

**TopYug Educations****CA INTER – CORPORATE & OTHER LAWS****SUGGESTED ANSWERS for TEST 7 – NI Act****Answer All the questions. Each question carries 5 marks each. Duration – 50 Mins**

1. Explain the difference between Drawee in case of need and Acceptor for Honor?

**Answer:**

Refer handwritten notes

2. Explain the meaning of 'Holder' and 'Holder in due course' of a negotiable instrument.  
The drawer, 'D' is induced by 'A' to draw a cheque in favour of P, who is an existing person. 'A' instead of sending the cheque to 'P', forges his name and pays the cheque into his own bank. Whether 'D' can recover the amount of the cheque from 'A's banker. Decide.

**Answer:****As per the Negotiable Instruments Act 1881,**The '**Holder**' of a promissory note, bill of exchange or cheque means person entitled

- (i) in his own name to the possession thereof, i.e., he must be named in instrument as payee or endorsee or he must be the bearer of instrument, and
- (ii) to receive or recover the amount due thereon from the parties thereto.

The finder of a lost instrument payable to bearer or a person in wrongful possession of such instrument is not a holder.

A **Holder in due course** must **satisfy** the following **conditions**:

- He must have become a holder for valuable **consideration**.
- He must have become the holder of the instrument **before its maturity**, the instrument should be complete and regular on the face of it.
- The holder must have received the instrument in **good faith**.

**As per section 131 of The Negotiable Instrument Act 1881**, if banker receives payment for a customer of a cheque crossed generally or specially in the name of that banker in good faith and without negligence, he shall not incur any liability to the true owner of the cheque just because the banker has received payment for customer. This would be so even if the title to the cheque was defective.

Thus, Banker will not be liable if it has only collected the payment for A.

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

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.

**Answer:**

**As per Section 46 of the Negotiable Instruments Act, 1881**, the making of a promissory note is completed by delivery, actual or constructive.

**In the given case**, Manoj, a Debtor makes a promissory note in favour of Umesh, his creditor. He cuts the note in half and sends one half to Umesh. He then changes his mind

and calls upon Umesh to return the half which is declined by Umesh.

**The question arising in this case is** whether the making of promissory note is complete when one half of the note was delivered to Umesh.

**Applying the above provision in the given case,** we can say that 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 Umesh to have the other half of the promissory note sent to him is not maintainable.

Manoj 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 promissory note.

4. Which are the essential elements of a valid acceptance of a Bill of Exchange? An acceptor accepts a "Bill of Exchange" but write on it "Accepted but payment will be made when goods delivered to me is sold." Decide the validity.

**Answer:**

**As per Explanation to Section 86 of the Negotiable Instruments Act 1881,** Acceptance may be either general or qualified. An acceptance is said to be general when the drawee assents without qualification order of the drawer. The qualification may relate to an event, amount, place, time etc.,

**In the given question,** an acceptor accepts a Bill of Exchange by writing the condition that payment will be made when goods delivered to me are sold.

**Question involved is** about the validity of acceptance given to Bill of Exchange.

**Applying the above provision in the given case,** we understand that the acceptance is a qualified acceptance since a condition has been attached declaring the payment to be dependent on the happening of an event therein stated.

As a rule, acceptance must be general acceptance and **therefore,** the holder is at liberty to refuse to take a qualified acceptance.

Where, he refuse to take it, the bill shall be dishonoured by non-acceptance. But, if he accepts the qualified acceptance, even then it binds only him and the acceptor and not the other parties who do not consent thereto.

5. Bharat executed a promissory note in favour of Bhushan for Rs.5 crores. The said amount was payable three days after sight. Bhushan, on maturity presented the promissory note on 1<sup>st</sup> Jan 2010 to Bharat. Bharat made the payment on 4<sup>th</sup> Jan 2010. Bhushan wants to recover interest for one day from Bharat. Advise Bharat, in the light of provisions of the NI Act, 1881, whether he is liable to pay the interest for one day?

**Answer:**

**Section 24 of the Negotiable Instruments Act, 1881** states that where a bill of exchange or promissory note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run.

**In the given case,** Bharat executed a promissory note in favour of Bhushan, which was payable three days after sight. Bhushan, on maturity presented the promissory note on 1<sup>st</sup> Jan 2010 to Bharat. Bharat made the payment on 4<sup>th</sup> Jan 2010.

**Question involved is** whether Bhushan can recover interest for one day from Bharat.

**Applying the above provision in the given case, we can conclude that,** in the given case, Bharat will succeed in objecting to Bhushan's claim. Bharat paid rightly "three days after sight".

Since the bill was presented on 1<sup>st</sup> January, Bharat was required to pay only on the 4<sup>th</sup> and not on 3<sup>rd</sup> April, as contended by Bharat.

6. Examine the validity under the provisions of NI Act, 1881:

(a) A bill is drawn "Pay to A or order the sum of one thousand rupees". In the margin, the amount stated is Rs.10,000/- in figures. (i) Is this a valid bill (ii) If so, for what amount?

(b) A cheque crossed 'Not Negotiable' is not transferable.

**Answer:**

**(a) As per section 18 of Negotiable Instruments Act 1881**, if the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

**In the given case**, a bill is drawn "Pay to A or order the sum of one thousand rupees" whereas the amount stated is Rs.10,000/- in figures.

**Question involved is** whether its a valid bill or not and If so, for what amount.

**Applying the above provision in the given case, we can conclude that** the bill is valid for one thousand rupees.

**(b) As per the provisions of Sec 130 of The Negotiable Instruments Act 1881**, a cheque marked "not negotiable" is a transferable instrument. The inclusion of the words 'not negotiable' however makes a significant difference in the transferability of the cheques. The holder of such a cheque cannot acquire title better than that of the transferor.

Thus the given statement that a crossed cheque 'Not Negotiable' is not transferable is a wrong statement.