

R.M.M. Law College, Saharsa

Pt. Lecturer- KESHAV KUMAR SHRIVASTAVA

L.L.B Part- 1st

Subject- Negotiable Instrument Act

Paper- 8th

Date- 28/01/2021

Topic- Write short notes on the following:

- 1. Non negotiable crossing, 2. Noting and Protest, 3. Accommodation Bill, 4. Material alteration.**

1. Non negotiable crossing

It is when the words 'Non Negotiable' are written between the two parallel transverse lines across the face of the cheque in the case of general crossing or in the case of special crossing along with the name of a banker.

The Non Negotiable Crossing does not mean that the cheque is non-transferrable. As per section 130 of the Negotiable Instruments Act, 1881 a person taking a cheque bearing a general or special crossing with the words 'non negotiable' will not have and is neither capable of giving a better title than that which the person from whom he took it had.

One of the important features of a negotiable instrument is that a person who receives it in good faith, without negligence, for value, before maturity and without knowing the defect in the title of the transferor, gets a good title to the instrument.

Thus, he becomes the holder in due course and acquires an indisputable title to it. Also, when the instrument passes through a holder in due course, all the subsequent holders also receive a good title.

But, Not Negotiable Crossing takes away this important feature. In this case, the transferee does not get the rights of the holder in due course.

Only if the title of the transferor is good, the title of the transferee is also good. Hence, in case of any taint in the title of any one of the endorsers, the title of all the subsequent transferees also becomes tainted.

2. Noting and Protest

Noting and Protest is a proactive measure to protect the holder's right of recourse against the drawer and endorsers of a dishonoured bill. Noting means recording (noting) the minutes of dishonour, by the 'Notary Public' on the dishonoured bill. Noting on a paper affixed to the dishonoured bill or partly on the dishonoured bill and partly on the paper attached to the bill is permitted under Negotiable Act. Protest is the next step of noting. A formal certificate is issued with Notary's seal, attesting the fact that the bill is dishonoured.

The liability and obligation of party to the negotiable instrument:

The section of 30 of negotiable instrument act 1881 casts certain obligations and liabilities upon party for acceptance or payment of a negotiable instrument. The maker of a promissory note or drawer of a cheque or acceptor of a bill of exchange are deemed as principal debtors to the holder and all other parties (endorsers) are liable as sureties for the maker, drawer or acceptor as the case may be. In case of bills of exchange, the liability and obligation of the acceptor is that of a principal debtor and the drawer of the bill and subsequent endorsers become sureties. When a negotiable instrument is dishonoured due to non-acceptance or non-payment as the case may be, the holder must send the notice of dishonor to the principal debtors and sureties. In case of inland bills, the noting and protest is not compulsory, but in case of foreign bills, the fact that the bill is dishonoured must be noted and protested. This is in addition to notice of dishonor already served on all the parties to the bill.

When a promissory note or bill of exchange is to be noted, the holder of the bill approaches the Notary Public with the dishonoured instrument to secure official evidence of dishonour. The Notary Public on receipt of the complaint, re-present the dishonoured instrument for acceptance or payment as the case may be to the defaulting parties. If the drawee or acceptor still refuses for acceptance or payment of bill, the Notary Public makes noting of reason for dishonour of the bill which comprises following details as provided under sec.99 of NI Act.

1. The date of dishonor 2.Reasons if any assigned for dishonor. 3.If the instrument is not expressly dishonoured, then the reason for holder coming to the conclusion that the bill is dishonoured. 4.The Notary Charges.

Noting must take place at a reasonable time after dishonour date (Generally 'noting 'takes place on dishonour date or the next succeeding business day).

1. The transcript of the instrument or instrument it self
2. The names of persons against whom the instrument has been protested.
3. A statement showing that Acceptance or Payment or better security as the case may be, has been demanded by the Notary, from the persons against whom the instrument has been protested. A Statement of record should be made, containing the parties' reply if any or result likes "No answer received from the parties" or "the parties could not be found" to the notice of the Notary etc.
4. The place and time of dishonour and place and time of refusal when better security is demanded.
5. Signature of the Notary.

3. Accomodation Bill

As contrasted with the Trade Bill, Accommodation Bills are drawn and accepted with no consideration passed or received. The Bill, which is drawn just to oblige a friend, who is in need of money, of course without any trading activities, with sole intention of raising funds required for ready cash is known as Accommodation Bill.

The accommodating party, i.e., the drawee accepts the Bill drawn by the accommodated party (drawer). That is the Drawer of the accommodation bill can be called accommodated party and drawee can be called accommodating party. After the Bill is accepted, the drawer discounts it with a bank and obtains the cash.

Before the due date of the Bill, Drawer provides funds to the Acceptor, who honours the Bill. Since the acceptance is given without consideration and to help the accommodated party to raise the funds, the accommodated party has to discharge the Bill by himself or provide funds to accommodating party.

Thus, there is always a mutual understanding between the parties and hence, these bills are called Accommodation Bills. The language of an Accommodation Bill is the same as that of an ordinary Trade Bill. The modes of drawing, accepting, discounting, honoring etc. are similar to that of any Trade Bills. A banker cannot make distinction between a genuine Trade Bill and Accommodation bill. These Bills are also called “Kites” or “Finance Bills”.

4. Material alteration

The term ‘**material alteration**‘ indicates alteration or change in the material parts of the instrument. It may be defined as any change, which alters the very nature of the instrument. Thus, it is the alteration, which changes and destroys the legal identity of the original instrument and causes it to speak a different language in legal effect from that which it originally spoke.

A material alteration makes the instrument void, i.e., inoperative and affects the rights and obligations of the parties to the instrument. It, however, does not affect one who becomes a party to an instrument subsequent to its material alteration, if any.

Every alteration or change on a negotiable instrument cannot be established as material alteration and would not necessarily vitiate the instrument or affect the rights and obligations of the parties thereto.

The Negotiable Instruments Act is silent on the subject as to what constitutes a material alteration. Courts of Law in India in this regard have followed the English Common Law, which held that anything, which has the effect of altering the legal relations between the parties, the character of the instrument, or the sum payable, amounts to a material alteration.

Accordingly, an alteration can be termed as material alteration if it is such that it alters or attempts to alter the character of the instrument and affects or attempts to affect the contract, which the instrument contains. It may arise not only by means of altering, changing, or erasing a certain thing already written on the instrument, but also by a new insertion.

The End