder in due course as he does not get the cheque for value and consideration.
2. Although not a holder in due course yet Mr. B is a holder. This title is good and bonafide. Thus, as a holder he is entitled to receive ₹ 11,000 from the bank on whom the cheque is drawn.



QUESTION 38.

'A' draws a bill amounting ₹ 5,000 of 3 month's maturity period on 'B' but signs it in the fictitious name of 'C'. Bill is payable to the order of 'C' and it is duly accepted by 'B'. 'D' obtains the bill from 'A' and thus becomes its 'Holder-in-Due course. On maturity 'D' presents bill to 'B' for payment. Is 'B' bound to make the payment of the bill? Examine it referring to the provisions of the Negotiable Instruments Act, 1881. (Nov 2019, 3 marks)

Answer:

This problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege as against the holder in due course that such name is fictitious. Accordingly, B cannot avoid payment by raising the plea that the drawer C is fictitious. The only condition is that signature of C as drawer and as endorser must be in the same hand writing.

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... signature of C as drawer and as endorser must be in the same hand writing.

Question 39.

Mr. X is the payee of an order cheque. Mr. Y steals the cheque and forges Mr. X signature and endorses the cheque in his own favour. Mr, Y then further endorses the cheque to Mr. Z, who takes the cheque in good faith and for valuable consideration. Examine the validity of the cheque as per provisions of the Negotiable Instruments Act. 1881 and also state whether Mr. Z can claim the privileges of holden-in-due-course. (Nov 2019, 3 marks)

Answer:

As per Section 8 of the Negotiable Instruments Act, 1881 holder of a Negotiable Instrument means any person entitled in his own name to the possession of t and to receive or recover the amount due thereon from the parties thereto.





According to Sec.9 of Negotiable Instruments Act, 1881 holder in due course means any person who for consideration becomes the processor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee there of. if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derives his title.

Present Case:

As Z in this case prima fade became a prcessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged. it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder (z) being able to obtain payment in spite of forgery, he cannot retain the money. A holder in due course is protected when there is defect In the title. But he derives no title when there is entire

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As Z in this case prima fade became a pracessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged. it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder (z) being able to obtain payment in spite of forgery, he cannot retain the money. A holder in due course is protected when there is defect In the title. But he derives no title when there is entire absense of title as in the case of forgery, Hence, Z cannot receive the amount on the bill.

Question 40.

State with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instruments per The Negotiable Instruments Act, 1851:

(i) Ram draws a Bill of Exchange in Delhi upon



Question 40.

State with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instruments per The Negotiable Instruments Act, 1851:

(i) Ram draws a Bill of Exchange in Delhi upon Shyam a resident of Jaipur and accepted to be payable in Thailand after 90 days of acceptance.


(ii) Ramesh draws a Bill of Exchange in Mumbai upon Suresh a resident of Australia and accepted to be payable in Chennai after 30 days of sight.

(iii) Aay draws a Bill of Exchange in California upon Vijay a resident of Jodhpur and accepted to be payable in Kanpur after 6 months of acceptance.

(iv) Mukesh draws a Bill of Exchange in Lucknow upon Dinesh a resident of China and accepted to be payable in China after 45 days of acceptance. (Nov 2020, 4 marks)

Question 41.

(i) Are the following instruments signed by Mr. Honest is valid promissory Notes? Give the

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to be payable in Kanpur after 6 months of acceptance.

(iv) Mukesh draws a Bill of Exchange in Lucknow upon Dinesh a resident of China and accepted to be payable in China after 45 days of acceptance. (Nov 2020, 4 marks)

Question 41.

(i) Are the following instruments signed by Mr. Honest is valid promissory Notes? Give the reasons.

(a) I promise to pay D's son ₹ 10000 for value received (D has two sons)

(b) I promise to pay ₹ 5000/- on demand at my convenience

(ii) Who is the competent authority to issue a promissory note payable to bearer'?

Your answers shall be in a accordance with the provisions of the Negotiable Instruments Act, 1881. (Nov 2020, 3 marks)

Question 42.

Under the Negotiable Instruments Act, explain



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I. (Nov 2020, 3 marks)

Question 42.

Under the Negotiable Instruments Act, explain the rights and obligations of a person:

(i) who is finder of a lost instrument; (Nov 1998, 3.5 marks)

Answer:

Rights and obligations of the finder of a lost instrument:

(a) When a negotiable instrument is lost, the finder acquires no title to it as against the rightful owner. He has no right to sue the acceptor or maker in order to enforce payment on it.

(b) If the finder of the lost instrument gets the payment than the person who pays it in due course may be able to get a valid discharge for it. But the real owner can get back the money due on the instrument as damages from the finder.



^ er acquires no title to it as against the rightful owner. He has no right to sue the acceptor or maker in order to enforce payment on it.

(b) If the finder of the lost instrument gets the payment than the person who pays it in due course may be able to get a valid discharge for it. But the real owner can get back the money due on the instrument as damages from the finder.

(c) If the instrument lost by one and it passes by delivery to the third party acquiring it bonafide and for valuable consideration and before maturity has the right to retain the instrument against the actual owner and to compel payment from prior parties.

(d) The loser of the instrument has the right to apply to the drawer a duplicate of the lost bill. If the drawer does not grant the application the loser may force him to provide with a duplicate bill (Sec. 45A).

Question 43.

Pick Out the correct answer from the following

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the drawer does not grant the application the loser may force him to provide with a duplicate bill (Sec. 45A).

Question 43.

Pick Out the correct answer from the following and give reasons:

A negotiable instrument drawn in favour of a minor is

- (1) void
- (2) void but not enforceable
- (3) valid
- (4) None of the above. (Nov 2009, 1 mark)

Answer:

Option 3: "Valid" A minor can be a drawee.

Therefore, the negotiable instrument drawn in favour of a minor is valid.

Question 44.

State, with reasons whether the following statement is correct or incorrect.



^ (3) valid

(3) valid

(4) None of the above. (Nov 2009, 1 mark)

Answer:

Option 3: 'Valid' A minor can be a drawee.

Therefore, the negotiable instrument drawn in favour of a minor is valid.

Question 44.

State, with reasons whether the following statement is correct or incorrect.

(i) A promissory note duly executed In favour of minor is void. (Nov 2010, 1 mark)

Answer:

Incorrect: Promissory Note duly executed in favour of minor is not void. As per the Indian Contract Act, 1872, minor is not competent to contract, but he can be a beneficiary. In this case, the minor is a beneficiary. Hence, the Promissory Note is not void and the minor at his Option can enforce it as a beneficiary.

Question 45.

State whether the following statement is correct or incorrect:

A promissory note duly executed in favour of a


^ ver:

Incorrect: Promissory Note duly executed in favour of minor is not void. As per the Indian Contract Act, 1872, minor is not competent to contract, but he can be a beneficiary. In this case, the minor is a beneficiary. Hence, the Promissory Note is not void and the minor at his Option can enforce it as a beneficiary.

Question 45.

State whether the following statement is correct or incorrect:

A promissory note duly executed in favour of a minor, is valid. (Nov 2015, 1 mark)

Answer:

Correct: As a minor's agreement is void, he cannot bind himself by becoming a party to a negotiable instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

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Question 46.

P. the holder of a Bill of Exchange. transfers it to Q without consideration. Q also transfers it to

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Question 46.

P. the holder of a Bill of Exchange. transfers it to O without consideration. O also transfers it to R without consideration. R transfers it to X for consideration. X transfers it to Y without consideration. State giving reasons whether Y can recover the amount on such instrument from X or P. (May 1998, 6 marks)

Answer:

Negotiable Instrument transferred without consideration (Sec. 43) :

Section 43 of the Negotiable Instruments Act, states down the following two rules regarding the absence of consideration in negotiable instruments:

(1) As between the Immediate parties:

A negotiable instrument made, drawn, accepted, endorsed or transferred without consideration or for a consideration which fails, creates no obligation of payment between the parties to the transactions.

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(2) As between the remote parties:
if any such party has transferred the instrument with or without Endorsement to a holder for consideration, such holder and every subsequent holder deriving title from him may recover the amount due on such instrument from the transferor for consideration or any prior party there to.

Partial absence or failure of money consideration:

Where there is a partial absence or failure of money consideration for which a person signed a negotiable instrument, the same rule will apply as to total absence or failure of consideration. Hence, the parties standing in continuous relation to each other cannot recover more than the real consideration, but this rule is not applicable in case of a holder in due course (Section 44).



Partial absence or failure of money

consideration:

Where there is a partial absence or failure of money consideration for which a person signed a negotiable instrument, the same rule will apply as to total absence or failure of consideration.

Hence, the parties standing in continuous relation to each other cannot recover more than real consideration, but this rule is not applicable in case of a holder in due course (Section 44).

In the problem asked above X and Y are immediate parties, so no consideration passes from Y to X. Hence, the first rule is applicable and Y has no rights against X. X is the holder for value. Hence, X and every subsequent holder deriving title from him may recover the amount due on such instrument from the transferor for consideration on any prior party thereto. The second rule is applicable. Thus, Y can recover the amount from P.

Question 47.

Explain the meaning of Endorsement. State the essentials of a valid endorsement.



Question 47.

Explain the meaning of Endorsement. State the essentials of a valid endorsement.

A is the holder of a bill of exchange made payable to the order of 'B'. The bill of exchange contains the following endorsements in blank:

First endorsement 'B'

Second endorsement G'

Third endorsement D

Fourth endorsement E'

'A strikes out, without 'Es consent, the endorsement by 'C' and 'D'.

Decide with reasons whether 'A' is entitled to recover anything from 'E'. (May 1999, 8 marks)

OR

Mr. Clever obtains fraudulently from J a cheque crossed 'Not Negotiable'. He later transfers the cheque to D, who gets the cheque encashed from ABC Bank, which is not the Drawee Bank. J, on coming to know about the fraudulent act of Clever, sues ABC Bank for the recovery of money. Examine with reference to the relevant provisions of the Negotiable Instruments Act, 1881, whether J will be successful in his claim. Would

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^ Provisions of the Negotiable Instruments Act, 1881, whether J will be successful in his claim.

Would

your answer be still the same in case Clever does not transfer the cheque and gets the cheque encashed from ABC Bank himself? (Nov 2000, 6 marks)

OR

'N' is the holder of a bill of exchange made payable to the order of 'V'. The bill of exchange contains the following endorsements in blank:

First endorsement 'P'

Second endorsement 'Q'

Third endorsement 'R'

Fourth endorsement 'S'

'N' strikes out, without S's consent, the endorsement by 'Q' and 'R'. Decide with reasons whether 'N' is entitled to recover anything from 'S' under the provisions of Negotiable Instruments Act, 1881. (Nov 2009, 5 marks)

OR

'E' is the holder of a bill of exchange made payable to the order of 'F'. The bill of exchange contains the following endorsements in blank:

First endorsement 'F',

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able to the order of 'F'. The bill of exchange contains the following endorsements in blank:
First endorsement 'F',
Second endorsement 'G',
Third endorsement 'H' and
Fourth endorsement 'I'
E' strikes out, without his consent, the endorsements by 'G' and 'H'. Decide with reasons whether 'E' is entitled to recover anything from under the provisions of Negotiable Instruments Act, 1881. (Nov 2017, 4 marks)

Answer:

Provisions:

The question asked above is based on the provision of Sec. 40 of the Negotiable Instruments Act, 1881. Accordingly, where the holder of a Negotiable Instrument without the consent of the endorser destroys or impairs the endorser's remedy against a prior party the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.



^ been paid at maturity.

Present Case:

'E' is the holder of a bill of exchange made payable to the order of 'F'. The bill of exchange contains the following endorsements in blank:

First endorsement 'F'

Second endorsement 'G'

Third endorsement 'H'

Fourth endorsement 'I'

'E' strikes out, without I's consent, the endorsement by 'G' and 'H'. Thus if the endorsements of 'H' and 'G' are struck out without the consent of 'I'. 'E' will not be entitled to recover anything from 'I', the reason being that as between 'H' and 'I' 'H' is the principal debtor and 'I' is the surety. If 'H' is released by the holder under Sec. 39 of the Act, 'I' being surety will be discharged. In this given problem, the rule may be stated thus that when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

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Question 48.

X, a major, and M, a minor, executed a promissory note in favour of P. Examine with reference to the provisions of the Negotiable Instruments Act, the validity of the promissory note and whether it is binding on X and M (May 2000, 6 marks)

OR

A, a major, and B, a minor, executed a Promissory Note in favour of C. Examine with reference to the provisions of the Negotiable Instruments Act, 1881 the validity of the Promissory Note and state whether it is binding on A and B. (Nov 2005, 4 marks)

Answer:

Minor being a party to a negotiable instrument: Every person who is competent to enter into a contract has the right to incur liability by making, drawing, endorsing, accepting, delivering and negotiating the negotiable instruments (Sec. 26). An agreement with a minor is void, so he cannot bind himself by becoming a party to a negotiable instrument.

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and B. (NOV 2005, 4 MARKS)

Answer:

Minor being a party to a negotiable instrument:

Every person who is competent to enter into a contract has the right to incur liability by making, drawing, endorsing, accepting, delivering and negotiating the negotiable instruments (Sec. 26). An agreement with a minor is void, so he cannot bind himself by becoming a party to a negotiable instrument. But the instrument can be drawn or endorsed as to bind all other parties.

Thus, by view Section 26, the promissory note executed by X and M is valid even though a minor is a party to it M being minor is not liable, but his immunity from liability does not absolve the other joint promisor, namely X from liability.

Question 49.

A draws a bill on B. B accepts the bill without any consideration, The bill is transferred to C



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Question 49.

A draws a bill on B. B accepts the bill without any consideration, The bill is transferred to C without consideration. C transferred it to D for value, Decide –

- (i) Whether D can sue the prior parties of the bill, and
- (ii) Whether the prior parties other than D have any right of action intense?

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881. (Nov 2004, 6 marks)

Answer:

Section 43 of the Act, provides that a negotiable instrument made, drawn, accepted endorsed or transferred without consideration a for a consideration which tails, creates no obligation of payment among the parties to the transaction. But, if any such party, has transferred the instrument with or without endorsement 10 a holder for consideration, then the holder and subsequent holder may recover the amount due on such instrument from the

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Section 43 of the Act, provides that a negotiable instrument made, drawn, accepted endorsed or transferred without consideration a for a consideration which tails, creates no obligation of payment among the parties to the transaction. But, if any such party, has transferred the instrument with or without endorsement to a holder for consideration, then the holder and subsequent holder may recover the amount due on such instrument from the transferor for consideration or any prior party:

(i) In first question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C. without consideration after that it is transferred from C to D for value. Thus on the basis of above Section, the bill actually has been transferred to D without consideration. Thus D can sue any of the parties i.e. A, B or C as D arrived a good title on it being taken with consideration.

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stferred it to C. without consideration after that it is transferred from C to D for valve. Thus on the basis of above Section, the bill actually has been transferred to D without consideration. Thus D can sue any of the parties i.e. A, B or C as D arrived a good title on it being taken with consideration.

(ii) In second case, the prior parties that is A, B and C have no right of action intersc. because a instrument made, drawn, accepted. endorsed or transferred without consideration or for a consideration which tails creates no obligation of payment among the parties to the transaction.

Question 50.

P draws a bill on Q for ₹ 10,000. Q accepts the bill. On maturity the bill was dis honoured by non-payment. P files a suit against Q for payment of ₹ 10,000.0 proved that the bill was accepted for value of ₹ 7,000 and as an

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^ Accommodation to the plaintiff for the balance amount i.e. ₹ 3,000. Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether P would succeed in recovering the whole amount of the bill.

(Nov 2010, 8 marks)

Answer:

Provision:

According to Sec. 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.

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



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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.

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

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Question 51.

'P', a major and 'Q', a minor executed a promissory note in favour of 'R'. Examine with reference to the provisions of the Negotiable Instruments Act, 1881, the validity of the promissory note and whether it is binding on 'P' and 'Q'. (May 2015, 4 marks)

Answer:

Provision:

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Answer:

Provision:

Minor being a party to a negotiable instrument:

Every person who is competent to enter in to a contract has the right to incur liability by making, drawing, endorsing, accepting, delivAring and negotiating the negotiable instruments (Sec. 26). An agreement with a minor is void, so he cannot bind himself by becoming a party to a negotiable instrument. But the instrument can be drawn or endorsed as to bind all other parties.

Present Case:

'P', a major and Q', a minor executed a promissory note in favour of 'R'. Examine with reference to the provisions of the Negotiatle Instruments Act, 1881, the validity of the promissory note and whether it is binding on 'P' and Thus, by view Sec. 26, the promissory note executed by P and G is valid even though a minor is a party to it. Q being minor is not liable, but his immunity from liability does not absolve the other joint promisor, namely P from liability.



Question 52.

'M' draws bill on 'N'. 'N' accepts the bill without any consideration. The bill is transferred to 'O' without consideration. O' transferred it to 'P' for ₹ 10,000. On dishonor of the bill, 'P' sued 'O' for recovery of the value of ₹ 10,000. Examine whether 'O' has any right to action against M and N? (May 2019, 2 marks)

Answer:

Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instruments made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.

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

Present Case:

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^ ny prior party thereto.

Present Case:

In the problem, M has drawn a bill on N and N accepted the bill without consideration and transferred it to O without consideration. Later on in the next transfer by O to P is for ₹ 10,000. According to provisions of the aforesaid Section 43, the bill ultimately has been transferred to P with consideration. Therefore, P can sue any of the parties i.e. M, N and O, as P arrived a good title on it being taken with consideration. So P can sue on O. for recovery of ₹ 10,000. Further, the prior parties before P i.e. M, N and above no right of action interse because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, endorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration. So O has no right to action against M and N.

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^ transaction prior to the parties who receive it on consideration. So O has no right to action against M and N.

Question 53.

Vikram accepts a Bill of Exchange for ₹ 50,000 which is an accommodation bill drawn by A on 1st January 2020 to be payable at Mumbai on 1st July 2020. A transfers the bill to B on 1st February 2020 without any consideration. B further transfers it to C on 1st March 2020 for value. Then C transfers it again to D on 1st April 2020 without consideration. D holds the bill till maturity and on the due date of payment he presented the bill for payment but the bill is dishonoured by Vikram. Discuss the rights of A,B,C and D to recover the amount of this bill as per the provisions of The Negotiable Instruments Act, 1881. (2020 Nov 3 marks)

Question 54.

Ram draws a cheque of 1 lakh. It was a bearer





honoured by Vikram. Discuss the rights of A,B,C and D to recover the amount of this bill as per the provisions of The Negotiable Instruments Act, 1881. (2020 Nov 3 marks)

Question 54.

Ram draws a cheque of 1 lakh. It was a bearer cheque. Ram kept the cheque with himself. After some time Ram gives this cheque to Shyam as a gift on his birthday. Decide whether Shyan, is having a valid title over the cheque and whether Shyam is a holder in due course or not in relation to this cheque as per the Section 9 of the Negotiable Instruments Act 1881. (Nov 2020, 3 marks)

Question 55.

Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following:

A Bill of Exchange originally drawn by R for a sum of ₹ 10,000 but accepted by S only for ₹ 7,000. (Jan 2021, 3 marks)

Question 56.

Under the Negotiable Instruments Act, explain

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Q. (Oct 2021, 3 marks)

Question 56.

Under the Negotiable Instruments Act, explain the rights and obligations of a person:

(i) who has obtained an instrument by unlawful means or by unlawful consideration. (Nov 1998, 3.5 marks)

Answer:

Instruments obtained by unlawful means : (Sec. 58)

- A person who gets an instrument by unlawful means is not entitled to claim money there upon, the consent of the party not being free.
- If the instrument obtained through fraud is negotiated the transferee, if aware of the fraud will also not be entitled to claim any payment.
- The defence of fraud cannot in general, be set up against a holder in due course or a holder deriving title from such holder.

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any payment.

- The defence of fraud cannot in general, be set up against a holder in due course or a holder deriving title from such holder.

Instrument obtained by unlawful consideration:

1. The instrument will be void, if the consideration for a negotiable instrument is unlawful.
2. A holder in due course however gets a good title to an instrument which was originally made or drawn or subsequently negotiated for an unlawful consideration.

Question 57.

Comment on the following statement with reference to the provisions of the Negotiable Instruments Act, 1881:

Once a bearer instrument always a bearer instrument. (May 2001, 6 marks)

Answer:



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ument. (May 2001, 6 marks)

Answer:

A bearer instrument is one, which can change hands by simple delivery of the instrument. The instrument may be. a promissory note or a bill of exchange or a cheque. It must be expressed to be so payable or on which the last endorsement is bearer.

According to Section 46, where an instrument is made payable to bearer it is transferred without any further endorsement. But this feature of the negotiable instrument can be changed. Section 49 states that a holder of negotiable instrument endorsed in blank, may without signing his own name, by writing above the endorser's signature, instructs that the payment must be made to another person. Thus, the feature of the instrument is changed and the instruments cannot be transferred by simple delivery.

The law followed in the case of the cheque is bit different. As per Section 85(2) where a cheque is actually expressed to be payable to bearer

^ not be transferred by simple delivery.

The law followed in the case of the cheque is bit different. As per Section 85(2) where a cheque is actually expressed to be payable to bearer, the drawee gets discharged by payment in due course to the bearer thereof, in spite of any endorsement whether in blank or full. Appearing thereon notwithstanding that any such instrument purported to restrict or exclude further negotiation. Thus, the statement is correct that, 'once a bearer instrument always a bearer instrument.'

Question 58.

What is meant by 'Negotiation'? Distinguish between 'Negotiability' v/s 'Assignability' of an instrument. (May 2000, 7 marks)

OR

What are the differences between "negotiability" and "assignability"? (Nov 2003, 4 marks)

OR

Distinguish between "Negotiability" and "Assignability". (May 2013, 4 marks)

Answer:

Distinction between Transfer by Negotiation and



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Distinction between Transfer by Negotiation and Transfer by Assignment

Basis	Transfer by Negotiation	Transfer by Assignment
1. Rights of a holder in due course	In negotiation, the transferee acquires all the rights of a holder in due course.	In transfer by assignment, the assignee does not acquire the right of a holder in due course.
2. Notice	In negotiation, notice of transfer is not needed.	In assignment, notice must be served by the assignee on his debtor.
3. Consideration	In negotiation, consideration is presumed.	In assignment, consideration must be proved.



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^ consideration	consideration is presumed.	must be proved.
4. Payment of stamp duty	Negotiation requires payment of stamp duty.	Assignment does not require payment of stamp duty.
5. Delivery	Negotiation requires delivery only in the case of 'bearer instrument or endorsement & delivery only in the case of order instrument".	In case of assignment, Sec. 130, of the Transfer of Property Act requires a document to be reduced into writing and signed by the transferor.

Question 59.

Pick-up the correct answer from the following and give reasons:

(iii) A negotiable instrument is payable to order can be transferred by:

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Question 59.

Pick-up the correct answer from the following and give reasons:

(iii) A negotiable instrument is payable to order can be transferred by:


- (1) Simple delivery
- (2) Endorsement and delivery
- (3) Endorsement
- (4) Registered Post. (Nov 2008, 1 mark)

Answer:

2. Endorsement and delivery: According to Sec. 48 of the Negotiable Instruments Act, 1881, in order to negotiate i.e. to transfer title to an instrument payable to order, it is at first to be endorsed and then delivered by the holder. Thus, negotiation of an order instrument shall be valid only if both the following conditions are satisfied:

1. The order instrument is endorsed by the holder.
2. After endorsement, the negotiable instrument is delivered to the transferee (i.e. endorsee).



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Question 60.

State whether the following statement is correct or incorrect:

(ii) A cheque marked Not-Negotiable is not transferable. (May 2011, 1 mark)

Answer:

Incorrect

Question 61.

What is meant by 'Sans Recourse Endorsement of a bill of exchange? How does it differ from 'Sans Frais Endorsement'? (May 2015, 4 marks)

Answer:

Meaning of Sans Recourse Endorsement:

Sans Recourse Endorsement is the situation in which an endorser may by express words in the endorsement exclude his own liability thereon. That is in the event of dishonour, he cannot be liable. Where the endorser who excludes his liability, later becomes the holder of the N/I, all intermediate endorsers are liable to him. The endorser signs the endorsement putting his signature along with the words "SANS RECOURSE". e.g.

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^ Endorser signs the endorsement putting his signature along with the words "SANS RECOURSE". e.g.

- (a) Pay D or order without recourse to me
- (b) Pay D or order sans recourse
- (c) Pay D or order at his own risk.

In Sans Frais Endorsement an endorser does not want the endorsee, or any subsequent holder of the instrument to incur any expense on his account on the Instrument, it is called endorsement Sans Frais', i.e. without expense.

The main difference between the Sans Recourse Endorsement and Sans Frais Endorsement is that in Sans Recourse Endorsement endorser excludes his liability thereon i.e. he is not liable for dishonour of bill. Whereas in Sans Frais recourse endorser does not want endorsee or any other subsequent holder of the instrument to incur any expense on his account on the instrument.



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Question 62.

Explain the concept and different forms of restrictive and Qualified endorsement. (Nov 2015, 4 marks)

Answer:

Restrictive endorsement prohibits for further negotiation. So that the amount of such instrument is payable to only that person in whose favour of such bill has been endorsed. So that restrictive endorsement restricts the other person to become payee of the bill.

Types of Conditional Endorsements:

- Sans Recourse: Endorser relieves himself from the liability to all subsequent endorsees.
- Facultative: Endorser waives any of his rights.
- Contingent: Endorser makes his liability dependent upon happening of some event.

Question 63.

State whether the following statement is correct

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rights.

- Contingent: Endorser makes his liability dependent upon happening of some event.

Question 63.

State whether the following statement is correct or incorrect:

(iii) A cheque marked "Not negotiable" is not transferable. (Nov 2015, 1 mark)

Answer:

Incorrect: A cheque marked "not negotiable" is a transferable instrument. The inclusion of the words 'not negotiable' however makes a significant difference in the transferability of the cheques. The holder of such a cheque cannot acquire title better than that of the transferor.

Question 64.

A is a payee holder of a bill of exchange. He endorses it in blank and delivers it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. State giving

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Question 64.

A is a payee holder of a bill of exchange. He endorses it in blank and delivers it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. State giving reasons whether D as bearer of the bill of exchange is entitled to recover the payment from A or B or C. (Nov 1998, 6 marks)

Answer:

According to Section 55 of the Act, if an instrument after having been endorsed in blank is endorsed in full, the endorsee in full does not incur the liability of an endorser, so the amount of it cannot be claimed from him. It means that if an endorsement in blank is followed by an endorsement in full, the instrument still remains payable to bear and negotiable by delivery as against all parties prior to endorse in full, though the endorser in full is only responsible to a holder who made title directly through his

endorsement in blank is followed by an endorsement in full, the instrument still remains payable to bear and negotiable by delivery as against all parties prior to endorse in full, though the endorser in full is only responsible to a holder who made title directly through his endorsement and the person deriving title through such holder. With the view of Section 55, D as the bearer of the instrument can receive payment or sue the drawer or the acceptor or A who has endorsed the bill in blank, but he cannot sue B and C.

Question 65.

A bill is dishonoured by non-acceptance. The bill is endorsed to 'A'. 'A' endorses it to 'B'. As between 'A' and 'B'. the bill is subject to an agreement as to the discharge of 'A'. The bill is afterwards endorsed to 'C', who takes it with notice of dishonour. Deduce, with reasons, whether 'C' is entitled to accept the bill in the capacity of a holder in due course. (Nov 1999, 6 marks)

Answer:

According to Section 59 of the Negotiable Instrument Act. 1881, the holder of negotiable

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afterwards endorsed to 'C', who takes it with notice of dishonour. Dedde, with reasons, whether 'C' is entitled to accept the bill in the capacity of a holder in due course. (Nov 1999, 6 marks)

Answer:

According to Section 59 of the Negotiable Instrument Act. 1881, the holder of negotiable instrument who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof or after maturity has only, as against the other parties, the rights there, n of his transferor.

Where the instrument has been dishonoured any person who takes it with notice of dishonour. takes it subject to any defect of title attaching thereto at the time of dishonour. The transferee of a dishonoured instrument takes it subject to any defect of title existing at the time of dishonour.



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...hing thereto at the time of dishonour. The transferee of a dishonoured instrument takes it subject to any defect of title existing at the time of dishonour.

The transferee cannot have a better title to it than that which his transferor had. In the question above the transferor 'A' has acquired the bill which has already been dishonoured by non-acceptance Mr 'A' has endorsed it to B subject to the agreement as to the discharge of 'A'. After endorsement 'C' takes it with notice of dishonour 'C' cannot have a good title to it than that which his transferor 'B' had.'C' takes the bill subject to the agreement between 'A' and 'B' and not a better title than this.

'C' is also not a holder in due course because he has not acquired the instrument before it became payable. Thus, 'C' is not entitled to accept the bill in the capacity of a holder in due course.



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Question 66.

What is a 'Sans Recours' Endorsement? A bill of exchange is drawn payable to X or order. X endorses into Y, Y to Z, Z to A, A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, Z, A and B, if he has originally endorsed the bill to Y by adding the words 'Sans Recours'. (Nov 2001, 6 marks)

Answer:

Meaning of Sans Recours Endorsement: An endorser may by express words exclude his own liability thereon to the endorser or any subsequent holder in case of dishonour of the instrument. Such an endorsement is called an Sans Recours Endorsement.

In the problem X. the endorser becomes the holder after it is negotiated to several parties. Normally in such a case, none of the intermediate parties are liable to X. This is done to prevent 'circuitry of action'. But in this case X's original endorsement is without recourse and thus he is not liable to Y,Z. A and B. But the

^ Original endorsement is without recourse and thus he is not liable to Y,Z. A and B. But the bill is negotiated back to X, all of them are liable to him and he can recover the amount from all or any of them (Sec. 52).

Question 67.

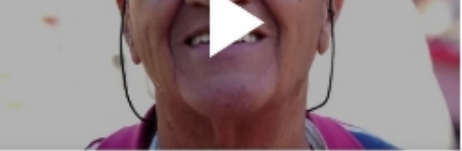
'A' draws a bill of exchange payable to himself on 'X'. Who accepts the bill without consideration just to accommodate 'A'. 'A' transfers the bill to 'P' for good consideration. State the rights of 'A' and 'P'. Would your answer be different if A transferred the bill to 'P' after maturity? (May 2008, 5 marks)

Answer:

Provision:

This is the case of accommodation bill. In an accommodation, bill drawer does not give any consideration to the drawee. Thus relationship between the drawer and the drawee is not that of a creditor and a debtor. It is drawn with an object to provide financial help either to the drawer or to both the drawer and the drawee.

The party accommodating is called the "accommodation party" and the party

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between the drawer and the drawee is not that of a creditor and a debtor. It is drawn with an object to provide financial help either to the drawer or to both the drawer and the drawee.

The party accommodating is called the "accommodation party" and the party accommodated is called "accommodated party."

Following are the salient features of an Accommodation Bill:

1. No obligation of drawee towards the drawer.
2. Drawee is liable to the 'holder in value' even if he knows that it is accommodation bill.
3. It can be negotiated even after its maturity and the holder can become 'holder in due course'.
4. Non-presentment for payment does not discharge the drawer.
5. Failure to give notice of dishonour does not discharge the liability of prior parties.



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2. Drawee is liable to the 'holder in value' even if he knows that it is accommodation bill.
3. It can be negotiated even after its maturity and the holder can become 'holder in due course'.
4. Non-presentment for payment does not discharge the drawer.
5. Failure to give notice of dishonour does not discharge the liability of prior parties.

Present Case: Looking at the above provisions we can conclude that X is not liable to A because A is an accommodated party. But he is liable to P because P is holder for value. Even if A transferred the instrument to P after maturity of bill, P will have right against X. Because accommodation bill is an exception to the rule that the transferee cannot become holder in due course if the transfer is made after maturity of the instrument.

Question 68.

S by inducing T obtains a Bill of Exchange from

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insferred the instrument to P after maturity of bill, P will have right against X. Because accommodation bill is an exception to the rule that the transferee cannot become holder in due course if the transfer is made after maturity of the instrument.

Question 68.

S by inducing T obtains a Bill of Exchange from him fraudulently in his (S) favour. Later, he enters into a commercial deal and endorses the bill to U towards consideration to him (U) for the deal. U takes the bill as a Holder in due course. all subsequently endorses the bill to S for value, as consideration to S for some other deal. On maturity (he bill is dishonoured. S sues T for the recovery of the money. With reference to the provisions of the Negotiable instruments Act, 1881 decide whether S would succeed in the case or not. (Nov 2014, 4 marks)

Answer:



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Provision:

The problem stated in the question is based on the provisions of the Negotiable Instrument Act, 1881 as contained in Sec. 53. The section provides once a negotiable instrument passes through the hands of a holder in due course, it gets clearer of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. Thus any defect in the title to the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud. (Sec. 53)

Thus applying above provisions it is quite clear that S who originally induced T in obtaining the bill of exchange in question fraudulently cannot succeed in the case. The reason is obvious as S himself was a party to the fraud.

Question 69.

'F' by inducing 'G' to obtain a Bill of Exchange from him fraudulently in his (F) favour. Later, he

enters into a commercial deal with 'H' and

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^ succeed in the case. The reason is obvious as S himself was a party to the fraud.

Question 69.

'F' by inducing 'G' to obtain a Bill of Exchange from him fraudulently in his (F) favour. Later, he enters into a commercial deal with 'H' and endorses the Bill to him (H) towards consideration for the deal. 'H' takes the bill as a holder-in-due-course. 'H' subsequently endorses the bill to 'F' for value as consideration to 'F' for some other deal. On maturity the bill is dishonoured. 'F' sues G for the recovery of the money. With reference to the provisions of the Negotiable Instruments Act, 1881, explain whether 'F' will succeed in this case. (Nov 2016, 4 marks)

Answer

The problem stated in the question is based on the provisions of the Negotiable Instrument Act, 1881 as contained in Sec. 53. The section provides once a negotiable instrument passes through the hands of a holder in due course, it

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The problem stated In the question is based on the provisions of the Negotiable Instrument Act, 1881 as contained in Sec. 53. The section provides once a negotiable instrument passes through the hands of a holder in due course, it gets cleared of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey.

Thus any defect in the title to the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud. (Sec. 53) Thus, applying above provisions it is quite clear that F who originally induced G in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as F himself was a party to the fraud.



Question 70.

State the circumstances under which a banker will be justified or bound to dishonour a cheque. (May 1999, 6, 6 marks).

OR

State the grounds on the basis of which a cheque may be dishonoured by a banker, in spite of the fact that there is sufficient amount in the account of the drawer. (Nov 2003, 6 marks)

OR

State the cases in which a banker is justified or bound to dishonour cheques. (May 2005, 6 marks)

OR

State, in brief, the grounds on the basis of which a banker can dishonour a cheque under the provisions of the Negotiable Instruments Act, 1881. (Nov 2011, 8 marks)

OR

State the circumstances on the basis of which a banker can dishonour a cheque under the provisions of Negotiable Instruments Act. 1881. (Nov 2013, 8 marks)

^ (2013, 8 marks)

Answer:

Cases in which a banker is justified or bound to dishonour cheques:

1. If a cheque is not dated (Grift vs Deiton (1940)).
2. If the banker gets notice about the insolvency or lunacy of customer.
3. If it contains a material alteration, – that is Irregular signature or endorsement.
4. A banker is justified in refusing payment of a post-dated cheque presented for payment before its extensible date [Morley is Cut vowel! 7M W 174, 178].
5. If the instrument is incomplete and not free from reasonable doubt.
6. If notice in respect of closure of the account is served by either party on the other.
7. If It is stated, that is it has not been presented within reasonable period.
8. If the customer has credit with one branch of a bank and he draws a cheque upon another branch of the same bank in which either he has account or his account is overdrawn [Wood Land vs.



. If it is stated, that is it has not been presented within reasonable period.

8. If the customer has credit with one branch of a bank and he draws a cheque upon another branch of the same bank in which either he has account or his account is overdrawn [Wood Land vs. Fear (1857)].
9. By notice of loss of cheque and a banker should not pay a cheque after receiving from the holder notice of its loss.
10. If the customer countermands the payment of cheque, the bankers duty ceases for payment.
11. If the authority of the banker to honour a cheque of his customer is determined by the notice of the later's death. Any payment made prior to the receipt of the notice of death is valid.
12. If the garnishee or other legal order from the court attaching or otherwise dealing with the money in the hand of the banker is served on the banker [Rogers V. Whitely 1892].



Question 71.

When s presentment of an instrument not necessary under the Negotiable Instruments Act? (May 2002,6 marks)

Answer:

When Presentment for Payment Unnecessary (Sec. 76) : The presentment for payment is dispensed under the following circumstances. The placement otan instrument for its payment is known as Presentment for payment. Such a presentment must be made:

1. To the maker.
2. To the drawee or acceptor

Time of Presentment for Payment:

1. It should be made during the usual hours of business.
2. A bill made payable at a specific period after date or sight must be presented for payment only at maturity.
3. An instrument payable on demand must be presented for payment within a reasonable time.
4. An instrument payable by instalment must be presented on third day after the



after date or sight must be presented for payment only at maturity.

3. An instrument payable on demand must be presented for payment within a reasonable time.
4. An instrument payable by instalment must be presented on third day after the date of payment of each instalment.

Place of Presentment for Payment:

1. If place is specified, the presentment is to be made at that specified place.
2. If place is not specified then:
 - (a) at the place of business; or
 - (b) if there is no place of business at the residence.
3. If no place is specified, and no fixed place of business or residence exists then the presentment may be made wherever found.

Presentment for payment when excused:

1. Where the maker, drawee or acceptor intentionally prevents the presentment of the instrument.



the instrument.

2. Where the instrument is payable at his place of business and the place is closed during the usual business hours on the due date.
3. Where though the place is open but there is no person to make the payment.
4. Where he has profni3d to pay not with standing non-presentment.
5. Where the presentment is expressly or impliedly waived by the party entitled to presentment. For example, it he makes a part payment of the amount due to the instrument or promises to pay the amount thereon in whole or in part.
6. As against the drawer, where he could not have suffered any damage by non-presentment.
7. Where the drawee is a fictitious person or one incompetent to contract, e.g., minor.
8. Where drawer and the drawee are the same person, e.g., in the case of a promissory note or an accommodation bill.
9. Where the bill is dishonoured by non-acceptance.

acceptance.

10. Where presentment has become impossible.

Question 72.

Under what circumstances shall a Negotiable Instrument be called to have been materially altered? What is the effect of such an alteration? State with reasons, whether the following shall amount to material alteration and invalidate the instrument-

- (i) D in possession of an inchoate instrument where the amount has not been written on the instrument, writes himself the amount
- (ii) K, in possession of an uncrossed cheque received from A. writes Payee's Account only on the face of the instrument. (May 1998, 8 marks)

OR

Under the provisions of Negotiable Instruments Act, 1881 state as to when shall an alteration made in a negotiable instrument be called 'Material Alteration'. What alterations in such an instrument are permitted under the Act? What is the effect of such alteration? (Nov 2001, 7 marks)

Material Alteration. What alterations in such an instrument are permitted under the Act? What is the effect of such alteration? (Nov 2001, 7 marks)

OR

When is an alteration of an instrument treated as a material alteration under the Negotiable Instruments Act, 1881? What is the effect of such an alteration? (May 2002, 6 marks)

OR

When is an alteration in a negotiable instrument is deemed to be a material alteration" under the Negotiable Instruments Act, 1881? What are the consequences of material alteration in a negotiable instrument? (May 2006, 5 marks)

Answer:

Material Alteration: In *Aidons v. Cornwall*, a material alteration was defined as "an alteration which changes the business effect of the instrument if used for any business purpose. Any alteration made in the instrument which causes it to speak different languages from what is originally intended, or which changes the legal identity of the instrument in its terms or in relation or parties thereto is a material alteration.



^ legal identity of the instrument in its terms

or in relation or parties thereto is a material alteration.

Examples of material alteration are: Change

(i) in the time of payment;

(ii) date;

(iii) place of payment;

(iv) sum payable:

(v) rate of interest;

(vi) relation between the parties etc.

Effect of Material Alteration (Section 87) : The material alteration of a negotiable instrument becomes void as against Party one who is a party there to at the time of making such alteration- and does not consent thereto. A material alteration will be valid, if the same was made in order to carry out the common interest of the original parties. An alteration to be valid, must be under the full signature of the drawer. Any material alteration made by an indorsee shall have the effect of discharging his indorsers from all liability to him in respect of the consideration thereof.

material alteration made by an indorser

shall have the effect of discharging his indorsers from all liability to him in respect of the consideration thereof.

Question 73.

In what way 'Discharge of a party' to a negotiable instrument differ from the 'Discharge of instrument'. Explain the different modes of discharge of a negotiable instrument under the Negotiable Instruments Act, 1881. (Nov 2000, 7 marks)

Answer:

Discharge of a party to a Negotiable Instrument etc.:

An instrument gets discharged only when the party who is actually liable there on is discharged from liability. Thus, the instrument itself cannot be discharged on a discharge of a party to an instrument. The effect of this is that, the holder in due course may proceed against the other parties liable for the instrument. For example, the endorser of a bill may be discharged from his liability, but even then acceptor may be proceeded against.

^
 riple, the endorser of a bill may be

discharged from his liability, but even then acceptor may be proceeded against.

Whereas when a bill gets discharge by payment, all rights related to it comes to an end, even a holder in due course cannot claim any amount under the bill Discharge of an instrument: The different modes of discharging a negotiable instrument under the Negotiable Instrument Act are as follows:

1. By express waiver: When the holder of a negotiable instrument at or after its maturity absolutely and unconditionally gives up formally in writing or gives up his rights against all the parties to the instrument, the instrument is discharged. The renouncing must be in writing unless the instrument is delivered upto the party actually liable.

2. By discharge as a simple contract: A negotiable instrument can also be discharged like any other contract for the payment of money. For example: discharge of an instrument by novation, or recession or by completion of limitation.

^ / discharge as a simple contract: A

negotiable instrument can also be discharged like any other contract for the payment of money. For example: discharge of an instrument by novation, or recession or by completion of limitation.

3. By payment In due course : The Instrument also gets discharged by payment made in due course by the party who is primarily liable to pay or by a person. who is accommodated in case the instrument was made or accepted for his accommodation. The payment, must be made at or after the maturity to the holder of the instrument.

4. By Cancellation: The instrument gets discharged if it is knowingly cancelled by the holder or his agent and the cancellation is apparent.

5. By party primarily liable by becoming holder: If the maker of a note or the acceptor of a bill becomes its holder at or after its maturity in his own right, the instrument is discharged.



Question 74.

A Bill of Exchange was made without mentioning any time for Payment. The holder added the words "on demand" on the face of the instrument. [Does this amount to any material alteration? Explain]. (May 2019, 2 marks)

Answer:

As per the provisions of the Negotiable Instruments Act, 1881, material alteration means the alterations in the material part of the instrument resulting in the alteration in the basic parts of the nature and legal effects of the instruments and the liabilities of the parties.

A bill of Exchange was made without mentioning any time for payment. The holder added the words 'on demand' on the face of the instrument. As per the provisions of the Negotiable Instruments Act, 1881, this is not a material alteration as a bill of exchange where no date of payment is specified will be treated as payable on demand. Hence, adding the words "on demand does not alter the business effect of the instrument.



Question 75.

A issues a cheque for ₹ 25,000/- in favour of B. A has sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank, in the meantime, became bankrupt. Decide under the provisions of the Negotiable Instruments Act, 1881, whether B can recover the money from A? (May 2003, 6 marks)

OR

A draws a cheque for 50,000. When the cheque ought to be presented to the drawee bank, the drawer has sufficient funds to make payment of the cheque. The bank fails before the cheque is presented. The payee demands payment from the drawer. What is the liability of the drawer? (May 2005, 6 marks)

Answer:

According to Section 84 of the Negotiable Instruments Act, 1881, where a cheque is not presented for payment within a reasonable time of its issue and the drawer suffers actual damage through the delay because of the failure of the bank, he is discharged to the extent of such damage. If at any time the bank

^ ented. The payee demands payment from the drawer. What is the liability of the drawer? (May 2005, 6 marks)

Answer:

According to Section 84 of the Negotiable Instruments Act, 1881., where a cheque is not presented for payment within a reasonable time of its issue and the drawer suffers actual damage through the delay because of the failure of the bank, he is discharged to the extent of such damage. If at any time the bank fails, the drawer had the full amount of the cheque with the banker for the payment of the cheque, he will be discharged in full. In knowing what is a reasonable time regard shall be paid to the nature of the instrument the usage of trade and of banker and the facts of the particular case.

Thus by using the above provision to the given problem as the payee has not presented the cheque to the drawer's bank within a reasonable time when the drawer had funds to clear the cheque, and the drawer has suffered actual damage, then the drawer is discharged from the liability.



Question 76.

A issues an open 'bearer' cheque for 10,000 in favour of B who strikes out the word 'bearer' and puts a crossing across the cheque. The cheque is thereafter negotiated to C and D. When it is finally presented by D's banker, it is returned with remarks "Payment countermanded" by drawer. In response to this legal notice from D, A pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881 decide, whether A's argument is valid or not? (May 2009, 5 marks)

Answer:

Provisions:

Sometimes, cheques may be altered between drawing and presentation period without authority from the drawer. Some alterations are material and some are not. In *Aidons y. Cornwall*, a material alteration was defined as "an alteration which changes the business effect of the instrument if used for any business purpose. Any alteration made in the instrument which causes it to speak a different language from what is originally intended, or which

which causes it to speak a different languages from what is originally intended, or which changes the legal identity of the instrument in its terms or in relation or parties thereto is a material alteration.

Examples of material alteration are: Change

- in the time of payment;
- date;
- place of payment;
- sum payable;
- rate of interest;
- relation
- between the parties, etc.

Effect of Material Alteration (Sec. 87): The material alteration of a negotiable instrument becomes void as against any one who is a party there to at the time of making such alteration and does not consent there to. A material alteration will be valid, if the same was made in order to carry out the common interest of the original parties. An alteration to be valid, must be under the full signature of the drawer.

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Material alteration of a negotiable instrument becomes void as against any one who is a party there to at the time of making such alteration and does not consent there to. A material alteration will be valid, if the same was made in order to carry out the common interest of the original parties. An alteration to be valid, must be under the full signature of the drawer.

Any material alteration made by an Endorsee shall have the effect of discharging his endorsers from all liability to him in respect of the consideration thereof.

Present Case: In this problem, the cheque bears two alterations when it is presented to the paying banker (i) the word 'bearer' has been struck off and (ii) the cheque has been crossed. Both of these alterations do not amount to material alteration under the provisions of the Act and hence the liability of any including the drawer is not at all affected. 'A' is liable to pay the amount of the cheque to the holder.

Question 77.

A' issued a cheque for ₹ 5,000/- to 'B', 'B' did not present the cheque for payment within reasonable period. The Bank fails. However, when the cheque was ought to be presented to the bank, there was sufficient fund to make payment of the cheque. Now, 'B' demands payment from 'A. Decide the liability of A' under the Negotiable Instruments Act, 1881. (May 2014, 4 marks)

Answer:

Provision:

According to Sec. 84 of the Negotiable Instruments Act, 1881, where a cheque is not presented for payment with-in a reasonable time of its issue and the drawer suffers actual damage through the delay because of the failure of the bank, he is discharged to the extent of such damage.

If at any time the bank fails, the drawer had the full amount of the cheque with the banker for the payment of the cheque, he will be discharged in full. In knowing what is a reasonable time regard shall be paid to the nature of the instrument the usage of trade and



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if at any time the bank fails, the drawer had the full amount of the cheque with the banker for the payment of the cheque, he will be discharged in full. In knowing what is a reasonable time regard shall be paid to the nature of the instrument the usage of trade and of banker and the facts of the particular case.

Thus by using the above provision to the given problem as the payee has not presented the cheque to the drawer's bank within a reasonable time when the drawer had funds to clear the cheque and the drawer has suffered actual damage, then the drawer is discharged from the liability.

Present case:

As per the provisions mentioned above since B has not presented the cheque on time (when he had funds to clear the cheque) A stands discharged. Thus. B cannot demand payment from A. A is not liable.

^ Question 78.

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. (Nov 2018, 4 marks)

Answer:

Provision: As per Sec. 8501 the N.I. Act, 1881;

1. 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.
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.



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^ ndorsed 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 there of, not with standing any indorsement whether in full or in blank appearing there on, and notwithstanding that any such inciorsement purports to restrict or exclude further negotiation.

Present Case:

According to Sec. 850f the Negotiable Instruments Act, 1881 the drawee banker is discharged when he pays a cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the endorsement of Mr. Vyas is forged, the banker is protected and he is discharged. The true owner, Mr. Vyas cannot recover the money from the drawee bank. So there is no liability of the drawee bank.



Question 79.

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? (Jan 2021, 3 marks)

OR

Gireesh, a legal successor of Ripun, the deceased person, signs a Bill of Exchange in his own name admitting a liability of 50,000 i.e. the extent to which he inherits the assets from the deceased payable to Mukund after 3 months from 1st January, 2019. On maturity, when Mukund presents the bill to Gireesh, he (Gireesh) refuses to pay for the bill on the ground that since the original liability was that of Ripun, the deceased, therefore, he is not liable to pay for the bill.



Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether Mukund can succeed in recovering 50,000 from Gireesh. Would your answer be still the same in case Gireesh specified the limit of his liability in the bill and the value of his inheritance is more than the liability? (Jan 2021, 4 marks)

OR

When is Notice of dishonour not necessary under the Negotiable Instruments Act, 1881. (May 1999, 6 marks)

OR

Describe the circumstances where under notice of dishonour is excused under the Negotiable Instruments Act, 1881. (May 2004, 6 marks)

Answer:

According to Sec. 98 of the Negotiable Instruments Act, 1881, following are the cases where notice of dishonour is not necessary;

1. When the party charged could not suffer damages for want of notice.
2. Where the promissory note is not negotiable.

3. In order to charge the drawer when



1. When the party charged could not suffer damages for want of notice.
2. Where the promissory note is not negotiable.
3. In order to charge the drawer when countermand, payment, notice of dishonour is unnecessary because the instrument is dishonoured by the express mandate of the drawer himself.
4. In case the drawer himself is acceptor, no notice is necessary to charge the drawer.
5. When it is dispensed with by the party entitled thereto.
6. When the party entitled to notice cannot after reasonable search be found.
7. When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.
8. Where the party liable to give notice is unable, without any fault of its own, to give it. –



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^ Question 80.

When a bill of exchange may be dishonoured by 'non-acceptance' and 'non-payment' under the provisions of Negotiable Instruments Act, 1881? (Nov 2002,6 marks)

Answer:

A bill of exchange may be dishonoured either by non-acceptance or by non-payment.

Dishonour by Non-acceptance (Sec. 91):

The circumstances under the bill shall be considered as dishonoured by non-acceptance are as follows:

1. When presentment for acceptance is excused and it remains unaccepted.
2. When the drawee could not be found after a reasonable research.
3. When the drawee or one of the several drawees makes default in acceptance upon being duly required to accept the bill.
4. Where the acceptance is qualified.
5. Where the drawee is a person incompetent to contract.



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1. when presentment for acceptance is excused and it remains unaccepted.
2. When the drawee could not be found after a reasonable research.
3. When the drawee or one of the several drawees makes default in acceptance upon being duly required to accept the bill.
4. Where the acceptance is qualified.
5. Where the drawee is a person incompetent to contract.

Dishonour by Non-payment (Sec. 92): A negotiable instrument is said to be dishonoured by non-payment, when the maker, acceptor or drawee, as the case may be, makes default in payment upon being duly required to pay the same. Also a negotiable instrument is dishonoured by non-payment when presentment for payment is excused and the instrument remains unpaid after maturity (Sec.76).

^ .76).

Question 81.

What are the circumstances under which a bill of exchange can be dishonoured by non-acceptance? Also, explain the consequences if a cheque gets dishonoured for insufficiency of funds in the account. (Nov 2018, 5 marks)

Answer:

Dishonour by non-acceptance (Section 91, the Negotiable Instrument Act, 1881):

A bill may be dishonoured either by non-acceptance or by non-payment. A dishonour by non-acceptance may take place in any of the following circumstances:

- (i) When the drawee either does not accept the bill within forty-eight hours of presentment or refuse to accept it;
- (ii) When one of several drawees, not being partners, makes default in acceptance;
- (iii) When the drawee gives a qualified acceptance;
- (iv) When presentment for acceptance is excused and the bill remains unaccepted; and
- (v) When the drawee is incompetent to contract.



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An instrument is dishonoured by non-payment when the party primarily liable i.e. the acceptor of a bill, the maker of a note or the drawee of a cheque, make default in payment. An instrument is also dishonoured for non-payment when presentment for payment excused and the instrument, when overdue, remains unpaid, under Section 76 of the Act.

Dishonour of cheque for insufficiency, etc. of funds in the account:

Where any cheque drawn by a person on an account maintained by him with a banker for payment is dishonoured due to insufficiency of funds, he shall be punished with imprisonment for a term which may extend to one year or with fine which may be extended to twice the amount of the cheque or with both [Section 138 of the Negotiable Instrument Act, 1881]

Provided that nothing in this section shall apply to unless:

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...ent is dishonoured due to insolvency of
funds, he shall be punished with imprisonment
for a term which may extend to one year or with
fine which may be extended to twice the
amount of the cheque or with both [Section 138
of the Negotiable Instrument Act, 1881]
Provided that nothing in this section shall apply
to unless:

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

^ for the written demand for payment.

Question 82.

Explain the concept of 'Noting', 'Protest' and 'Protest for better security' as per the Negotiable Instruments Act, 1881. (May 2019, 3 marks)

Answer:

Noting:

As per Sec. 99 of the Negotiable Instruments Act, 1881, 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 read within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

^ dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest:

As per Sec. 100 of the Negotiable Instrument Act, 1881, 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 within a reasonable time cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.



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Question 83.

A bill of exchange has been dishonoured by non-payment. Now, Mr. Sandip, the holder wants a certificate of protest for such a dishonoured bill. Advise, Mr. Sandip whether he can get the certificate of protest. Also, advise him regarding the provisions of Protest for better security.

Answer:

Protest: According to section 100 of the Negotiable Instruments Act, 1881, 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 a 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

बॉयफ्रेंड के लिए पिता के खिलाफ गई थी नाबालिग
पॉक्सो एक्ट में जमानत दिलाई; हत्या के बाद से फरार हैं ..



शेयर करें

^ ficate of protest. Also. advise him regarding
the provisions of Protest for better security.

Answer:

Protest: According to section 100 of the
Negotiable Instruments Act.1 881, 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 a 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 a certificate is called a protest
for better security. Thus, Mr. Sandip can get the
certificate of protest by following the above

^ ficate of protest. Also. advise him regarding the provisions of Protest for better security.

Answer:

Protest: According to section 100 of the Negotiable Instruments Act.1 881, 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 a 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 a certificate is called a protest for better security. The provisions of the Act apply to such a protest.

The file has been moved to the trash and will be permanently deleted in 24 hours.

Question 84.



Question 84.

What are the penalties prescribed In the Negotiable Instruments Act, 1881 in case of dishonour of a Cheque for insufficiency of funds in the account of the person issuing the Cheque? What steps the payee should take for making the drawer liable for this offence? (1998 – May, 7 marks)

Answer:

Section 138 of the Negotiable Instruments [added by the (Amendment) Act, 1988 and now amended by Negotiable Instruments [Amendment; Act, 2002] states the criminal penalties in the event of dishonour of cheques for insufficiency of funds. The drawer under Section 138, may be punished with imprisonment upto 2 years or with a fine upto twice the amount of the cheque or with both. To constitute, the said offence, certain conditions are to be fulfilled. These are:

1. The cheque should have been presented within 6 months from the date on which it is drawn or within the period of validity, which ever is earlier.

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stitute, the said offence, certain conditions are to be fulfilled. These are:

1. The cheque should have been presented within 6 months from the date on which it is drawn or within the period of validity, which ever is earlier.
2. The drawer is liable only if he fails to make the payment within 15 days of such notice period.
3. The payee or holder In due course of the cheque should have been given notice demanding payment within 30 days from the drawer on receipt of information of dishonour of cheque from the bank.

complaint within one month: The payee or the holder in due course of the cheques dishonoured should have made a complaint within one month of cause of action arising out. If the cheques is drawn as a gift no offence will be committed, it the said cheque is returned by the bank unpaid.



Question 85.

A finance company after having issued a cheque in favour of a depositor informs the depositor not to present the cheque as well as informs the bank to stop payment. Examine with reference to the provisions of the Negotiable Instruments Act whether it is an offence under the Act. (May 2000, 6 marks)

OR

Bholenath drew a cheque in favour of Surendar. After having issued the cheque, Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of The Negotiable Instruments Act, 1681 whether the said acts of Bholenath constitute an offence. (May 2018, 4 marks)

Answer:

(d) Dishonour of cheque: The facts of the case are somewhat similar to Modi Cements Ltd vs. Kuchil Kumar Nandi. In This case, the Supreme Court held that once a cheque is issued by the drawer, a presumption, under Section 139 of the Act, follows and merely because the drawer issues a notice thereafter to the drawer or to the

some what similar to Modi Cements Ltd vs. Kuchil Kumar Nandi. In This csse, the Supreme Court held that once a cheque is issued by the drawer, a presumption, under Section 139 of the Act, follows and merely because the drawer issues a notice thereafter to the drawer or to the bank for stoppage of payment, it will not preclude on action under Section 138. This Section is a penal provision in the sense that once a cheque is drawn on an account kept by the drawer with his banker for payment of any amount of money to some other person from out of that account for the discharge of in whole or in part of any debt or other liability.

The cheque is returned by the bank unpaid due to insufficiency of amount to honour cheques or the amount exceeding the arrangement made with the bank. These types of persons are deemed to have committed an offence.

In view of this Supreme Court decision, the finance company may be said to have committed an offence under Sec.1 38 of the Negotiable Instruments Act, 1881.



Question 86.

State the circumstances under which the drawer of a cheque will be liable for an offence relating to dishonour of the cheque under the Negotiable Instrument Act, 1881. Examine, whether there is an offence under the Negotiable Instrument

Act, 1881, if a Drawer of a cheque after having issued the cheque, informs the Drawee not to present the cheque as well as informs the Bank to stop the payment. (May 2007, 5 marks)

Answer:

According to Sec. 138-142 of the Negotiable Instruments Act (added by the Amendment Act 1988 and now amended by Negotiable instruments Act, 2002, the Bouncing of Cheque is a Criminal Offence. In case of Bouncing of Cheque the drawer may be punished with an imprisonment upto 2 years or with a fine up to twice the amount of the cheque or with both.

The following conditions must be satisfied for aforesaid punishments:



1. The cheque should have been dishonoured, due to insufficiency of funds in the account maintained in the bank.
2. The payment for which the cheque was issued should have been in discharge of a legally enforceable debt or liability in whole or part of it.
3. The cheque should have been presented within 6 months of its period of validity.
4. The holder in due course of the cheque should have been given notice demanding payment within 30 days.
5. The drawer is liable only if he fails to make the payment within 18 days of such notice period.
6. The payee or holder in due course of the cheque dishonoured, should have made a complaint within one month of cause of action arising out of Sec. 138.

Problem: Once a cheque is issued by the drawer, he is bound by it to discharge and merely because he issued a notice for stoppage of payment, will not preclude an action under sec 138. Hence, the drawer of cheque will be liable for offence u/s 138 for dishonour of cheque.

^ ment, will not preclude an action under sec

138. Hence, the drawer of cheque will be liable for offence u/s 138 for dishonour of cheque. Modi Cements Ltd. Vs Kuchil Kumar Nandi.

Question 87.

A drawer of a cheque after having issued the cheque, informs the drawee not to present the cheque as well as inform the bank to stop the payment. Decide whether it constitutes an offence against the drawer under the Negotiable Instruments Act 1881? (May 2017, 4 marks)

Answer:

As per the provision of Sec. 139 of the N. I. Act, 1881, it shall be presumed unless the contrary is proved that the holder of a cheque received the cheque of the nature referred to in Sec. 138 for the discharge in whole or in part or any debt or other liability.

Once a cheque is issued by the drawer, he is bound by it to discharge and merely because he issued a notice for stoppage of payment, it will not preclude an action under sec 138. Hence, the drawer of cheque will be liable for offence u/s 138 for dishonour of cheque. Leading



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nd by it to discharge and merely because he issued a notice for stoppage of payment, it will not preclude an action under sec 138. Hence, the drawer of cheque will be liable for offence u/s 138 for dishonour of cheque. Leading Cases: Modi Cements Ltd. Vs Kuchil Kumar Nandi.

Question 88.

J. a shareholder of a Company purchased for his personal use certain goods from a Mall (Departmental Store) on credit. He sent a cheque drawn on the Company's account to the Mall (Departmental Store) towards the full payment of the bills. The cheque was dishonoured by the Company's Bank J, the shareholder of the company was neither a Director nor a person in-charge of the company. Examining the provisions of the Negotiable Instruments Act, 1881 state whether has committed an offence under Sec. 138 of the Act and decide whether he (J) can be held liable for the payment, for the goods purchased from the Mall (Departmental Store). (Nov 2006, 5 marks)

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decide whether he (J) can be held liable for the payment, for the goods purchased from the Mall (Departmental Store). (Nov 2006, 5 marks)

Answer:

According to Sec. 138 of the Act, when a cheque is dishonoured due to insufficiency of funds in the drawer's account such person shall be deemed to have committed an offence, and be punished with imprisonment for a term which may extend to two year or with fine which may extend to twice the amount of the cheque or with both.

Furthermore, if the person committing an offence is a company or a person incharge of and responsible to the company for the conduct of the business of the company as well as the company shall be deemed guilty of offence and shall be liable to be proceeded against and punished accordingly. In he present case, J, a shareholder of company has drawn a cheque on the company's account towards full payment of goods purchased from a Mall (Departmental Store).



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^ h may extend to two year or with fine which may extend to twice the amount of the cheque or with both.

Furthermore, if the person committing an offence is a company or a person in charge of and responsible to the company for the conduct of the business of the company as well as the company shall be deemed guilty of offence and shall be liable to be proceeded against and punished accordingly. In the present case, J, a shareholder of company has drawn a cheque on the company's account towards full payment of goods purchased from a Mall (Departmental Store).

Although cheque was drawn on company's account but company is not guilty of offence as it was committed without his knowledge.

Moreover, J is neither a Director nor a person in charge of company. Therefore he is not liable for the goods purchased from the Mall.

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^ However, J is neither a Director nor a person in charge of company. Therefore he is not liable for the goods purchad from 'he Mall.

Question 89.

PQR Limited received a cheque for ₹ 50,000 from its customer Mr. LML after a week company came to know that the proceeds were not credited to the account of PQR Limited due to some defects', as informed by the Banker. What according to you are the possible effects? (May 2007, 5 marks)

Answer:

According to Sec. 138-142 of the Negotiable Instruments Act (added by the Amendment Act 1988 and now amended by Negotiable Instruments Act, 2002, Bouncing of Cheque Is a Criminal Offence. In case of Bouncing of Cheque, the drawer may be punished with an imprisonment upto 2 years or with a fine upto twice the amount of the cheque or with both.

The following conditions must be satisfied for aforesaid punishments:



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Following conditions must be satisfied for
aforesaid punishments:

1. The cheque should have been dishonoured, due to insufficiency of funds in the account maintained in the bank.
2. The payment for which the cheque was issued should have been in discharge of a legally enforceable debt or liability in whole or part of it.
3. The cheque should have been presented within 6 months of its period of validity.
4. The holder in due course of the cheque should have been given notice demanding payment within 30 days.
5. The drawer is liable only if he fails to make the payment within 18 days of such notice period.
6. The payee or holder in due course of the cheque dishonoured, should have made a complaint within one month of cause of action arising out of Sec. 138.



action arising out of Sec. 138.

Question 90.

Mr. S Venkatesh drew a cheque in favour of M who was sixteen years old. M settled his rental due by endorsing the cheque in favour of Mrs. A the owner of the house in which he stayed. The cheque was dishonoured when Mrs. A presented it for payment on grounds of inadequacy of funds. Advise Mrs. A how she can proceed to collect her dues. (Nov 2018, 4 marks)

Answer:

Provision:

As per Section 26 of the Negotiable Instruments Act, 1881, Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. However, a minor may draw, endorse, deliver and negotiate Such instruments so as to bind all parties except himself.



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1881, Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. However, a minor may draw, endorse, deliver and negotiate Such instruments so as to bind all parties except himself.

Present Case:

Mr. S Venkatesh draws a cheque in favour of M, a minor. M endorses the same in favour of Mrs. A to settle his rental dues. The cheque was dishonoured when it was presented by Mrs. A to the bank on the ground of inadequacy of funds. A minor may draw, endorse, deliver and negotiate the Instrument so as to bind all parties except himself. Therefore. M is not liable. Mrs. A can thus, proceed against Mr. S Venkatesh to collect her dues.

Question 91.





Question 91.

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 know the exact amount payable by him. Singh fills up fraudulently the amount larger than the amount payable by Ram and endorses the cheque to Chandra in full payment of Singh's own due. Ram's cheque is dishonoured.

Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of Singh and Chandra. (May 2019, 3 marks)

Answer:

Sec. 44 of the Negotiable Instruments Act, 1881 is applicable in this case. According to Section 49 of this Act, Singh who is a party in immediate relation with the drawer of the cheque is entitled to recover from Ram 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.