CHAPTER V – OF PRESENTMENT

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61. Presentment for acceptance

Every bill of exchange payable after sight shall be presented to the drawee for acceptance within a reasonable time after it is drawn, and no party to the bill shall be liable to a holder who fails to do so.

A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, 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.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

> Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Section 61 of the Negotiable Instruments Act, 1881 applies to bills payable "after sight", such as a bill payable "thirty days after sight". Presentment for acceptance is essential for these bills because their maturity is counted from the date of acceptance, or from the date the bill is noted or protested for non-acceptance (s. 24). Until the bill is presented, its due date cannot be fixed. Where the bill does not specify a time or place for presentment, it must be presented to the drawee, if he can be found after reasonable search, by a person entitled to demand acceptance (usually the holder or his agent). It must be presented within a reasonable time after it is drawn, judged by the nature of the instrument and the usual course of dealing (s. 105), and in business hours on a business day. If the holder fails to do this, every party to the bill, including the drawer and the indorsers, is discharged from liability to that holder. If the drawee cannot be found after reasonable search, the bill is treated as dishonoured. If the bill is addressed to the drawee at a particular place, it must be presented there, and it is dishonoured if he cannot be found there on the due date after reasonable search. Presentment by registered post is valid only where an agreement or trade usage permits it. Once a bill is dishonoured by non-acceptance, the holder can sue the drawer and indorsers at once, provided he gives them notice of dishonour (ss. 91 and 93). For example, A, a trader in Patna, draws a bill on B of Kolkata for ₹1 lakh, payable "60 days after sight", in favour of C, and C indorses it to D. D keeps the bill for eight months without presenting it to B, and B then becomes insolvent. Since D did not present the bill within a reasonable time, A and C are both discharged, and D cannot recover the amount from either of them. If D had promptly taken the bill to B's office in Kolkata during business hours and B had refused to accept it, or B could not be traced there after reasonable search, the bill would have been dishonoured. D could then have sued A and C after giving them notice.

62. Presentment of promissory note for sight

A promissory note payable at a certain period after sight shall be presented to the maker for sight within a reasonable time after it is made, failing which no party to it shall be liable to the holder in default.

> A promissory note, payable at a certain period after sight must be presented to the maker thereof for sight (if he can after reasonable search be round) by a person entitled to demand payment, within a reasonable time after it is made 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.

Section 62 of the Negotiable Instruments Act, 1881 applies to promissory notes payable "after sight", such as a note payable "three months after sight". The maturity of such a note is not fixed when it is made. It runs from the time the maker sees the note, because "after sight" in a promissory note means after presentment for sight (s. 21). Presentment for sight is therefore what starts the period of payment. The section requires that it be made by a person entitled to demand payment, that is, the holder (s. 8), and that it be made to the maker if he can be found after reasonable search. If he cannot be found despite such a search, the requirement is excused. Presentment must take place within a reasonable time after the note is made, which is judged by the nature of the instrument and the usual course of dealing between similar parties (s. 105), and it must be made during business hours on a business day. If the holder does not present the note in this way, the maker and all other parties to the note, such as endorsers, are freed from liability to that holder. A holder cannot leave the maturity date open indefinitely and then enforce the note at his convenience. Presentment may, however, be excused in the cases mentioned in s. 76, for example where the maker intentionally prevents it. For example, on 1 January A makes a note payable to B "three months after sight". If B presents it to A for sight on a working day during business hours on 10 January, the three months run from that date, and the note falls due on 10 April plus three days of grace (s. 22). But if B keeps the note unpresented for two years without any excuse and only then asks A to sight and pay it, neither A nor any endorser is liable to B on the note, because B failed to present it within a reasonable time.

63. Drawee's time for deliberation

The holder shall, if the drawee so requires, allow the drawee forty-eight hours, excluding public holidays, to decide whether to accept a bill of exchange.

> The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.

Section 63 of the Negotiable Instruments Act, 1881 gives the drawee a short period to consider before accepting a bill. When a bill is presented for acceptance, the drawee is being asked to take on personal liability to pay it, and becomes the acceptor once they accept. The law therefore lets the drawee check their accounts with the drawer, confirm the drawer's signature, and decide whether they owe the drawer enough to justify accepting. This time is not automatic: the drawee has to ask for it, and the holder then has to allow it. The 48 hours are counted without public holidays. A drawee's silence or delay within this period does not count as refusal, so the holder cannot treat the bill as dishonoured during that time. If the drawee has not accepted by the end of the 48 hours, the bill is dishonoured by non-acceptance (s. 91), and the holder may then give notice of dishonour to the drawer and endorsers (s. 93) and proceed against them. If the holder refuses to allow the time and treats the bill as dishonoured straight away, the holder risks losing recourse against the parties liable on it. For example, X draws a bill for ₹1,00,000 on Y, payable three months after sight, in favour of Z. On Friday at 10 a.m., Z presents the bill to Y for acceptance, and Y asks for time to check X's account. Z must give Y 48 hours. Since Saturday is a working day and Sunday is a public holiday, the period runs until Monday at 10 a.m. If Y accepts by then, Y becomes liable as acceptor. If Y does not, the bill is dishonoured by non-acceptance, and Z may give notice of dishonour and sue X. Z could not have treated the bill as dishonoured on Friday or Saturday just because Y did not accept on the spot.

64. Presentment for payment

64.1 Every promissory note, bill of exchange and cheque must be presented for payment to the maker, acceptor or drawee, and if it is not, the other parties to it are not liable to the holder.

> (1) Promissory notes, bills 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 there to are not liable thereon to such holder.
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> Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

> Exception.--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.

Section 64 of the Negotiable Instruments Act, 1881 makes presentment for payment a condition for holding the secondary parties, such as the drawer and the endorsers, liable on the instrument. The holder, or someone acting on the holder's behalf, must present it to the person primarily bound to pay: the maker of a promissory note, the acceptor of a bill of exchange, or the drawee bank of a cheque. This gives the primary party a chance to pay before anyone else is held liable. Presentment must follow the rules on time, place and manner in the sections that come after it (ss. 65 to 77). If the holder fails to present, the drawer and endorsers are discharged as against that holder. The primary party, however, generally stays liable, because the duty to pay is that party's own. Where an agreement between the parties or a usage of trade allows it, presentment by registered post is valid. In some cases presentment is excused altogether, for instance where the maker or drawee deliberately prevents it (s. 76). The Exception applies to a promissory note payable on demand that names no place of payment. In that case the maker can be held liable without presentment, because he is bound to pay on demand wherever he is found, and filing a suit is itself a demand. For example, X draws a bill of exchange on Y, payable to Z, and Y accepts it. Z endorses the bill to W. At maturity W does not present the bill to Y for payment, and Y does not pay. Because there was no presentment, W cannot sue X (the drawer) or Z (the endorser), as both are discharged. W can still sue Y, the acceptor and primary party. Under the Exception, if P gives Q a promissory note "payable on demand" that names no place of payment, Q can sue P directly without first presenting the note.

A note on cheques: under s. 84, a drawer whose cheque is not presented within a reasonable time is discharged only to the extent of any actual loss caused by the delay, not fully. That is why the example above uses a bill of exchange.

64.2 When an electronic image of a truncated cheque is presented for payment, the drawee bank may demand further information about it from the bank holding the cheque if it reasonably suspects its genuineness, and may demand the physical cheque itself for verification

if it suspects fraud, forgery, tampering or destruction. If payment is made, the drawee bank shall retain the cheque so obtained.

> (2) Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from, the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:
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> Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly:

Section 64(2) of the Negotiable Instruments Act, 1881 deals with cheque truncation. Under truncation, the presenting bank or the clearing house stops the physical cheque during the clearing cycle and sends only its electronic image to the paying bank (s. 6, Explanation I). In India this is done through the Cheque Truncation System (CTS) run under the Reserve Bank of India. Normally the drawee bank decides whether to pay by looking only at this image. Because an image can hide alterations that would show on the paper, such as erasures, chemical washing, overwriting or a forged signature, s. 64(2) gives the drawee bank two graded safeguards, and the opening words "notwithstanding anything contained in section 6" let it use them even though the image counts as a valid presentment of the cheque. The first safeguard applies where the bank has a *reasonable suspicion* about the genuineness of the apparent tenor of the instrument, meaning what the cheque appears to say (payee, amount, date, signature). The bank may then ask the bank holding the truncated cheque for further information about it. The second, stronger safeguard applies where the suspicion is specifically one of fraud, forgery, tampering or destruction of the instrument. The bank may then demand that the physical cheque itself be produced so it can verify it. The proviso says that if the drawee bank pays after receiving the physical cheque, it must keep that cheque. The cheque then serves as the bank's voucher and as evidence if the payment is later disputed. The suspicion must be reasonable, so the provision does not allow a bank to delay or refuse payment on a mere whim. For example, X draws a cheque for ₹15,000 on Bank A in favour of Y. Y deposits it with Bank B, which truncates it and sends the image through CTS to Bank A. Bank A notices that the image

shows the amount as ₹1,50,000 and that the ink density around the figures looks irregular. Because it suspects tampering, Bank A asks Bank B for the original paper cheque. Bank B produces it, and Bank A examines it under ultraviolet light. If the cheque turns out to be altered, Bank A refuses payment. If the cheque is genuine and Bank A pays, it keeps the physical cheque in its records as required by the proviso. If Bank A's only doubt had been a minor mismatch, say an unclear date, without any suspicion of fraud, it could ask Bank B only for further information and could not demand the physical cheque.

65. Hours for presentment

Presentment for payment shall be made during the usual hours of business, and at a bank, within banking hours.

> Presentment for payment must be made during the usual hours of business and, if at a banker's, within banking hours.

Section 65 of the Negotiable Instruments Act, 1881 fixes the time of day at which a promissory note, bill of exchange or cheque must be presented for payment. Under s. 64, the holder must present the instrument to the maker, acceptor or drawee for payment, and if he fails to present it properly, the other parties to the instrument are not liable to him. Section 65 adds that presentment is valid only if made at a reasonable hour. Where the instrument is payable by a private person or firm, it must be presented during the ordinary business hours of that person or business. Where it is payable at a bank, it must be presented during the hours the bank is open for business with the public. The rule is meant to be fair to the person who has to pay: he can only be expected to pay when he is ready to do business, with his staff, records and funds available. Presentment made outside these hours is not proper presentment. A refusal to pay at that time is therefore not a dishonour, and it gives the holder no right to proceed against the drawer or endorsers on that basis. The holder must present the instrument again within proper hours. For example, S holds a cheque for ₹25,000 drawn by T on Bank X, and the bank's public business hours end at 4 p.m. If S goes to the bank at 6 p.m. and a staff member who is still on the premises refuses to pay, that refusal is not a dishonour, because the cheque was not presented within banking hours. S cannot treat the cheque as dishonoured or give T notice of dishonour on that basis. S must present the cheque again during

banking hours. Similarly, a promissory note payable by a trader at his shop must be presented while the shop is open for business, not late at night at his residence or at the shop after closing time.

66. Presentment for payment of instrument payable after date or sight

A promissory note or bill of exchange payable at a specified period after date or after sight shall be presented for payment on the date of its maturity.

> A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Section 66 of the Negotiable Instruments Act, 1881 applies to time instruments, which are notes and bills payable a fixed period after their date (for example, “three months after date”) or a fixed period after sight (for example, “sixty days after sight”). Because the due date of such an instrument is fixed in advance, the holder must present it for payment on that exact day. Presenting it earlier is not valid presentment, since the maker or acceptor is not bound to pay before the due date. Maturity is worked out under the Act by adding three days of grace to the date on which the instrument is expressed to be payable (s. 22). For an instrument payable after date, the period runs from the date of the instrument (s. 23). For one payable after sight, it runs from the date of acceptance or noting for non-acceptance, or, in the case of a note, from presentment for sight (s. 24). If the maturity date falls on a public holiday, the instrument is due on the preceding business day (s. 25). Presentment at maturity matters because, under s. 64, if the holder fails to present duly, the other parties to the instrument, such as the drawer and the endorsers, are discharged from liability to the holder, while the maker of a note or acceptor of a bill remains liable. Presentment is excused in the cases listed in s. 76, for instance where the maker or acceptor intentionally prevents it. For example, A draws a bill on B dated 1 January, payable “three months after date”, and B accepts it. The bill is nominally due on 1 April, but with three days of grace it matures on 4 April, so the holder, C, must present it on 4 April. If C presents it on 1 April, B may lawfully refuse payment, and the refusal is not a dishonour. If 4 April were a public holiday, the bill would have to be presented on 3

April. If C does not present the bill at maturity at all, A as drawer is discharged from liability to C, though C may still recover from B as acceptor.

67. Presentment for payment of promissory note payable by instalments

A promissory note payable by instalments shall be presented for payment on the third day after the date fixed for each instalment, and non-payment of an instalment on such presentment shall have the same effect as non-payment of a note at maturity.

> A promissory note payable by installments must be presented for payment on the third day after the date fixed for payment of each installment; and nonpayment on such presentment has the same effect as non-payment of a note at maturity.

Section 67 of the Negotiable Instruments Act, 1881 deals with a promissory note whose amount is payable in parts on different dates rather than in one sum. Each instalment is treated as if it were a separate note falling due on its own date. Section 22 gives every note that is not payable on demand, at sight or on presentment three days of grace, and the note matures on the third day after the date it is expressed to be payable. Section 67 applies the same rule to each instalment, so each one must be presented for payment on the third day after its fixed date. If that day is a public holiday, the instalment falls due on the preceding business day (s. 25). Presentment under s. 64 is the formal demand for payment made to the maker by or on behalf of the holder. If an instalment is not paid when presented, the note is dishonoured by non-payment as to that instalment, exactly as a whole note would be at maturity (s. 92). The holder may then sue the parties liable for the unpaid amount. To keep the endorsers liable, the holder must give them notice of dishonour (s. 93). If an instalment is not presented, endorsers and other parties are discharged as to that instalment (s. 64), although the maker remains liable. Default on one instalment does not by itself make the later instalments due at once. That happens only if the note contains an acceleration clause. Otherwise, each later instalment is presented and dealt with on its own due date. For example, A makes a promissory note in favour of B for ₹30,000, payable in three instalments of ₹10,000 on 1 January, 1 February and 1 March. B endorses the note to C. C must present the first

instalment for payment on 4 January. If A fails to pay, the note is dishonoured as to that ₹10,000, with the same legal effect as non-payment of a note at maturity. C may sue A for it, and C can also hold B liable if C promptly gives B notice of dishonour. The second and third instalments are not yet due unless the note says that one default makes the whole balance payable. C must present them on 4 February and 4 March respectively. If C fails to present the first instalment on 4 January, B is discharged from liability for that instalment, but A still owes it.

68. Presentment for payment of instrument payable at specified place and not elsewhere

A promissory note, bill of exchange or cheque payable at a specified place and not elsewhere must be presented for payment at that place in order to charge any party to it.

> A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Section 68 of the Negotiable Instruments Act, 1881 covers instruments where the maker, drawer or acceptor has made payment exclusively payable at one named place, by using words such as “payable at X and not elsewhere” or “payable only at X”. By choosing those words, the parties have agreed that payment is due only at that place. The holder must therefore present the instrument there, and nowhere else, before any party can be held liable on it. Presenting it at any other place, such as the maker’s home or another bank, is not valid presentment. The words “to charge any party thereto” mean the requirement applies to the maker of a note and the acceptor of a bill as well as the drawer and endorsers. Under the general rule in s. 64, the primary party (maker or acceptor) stays liable even without presentment. Section 68 is an exception: where payment is restricted to one place, even the primary party is not liable until the instrument has been presented there. If the holder fails to present it at the specified place, the drawer and endorsers are discharged (s. 64), and the holder cannot sue the maker or acceptor until proper presentment is made. Section 68 should be distinguished from s. 69, which deals with an instrument simply “payable at a specified place” (without “and not elsewhere”); that instrument too must be presented there, but only to charge the maker or drawer. Where no place

is specified at all, s. 70 says the instrument is presented at the maker's, drawee's or acceptor's place of business or usual residence. For example, A makes a promissory note for ₹1,00,000 in favour of B, "payable at the State Bank of India, Gandhi Maidan branch, Patna, and not elsewhere." On maturity, B presents the note to A at A's shop instead of the bank, and A refuses to pay. That presentment is invalid, because the note could be presented only at the named branch. B cannot charge A, or any endorser, on the strength of it. B must present the note at the Gandhi Maidan branch; only if payment is refused there can B proceed against the parties liable. Similarly, if C accepts a bill drawn by D "payable at Punjab National Bank, Boring Road, Patna, only", the holder must present it at that branch to charge C, the acceptor.

69. Instrument payable at specified place

A promissory note or bill of exchange payable at a specified place must be presented for payment at that place in order to make the maker or drawer liable.

> A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at the place.

Section 69 of the Negotiable Instruments Act, 1881 covers an instrument that is made, drawn or accepted payable at a particular place, such as a named bank, office or address. In that case, the holder must present it for payment at that same place. If the holder presents it somewhere else, or doesn't present it at all, the maker of the note or the drawer of the bill cannot be charged on it. The reason is that the parties fixed where payment was to be made, and the maker or drawer is entitled to have the instrument presented there, where funds or arrangements for payment are expected to be. The general rule that instruments must be presented for payment is in s. 64. Section 69 adds a specific requirement about place when the instrument names one. Where no place is specified, ss. 70 and 71 decide where it should be presented, such as at the maker's or drawee's place of business or residence. Section 76 lists cases where presentment is excused altogether, for example where the maker, drawer or acceptor intentionally prevents presentment, or where the party to be charged expressly waives it. For example, A makes a promissory note for ₹1 lakh in favour of B, "payable at

the State Bank of India, Patna Main Branch," on 1 March. On the due date B goes to A's house instead and demands payment there, and A refuses. B cannot hold A liable on the note for that refusal, because the note was not presented at the specified place. If B had presented the note at the SBI Patna Main Branch on 1 March and it was dishonoured there, B would be entitled to hold A liable. Similarly, if a bill of exchange drawn by C on D is accepted "payable at Canara Bank, Bank Road, Patna," the holder must present it at that bank to charge C as drawer. If the holder presents it elsewhere and it is not paid, C is discharged.

70. Presentment where no exclusive place specified

A promissory note or bill of exchange that names no place of payment must be presented for payment at the place of business, or the usual residence, of the maker, drawee or acceptor.

> A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Section 70 of the Negotiable Instruments Act, 1881 fills the gap left by sections 68 and 69. Those two sections cover instruments that name a place of payment. Under s. 68, an instrument made payable at a specified place and nowhere else must be presented there to charge any party. Under s. 69, an instrument made payable at a specified place must be presented there to charge the maker. Section 70 covers every other instrument, where no place of payment is named. In that case the holder must present it at the place of business of the party liable to pay, if that party has one. Otherwise it is presented at that party's usual residence. Who that party is depends on the instrument: the maker for a promissory note, the drawee for a bill that has not yet been accepted, and the acceptor for an accepted bill. The holder chooses between the two places, and presentment at either one is valid. The rule matters because proper presentment is usually needed before the holder can hold the other parties liable. Presentment at some other place, such as a casual meeting in a market, is not proper presentment under this section. Section 71 deals with the case where the party has no known place of business or fixed residence and no place of payment is named: presentment to that party in person, wherever they can be found, is then sufficient. For

example, A makes a promissory note promising to pay B ₹1,00,000 three months after date, without naming any place of payment. A runs a shop in Patna Market and lives in Boring Road, Patna. When the note matures, B must present it at A's shop or at A's home on Boring Road. If B instead presents it at A's relative's house in another town, that is not proper presentment under s. 70. Similarly, if C draws a bill on D without naming a place of payment and D accepts it, the holder must present it for payment at D's place of business or D's usual residence.

71. Presentment when maker, etc., has no known place of business or residence

Where the maker, drawee or acceptor has no known place of business or fixed residence, and the instrument names no place of presentment, the instrument shall be presented to him in person wherever he can be found.

> If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment such presentment may be made to him in person wherever he can be found.

Section 71 of the Negotiable Instruments Act, 1881 fills a gap in the rules on where a negotiable instrument must be presented. Normally the place is fixed by the instrument or by law. If the instrument names a place for payment, it must be presented there (ss. 68 and 69). If it names no place, it is presented at the maker's, drawee's or acceptor's place of business, if known, or otherwise at his usual residence (s. 70). Section 71 covers the remaining case, where none of these places exists: no place is specified in the instrument, and the party has no known place of business or fixed residence. Here the holder is neither excused from presentment nor left without a remedy. He may present the instrument to the party personally, at any place where he finds him. This applies to presentment both for acceptance (in the case of a bill of exchange) and for payment. It keeps presentment possible even against someone who has no settled address, so the holder can still establish dishonour and preserve his rights against prior parties such as the drawer and endorsers. Presentment for payment must still be made at a reasonable hour, and on a business day if made at a place of business (s. 65). If the party cannot be found even after due search,

presentment for payment is excused altogether (s. 76(a)), and the instrument may be treated as dishonoured. For example, A, a travelling trader with no shop and no fixed home, makes a promissory note for ₹50,000 payable to B. The note names no place of payment. When the note falls due, B learns that A is attending a trade fair in Muzaffarpur. B may go to the fair and present the note to A in person, and this is valid presentment under s. 71. If A refuses to pay, the note is dishonoured, and B may proceed against A and any prior endorsers. If B instead searched diligently and could not trace A anywhere, presentment would be excused under s. 76(a), and B could treat the note as dishonoured without presenting it.

72. Presentment of cheque to charge drawer

A cheque must be presented at the drawee bank, before the drawer's position with that bank changes to the drawer's prejudice, in order to make the drawer liable.

> Subject to the provisions of section 84 a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and hi s banker has been altered to the prejudice of the drawer.

Section 72 of the Negotiable Instruments Act, 1881 makes presentment a condition of the drawer's liability on a cheque. The holder must present the cheque at the bank on which it is drawn, normally the branch where the drawer keeps the account, and must do so before the relationship between the drawer and that bank has been "altered to the prejudice of the drawer". That phrase covers events that hurt the drawer's ability to have the cheque paid. The most common is the bank failing or going into liquidation while the drawer still has enough funds there; others are the account being frozen or the funds being attached. The idea is that a drawer who keeps enough money in the bank has done their part, so a holder who delays presenting the cheque cannot shift the loss caused by that delay onto the drawer. The section is expressly made "subject to section 84", which limits how far the drawer is actually freed. Under s. 84, where a cheque is not presented within a reasonable time after issue, the drawer is discharged only if the drawer had the right to have the cheque paid when it ought to have been presented and suffered actual damage through the delay, and even then only to the extent of that damage. The holder then takes the drawer's place as a creditor of the

bank for that amount. If the delay causes the drawer no loss, the drawer stays fully liable. What counts as 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)). For example, on 1 March A gives B a cheque for ₹50,000 drawn on X Bank, where A's account holds ₹2 lakh. B keeps the cheque for six months without presenting it, and X Bank then goes into liquidation. A's relationship with the bank has been altered to A's prejudice and B failed to present the cheque in time, so A is discharged to the extent of the loss the delay caused. B cannot recover the ₹50,000 from A and must instead claim against X Bank in the liquidation, in A's place. If, however, B had presented the cheque on 5 March and it had been dishonoured, A would remain liable to B. A would also remain liable if the bank had failed the day after issue, before B could reasonably have presented the cheque, because B would not then be at fault for any delay.

73. Presentment of cheque to charge any other person

A cheque must be presented within a reasonable time after its delivery by any person other than the drawer, or that person shall not be liable on it.

> A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Section 73 of the Negotiable Instruments Act, 1881 covers the liability of parties to a cheque other than the drawer, mainly endorsers who receive a cheque and pass it on to someone else. When an endorser delivers a cheque, they become liable to later holders if it is dishonoured (s. 35). That liability depends on the holder presenting the cheque for payment within a reasonable time after the endorser delivered it. If the holder delays beyond a reasonable time, the endorser is discharged and cannot be held liable, even if the cheque is later dishonoured. The time is counted separately for each endorser, from the date that endorser delivered the cheque, so a holder may lose recourse against an earlier endorser while keeping it against a later one. The drawer is expressly excluded. The drawer's position is governed by s. 84, under which the drawer is discharged by delay in presentment only to the extent that the delay actually causes them loss, for example through the failure of the bank. Under s. 105, what counts as a reasonable time depends on the nature of the instrument, the usage of trade and of bankers, and the

facts of the case. Under the Reserve Bank of India's directions, a cheque is valid for three months from its date, but a reasonable time for the purposes of s. 73 may be much shorter than that. The rule exists because an endorser's role is secondary. They should not be exposed to a risk that grows indefinitely, such as the drawer becoming insolvent in the meantime, because the holder was careless. For example, A draws a cheque for ₹50,000 in favour of B. On 1 March, B endorses and delivers it to C in payment of a debt. C keeps the cheque and presents it only on 20 May. By then A's account has been emptied, and the cheque is dishonoured. If the court finds that 80 days was not a reasonable time in the circumstances, B is discharged under s. 73, and C cannot recover the amount from B on the cheque. C can still proceed against A, the drawer. A is not discharged unless A shows that the delay itself caused A actual loss (s. 84). If C had presented the cheque within a few days of 1 March and it had been dishonoured, B would have remained liable to C.

74. Presentment of instrument payable on demand

A negotiable instrument payable on demand must be presented for payment within a reasonable time after the holder receives it.

> Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Section 74 of the Negotiable Instruments Act, 1881 applies to instruments payable on demand, such as cheques, demand promissory notes and bills payable at sight or on presentment, where no due date is fixed (s. 19 and s. 21). It requires the holder to present the instrument promptly, so that the parties liable on it are not left exposed for an uncertain period. The Act does not fix a number of days. What counts as reasonable time depends on the nature of the instrument, the usage of trade and bankers about similar instruments, and the facts of the case (s. 105). Under s. 64, if an instrument is not presented as required, the other parties to it are discharged from liability to the holder. For cheques the rule is softened by s. 84: if a cheque is not presented within a reasonable time and the drawer suffers actual damage because of the delay, such as the bank failing in the meantime, the drawer is discharged only to the extent of that damage. The words "subject to the provisions of section 31" keep the banker's own duty intact. A drawee

bank that holds enough of the drawer's funds must still honour the cheque when it is properly presented, and must compensate the drawer if it wrongfully refuses. In banking practice a cheque is also valid for only three months from its date (RBI direction, effective 1 April 2012), and banks treat it as stale after that. For example, A gives B a cheque for ₹1 lakh drawn on X Bank, and A keeps enough money in the account. B keeps the cheque for several weeks without depositing it. During that time X Bank goes into liquidation, and A's balance can no longer be fully paid out. Because B did not present the cheque within a reasonable time and A lost money as a result, A is discharged to the extent of that loss under s. 84. B must claim that amount from the bank's liquidator as a creditor in A's place, and cannot recover it from A. If B had deposited the cheque within a day or two of receiving it, it would have been paid in full and the loss would not have arisen.

75. Presentment by or to agent, representative of deceased, or assignee of insolvent

Presentment for acceptance or payment may be made to the drawee, maker or acceptor's authorised agent, legal representative or assignee in insolvency.

> Presentment for acceptance or payment may be made to the duly authorized agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Section 75 of the Negotiable Instruments Act, 1881 lists who, apart from the drawee, maker or acceptor in person, may receive presentment of an instrument. Presentment for acceptance (s. 61) and presentment for payment (s. 64) are usually made to the party liable on the instrument: the drawee of a bill for acceptance, and the maker of a note or the acceptor of a bill for payment. Section 75 allows presentment in three other cases. First, it may be made to an agent whom that party has duly authorised, such as a manager or a clerk whose authority covers dealing with the party's instruments. Second, if the party has died, it may be made to his legal representative, meaning the person who represents his estate in law, such as an executor, an administrator or an heir. Third, if the party has been declared insolvent, it may be made to his assignee, meaning the official assignee or receiver in

whom the insolvent's property vests. A presentment made to any of these persons is as valid as one made to the party himself. It therefore keeps the holder's rights intact, including the right to treat the instrument as dishonoured if acceptance or payment is refused, and to proceed against prior parties after giving due notice. Presentment made to an unauthorised person is not valid presentment. For example, A draws a bill of exchange on B for ₹1 lakh, payable to C three months after sight. B is often away on business, so C presents the bill for acceptance to B's manager, whom B has authorised in writing to accept bills for him. That is a valid presentment under s. 75. Suppose B accepts the bill and then dies before it falls due. On the due date, C must present it for payment to B's legal representative, for instance B's son as administrator of the estate. If the son refuses to pay, the bill is dishonoured, and after giving notice of dishonour C may sue A, the drawer, and recover from B's estate. Similarly, if B had been declared insolvent, C would present the bill to the official receiver in whom B's estate has vested.

75A. Excuse for delay in presentment for acceptance or payment

Delay in presentment caused by circumstances beyond the holder's control shall be excused, but presentment shall be made within a reasonable time after the cause of delay ceases.

> Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.

Section 75A of the Negotiable Instruments Act, 1881 relaxes the rules that require a negotiable instrument to be presented for acceptance or payment on time. Under ss. 61 and 64, presentment must be made within the proper time, and failing that, the parties other than the maker or acceptor (such as the drawer and endorsers) are discharged from liability to the holder. Section 75A protects a holder who could not present in time for reasons he could not prevent, such as a natural calamity, war, riot, curfew, serious illness or a sudden closure of communications. The delay is excused only if two conditions are met. First, the cause must be beyond the holder's control. Second, the delay must not be due to the holder's own default, misconduct

or negligence, so carelessness, forgetfulness or deliberate postponement give no protection. The excuse is also temporary. Once the obstacle is removed, the holder must present the instrument within a reasonable time, and what counts as reasonable depends on the nature of the instrument, trade usage and the facts of the case (s. 105). If the holder delays further after the cause has ceased, the excuse is lost and the drawer and endorsers may be discharged. For example, T holds a bill of exchange payable at a bank in Patna on 10 August, but heavy floods cut off all road and rail links from his town from 8 to 15 August, so he cannot reach Patna. His failure to present on the due date is excused because the floods were beyond his control and not caused by his negligence. If he presents the bill on 17 August, soon after the routes reopen, the drawer and endorsers remain liable. But if he waits until October without any good reason, the later delay is his own default, s. 75A no longer protects him, and the drawer and endorsers may be discharged. Likewise, if T simply forgot the due date, the delay would never be excused, since it would be due to his own negligence.

76. When presentment unnecessary

Presentment for payment shall be excused in the specified cases, and the instrument shall be treated as dishonoured on the due date for presentment.

> No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:--
>
> (a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
>
> if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or if the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or
>
> if the instrument not being payable at any specified place, he cannot after due search be found;
>
> (b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
>
> (c) 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;

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

Section 76 of the Negotiable Instruments Act, 1881 is an exception to s. 64. Under s. 64, a promissory note, bill of exchange or cheque must ordinarily be presented for payment, and the other parties are not liable to the holder if it is not. Section 76 relieves the holder of this duty in four cases and treats the instrument as dishonoured on the date presentment was due, so the holder can at once proceed against the liable parties. The first case, under clause (a), arises from the conduct of the party liable. It applies where the maker, drawee or acceptor intentionally prevents presentment. It also applies where the instrument is payable at his place of business and he closes it on a business day during usual business hours, or where it is payable at some other specified place and neither he nor anyone authorised to pay attends there during business hours. Finally, it applies where no place of payment is specified and he cannot be found after due search. In each of these situations presentment is impossible or pointless, and the law does not require a futile act. The second case, under clause (b), applies against a party who has engaged to pay notwithstanding non-presentment, since he has waived the requirement in advance. The third case, under clause (c), applies against a party who, after maturity and with knowledge that the instrument has not been presented, makes a part payment, promises to pay the amount in whole or in part, or otherwise waives his right to take advantage of the default. His later conduct amounts to a waiver of the objection. The fourth case, under clause (d), applies against the drawer where he could not suffer damage from the want of presentment. Presentment exists to protect the drawer from loss, so a drawer who could not have been prejudiced by its absence cannot rely on it. Examples are where he had no funds with the drawee or had himself countermanded payment. Clauses (b), (c) and (d) operate only against the particular party concerned, so other parties keep the protection of s. 64. For example, A draws a bill on B, payable at B’s shop on 1 March, in favour of C. If B

keeps his shop closed during business hours on 1 March, C is excused from presentment under clause (a). The bill is treated as dishonoured on 1 March, and C may sue A. If C never presents the bill but A, knowing this, pays C ₹5,000 towards it on 10 March, A has waived the defect under clause (c) and cannot avoid liability for the balance. If A had no funds with B and no arrangement for B to pay, A suffers no damage from non-presentment, and under clause (d) A remains liable to C even though the bill was never presented.

77. Liability of banker for negligently dealing with bill presented for payment

A banker who negligently or improperly keeps, deals with or delivers back a dishonoured bill presented for payment at his bank shall compensate the holder for the resulting loss.

> When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Section 77 of the Negotiable Instruments Act, 1881 applies where the acceptor of a bill of exchange has made it payable at a named bank, so the holder must present it there for payment (ss. 68 and 69). Once the bill has been properly presented and dishonoured, the banker holds a document that the holder still needs. With it, the holder can give notice of dishonour, have the bill noted or protested, and sue the drawer, acceptor and indorsers. The section makes the banker responsible for the safe handling of the bill at this stage. If the banker loses it, holds it back, damages it, deals with it wrongly, or returns it late or to the wrong person, and this carelessness or improper conduct causes the holder a loss, the banker must make good that loss. The liability is statutory: it arises even though the banker is not a party to the bill and has no contract with the holder. It is also limited in two ways. First, the bill must have been duly presented and dishonoured. Second, the holder must show actual loss caused by the banker's negligent or improper act. Dishonour by itself does not make the banker liable; the duty concerns only how the banker handles the bill afterwards. For example, X draws a bill on Y for ₹1 lakh, and Y accepts it payable at ABC Bank, Patna. On the due date the holder, Z, presents the bill at ABC Bank, and the bank dishonours it

because Y's account has insufficient funds. Instead of promptly returning the bill to Z, the bank mislays it for several weeks. Without the bill, Z cannot have it noted or protested or send notice of dishonour to X in time. X is therefore discharged (s. 93), and Y has meanwhile become insolvent. Z's loss of the right to recover from X results directly from the bank's negligent handling of the bill, so under s. 77 ABC Bank must compensate Z for that loss. If the bank had returned the bill promptly, it would not be liable merely because the bill was dishonoured.