

### Question 1

X, a major, and M, a minor, executed a promissory note in favour of P. Examine with reference to the provisions of the Negotiable Instruments Act, the validity of the promissory note and whether it is binding on X and M. (May 2000)

#### Answer

**Minor being a party to negotiable instrument:** Every person competent to contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a promissory note, bill of exchange or cheque (Section 26, para 1, Negotiable Instrument Act, 1881).

As a minor's agreement is void, he cannot bind himself by becoming a party to a negotiable instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself (Section 26, para 2).

In view of the provisions of Section 26 explained above, the promissory note executed by X and M is valid even though a minor is a party to it. M, being a minor is not liable; but his immunity from liability does not absolve the other joint promisor, namely X from liability [*Sulochana v. Pandiyan Bank Ltd.*, AIR (1975) Mad. 70].

### Question 2

Explain the essential elements of a Promissory note. State, giving reasons, whether the following instruments are valid Promissory notes:

(i) X promises to pay Y, by a Promissory note, a sum of Rs. 5,000, fifteen days after the death of B.

(ii) X promises to pay Y, by a Promissory note, Rs. 5000 and all other sums, which shall be due. (November, 2000)

#### Answer

##### Essential Elements of a Promissory Note:

1. must be in writing.
2. *Promise to pay:* The instrument must contain an express promise to pay.
3. *Definite and unconditional:* The promise to pay must be definite and unconditional. If it is uncertain or conditional, the instrument is invalid.
4. *Signed by the maker:* The instrument must be signed by the maker, otherwise it is incomplete and of no effect. Even if it is written by the maker himself and his name appears in the body of the instrument, his signature must be there. An agent of a trading firm can sign a promissory note on behalf of the firm- (*Meenakshi v. Chettiar*).
5. *Certain parties:* The instrument must point out with certainty as to who the maker is and who the payee is. When the maker and the payee cannot be identified with certainty from the instrument itself, the instrument, even if it contains an unconditional promise to pay, is not a promissory note.
6. *Certain sum of money:* The sum payable must be certain and must not be capable of contingent additions or subtractions,
7. *Promise to pay money only:* The payment must be in the legal tender money of India.

**Answer to Problem:** In the case number 1, the payment to be made is fifteen days after the death of B. Though the date of death is uncertain, it is certain that B shall die. Therefore the instrument is valid.

In the second case- the sum payable is not certain within the meaning of Section 4 of the Negotiable Instruments Act, 1881- Hence the Promissory Note is not a valid one.

### Question 3

Mr. Clever obtains fraudulently from J a cheque crossed 'Not Negotiable'<sup>1</sup>. He later transfers the cheque to D, who gets the cheque encashed from ABC Bank, which is not the Drawee Bank. J, on coming to know about the fraudulent act of Clever, sues ABC Bank for the recovery of money. Examine with reference to the relevant provisions of the Negotiable Instruments Act, 1881, whether J will be successful in his claim. Would your answer be still the same in case Clever does not transfer the cheque and gets the cheque encashed from ABC Bank himself? (November 2000)

#### Answer

According to Section 130 of the Negotiable Instrument Act, 1881 a person taking cheque crossed generally or specially bearing in either case the words 'Not Negotiable' shall not have or shall not be able to give a better title to the cheque than the title the person from who he took had. In consequence, if the title of the transferee is defective, the title of the transferee would be vitiated by the defect.

Thus based on the above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title, but if the transferor has a defective title, the transferee is affected by such defects, and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value. As Mr. Cleaver in the case in question had obtained the cheque fraudulently, he had no title to it and could not give to the bank any title to the cheque or money; and the bank would be liable for the amount of the cheque for encashment. (Great Western Railway Co. v. London and Country Banking Co.)

The answer in the second case would not change and shall remain the same for the reasons given above.

Thus J in both the cases shall be successful in his claim from ABC bank.

#### **Question 4**

*X by inducing Y obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the bill as a Holder-in-due-course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity the bill is dishonoured. X sues Y for the recovery of the money.*

*With reference to the provisions of the Negotiable Instruments Act, decide whether X will succeed in the case ? (May 2001)*

#### **Answer**

The problem stated in the question is based on the provisions of the Negotiable Instruments Act as contained in Section 53. The section provides: 'Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. Thus any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud. (Section 53).

Thus applying the above provisions it is quite clear that X who originally induced Y in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as X himself was a party to the fraud.

#### **Question 5**

*What is a 'Sans Recours' indorsement? A bill of exchange is drawn payable to X or order. X indorses it to Y, Y to Z, Z to A.A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, Z, A and B, if he has originally indorsed the bill to Y by adding the words 'Sans Recours. (November 2001)*

#### **Answer**

**Meaning of Sans Recours Endorsement:** It is a type of endorsement on a Negotiable Instrument by which the endorser absolves himself or declines to accept any liability on the instrument of any subsequent party. The endorser signs the endorsement putting his-signature along with the words, SANS RECOURS.

In the problem X, the endorser becomes the holder after it is negotiated to several parties. Normally, in such a case, none of the intermediate parties is liable to X. Tills is to prevent 'circuitry of action'. But in this case X's original endorsement is 'without recourse' and therefore, he is not liable co Y, Z, A and B. But the bill is negotiated back to X, all of them are liable to him and he can recover the amount from all or any of them (Section 52 para 2).

#### **Question 6**

*Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following Promissory Notes:*

- (i) I owe you a sum of Rs.1,000. 'A' tells 'B'.
- (ii) 'X' promise4s to pay 'Y' a sum of Rs.10,000, six months after 'Y's marriage with 'Z'

(Nov. 2002).

#### **Answer**

##### **Promissory Note**

A Promissory Note is an instrument in writing containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of certain person, or the bearer of the Instrument. (Section 4, The Negotiable Instruments Act, 1881).

**Essential elements:**

1. It must be in writing.
2. *Promise to pay*: The instrument must contain an express promise to pay.
3. *Definite and unconditional*: The promise to pay must be definite and unconditional. If it is uncertain or conditional, the instrument is invalid.
  - a. *Signed by the maker*: The instrument must be signed by the maker, otherwise it is incomplete and of no effect. Even if it is written by the maker himself and his name appears in the body of the instrument, his signatures must be there. An agent of a trading firm can sign a promissory note on behalf of the firm.
  - b. *Certain parties*: The instrument must point out with certainty as to who the maker is and who the payee is. When the maker and the payee cannot be identified with certainty from the instrument itself, the instrument, even if it contains an unconditional promise to pay, is not a promissory note.
6. *Certain sum of money*: The sum payable must be certain and must not be capable of contingent additions or subtractions.
7. *Promise to pay money only*: The payment must be in the legal tender money of India.

Based on the above conditions in accordance with the definition of a promissory note, the answers to the two problems is as under:

- (i) It is not a promissory note in the first case, since there is no promise to pay.
- (ii) In the second case also it is not a promissory note since as it is probably that Y may not marry.

**Question 7**

*A issues a cheque for Rs. 25,000/- in favour of B. A has sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank, in the meantime, became bankrupt. Decide under the provisions of the Negotiable Instruments Act, 1881, whether B can recover the money from A? (May 2003)*

**Answer****Problem on Negotiable Instruments Act, 1881**

The problem as asked in the question is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 84. The section provides that where a cheque is not presented by the holder for payment within a reasonable time of its issue and the drawer suffers actual damage through the delay because of the failure of the bank, he is discharged from liability to the extent of such damage. In determining what is reasonable time, regard shall be had to the nature of the instrument, the usage of trade and bankers, and the facts of the particular case.

Accordingly, in the given case, the drawer is discharged from the liability to pay the amount of cheque to B. However, B can sue against the bank for the amount of the cheque applying the above provisions.

**Question 8**

*Describe, in brief, the main amendments incorporated by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 in Sections 138, 141 and 142 of the Principal Act i.e. the Negotiable Instruments Act, 1881. (May 2004)*

**Answer****Amendments in the Negotiable Instruments Act, 1881**

The main amendments made through the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 in Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 are as follows:

**Section 138**

- (i) To increase the punishment as prescribed under the Act from one year to two years.
- (ii) To increase the period for issue of notice by the payee to the drawer from 15 days to 30 days [*Proviso(b) to Section 138*].

**Section 141**

To exempt those directors from prosecution under Section 141 of the Act who are nominated as directors of a company by virtue of their holding any office or employment in the Central Government or State Government or a Financial Corporation owned or controlled by the Central Government, or the State Government, as the case may be [*Proviso to Section 141(I)*].

**Section 142**

To provide discretion to the court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act [Proviso to Section 142(b)]

### Question 9

What is a "Promissory Note" and what are its elements?

S writes "I promise to pay 'B' a sum of Rs.500, seven days after my marriage with 'C'. Is this a promissory note?  
(May 2004)

### Answer

According to the Section 4 of the Negotiable Instruments Act, 1881, "A promissory note is an instrument in writing (Not being a Bank-Note or a Currency-Note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or to order of a certain person, or to the bearer of the instrument."

### The essential characteristics of a promissory note are as follows:

- (1) It must be in writing. In other words an oral promise does not make a promissory note since it is not an instrument.
- (2) The promise to pay must be unconditional. It may be noted that a promise to pay is not conditional if it depends upon an event, which is certain to happen, but the time of its occurrence may be uncertain.
- (3) The amount promised must be a certain and a definite sum of money.
- (4) The instrument must be signed by the maker.
- (5) The person to whom the promise is made must be a definite person.

### Problem

In the given case S promises to pay Rs.500. It is possible that 'S' may never marry 'C' and the sum may never become payable. Hence, the promise to pay is conditional as it depends upon an event, which may not happen. Hence, it is not a promissory note.

### Question 10

State the privileges of a "Holder in due course" under the Negotiable Instruments Act, 1881.

A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's indorsement and collected proceeds to the cheque through his Bankers. B the drawer wants to recover the amount from C's Bankers. Decide in the light of the provisions of Negotiable Instruments Act, 1881-

- (i) Whether B the drawer, can recover the amount of the cheque from C's Bankers?
- (ii) Whether C is the Fictitious Payee?
- (iii) Would your answer be still the same in case C is a fictitious person?

(November 2004)

### Answer

**Privileges of a "Holder in Due Course":** According to the provisions of the Negotiable Instruments Act, 1881, a holder in due course has the following privileges:

- (i) A person signing and delivering to another a stamped but otherwise inchoate instrument is debarred from asserting, as against a holder in due course, that the instrument has not been filled in accordance with the authority given by him, the stamp being sufficient to cover the amount (Section 20).
- (ii) In case of bill of exchange is drawn payable to drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature. It is not permissible for acceptor to allege as against the holder in due course that such name is fictitious (Section 42).
- (iii) In case a bill or note is negotiated to a holder in due course, the other parties to the bill or note cannot avoid liability on the ground that the delivery of the instrument was conditional or for a special purpose only (Section 42 and 47).
- (iv) The person liable in a negotiable instrument cannot set up against the holder in due course the defences that the instrument had been lost or obtained from the former by means of an offence or fraud or for an unlawful consideration (Section 58).
- (v) No maker of a promissory note, and no drawer of a bill or cheque and no acceptor of a bill for the honour of the drawer shall, in a suit thereon by a holder in due course be permitted to deny the validity of the instrument as

originally made or drawn (Section 120).

- (vi) No maker of a promissory note and no acceptor of a bill payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the rate of the note or bill, to endorse the same (Section 121).

In brief, it is clear that a holder in due course gets a good title in many respects. Answer to problem

According to Section 42 of the Negotiable Instruments Act, 1881 an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an instrument by the same hand as the drawer's signature, and purporting to be made by the drawer. The word 'fictitious payee' means a person who is not in existence or being in existence, was never intended by the drawer to have the payment. Where drawer intends the payee to have the payment, then he is not a fictitious payee and the forgery of his signature will affect the validity of the cheque.

Applying the above, answers to the questions asked can be as under:

- I. In this case B, the drawer can recover the amount of the cheque from C's bankers because C's title was derived through forged endorsement.
- II. Here C is not a fictitious payee because the drawer intended him to receive payment.
- III. The result would be different if C is not a real person or is a fictitious person or was not intended to have the payment.

### **Question 11**

*A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide-*

- (i) *Whether D can sue the prior parties of the bill, and*
- (ii) *Whether the prior parties other than D have any right of action inter se?*

*Give your answer in reference to the Provisions of Negotiable Instruments Act. 1881*

*(November 2004)*

### **Answer**

#### **Problem on Negotiable Instrument made without consideration:**

Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

- (i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to D with consideration. Therefore, D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration.
- (ii) As regards to the second part of the problem, the prior parties before D i.e., A, B, and C have no right of action inter se because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

### **Question 12**

*A cheque payable to bearer is crossed generally and marked "not negotiable". The cheque is lost or stolen and comes into possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from B.*

*(May 2005)*

### **Answers**

The cheque in the given case was crossed generally and marked 'Not Negotiable'. Thereafter, the cheque was lost or stolen and came into the possession of B, who takes it in good faith and gives value for it. Section 130 of the Negotiable Instruments Act, 1881 provides that a person taking a cheque crossed generally or specially, bearing in either case the words 'not negotiable', shall not have, and shall not be capable of giving a better title to the cheque than that which the

person from whom he took it had. In view of these provisions, B, even though he was a holder in due course, did not acquire any title to the cheque as against its true owner. The addition of the words 'not negotiable' entirely takes away the main feature of negotiability, which is, that a holder with a defective title can give a good title to a subsequent holder in due course. B did not obtain any better title than his immediate transferor, who had either stolen or found the cheque and was not the true owner of the cheque. Therefore, as regards the true owner, B was in no better position than the transferor. B is also liable to repay the amount of the cheque to the true owner. He can, however, proceed against the person from whom he took the cheque.

In the given case, both the collecting banker and the paying bankers would be exonerated. Since the collecting banker, in good faith and without negligence, had received payment for B, who was its customer of the cheque which was crossed generally, the banker would not be liable, in case the title proved to be defective, to the true owner by reason only of having received the payment of the cheque for his customer (Section 131). Since the paying banker on whom the crossed cheque was drawn, had paid the same in due course, the banker would also not be liable to the true owner. (Section 128).

### **Question 13**

*'A' draws a cheque for Rs.50,000. When the cheque ought to be presented to the drawee bank, the drawer has sufficient funds to make payment of the cheque. The bank fails before the cheque is presented. The payee demands payment from the drawer. What is the liability of the drawer. (May 2005)*

### **Answer**

Section 84 of the Negotiable Instruments Act, 1881 provides that where a cheque is not presented for payment within a reasonable time of its issue and the drawer or person on whose account it is drawn had the right at the time when presentation ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged from the liability, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than would have been if such cheque had been paid. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of banker, and the facts of the particular case.

Applying the above provisions to the given problem since the payee has not presented the cheque to the drawer's bank within a reasonable time when the drawer had funds to pay the cheque, and the drawer has suffered actual damage, the drawer is discharged from the liability.

### **Question 14**

*State the cases in which a banker is justified or bound to dishonour cheques. (May 2005)*

### **Answer**

In the following cases in which a banker is bound or justified to dishonour cheques:

- (i) A banker is justified to dishonour a cheque in reference to payment of a post-dated cheque presented for payment before its ostensible date;
- (ii) The banker is bound to pay a cheque only when it has 'sufficient funds of the drawer in his hands' otherwise not.
- (iii) The banker is bound to honour his customer's cheque only when the funds of the customers in his hands are 'properly applicable to the payment of such cheques' otherwise not.
- (iv) A banker is justified in refusing to honour a cheque which is irregular, or ambiguous, or drawn in a form of doubtful legality;
- (v) A banker is justified in refusing payment of a cheque drawn by a customer having credit with one branch of the bank, where the cheque is drawn upon another branch in which he has no account or in which his account is overdrawn.
- (vi) When the customer becomes insolvent, or an order of adjudication has been made against him, all his assets vest in the official assignee, and the banker should thereafter refuse to pay his customer's cheques.
- (vii) The duty and authority of a banker to pay a cheque drawn on him by his customer is determined by the customer countermanding payment;
- (viii) Notice of death of the customer determines the authority of the banker to dishonour a cheque, but if the banker pays a cheque before he receives notice of his customer's death, payment is valid.

- (ix) If garnishee or other legal order from a court attaching or otherwise dealing with money in the hands of the banker, is served on the banker.
- (x) If it contains material alterations, irregular signature or irregular endorsement.
- (xi) If it is stale, that is if it has not been presented within reasonable period.

### Question 15

*A, a major, and B, a minor, executed a Promissory Note in favour of C. Examine with reference to the provisions of the negotiable Instruments Act, 1881 the validity of the Promissory Note and state whether it is binding on A and B. (November 2005)*

### Answer

**Minor being a party to Negotiable Instrument:** Every person competent to enter into contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a Promissory Note, Bill of Exchange or clearance (Section 26, Para 1, Negotiable Instrument Act, 1881).

As a Minor's agreement is void, he cannot bind himself by becoming a party to a Negotiable Instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself (Section 26, para 2).

In view of the provisions of Section 26 explained above, the promissory note executed by A and B is valid even though a minor is a party to it. B, being a minor is not liable; but his immunity from liability does not absolve the other joint promissory, viz., A from liability [*Sulochona v. Pondiyan Bank Ltd.*].

### Question 16

*J. a shareholder of a Company purchased for his personal use certain goods from a Mall (Departmental Store) on credit. He sent a cheque drawn on the Company's account to the Mall (Departmental Store) towards the full payment of the bills. The cheque was dishonoured by the Company's Bank. J, the shareholder of the company was neither a Director nor a person in-charge of the company. Examining the provisions of the Negotiable Instruments Act, 1881 state whether J has committed an offence under Section 138 of the Act and decide whether he (J) can be held liable for the payment, for the goods purchase from the Mall (Departmental Store). (November 2006)*

### Answer

The facts of the problem are identical with the facts of a case know as H.N.D. Mulla Feroze Vs. C.Y. Somaya Julu, J(2004) 55 SCL (AP) wherein the Andhra Pradesh High Court held that although the petitioner has an legal liability to refund the amount to the appellant, petitioner is not the drawer of the cheque, which was dishonoured and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner J could not be said to have committed the offence under Section 138 of the Negotiable Instrument Act, 1881. Therefore X also is not liable for the cheque but legally liable for the payments for the goods.

### Question 17

*B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1882, decide whether D can recover the money from A in the given case. (November 2006)*

### Answer

Section 53 of the Negotiable Instrument Act, 1881 provides that a holder of negotiable instrument who derives title from a holder in due course has the right thereon of that holder in due course. Such holder of the bill who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards to the acceptor and all parties to the bill prior to that holder. In this case, it is clear that though D was aware of the fraud, he was himself not a party to it. He obtained the instrument from C who was a holder in due course. So D gets a good title and can recover from A.

### Question 18

*A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favour of B, signs and delivers it to B with a request to fill up the amount due, payable by him. B fills up fraudulently the amount larger than the*

amount due, payable by A and endorses the cheque to C in full payment of dues of B. Cheque of A is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C. (May 2007)

**Answer**

Section 44 of the Negotiable Instruments Act 1881 is applicable in this case. According to Section 44 of this Act, B who is a party in immediate relation with the drawer of the cheque is entitled to recover from A only the exact amount due from A and not the amount entered in the cheque. However the right of C, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from B.

**Question 19**

Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following:

- (i) A bill of Exchange originally drawn by M for a sum of Rs. 10,000, but accepted by R only for Rs.7,000.
- (ii) A cheque marked 'Not Negotiable' is not transferable. (May 2007)

**Answer**

- (i) As per the provisions of the Negotiable Instruments Act 1881, acceptance may be either general or qualified. It is qualified when the drawee does not accept the bill according to the apparent tenor of the bill but attaches some condition or qualification which have the effect of either reducing his (acceptor's) liability or acceptance of this liability is subject to certain condition. The holder of the bill is entitled to require an absolute and unconditional acceptance, otherwise he will treat it as dishonoured however, he may agree to qualified acceptance but he does so at his own peril, since he discharges all parties prior to himself, unless he has obtained their consent. Thus in this given case in accordance with the Explanation to Section 86 of the Act, when the drawee undertakes the payment of part only of the sum ordered to be paid, it is a qualified acceptance and the drawer may treat it as dishonoured unless agreed by him. If the Drawer (M) agrees to acceptance, the drawee (R) is responsible for a sum of Rs. 7000 only.
- (ii) It is wrong statement. A cheque marked "not negotiable" is a transferable instrument. The inclusion of the words 'not negotiable' however makes a significant difference in the transferability of the cheques. The holder of such a cheque cannot acquire title better than that of the transferor.

**Question 20**

What are the essential elements of a "Promissory note" under the Negotiable Instruments Act, 1881? Whether the following notes may be considered as valid Promissory notes:

- (i) "I promise to pay Rs. 5,000 or 7,000 to Mr. Ram."
- (ii) I promise to pay to Mohan Rs. 500, if he secures 60% marks in the examination.
- (iii) I promise to pay Rs. 3,000 to Ravi after 15 days of the death of A. (November 2007)

**Answer**

A promissory note is an instrument (not being a bank note or currency note) in writing containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or the holder of, a certain person or to the bearer of the instrument, (Section 4 of the Negotiable Instruments Act, 1881).

In view of the above provision of the said Act, following are the essential elements of a promissory note-

1. It must be in writing.
2. The promise to pay must be unconditional.
3. The amount promised must be a certain and a definite sum of money.
4. The instrument must be signed by the maker.
5. The person to whom the promise is made must be a definite person.

Thus:

- (i) In case (i), it is not a valid promissory note because the amount is not certain.
- (ii) In case (ii), it is not a valid promissory note because it is conditional.
- (iii) In case (iii), it is a valid promissory note because death of A is a certainty even if time of death is not certain.

**Question 21**

What do you understand by "Material alteration" under the Negotiable Instruments Act, 1881? State whether the following alterations are material alterations under the Negotiable Instruments Act, 1881?

- (i) The holder of the bill inserts the word "or order" in the bill,
- (ii) The holder of the bearer cheque converts it into account payee cheque,
- (iii) A bill payable to ' is converted into a bill payable to X and Y. (November 2007)

#### **Answer**

As per the Negotiable Instrument Act, 1881, an alteration can be called a material alteration if it alters or attempts to alters the character of the instrument and affects or is likely to affect the contract which the instrument contains or is evidence of. Thus, it totally alters the business effect of the instrument. It makes the instrument speak a language other than that was intended.

The following materials alterations have been authorised by the Act and do not require any authentication:

- (a) filling blanks of inchoate instruments [Section 20]
- (b) Conversion of a blank endorsement into an endorsement in full [Section 49]
- (c) Crossing of cheque [Section 125]

#### **Question 22**

*Bharat executed a promissory note in favour of Bhushan for Rs. 5 crores. The said amount was payable three days after sight. Bhushan, on maturity, presented the promissory note on 1<sup>st</sup> January, 2008 to Bharat. Bharat made the payments on 4<sup>th</sup> January, 2008. Bhushan wants to recover interest for one day from Bharat. Advise Bharat, in the light of provisions of the Negotiable Instruments Act, 1881, whether he is liable to pay the interest for one day? (May 2008)*

#### **Answer**

##### **Claim of Interest**

Section 24 of the Negotiable Instruments Act, 1881 states that where a bill or note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run. Therefore, in the given case, Bharat will succeed in objecting to Bhushan's claim. Bharat paid rightly "three days after sight". Since the bill was presented on 1<sup>st</sup> January, Bharat was required to pay only on the 4<sup>th</sup> and not on 3<sup>rd</sup> April, as contended by Bharat.

#### **Question 23**

*X draws a cheque in favour of Y. After having issued the cheque he informs Y not to present the cheque for payment. He also informs the bank to stop payment. Decide, under provisions of the Negotiable Instruments Act, 1881, whether the said acts of X constitute an offence against him ? (May 2008)*

#### **Answer**

##### **Problem: Offence under the Negotiable Instruments Act, 1881**

This problem is based on the case of *Modi Cements Ltd. Vs. Kuchil Kumar Nandi, 1998*. In this case the Supreme Court held that once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138. The object of Sections 138 to 142 of the Act is to promote the efficacy of the banking operations and to ensure credibility in transacting business through cheques. Section 138 is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person from out of that account for the discharge in whole or in part of any debt or other liability, is informed by the bank unpaid either because of insufficiency of amount to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

#### **Question 24**

*Discuss with reasons, whether the following persons can be called as a 'holder' under the Negotiable Instruments Act, 1881:*

- (i) X who obtains a cheque drawn by Y by way of gift.
- (ii) A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.
- (iii) M, who finds a cheque payable to bearer, on the road and retains it.
- (iv) B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee.
- (v) B, who steals a blank cheque of A and forges A's signature. (November 2008)

#### **Answer**

##### **Person to be called as a holder**

As per section 8 of the Negotiable Instruments Act, 1881 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases-

- (i) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.
- (ii) No, he is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.
- (iii) No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name.
- (iv) No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.
- (v) No, B is not a holder because he is in wrongful possession of the instrument.

**Question 25**

*X draws a bill on Y but signs it in the fictitious name of Z. The bill is payable to the order of Z. The bill is duly accepted by Y. M obtains the bill from X thus becoming its holder in due course. Can Y avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881. (November 2008)*

**Answer**

**Bill drawn in fictitious name**

The problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege as against the holder in due course that such name is fictitious. Accordingly, in the instant case, Y cannot avoid payment by raising the plea that the drawer (Z) is fictitious. The only condition is that the signature of Z as drawer and as endorser must be in the same handwriting.