

Chapter 7 - The Negotiable Instruments Act, 1881

Question 1

M drew a cheque amounting to Rs. 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N indorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881?

Answer

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

Question 2

M owes money to N. Therefore, he makes a promissory note for the amount in favor of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return the half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how rights of the parties are to be adjusted.

Answer

The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a Promissory Note (P/N) is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of N to have the other half of the P/N sent to him is not maintainable.

M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.

Question 3

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, 1881 whether the said acts of Bholenath constitute an offence?

Answer

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.

Question 4

Mr. X draws a cheque in favour of Mr. R for payment of his outstanding dues of Rs. 5,00,000 on 26/07/2022 with date of 1/08/2022. At the time of issuing cheque, he was having sufficient balance in his account, but on 29/07/2022 he made payment for his taxes, now his bank account is left with only Rs. 4,50,000. So, Mr. X requested Mr. R not to present the cheque for payment, but he did not accept his request. So, Mr. X instructed the bank to stop payment of cheque issued for dated 01/08/2022 in favour of Mr. R.

Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Mr. X constitute an offence? (3 Marks)

Answer

As per the facts stated in the question, Mr. X (drawer) issued the cheque to Mr. R for outstanding dues of Rs. 5,00,000 on 26/07/2022 with the postdated cheque of 1/08/2022. But on 29/07/2022, he made payment for his taxes and left with bank balance of Rs 4,50,000. Mr. X requested Mr. R not to present the cheque for payment. Later, he gave a stop payment request to the bank in respect of the cheque issued to Mr. R. Where any cheque drawn by a person for consideration is returned by the bank unpaid because of the amount of money standing to the credit of that account is insufficient to honour the cheque such person shall be deemed to have committed an offence and shall be punishable. (Section 138)

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 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 Mr. X, for stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

Question 5

Mr. Harsha donated Rs. 50,000 to an NGO by cheque for sponsoring the education of one child for one year. Later on he found that the NGO was a fraud and did not engage in philanthropic activities. He gave a "stop payment" instruction to his bankers and the cheque was not honoured by the bank as per his instruction.

The NGO has sent a demand notice and threatened to file a case against Harsha. Advise Mr. Harsha about the course of action available under the Negotiable Instruments Act, 1881. (3 Marks)

Answer

In the given instance, Mr. Harsha donated 7 50,000 to NGO by cheque for sponsoring child education for 1 year. On founding that NGO was fraud, Mr. Harsha instructed bankers for stop payment. In lieu of that, NGO sent a demand notice and threatened to file a case against him.

Section 138 of the Negotiable Instruments Act, 1881 deals with dishonor of cheque which is issued for the discharge, in whole or in part, of any debt or other liability. However, any cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, would be considered outside the purview of section 138.

Here the cheque is given as a donation for the sponsoring child education for 1 year and is not legally enforceable debt or other liability on Mr. Harsha. Therefore, he is not liable for the donated amount which is not honoured by the bank to the NGO.

Question 6

Rama executes a promissory note in the following form, 'I promise to pay a sum of 710,000 after three months: Decide whether the promissory note is a valid promissory note.

Answer

The promissory note is an unconditional promise in writing. In the above question the amount is certain but the date and name of payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.

Question 7

Mr. A made endorsement of a bill of exchange amounting 750,000 to Mr. B. But, before the same could be delivered to Mr. B, Mr. A passed away. Mr. S, son of Mr. A, who was the only legal representative

of Mr. A approached Mr. B and informed him about his father's death. Now, Mr. S is willing to complete the instrument which was executed by his deceased father. Referring to the relevant provisions of the Negotiable Instruments Act, 1881, decide, whether Mr. S can complete the instrument in the above scenario? (3 Marks)

Answer

According to Section 57 of the Negotiable Instruments Act, 1881, the legal representative of a deceased person cannot negotiate by delivery only, a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

An agent can complete the instrument if he is authorized by the principal to do so. But, a legal representative is not an agent of the deceased.

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.

Therefore, a legal representative cannot complete the instrument if the instrument was executed by the deceased but could not be delivered because of his death.

Hence, in the said case, Mr. S, son of Mr. A (the deceased) cannot complete the instrument which was executed by Mr. A but could not be delivered to Mr. B, because of his death.

Question 8

The concept of Noting, "Protest and "Protest for better security" as per the Negotiable Instruments Act, 1881. (3 Marks)

Answer

Noting: 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 made 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.

Protest: When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security: When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused, may with a

reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Question 9

State giving reason whether, the following instruments are valid promissory note under the Negotiable Instruments Act, 1881:

- (i) X promises to pay Y, by a promissory note, a sum of 5,000, fifteen days after the death of B.
- (ii) X promises to pay Y, by a promissory note, a sum of 500 and all other sum, which shall be due. (4 Marks)

Answer

As per Section 4 of the Negotiable Instrument Act, 1881, 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 to the bearer of the instrument.

In view of provisions of Section 4, answer to given problem is as follows:

- (i) If "X promises to pay Y, by a promissory note, a sum of 5,000, fifteen days after the death of B" is a valid promissory note as event is certain i.e. death of B, even though date is uncertain.
- (ii) If "X promises to pay Y, by a promissory note, a sum of 500 and all other sum, which shall be due" is not a valid promissory note as sum payable is not certain.

Question 10

State giving reason whether, the following instruments are valid promissory note under the Negotiable Instruments Act, 1881:

- (i) I owe you a sum of Rs. 1,000. 'A' tell to 'B'.
- (ii) 'X' promises to 'Y' a sum of ` 10,000, six month after 'Y marriage with 'Z'.

Answer

As per Section 4 of the Negotiable Instrument Act, 1881, 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 to the bearer of the instrument.

In view of provisions of Section 4, answer to given problem is as follows:

- (i) If A tell to B that he owes ` 1,000 to him, it is acknowledgement of debt and not a promissory note. Second reason for not being a promissory note is that such acknowledgement is oral not in writing.
- (ii) If 'X' promises to 'Y' a sum of ` 10,000, six months after 'Y marriage with 'Z', it is not a valid promissory note as it depends upon condition/ event which may or may not happen.