



**FACULTY OF JURIDICAL SCIENCES**

**COURSE NAME : BALLB/BBALLB**

**SEMESTER : VIIIth**

**SUBJECT : Banking law**

**SUBJECT CODE: BAL -802/BBL-802**

**LECTURE : 30**

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## **Holder and Holder in due course:**

Section 8 of Negotiable Instruments Act 1881 defines the term Holder as The holder of a negotiable instrument is any person who is for the time being entitled in his own name and right to the possession of the instrument and to receive and recover the amount due on the instrument. A person is said to be held only if he has possession and entitled for that possession along with entitled to claim money under it. In the case of an order instrument, the name of the holder appears on the document as payee or endorsee. In the case of a bearer document, a payee claims the money without having his name mentioned on the cheque.

According to this section, the holder has the capacity to receive payment or recover the amount by filing a suit in his own name against other parties, to negotiate the instrument and to give a valid discharge. If the promissory note, cheque or bill is destroyed or lost by any chance then it is the holder so entitled at the time of such destruction or loss.

## **Kinds of Holder:**

(a) De jure- The holder of a negotiable instrument as a matter of legal right.

(b) De facto- The holder of a negotiable instrument by the virtue of possession but not entitled in his own name.

## **Holder's Rights and Powers:**

- In Special Endorsement, the holder of a cheque endorsed in blank may convert the blank endorsement, by writing above the endorser's signature which gives direction to pay the cheque to or to the order of himself or any other person.
- In Crossings, a cheque may be crossed generally or specifically; when it's uncrossed whilst when it's crossed generally, the holder may cross it specifically.
- In Duplicate of Cheque, in case of misplacing of the cheque, the holder can ask to the drawer to give him another cheque of the same tenor, but holder must give security to the drawer to indemnify him for all the loses if the lost cheque has been found again.

- In Negotiation, a holder of a cheque has a right to negotiate to another person. Moreover, in some cases, a holder has a power of negotiation even though cheque has no title or faulty title.
- In Presentation, if a cheque is an open cheque then the person can take it to the drawee bank and request payment in cash; but in case of crossed cheques one cannot anticipate drawee bank to pay in cash, and he should, therefore, present it to the drawee bank for payment.
- In Notice of Dishonour, a cheque holder presents the cheque for payment and it does not get paid then he may give notice of dishonour outright to prior parties in order to hold back their liability to him.
- In Right of Action, a holder can sue on it in his own name. whether his action on the cheque succeeds or not is depended on whether he is a holder or holder in due course.

## Holder in due course-

In Banking or Commercial law, a holder in due course is a person who accepts a negotiable instrument in a value-for-value exchange without doubting its legitimacy so ultimately in a good faith. Now the person who took it for value in good faith now becomes a real owner of the instrument and is known as "holder in due consideration". According to Section 9, "Holder in due course means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque is payable to bearer, or the payee or endorsee thereof, if payable to order before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title".

The phrase "in good faith and for value" has split into 4 rudiments under sec 9-

- The instrument taken by the holder is should be for value.
- It's necessary to obtain the instrument before its maturity.
- The instrument should be complete and regular on its face.
- The instrument should have been received in a good faith without noticing any defect or error neither in the instrument, title nor in the person negotiating it to him.

Case- SukhanRajkhim Raja a Firm of Merchants, Bombay V. N. Raja Gopalan-

The Hon'ble court held that the plaintiff was cognizant that the cheque had been dishonoured and endorsement in his favour was only after it was returned by the bank. Furthermore, it has lost its negotiability. Hence, the plaintiff cannot be a holder in due course.

### The difference between Holder and Holder in due course-

Holder refers to a person, the payee of the negotiable instrument, who is in possession of it. A person, who is entitled to receive or recover the amount due on the instrument from the parties to that, whilst the holder in due course connotes a person who incurs the instrument for value and in good faith without having any knowledge of the defect in the title of the person transferring the instrument. In holder, consideration is not necessary but in the holder in due course, it is of course necessary. A holder cannot sue all the prior parties but a holder in due course can sue all the prior parties. The instrument is obtained regardless of good faith but holder in due course the instrument is only accepted in good faith. A person can become a holder before or after the maturity of negotiable instrument, on the other hand, a person can become holder in due course, only before the maturity of the negotiable instrument. If the title of any of the prior parties was imperfect or defective the holder does not acquire good title but a holder in due course acquires a good title even there was an error in the title of any prior parties.

### Conclusion

The holder of a negotiable instrument is any person who is for the time being entitled in his own name and right to the possession of the instrument and to receive and recover the amount due on the instrument. A holder in due course is a person who accepts a negotiable instrument in a value-for-value exchange without doubting its legitimacy so ultimately in good faith. Now the person who took it for value in good faith now becomes a real owner of the instrument and is known as "holder in due consideration". To sum it up every holder in due course is a holder but every holder in due course is not a holder.

### What is the holder?

Sec 8 of Negotiable Instrument act defines the term, "Holder"-The holder of a negotiable instrument is any person who is for the time being entitled in his own name and right to the possession of the instrument and to receive and recover the amount due on the instrument.

What is the holder in due course?

Holder in due course means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque is payable to bearer, or the payee or endorsee thereof, if payable to order before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

How holder and holder in due course distinct in terms of entitlement?

A holder is entitled in his own name to the possession of the instrument, whilst a holder in due course acquires the possession of the instrument for consideration.

#### MCQs

*A special indorsement creates \_\_\_\_\_ paper.*

- bearer
- order
- holder in due course
- non-negotiable

**2.** *Order paper is negotiated by \_\_\_\_\_.*

- indorsement only
- delivery only

indorsement and delivery

indorsement or delivery

3.

*An indorsement is a promise by the indorser to pay the holder or any subsequent indorser the amount of the instrument if the maker, drawer, or acceptor defaults on it. This promise is called an \_\_\_\_\_ indorsement.*

unlimited

unconditional

unqualified

unreserved

4.

*A \_\_\_\_\_ indorser does not guarantee payment of the instrument if the maker, drawer, or acceptor defaults on it.*

conditional

qualified

secondary

reserved

5.

*A qualified indorsement is created by placing a notation such as without \_\_\_\_\_ that disclaims liability as part of the endorsement.*

- reservation
- retribution
- recourse
- none of the above