CHAPTER VIII OF NOTICES OF DISHONOUR

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## 91. Dishonour by non-acceptance

**A bill of exchange shall be treated as dishonoured by non-acceptance when the drawee fails to accept it on due presentment.**

> A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.
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> Where the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonoured.

Section 91 of the Negotiable Instruments Act, 1881 says when a bill counts as dishonoured at the acceptance stage, before it ever falls due for payment. A bill is dishonoured by non-acceptance in two situations. The first is when the drawee, after being duly asked to accept, fails or refuses to do so. Due presentment means presenting the bill to the drawee at the proper time and place, as required by sections 61 and 63. The second is when presentment for acceptance is excused, for example because the drawee cannot be found after reasonable search (s. 61), and the bill goes unaccepted. Where a bill is drawn on several drawees who are not partners, a default by any one of them is enough, because each must accept separately. Where the drawees are partners, acceptance by one binds the firm. The section also allows the holder to choose to treat the bill as dishonoured in two further cases. One is when the drawee is incompetent to contract, such as a minor or a person of unsound mind, since such an acceptance creates no enforceable liability. The other is when the acceptance is qualified, for example conditional, partial, or varying the time or place of payment, since the holder is entitled

to an absolute acceptance (s. 86). Once the bill is dishonoured, the holder must give notice of dishonour to the drawer and the endorsers (s. 93). Parties who do not receive notice are discharged, unless notice is excused (s. 98). After giving notice, the holder can proceed against them at once, without waiting for the due date. For example, A draws a bill on B for ₹1 lakh, payable three months after sight, in favour of C. When C presents it, B refuses to accept, so the bill is dishonoured by non-acceptance, and C must notify A and may sue A for the amount. The result is the same if B is a minor, or if B writes "accepted, payable only on delivery of goods by A". In those cases C may refuse the conditional or invalid acceptance, treat the bill as dishonoured, and hold A liable.

## 92. Dishonour by non-payment

**A promissory note, bill of exchange or cheque shall be treated as dishonoured by non-payment when the party primarily liable fails to pay it on due presentment.**

> A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Section 92 of the Negotiable Instruments Act, 1881 defines when an instrument is dishonoured by non-payment. The party bound to pay depends on the instrument: the maker of a promissory note, the acceptor of a bill of exchange, and the drawee of a cheque, which is always the drawer's banker. Dishonour happens only when that party defaults "upon being duly required to pay". This means the instrument must have been properly presented for payment under the Act's rules on presentment: to the right person, at the proper place, within business hours and on the due date (ss. 64 to 75). If the holder never presents the instrument, or presents it improperly, the instrument is not dishonoured. In that case the drawer and indorsers are generally discharged as against the holder (s. 64). Where presentment is excused under s. 76, for example because the maker has deliberately prevented it or the place of payment is closed on the due date, the instrument is treated as dishonoured without presentment. Dishonour by non-payment has three main consequences. First, the holder's right of recourse against the drawer and indorsers arises, provided the holder gives them notice of dishonour as s. 93 requires. Second, they become liable to

compensate the holder (ss. 30, 35 and 117). Third, in the case of a cheque returned unpaid for insufficient funds, the drawer may be liable to prosecution under s. 138, subject to its conditions. For example, A draws a cheque for ₹1,00,000 on his account with SBI in favour of B. B presents the cheque at the bank during banking hours within its validity period, and the bank returns it marked "funds insufficient". Because the drawee bank defaulted on due presentment, the cheque is dishonoured by non-payment. B may then give A notice of dishonour and sue him for the amount. If the conditions of s. 138 are met, B may also file a criminal complaint against A. By contrast, if B had never presented the cheque, or had presented it to the bank on a Sunday when the bank was closed, there would be no dishonour, because the bank was never duly required to pay.

## 93. By and to whom notice should be given

**Notice of dishonour must be given to every party who is to be held liable on the dishonoured instrument.**

> When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.
>
> Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

Section 93 of the Negotiable Instruments Act, 1881 applies once a promissory note, bill of exchange or cheque has been dishonoured, either by non-acceptance (s. 91) or by non-payment (s. 92), and it settles who must give notice of the dishonour and to whom. The notice may be given by the holder, or by any party to the instrument who is still liable on it; for example, an endorser who has himself received notice may pass it on to the parties before him (s. 95). Every party whom the holder wants to hold severally liable must receive notice, and these are usually the drawer and the endorsers, whose liability is secondary and depends on being told of the dishonour (ss. 30 and 35). Where several parties are jointly liable, notice to any one of them is enough. No notice is needed to the maker of a note, the

drawee of a bill or cheque, or the acceptor of a bill. The maker and the acceptor are the principal debtors and already know of their own default, while a drawee who has not accepted is not liable on the instrument at all. The practical effect is that a drawer or endorser who does not receive due notice is discharged, unless notice is excused under s. 98, for example where that party has waived it or where the drawer has countermanded payment. The notice may be oral or written and must be given within a reasonable time (s. 94). This notice of dishonour is a different requirement from the statutory demand notice needed before prosecuting for a dishonoured cheque under s. 138. For example, A draws a bill on B payable to C, C endorses it to D, and D endorses it to E. When E presents the bill, B refuses to pay. If E wants to hold A, C and D liable, he must give each of them notice of dishonour, but he need not notify B, the drawee. If E notifies only D, then C and A are discharged, unless D, being liable himself, passes the notice on to them in time. If C were instead two partners who had endorsed the bill jointly, notice to either partner would bind both.

## 94. Mode in which notice may be given

**Notice of dishonour shall clearly inform the party that the instrument has been dishonoured, how it was dishonoured, and that he will be held liable on it, and shall be given within a reasonable time at his place of business, or at his residence if he has none.**

> Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.
>
> If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

Section 94 of the Negotiable Instruments Act, 1881 sets out how a notice of dishonour must be given. Under s. 93, the holder must give this notice to the parties he wants to hold liable when a bill, note or cheque is dishonoured.

The section is flexible about the person served and the form of the notice. It may be given to the party himself or to his authorised agent. If the party has died, it goes to his legal representative, and if he has been declared insolvent, to his assignee. The notice may be oral or written, may be sent by post, and need not follow any set wording. What matters is its content: expressly or by reasonable implication, it must tell the party three things: (i) that the instrument has been dishonoured; (ii) the manner of dishonour, such as non-acceptance or non-payment; and (iii) that he will be held liable on it. It must also be given within a reasonable time after dishonour, which s. 105 explains with reference to the nature of the instrument and the usual course of dealing, and at the party's place of business, or at his residence if he has no place of business. The last paragraph protects a holder who sends the notice properly: if it is correctly addressed and posted but lost or delayed in the post, it remains valid. The purpose is to warn secondary parties (drawers and endorsers) promptly, so that they can protect themselves against the parties liable to them. For example, A draws a bill of exchange for ₹1,00,000 on B in favour of C, and B refuses to accept it. The day after, C sends a letter by registered post to A's shop, stating that the bill has been dishonoured by non-acceptance and that C will hold A liable for the amount. This is a valid notice under s. 94. It would still be valid if the post office lost the letter, because it was properly addressed and posted. But if C's letter only said "please contact me about your bill," it would not be valid notice, because it does not tell A, expressly or by reasonable implication, that the bill was dishonoured or that A will be held liable. Likewise, a notice sent months later, or to an address unconnected with A, would not satisfy the section.

## 95. Party receiving must transmit notice of dishonor

**A party who receives notice of dishonour shall give notice of dishonour to every prior party he seeks to hold liable to himself, within a reasonable time.**

> Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

Section 95 of the Negotiable Instruments Act, 1881 deals with the chain of liability that follows the dishonour of a negotiable instrument. Under s. 93, when an instrument is dishonoured, the holder must give notice of dishonour to every party he wants to hold liable, and any party who does not receive due notice is discharged as against him. Section 95 extends this duty along the chain. An endorser who receives notice from a later party, and who wants to recover from parties earlier in the chain, must pass the notice on to those prior parties within a reasonable time. Without notice, those prior parties cannot be made liable to him. The purpose is to warn each prior party promptly so that, in turn, they can protect their own rights against the parties before them. Two limits apply. First, a prior party who has already received due notice under s. 93, for instance directly from the holder, need not be notified again. Second, notice must be given within a "reasonable time", which s. 106 measures by the nature of the instrument and the usual course of dealing, excluding public holidays. Where the parties live or do business in different places, the notice must be dispatched by the next post or the day after the party receives notice. Where they are in the same place, it must be dispatched in time to reach the other party on the next business day. Section 98 lists situations in which no notice is required at all, for example where the party entitled to notice waives it. For example, A draws a bill on B payable to C. C endorses it to D, and D endorses it to E. On maturity, B dishonours the bill. E, the holder, gives notice of dishonour only to D. If D pays E and then wants to recover from C and A, D must give notice of dishonour to C and A within a reasonable time. If D does so, C and A remain liable to him. If D neglects to give notice and neither C nor A has received due notice from anyone else, they are discharged as against D, and D must bear the loss himself. If E had already sent notice to C and A as well, D would not need to send a fresh notice to them.

## 96. Agent for presentment

**An agent with whom an instrument is deposited for presentment shall give notice of dishonour to his principal within the time allowed to a holder, and the principal shall have a further equal period to give notice of dishonour to the parties liable.**

> When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder

> giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

Section 96 of the Negotiable Instruments Act, 1881 covers the case where the holder of an instrument does not present it himself but deposits it with an agent, usually a bank, to present it for acceptance or payment. If the instrument is dishonoured, the agent learns of it first, but it is the principal who must give notice of dishonour to the drawer and endorsers to keep them liable (ss. 93 and 95). The law therefore treats the agent and the principal as two separate stages in passing on the notice. The agent may take the same time to inform his principal as a holder would have to give notice of dishonour, which is a reasonable time under s. 106: it depends on the nature of the instrument and the usual course of dealing, and notice is normally sent by the next post or within the following day. Once informed, the principal gets a fresh period of the same length to give notice to the prior parties, so he loses no time because an agent was used. If each stage is completed in time, the drawer and endorsers remain liable and cannot claim discharge merely because notice reached them later than if the holder had presented the instrument himself. For example, P holds a bill drawn by D and endorsed to him by E, and deposits it with his bank for presentment. The bank presents it on 1 March and it is dishonoured. The bank may inform P within the period allowed to a holder, and P then has a further like period from receiving that notice to inform D and E. If P sends notice within that period, D and E remain liable to him. If either the bank or P delays beyond the time allowed, any party who did not receive due notice is discharged (s. 93).

## 97. When party to whom notice given is dead

**Notice of dishonour sent to a party who has died shall be valid if the sender did not know of the death.**

> When the party to whom notice of dishonour is dispatched is dead, but the party dispatching the notice is ignorant of his death, the notice is sufficient.

Section 97 of the Negotiable Instruments Act, 1881 protects the holder who sends notice of dishonour without knowing that the person it is addressed to has died. When a negotiable instrument is dishonoured, the holder must give notice of dishonour to the drawer and the indorsers in order to keep them

liable (s. 93). Notice not given in the required way discharges those parties. Section 94 allows notice to be sent by post, and s. 98 lists the cases where notice is not needed at all. Because the holder often cannot know at once that a party has died, s. 97 provides that notice properly dispatched to that party is sufficient, even though the addressee was already dead and could not receive it. The holder does not need to trace and notify the legal representatives separately, and the estate of the deceased stays liable. The protection depends on the sender's ignorance. If the sender knew of the death, a notice addressed to the dead person is not sufficient, and notice should go to the legal representative (s. 95 allows notice to be given to a duly authorised agent or, where the party is dead, to the legal representative). For example, A draws a bill on B in favour of C, and C indorses it to D. B dishonours the bill, and D posts notice of dishonour to C at C's usual address the same day. Unknown to D, C had died two days earlier. Under s. 97 the notice is sufficient, so C's estate remains liable on the bill and D can recover from C's legal representatives. But if D had already been told of C's death and still sent the notice in C's name, it would not be sufficient, and D would have had to notify C's legal representative to keep the estate liable.

## 98. When notice of dishonour is unnecessary

**Notice of dishonour need not be given where the party entitled to it has waived it, cannot suffer by its absence, or cannot with due diligence be reached.**

No notice of dishonour is necessary--

(a) when it is dispensed with by the party entitled thereto;

(b) in order to charge the drawer, when he has countermanded payment;

(c) when the party charged could not suffer damage for want of notice;

(d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;

(e) to charge the drawers, when the acceptor is also a drawer;

(f) in the case of a promissory note which is not negotiable;

(g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

Section 98 of the Negotiable Instruments Act, 1881 sets out seven cases in which a holder need not give notice of dishonour to hold a party liable on a dishonoured instrument. It is an exception to s. 93, which ordinarily requires the holder to give notice of dishonour to every party he seeks to charge, and under which a party not given notice is discharged. The purpose of notice is to tell prior parties, such as the drawer and indorsers, that the instrument has not been paid, so they can protect themselves against those liable to them. Section 98 excuses notice where that purpose is already served or cannot be achieved. First, under clause (a), no notice is needed where the party entitled to it waives it, either expressly (for instance, by writing "notice of dishonour waived" on the instrument) or by conduct, and either before or after dishonour. Second, under clause (b), no notice is needed to charge a drawer who has countermanded payment, because he caused the dishonour himself and already knows of it. Third, under clause (c), notice is excused where the party charged could not suffer damage from its absence, as where a drawer had no funds with the drawee and no reason to expect the instrument to be honoured. Fourth, under clause (d), notice is excused where the party entitled to it cannot be found after due search, or where the party bound to give it is unable to do so for any other reason that is not his fault. Fifth, under clause (e), no notice is needed to charge the drawers where the acceptor is also one of the drawers, since the person who failed to pay knows of the dishonour personally. Sixth, under clause (f), no notice is needed for a promissory note that is not negotiable, because it does not pass to subsequent parties whose position depends on being informed. Seventh, under clause (g), notice is excused where the party entitled to it, knowing the facts, unconditionally promises to pay the amount due, since that promise acts as a waiver. These exemptions concern only notice of dishonour as a condition of liability on the instrument. They do not remove the separate written demand notice that s. 138 requires before criminal proceedings can be brought over a dishonoured cheque. For example, P gives Q a cheque for ₹1 lakh and then instructs his bank to stop payment. Q presents the cheque and it is returned unpaid. Under clause (b), Q does not need to give P notice of dishonour to hold him liable on the cheque, because P caused the dishonour himself. Similarly, suppose R indorses a bill to S,

the bill is dishonoured, and before any notice is sent R writes to S: “I know the bill was not paid; I will pay you the amount.” Under clause (g), R cannot later claim discharge for want of notice. If, however, S had simply failed to inform R of the dishonour and none of the s. 98 exemptions applied, R would be discharged from liability.