

J.K. SHAH[®]

**TEST
SERIES**

SUGGESTED SOLUTION

CA FOUNDATION

SUBJECT- BUSINESS LAW

Test Code – JMU 2412

BRANCH - () (Date :)

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ANSWER : 1

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-

- (i) '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.
- (ii) 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.

(4 MARKS)

ANSWER : 2

According to section 47 of the Negotiable Instruments Act, 1881, subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof. However a promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable unless such event happens.

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

(3 MARKS)

ANSWER : 3

- (i) It is not a valid promissory note – since A has not made any promise to pay INR 1,000 to (mere acknowledgement of indebtedness does not result in a valid promissory note).
- (ii) It is not a valid promissory note – since the promise is conditional (as Y's marriage with Z is not certain to happen).

(2 MARKS)

ANSWER: 4

No, Reena does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to her. (Section 48, the Negotiable Instruments Act, 1881)

(2 MARKS)

ANSWER: 5

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

- (a)
 - (i) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
 - (ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
 - (iii) if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or

- (iv) if the instrument not being payable at any specified place, he cannot after due search be found;
- (b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non presentment;
- (c) as against any party if, after maturity, with knowledge that the instrument has not been presented –
- He makes a part payment on account of the amount due on the instrument.
 - Or promises to pay the amount due thereon in whole or in part,
 - Or otherwise waives his right to take advantage of any default in presentment for payment;
- (d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

(5 MARKS)

ANSWER: 6

Delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically. Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee. Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is indorsed to him, unless the instrument is negotiated to a holder in due course. The contract on a negotiable instrument until delivery remains incomplete and revocable. The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57)

(5 MARKS)

ANSWER: 7

In the words of Section 4 of the Negotiable Instruments Act, 1881, "A promissory note is an instrument in writing, containing an unconditional undertaking signed by the maker to pay a certain sum of money to, or the order of, a certain person or to the bearer of the instrument.

No.	Basis	Promissory Note	Bill of Exchange
1.	Definition	"A Promissory Note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to,	"A bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order

		or to the order of, a certain person, or to the bearer of the instrument.	of a certain person or to the bearer of the instrument.
2.	Nature of Instrument	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.
3.	Parties	In a promissory note, there are only 2 parties namely: (i) the maker and the payee	In a bill of exchange, there are 3 parties which are as under: (i) the drawer (ii) the drawee the payee
4.	Acceptance	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bills of exchange needs acceptance from the drawee.
5.	Payable to bearer	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.

(8 MARKS)

ANSWER 8 :

Meaning of Negotiable Instruments: Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable (by customs of trade) from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument passes to a bonafide transferee for value. The Act does not define the term 'Negotiable Instruments'. However,

Section 13 of the Act provides for only three kinds of negotiable instruments namely bills of exchange, promissory notes and cheques, payable either to order or bearer.

1. Essential Characteristics of Negotiable Instruments
2. It is necessarily in writing.
3. It should be signed.
4. It is freely transferable from one person to another.
5. Holder's title is free from defects.
6. It can be transferred any number of times till its satisfaction.
7. Every negotiable instrument must contain an unconditional promise or order to pay money.
The promise or order to pay must consist of money only.
8. The sum payable, the time of payment, the payee, must be certain.
9. The instrument should be delivered. Mere drawing of instrument does not create liability.

(7 MARKS)

ANSWER 9 :

By virtue of provisions of Section 138 of the Negotiable Instruments Act, 1881, where cheque was issued by a person to discharge a legally enforceable debt was dishonoured by bank due to insufficiency of funds, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term

which may extend to two years or with fine which may extend to twice the amount of the cheque, or with both.

However,

- (a) the cheque has been presented to the bank within three months or validity period of the cheque, whichever is earlier;
- (b) the holder makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within 30 days of the receipt of information from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money within fifteen days of the receipt of the said notice.

In the instant case, Priyansh issued a cheque to Sumit for payment of the price of goods purchased from him. When Sumit presented the cheque in bank, it was returned unpaid due to insufficiency of funds in the account of Priyansh. Sumit sued against Priyansh under section 138 of the Negotiable Instruments Act, 1881.

For filing the suit under section 138, Sumit should have to make a demand of payment by giving a notice in writing to Priyansh upto 18th July, 2023. In case, Priyansh failed in making the payment within fifteen days of the receipt of the said notice, Sumit could sue under section 138.

(7 MARKS)

ANSWER 10 :

As per the facts stated in the question, Bholenath (drawer) after having issued the cheque, informs Surendar (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surendar. Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence. Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138. Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section. Accordingly, the act of Bholenath, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

(7 MARKS)