



FACULTY OF JURIDICAL SCIENCES

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Acceptance and Dishonor of Cheque:

In the day to day life, many of us might have acquainted with the issue of dishonor of cheque or cheque bounce, due to the insufficiency of funds or signature mismatch or overwriting or any other reasons. This article is a hand to know the provisions of the [Negotiable Instrument Act 1881](#) dealing with the dishonor of cheque for insufficiency of funds in the accounts.

As per Section 6 of the Act, a cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

“A cheque in the electronic form” means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature(with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be;

“ A truncated cheque” means a cheque which is truncated during the course of a clearing cycle, either by the clearinghouse or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Section 138 of the Negotiable Instrument Act dealt with the provisions applicable to the dishonor of cheque in case of insufficiency of funds.

What is dishonor of cheque?

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge of the debt or liability, is returned by the bank unpaid, *either on account of insufficiency of funds to honor the cheque or the amount mentioned in the cheque exceeds the amount standing credit to that account.*

Conditions for applicability of section 138

- a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within a period of its validity, whichever is earlier.
- b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for payment of the said amount of money by giving a notice in writing to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheques as unpaid
- c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder of the due course of the cheque, within fifteen days of the receipt of the aforesaid notice.

The payee or the holder in due course can make a complaint in writing within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138 as discussed above.

The court will issue the summon when they receive the compliant.

Cognizance of offenses under section 138

As per section 142 of the Act, No court inferior to that of a Magistrate or a Judicial Magistrate of the first class shall try an offense punishable under [section 138](#).

Secondly, an offense under section 138 shall be inquired into and tried only by a court within whose local jurisdiction;

- 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 maintain the account, is situated.
- 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.

Interim compensation(Section 143A)

The court has the power to order interim compensation to the complainant;

(a) in a summary trial or summons case, where he pleads not guilty to the accusation made in the complaint, and

(b) in any other case, upon framing of charge.

The interim compensation shall not exceed twenty percent of the amount of the cheque. It shall be paid within sixty days from the order, but in apposite cases, a further period of thirty days shall be given. In case 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, prevailing at the beginning of the financial year.

The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the code of criminal procedure.

Penalty for the dishonor of cheque

- a) Imprisonment, which may extend to two year or
- b) with fine which may extend to twice the amount of the cheque or
- c) with both

MCQs

1. When the amount stated in words and figures differs, the banker.....

- a) Can honour the amount in figures
- b) Can honour the amount in words
- c) Can honour the smaller amount
- d) Can dishonour it

2. The best answer for returning a cheque for want of funds in the account is.....
- a) Refer to drawer
 - b) Not provided for
 - c) Exceeds arrangement
 - d) Not sufficient funds
3. To get statutory protection, paying banker must make:
- a) Payment to a holder
 - b) Payment to a holder in due course
 - c) Payment in due course
 - d) Payment to a drawee in case of need
4. Bankers undertake the duty of collection of cheques and bills because.....
- a) Sec.131 of the NI Act compels them to do so
 - b) Sec.85 of the NI Act compels them to do so
 - c) They want to do it as a service
 - d) Collection is a must for a crossed cheque
5. A collecting banker is given protection only when he collects
- a) A crossed cheque
 - b) An order cheque
 - c) An Bearer Cheque
 - d) An mutilated cheque
6. Collecting a cheque payable to the firm to the private account of a partner without enquiry constitutes.....
- a) gross negligence
 - b) Negligence under remote grounds
 - c) Negligence connected with immediate collection of a cheque

d) Contributory Negligence