

# Business law

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### 1) Dishonour of Cheque –

2) Sections 138 to 142 deals with dishonor of cheques and provides for criminal penalties in the event of dishonor of cheques for insufficiency of funds.

### 3) Penalty for dishonour of cheque –

The drawer, under Section 138, may be punished with **imprisonment up to 2 years or with a fine up to twice the amount of the cheque or with both.**

However, in order to attract the aforesaid penalties, following conditions must be satisfied:

- ✓ The **cheque should have been dishonored due to insufficiency of funds** in the account maintained by him with a banker for payment of any amount of money to another person from out of that account.
- ✓ The payment for which the cheque was issued should have been in discharge of a **legally enforceable debt or liability** in whole or part of it.
- ✓ The cheque should have been **presented within 3 months** from the date on which it is drawn.

#### Presumption in favor of holder - Section 139

It shall be presumed that the holder of a cheque received the cheque for the discharge of any debt or other liability.

#### Defense which may not be allowed in any prosecution under section 138 - Section 140

It shall not be a defense in a prosecution of an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonored on presentment because of insufficiency of funds

#### Offences by Companies - Section 141

If the person committing an offence is a company, every person, who at the time the offence was committed and the company shall be jointly liable for the offence.

#### Procedure to be followed before charging penalty –

- Cheque is issued by drawer
- The payee/holder presents it for payment.
- The collecting bank informs payee/holder about dishonor of cheque.
- The payee or the holder in due course of the cheque should have given notice demanding payment within 30 days from the drawer in receipt of information of dishonor of cheque from the bank.
- Notice can be served by ordinary post or even telegram.
- The drawer is liable only if he fails to make the payment within 15 days of such notice period.
- The payee or holder in due course of the cheque dishonored should have made a complaint within one month of cause of action arising out of Sec. 138.

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### Cognizance of offences – Section 142

#### A) Filing case –

- 1) Court shall take cognizance of any offence punishable under section 138 only if it is in writing.
- 2) Time limit for filing the complaint is **1 month**.
- 3) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

#### B) Place of Jurisdiction of court for the trial of offence:

The offence under section 138, which deals with the dishonor of cheque, shall be inquired into and tried only by a court within whose local jurisdiction -

- a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or
- b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

### Power of Court to try cases summarily – Section 143

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees.

### Power to direct interim compensation – Section 143A

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—
  - a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
  - b) in any other case, upon framing of charge.
2. The interim compensation under sub-section (1) **shall not exceed 20%** of the amount of the cheque.
3. The interim compensation **shall be paid within 60 days** from the date of the order or within such further period not exceeding **30 days** as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
4. If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, **within 60 days** from the date of the order, or within such further period not exceeding **30 days** as may be directed by the Court on sufficient cause being shown by the complainant.

### Offences to be compoundable – Section 147

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be compoundable.

### Power of Appellate Court to order payment pending appeal against conviction – Section 148

- 1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court:

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**Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.**

- 2) The amount mentioned above shall be deposited **within 60 days** from the date of the order, or within such further period not exceeding **30 days** as may be directed by the Court on sufficient cause being shown by the appellant.
- 3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

**Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the Court on sufficient cause being shown by the complainant**

### Hundis –

#### A) Meaning –

- 1) Hundis are negotiable instruments written in an oriental language.
- 2) They are sometimes bills of exchange and sometimes promissory notes, and are not covered under the Negotiable Instruments Act, 1881.
- 3) They are governed by the customs and usages in the locality but if custom is silent on the point in dispute before the Court, this Act applies to the hundis.

#### B) Types of Hundis –

Types	Description
<b>Shah Jog Hundi</b>	“Shah” means a respectable and responsible person or a man of worth in the bazar. Shah Jog Hundi means a hundi which is payable only to a respectable holder, as opposed to a hundi payable to bearer. In other words the drawee before paying the same has to satisfy himself that the payee is a ‘SHAH’.
<b>Jokhmi Hundi</b>	A “jokhmi” hundi is always drawn on or against goods shipped on the vessel mentioned in the hundi. It implies a condition that money will be paid only in the event of arrival of the goods against which the hundi is drawn. It is in the nature of policy of insurance. The difference, however, is that the money is paid before hand and is to be recovered if the ship arrives safely
<b>Jawabee Hundi</b>	According to Macpherson, “A person desirous of making a remittance writes to the payee and delivers the letter to a banker, who either endorses it on to any of his correspondents near the payee’s place of residence, or negotiates its transfer. On the arrival, the letter is forwarded to the payee, who attends and gives his receipt in the form of an answer to the letter which is forwarded by the same channel of the drawer or the order.” Therefore, this is a form of hundi which is used for remitting money from one place to another.

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<b>Nam jog Hundi</b>	It is a hundi payable to the party named in the bill or his order. The name of the payee is specifically inserted in the hundi. It can also be negotiated like a bill of exchange. Its alteration into a Shah Jog hundi is a material alteration and renders it void.
<b>Darshani Hundi</b>	This is a hundi payable at sight. It is freely negotiable and the price is regulated by demand and supply. They are payable on demand and must be presented for payment within a reasonable time after they are received by the holder.
<b>Miadi Hundi</b>	This is otherwise called muddati hundi, that is, a hundi payable after a specified period of time. Usually money is advanced against these hundis by shroffs after deducting the advance for the period in advance. There are other forms of hundis also like.
<b>Dhani Jog Hundi</b>	A hundi which is payable to "dhani" i.e., the owner.
<b>Firman Jog Hundi</b>	which is payable to order if can be negotiated by endorsement and delivery

### National Electronic Funds Transfer (NEFT)

- 1) National Electronic Fund Transfer (**NEFT**) is a nation-wide payments system that allows the transfer of funds from one bank's account to another.
- 2) Under this Scheme, individuals, firms and corporates can electronically transfer funds from any bank branch to any individual, firm or corporate having an account with any other bank branch in the country participating in the Scheme
- 3) NEFT is generally for transactions with smaller amount.
- 4) NEFT is an electronic fund transfer system that operates on a Deferred Net Settlement (DNS) basis which settles transactions in batches.
- 5) In DNS, the settlement takes place with all transactions received till the particular cutoff time.

### Real Time Gross Settlement (RTGS) –

- Real Time Gross Settlement, abbreviated as RTGS systems are specialist funds transfer systems where the transfer of money or securities takes place from one bank to any other bank on a "real-time" and on a "gross" basis
- It is a safe and secure system for funds transfer.
- Real-time gross settlement is generally employed for large-value interbank funds transfers