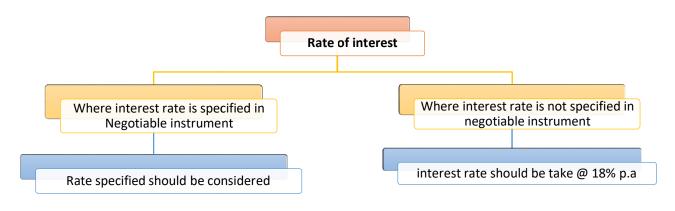# Business law
Lecture-27

Payment and interest – A) To whom payment should be made?

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

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                    ┌─────────────────────┐
                    │   Rate of interest   │
                    └─────────────────────┘
            ┌──────────────┴────────────────┐
┌───────────────────────────┐   ┌───────────────────────────┐
│ Where interest rate is     │   │ Where interest rate is not │
│ specified in Negotiable    │   │ specified in negotiable    │
│ instrument                 │   │ instrument                 │
└───────────────────────────┘   └───────────────────────────┘
┌───────────────────────────┐   ┌───────────────────────────┐
│ Rate specified should be   │   │ interest rate should be    │
│ considered                 │   │ take @ 18% p.a             │
└───────────────────────────┘   └───────────────────────────┘
```

Discharge from Liabilty

Meaning –

Discharge from liability implies when the liability of the parties ceases to exist. Following are the different modes of discharge of instrument.
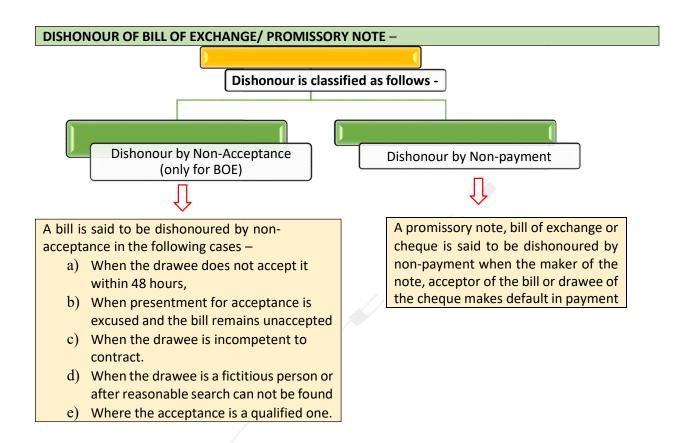
Modes of discharge:

One or more parties to a negotiable instrument may be discharged from liability in either of the following ways:

1) **By cancellation, Release or Payment:**
   a) **By cancellation:** Cancellation of acceptor's name will discharge the instrument and cancellation of any other party will discharge the party.
   b) **By release:** Release of acceptor will discharge the instrument and release of any other party will discharge the party.
   c) **By payment:** When the amount due on the instrument is paid by the party primarily liable on the instrument, the instrument is discharged.

2) **By allowing drawee more than 48 hours:** If the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holiday(s) to consider whether he will accept the same, all previous parties not consenting to such allowance are discharged from liability to such holder.

3) **By delay in presenting cheques:** If a cheque is not presented within a reasonable time of its issue, and the bank fails and drawer suffers actual damages through such delay, he is discharged from the liability to the holder to the extent of such damage.

4) **Forgery of Endorser's signature in case of Cheque:** The Bank is discharged by PIDC even if the signature of endorser is forged.

5) **By qualified acceptance:** If the holder of a bill of exchange agrees to accept qualified acceptance, all the previous parties whose consent is not obtained to such acceptance are discharged from liability, unless the holder gives notice thereof and the parties give their assent to such qualified acceptance.

6) **By material alteration.:** Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties. Again, it may be noted that alteration should be material and immaterial alterations will not affect the instrument and will not discharge any liability.

7) **Discharge of Bank:** As per Section 89, bank is discharged by payment in due course in case of alteration not apparent from records.

8) As per **Section 90**, when the acceptor of bill of exchange or maker of promissory note becomes holder on or after maturity, the instrument is discharged.

DISHONOUR OF BILL OF EXCHANGE/ PROMISSORY NOTE –

Dishonour is classified as follows -

Dishonour by Non-Acceptance (only for BOE)	Dishonour by Non-payment

A bill is said to be dishonoured by non-acceptance in the following cases –
  a) When the drawee does not accept it within 48 hours,
  b) When presentment for acceptance is excused and the bill remains unaccepted
  c) When the drawee is incompetent to contract.
  d) When the drawee is a fictitious person or after reasonable search can not be found
  e) Where the acceptance is a qualified one.

A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment

Dishonor of bill of exchange/ promissory note by non-payment – Section 92

An instrument is dishonored by non- payment when the party primarily liable, makes default in payment.

Notice of dishonor (Section 93 & 94):

❖ **By whom notice to be given**: When an instrument is dishonored either by non-acceptance or by non-payment, the holder thereof or some party thereto who remains liable thereon must give notice of dishonor.

❖ **To whom notice is to be given**: Notice must be given to such parties whom the holder proposes to charge with liability severally or jointly, e.g., the drawer and the endorsers. Notice may be given either to the party himself or to his agent, or to his legal representative on his death, or to the official assignee on his insolvency. It is not necessary to give notice to the maker of a note or the drawee or acceptor of a bill or cheque.

❖ **Effect of non-service of notice**: If a notice of dishonor is not sent to any prior party who is entitled to such notice within a reasonable time, he is discharged from liability.

Business law
Lecture-27

❖ **Mode of service of notice :** The notice, if written, may be given by post at the place of business or at the residence of party for whom it is intended.

Notice of dishonor is not required in the following cases:

➢ When there is no intention to make prior party liable.
➢ When prior party is discharged.
➢ When drawer and drawee are same
➢ When drawer is fictitious.
➢ When the prior party has signed the indorsement 'without recourse'.
➢ When the party entitled to notice cannot, after reasonable search, be found.
➢ Where the party liable to give notice is unable, without any fault of its own to give it, e.g., death or serious illness of the holder or his agent or any other accident.
➢ When the prior party is incompetent.

Noting – Section 99

- When a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment, the holder may cause such dishonor to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

- Such note must be made within a reasonable time after dishonor, and must specify the date of dishonor, the reason, if any, assigned for such dishonor, or, if the instrument has not been expressly dishonored, the reason why the holder treats it as dishonored, and the notary's charges.

Protest – Section 100

When a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonor to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security. When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Protest of foreign bills – Section 104

Foreign bills of exchange must be protested for dishonor when such protest is required by the law of the place where they are drawn.