NIA VII – OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

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82. Discharge from liability

The maker, acceptor or indorser of a negotiable instrument shall be discharged from liability by cancellation of his name, by release, or by payment in due course.

> The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon--
>
> (a) By cancellation.--to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;
>
> (b) By release.--to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;
>
> (c) By payment.--to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

Section 82 of the Negotiable Instruments Act, 1881 sets out three ways in which a party liable on a negotiable instrument is freed from that liability. The first is cancellation under clause (a): the holder intentionally strikes out the name of the acceptor or an indorser. The clause does not mention the maker. The cancellation must be made with intent to discharge that party, so an accidental or mistaken cancellation has no effect. Because the

cancellation appears on the face of the instrument, it binds the holder who made it and everyone who later claims under him, whether or not they knew of it. The second is release under clause (b): the holder discharges the maker, acceptor or indorser in some other way, such as a separate written release, a waiver or an agreement not to sue. Such a release does not appear on the instrument, so it binds the releasing holder, but it binds a later holder only if that holder took the instrument after notice of the discharge. The third is payment under clause (c): where the instrument is payable to bearer or has been indorsed in blank, and the maker, acceptor or indorser pays the amount due in due course, that party is discharged towards all parties. Payment in due course means payment made according to the apparent tenor of the instrument, in good faith and without negligence, to the person in possession of it, where the payer has no reason to believe that person is not entitled to receive payment (s. 10). The provision rests on the principle that a party released by the person entitled to enforce the instrument, or who has properly paid it, should not have to pay again, while a later holder is protected against a hidden release he could not have discovered. For example, A draws a bill on B, who accepts it, and the bill is indorsed by C and then by D before reaching E. If E deliberately strikes out D's name intending to free him, D is discharged as against E and anyone who later takes the bill from E, such as F. If E instead writes C a separate letter releasing him and then negotiates the bill to F, who knows nothing of the letter, F can still sue C; had F taken the bill after learning of the release, C would be discharged as against F as well. And if the bill had been indorsed in blank and B, the acceptor, paid the full amount at maturity in good faith to the holder in possession, B would be discharged towards all parties, and no one could later sue him on the bill.

83. Discharge by allowing drawee more than forty-eight hours to accept

If the holder of a bill of exchange allows the drawee more than forty-eight hours, excluding public holidays, to decide whether to accept it, every previous party who did not consent to the extra time shall be discharged from liability to that holder.

> If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holidays, to consider whether he will accept the

> same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When a bill is presented for acceptance, the drawee may ask for time to decide. Section 63 of the Negotiable Instruments Act, 1881 requires the holder to allow up to forty-eight hours for this, excluding public holidays, and Section 83 limits that time. If the holder gives the drawee longer, the drawer and any endorsers who signed before the holder lose the protection the law gives them. The bill is held in suspense, so they are not promptly told whether it has been dishonoured. Meanwhile the drawee's financial position may get worse, and they lose the chance to protect themselves against him. The Act therefore discharges every prior party who did not agree to the extension. The discharge has limits. A prior party who consented to the extra time stays liable. The discharge works only against the holder who allowed the delay. The drawee is not discharged either, and if he later accepts the bill, he is liable as acceptor. For example, A draws a bill on B, payable to C, and C endorses it to D. D presents the bill to B for acceptance and, without asking A or C, gives B five days to consider it. B then refuses to accept. Because D allowed more than forty-eight hours without their consent, A and C are both discharged from liability to D. Had C agreed to the five-day extension, C would remain liable to D, but A, who did not consent, would still be discharged.

84. When cheque not duly presented and drawer damaged there by

84.1 Where a cheque is not presented for payment within a reasonable time and the drawer suffers actual damage from the delay, the drawer shall be discharged to the extent of that damage.

> (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been if such cheque had been paid.

Section 84(1) of the Negotiable Instruments Act, 1881 protects the drawer of a cheque from loss caused by the holder's delay. With most bills of exchange, failing to present the instrument in time discharges the drawer

altogether (s. 64). With a cheque, delay alone does not; the drawer is discharged only when three conditions are all met. First, the cheque was not presented within a reasonable time of its issue. Second, when presentment ought to have been made, the drawer had the right, as against the bank, to have the cheque paid, meaning the account held enough money or an arrangement covered the cheque. Third, the drawer suffered actual damage because of the delay, usually because the bank failed or went into liquidation in the meantime. Even then, the drawer is not freed entirely but only to the extent of the loss. The loss is measured as the amount by which the drawer is a creditor of the bank beyond what he would have been if the cheque had been paid on time. A "reasonable time" depends on the nature of the instrument, the usage of trade and of bankers, and the facts of the case (s. 84(2)). Under s. 84(3), the holder then takes the drawer's place as a creditor of the bank to the extent of the discharge and must recover that part from the bank, not from the drawer. For example, A has ₹50,000 in X Bank and on 1 March gives B a cheque for ₹30,000, which B holds for five months without presenting. Meanwhile X Bank goes into liquidation and pays depositors only 40 paise per rupee. Had B presented the cheque on time, the ₹30,000 would have left the bank before it failed; because of the delay, A recovers only ₹12,000 of that sum, so A's actual damage is ₹18,000. A is discharged to that extent and remains liable to B for only ₹12,000, while B must claim the rest against the bank's estate in A's place. If A's account had been empty when the cheque should have been presented, or if the bank had not failed, A would not be discharged at all, because the delay would have caused him no damage.

84.2 In deciding what is a reasonable time for presenting a cheque, the court shall consider the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

> (2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

Section 84(2) of the Negotiable Instruments Act, 1881 supports s. 84(1). Under s. 84(1), if a cheque is not presented for payment within a reasonable time of its issue and the drawer suffers actual damage because of the delay, such as when the bank fails in the meantime, the drawer is discharged to the

extent of that damage. This protection applies only if the drawer had enough funds in the bank, and was entitled to have the cheque paid, at the time it should have been presented. The Act does not fix “reasonable time” as a number of days. Instead, s. 84(2) tells the court to weigh three things. The first is the nature of the instrument: a cheque is meant for prompt payment and is not a long-term credit instrument, so it should be presented quickly. The second is the usage of trade and of bankers, meaning established commercial and banking practice, such as the RBI direction, effective 1 April 2012, that banks pay cheques only within three months of their date. The third is the facts of the particular case, such as the distance between the payee and the bank, holidays, or any special circumstances that delayed presentment. Reasonable time is therefore a question of fact decided case by case, not a fixed rule. Under s. 84(3), a holder whose claim against the drawer is discharged this way becomes a creditor of the failed bank in place of the drawer, to the extent of the discharge. For example, A, who lives in Patna, gives B a cheque for ₹50,000 drawn on a local bank where A has enough balance. B lives in the same city but keeps the cheque for two months without presenting it, and during that time the bank goes into liquidation. A cheque payable locally would normally be presented within a few days, and B has no special reason for the delay, so a court would likely hold that the cheque was not presented within a reasonable time. Since A has lost his funds in the failed bank, A is discharged to the extent of ₹50,000, and B must claim that amount from the bank’s liquidator instead of from A. On the other hand, if B had been posted to a remote area without banking access and presented the cheque as soon as he returned three weeks later, those facts could make the delay reasonable, and A would remain liable to B.

84.3 The holder of a cheque shall, to the extent the drawer is discharged by delayed presentment, become the banker’s creditor in the drawer’s place and may recover that amount from the banker.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations

(a) A draws a cheque for Rs. 1, 000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at Ambala on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Section 84(3) of the Negotiable Instruments Act, 1881 works together with s. 84(1). Under s. 84(1), the drawer is discharged to the extent of the actual damage he suffers if three things are true: the cheque is not presented within a reasonable time after issue, the drawer had sufficient funds with the bank to meet it when it ought to have been presented, and the drawer suffers actual damage because of the delay. The usual case is the bank failing in the meantime. Section 84(2) says what counts as a reasonable time: it depends on the nature of the instrument, the usage of trade and of bankers, and the facts of the case. Section 84(3) protects the holder once the drawer is discharged. The holder's claim does not disappear. It moves from the drawer to the bank, so the holder steps into the drawer's position and becomes a creditor of the bank for the amount by which the drawer was discharged. The loss caused by the holder's delay therefore falls on the holder, who must now recover from the bank (often only a share in the bank's liquidation), and not on the drawer, who would otherwise have had his debt paid. Two limits apply. The provision covers only actual damage, and if the delay caused the drawer no loss, he is not discharged and stays liable to the holder (Illustration (b)). Also, where the drawer is discharged only in part, the holder can recover the rest from the drawer. For example, X gives Y a cheque for ₹50,000 drawn on Z Bank, where X has ₹80,000 in his account. Y keeps the cheque for several months without presenting it, well beyond a reasonable time, and Z Bank then fails and stops payment. X lost ₹50,000 of his deposit because of Y's delay, since the money would have left his account had the cheque been presented on time. X is therefore discharged, and under s. 84(3) Y becomes Z Bank's creditor for ₹50,000 in X's place and must claim it in the bank's liquidation. If Y had presented the cheque promptly and the bank had already failed before it could be presented in the ordinary course, the delay would have caused X no damage, so X would not be discharged and Y could sue X on the cheque.

85. Cheque payable to order

85.1 A drawee who pays an order cheque in due course, where the cheque appears to be indorsed by or on behalf of the payee, shall be discharged.

(1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

Section 85(1) of the Negotiable Instruments Act, 1881 protects the paying banker (the drawee) when it pays a cheque payable to order. Such a cheque can be negotiated only by the payee's indorsement and delivery, so it may pass through several hands before it is presented. The banker cannot check whether each indorsement is genuine, because it does not know the payee's signature. The law therefore asks only that the cheque *purports* to be indorsed by the payee or by someone on the payee's behalf, meaning the indorsement looks regular on its face. If it does, and the bank pays in due course, the bank is discharged even if the indorsement later turns out to be forged or unauthorised. The bank can then debit the drawer's account and owes nothing more to the drawer or the true payee. "Payment in due course" is defined in s. 10. It means payment according to the apparent tenor of the instrument, made in good faith and without negligence, to the person in possession of it, where nothing gives reasonable grounds to believe that person is not entitled to payment. The protection covers only the payee's indorsement, so it does not help the bank if the drawer's own signature is forged, because then the bank has no valid mandate from its customer. The bank also loses the protection if the indorsement is irregular on its face, for example missing or in a name different from the payee's, or if it pays in bad faith or negligently. Where the bank is protected, the true owner's remedy lies against the forger or the person who received the money, not against the paying bank. For example, D draws an order cheque on Y Bank for ₹1,00,000 payable to "P or order". A thief steals the cheque, forges P's signature on the back as an indorsement to himself, and presents it at Y Bank. The indorsement looks regular, nothing about the transaction is suspicious, and the bank pays in good faith. Under s. 85(1) the bank is discharged and may debit D's account, and P must pursue the thief rather than the bank. But if the cheque had carried no indorsement at all, or had been indorsed in the name "R" instead of "P", the bank would not have paid

in due course. It would then not be discharged and could be made to re-credit D's account.

85.2 A banker shall be discharged by paying a cheque originally drawn payable to bearer, in due course, to its bearer, whatever indorsement appears on it.

> (2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

Section 85(2) of the Negotiable Instruments Act, 1881 states the rule often summed up as "once a bearer cheque, always a bearer cheque." When the drawer first issues a cheque payable to bearer, it can be transferred by simple delivery. It keeps that character even if a holder later writes an indorsement on it, whether a full (special) indorsement naming a particular indorsee, a blank indorsement, or a restrictive indorsement such as "pay X only" or "not negotiable." Those indorsements do not turn the cheque into an order cheque. The drawee bank is therefore not required to check whether they have been complied with, and it is discharged if it pays whoever presents the cheque, as long as the payment is a payment in due course. Under s. 10, that means payment made according to the apparent tenor of the instrument, in good faith and without negligence, to a person in possession of it, where nothing gives reasonable ground to believe that person is not entitled to payment. The rule protects banks, which cannot be expected to investigate a chain of indorsements on an instrument the drawer chose to make payable to anyone who holds it. Section 85(1) contrasts with it: for a cheque payable to order, the banker is discharged only if the payment is made against an indorsement that purports to be the payee's. Section 85(2) does not protect a bank that pays negligently or in bad faith, for example where it has notice that the presenter stole the cheque. In that case the payment is not in due course. For example, A draws a cheque on his bank for ₹25,000 "payable to B or bearer" and hands it to B. B writes on the back "Pay C only" and signs it, then gives it to C. C loses the cheque, and D, who found it, presents it at the bank's counter. The cheque was originally payable to bearer, so B's restrictive indorsement in favour of C does not change its character. If the bank pays D in good faith and without

negligence, with nothing to suggest that D is not entitled, it is discharged and may debit A's account. C cannot make the bank pay again and must pursue D. If the bank had known the cheque was lost or stolen, or had ignored obvious suspicious circumstances, the payment would not be in due course and the bank would not be protected.

85A. Drafts drawn by one branch of a bank on another payable to order

A bank that pays, in due course, a demand draft drawn by one of its offices on another and payable to order shall be discharged, if the draft appears to be indorsed by or on behalf of the payee.

> Where any draft, that is an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be indorsed by or on behalf of the payee, the bank is discharged by payment in due course.

Section 85A of the Negotiable Instruments Act, 1881 covers bank drafts, which are orders to pay money drawn by one branch of a bank on another branch of the same bank, payable to order on demand. The paying branch usually cannot check whether the payee's indorsement is genuine, so the section protects the bank in the same way that s. 85(1) protects a banker who pays an order cheque. The bank only has to show two things. First, the draft must *purport* to be indorsed by or on behalf of the payee, meaning the indorsement looks regular on its face. Second, the bank must have paid in due course. Under s. 10, that means paying according to the apparent tenor of the instrument, in good faith and without negligence, to the person in possession of it, in circumstances that give no reasonable ground to believe that person is not entitled to the money. If both conditions are met, the bank is discharged even if the indorsement later turns out to be forged. The true payee then cannot make the bank pay a second time and must pursue the wrongdoer. The bank loses this protection if it acted negligently or in bad faith, for example by paying on an obviously irregular indorsement, or despite suspicious circumstances or notice that the payee had lost the draft. For example, the Patna branch of a bank issues a demand draft for ₹1,00,000 payable to "R or order", drawn on its Delhi branch. The draft is stolen from R, and the thief forges R's indorsement in his own favour and presents it at the Delhi branch. The branch sees an indorsement that looks

regular, has no reason for suspicion, and pays the thief in good faith. The bank is discharged under s. 85A, and R's remedy lies against the thief, not the bank. However, if the indorsement had been plainly defective, such as being in a name different from the payee's, or if R had already told the bank the draft was lost, the payment would not be in due course, the bank would not be discharged, and it would remain liable to R.

86. Parties not consenting discharged by qualified or limited acceptance

A holder who acquiesces in a qualified acceptance shall discharge every previous party who has not consented to it.

> If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.
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> Explanation.--An acceptance is qualified--
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> (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;
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> (b) where it undertakes the payment of part only of the sum order to be paid;
>
> (c) where no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;
>
> (d) where it undertakes the payment at a time other than that at which under the order or would be legally due.

Section 86 of the Negotiable Instruments Act, 1881 protects the drawer and endorsers of a bill of exchange. They became liable on the terms of the bill as it was drawn, and they cannot be held to different terms without their consent. The holder is entitled to an unqualified acceptance, meaning an unconditional promise by the drawee to pay the full sum at the time and place stated in the bill. If the drawee offers only a qualified acceptance, the holder may refuse it and treat the bill as dishonoured by non-acceptance (s. 91), which lets him proceed against the prior parties at once after giving

notice of dishonour. If he acquiesces in it instead, every previous party who has not consented is discharged as against the holder and anyone claiming under him. The only exception is a party who assents to the qualified acceptance after the holder gives notice. Under the section and its Explanation, an acceptance is qualified when it is conditional on some event happening; when it covers only part of the sum; when it confines payment to a particular place "and not otherwise or elsewhere", whether or not the bill names a place; when it promises payment at a time other than when the bill is legally due; or when the drawees are not partners and not all of them sign it. The acceptor remains bound to the extent of his own acceptance. The purpose of the rule is that the holder should not be able to vary the drawer's and endorsers' risk behind their backs. For example, A draws a bill for ₹1,00,000 on B, payable at Patna three months after date, and endorses it to C, who endorses it to D. B accepts it "for ₹60,000 only, payable at Mumbai and not elsewhere". If D accepts this without A's and C's consent, A and C are discharged as against D and anyone claiming under D, and D can recover only ₹60,000 from B at Mumbai. If D had notified A and C and they had agreed, they would have remained liable. Alternatively, D could have refused the acceptance, treated the bill as dishonoured under s. 91, given notice of dishonour, and sued A and C straight away.

87. Effect of material alteration

A material alteration of a negotiable instrument shall render it void against every party who did not consent to the alteration.

> Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;
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> Alteration by indorsee.--And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.
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> The provisions of this section are subject to those of sections 20, 49, 86 and 125.

Section 87 of the Negotiable Instruments Act, 1881 protects parties from unauthorised changes made to an instrument after they have become liable on it. An alteration is material when it changes the legal effect of the

instrument or the rights and liabilities of the parties, such as a change in the date, the amount, the time or place of payment, the names of the parties, or the rate of interest. Such an alteration makes the instrument void against anyone who was a party to it at the time of the alteration and did not consent to it. That party is released entirely and cannot be held liable even for the instrument as it originally stood. Parties who made or agreed to the alteration remain bound, as do those who became parties afterwards, because they took the instrument in its altered form. The section makes one express exception: an alteration does not avoid the instrument if it was made to carry out the common intention of the original parties, such as correcting a clerical mistake so that the instrument reflects what they originally agreed. The second limb deals with alteration by an indorsee: if an indorsee materially alters the instrument, his own indorser is discharged from all liability to him on it. The section is also subject to ss. 20, 49, 86 and 125, under which certain changes are permitted and do not avoid the instrument. These are the completion of an inchoate stamped instrument, the conversion of a blank indorsement into a full one, a qualified acceptance (which discharges non-consenting parties only as s. 86 provides), and the crossing of a cheque by its holder. For example, A gives B a cheque for ₹10,000, and B, without A's knowledge, changes the amount to ₹1,00,000. This is a material alteration made without A's consent, so the cheque becomes void against A, and B cannot recover even the original ₹10,000 on it; B's remedy, if any, lies on the underlying debt, not on the cheque. But if A had mistakenly written last year's date in January and B corrected it with A's agreement, the alteration would have been made with consent and to carry out the parties' common intention, so the cheque would remain valid against A. Applying the indorsee rule, if B indorses a promissory note to C and C alters its due date to a later one, B, as C's indorser, is discharged from liability to C on the note. However, if C merely crosses a cheque in his hands, B is not discharged, because s. 125 permits that change. The Supreme Court applied the consent principle in *Veera Exports v. T. Kalavathy*, (2002) 1 SCC 97, holding that altering the date on a cheque with the drawer's consent does not make it void under s. 87.

88. Acceptor or indorser bound notwithstanding previous alteration

An acceptor or indorser shall be bound by his acceptance or indorsement even though the instrument was altered before he accepted or indorsed it.

> An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Section 88 of the Negotiable Instruments Act, 1881 is an exception to Section 87. Under Section 87, a material alteration of a negotiable instrument (for example, a change in the amount, date, payee or place of payment) makes it void against anyone who was a party to it before the alteration and did not consent to it. Section 88 protects later holders by making it clear that this protection does not extend to a person who accepts or indorses the instrument *after* it has been altered. That person dealt with the instrument in its altered form. By accepting or indorsing it, he represents to later holders that the instrument is valid as it then stands, so he cannot later avoid liability by pointing to an alteration made before he signed. He is liable on the instrument as it stood when he accepted or indorsed it. The parties who signed before the alteration and did not consent remain discharged under Section 87, but the later acceptor or indorser does not. For example, A draws a bill of exchange for ₹10,000 payable to B. B fraudulently changes the amount to ₹50,000 and indorses the bill to C. C then indorses it to D. Under Section 87, A is discharged, because the material alteration was made after he signed and without his consent. C, however, indorsed the bill after it had already been altered, so under Section 88 he is bound by his indorsement and is liable to D for ₹50,000. In the same way, if the drawee accepts the bill after the alteration, he is liable as acceptor on the altered bill.

89. Payment of instrument on which alteration is not apparent

89.1 A person or banker who pays a materially altered instrument, or an obliterated crossed cheque, whose alteration or crossing is not apparent, shall be discharged if the payment is made in due course according to the instrument's apparent tenor.

> (1) Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, or where a cheque is

> presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated, payment thereof by a person or banker liable to pay and paying the same according to the apparent tenor thereof at the time of payment and other wise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

Section 89(1) of the Negotiable Instruments Act, 1881 protects a person liable to pay a promissory note, bill of exchange or cheque, such as a drawee or a banker, in two situations. The first is where the instrument has been materially altered, for instance in its amount, date or payee, but the alteration cannot be seen. Under s. 87, such an alteration makes the instrument void against any party who did not consent to it, so without this protection the payer could be held liable for paying on a void instrument. The second is where a cheque was crossed but, when presented, does not appear to be crossed or to have had a crossing that was wiped out. Since a crossed cheque must be paid only through a banker (s. 126), a banker who pays it over the counter would otherwise be liable for paying contrary to the crossing (s. 129). In both situations, s. 89(1) fully discharges the payer, and the payment cannot be challenged because of the alteration or the crossing. Three conditions must be met. First, the alteration or crossing must not be apparent on reasonable inspection at the time of payment. Second, the payer must pay according to the apparent tenor, that is, exactly what the instrument appears to say on its face. Third, the payment must be made in due course, which under s. 10 means paying in good faith, without negligence, to the person in possession of the instrument, with no reasonable ground to believe that person is not entitled to payment. The reason for the rule is that a payer, especially a bank handling a large number of instruments, cannot be expected to detect a fraud that leaves no visible trace, so the loss should not fall on a payer who acted honestly and carefully. For example, A draws a crossed cheque for ₹5,000 in favour of B on his account with X Bank. B skilfully changes the amount to ₹50,000 and chemically erases the crossing, leaving no visible sign of either change, and then presents the cheque at the bank’s counter. The cashier examines it with ordinary care, notices nothing unusual and pays B ₹50,000 in cash. X Bank has paid according to the apparent tenor, in good faith and without negligence, and neither the alteration nor the former crossing was apparent.

X Bank is therefore discharged under s. 89(1), and A cannot question the payment on the ground of the alteration or the crossing. The result would be different if the overwriting of the amount or traces of the crossing lines were visible to an ordinary examiner. The alteration would then be apparent and the payment would not be in due course, so X Bank would lose the protection of s. 89(1) and would have to bear the loss itself.

89.2 Any difference between the electronic image of a truncated cheque and the truncated cheque itself shall be a material alteration, and the bank or clearing house shall ensure that the image exactly reproduces the cheque when truncating and transmitting it.

> (2) Where the cheque is an electronic image of a truncated cheque, any difference in apparent tenor of such electronic image and the truncated cheque shall be a material alteration and it shall be the duty of the bank or the clearing house, as the case may be, to ensure the exactness of the apparent tenor of electronic image of the truncated cheque while truncating and transmitting the image.

Section 89(2) of the Negotiable Instruments Act, 1881 deals with cheques cleared electronically. A truncated cheque is a physical cheque whose movement is stopped during the clearing cycle: the clearing house, or the collecting or paying bank, creates an electronic image of it, and that image is sent for payment in place of the paper (s. 6, Explanation I(b)). In India this happens under the RBI's Cheque Truncation System (CTS). Because the paying bank never sees the original and acts only on the image, the provision does two things. First, it treats any difference in "apparent tenor" between the image and the original as a material alteration. Apparent tenor means what the cheque shows on its face, such as the amount, date, payee's name and signature. Section 87 lays down the effect of a material alteration: it makes the instrument void against a person who did not consent to it, so a payment based on an image that does not match the cheque cannot be justified by pointing to the image. Second, it places a positive duty on the bank or clearing house that truncates and transmits the cheque to make sure the image is exact. This allocates responsibility for errors in imaging to the institution that controls the process, and not to the drawer, who has no part in it. The general protection in s. 89(1), for a bank that pays an instrument on which an alteration is not apparent, therefore cannot be relied on by a bank whose own faulty truncation caused the discrepancy. Section 89(3)

adds a safeguard: a bank or clearing house that receives a truncated cheque's image may demand the truncated cheque itself from the truncating bank to verify it. For example, A writes a cheque for ₹15,000 in favour of B, and B deposits it with his bank, X. X truncates the cheque and sends its electronic image through CTS to A's bank, Y. Because of a scanning defect, the amount on the image reads ₹1,50,000, and Y pays that sum. The difference between the image and the paper cheque is a material alteration under s. 89(2), so the payment cannot be supported by the image, and A's account cannot properly be debited with the inflated sum. Since X failed in its duty to ensure the image was exact when it truncated and transmitted the cheque, X is answerable for the loss arising from the error. If Y had doubted the image, it could have asked X for the truncated cheque under s. 89(3) before paying.

89.3 Any bank or clearing house that receives an electronic image of a truncated cheque shall verify with the transmitting party that the image received is exactly the same as the image transmitted.

> (3) Any bank or a clearing house which receives a transmitted electronic image of a truncated cheque, shall verify from the party who transmitted the image to it, that the image so transmitted to it and received by it, is exactly the same.

Section 89(3) of the Negotiable Instruments Act, 1881 was inserted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, which recognised cheque truncation. A truncated cheque is one whose physical movement is stopped during the clearing cycle, either by the clearing house or by a bank. An electronic image of the cheque is generated and sent onward in place of the paper instrument (s. 6, Explanation I). Because the paying bank never sees the original cheque, it has to rely entirely on the image to check the drawer's signature, the amount, the date and the payee's name, and to spot any alteration. The image could be corrupted, tampered with or substituted while it is being transmitted. Section 89(3) therefore puts a duty on every bank or clearing house that receives such an image to confirm with the party that sent it that the received image matches the transmitted image exactly. The aim is to protect the integrity of the electronic clearing system, so that the paying bank acts on a true picture of the cheque and liability for any loss can be traced to the point where the image went wrong. This provision works alongside s. 89(2). Under that

subsection, any difference in the apparent tenor of the electronic image and the truncated cheque is a material alteration, and the bank or clearing house that truncated the cheque must ensure the exactness of its apparent tenor. For example, D draws a cheque for ₹25,000 in favour of P, who deposits it with Bank X. Under the RBI's Cheque Truncation System, Bank X scans the cheque, keeps the paper original, and transmits the image through the clearing house to Bank Y, where D has his account. If the image is altered in transit so that it shows ₹2,50,000, and Bank Y pays on it without checking with the clearing house or Bank X that the image matches what was sent, Bank Y has failed in the duty that s. 89(3) imposes, and it may have to bear the loss. If Bank Y had carried out the verification, the mismatch would have been detected and the wrong payment prevented.

90. Extinguishment of rights of action on bill in acceptor's hands

Where a negotiated bill of exchange is held by the acceptor in his own right at or after maturity, all rights of action on it shall be extinguished.

> If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Section 90 of the Negotiable Instruments Act, 1881 applies the principle of merger to bills of exchange. The acceptor is the party primarily liable on a bill: he has promised to pay it when it falls due. If, after the bill has passed through other hands, it comes back to the acceptor at or after maturity and he holds it in his own right, he becomes both the person who must pay and the person entitled to be paid. Since no one can sue himself, the debt is treated as discharged, and the bill can no longer be enforced. Every right of action on the bill ends, both against the acceptor and against the drawer and endorsers, because their liability is only secondary and falls away once the primary debtor's liability is discharged. Three conditions must be met. First, the bill must have been negotiated, meaning it has actually passed from hand to hand. Second, the acceptor must hold it at or after maturity. Before maturity he may still negotiate it again, and it remains a live instrument. Third, he must hold it in his own right, that is, beneficially for himself, and not, for example, as an agent, a trustee, or a collecting banker on someone else's behalf. For example, A draws a bill for ₹1,00,000 on B, payable three

months after date. B accepts it, and A endorses it to C, who endorses it to D. On the due date, B pays D and takes the bill back for himself. B now holds it in his own right after maturity, so all rights of action on it are extinguished. B cannot sue A, C or D on it, and if B later passes it to E, E cannot sue anyone on it either. If B had instead bought the bill from D a month before maturity, it would not be extinguished. B could negotiate it to E, and E could enforce it on maturity. Likewise, if B received the bill after maturity only as an agent collecting payment for D, the bill would not be extinguished, because B would not hold it in his own right.