CHAPTER VI – OF PAYMENTS AND INTEREST

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78. To whom payment should be made

Payment of the amount due on a promissory note, bill of exchange or cheque shall be made to the holder of the instrument to discharge the maker or acceptor.

> Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Section 78 of the Negotiable Instruments Act, 1881 decides who must receive payment so that the person liable on the instrument (the maker of a promissory note, or the acceptor of a bill of exchange) is discharged. That person is the holder. Under s. 8, the holder is the person entitled in his own name to possess the instrument and to receive or recover the amount due on it, such as the payee or an indorsee. Payment to anyone else, such as a person who merely has the instrument in hand but no title to it, does not discharge the maker or acceptor. They stay liable to the true holder and may have to pay twice. The provision is subject to one exception in s. 82(c). Where the instrument is payable to bearer, or has been indorsed in blank, and the maker, acceptor or drawee makes payment in due course, all parties are discharged even if the person paid was not the true holder. Under s. 10, payment in due course means payment made according to the apparent tenor of the instrument, in good faith and without negligence, to a person in possession of it, in circumstances that give no reasonable ground to believe he is not entitled to receive it. For example, A makes a promissory note for ₹50,000 payable to B “or order”. B indorses it specially to C, and C becomes the holder. If A pays the ₹50,000 to B, who no longer has any right to it, A is not discharged and remains liable to pay C. But suppose the note had been payable to bearer, or B had indorsed it in blank, and a thief stole it from C and presented it to A at maturity. If A pays the thief in good faith and without negligence, with nothing to suggest the thief was not entitled,

this is payment in due course under s. 82(c). A is discharged, and C's remedy lies against the thief, not A.

79. Interest when rate specified

Where a promissory note or bill of exchange expressly provides for interest at a specified rate, interest shall be paid at that rate on the principal from the date of the instrument until the amount is tendered or realised.

> When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the court directs.

Section 79 of the Negotiable Instruments Act, 1881 gives effect to the rate of interest the parties themselves agreed, so that when the instrument states a rate, the court applies that rate and not one of its own. Interest is calculated only on the principal money due, not on accrued interest, so it is simple interest unless the instrument provides otherwise. It runs from the date of the instrument, not from the due date or the date of demand. It stops when the debtor tenders the amount (makes an unconditional offer to pay it) or when the amount is realised. If the holder has to sue, interest at the specified rate runs only until the date after the filing of the suit that the court directs, so the court decides how long the contractual rate continues during litigation. Interest after that date is governed by Section 34 of the Code of Civil Procedure, 1908. The section applies only where a rate is expressly stated. Where the instrument names no rate, Section 80 applies instead and allows interest at 18% per annum from the date payment was due. For example, on 1 January 2024 A makes a promissory note in favour of B for ₹1,00,000, payable on 1 January 2025, with interest at 12% per annum. A fails to pay on the due date but tenders the full amount on 1 July 2025. A must pay interest at 12% from 1 January 2024, the date of the note, to 1 July 2025, which is ₹18,000 for one and a half years. If A had not paid and B had sued on 1 July 2025, the court could direct that the 12% rate run only until the date of the suit and award further interest under Section 34 CPC. If the note had said nothing about interest, Section 79 would not apply, and B would instead get 18% per annum under Section 80 from 1 January 2025.

80. Interest when no rate specified

Where no rate of interest is specified in the instrument, interest shall be paid at eighteen per cent per annum from the date the amount fell due until it is paid.

> When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.
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> Explanation.-- When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Section 80 of the Negotiable Instruments Act, 1881 fixes a statutory rate of interest where a promissory note, bill of exchange or cheque says nothing about interest. Where the instrument does specify a rate, s. 79 applies and that rate governs. Under s. 80, interest is charged at 18% per annum, a rate fixed by the 1988 amendment. Any side agreement between the parties about interest does not displace it, because the provision applies "notwithstanding any agreement relating to interest between any parties to the instrument". What matters is the rate written on the instrument itself, not an understanding outside it. Interest starts to run from the date on which the party charged ought to have paid. It stops when the amount is tendered or actually paid, or, once a suit has been filed, on the date after filing that the Court directs. The Explanation makes an exception for an indorser of an instrument dishonoured by non-payment. An indorser may not know of the dishonour, so his liability for interest starts only when he receives notice of it, not from the due date. For example, A makes a promissory note for ₹1,00,000 in favour of B, payable on 1 January 2025, and the note says nothing about interest. A fails to pay on that date and pays on 1 January 2026. A must pay interest at 18% per annum for that year, which comes to ₹18,000, even if A and B had orally agreed on a lower rate. If B had indorsed the note to C, and C informed B of A's non-payment on 1 March 2025, B would owe interest to C only from 1 March 2025, and not from 1 January 2025.

81. Delivery of instrument on payment or indemnity in case of loss

81.1 A person liable on a negotiable instrument shall pay only against its production and delivery, or, if it is lost, against an indemnity.

> (1) Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to hi m, or if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

Section 81(1) of the Negotiable Instruments Act, 1881 protects a party who is liable on a promissory note, bill of exchange or cheque, such as the maker, drawer, acceptor or an endorser, when the holder demands payment. It gives that party three rights. First, before paying, they can insist that the holder show the instrument. This lets them confirm that the instrument exists, that the person demanding payment is really its holder, and that the amount claimed is the amount due. Second, on paying, they can require the instrument to be handed over to them. Third, if the holder says the instrument is lost or cannot be produced for some other reason, they can refuse to pay unless the holder indemnifies them against any later claim on it. The reason for these rights is that a negotiable instrument passes from hand to hand by delivery or endorsement. If the payer settles the debt and the instrument stays in circulation, it could later reach a holder in due course (s. 9), who could enforce it again free of any defences (s. 53), and the payer would have to pay twice. Taking back the instrument, which is also evidence that it has been discharged, or getting an indemnity in its place, removes that risk. Section 45A deals with the same problem from the holder's side: a holder who loses a bill before it is overdue may ask the drawer for a duplicate but must give security against loss if the original turns up. For example, A gives B a promissory note for ₹1,00,000 payable on demand. B demands payment from A. Before paying, A may ask B to produce the note. When A pays, A may require B to hand the note back, so that it cannot later be endorsed to C, who might sue A on it as a holder in due course. If B says the note has been lost, A may refuse to pay until B gives a written indemnity, backed by surety if necessary, undertaking to make good any loss A suffers if the note is later presented by someone else.

If A pays without either taking back the note or obtaining an indemnity, A takes the risk of having to pay the same debt a second time.

81.2 Where a cheque is truncated, the banker who received payment shall be entitled to keep the truncated cheque even after payment.

> (2) Where the cheque is an electronic image of a truncated cheque, even after the payment the banker who received the payment shall be entitled to retain the truncated cheque.

Section 81(2) of the Negotiable Instruments Act, 1881 is an exception to the general rule in s. 81(1). Under that rule, a person holding a negotiable instrument must hand it over to the party paying it once payment is made in full, so that the payer has the instrument as proof of payment and it cannot be negotiated again. Section 81(2) was added by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 to support cheque truncation. Under Explanation II to s. 6, a "truncated cheque" is one that the clearing house or the bank truncates during the clearing cycle. The bank does this by making an electronic image of the cheque and sending that image for payment, so the paper cheque no longer has to travel physically. Since only the image goes to the paying bank, the physical cheque stays with the collecting bank. Section 81(2) therefore releases the banker who received the payment from the duty to deliver the cheque, and lets that banker lawfully keep it. Because the payer does not get the paper cheque back, s. 81(3) makes a certificate issued on a printout of the cheque's electronic image *prima facie* proof of payment. This certificate is issued by the drawee bank or by another bank or the clearing house. In India this system operates as the Reserve Bank of India's Cheque Truncation System (CTS). For example, A, who has an account with State Bank of India, gives a cheque for ₹25,000 to B. B deposits it in his account at HDFC Bank. HDFC Bank scans the cheque and sends only its electronic image through the CTS clearing house to SBI. SBI then pays the amount from A's account. Ordinarily, s. 81(1) would require the paid cheque to be delivered to the paying party. Because this cheque was truncated, s. 81(2) allows HDFC Bank, which received the payment, to keep the physical cheque. If A later needs to prove that he paid B, he can rely on a certificate printed on the cheque's image printout under s. 81(3) instead of the original paper cheque.

81.3 A certificate issued by the paying banker on the printout of the electronic image of a truncated cheque shall be prima facie proof of payment.

> (3) A certificate issued on the foot of the printout of the electronic image of a truncated cheque by the banker who paid the instrument, shall be prima facie proof of such payment.

Section 81(3) of the Negotiable Instruments Act, 1881 was added by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 to support cheque truncation. A truncated cheque is one whose physical movement is stopped during the clearing cycle: the clearing house or a bank captures an electronic image of it and sends the image instead of the paper cheque (Explanation I to s. 6). Normally, the paying banker keeps the paid cheque as its voucher and proof that it paid. Under truncation, however, the paying banker never receives the physical cheque, because the bank that collected the payment may retain it (s. 81(2)). Section 81(3) fills this gap. The paying banker can print the electronic image of the cheque and endorse a certificate on that printout, and the certified printout is then accepted as proof that the cheque was paid. The proof is only prima facie, which means it stands unless the opposing party proves otherwise, for example by showing that the image does not match the original cheque or that payment was in fact not made. In practice, this lets banks and courts rely on the certified printout instead of the original paper cheque, which matters in disputes over payment and in cheque-dishonour proceedings. For example, A issues a cheque for ₹1 lakh to B, and B deposits it with his bank, X Bank. X Bank truncates the cheque and sends only its electronic image through clearing to A's bank, Y Bank, which pays it. Later A denies that the amount was paid out of his account and demands the original cheque. Y Bank does not have the physical cheque, but it produces a printout of the cheque's electronic image with a certificate stating that it paid the cheque. Under s. 81(3), this certified printout is prima facie proof of payment, and the burden shifts to A to show, with evidence, that the payment did not take place or that the image is not of his cheque.