



Test 2- The Negotiable Instruments Act, 1881

Marks: 15 marks

Time: 25 mins

Q1) A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide-

- (i) Whether D can sue the prior parties of the bill, and
- (ii) Whether the prior parties other than D have any right of action inter se?

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881. (5 Marks)

Problem on Negotiable Instrument made without consideration: Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

(i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to D with consideration. Therefore, D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration.

(ii) As regards to the second part of the problem, the prior parties before D i.e., A, B, and C have no right of action inter se because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

Q2) C issues a cheque for ₹ 55,00,00/- in favour of D. C has sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank, in the meantime, C became bankrupt. Decide under the provisions of Negotiable Instruments Act, 1881, whether D can recover the money from C? (4 Marks)

Section 84(1) of the Act, provides that cheque should be presented to Bank within reasonable time. If cheque is not presented within reasonable time, meanwhile the drawer suffers actual damage, the drawer is discharged to the extent of such actual damage. This would be so if the cheque would have been passed if it was presented within reasonable time.

As per section 84(2), in determining what is a reasonable time, regard shall be had to (a) the nature of the instrument

(b) the usage of trade and of bankers, and

(c) facts of the particular case. The drawer will get discharge, but the holder of the cheque will be treated as creditor of the bank, in place of drawer. He will be entitled to recover the amount from Bank.



In the above case drawer i.e. C has suffered damage as cheque was not presented by D within reasonable time. Hence, C will be discharged but D will be the creditor of bank for the amount of cheque and can recover the amount from the bank.

Q3) Discuss with reasons, whether the following persons can be called as a 'holder' under the Negotiable Instruments Act, 1881:

- (i) X who obtains a cheque drawn by Y by way of gift.
- (ii) M, who finds a cheque payable to bearer, on the road and retains it.
- (iii) B, who steals a blank cheque of A and forges A's signature.

(3 Marks)

Person to be called as a holder: 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) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.

(ii) No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name.

(iii) No, B is not a holder because he is in wrongful possession of the instrument.

Q5) Multiple Choice Questions

(3 Marks)

(i) A negotiable instrument that is payable to order can be transferred by:

- (a) Simple delivery
- (b) Indorsement and delivery**
- (c) Indorsement
- (d) Registered post

(ii) Mr. Aylam issued a cheque amounting to INR 25,000 dated 2nd February 2020 to Mr. Gandhi which was deposited by Mr. Gandhi on 16th March 2020 in his bank account. The said cheque got dishonored on 17th March 2020 by the bank of Mr. Aylam citing insufficient funds in the account of Mr. Aylam. Then Mr. Gandhi demanded the payment from Mr. Aylam by issuing the notice on 31st March 2020 which was received by Mr. Aylam on 2nd April 2020. Assuming that Mr. Aylam failed to make the payment within stipulated time, what is the last date by which Mr. Gandhi should have made a complaint in the court?

- (a) 17th May 2020**
- (b) 2nd May 2020
- (c) 17th April 2020
- (d) 30th April 2020

(iii) As per the Negotiable Instruments Act, 1881, when the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the..... .

- (a) Said public holiday
- (b) 5 days succeeding public holiday
- (c) Next succeeding business day
- (d) Next preceding business day**