CHAPTER IX – OF NOTING AND PROTEST

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## 99. Noting

**When a promissory note or bill of exchange is dishonoured, the holder may have the dishonour noted on the instrument by a notary public, within a reasonable time, recording the date of dishonour, the reason for it and the notary's charges.**

> When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.
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> Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Section 99 of the Negotiable Instruments Act, 1881 lets the holder of a dishonoured promissory note or bill of exchange keep an official, independent record of the dishonour. The dishonour may be by non-acceptance, where the drawee refuses to accept a bill, or by non-payment, where the maker or acceptor refuses to pay when the instrument falls due. Noting means that a notary public writes a short memorandum of the dishonour on the instrument itself, on a paper attached to it, or partly on each. The word "may" makes noting optional for inland instruments, and the holder does not need it in order to sue. Its value is as evidence: an impartial public officer records the facts of dishonour at the time they happen, which makes them hard to dispute later. The noting must be made within a reasonable time after dishonour. It must state the date of dishonour and the reason given for it. If the instrument was not expressly dishonoured, it must

instead state why the holder treats it as dishonoured, for example because the drawee could not be found at the address given. It must also state the notary's charges, which the holder can then recover from the parties liable. Noting is also the first step towards a formal protest under s. 100, which may be made on the basis of the noting, and for foreign bills a protest is compulsory where the law of the place of drawing requires it (s. 104). For example, A draws a bill of exchange for ₹1,00,000 on B, payable to C three months after date. On the due date B refuses to pay, citing insufficient funds. C takes the bill to a notary public, who presents it to B again, and when payment is still refused, the notary records on the bill the date of dishonour, the reason ("insufficient funds") and the noting charges of ₹500, all within a reasonable time. When C later sues A as drawer, this record is strong independent proof that the bill was presented and dishonoured on that date, and C can also recover the ₹500 noting charges as part of the amount due.

## 100. Protest

**The holder of a dishonoured promissory note or bill of exchange may have the dishonour noted and certified by a notary public within a reasonable time. Where the acceptor becomes insolvent or loses public credit before maturity, the holder may have better security demanded and any refusal certified.**

> When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.
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> Protest for better security.--When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Section 100 of the Negotiable Instruments Act, 1881 deals with protest, which is a formal, independent record by a notary public that an instrument has been dishonoured. Protest is done in two steps. First the notary notes the dishonour on the instrument or on a paper attached to it, recording the date,

the reason for dishonour and the notary's charges (s. 99). The notary then issues a certificate attesting the dishonour, and that certificate is called the protest (its contents are prescribed by s. 101). For inland instruments protest is optional, which is why the section says the holder "may" cause it. It is still valuable because in a suit on a protested instrument the court must presume dishonour unless it is disproved (s. 119). Foreign bills, however, must be protested where the law of the place of making or dishonour requires it (s. 104), and where protest is required, notice of protest replaces notice of dishonour (s. 102). The second part of the section provides for protest for better security. If the acceptor becomes insolvent, or his credit is publicly impeached, before the bill matures, the holder need not wait for the due date. He may have a notary demand better security from the acceptor and, if it is refused, have that refusal noted and certified. This gives the holder an authentic record of the acceptor's weakened position made at the time. For example, A draws a bill for ₹5 lakh on B, payable three months after date to C, and B accepts it. On maturity B refuses to pay. Within a reasonable time C has a notary present the bill to B again, and when B refuses, the notary notes and certifies the dishonour. If C later sues, the court will presume dishonour from the protest. If instead B had been declared insolvent a month before maturity, C could have had a notary demand better security from B, such as a guarantee, and on B's refusal obtained a certificate called a protest for better security.

## 101. Contents of protest

**A protest under section 100 shall record the instrument, the parties, the demand and the answer to it, the place and time of dishonour, the notary's signature, and any acceptance or payment for honour.**

A protest under section 100 must contain--

(a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;

(b) the name of the person for whom and against whom the instrument has been protested;

(c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of hi s answer, if any, or a statement that he gave no answer, or that he could not be found;

(d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;

(e) the subscription of the notary public making the protest;

(f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, were authorized by agreement or usage, by registered letter.

Section 101 of the Negotiable Instruments Act, 1881 lists what a protest must contain. A protest is the formal certificate a notary public draws up under s. 100 when a promissory note or bill of exchange is dishonoured by non-acceptance or non-payment. A notary also draws one up when the acceptor becomes insolvent or suspends payment and better security is then refused. Because the protest serves as official evidence of dishonour, it must be complete in itself. It must include the instrument itself or an exact copy of it, together with everything written or printed on it, such as endorsements and the acceptance, so the dishonoured instrument can be identified beyond doubt. It must name the person for whom the instrument is protested, usually the holder, and the person against whom it is protested, such as the drawee, acceptor or maker. It must state that the notary demanded payment, acceptance or better security, as the case may be. It must record the answer to that demand, or note that no answer was given or that the person could not be found. It must state where and when the instrument was dishonoured or better security was refused. It must bear the notary's signature, which makes it authentic. If a third person has accepted or paid the instrument for the honour of a party liable under ss. 108 to 114, the protest must also record who did so, for whom, and in what manner. The notary need not make the demand personally: it may be made through the notary's clerk, or by registered letter where an agreement or usage permits. These formalities matter because, under s. 119, once a protest is proved in a suit on a dishonoured instrument, the court presumes the instrument was dishonoured unless the defendant disproves it. For foreign bills, s. 104 requires a protest wherever the law of the place where the bill was drawn requires one. A defective protest may therefore lose its evidentiary value. For example, A,

in London, draws a bill of exchange on B, in Mumbai, payable to C. On the due date C presents the bill to B in Mumbai, and B refuses to pay. C takes the bill to N, a notary public. N's clerk demands payment again from B at B's office at 11 a.m. on 10 March 2026, and B replies that he has insufficient funds. N then prepares a protest containing a copy of the bill with all its endorsements and stating that it is protested for C against B. The protest also records the demand made through the clerk and B's reply, states the place and time of the refusal, and bears N's signature. If D, a friend of A, later pays the bill for A's honour, the protest must also record that D paid, that he paid for A, and how the payment was made. If C later sues A on the bill, C need only produce this protest, and the court will presume that the bill was dishonoured unless A proves otherwise.

## 102. Notice of protest

**Where the law requires a promissory note or bill of exchange to be protested, notice of the protest shall be given in place of notice of dishonour.**

> When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Section 102 of the Negotiable Instruments Act, 1881 applies only where protest is compulsory. Usually, when an instrument is dishonoured, the holder must give notice of dishonour to the prior parties he wants to hold liable, such as the drawer and endorsers (s. 93), and any party who gets no notice is discharged. For inland instruments, protest by a notary public is optional (s. 100). For foreign bills, however, protest is compulsory if the law of the place where they were drawn requires it (s. 104). In such cases s. 102 makes notice of protest replace notice of dishonour, and it is given in the same way and subject to the same conditions. It must go to the parties to be charged or their authorised agent (ss. 93 and 94). It may be oral or written and may be sent by post (s. 94). It must be given within a reasonable time (ss. 105 and 106), and it is excused in the cases listed in s. 98, such as where the party entitled to it has waived it. Failure has the same result as failure to give notice of dishonour: a party who should have received notice of protest and did not is discharged from liability. The section adds one convenience,

which is that the notary public who makes the protest may give the notice himself, so the holder does not have to. For example, a bill drawn in London by X on Y in Mumbai is endorsed by X to Z, and English law requires that it be protested on dishonour. When Y refuses to pay, Z has the bill protested by a notary public in Mumbai. To keep X liable, Z must send X notice of the protest within a reasonable time, because notice of dishonour alone will not do. The notary who made the protest may send this notice to X on Z's behalf. If no notice of protest reaches X and no s. 98 exception applies, X is discharged and Z can proceed only against Y.

## 103. Protest for non-payment after dishonour by non-acceptance

**A bill payable elsewhere than at the drawee's residence and dishonoured by non-acceptance may be protested for non-payment at the place of payment without being presented again, unless it is paid by maturity.**

> All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

Section 103 of the Negotiable Instruments Act, 1881 covers bills drawn on a drawee who lives in one place but made payable at another, such as a bank or office in a different city. When the drawee refuses to accept such a bill, it is dishonoured by non-acceptance (s. 91). Section 103 then relieves the holder of having to present the bill to the drawee again for payment. At maturity, the holder can have it protested for non-payment at the place named for payment. This spares the holder a pointless formality, since a drawee who has refused to accept the bill is unlikely to pay it. The provision is permissive: the holder "may" protest, so protest is not compulsory. Even so, the bill can still be paid before or at maturity, and if it is, no protest for non-payment can be made. A protest is a formal certificate of dishonour, prepared by a notary public, that records the dishonour and the details listed in s. 100. In India, protest is compulsory only for foreign bills when the law of the place where they were drawn requires it (s. 104), and for inland bills it serves mainly as formal proof of dishonour. For example, A, a trader in

Patna, draws a bill on B, who lives in Delhi, payable three months after date at a bank in Mumbai, and gives it to C. B refuses to accept the bill when C presents it in Delhi. C need not present it to B again for payment. If it is still unpaid at maturity, C can have a notary public in Mumbai protest it for non-payment and use that protest as proof of dishonour against A and the other parties liable. If B, or someone acting for B, had paid the bill at the Mumbai bank on or before the due date, C could not protest it.

## 104. Protest of foreign bills

**Foreign bills of exchange shall be protested for dishonour whenever the law of the place where they are drawn requires a protest.**

> Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

Section 104 of the Negotiable Instruments Act, 1881 covers foreign bills, meaning bills that are not inland instruments. Under s. 11, an instrument is inland if it is drawn or made in India and either payable in India or drawn on a person resident in India. Any instrument that does not meet that test is foreign (s. 12). For an inland bill, protest is optional. The holder may simply give notice of dishonour, and noting or protest is only a matter of evidence. For foreign bills, Indian law follows the law of the place where the bill was drawn. If that law makes protest compulsory, the holder must have the bill protested. A protest is a formal certificate issued by a notary public attesting to the dishonour by non-acceptance or non-payment (s. 100). It is usually preceded by noting, which is the notary's record of the dishonour on the instrument (s. 99). The rule exists because foreign bills cross jurisdictions, and a protest gives authentic proof of dishonour that courts and parties abroad will recognise. If the law of the place of drawing requires protest and the holder fails to obtain one, the holder risks losing the right to recover from the drawer and indorsers under that law. For example, a bill is drawn by X in London on Y, a merchant in Mumbai, and Y dishonours it by non-payment. This is a foreign bill because it was drawn outside India. If English law, as the law of the place of drawing, requires a foreign bill to be protested, the holder must have a notary in Mumbai note and protest the dishonour. Without that protest, the holder may be unable to enforce the bill against X or the indorsers. By contrast, if the bill had been drawn in Delhi

on a person in Mumbai, it would be an inland bill, and protest would not be compulsory.

## 104A. When noting equivalent to protest

**Where a bill or note must be protested within a specified time or before a further step is taken, noting it for protest within that time or before that step shall be sufficient, and the formal protest may be drawn up at any later time as of the date of the noting.**

> For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

Section 104A of the Negotiable Instruments Act, 1881 relaxes the time limit for protest. “Noting” and “protest” are two separate steps a notary public takes after a bill of exchange or promissory note is dishonoured. Noting (s. 99) is a brief record the notary makes on the instrument, or on a paper attached to it, within a reasonable time after dishonour. It states the date of dishonour, the reason for it (or that no reason was given) and the notary’s charges. Protest (s. 100) is the formal certificate the notary issues to attest the dishonour, and it contains the fuller particulars set out in s. 101. Under s. 104, a foreign bill must be protested for dishonour when the law of the place where it was drawn requires it, and a statute or contract may also require protest within a fixed time or before a step such as suing a prior party or making a payment for honour. Preparing a formal protest takes time, so s. 104A treats prompt noting as compliance with the time requirement. The holder must get the instrument noted within the specified period or before the further proceeding. Once that is done, the formal protest can be completed afterwards, and it takes effect as of the date of noting. A delay in drawing up the protest therefore does not cost the holder any rights, as long as the noting was made in time. For example, a bill of exchange drawn in a foreign country is payable in Mumbai. The law of the country where it was drawn requires it to be protested on the day of dishonour. The acceptor refuses payment on 10 March, and that same day the holder has a notary public note the dishonour on the bill. The notary is busy and prepares the formal protest certificate only on 18 March. Under s. 104A the protest is

still valid and is treated as made on 10 March, the date of noting, so the holder keeps his rights against the drawer and indorsers. If the holder had done nothing until 18 March and the bill had never been noted, the time requirement would not have been met.