



**FACULTY OF JURIDICAL SCIENCES**

**COURSE NAME : BALLB/BBALLB**

**SEMESTER : VIIIth**

**SUBJECT : Banking law**

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

**LECTURE : 31**

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## Payment in due course:

*Sec 10 of Negotiable Instrument Acts defines 'Payment in due course' as 'payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned'.*

A paying banker does not get statutory protection under NI Acts if he does not make the payment of negotiable instrument in due course. According to above, following four conditions to be satisfied to treat payment as a payment in due course.

*Payment must be in accordance with the apparent tenor of the instrument.*

For example, a banker makes the payment of a postdated cheque. In this case, payment made by the banker is not in accordance with the apparent tenor of the instrument (i.e. payment made before the date apparent on the instrument). Since the payment made by the banker is against the intention of the drawer of the cheque, such payment cannot be treated as payment in due course.

*Payment made must be to a legally entitled person in good faith and without negligence*

The banker must have made the payment on the true belief that the person who received the payment is entitled to receive payment of the amount therein mentioned. Besides, the drawee (payer) should not be guilty of negligence in making such payment. Guilty of negligence means when the drawee banker did not make proper enquiry (like any person of normal prudence makes enquiry under such circumstances) before making payment in doubtful situations or when endorsement on the instrument is not regular.

*Payment must be made only against presentation of the instrument for payment.*

If the payment made in the absence of presentation of the instrument for payment, such payment will not be treated as payment in due course. The drawee shall receive and see the instrument (physical or electronic image in clearing) presented to him for payment before making payment, lest it cannot be treated as payment in due course.

### MCQs

1. When bank has reason to believe that the title of the presenter is defective , then the cheque will be

- a. dishonored
- b. cancelled
- c. stalled
- d. countermanded.

2. A holder in due course will get protected from earlier defect of

- a. no consideration
- b. conditional delivery
- c. unlawful means
- d. all of the above

