Shobhit Institute of Engineering & Technology Deemed to-be-University
EDUCATION EMPOWERS

Legal Aspects of Business

Unit- 3

Negotiable Instruments Act, 1881

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Content

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- Definition, Features and types of negotiable instruments, kinds of negotiable instruments, Methods of negotiation of instruments; holder and holder in due Course; Endorsement and delivery of a negotiable instrument; Presentation of Negotiable Instrument.
- Banker and Customer: An introduction; Crossing of a cheque; Types of crossing; Bouncing of cheques, Obligations of banker and customer; Dishonour and discharge of negotiable instruments

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Definition

- The word negotiable' means "transferable by delivery" and instrument means "a written document by which a right is created in favor of some person or persons.

- Thus, the term negotiable instrument literally means a written document which creates a right in favor of somebody and is freely transferable.

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A negotiable instrument is a piece of paper which entitles a person to a certain sum of money and which is transferable from one to another person by a delivery or by endorsement and delivery.

E.g. - Promissory note, Cheque and a Bill of exchange, documents such as Railway or ST Receipts; Dividend, warrants; Railway Bonds payable etc.

Characteristics Of a Negotiable Instrument

Freely transferable: The property in a negotiable, instrument passes from one person to another by a simple process, i.e., by mere delivery if it is payable to bearer, and by endorsement and delivery if it is payable to order.

Holder's title free from all defects: The holder in due course (one who acquires the instrument in good faith and for consideration) gets it free from all defects.

Section 118 – Presumptions as to negotiable instruments

- **Consideration:** It shall be presumed that every negotiable instrument was made, drawn, accepted or endorsed for consideration. It is also presumed that, consideration is present in every negotiable instrument until the contrary is proved. The presumption of consideration however may be rebutted by proof that the instrument had been obtained from its lawful owner by means of fraud or undue influence.
- **Presumption as to Date:** Where a negotiable instrument is dated, the presumption is that it has been made or drawn on such date, unless the contrary is proved.
- **Time of acceptance:** Unless the contrary is proved, every accepted bill of exchange is presumed to have been accepted within a reasonable time after its issue and before its maturity. This presumption only applies when the acceptance is not dated; if the acceptance bears a date, it will prima facie be taken as evidence of the date on which it was made.

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- **Time of transfer:** Unless the contrary is proved, it shall be presumed that every transfer of a negotiable instrument was made before its maturity. But it is also seen that there is no presumption as to the exact date of negotiation.
- **Order of endorsement:** Until the contrary is proved, it shall be presumed that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon. For example, in a situation where no evidence is adduced by the defendant, and when the instrument is signed by the second defendant below the endorsement signature of first defendant (who is the payee in the promissory note), the presumption will be made that the endorsement signatures were made in the order in which they occur, according to s. 118.
- **Stamp:** Unless the contrary is proved, it shall be presumed that a lost promissory note, bill of exchange or cheque was duly stamped

Types

Negotiable Instruments recognized by status:

e.g. Bills of exchange, cheque and promissory notes.

Negotiable instruments recognized by usage or customs of trade:

e.g. Bank notes, exchequer bills, share warrants, bearer debentures, dividend warrants, share certificate

Negotiable Instruments recognized by status: Bills of exchange

- 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 of a certain person or to the bearer of the instrument.

Eg - Mr. X purchases goods from Mr. Y for Rs. 1000/-
Mr. Y buys goods from Mr. S for Rs. 1000/. Then Mr. Y may order Mr. X to pay Rs. 1000/- Mr. S which will be nothing but a bill of exchange.

Vikas
Rs. 50,000

New Delhi
15th August 2016

Three months after date pay to me or my order, the sum of Rupees Fifty Thousand only, for value received.

STAMP

Accepted
(signed)
Nishchay
15/8/2016
10/4, Mall Avenue,
New Delhi – 110037

(Signed)
Vikas
128, Karolbagh
New Delhi

To,
Nishchay
10/4, Mall Avenue
New Delhi

Parties

Bills of Exchange

The person who issues the bill	The person to whom the bill is issued	The person to whom payment is made
Drawer	**Drawee**	**Payee**

WallStreetMojo

Essentials Features Of Bill Of Exchange:

- It must be in writing.
- It must contain an order to pay a definite sum of money.
- The order to pay must be unconditional.
- It must be signed by the drawer (who draw money).
- The drawer, the drawee &the payee must be identified & must be certain.
- The sum payable must be certain.
- The bill must contain an order to pay the money in legal tender in India.
- It must contain the formalities like date, place & stamp etc.

Cheque

- "A cheque is a bill of exchange drawn on a specified banker and expressed to be payable otherwise than on demand."

- The maker of a bill of exchange or Cheque is called the "Drawer"; the person thereby directed to pay is called the "Drawee".

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Promissory Notes

- A "promissory –note" is an instrument in writing [not being a bank-note or a currency-note 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 the bearer of the instrument.
- A promissory note is a legal, financial tool declared by a party, promising another party to pay the debt on a particular day. It is a written agreement signed by drawer with a promise to pay the money on a specific date or whenever demanded.

Promissory Note

____
Place of residence

____
Date

I, ______ (Maker's name) ________ agree and promise to pay __(Payee's name)... or order the sum of (€ __________) Euros for value received, with interest at the annual rate of ...% payable on/after ____ (Date) _____.

____
(Maker's signature)

Types of Promissory Notes

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- **Personal Promissory Notes** – This is a particular loan taken from family or friends. Though people avoid legal writings when seeking a loan from close contact, the promissory note shows belief and trust in the interest of the borrower.
- **Commercial** – Here, the note is made when dealing with commercial lenders such as banks. Most of the commercial promissory agreement is similar to personal notes.
- **Real Estate** – This is similar to commercial notes in terms of nonpayment consequences. If the borrower becomes a defaulter, then the party has the right to keep the property until the debt is cleared. It is a little risky as all the essential details become public, which can hinder the borrower's credit history in the future.
- **Investments** – The promissory note is occasionally used to raise funds for the business. It is used as a security purpose and managed by securities laws. It includes terms and conditions related to returns of investment.

Parties of Promissory Note

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- **Drawer**: A drawer is a person who agrees to pay the drawee a certain amount of money on the maturity of the promissory note. He/she is also known as maker.
- **Drawee**: She/he is an individual, in whose favour the note is prepared. In usual cases the drawee is also the payee until and unless the promissory note is transferred specifically in favour of the payee. For e.g. Ram is considered a drawer if he promises to pay Shyam Rs.5000 (Shyam is the drawee). However, if the same promissory note is transferred in favour of Rohan, then Rohan becomes the payee.
- **Payee**: A payee is someone to whom the payment is made.

Features of Promissory Note

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- **Printed/Written Agreement** – A promissory should be in writing, and an oral promise to pay money is not accepted.
- **Pay Defined Amount** – It is a promise to pay the money on a particular time or when demanded. The mentioned amount can neither be added or subtracted.
- **Signed Documents** – The document is duly signed and drawn by the drawer and stamped.
- **Unconditional Promise** – The promise to pay a certain amount of money must be absolute in all cases. In such notes, a conditional guarantee is not accepted.
- **Legal Composition** – All the payment should be made in the nation's legal currency.
- **Detailed Information** – The note has all the required information including the name of the drawer and payee, date of maturity, terms of repayment, issue date, name of the drawee, name, and signature of the drawer, principal amount, and the rate of interest, etc.

Negotiable instruments recognized by usage or customs of trade: Banknotes

A banknote is a negotiable promissory note which one party can use to pay another party a specific amount of money. A banknote is payable to the bearer on demand, and the amount payable is apparent on the face of the note. Banknotes are considered legal tender; along with coins, they make up the bearer forms of all modern money.

Exchequer Bills

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The exchequer bill was an obligation of the exchequer issued by direction of the Treasury. It was a negotiable instrument transferable by endorsement. It was sometimes for three months, sometimes for one year, sometimes for several years. Its special characteristics were (I) that the holder could use it during its currency (or during a specified part of its currency) in payment of taxes or other sums due to the exchequer, (2) that interest accrued on it from day to day at rates notified by the Treasury from time to time in the London Gazette. Sometimes holders were entitled to demand cash for the bills ; for example, the holder of a five-year bill might have the option of demanding payment in cash at intervals of 12 months.

Share Warrants

- A Share Warrant is a document issued by the company under its common seal, stating that its bearer is entitled to the shares or stock specified therein. Share warrants are negotiable instruments. They are transferable by mere delivery without registration of transfer.
- It is a negotiable instrument and mere delivery transfers the ownership of the shares. Coupons are attached to each warrant, bearing the dates on which the dividend will be paid by the company as it cannot know who the shareholder or who is entitled to the dividends. The person who produces the appropriate coupon can receive payment of the dividend.

Conditions for issuing share warrants

1. Only a public company can issue share warrants.
2. It must be authorized by the Articles of Association.
3. The shares must be fully paid-up.
4. The approval of the Central Government is necessary.

On the issue of the share warrant, the company must strike off the name of the member in its Register of Members and must enter the following particulars:

1. The fact of the issue of the share warrant,
2. A statement of the shares included in the warrant, distinguishing each share by its number, and
3. The date of issue of the warrant.

Merits of Share Warrant

1. The shares mentioned in it are transferable by mere delivery of the warrant. Registration is not necessary.

2. It is a negotiable instrument. So one who purchases the share warrant in good faith and without negligence gets a better title
than that of the transferor.

3. Banks accept share warrants as a security for loans.

4. The company may provide for future dividend payments by attaching dividend coupons with the share warrants.

Demerits of Share Warrant

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1. The bearer of the warrant is not a member of the company.
2. Since it is bearer instrument, the holder always faces the risk of losing the document.
3. The company should be very careful while printing and keeping them in safe custody.
4. The stamp duty on share warrant is very heavy.
5. Prior approval of the Central Government is essential.
6. The number of shares mentioned in it does not constitute a share qualification for directorship.

Bearer Debentures

- Debentures are a common type of long-term loans raised by a company. Debentures and are issued in the form of a document containing the terms and conditions of the loan, redemption of the loan, payment of interest, and other features. Most debentures pay a fixed rate of interest to its holders. Generally, debentures are secured, however, there are unsecured types of debentures as well.
- Bearer debentures an be transferred by mere delivery and hence, are payable to the bearer of the instrument. No records are maintained in the register of debenture holders and registration of transfer is not necessary. That is why they are also known as unregistered debentures.

Features and benefits of bearer debentures

- Bearer debentures are unregistered debentures that can be transferred by mere delivery. No records are maintained in the company's debenture-holders' register for the ownership of these securities.
- Such debentures are issued physically, i.e., on paper.
- In order to receive interest payments, the bondholder needs to submit the coupons for interest payment which are physically attached to the security to the bank or the issuing company.
- These debentures can be redeemed within thirty days from the date of maturity which is printed on the bond.
- Selling bearer debentures is relatively easy as no third party or intermediary is needed since these can be simply transferred by just handing over the certificate to the other person.

Risks involved in purchasing bearer debentures

- Since the sale of these securities is not recorded by the issuing company, replacement in case of a lost or a stolen debenture is not possible. Any person who finds it will be considered the owner as these debentures can change ownership by mere delivery.
- Likewise, since no information is printed on this type of bond, the person in possession of the bond can claim the final payment.
- In case of any rise in the interest rates, the issuing company is under no obligation and can call back the bearer debentures anytime.
- There is always a risk of losing the interest payment coupons if these are detached and sent through the mail. So, the bond needs to be delivered to a bank in person to redeem it at the time of maturity.
- In case of death of the bearer debenture holder before the date of maturity, it becomes nearly impossible to claim the principal and interest payments.
- Apart from the risks involved mentioned above, there is another very important factor that has prompted many economies to stop the issue of these bonds. The bearer bonds can be easily used for money laundering or tax evasion as owners of bearer bonds are able not to report any profits that come from holding this type of bond.

Dividend Warrants

- An order, or warrant, issued by a company, and drawn upon its bankers, in favour of a member of the company. for payment of the interest or dividend due to him upon his holding of shares or stock in the company.
- Where a dividend warrant is payable to several persons, it is the custom to pay it on being signed by one of them. But in the case of an interest warrant all the persons named should sign.
- A dividend warrant is a cheque sent by a company to a shareholder for payment of dividend to the registered address of the shareholder.

Share Certificate

- Share certificates are written documents that are attested on behalf of a firm or a corporation, which acts as legal proof for ownership stating the number of shares shown. Another name of the share certificate is 'stock certificate'.
- When a firm issues stocks in the market, the investors who purchase the same are given share or stock certificates. Share certificates fundamentally act as the receipt of purchase and indicate the ownership of stocks in a particular company. Share certificate confirms ownership that is registered and shows the date from which it is registered.

Details Provided in Share Certificate

- Name of the issuing firm
- Corporate Identification Number (CIN)
- Full registered address of the company
- Full legal name of the shareholder
- Member's folio number
- Number of shares purchased by the investor
- Amount of money spent by the investor to purchase the shares
- Distinct number of shares

Negotiation: Meaning, Definition

According to Section 14 of Negotiable Instrument Act 188 "When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute the person the holder thereof, the instrument is said to be negotiated.

Modes of Negotiations

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(i) Negotiation by Delivery -

According to Section 47 Subject to the provisions of Section 58 of the Negotiable Instrument Act, 1881 a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

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

Illustration -

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

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

(ii) Negotiation by Endorsement and Delivery -

According to Section 48 of the said Act Negotiation by endorsement, Subject to the provisions of Section 58, a Promissory Note, bill of exchange or cheque payable to order, is negotiable by the holder by endorsement and delivery thereof.

Holder and Holder in due Course

Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or endorsee thereof, if 9[payable to order], before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

- Section 8 of Negotiable Instruments Act 1881defines the term Holder as The holder of a negotiable instrument is any person who is for the time being entitled in his own name and right to the possession of the instrument and to receive and recover the amount due on the instrument. A person is said to be held only if he has possession and entitled for that possession along with entitled to claim money under it. In the case of an order instrument, the name of the holder appears on the document as payee or endorsee. In the case of a bearer document, a payee claims the money without having his name mentioned on the cheque.
- According to this section, the holder has the capacity to receive payment or recover the amount by filing a suit in his own name against other parties, to negotiate the instrument and to give a valid discharge. If the promissory note, cheque or bill is destroyed or lost by any chance then it is the holder so entitled at the time of such destruction or loss.

Kinds of Holder:

- (a) De jure- The holder of a negotiable instrument as a matter of legal right.
- (b) De facto- The holder of a negotiable instrument by the virtue of possession but not entitled in his own name.

Endorsement of a negotiable instrument

The act of a person who is a holder of a negotiable instrument in signing his or her name on the back of that instrument, thereby transferring title or ownership is an endorsement. An endorsement may be in favour of another individual or legal entity. An endorsement provides a transfer of the property to that other individual or legal entity. The person to whom the instrument is endorsed is called the endorsee. The person making the endorsement is the endorser. Let us discuss the Endorsement of Instruments here in detail.

Types of Endorsement

- **Blank Endorsement** – Where the endorser signs his name only, and it becomes payable to bearer.
- **Special Endorsement** – Where the endorser puts his sign and writes the name of the person who will receive the payment.
- **Restrictive Endorsement** – Which restricts further negotiation.
- **Partial Endorsement** – Which allows transferring to the endorsee a part only of the amount payable on the instrument.
- **Conditional Endorsement** – Where the fulfillment of some conditions is required.

Delivery of a negotiable instrument

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

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

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

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by endorsement and delivery thereof.

Presentment of Negotiable Instrument

The Act requires presentment of negotiable instruments. Presentment is simply a demand by which holder of the instruments is required to do as per direction of the instruments. Direction may be either acceptance in case of bill of exchange or payment in case of all instruments.

Kinds of Presentment

• The scheme of the Act as to presentment may be classified as following:

(1) Presentment for acceptance (Section 61).
(2) Presentment of promissory note for sight (Section 62)
(3) Presentment for payment (Section 64)
(4) Presentment of cheque to charge the drawee bank (Section 138).

Banker

A banker, official of bank is one who accepts deposits from public subject to withdrawal by cheque, draft or order and uses these deposits for making loans and advances to public and for investment.

A bank provides all financial solution to customers.

Banking: An Evolutionary Concept

- Banking Means the accepting , for purpose of lending or investment of deposits of money from public , repayable on demand or otherwise and withdrawal by cheque , draft, order or otherwise -Banking Regulation Act 1949
- Banking Company means any company which transacts the business of banking -Section 5 (c), Banking Regulation Act 1949

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Functions of Bank

Dealing in Money: Bank is a financial institution which deals with other people's money i.e. money given by depositors.

Individual / Firm / Company : A bank may be a person, firm or a company. A banking company means a company which is in the business of banking.

Acceptance of Deposit : A bank accepts money from the people in the form of deposits which are usually repayable on demand or after the expiry of a fixed period. It gives safety to the deposits of its customers. It also acts as a custodian of funds of its customers.

Giving Advances : A bank lends out money in the form of loans to those who require it for different purposes

Payment and Withdrawal: A bank provides easy payment and withdrawal facility to its customers in the form of cheques and drafts, It also brings bank money in circulation. This money is in the form of cheques, drafts, etc.

Agency and Utility Services: A bank provides various banking facilities to its customers. They include general utility services and agency services.

Profit and Service Orientation: A bank is a profit seeking institution having service oriented approach.

Ever increasing Functions: Banking is an evolutionary concept. There is continuous expansion and diversification as regards the functions, services and activities of a bank.

Connecting Link: A bank acts as a connecting link between borrowers and lenders of money. Banks collect money from those who have surplus money and give the same to those who are in need of money.

Banking Business: A bank's main activity should be to do business of banking which should not be subsidiary to any other business.

Name Identity: A bank should always add the word "bank" to its name to enable people to know that it is a bank and that it is dealing in money.

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Customer

- A person who buys goods or services from a shop or a business entity.
- A person you deal with as a business entity.
- There is no statutory definition.
- A person/ company/entity who has an account with a bank is a customer.
- There is no unanimity as regards to the time period of the dealings.
- A customer is a person who maintains an account with the bank, without taking into consideration the duration and frequency of operation of his account.

Banker and Customer Relationship

The relationship between the banker and customer is very important. It is generally studied under the following two heads.

– General Relationship

– Special Relationship

General Relationship

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Debtor and Creditor:

- The true relationship between banker and customer is primarily of a debtor and creditor.
- When a customer deposits money with a bank, the bank then is the debtor and the customer is the creditor.

Principal and agent:

- The special relationship between the customer and the banker is that of principal and agent.
- The customer (principal) deposits checks, drafts, dividends for collection with the bank.
- He also gives written instructions to the bank to purchase securities, pay insurance premium, installments of loans etc. on his behalf.
- When the bank performs such agency services, he becomes an agent of his customer.

- **Bailer and Bailment relationship**
- A bailment is the delivery of goods in trust. A bank may accept the valuables of his customer such as jewelry, documents, securities for safe custody.
- In such a case the customer is the Bailer and the bank is bailee.
- The bank (bailee) charges a very small amount as service charges for safe custody of the valuables from his customer (bailer).

Special Relationship

- Obligation to honor Cheques
- Wrong Dishonour of cheque
- Obligation to maintain confidentiality/secrecy of customers accounts
- Act in Good faith without negligence
- Payment to Nominee

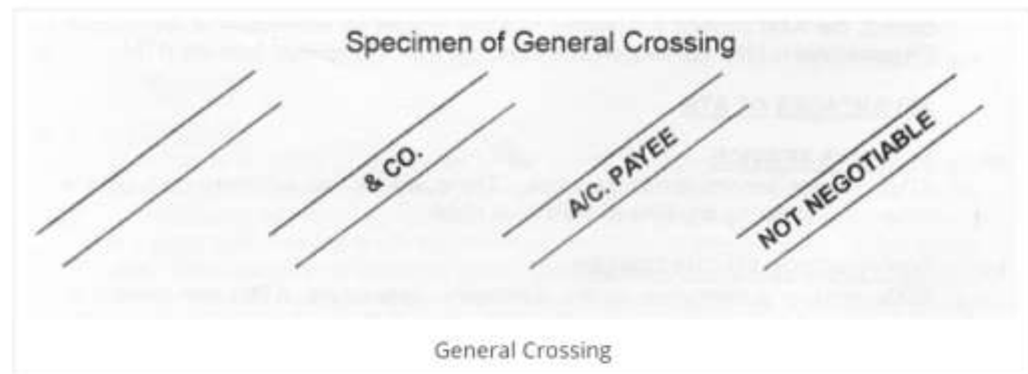
Crossing of a cheque

- Crossing of a cheque is nothing but instructing the banker to pay the specified sum through the banker only, i.e. the amount on the cheque has to be deposited directly to the bank account of the payee.
- Hence, it is not instantly encashed by the holder presenting the cheque at the bank counter. If any cheque contains such an instruction, it is called a crossed cheque.

Types of Crossing

The way a cheque is crossed specified the banker on how the funds are to be handled, to protect it from fraud and forgery. There are several types of crossing.

General Crossing: When across the face of a cheque two transverse parallel lines are drawn at the top left corner, along with the words & Co., between the two lines, with or without using the words not negotiable. When a cheque is crossed in this way, it is called a general crossing.



General Crossing

Restrictive Crossing: When in between the two transverse parallel lines, the words ‘A/c payee’ is written across the face of the cheque, then such a crossing is called restrictive crossing or account payee crossing. In this case, the cheque can be credited to the account of the stated person only, making it a non-negotiable instrument.

A/c Payee

Special Crossing: In a special crossing, the paying banker will pay the sum only to the banker whose name is stated in the cheque or to his agent. Hence, the cheque will be honored only when the bank mentioned in the crossing orders the same.

Special Crossing

Not Negotiable Crossing: When the words not negotiable is mentioned in between the two transverse parallel lines, indicating that the cheque can be transferred but the transferee will not be able to have a better title to the cheque

Not Negotiable

Double Crossing: Double crossing is when a bank to whom the cheque crossed specially, further submits the same to another bank, for the purpose of collection as its agent, in this situation the second crossing should indicate that it is serving as an agent of the prior banker, to whom the cheque was specially crossed

State Bank of India

Punjab National Bank

Bouncing of cheques

- A bounced check is slang for a check that cannot be processed because the account holder has nonsufficient funds (NSF) available for use. Banks return, or "bounce", these checks, also known as rubber checks, rather than honoring them, and banks charge the check writers NSF fees.
- A bounced check occurs when the writer of the check has insufficient funds available to fulfill the payment amount on the check to the payee.
- When a check bounces, they are not honored by the depositor's bank, and may result in fees and banking restrictions.
- Additional penalties for bouncing checks may include negative credit score marks, refusal of merchants from accepting your checks, and potentially legally trouble.
- Banks often offer overdraft protection to prevent inadvertent check bouncing.

Obligations of Bankers towards Customers

- **Obligation to Pay Cheques**
- **Secrecy**
- **Banker 's Lien:** The bank has the right to sell the subject matter in possession in the ordinary course of business as a banker, and adjust the unpaid debt. Lien may be a general or particular lien. General lien empowers the bank to retain all movables in its possession but particular lien gives the right to retain the goods or property connected with particular debt.
- **Mandate:** A mandate is an authority given by the account holder in favour of a third person. This is issued by an account holder with a direction to his banker authorizing third person to operate the account. It is unstamped letter signed by the customer.
- **Circumstances Leading to Closure of Accounts:** The banker should carefully examine the issue before closing the customer's account and unless there are justifiable reasons, it should not close the accounts of the customer.
- **Loans and Advances**

Rights of a Banker

1. Right to charge interest: Every bank in India has the right to charge interest on the loans and advances sanctioned to customers. Interest is usually charged monthly, quarterly, semiannually or annually.

2. Right to levy commission and service charges: Along with interest, banks also have the right to levy a commission and service charges for the services rendered. The service rendered by the bank might be SMS notification service, retail banking and so on. Banks can also debit these charges from the customer's bank account.

3. Right of Lien: Another important right enjoyed by banks is the Right of Lien. Banks have the right to keep goods and securities belonging to the debtor as a security, until the loan is repaid by the debtor. Banks have only the right to maintain the security of the debtor and not to sell.

4. The Right of Set-off: The banker has the right to set off customer accounts. Banks can merge a couple of accounts which are in the name of the customer and set off the debit balance in one account with the credit balance in the other, provided the funds belong to the customer.

5. Right of Appropriation: Let us consider that a customer has taken many loans from the bank and he deposits some money in the bank without any instructions. If that amount is not sufficient to discharge all loans, the bank has the right to appropriate the amount deposited to any loan, even to a time-barred debt. But the customer should be informed on the same.

6. Right to Close the Account: If the customer's account is not properly maintained, banks have all the right to close the account by sending a notice to the customer. Bankers have no right to close the account, without sending a written notice.

Rights of a Customer

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1. Right to fair treatment: According to this right, banks cannot discriminate between customers on the basis of gender, age, religion, caste, and physical ability while providing services. This does not mean that banks cannot offer schemes which are designed for a particular set of people. Banks have all the right to offers differential rates of interest or products to customers.

2. Right of transparent, fair and honest dealing: The contract between the banks and customers should be easily understood by the common man. It is the responsibility of the bank to make the customer understand interest rates, the risk involved and all other terms and conditions. Banks should not hide anything from the customer before the signing of the agreement. Even if there are any short comings, they should be communicated to the customer. The language in the contract should be simple and easily understood.

3. Right to suitability: You might have come across a lot of cases of mis-selling of financial products, especially life insurance policies. Usually, customers are forced to buy the product which offers the highest commission to an agent. As per this right, customers should be sold the product which is suitable to them. So, banks should always keep customers needs in mind, before selling any product.

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4. Right to privacy: As per this law, the personal information provided by the customers to the bank, must be kept confidential. Bankers can disclose only such information, which is required by law or only after customers have given permission. Banks are not allowed to provide your details to telemarketing companies or for cross-selling.

5. Right to grievance Redressal and compensation: Banks are responsible for all the products and services offered by them and customers have the right to easy and simple grievance redressal systems in case the bank fails to adhere to basic norms. Along with their own products, bankers are responsible for the products of third parties like insurance companies and fund houses. If the customer complaint is not resolved by the bank, customers can go to the banking ombudsman.

Duties of customers to banks

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1. It is the duty of customers to present the cheque and other negotiable instruments only during the business hours of the bank.
2. In the case of any disagreement in the bank statement, customers should inform the bank.
3. Whenever photographs of customers are required by the bank, it should be submitted.
4. It is the duty of the customer to present the instrument of credit within the due time from the date of issue.
5. The cheque should be filled by customers very carefully.
6. If the cheque book is lost or stolen, it is the duty of the customers to inform the bank.
7. If the customer notices any forgery in the amount of the cheque, he/she should inform it to the bank immediately.
8. Customers should provide proper information in the Know Your Customer (KYC) form.
9. Customers should make the repayment of all the dues on time.
10. It is the duty of the customers to read the MITC (Most Important Terms and Conditions)

Dishonour and discharge of negotiable instruments

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Dishonour means not honouring the obligation. A negotiable instrument may be dishonoured by-

(a) Non acceptance

(b) Non-payment

A bill of Exchange is dishonoured either by non-acceptance or by non-payment but a cheque and promissory notes can be dishonoured by non-payment.

Section 91: Dishonour by non-acceptance

i. When the acceptance of the bill is not done within 48 hrs. from the time of presentment for acceptance by the drawee.

ii. When drawee is a fictitious person and cannot be traced (Section 61)

iii. When drawee is incompetent to contract.

iv. When drawee accepts with qualified acceptance.

v. When drawee is insolvent or dead.

vi. When the presentment for acceptance is excused and the bill is not accepted i.e., remains unaccepted.

Section 92:
Dishonour by non payment

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i. When a bill is accepted then it has to be presented on the date of its maturity.

ii. When the acceptor fails to pay when it is due, the bill is dishonoured by non-payment.

iii. When the holder of a bill or pro-note may treat it as dishonoured, without placing for payment when presentment for payment is excused expressly by the maker of the pro-note, or acceptor of the bill and the note or bill when overdue remains unpaid.

iv. When the banker refuses to pay then the cheque is dishonoured by non-payment.

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Section 93: Effect of Dishonour

- When a negotiable instrument is dishonoured either by non-acceptance or non-payment, the holder has all the rights to sue the parties liable to pay.
- It is compulsory for the holder to give notice of dishonour to every party against whom he intends to proceed.
- Holder of the instrument has to give the notice.
- Notice is given to all the parties, it may be given to endorser or argent.
- The notice may be in oral or in writing (must be sent by post).
- The notice should be given in a reasonable time.
- Except in the cases which notice is dispensed with Section 98 is to discharge all parties who are entitled to such notice.

Discharge of instrument

- Discharge means to release from the obligation. When the Negotiable Instrument is issued, there is a liability to pay at a certain time and amount and when the liability is satisfied, the instrument is discharged. Discharge means the discharge of the instrument and the discharge of one or more parties liable on the instrument. When the Instrument is discharged then it will not be negotiable but when a particular party is discharged then the instrument is negotiable.

A party to a negotiable instrument is discharged in the following ways

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- By cancellation of the name of a party to the instruments
- By the release of any party to the instruments
- By payments
- By allowing drawee more than 48 hours to accept
- By delay in presenting a cheque for payment
- By payment in due course of a cheque (payable to order)
- By taking qualified acceptance
- By non-presentment for acceptance of a bill of exchange
- By operation of law