



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.

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 rple, 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 s 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, notwithstanding any indorsement whether in full or in blank appearing there on, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

Present Case:

According to Sec. 85 of 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
tunds, 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 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

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 (b) 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 be 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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may extend to twice the amount of the cheque
or with both.

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offence is a company or a person incharge of
and responsible to the company for the conduct
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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).

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 purchad from 'he 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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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.