

THE NEGOTIABLE INSTRUMENTS ACT, 1881

Previous year questions & answers

What are Negotiable Instruments? Explain its essential characteristics under the Negotiable Instruments Act, 1881. (7 Marks)

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.

Essential Characteristics of Negotiable Instruments

- i. It is necessarily in writing.
- ii. It should be signed.
- iii. It is freely transferable from one person to another.
- iv. Holder's title is free from defects.
- v. It can be transferred any number of times till its satisfaction.
- vi. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
- vii. The sum payable, the time of payment, the payee, must be certain.
- viii. The instrument should be delivered. Mere drawing of instrument does not create liability.

Priyansh purchased some goods from Sumit. He issued a cheque to Sumit for the sale price on 14th June, 2023. Sumit presented the cheque in his bank and his bank informed him on 19th June, 2023 that cheque 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. State with reasons, whether this suit is maintainable? (7 Marks)

PROVISION

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.

FACTS

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.

CONCLUSION

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.

What is a Bill of Exchange? Also, explain its essential characteristics under the Negotiable Instruments Act, 1881. (7 Marks)

Bill 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.

Parties to the bill of exchange

- a. Drawer: The maker of a bill of exchange.
- b. Drawee: The person directed by the drawer to pay is called the 'drawee'. He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill. His liability is primary and unconditional.
- c. Payee: The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.

Essential characteristics of bill of exchange (a)

- i. It must be in writing.
- ii. Must contain an express order to pay.
- iii. The order to pay must be definite and unconditional.
- iv. The drawer must sign the instrument.
- v. Drawer, drawee, and payee must be certain. All these three parties may not necessarily be three different persons. One can play the role of two. But there must be two distinct persons in any case. As per Section 31 of the RBI Act, 1934, a bill of exchange cannot be made payable to bearer on demand.
- vi. The sum must be certain.
- vii. The order must be to pay money only.
- viii. It must be stamped.

Utkarsh purchased some goods from Saksham for ` 50,000 on 14th August, 2023. Saksham drawn a bill of exchange on Utkarsh and sent to him for acceptance on the same day at 3:00 p.m. Utkarsh requested Saksham to allow him some time for acceptance. Saksham allowed him 48 hours for acceptance. Utkarsh could not accept till 16th August, 2023 (3:00 p.m.). Saksham treated the bill as dishonoured for non-acceptance. Referring to the provisions of the Negotiable Instruments Act, 1881, whether bill of exchange was dishonoured due to non-acceptance? (7 Marks)

PROVISION

According to Section 61 of the Negotiable Instruments Act, 1881, a bill of exchange must be presented to the drawee thereof for acceptance by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Further, section 63 provides that the holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it.

FACTS

In the instant case, Saksham drawn a bill of exchange on Utkarsh and on request of Utkarsh, he allowed 48 hours to accept the bill. The bill was sent at 3:00p.m on 14th August, 2023. Bill was not accepted till 3:00 p.m. on 16th August, 2023. Saksham treated the bill as dishonoured for non-acceptance.

CONCLUSION

Since, 15th August is a public holiday, his 48 hours would end on 17th August, 2023 not on 16th August, 2023. Hence, the bill could not be treated as dishonoured on 16th August, 2023.

What are Inchoate and Ambiguous Instruments under the Negotiable Instruments Act, 1881? (7 Marks)

Inchoate Instrument: It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete. Such an instrument is called an inchoate instrument and this gives the power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it. The principle of this rule of an inchoate instrument is based on the principle of estoppel.

Ambiguous Instrument: According to Section 17 of the Negotiable Instruments Act, 1881, where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as a promissory note, or as a bill of exchange. Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly.

Advik purchased a mobile from Bhanu. He issued a promissory note to Bhanu which was payable on demand but no specific place for payment was mentioned on it. On maturity, Bhanu did not present the promissory note for payment. As the promissory note was not duly presented for payment, whether Advik would be discharged from liability under the provisions of the Negotiable Instruments Act, 1881? (4 Marks)

PROVISION

Section 64 of the Negotiable Instruments Act, 1881 provides, Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder. However, where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

FACTS

In the instant case, Advik issued a promissory note to Bhanu payable on demand without mentioning any specific place for payment. On maturity, the promissory note was not presented by Bhanu for payment.

CONCLUSION

On the basis of the above provisions and facts of the case, although non-presentment of promissory note for payment results in discharge of maker from liability but the given case is covered under the

exception to section 64. Hence, Advik would not be discharged from liability even the non-presentment by Bhanu as the promissory note was payable on demand and no specific place for payment was mentioned.

Shiva gave a gift of ` 21,000 to his sister through a cheque issued in her favour on the occasion of Raksha Bandhan. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment. Examining the provisions of the Negotiable Instruments Act, 1881, decide whether Shiva's acts constitute an offence under section 138 of the Act? (3 Marks)

PROVISION

Section 138 of the Negotiable Instruments Act, 1881 provides where any cheque drawn by a person for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid due to insufficiency of fund, the drawer is punishable with imprisonment upto 2 years or fine upto 2 times the amount of cheque or Both. In other words, the liability under section 138 arises only if the drawer had issued the cheque to discharge a legally enforceable debt or other liability. Thus, where the drawer issues a cheque as a gift or charity, he is not liable under section 138 even if cheque is dishonoured.

FACTS

In the instant case, Shiva gifted a cheque of ` 21,000 to his sister. Afterwards, Shiva informed his sister not to present the cheque for payment and also informed the bank to stop the payment.

CONCLUSION

On the basis of above, as the cheque was given as gift, provisions of section 138 will not be applicable on Shiva.

Explain the Rules as to compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee covered under the Negotiable Instruments Act, 1881. (7 Marks)

As per section 117 of the Negotiable Instruments Act, 1881, the compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

- i. the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

- ii. when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- iii. an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;
- iv. when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;
- v. the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

Shankar drew a cheque in favour of Surendar. After having issued the cheque, Shankar 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 Shankar constitute an offence? (7 Marks)

As per the facts stated in the question, Shankar (drawer) after having issued the cheque, informs Surendar (drawee) not to present the cheque for payment and also 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 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 Shankar, i.e., his request to stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

State the Difference between promissory note and bill of exchange.” (7 Marks)

Difference between promissory note and bill of exchange:

S. 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, or to the order of, a certain person, or to the bearer of the instrument.	"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.
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 ii. the payee	In a bill of exchange, there are 3 parties which are as under: i. the drawer ii. the drawee iii. 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 bill 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.

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 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. (4 Marks)

PROVISION

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.

CONCLUSION

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

Rama executes a promissory note in the following form, 'I promise to pay a sum of `10,000 after three months'. Decide whether the promissory note is a valid promissory note. (3 Marks)

The promissory note is an unconditional promise in writing. In the above question, the amount is certain but the date and name of the 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

What is a cheque under the Negotiable Instruments Act, 1881, and who are the parties involved? What are the essential elements of a cheque? (7 Marks)

CHEQUE [Section 6 of the Negotiable Instruments Act, 1881]

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Parties to Cheque

- I. Drawer: The person who draws a cheque i.e., makes the cheque (Debtor). His liability is primary and conditional.
- II. Drawee: The specific bank on whom cheque is drawn. He makes the payment of the cheque. In case of cheque, drawee is always banker.
- III. Payee: The person named in the instrument (i.e., the person in whose favour cheque is issued), to whom or to whose order the money is, by the instrument,

directed to be paid, is called the payee. The payee may be the drawer himself or a third party.

Essential Characteristics of a cheque

According to the definition of cheque under section 6, a cheque is a species of bill of exchange. Thus, it should fulfil:

- a. all the essential characteristics of a bill of exchange
- b. Must be drawn on a specified banker.
- c. It must be payable on demand.

'Nakul' made promissory note in favour of 'Sahdev' of `10,000 and delivered to him. 'Sahdev' indorsed the promissory note in favour of 'Arjun' but delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note. Whether 'Arjun' can recover amount under the provisions of the Negotiable Instrument Act 1881? (4 Marks)

PROVISION

According to Section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof. Further, 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.

FACTS

In the instant case, 'Sahdev' received a promissory note from 'Nakul' and indorsed the promissory note in favour of 'Arjun' and delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note.

CONCLUSION

An order negotiable instrument can be transferred by endorsement and delivery. As delivery to Arjun's agent is sufficient delivery of promissory note to Arjun. Therefore, 'Arjun' is eligible to claim the payment of promissory note.

Utkarsh purchased some goods from Saksham for ` 50,000 on 14th August. Saksham drawn a bill of exchange on Utkarsh and sent to him for acceptance on the same day at 3:00 pm Utkarsh requested Saksham to allow him some time for acceptance. Saksham allowed him 48 hours for acceptance. Utkarsh could not accept till 16th August (3:00 pm). Saksham treated the bill as dishonoured for non-acceptance. Referring the provisions of the Negotiable Instruments Act, 1881, whether bill of exchange was dishonoured due to non-acceptance? (3 Marks)

PROVISION

According to Section 61 of the Negotiable Instruments Act, 1881, a bill of exchange must be presented to the drawee thereof for acceptance by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. Further, section 63 provides that the holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it.

FACTS

In the instant case, Saksham drawn a bill of exchange on Utkarsh and and on request of Utkarsh, he allowed 48 hours to accept the bill. The bill was sent at 3:00 pm on 14th August. Bill was not accepted till 3:00 pm of 16th August. Saksham treated the bill as dishonoured for non-acceptance.

CONCLUSION

Here, As 15th August is a public holiday, his 48 hours would end on 17th August not on 16th August. Hence, bill could not be treated as dishonoured on 16th August.

A promissory note, payable at a certain period after sight, must be presented to the maker thereof for payment. Under which scenarios, presentment for payment is not necessary and the instrument is dishonoured at the due date for presentment according to the provisions of the Negotiable Instrument Act, 1881? (7 Marks)

As per Section 76 of the Negotiable Instruments Act, 1881: No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

- 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 authorised 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;

(A) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

(B) 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;

(C) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Mr. Y issued a cheque for ` 10,000 to Mr. Z which was dishonoured by the Bank because Y did not have enough funds in his account and has no authority to overdraw. Examine as per the provisions of the Negotiable Instruments Act, 1881 whether-

- (i) **Mr. Y is liable for dishonour of cheque, if yes, what are the consequences for such an offence?**
- (ii) **What would be your answer if Y issued a cheque as a donation to Mr. Z? (7 Marks)**

PROVISION

Dishonour of Cheque for Insufficiency, Etc., of funds in the accounts [Section 138 of the Negotiable Instruments Act, 1881]

Where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
- either because of the—

- amount of money standing to the credit of that account is insufficient to honour the cheque, or
- that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, 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.

FACTS & CONCLUSION

In the instant case,

- (i) Since Y's cheque was dishonoured by the Bank due to insufficiency of funds in his account, he shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to ` 20,000, or with both.
- (ii) A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section. Hence, if Y issued a cheque as a donation to Mr. Z, he shall not be liable under section 138 of the Act.

A promissory note, payable at a certain period after sight, must be presented to the maker thereof for payment. Under which scenarios presentment for payment is not necessary and the instrument is dishonoured at the due date for presentment according to the provisions of the Negotiable Instrument Act. 1881? (7 Marks)

Inchoate Instrument: It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete. Such an instrument is called an inchoate instrument and this gives the power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it. The principle of this rule of an inchoate instrument is based on the principle of estoppel.

Ambiguous Instrument: According to Section 17 of the Negotiable Instruments Act, 1881, where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as a promissory note, or as a bill of exchange. Section

17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly.

Referring to the provisions of the Negotiable Instruments Act, 1881, answer the following in the given scenario:

Aman drew the bill of exchange (the bill) on Baban, who accepted it, payable to Magan or order. Magan indorsed the bill to Gagan. Gagan indorsed the bill to Akash to be delivered to him on the next day. However, on the death of Gagan on the same day, his only son Ankit delivered the bill to Akash on the next day as intended by his deceased father. On presenting the bill on the due date, Baban refused to pay. Explaining the importance of delivery in negotiation, decide, whether Akash can enforce the payment of the bill against Baban or the previous parties. (4 Marks)

Reliable Limited, an Indian company, is a global leader in Petrochemical products. For payment of the sale price of machinery imported from Alex Manufacturing Limited, a USA based company (the exporter), the Indian company drew a bill of exchange on Manish, a resident of Mumbai (India) who accepted the bill at Mumbai payable to the exporter in Los Angeles, USA. Decide, whether the bill of exchange is an inland instrument or a foreign instrument. Assume that the bill of exchange was signed by the authorised person for the drawer company. (3 Marks)

PROVISION

- **Importance of Delivery in Negotiation [Section 46 of the Negotiable Instruments Act, 1881]**
- 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. 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).

FACTS & CONCLUSION

In the instant case, Ankit the only son of Gagan delivered the bill to Akash on the next day as intended by his deceased father (Gagan) which is not valid. Hence, Akash cannot enforce the payment of the bill against Baban or the previous parties.

PROVISION

As per section 11 of the Negotiable Instruments Act, 1881, a promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument

FACTS & CONCLUSION

In the instant case, the bill of exchange was:

- Drawn in India (since it was drawn by Reliable Limited, an Indian company).
- Accepted in India (Manish, a resident of Mumbai, accepted the bill in Mumbai).
- Payable outside India, in Los Angeles, USA.

The bill of exchange in this case is an inland instrument because it was drawn in India and accepted by a person resident in India, even though it is payable outside India (Los Angeles, USA).

With reference to provisions of the Negotiable Instruments Act, 1881, tell the instances where a person shall be deemed to have committed an offence for dishonour of cheque and what are the conditions to be complied with for not constituting such an offence? (4 Marks)

According to Section 138 of the Negotiable Instruments Act, 1881, where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
- either because of the—

- amount of money standing to the credit of that account is insufficient to honor the cheque, or
- that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, 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.

When section 138 shall not apply: unless the below given conditions are complied with—

- a. **Cheque presented within validity period:** The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- b. **Demand for the payment through the notice:** the payee or the holder in due course of the cheque, as the case may be, 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 by him from the bank regarding the return of the cheque as unpaid, and
- c. **Failure of drawer to make payment:** the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.