

Business law

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- **Instrument obtained by unlawful means or unlawful consideration – Section 58** 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 endorsee 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 endorsee is, or some person through whom he claims was, a holder in due course.

Liabilities of Parties –

A) Liability of a minor –

It may be noted that a minor, being incompetent to contract, cannot bind himself by becoming a party to a negotiable instrument. Whether he is the drawer, maker, acceptor or endorser, he is not liable on the instrument. Section 26 categorically excludes minor's liability by stating that a minor binds all parties except himself.

B) Liability of an agent –

- a) Every person capable of legally entering into a contract, may make, draw, accept indorse, deliver and negotiate a promissory note, bill of exchange or cheque, himself or through a duly authorized agent.
- b) A general authority to transact business and to discharge debt does not confer upon an agent the power to indorse bills of exchange so as to bind his principal.
- c) An agent cannot escape personal liability unless he indicates that he signs as an agent and does not intend to incur personal liability

C) Liability of Legal Representative –

A legal representative' of a deceased person, who signs his own name on an instrument, is personally liable for the entire amount; but he may expressly limit his liability to the extent of the assets received by him as legal representative.

D) Liability of Drawer:

- a) Usually, the liability of the drawer of a bill or cheque is secondary and conditional.
- b) The liability of the acceptor and maker of the bill and drawee of the cheque is primary and unconditional.
- c) The drawer's liability is conditional, i.e., it arises only in the event of a dishonor by the drawee or acceptor.
- d) Once there has been dishonor and the notice of dishonor has been given to the drawer, he is liable to compensate the holder whatever be the state of the account between himself and the drawee or acceptor.

E) Liability of drawee Bank of cheque –

Wrongful dishonor of customer's cheque entails exemplary damages against banker and the amount of damages is inversely related to the amount of the cheque dishonored.

F) Liability of drawee of Bill of Exchange/ Maker of Promissory Note –

- a) The maker of a promissory note is bound to pay the amount at maturity.
- b) The liability of the drawee only arises when he accepts the bills.
- c) Drawee's liability is primary and unconditional.
- d) He is liable for Principal amount along with interest and noting/ protesting charges if any.

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G) Liability of maker, drawer and acceptor as principals –

- The maker of a promissory note is liable as the principal debtor.
- In a bill of exchange, the acceptor acts as a principal debtor and the drawer acts a surety as drawer is liable to pay only if acceptor defaults.

H) Effect of forged indorsement on acceptor's liability –

- A bill may be accepted before or after indorsement by the payee.
- An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged.

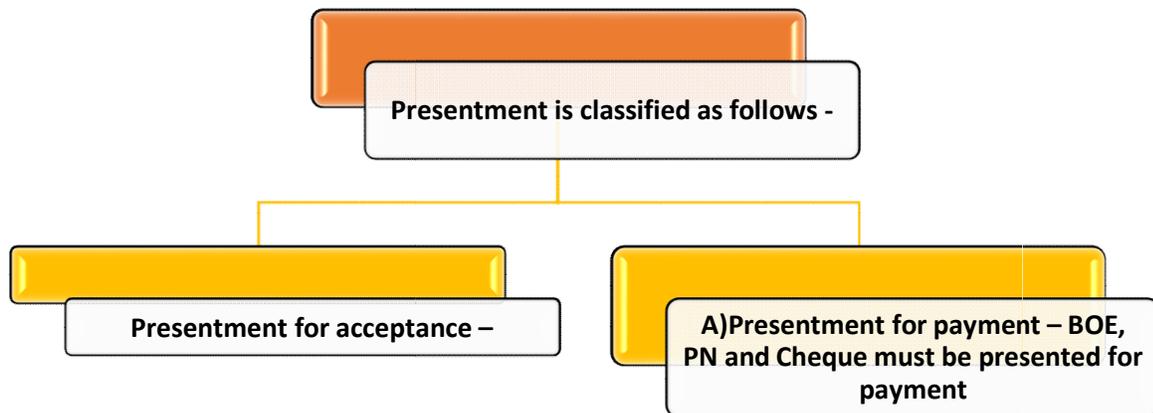
I) Liability of acceptor of a bill drawn in a fictitious name –

The acceptor is not relieved from liability by proving that the drawer is fictitious.

J) Liability on an instrument made drawn etc. without consideration –

An instrument made, drawn, accepted, indorsed, or transferred without consideration creates no obligation of payment between the parties to the instrument.

Presentment – Section 61 to section 67



A) Presentment for acceptance –

- Only Bills of exchange requires presentment for acceptance.
- Bill of exchange should be presented within a reasonable time, on business day and during business hours to the drawee for acceptance.
- Following bills must be presented for acceptance –
 - A bill payable after sight – Presentment is necessary in order to fix maturity of the bills
 - Express condition – A bill in which there is an express condition shall be presented for acceptance before it is presented for payment.
- In case it is not presented for acceptance the bill is dishonored due to non-acceptance and no party is liable.

B) Bills of exchange should be presented to whom for acceptance?

The following are the persons to whom a bill of exchange should be presented –

- The drawee or his agent

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- b) If there are many drawees, bill must be presented to all of them.
- c) The legal representatives of the drawee if drawee is dead.
- d) The official receiver or assignee of insolvent drawee.
- e) To a drawee in case of need, if there is any
- f) The acceptor for honour.

C) Drawee's time for deliberation –

Holder of the bills of exchange should allow **48 hours** to the drawee for accepting the bill of exchange.

D) Presentment for payment –

- a) Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.
- b) In default of such presentment, the other parties thereto are not liable thereon to such holder.

E) Hours for presentment –

Presentment for payment must be made during the usual hours of business and, if at a banker's, within banking hours.

When presentment unnecessary –

Presentment for payment is unnecessary, and the instrument is dishonored at the due date for presentment, in any of the following cases:

- if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
- If the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
- If the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or
- If the instrument not being payable at any specified place, he cannot after due search be found;
- if the maker has agreed to pay even without presentment.
- if the maker has done the part-payment even without presentment.

Presentment for acceptance is unnecessary in the following cases –

- ❑ Where the drawee cannot be found after reasonable search.
- ❑ Where drawee is a fictitious person.
- ❑ Where although the presentment is irregular, acceptance has been refused on some other ground.
- Where drawee is incompetent to contract, e.g., minor or lunatic.
- Where one or more of the several drawees (not being partners) refuse to accept the bill.