CHAPTER IV - OF NEGOTIATION

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46. Delivery

The making, acceptance or indorsement of a negotiable instrument shall be complete only upon its delivery.

The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation; delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Section 46 of the Negotiable Instruments Act, 1881 makes delivery the final act that completes the making, acceptance or indorsement of a promissory note, bill of exchange or cheque. Signing the instrument isn't enough. Until it is delivered, the signer's liability is incomplete and the instrument can still be withdrawn. Delivery means a voluntary transfer of possession. It may be actual, where the instrument is physically handed over, or constructive, where possession changes in law without a physical handover, as when the instrument is given to the payee's agent or the maker holds it on the payee's behalf. Between parties in immediate relation, such as drawer and payee or indorser and indorsee, delivery is effective only if it is made by the party who signed or by a person that party authorised. An instrument that is stolen or taken without authority has therefore not been validly delivered, and the signer isn't bound to that party. The section also allows delivery to be conditional or for a special purpose only, and not meant to transfer the instrument outright. The signer may prove such a condition against the immediate party and against any holder other than a holder in due course. A holder in due course (s. 9) takes the instrument for value, in good faith and without notice of any defect, so this defence can't be raised against them. Finally, the section states how instruments are negotiated: one payable to bearer passes by delivery alone, while one payable to order passes only by the holder's indorsement followed by delivery (ss. 47 and 48). For example, A writes and signs a cheque for ₹50,000 in favour of B but leaves it in his desk drawer. No cheque has yet been made in law, because it hasn't been delivered, and if C steals it and gives it to B, B can't enforce it against A. Now suppose A hands the cheque to B on the condition that B may present it only after supplying certain goods, and B presents it without supplying them. If B sues on the cheque, A may prove the condition and refuse payment. But if B had first indorsed and delivered the cheque to D, who paid value in good faith without knowing of the condition, D would be a holder in due course, and A couldn't rely on the conditional delivery against D. Similarly, if the cheque were made out to "B or bearer", B could transfer it simply by handing it over, but if it were made out to "B or order", B would have to indorse it and then deliver it.

47. Negotiation by delivery

A promissory note, bill of exchange or cheque payable to bearer shall be negotiated by delivery alone.

> Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.
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> Exception.--A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens:
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> *Illustrations*
>
> (a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.
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> (b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Section 47 of the Negotiable Instruments Act, 1881 deals with bearer instruments, which are payable to whoever holds them. Such an instrument is negotiated just by handing it over to the transferee with the intention of passing title. No endorsement or signature is needed. Delivery may be actual, where the instrument is physically handed to the transferee, or constructive, where the instrument goes to someone who holds it on the transferee's behalf, such as an agent or a banker (Illustrations (a) and (b)). Section 14 says an instrument is negotiated when it is transferred so as to make the transferee its holder, so on delivery the transferee becomes the holder and can sue on it in their own name. The section has two limits. First, it is subject to s. 58: a person who obtains the instrument through an offence or fraud, or for an unlawful consideration, gets no right to recover on it, nor does anyone claiming through that person, unless they are or claim through a holder in due course. Second, under the Exception, where an instrument is delivered on condition that it is not to take effect until a certain event happens, it is not negotiated until that event happens. The only exception is a holder for value who took it without notice of the condition. For example, A holds a cheque for ₹20,000 payable "to bearer" and hands it to B in payment of a debt. B becomes the holder at once, without any endorsement by A, and can present it for payment. If A had instead given the cheque to

C, B's clerk, to keep for B, the cheque would still have been negotiated to B through constructive delivery. Now suppose A gives the cheque to B on the condition that it is to operate only if B delivers certain goods by Friday, and B never delivers. The cheque has not been negotiated, and B cannot enforce it against A. However, if B passes it to D, who pays value and knows nothing of the condition, D may enforce it. Similarly, if a thief steals a bearer cheque and passes it on, the thief gets no title because of s. 58. A later holder in due course, who took it in good faith and for value, may still recover on it.

48. Negotiation by indorsement

An instrument payable to order shall be negotiated by indorsement and delivery.

> Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

Section 48 of the Negotiable Instruments Act, 1881 sets out how promissory notes, bills of exchange and cheques payable to order are transferred. An instrument is payable to order when it is expressed to be payable to a particular person or to their order, such as "Pay A or order" (s. 13). Only the holder can negotiate it. The holder is the person entitled in their own name to possess the instrument and to recover the amount due on it (s. 8). Two acts are needed. The first is indorsement: the holder signs the instrument, usually on the back, for the purpose of negotiation (s. 15). The second is delivery: the indorsed instrument is handed over to the transferee, and the indorsement is not complete until it is delivered (s. 46). Neither act works alone. An indorsed instrument that stays with the holder has not been negotiated. An order instrument handed over without indorsement passes possession, but the transferee does not become a holder entitled to sue in their own name. Once both acts are done, the indorsee becomes the holder and can negotiate the instrument again or recover the amount due. The rule is different for bearer instruments, which are negotiated by delivery alone (s. 47). It is also subject to s. 58: a person who takes through someone who found the instrument, or who obtained it by an offence, fraud or for unlawful consideration, gets no right to the amount unless they or someone they claim through is a holder in due course. For example, X issues a

cheque “Pay Y or order ₹50,000”. To transfer it to Z, Y must sign on the back, either “Pay Z or order” followed by his signature (a special indorsement) or just his signature (a blank indorsement), and then hand the cheque to Z. Z then becomes the holder and can present it for payment or indorse it to someone else. If Y signs the cheque but keeps it in his drawer, it has not been negotiated, because there was no delivery. If Y hands it to Z without signing it, Z has possession but is not a holder who can claim payment in his own name, because there was no indorsement.

49. Conversion of indorsement in blank into indorsement in full

The holder of an instrument indorsed in blank may convert it into an indorsement in full by writing a direction to pay a named indorsee above the indorser’s signature, without becoming liable as an indorser.

> The holder of a negotiable instrument indorsed in blanks may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Section 49 of the Negotiable Instruments Act, 1881 deals with an indorsement in blank, which is one where the indorser signs only their name and does not name an indorsee (s. 16(1)). Such an instrument becomes payable to bearer (s. 54) and can pass from hand to hand by mere delivery, so anyone who finds or steals it may be able to deal with it. To guard against this, s. 49 lets the holder turn the blank indorsement into an indorsement in full, which names the person to whom, or to whose order, the instrument is payable. The holder does this simply by writing words such as “Pay to X or order” above the existing signature of the indorser. The holder does not sign the instrument, so they do not become a party to it and take on none of an indorser’s liability to later holders under s. 35. The instrument is then payable only to the named indorsee or to their order, and can be negotiated further only by that person’s indorsement and delivery. For example, A holds a bill of exchange payable to A’s order and indorses it in blank by simply signing “A” on the back, then delivers it to B. B wants to send it to C by post safely, so B writes “Pay to C or order” above A’s signature and posts it. The indorsement is now in full in favour of C. If the bill is lost in

transit, a finder cannot negotiate it without C's indorsement. Since B never signed the bill, B is not liable on it if it is dishonoured, and C must look to A and the other prior parties for payment.

50. Effect of indorsement

An indorsement followed by delivery shall transfer to the indorsee the property in the negotiable instrument, together with the right to negotiate it further.

> The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.
>
> *Illustrations*
>
> B signs the following indorsements on different negotiable instruments payable to bearer:--
>
> (a) "Pay the contents to C only."
>
> (b) "Pay C for my use."
>
> (c) "Pay C or order for the account of B."
>
> (d) "The within must be credited to C."
>
> These indorsements exclude the right of further negotiation by C.
>
> (e) "Pay C."
>
> (f) "Pay C value in account with the Oriental Bank."
>
> (g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."
>
> These indorsements do not exclude the right of further negotiation by C.

Section 50 of the Negotiable Instruments Act, 1881 states the effect of an indorsement. When the holder signs the instrument (s. 15) and delivers it to the indorsee, the indorsee becomes owner of the instrument and of the money due on it, and may transfer it onward by further indorsement or delivery. This is the ordinary rule, and it keeps negotiable instruments freely transferable. The indorser may, however, change this effect with express words, which is called a restrictive indorsement. Such words may restrict or

exclude the right of further negotiation, as in “Pay the contents to C only”. They may instead make the indorsee merely an agent to indorse the instrument, or to receive its amount for the indorser or for a named person, as in “Pay C for my use” or “Pay C or order for the account of B”. In these agency cases the indorsee gets no property of his own and acts only on behalf of another. A restriction is never presumed and must appear plainly from the words. Merely naming the indorsee (“Pay C”) does not exclude further negotiation. Nor does stating where the value is to be credited (“Pay C value in account with the Oriental Bank”) or the reason the instrument is given (“being part of the consideration in a certain deed of assignment”), since such words only identify the indorsee or record the transaction. For example, A holds a bill of exchange for ₹1 lakh, writes “Pay B” on it and hands it to B. B becomes owner and may indorse it to D in payment of his own debt, and D can enforce it. Had A written “Pay B only”, B could collect the money but could not validly transfer the bill to D. Had A written “Pay B for my account”, B would be only A’s agent to collect the amount, would hold no ownership in the bill, and would have to account to A for what he received.

51. Who may negotiate

Every maker, drawer, payee or indorsee of a negotiable instrument may indorse and negotiate it, and where there are several of them, all must join.

> Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.
>
> Explanation.--Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.
>
> *Illustration*
>
> A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Section 51 of the Negotiable Instruments Act, 1881 says who has the right to negotiate an instrument, meaning transfer it so that the transferee becomes its holder (s. 14). The right belongs to the maker, drawer, payee or indorsee. Where the instrument stands in the name of two or more persons jointly, one of them alone cannot negotiate it, and all of them must indorse. The right is subject to two limits. First, the instrument's negotiability must not have been restricted or excluded under s. 50, for instance by a restrictive indorsement such as "Pay C only". Second, under the Explanation, a maker or drawer may negotiate only if he is in lawful possession of the instrument or is its holder, and a payee or indorsee may negotiate only if he is its holder, that is, entitled in his own name to possess it and to receive the amount due (s. 8). So a person who has stolen or found the instrument cannot validly negotiate it, even if his name appears on it. The Illustration adds that an indorsement does not restrict negotiability merely because it leaves out the words "or order"; an instrument payable to order remains negotiable in the indorsee's hands unless the indorsement expressly restricts it. For example, X draws a cheque "Pay Y or order". Y indorses it simply "Pay Z" and hands it to Z. Even though the words "or order" are missing, Z is the holder and may indorse and deliver the cheque to W. If Y had written "Pay Z only", the cheque's negotiability would have been restricted under s. 50, and Z could not negotiate it further. Likewise, if the cheque had been payable to Y and Z jointly, both would have had to sign the indorsement, and if a thief stole the cheque from Z, the thief could not negotiate it because he is not its holder.

52. Indorser who excludes his own liability or makes it conditional

An indorser may, by express words, exclude his own liability or make it conditional; if such an indorser later becomes the holder, all intermediate indorsers shall be liable to him.

> The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.
>
> Where an indorser so excludes his liability and afterwards becomes the holder of the instrument all intermediate indorsers are liable to him.

Illustrations

(a) The indorser of a negotiable instrument signs his name, adding the words--"Without recourse".

Upon this indorsement he incurs no liability.

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse", he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

Section 52 of the Negotiable Instruments Act, 1881 is an exception to the ordinary rule in s. 35. Under s. 35, unless there is a contract to the contrary, an indorser is liable to every later holder if the instrument is dishonoured. Section 52 lets the indorser make that contract to the contrary in the indorsement itself, in two ways. First, he may exclude his liability altogether by adding words such as “without recourse” or “sans recours”. He then passes title to the instrument but does not promise to pay if it is dishonoured. Second, he may make his liability, or the indorsee’s right to receive payment, depend on a specified event, such as “pay C or order on the arrival of ship X”. This applies even though the event may never happen, and if it doesn’t, no liability arises. Either way, the words must be express and written in the indorsement. They affect only that indorser’s own liability. The instrument stays negotiable, and the other parties remain liable as before. The second paragraph of s. 52 deals with an indorser who excluded his liability and later gets the instrument back. Normally, a prior indorser who reacquires an instrument cannot sue the intermediate indorsers, because they could in turn sue him: the claim would go round in a circle (circuity of action). Here the original indorser owes them nothing, since he excluded his liability, so there is no circle. He regains his original rights and also gets the rights of an indorsee against every intermediate indorser. For example, A, the payee and holder of a bill of exchange for ₹1 lakh, indorses it to B with the words “without recourse”. B indorses it to C, and C indorses it back to A. If the bill is dishonoured on presentment, A can sue both B and C as their indorsee. Neither B nor C can sue A, because A excluded his liability. If A had indorsed it in the ordinary way, with no such words, he could not sue B or C, since he would be liable to them in turn. In the same way, if D indorses a cheque to E “on E’s passing the LL.B.

examination", D is liable to E or any later holder only if E passes. If E never passes, D incurs no liability.

53. Holder deriving title from holder in due course

A holder who derives title from a holder in due course shall have all the rights of that holder in due course.

> A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Section 53 of the Negotiable Instruments Act, 1881 is often called the "shelter rule." A holder in due course is a person who, for consideration and in good faith, became the possessor of a negotiable instrument before it became payable, without sufficient cause to believe that the title of the person from whom he got it was defective (s. 9). Such a holder takes the instrument free from defects in the title of earlier parties. Section 53 extends that protection to anyone who later takes the instrument from such a holder, even if this later holder does not meet the conditions of s. 9 himself. For example, he may have paid nothing for it, received it after maturity, or known about an earlier defect. The reason is that the holder in due course has a perfect title, and he should be free to transfer it. If his transferee could not enforce the instrument, the holder in due course could not deal with it fully and the instrument would lose its negotiability. Section 58 reflects the same rule: where an instrument was obtained by fraud, theft or for an unlawful consideration, the holder cannot recover on it unless he, or some person through whom he claims, was a holder in due course. Courts and commentators, drawing on the corresponding English rule (s. 29(3), Bills of Exchange Act, 1882), add one limit. A holder who was himself a party to the fraud or illegality affecting the instrument cannot shelter behind a later holder in due course. For example, B fraudulently induces A to make a promissory note for ₹1,00,000 payable to B. B endorses it to C, who pays full value in good faith and knows nothing of the fraud, so C is a holder in due course. C then gives the note as a gift to D, who has heard about B's fraud. D is not a holder in due course on his own, because he gave no consideration and had notice of the defect. But under s. 53, D derives title from C, so he has C's rights and can recover ₹1,00,000 from A. A cannot raise B's fraud as a defence against D. If the note had instead come back

into B's hands from C, B could not use s. 53, because he was the party to the fraud.

54. Instrument indorsed in blank

A negotiable instrument indorsed in blank shall be payable to its bearer, even if it was originally payable to order.

> Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Section 54 of the Negotiable Instruments Act, 1881 deals with the effect of an indorsement in blank. Under s. 16, an indorsement is "in blank" when the indorser signs only his name and does not name the person to whom, or to whose order, the instrument is to be paid. An instrument payable to order, such as a cheque drawn "Pay X or order", can usually be transferred only by indorsement and delivery, and the drawee pays only the named payee or the person to whom it has been properly indorsed. Section 54 provides that once the payee signs his name on the back without naming an indorsee, the instrument becomes payable to bearer. From then on, anyone who holds it can claim payment, and it can be passed on by delivery alone, without any further indorsement (s. 47). This makes the instrument easier to circulate, but it also carries risk: if it is lost or stolen, a finder or thief could obtain payment. To guard against this, s. 49 lets the holder turn a blank indorsement into a full one by writing above the indorser's signature a direction to pay himself or another named person. The effect of s. 54 is subject to the rules on crossed cheques (ss. 123 to 131). A crossed cheque is paid only to a banker (s. 126), so a crossed cheque indorsed in blank still cannot be cashed over the counter by whoever holds it; it must be collected through a bank account. For example, A draws a cheque "Pay B or order ₹10,000". B signs only "B" on the back and hands it to C. The cheque is now payable to bearer, so C can collect the money from the bank or simply give the cheque to D, who can also claim payment without any indorsement by C. If B loses the cheque after signing it and E finds it, the bank may pay E in due course. To avoid this, C could write above B's signature "Pay C or order", which converts the blank indorsement into a full one under s. 49, so that only C or C's indorsee can then receive payment. If the cheque had

been crossed, however, neither C, D nor E could be paid in cash at the counter, and the amount would be paid only through a banker.

55. Conversion of indorsement in blank into indorsement in full

A person who indorses in full a negotiable instrument that was earlier indorsed in blank shall be liable only to the indorsee named by him, or to a person who derives title through that indorsee.

> If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Section 55 of the Negotiable Instruments Act, 1881 deals with an instrument that is first indorsed in blank and later indorsed in full. An indorsement in blank is only the indorser's signature, without naming anyone to receive payment. It makes the instrument payable to bearer, so it can then be negotiated by delivery alone (ss. 16 and 54). An indorsement in full, also called a special indorsement, names the person to whom or to whose order the amount is to be paid. When a later holder indorses in full, s. 55 protects that full indorser: the named indorsee, or someone who takes title from that indorsee (for example, by the indorsee's own indorsement), can hold him liable on his indorsement. A person who comes into possession of the instrument in any other way cannot. This rule differs from s. 49, under which a holder may convert a blank indorsement into a full one by writing a direction above the blank indorser's signature without signing anything himself. Under s. 55 the holder signs a new indorsement in full of his own. As commentators on the Act generally read it, s. 55 protects only the full indorser and does not wipe out the bearer character that the earlier blank indorsement gave the instrument as regards the parties before it. For example, P, the payee of a bill of exchange, signs his name on the back and delivers it to Q. Because this is an indorsement in blank, the bill becomes payable to bearer. Q then writes "Pay R or order" above his own signature and delivers the bill to R. This is an indorsement in full. R loses the bill, and S gets hold of it without any indorsement by R. S cannot claim the amount from Q, because Q's indorsement was in full in favour of R and S does not

take title through R. R, however, can claim from Q. So can T, if R indorses the bill to T, because T derives title through R.

56. Endorsment for part of sum due

A negotiable instrument shall not be negotiated for only part of the amount due on it. Where part of that amount has been paid, the payment may be noted on the instrument and the instrument negotiated for the balance.

> No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Section 56 of the Negotiable Instruments Act, 1881 treats a negotiable instrument as one indivisible obligation, which can only be negotiated whole. An indorsement that tries to transfer only part of the amount, such as "Pay B ₹40,000" on a note for ₹1,00,000, is invalid for the purpose of negotiation. The transferee does not become the holder (s. 8) or a holder in due course (s. 9), and cannot sue on the instrument in their own name. There are two reasons for this. First, the maker or acceptor promised to pay one sum to one holder, and splitting the instrument would expose them to several holders and several suits on a single promise. Second, the instrument can only be in one person's possession, so it cannot be held by two indorsees at once. The provision makes one exception, for an amount that has genuinely been reduced by part payment. In that case a note of the payment may be indorsed on the instrument, and it may then be negotiated for the balance. This is not a partial transfer, because the whole of what remains due passes to the indorsee, and the note on the instrument warns later holders that only the balance can be claimed. For example, C makes a promissory note for ₹1,00,000 payable to A or order. If A indorses it "Pay B or order ₹60,000" and keeps the right to the other ₹40,000, the indorsement is invalid as a negotiation, and B cannot enforce the note as holder. But suppose C has already paid A ₹40,000. A may then write on the note "Received ₹40,000 on 10.01.2026 – A" and indorse it to B. That is a valid negotiation, and B becomes holder of the note for the balance of ₹60,000 and can recover that amount from C.

57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased

The legal representative of a deceased holder shall not negotiate, by delivery alone, an order instrument that the deceased indorsed but did not deliver.

> The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Under Section 57 of the Negotiable Instruments Act, 1881, a promissory note, bill of exchange or cheque payable to order is negotiated by indorsement followed by delivery (ss. 14 and 48). An indorsement has no effect until the instrument is delivered: s. 46 provides that the making, acceptance or indorsement of an instrument is completed by delivery. So when a holder signs an indorsement and dies before handing the instrument over, the indorsement is left incomplete and no title passes to the intended indorsee. The instrument then forms part of the deceased's estate. A blank indorsement would normally make an order instrument transferable by delivery like a bearer instrument (s. 54). Section 57 prevents the legal representative (executor, administrator or heir) from relying on such an undelivered indorsement and simply handing the instrument over to complete the deceased's transfer. To negotiate it, the legal representative must indorse it again in their own capacity as legal representative and then deliver it. The rule protects the estate and the parties liable on the instrument, because the deceased's unfinished act cannot be finished by someone else. For example, A holds a cheque payable to "A or order". He signs his name on the back, meaning to give it to B, but dies before handing it over. A's son C, who is his legal representative, finds the cheque and gives it to B. B gets no title to the cheque, because A's indorsement was never completed by delivery and C cannot complete it by delivery alone. For B to become the holder, C must indorse the cheque himself as A's legal representative and then deliver it to B.

58. Instrument obtained by unlawful means or for unlawful consideration

No person claiming through a finder, or through one who obtained a negotiable instrument by an offence, fraud or unlawful consideration, shall recover its amount from the maker, acceptor, holder or any prior party, unless he or someone through whom he claims is a holder in due course.

> When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Section 58 of the Negotiable Instruments Act, 1881 deals with instruments whose title is defective in one of three ways: the instrument was lost and then found by someone, or it was obtained from its maker, acceptor or holder by an offence or fraud (such as theft, cheating or coercion), or it was obtained for an unlawful consideration (such as a bribe, or payment for an act forbidden by law under s. 23 of the Indian Contract Act, 1872). The finder or wrongdoer has no right to be paid on the instrument, and anyone who takes it from that person, directly or through later transfers, gets no better right. None of them can recover from the person who lost the instrument or was defrauded, or from any party liable before that person. The exception is a holder in due course, that is, someone who took the instrument for consideration, before it became payable, and without sufficient cause to believe that the transferor's title was defective (s. 9). A holder in due course takes the instrument free of these defects and can enforce it. Under s. 53, anyone who later takes the instrument from a holder in due course gets the same protection, provided they were not themselves a party to the fraud or illegality. Courts ordinarily presume every holder to be a holder in due course (s. 118(g)), but that presumption does not apply once the instrument is shown to have been lost or obtained by an offence, fraud or unlawful consideration, and the holder must then prove that he is one. For example, A gives B a cheque payable to bearer, and C steals it from B. If C gives the cheque to D as a gift, D cannot recover the amount from A or B, because D claims through a thief and gave nothing for it. But if C had sold the cheque for its full value, before it became due, to E, who had no reason to suspect the theft, E would be a holder in due course and could enforce the

cheque against A. If E then gave the cheque to F as a gift, F could also recover, because F claims through E, a holder in due course (s. 53).

59. Instrument acquired after dishonour or when overdue

A person who acquires a negotiable instrument after maturity, or after its dishonour with notice of the dishonour, takes it with no better rights than those of his transferor.

> The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor.
>
> Accommodation note or bill.--Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.
>
> *Illustration*
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> The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

Section 59 of the Negotiable Instruments Act, 1881 deals with an instrument that is transferred after it has run its normal course. A holder in due course must obtain the instrument before it falls due and without reason to believe there is any defect in the transferor’s title (s. 9). Section 59 covers people who fail that test, and there are two cases. The first is a person who takes the instrument after maturity, whether or not he knows of any defect. The second is a person who takes it after it has been dishonoured, by non-acceptance or non-payment, and who knows of the dishonour. An overdue or dishonoured instrument that is still circulating is itself a warning that something may be wrong. Such a person therefore does not get the special protection of a holder in due course. He steps into his transferor’s position and is open to every defence and defect that could have been raised against the transferor, such as fraud, illegality, absence of consideration, or a set-off or security already given. In short, he takes the instrument subject to the

equities. The proviso makes an exception for accommodation instruments, meaning notes or bills that are made, drawn or accepted without consideration to help some party raise money on them. A person who takes such an instrument after maturity can still recover from any prior party, provided he takes it in good faith and for consideration. The accommodating party lent his name so that the instrument could be used to raise money. He cannot later refuse to pay a genuine holder for value just because he himself received no consideration, or because the instrument was transferred late. The illustration shows the general rule at work. The acceptor gave the drawer goods as security for the bill. After maturity the drawer sold the goods and kept the proceeds, then indorsed the bill to A. The acceptor could have set those proceeds up against the drawer, and since A took the bill after it was overdue, he can be met with the same defence. For example, X signs a promissory note for ₹1 lakh in favour of Y, payable on 1 March, and Y obtains it by fraud. On 15 March, after the note has matured, Y indorses it to Z for value. When Z sues X, X can plead Y's fraud against Z, because Z took the note after maturity and has only Y's rights. If Z had taken it on 15 February, before maturity and without knowledge of the fraud, he would be a holder in due course and X's defence would fail. Now take a different case: P accepts a bill drawn by Q without receiving anything, purely so that Q can raise a loan. After maturity Q negotiates it to R, who pays value in good faith. Under the proviso R can recover the amount from P, and P cannot plead that he received no consideration.

60. Instrument negotiable till payment or satisfaction

A negotiable instrument shall remain negotiable until the maker, drawee or acceptor pays or satisfies it at or after maturity.

> A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or, satisfaction.

Section 60 of the Negotiable Instruments Act, 1881 says how long an instrument can keep passing from hand to hand. It does not stop being negotiable when it falls due (its maturity, s. 22). A holder may still negotiate it after the due date, as long as it has not been paid or otherwise discharged. Negotiability ends only when the party primarily liable (the maker of a note,

the drawee of a cheque, or the acceptor of a bill) pays or satisfies the instrument at or after maturity. That payment discharges the instrument, so nothing is left to transfer. Payment by another party, such as an indorser, does not have this effect. Nor does payment by the maker before maturity, because that is not payment in due course (s. 10). The section has one exception: once the instrument has matured, the maker, drawee or acceptor cannot negotiate it, even if it comes back into their hands. They are the ones ultimately bound to pay, so an overdue instrument in their hands is effectively discharged and should not go back into circulation. Negotiating an instrument after maturity is valid, but it has limits. A transferee who takes an overdue instrument cannot be a holder in due course, because s. 9 requires the instrument to be acquired before it becomes payable. Such a transferee also takes it subject to any defects in the transferor's title (s. 59). For example, A makes a promissory note for ₹1 lakh payable to B on 1 March. A does not pay on the due date, and on 15 March B indorses and delivers the note to C. The negotiation is valid because the note had not been paid or satisfied, so C becomes the holder and can sue A. However, C is not a holder in due course: if A has a defence against B, such as failure of consideration, A can also raise it against C. If A had paid B on 1 March and taken the note back, the note would have been discharged and could not be negotiated further. Even if A had obtained the unpaid note after 1 March in some other way, A could not negotiate it to anyone.