

SECTION – 2

QUESTION-1.

ANSWER:-

Paying Banker:-

The paying banker is the bank whose name is printed on a given cheque. This bank pays the specified amount by the cheque to the collecting banker and withdraws that amount from the customer's account. ... In the case of bills, it is part of the paying banker's duty from instruction by the customer to pay them.

Payment of order cheque

Section -85(1) of N.I.Acts 1881 provides that

“Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course”

The above section provides protection to paying banker if he has made payment of an order cheque in due course (within the meaning of sec.10 of N.I.Act.) and if the proceeds credited to the account of an endorsee if and only if the endorsement is regular.

Payment of bearer cheque

Section -85(2) of N.I.Acts provides that

“Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or blank appearing thereon and notwithstanding that any such endorsement purports to restrict or exclude further negotiation”.

The above section specifies that a cheque which is ‘once a bearer is always bearer’ (which means if a cheque is originally drawn as a bearer cheque remains always bearer irrespective of any endorsements on the back of the instrument). Therefore banks are not required to verify the regularity of the endorsement on the back of the cheque if any and they are protected from liability if they have made payment of an uncrossed bearer cheque to a bearer in due course.

Payment of ‘Crossed cheque’

Section -128.of N.I.Acts 1881 provides that

“Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights, and be placed in if the amount of the cheque had been paid to and received by the true owner thereof”.

The paying banker of a crossed cheque shall satisfy the following condition to be eligible for protection under related NI acts.

Payment shall be made in due course.

Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed or his agent for collection.

In following cases paying banker does not get statutory protections if he makes the payment of a cheque;

- a) Materially altered or signature of the drawer is forged or payment made of a crossed cheque with an irregular endorsement.
- b) Makes payment of a crossed cheque to a person otherwise than to the banker then he is liable for the loss to the true owner of the cheque.

A cheque is said to be honoured, if the banks give the amount to the payee. While, if the bank refuses to pay the amount to the payee, the cheque is said to be dishonoured. In other words, dishonour of cheque is a condition in which bank refuses to pay the amount of cheque to the payee.

Whenever the cheque is dishonoured, the drawee bank instantly issues a 'Cheque Return Memo' to the payee banker specifying the reasons for dishonour. The payee banker provides the memo and the dishonoured cheque to the payee. The payee has an option to resubmit the cheque within three months of the date specified on the cheque after fulfilling the reason for the dishonour of cheque.

Moreover, the payee has to give a notice to the drawer within 30 days from the date of receiving "Cheque Return Memo" from the bank. The notice should state that the cheque amount will be paid to the payee within 15 days from the date of receipt of the notice by the drawer.

However, if the drawer fails to make a fresh payment within 30 days of receiving the notice, the payee has the right to conduct a legal proceeding against the defaulter as per Section 138 of the Negotiable Instruments Act.

Reasons for Dishonour of Cheque

reasons for dishonour of cheque infograph

1. If the cheque is overwritten. Know 'How to write a Cheque?'
2. If the signature is absent or the signature in the cheque does not match with the specimen signature kept by the bank.
3. If the name of the payee is absent or not clearly written.
4. If the amount written in words and figures does not match with each other.
5. If the account number is not mentioned clearly or is altogether absent.
6. If the drawer orders the bank to stop payment on the cheque.
7. If the court of law has given an order to the bank to stop payment on the cheque.
8. If the drawer has closed the account before presenting the cheque.
9. If the fund in the bank account is insufficient to meet the payment of the cheque.
10. If the bank receives the information regarding the death or lunacy or insolvency of the drawer.
11. If any alteration made on the cheque is not proved by the drawer by giving his/her signature.
12. If the date is not mentioned or written incorrectly or the date mentioned is of three months before.

What Happens When A Cheque Is Dishonoured?

When the cheque is dishonoured, a 'cheque return memo' is offered by the bank to the payee stating why the cheque has been bounced. The payee can resubmit the cheque if he believes that it will be honoured second time. The payee can prosecute the drawer legally if the cheque is bounced again.

The Negotiable Instrument Act, 1881 is applicable for the cases related to dishonour of cheques. In accordance with section 138 of this act, dishonour of cheque is a criminal offence and is punishable with monetary penalty or imprisonment up to 2 years or both.

1. Penalty

If a cheque is bounced, then a penalty is levied on both drawer and payee by their respective banks. The person will additionally have to pay late payment charges if the dishonoured cheque is against repayment of a loan.

2. Damage To Credit History

Your credit history is negatively impacted if a cheque is dishonoured since your payment activities are reported to the credit bureaus by the financial institutions. The lenders will trust you if you have a good credit score. In order to have a good credit score, it's a good practice to avoid your cheques from being bounced. Your good payment activities will help you build good CIBIL score and benefit you at the time of lending money from financial institutions.

Keep the above points in mind while writing the cheque so that the cheque is not dishonoured.