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Lesson No.

- 2.1 : Negotiable Instruments Act - I
- 2.2 : Negotiable Instruments Act - II
- 2.3 : Negotiable Instruments Act - III
- 2.4 : Consumer Protection Act, 1986

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NEGOTIABLE INSTRUMENT ACT-1

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2.1.0 OBJECTIVES :

The following lesson deals with the law in India related to negotiable instruments which is contained in the Negotiable Instruments Act 1881. Most Commonly used negotiable instruments are promissory notes, bills of exchange and cheques.

2.1.1 INTRODUCTION

The law of negotiable instruments in India is based entirely on the

principles of the Mercantile law of England. The Act applies to the whole of India, to all persons residents in India, whether foreigner or Indian. The provisions of the Act are not applicable to hundies or other local type of instruments generally.

2.1.2 DEFINITION OF NEGOTIABLE INSTRUMENT :

A negotiable instrument is a piece of paper which entitles a person to a sum of money and which is transferable from person to person by mere delivery or by endorsement and delivery. The person to whom it is transferred like this, becomes entitled to the money and also to the right of further transferring it.

According to Section 10 (1) of Negotiable Instruments Act, "A negotiable instrument means a promissory note, bill of exchange or cheque, payable either to order or to bearer."

The general principle is that no one can become the owner of any property unless he purchases it from the true owner or with his authority. But negotiable instruments have an exception to this Principle. A person who takes a negotiable instrument in good faith and for value, becomes the true owner even if he takes it from a thief or finder.

Justice Wills has defined it as, "the property which is acquired by anyone who takes it bonafide and for value, not with standing any defect of title in the person from whom he took it". The element of negotiability in the acquisition of property by your own conduct, not by another's that if you take it bonafide and for value, nobody can deprive you of it.

CASE-RAEPHAL VS. BANK OF ENGLAND

Some notes of the Bank of England were stolen in a robbery. The bank immediately prepared a list of stolen notes and distributed it. The plaintiff was a money changer in Paris, also received a list. After 12 months a man came to plaintiff to exchange a note of Bank of England and within 12 months plaintiff had forgotten about the list supplied by Bank of England and encashed the note. The note turned out to be a stolen one.

It was held in the above case that though the Plaintiff acted negligently, but he had acted honestly and he encashed the note in good faith. So, he was entitled to payment.

2.1.3 CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT :

2.1.3.1 PROPERTY :

A negotiable instrument does not merely give the possession of the instrument but right to property also. The property in negotiable instrument

can be transferred easily without any formality. In the case of an order instrument, endorsement and delivery are required for the transfer of property.

2.1.3.2. TITLE :

A transferee in case of negotiable instruments is known as holder in due course. Defect of title will not affect the validity of transfer. The general rule is that no one can give a better title than he himself has, does not apply on negotiable instruments.

2.1.3.3. RIGHTS :

In case of dishonour, the transferee can use his own name. A negotiable instrument can be transferred for a number of times before it actually matures. No notice is required by the holder to the party liable to make the payment.

2.1.3.4. PRESUMPTIONS :

The deal of negotiable instrument is based on certain presumptions. Payment of consideration is a presumption. There is no need to write in words for value received or any other similar expression.

2.1.3.5. QUICK PAYMENT :

A negotiable instrument enables the holders to expect quick payment. Because dishonour is generally taken as a type of crime and it may ruin its credibility.

2.1.4. SOME NEGOTIABLE INSTRUMENTS :

(i) By Statute: A few negotiable instruments are recognised by statute like Bills of exchange, Promissory notes and Cheques.

(ii) By Custom /Usage : Hundies, Share, warrant, Banker's draft, Circular notes, Bearer debentures, Railway receipts, Delivery notes etc. are negotiable instruments recognised by usage or custom.

It is not easy to give the full details of negotiable instruments. Because of growth of commerce, new kinds of securities are also being recognised as a negotiable instrument.

Money orders, Deposit receipts, Share certificates, Dock warrants, Postal orders etc. are other negotiable instruments.

SELF CHECK EXERCISE NO. 1

Which type of negotiable instrument is a cheque?

2.1.5. KINDS OF NEGOTIABLE INSTRUMENTS :

2.1.5.1 PROMISSORY NOTE :

According to Section 4 of this Act, "A Promissory note is an Instrument in writing containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to order to a certain person or to the bearer of the instrument, "e.g. A signs an instrument as 'I Promise to pay B or order Rs. 500.'

The usual form of a promissory note is like this.

Rs. 300	Patiala Oct 3, 2001
Three months after date, I promise to pay M	
Chand or Bearer/Order, the sum of rupees	
three hundred for value, received.	
S.K.Gupta	

A promissory note may take any other form, but it must have following characteristics :

- a. In Writing : All negotiable instruments should be in writing. An oral agreement is not valid. The writing can be with the help of ink pen or even pencil.
- b. Promise to pay : There should be a clear promise to pay. There should be an expressed promise. A mere receipt for money does not amount to a promissory note.

Case-Akbar Khan V. Attar Singh.

The document was containing words like this-This receipt is hereby executed by B, for Rs. 43000, received from A. The amount to be payable after 2 years, it was held that this instrument is not a promissory note within the definition of Sec. 4. But primarily a receipt, even coupled with a promise to pay, is not a promissory note and is not negotiable. Receipts are generally not intended to be negotiable.

- c. Unconditional : The promise to pay the money should be unconditional or may be subject to condition which, according to the ordinary experience of mankind is bound to happen.

Case - Beardslay v. Baldwin.

A written undertaking was given by one party that it will pay a certain sum of money within so many days after defendant's marriage.

It was not recognised as a promissory note because it's also possible that defendant may never marry.

d. **Money only:** The instrument must be payable in money and money only. Any instrument contains a promise to pay something other than money or even in addition to money, will not be a promissory note. The amount of money payable should also be mentioned on it.

SELF CHECK EXERCISE NO. 2

Explain that an instrument which contains the following statement, is a promissory note or not.

Received and borrowed Rs. 500 from A, which I promise to pay at a interest rate of 5%, I also promise to pay the fees of a club.

e. **Parties :**There must be two parties to the instrument. The person who makes the note is known as the maker and a person to whom it is made, is known as payee. Both the maker and payee must be indicated with certainty on the face of the promissory note.

f. **Signature :** The signature of the maker must be present on a promissory note.

g. **Payee must be certain :** Where a document does not specify the person to whom the money is to be paid, it's not a promissory note. The payee must be ascertained by name or by designation.

2.1.5.2. BILL OF EXCHANGE :

Section 5 defines bill of exchange as "an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument."

No particular form of a bill of exchange is prescribed, but in general, form of a bill of exchange is given on the next page like this-

Rs. 500	Patiala, Nov. 2. 2001
Three months after date pay to person Or Bearer/ Order the sum of rupee five hundred for value received.	
To	
Rajiv	
Patiala	Sanjeev

A bill of exchange must possess the following characteristics.

- a. **Writing :** It should be in writing.
- b. **Order to pay :** It must contain an order to pay. This order may

be in form of a request. The language used may be polite, but it does not destroy the promise to pay. If the language of draft does not include any 'order to pay' the draft will not be bill exchange.

c. **Unconditional** : The order to pay should be unconditional. The meaning of the word 'unconditional' will be same as it is in case of promissory note.

d. **Money** : The sum mentioned on a bill of exchange should be clear and certain. The order must contain money only.

e. **Three Parties** : Generally, a bill of exchange requires three parties. The person who makes the bill of exchange, called the drawer. The person to whom it is addressed, called the drawee and third party is payee. Sometimes the drawer and the payee are one and the same persons as where a bill is drawn, "Pay to me or my order," In such a case there are only two parties. So, there should be at least two parties.

f. **Indicative of drawee** : Though the payee may not be named, the drawee must be designated with reasonable certainty.

In a case-Gray v. Milner, no drawee was at all indicated in the bill of exchange, yet it was held to be valid. The facts were that as instrument was made payable "to drawer or order". It was not addressed to any person by name. But the place of payment was specified. The bill was afterwards accepted by the person who was residing at a place where it was made payable.

It was held that the instrument was clearly a bill of exchange.

g. **Signature** : The bill of exchange must contain the signatures of the drawer.

2.1.5.3. Cheque :

Section 6 defines a cheque as, "A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise on demand."

Following is the usual form of a cheque.

No.....	Date..... 19
Central Bank of India	
Pay.....	
.....or Bearer	
Rupees.....	
Rs.....	

A cheque must possess all the essentials of bill of exchange and should also fulfil the requirements of Section 6. If an instrument is not a bill of exchange, it could not be cheque either. A cheque must be drawn upon a banker.

Case - R, Pillai Vs Ayyar.

A District Board had its funds in the Government Treasury and they used to withdraw money by issuing order in form of cheques. It was held that "Treasury is not a bank" and hence order issued was not a cheque but it was a bill of Exchange under Section 5. So, there is a difference between a Bill of Exchange and Cheque.

2.1.6. Difference Between Cheque and Bill of Exchange

1. A cheque is always drawn on a bank/banker, a bill can be drawn on any person or even banker.
2. No acceptance is necessary in case of a cheque, but a bill must be accepted by the concerned party.
3. A cheque can be crossed, but there is not such provision in case of a bill.
4. A cheque is payable on demand without any days of grace, but a bill of exchange is normally entitled to 3 days of grace unless it is payable on demand.
5. A bill of exchange must be stamped, but no such provision is required in case of a cheque.
6. A cheque is not noted or protested for dishonour and is generally inland. But BOE can be noted/protested under Section 99 and 100 of Negotiable Instrument Act to obtain a proof that bill was dishonoured.

2.1.7 Crossing of a Cheque :

There are two types of cheques.

Open cheque
and crossed cheque

An open cheque is that which is paid over the counter of the bank. If an open cheque goes to wrong hands, it can be transferred to a holder in due course. Open cheques are liable to a great risk. They may be stolen or lost.

Crossing of cheque is a direction to banker not to pay the cheque across

the counter but to pay to a bank only or to a particular bank in an account with the bank. Thus, crossing provides a protection and safeguard to the owner of the cheque as by securing payment through a banker it can easily be detected.

Crossing can again be of four types :

General crossing means when a cheque bears across of its face and addition of the words, "and company" or any abbreviation thereof, between two parallel lines, either with or without the words 'not negotiable' or simply two parallel lines without the words not negotiable'.

Special crossing requires the name of the banker to be added across the face of the cheque either with or without the words 'not negotiable'. Transverse lines are not necessary for a special crossing. A special crossing makes the cheque more safe than a general crossing because the payee or holder cannot receive payment except through the banker named on the cheque.

Restrictive crossing is adopted by commercial and banking usage. It has the effect of restricting the payment in certain ways. In such a crossing, the words "Account payee only" or "payee Account only" are added.

Not Negotiable crossing can be done by adding the word 'not negotiable' on it. It does not mean that now the cheque is not negotiable but the words 'not negotiable', gets a better title. The holder in due course does not get any better title than what the transferor had. If the transferor had defective title, the title of the holder in due course also becomes defective.

2.1.8 Some other negotiable instruments.

2.1.8.1 Inland instruments. - Section 11 says that an inland instrument can be drawn and payable in India both or can be drawn in India on some person resident therein e.g. A bill drawn in both Mumbai on a businessman resident in London and payable in Delhi, is an inland instrument. The nature of such instrument is not changed by just the fact of its being circulated in a foreign country.

2.1.8.2 Foreign Instrument - Section 12 explains that any instrument which is not an inland instrument is a foreign instrument, e.g. bill drawn outside India on a person resident outside India, a bill drawn in India on a person resident outside India is a foreign bill. The aim of drawing foreign bills is generally to avoid the risk of loss. A bill drawn in London and made payable in India is a foreign bill.

2.1.8.3 Ambiguous Instruments - An instrument which can be either treated as a bill of exchange or a promissory note is an ambiguous instrument. A person who receives it, may treat it as a bill or a promissory note. e.g. If in a bill, drawer and drawee are the same person or drawee is a fictitious person, the instrument is ambiguous and the holder may treat it as a bill or Promissory note.

2.1.8.4 Inchoate instrument - An incomplete instrument is known as inchoate instrument. e.g. If an instrument is without date or not mentioning the amount payable or not giving the name of the payee or blank stamped paper etc.

The liability of a person, who signs such instruments is restricted to the amount specified therein, but not exceeding the amount covered by stamp.

2.1.8.5 Accomodation bills - Some bills are drawn and accepted without any consideration. Such bills are signed to oblige some friends or relatives for the purpose of lending of money. Thus, the relationship between drawer and drawee is not of creditor and debtor in accomodation bills. One party is called accomodation party and the other is called accomodated party.

2.1.8.6 Fictitious bills - Sections 42 says that when the names of drawer or payee or both are fictitious, the bill is called fictitious bill. Fictitious means a person other than the actual person intended by the parties.

2.1.8.7 Bearer Instruments - If a bill is made payable to 'A' on order, and 'A' endorse it in blank and negotiates it, it's a bearer instrument. A negotiable instrument is payable to bearer which is expressed to be so payable or on which the name or last endorsement is blank.

2.1.8.8 Undated bill - In such a bill, the date of acceptance of a bill is omitted. The holder of such a bill may insert the true date and this would not be considered as a material change in the bill and the instrument will still remain valid.

2.1.8.9. Bankers's Draft - An order addressed by one bank to another or by a bank to its branch, directing to pay the latter specified sum of money to name person or his order, is known as banker's draft. It is quite similar to a cheque, but not exactly. It can only be drawn by a bank on another bank, not on individuals.

2.1.8.10. Order Instruments - Such an instrument is payable to order which is expressed to be so payable or which is expressed to be payable to

a particular person but does not contain words showing transfer or indicating an intention that it shall not be transferable.

2.1.8.11. Bills in Sets (sec 102 & 103)- Bills in sets are generally used in case of foreign bills. They are drawn in sets to avoid the delay and inconvenience which may arise from loss during transit. Each part of it contains a number and references to other parts.

2.1.9 Summary

The law of negotiable instruments in India is based on the principles of Mercantile law of England. The Act applies to the whole of India. Definitions have also given according to Indian law as well as according to English law.

The main characteristics of a negotiable instrument are property, title, rights, presumptions and Quick payment.

A few types of negotiable instruments, as well as of non-negotiable instrument have been given.

Kinds of negotiable instrument primarily include promissory note, Bill of Exchange and cheques. The characteristics of all these three have been given and the difference between a cheque and a bill of exchange has been explained.

After that, crossing of a cheque has been explained by including four types of crossing the cheque via., general crossing, special crossing, restrictive crossing and not negotiable crossing etc.

In the end, Some other negotiable instruments have been discussed which includes the instruments like, Inland instruments, foreign instruments, ambiguous and Inchoate instruments, accomodation bill, undated bills, Fictitious bills, Bearer instruments, Banker's draft etc.

2.1.10 Key words

	Words		Meaning
1.	Entirely	:	Fully, Totally
2.	Endorsement	:	Publically approving something
3.	Acquisition	:	Getting something or buying
4.	Defendant	:	A person against whom the case is filed.
5.	Holder	:	Someone who possesses the things

2.1.11 Answers to self check exercise

1. A cheque is a negotiable instrument by statute. A few negotiable instruments are recognised by statute.
2. Such an instrument was declared void because its exact value was not written clearly.

2.1.12 Questions for exercise

Long questions:

Q. 1 What is negotiable instrument? What are its essential characteristics?

Q. 2 What is crossing of cheque? Who can cross a cheque? Explain various types of crossing of cheque.

Short Questions:

Q. 1 Define promissory note.

Q. 2 Define bill of exchange.

Q. 3 Define cheque.

Q. 4 Distinguish between a cheque and a bill of exchange.

2.1.13 Suggested Readings

1. Principles of Mercantile law : Avtar Singh
2. Mercantile Law : N.D.Kapoor

INDIAN NEGOTIABLE INSTRUMENTS ACT-II

2.2.0 Objectives

2.2.1 Holder & Holder In Due Course

2.2.1.1 Meaning of Holder (Sec 8)

2.2.1.2 Meaning of Holder in due course

2.2.1.3 Difference between Holder & Holder in due course

2.2.2 Transferability of a Negotiable Instrument

2.2.2.1 Transfer by Negotiation (Sec 2.2)

2.2.2.2 Transfer by Assignment

2.2.2.3 Who may Negotiate (Sec 51)

2.2.3 Methods of Negotiation:-

2.2.3.1 Negotiation by delivery (Sec 47)

2.2.3.2 Negotiation by endorsement & delivery (Sec 48)

2.2.4 Importance of delivery in Negotiation

2.2.5 Duration of Negotiation (Sec 60)

2.2.6 Effect of Negotiation

2.2.7 Endorsement

2.2.7.1 Meaning of Endorsement

2.2.7.2 Essentials of Endorsement

2.2.7.3 Who may endorse?

2.2.8 Kinds of Endorsement:-

2.2.8.1 Blank or General Endorsement

2.2.8.2 Special or full Endorsement

2.2.8.3 Partial Endorsement

2.2.8.4 Restrictive Endorsement

2.2.8.5 Conditional Endorsement

2.2.9 Effect of Endorsement

2.2.10 Cancellation of Endorsement

2.2.11 Negotiation Back

2.2.12 Negotiation By Unauthorized Parties

- 2.2.12.1 Lost Instrument
 - 2.2.12.1.1 Notice to prior Parties
 - 2.2.12.1.2 Apply for a duplicate of lost Instrument
 - 2.2.12.1.3 Finder acquires no title
 - 2.2.12.1.4 Application to drawee
 - 2.2.12.1.5 Indemnity in case of loss
 - 2.2.12.1.6 Payment in due course
 - 2.2.12.1.7 Right of Holder in due course
- 2.2.12.2 Stolen Instrument
- 2.2.12.3 Instrument obtained by fraud
- 2.2.12.4 Instrument obtained for an unlawful consideration
- 2.2.12.5 Forged instrument
- 2.2.12.6 Forged Endorsement
- 2.2.12.7 Instrument without consideration
- 2.2.12.8 Partial consideration
- 2.2.13 Summary
- 2.2.14 Answers to Self Check Exercises
- 2.2.15 Glossary
- 2.2.16 Questions for exercise
 - Long questions
 - Short questions
- 2.2.17 Suggested Readings

2.2.0 Objectives :

The following lesson deals with who is Holder and Holder in due course in context with Indian Negotiable Instrument Act. Next part of the lesson deals with Negotiation procedure of the Instrument and describes how instrument is negotiated and assigned from one person to another. The following lesson also covers Dishonour of an instrument including Noting and Protesting procedure and also Discharge of a Negotiable instrument.

2.2.1 Holder and Holder in due course

2.2.1.1 Meaning of Holder (Sec 8)

"The Holder of a promissory note, bill of exchange or cheque means any person entitled in his own name the possession thereof and to receive or recover the amount due thereon from the parties thereto."

In other words, before a person can claim to be the 'holder' of a negotiable instrument, it is necessary that---

- ⓪) he should be entitled in his own name to the possession of the instrument, and
- ⓪ he should have the right to receive or recover the amount due thereon from the parties thereto

It may be noted that a possession of the instrument is not necessary to constitute a person, a holder. He may or may not be in possession of the instrument.

If a thief, or an endorsee under a forged instrument, or a finder of the instrument is in actual possession of it, but he does not become a 'holder' because he is not entitled to the time of such loss or destruction.

It is important to determine the position of the 'holder' because of following reasons-

1. No person other than the holder can sue on the instrument.
2. He has a right to negotiate it
3. Only he can give valid discharge to the bill.
4. He is the Chief person to whom other persons are liable on the bill

Example : A makes a promissory note and gives it to Y .Y endorses it in full to C. C is the holder because he has the legal title to the note and is entitled to recover the amount on the note.

2.2.1.2 Meaning of Holder in due course :

A holder in due course is-

- ⓪) a person who obtains possession of a negotiable instrument for consideration if payable to bearer ; or
- ⓪ the payee or endorsee thereof, if payable to order, before its maturity, and without having sufficient causes to believe that any defect existed in the title of the persons from whom he derived his title.

In other words, a person taking a negotiable instrument in good faith and for value obtains a valid title though he takes it from one who has a defective title, such a person is known as ' holder in due course'.

Before a person claims to be a 'holder in due course' he must show-

- (i) That he obtains the possession of the instrument for valuable consideration.
- (ii) That he possessed that instrument before the amount mentioned therein became payable.
- (iii) That he took the delivery of the instrument in good faith. It implies that he received the instrument without having sufficient cause to

believe that any defect existed in the person from where he received this title.

- (iv) that the instrument should be completed and regular on the face of it.

Example- A bank note sent by general postage was taken and carried by a robber. The next day, the same note came in the hands of the plaintiff. He received it for full and valuable consideration and in the usual course of business and without any notice of the bank note being taken out of the mail. Held, the plaintiff is the holder In due course.

2.2.1.3 Difference between Holder & Holder in due course :

Basis of difference	Holder	Holder in due course
1. Consideration	A Holder may acquire an instrument without consideration	A holder in due course must show that he has acquired instrument for a valuable consideration.
2. Nature of title	Holder does not get better title than that of good title from whom he gets. is defective.	Holder in due course gets better title even if that title is defective.
3. Enforcement	Holder can enforce the instrument for payment against the transferor. Parties.	Holder in due course has a right to sue all the prior parties.
4. Maturity	Holder may possess the instrument after the date of maturity	Holder in due course must acquire instrument before the date of maturity
5. Negotiation	The person may become entitled to instrument through assignment.	The person may become a holder in due course only through negotiation.

Self Check Exercise - 1

What is meant by holder & Holder In Due course , and make a difference between these ?

2.2.2 Transferability of a 'Negotiable Instrument'

Transferability of a 'Negotiable instrument' is one of its essential features.

The instruments are generally transferred from one person to another in either of the following ways:

1. By Negotiation
2. By Assignment

2.2.2.1 Transfer by Negotiation (Sec 2.2) :

Negotiation is a transfer of an instrument from one person to another in such a manner as to convey title and to constitute the transferee the holder thereof (sec 2.2)

Although the negotiation means transfer of instrument but a mere change of possession does not amount to negotiation. To constitute a valid negotiation according to sec 2.2 of the Act, it must fulfill the following conditions:-

1. There must be a transfer of possession of the instrument.
2. The instrument must be transferred in such a manner that the transferee becomes holder thereof.

A transferee becomes the holder when he is entitled in his own name to the possession of the instrument and to recover the amount due therein from the parties thereto. So, there must be a transfer with an intention to pass title.

2.2.2.2 Transfer by Assignment :

Where the negotiation of an instrument takes place according to Negotiable Instruments Act, the assignment of instrument takes place under Transfer of Property Act.

The negotiable instruments are chose-in -action and therefore their ownership can be transferred by assignment i.e. by writing a separate transfer deed, the property in negotiable instruments can be sold or bought like any other thing without any endorsement. The assignee is entitled to possession and he can recover the amount from the parties thereto. The negotiable instruments are transferred in assignment without any Endorsement. The assignee does not get a better title than the assignor. It means he does not enjoy the position of holder in due course.

Example : M executed a promissory note for Rs. 1,000 in favour of R. who in turn sold the note to N under a separate sale deed. N sued M for the recovery of the amount of the note and that the suit was not maintainable. Held, it is true that N is not a holder in due course but he is a holder within the meaning of Sec. 8, as he is in possession of the note and as an

assignee is entitled to recover in his own name.

2.2.2.3 Who may negotiate ? (Sec. 51) :

Every sole maker, drawer, payee or endorsee, or all of the several joint makers, drawees, payers or endorsers can negotiate the instrument. But the right of negotiation can only be exercised when negotiability is not restricted.

The maker or drawee should be in lawful possession of the instrument and a holder thereof. Further, a payee or an endorsee of an instrument, before he can endorse or negotiate it, he must be a holder thereof.

Thus, an endorsement by a thief or a finder of the instrument cannot Endorse or negotiate it, as he is not a holder within the meaning of this section.

Example : A bill is 'payable to the order of A and B'. A alone Endorses it to C. This is not sufficient. C can not sue the acceptance.

2.2.3 Methods of negotiation :

Negotiation may be made in the following ways:

2.2.3.1 Negotiation by delivery (Sec. 47) :

Where a promissory note, bill of exchange or cheque is payable to bearer is negotiable by delivery thereof. The delivery may be actual or constructive. Under this section, negotiation takes place without any endorsement, so it is a sale of an instrument like any other thing.

Example : A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

2.2.3.2 Negotiation by Endorsement and delivery (Sec. 48) :

Where a promissory note, bill of exchange or cheque payable to order, it can be negotiated by the holder by Endorsement and delivery only. Thus, for the purpose of negotiation of order instrument, there should be an endorsement as well as delivery. The negotiation is invalid in the absence of either of the two i.e. endorsement and delivery. In case a holder of an instrument dies after endorsement but before delivery, it is not a complete negotiation. The legal representatives cannot complete it by delivery. A delivery without endorsement amounts to assignment only. I

Example : A is the holder of a bill payable to 'A or order'. A by simple delivery transfers the bill without endorsing it to B.B is not a holder in due course but a mere assignee of chose-in-action and takes the bill subject

to all defects.

2.2.4 Importance of delivery in negotiation:

The delivery is a voluntary transfer of possession from one person to another. No negotiation is possible either by mere delivery or by endorsement. So, delivery is an essential element for negotiation of an instrument. Acceptance or endorsement is incomplete without delivery. Mere execution i.e. writing and signing does not make the negotiation operative without delivery. Delivery made voluntarily with the intention of passing the property in instrument to the person to whom it is given is essential.

Example : Bank of Van Diemen's land V Bank of Victoria (1871),

D drew a bill on A and transferred it to B. B sent the bill to A who gives his acceptance on it. Afterwards A hears that D, the drawer has become bankrupt. A cancels his acceptance and returns the dishonored bill to B. A never delivered the accepted bill so as to make himself liable on it.

Delivery may be actual or constructive. It may be conditional or for a special purpose. When an instrument is delivered conditionally or for special purpose only, the property in it does not pass to the transferee, even though it is endorsed to him. Thus, the fulfillment of condition attached to the delivery of an instrument is necessary before the property in it passes to the transferee.

2.2.5 Duration of negotiability (Sec. 60) :

A negotiable instrument remains to be negotiable until it is paid or satisfied by the maker, drawee or acceptor at or after maturity. In case the instrument is paid before maturity, such a payment is no payment as it is not in due course. Then, the instrument continues to be negotiable if it is paid before due date.

It is to be noted that in order to stop the negotiability, the party must make the payment liable thereon i.e., maker, drawee or acceptor. A payment or satisfaction by the third party cannot stop the negotiability of the instrument.

Examples : (a) A gives a promissory note to B whose maturity date is 1st August B negotiates it to C, who further negotiates it to D on 5th August. D negotiates it to E on 10th August, and E presents the note for payment on 16th August. All the above Endorsements are valid because these were before payment.

(b) If in the above example, C presents the instrument for payment on 5th August then the note cannot be negotiated further.

2.2.6 Effect of negotiation :

The property in instrument is transferred from holder to transferee by negotiation. The transferee gets a good title to the instrument provided he has received it for value and in good faith irrespective of any defect in the title of transferor except in case of forgery. Thus, a bonafide holder who takes the instrument for valuable consideration and in good faith gets a better title than the title of the transferor of the instrument in case it is defective by virtue of fraud, coercion or misrepresentation. Negotiation gives better title to the transferee in case the transferee is a holder in due course.

Self Check Exercise-2

Distinguish between 'negotiation & assignment, and discuss the methods of negotiation?

2.2.7 Endorsement :

2.2.7.1 Meaning of Endorsement

The word 'endorsement in ordinary sense means writing on the back of an instrument. According to Negotiable Instruments Act, "when a maker or holder writes the person's name on the face or back of the instrument and puts his signatures thereto for the purpose of negotiation, it is called endorsement". No particular form of words are required for endorsement. A mere signature of the maker or holder on the face or back of the instrument is sufficient. If no space is left on the instrument, a slip of paper may be attached to it for making endorsement. It is called 'ALLONGE'. The person who signs the instrument is known as endorser' and to whom it is endorsed is known as 'endorsee'.

The endorsement to become valid should be made with ink. An endorsement in pencil or rubber stamp is invalid. If the endorser is illiterate, he may make endorsement by putting his left thumb impression on the document, but the same should be witnessed or attested by somebody. The endorsement is always presumed to be in order unless contrary is proved.

2.2.7.2 Essentials of a valid endorsement :

1. It must be either on the back or face of the instrument. In case no space is left, a separate piece of paper may be attached to it for

- making endorsement.
2. It must be made by maker or holder. A stranger to an instrument cannot make a valid endorsement.
 3. It must be Properly signed by endorser. In case a person is illiterate, he must put his left thumb impression.
 4. The instrument must be delivered by endorser himself or by somebody on his behalf.
 5. The endorsement must be of entire negotiable instrument. An endorsement of the part of the instrument is not valid.
 6. No specific form of words are necessary for endorsement. But, intention to endorse, on the part of the endorser must appear.
 7. If delivery is conditional, endowment is not complete until the condition is fulfilled.

2.2.7.3 Who may Endorse?

An endorsement can be made by

1. the holder of the instrument.
2. the payer of the instrument.

A maker or drawer cannot endorse the instrument unless any of them has become a holder thereof. A stranger cannot endorse an instrument. If he does so, he is not liable for it. But he may make himself liable as surety, if he guarantees payment. The stranger who endorses the instrument is called 'backer'.

2.2.8 Kinds of endorsement :

A negotiable instrument may be Endorsed in any of the following ways:

2.2.8.1 Blank or general endorsement :

An endorsement is said to be blank or general where the endorser simply puts his signatures on the back of the instrument without writing the name of the person, in whose favour the instrument is endorsed. In such an endorsement, the name of the endorsee does not appear on the instrument. It simply bears the signatures of the Endorser on the instrument for the purpose of endorsement. An instrument, which is order in nature, becomes bearer if Endorsed in blank. Then, property in instrument passes by mere delivery so long as instrument remains to be blank. But a holder of the instrument may convert a blank endorsement into a full endorsement by writing above the signatures of the endorser the name

of any person or his order. The advantage of such an endorsement is that the holder may transfer the instrument, without incurring any liability as Endorser.

Example : X, a holder of the bill, endorses it simply by putting his signatures on it. It is an endorsement in blank by X. Thus, the bill becomes payable to bearer,

2.2.8.2 Special or full endorsement :

An endorsement with the direction to pay amount mentioned in the instrument to a specified person or his order and the Endorser writes his signatures under it, such an Endorsement is called special or full endorsement.

Pay X or order'.

Sd/ -Y

It is a special or full endorsement.

2.2.8.2.1 When the blank endorsement is converted into full:

A holder of an instrument containing an endorsement in blank may convert it into full endorsement by writing the name of any person or his order (as endorsee) above the signatures of the endorser. (Sec. 49)

Example : A is the holder of the bill endorsed by B, in blank. A writes over B's signature the words 'Pay to C or order". A is not liable as an endorser, but the writing operates as an endorsement in full from B to C.

2.2.8.2.2. Where the blank transfer is followed by full transfer : The

instrument remains payable to the bearer and negotiable by delivery as against all the parties prior to the endorser in full, though the endorser in full is only liable to a holder who made title directly through his endorsement, and persons deriving title through such holder. (Sec. 55)

Example : A is the payee holder of a bill. A endorses it in blank and delivers it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. D as the bearer is entitled to receive payment or to sue the drawer, acceptor, or A who endorsed the bill in blank, but he cannot sue B or C.

2.2.8.3 Partial endorsement (Sec. 56) :

An endorsement is said to be partial, when an endorser purports to transfer to endorsee only a part of to be amount of the instrument. Such an endorsement does not operate as a negotiation of the instrument. The

reason being that the personal contract cannot be appropriated.

Examples : (a) A is the holder of the bill for Rs. 1,000. A endorses in thus: "pay B or order Rs. 500". This is a partial endorsement and invalid for the purpose of negotiation.

(b) A is the holder of the bill for Rs. 1,000. A endorses it thus: "Pay Rs. 500 to B or order, and Rs. 500 to C or order". Though the whole amount of the bill is transferred to B and C as each of them as an endorsee of only a part of the amount, the endorsement is partial and invalid for the purpose of negotiation.

2.2.8.4 Restrictive endorsement (Sec. 50) :

An endorsement is said to be restrictive if it prohibits or restricts the further negotiability of the instrument. The holder of such an instrument can only receive the payment but he cannot negotiate it further. Further, transfer of an instrument can be restricted only by express words to that effect. The effect of restrictive endorsement is

- ⓪) to prohibit or exclude further endorsement; or
- ⓪ to constitute the endorsee an agent to endorse the instrument, or to re-ceive its contents for the endorser; or
- ⓪ to constitute the endorsee an agent to receive its contents for some other specified person.

Example : The following endorsements by B exclude the right of further negotiations by C :

- ⓪) "Pay the content to C only" . (ii) "Pay C for my use".

The following endorsements by B do not exclude the right of further negotiations by C:

- ⓪) "Pay C" .
- ⓪ "Pay C value in account with Bank of Baroda" .

2.2.8.5 Conditional endorsement : (Qualified endorsement)

A conditional endorsement is one which limits or negatives the liability of the Endorser. It is also called the 'qualified endorsement'. The conditional endorsement is different from the restrictive endorsement in the sense that the conditional endorsement only limits the liability of the endorser but not the negotiability of the instrument. Thus, the conditional endorsement does not affect the negotiability of the instrument.

The conditional endorsement must be in express words. An endorsement is conditional when the endorser endorses the instrument with the following words:-

- ①) "Pay A or order on his marrying B".
- ① "Pay A or order on the arrival of the ship" .

Thus, in a conditional endorsement, liability of the endorser arises on the happening of a specified event.

2.2.9 Effect of endorsement :

The effect of negotiation by endorsement is-

- ①) The property in instrument is transferred from endorser to endorsee.
- ① The endorsee gets right to negotiate the instrument further; and
- ① The endorsee gets right to sue in his own name to all other parties.

To conclude, it can be said that the endorsee steps into the shoes of the endorser.

2.2.10 Cancellation of endorsement :

Where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorsee's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Example : A is the holder of the bill of exchange made payable to the order of B, which contains the following instrument in blank :

First endorsement,	'B'
'Second endorsement,	'Peter William'
Third endorsement,	'Wright & Co.'
Fourth endorsement,	'John Rozario'

This bill A puts in suit against John Rozario and strike out, without John Rozario's consent the endorsements by Peter Williams and Wright and Co. A is not entitled to recover anything from John Rozario.

2.2.11 Negotiation Back :

When an endorser negotiates the instrument and again becomes its holder

before its maturity, the instrument is said to be 'negotiated back' to that endorser. In a consequence, none of the intermediate endorsers are then liable to him. The purpose of this rule is to prevent the circulation of action. This rule is an exception to the general rule that the holder in due course may sue all the prior parties to the instrument.

Example : A, the holder of the bill endorses it to B. B endorses it to C, C to D, D to E endorses it again to A. A being a holder in due course of the bill by second endorsement by E, can recover the amount thereof from B, C, D or E, and himself being a prior party is liable to all of them. Therefore, A having been relegated by second endorsement to original position, cannot sue B, C, D and E. If A were allowed to sue E, E could sue D, and D could sue C, and C could sue B, and B could sue A and this circuity of action the law prohibits.

A, however, can further negotiate the bill provided he cancels or strikes off the endorsement of B,C,D and E. Such a transaction is called "Taking up a Bill".

Self Check Exercise-3

1. Define endorsement. What are the various types of endorsement ?

2.2.12 Negotiation by Unauthorized Parties :

2.2.12.1 Lost instruments :

If the holder of a bill or note loses it, the finder gets no title to it and he can't transfer it.

The rules in case of lost instruments are as follows :

2.2.12.1.1 Notice to Prior parties :

The holder of the instrument should give notice to all parties liable on it to avoid any wrong payment. He should also give public notice in some newspaper.

2.2.12.1.2 Apply for a duplicate of lost instrument :

The holder should apply to the maker or drawer for issue of the duplicate of the lost instrument of the same tenor as the original one, in case it is lost before it is overdue. He may give some security to the maker or drawer against loss. If the drawer or maker refuses to issue the duplicate instrument, he may follow a legal course to get it (Sec. 45A).

2.2.12.1.3 Finder acquires no title :

The finder of the lost instrument does not acquire any title to it. The real

owner is entitled to recover it from the finder.

2.2.12.1.4 Application to drawee :

The holder should apply to the maker or drawee for making a payment when it becomes due. If the instrument is dishonored, it is necessary that he should give notice of dishonor to the parties liable on it. Otherwise, the holder will lose his remedy against the maker or drawee and the endorsers.

2.2.12.1.5 Indemnity in case of loss :

The payment against the instrument can only be made when it is presented to the person liable on it. When the instrument is lost or cannot be produced, he may refuse to pay or may ask for an indemnity against any further claim thereon against him (Sec. 81).

2.2.12.1.6 Payment in due course :

If the finder obtains payment on a lost instrument, the person who paid on it in due course, gets a valid discharge. However, the true owner can recover the amount due or damages from the finder.

2.2.12.1.7 Rights of holder in due course :

The finder of instrument which is payable to bearer or which is endorsed in blank, negotiate further to the bona fide transferee for value. Such a transferee is known as holder in due course, who acquires a valid title to it and is entitled both to retain the instrument as against the true owner, and to compel payment from the persons liable thereon.

2.2.12.2 Stolen Instrument :

The position of the stolen instrument is almost same as that of the lost instrument. The only difference is that the thief is open to criminal prosecution but the finder is not. If the stolen instrument is bearer or is endorsed in blank and the thief negotiates it to bona fide transferee for value, the transferee gets a good title and attains the position of holder in due course. However, a thief does not acquire any title to the instrument and the rightful owner can sue him for recovery of instrument or money if he has received from maker or drawer, or if he has validly negotiated it further.

2.2.12.3 Instruments obtained by fraud:

Where a person obtains a negotiable instrument by fraud, neither he nor the third party to whom he passes the instrument, gets good title to it. The reason being that the consent of the person from whom it is obtained, is not free. In case, such an instrument passes into the hands of the

holder in due course, he acquires a good title to it and the defence of the fraud is not available against him. The position remains the same where he obtains it by undue influence or coercion.

2.2.12.4 Instruments obtained for an unlawful consideration :

The general rule of the contract is that where the object or consideration is unlawful or immoral, the agreement is void. The same rule applies to negotiable instruments if the consideration is unlawful. Thus, where the instrument is given in consideration of giving false evidence or in consideration of future illicit cohabitation, the transaction is void. However, a holder in due course gets a good title to it.

2.2.12.5 Forged instruments :

Forgery is fraudulent making of alteration of writing to the prejudice of another's right. Forgery does not give a good title to a person who acquires forged instrument. A forged instrument is not operative. The position of the forged instrument in law is that as if it has not come into existence. So, it is treated as a nullity. An instrument is said to be forged in the following cases-

- ①) Where fraudulently writing the name of an existing person; or
- ① where signing one's own name or the name of a fictitious person with the intention that the signature may pass as that of real person; or
- ① where signing one's own name with the intention that the signature may pass as the signature of some other person of the same name.

Since the forged instrument has no existence in the eyes of law, therefore property in it remains in the person who was the holder at the time when it was forged. The property in an instrument does not pass even to the holder in due course, as it is no more than a piece of paper.

2.2.12.6 Forged endorsement :

A forged endorsement is one where the signature of the endorser is forged on the negotiable instrument. The position of the forged endorsement can be discussed as under:-

(i) When the instrument is endorsed in full :

If an instrument is endorsed in full, only the holder of it can endorse it further by signing it and the endorsee gets a good title to it. But, if the instrument is endorsed by way of forged endorsement, the endorsee does

not get a good title irrespective of the fact that he obtains the instrument in good faith and for valuable consideration. It is so because the forged endorsement is nullity in the eyes of law.

Example : A bill is endorsed "Pay P or order". P must endorse the bill and if his signature is forged, the endorsement is inoperative.

(ii) **When the instrument is endorsed in blank :**

Where the instrument is bearer or endorsed in blank, it can be negotiated by mere delivery. The holder of such an instrument gets good title because it is independent of the forged endorsement.

In spite of the intervening forged endorsement.

2.2.12.7 Instruments without consideration :

Though there is a presumption that consideration exists between the parties as to the transaction relating to the negotiable instruments until it is proved otherwise. The rules regarding the absence of consideration in negotiable instruments are laid down in section 43 which are as follows:-

(i) **As between immediate parties :**

If an instrument is made, drawn or endorsed or transferred without consideration or for a consideration which fails, it creates no obligation of payment between the parties to the transaction. So, like a simple contract, consideration is must in this case also.

Example : A is the holder of a bill for consideration. A endorses it away to B without consideration. The property in the bill passes to B. The bill is dishonoured at maturity. B cannot sue A on the bill.

(ii) **As between remote parties :**

The remote parties mean the parties who are not in direct relation to each other. For example, between the payee and the acceptor, between the endorsee and a remote endorser.

Self Check Exercise-4

1. Discuss the rules regarding negotiation of a lost instrument, a forged instrument and an instrument obtained by fraud and unlawful consideration?

2.2.12.8 Partial Consideration :

When there is a partial absence or failure of consideration, the parties standing in immediate relation to each other cannot recover more than actual consideration, but this rule does not apply to a holder in due course.

2.2.13 Summary

The above lesson describes the basic difference between holder & holder in due course. Holder is a person who is entitled to the possession of the instrument in his own name, whereas Holder in due course is a person who takes the instrument in good faith for consideration before the date of maturity

Next part of the lesson deals with What is Negotiation? and What is the procedure of Negotiating a Negotiable instrument? Negotiation is a transfer of an instrument from one person to another in such a manner as to convey title and to constitute the transferee the holder thereof. Negotiation can be done by two ways, first is by delivery and the second is by endorsement and delivery. When a maker or holder writes the person's name on the face or back of the instrument and puts his signature thereto for the purpose of negotiation, it is called endorsement'. There are many kinds of endorsement like Blank or general, Special or full, Partial, Restrictive and conditional etc.

2.2.14 Answers to self check Exercises :

1. See 2.2.2.1, 2.2.2.2 & 2.2.2.3
2. See 2.2.3.1, 2.2.3.2 & 2.2.3
3. See 2.2.8 & 2.2.9
4. See 2.2.13.1 & 2.2.13.3 to 2.2.13.5

2.2.15 Glossary

- | | | |
|-------------------|---|--|
| 1. Possession | : | Ownership, the things possessed |
| 2. in good faith | : | taking something in good faith |
| 3. negotiate | : | Discussion for reaching to a solution |
| 4. endorsement | : | to assign by writing on the back of |
| 5. forgery | : | act of counterfeiting |
| 6. remote parties | : | parties which are far from the situation |
| 7. consideration | : | something in return |

2.2.16 Questions for exercise

Long questions:

- Q.1 What is an endorsement? Explain the various types of endorsement.
- Q. 2 Define a holder in due course. What are his privileges under the negotiable instrument act?
- Q. 3 Explain methods of negotiation?

Short questions:

- Q.1 Distinguish between holder and holder in due course?

Q. 2 Who may negotiate?

Q. 3 What is restrictive endorsement?

Q.4 What is forged instrument?

Q. 5 What is negotiation back?

2.2.17 Suggested Readings :

1. Mercantile Law : Kapoor G.K.
2. Business & Mercantile Law : Kapoor N.D.
3. Principles of Mercantile Law : Singh Avtar

INDIAN NEGOTIABLE INSTRUMENTS ACT-III

- 2.3.0 Objectives
- 2.3.1 Introduction
- 2.3.2 Discharge of an Instrument
 - 2.3.2.1 By payment in due course
 - 2.3.2.2 By party primarily liable
 - 2.3.2.3 By cancellation
 - 2.3.2.4 By express waiver
 - 2.3.2.5 Discharge as simple contract
- 2.3.3 Discharge of party or parties
 - 2.3.3.1 By Cancellation
 - 2.3.3.2 By Release
 - 2.3.3.3 By payment
 - 2.3.3.4 By allowing more than 48 hours to accept
 - 2.3.3.5 By making a delay in presenting the cheque
 - 2.3.3.6 When bank makes payment in due course
 - 2.3.3.7 By taking qualified acceptance
 - 2.3.3.8 Draft drawn by one branch on another
 - 2.3.3.9 By not giving notice of dishonour
 - 2.3.3.10 By operation of law
 - 2.3.3.11 By material alteration
 - 2.3.3.2.3 By payment of altered instrument
- 2.3.4 Dishonoure of a Negotiable Instrument
 - 2.3.4.1 Dishonoured by Non-Acceptance (Sec 91)
 - 2.3.4.2 Dishonoured by Non-Payment (Sec 92)
- 2.3.5 Notice of Dishonour
 - 2.3.5.1 Requisites of Notice:
 - 2.3.5.2 Notice by whom
 - 2.3.5.3 Notice to whom
 - 2.3.5.4 What is a reasonable time ?

- 2.3.5.5 When the notice is unnecessary
- 2.3.6 Noting & Protesting
 - 2.3.6.1 Noting-Meaning
 - 2.3.6.2 Particulars which Noting must contain
 - 2.3.6.3 Protesting-Meaning
 - 2.3.6.4 Particulars which protesting must contain
 - 2.3.6.5 Advantages of Protesting
- 2.3.7 Summary
- 2.3.8 Answers to Self Check Exercises
- 2.3.9 Glossary
- 2.3.10 Questions for exercise
 - Long questions
 - Short questions
- 2.3.11 Suggested Readings

2.3.0 Objectives :

Objectives of the following lesson is to explain the procedure of discharge of instrument and discharge of party or parties to the instrument by various methods. An instrument is said to be discharged when it ceases to be negotiable, whereas Discharge of a party to a negotiable instrument means that only the liability of a party to instrument has come to an end but the instrument continues to be negotiable. The discharge of instrument has much wider implication than the discharge of a party. When an instrument discharges, the liabilities of all the parties come to an end. Whereas one or more parties to instrument discharges only the liability of such parties is extinguished but the instrument continues to be negotiable.

2.3.1 Introduction

A Negotiable instrument is a piece of paper which entitles a person to a sum of money, transferable from one person to another person by mere delivery or endorsement. In such a case, liability is discharged by using different methods. It may be discharged by the parties concerned. A notice of dishonour is also required within reasonable time.

2.3.1 Discharge from liability :

The term discharge from liability is used in two senses viz.

1. the discharge of the instrument and
2. the discharge of one or more parties liable on the instrument.

Discharge of an instrument :

An instrument is said to be discharged when it ceases to be negotiated .

The rights of all parties with respect to instrument are completely extinguished. Even a holder in due course is not entitled to claim any amount from any party if a discharged instrument comes into his hand. To sum up, the liabilities of all the parties come to an end when the instrument is discharged.

Discharge of a party to an instrument :

Discharge of a party to a negotiable instrument means that only the liability of a party to instrument has come to an end but the instrument continues to be negotiable. When one or more parties to the instrument are discharged, it implies only the liabilities of that party has been extinguished while the other parties continue to be liable on the instrument. Thus, the discharge of one or more parties to an instrument does not amount as the discharge of the instrument.

To conclude, the discharge of instrument has much wider implication than the discharge of a party. When an instrument discharges, the liability of all the parties comes to an end. Whereas one or more parties to instrument discharges only the liability of such parties is extinguished but the instrument continues to be negotiable.

2.3.2 Discharge of an Instrument :

An instrument can be discharged in the following ways:

2.3.2.1 By payment in due course :

When the party who is primarily liable on the instrument makes the payment in due course, the instrument is said to be discharged. It is most usual method of discharge of an instrument. After making the payment the party has a right to get back the instrument and then it ceases to be negotiable.

2.3.2.2 By party primarily liable becoming its holder :

When the instrument is negotiated at back or after maturity, its acceptor or maker becomes the holder in own right the instrument is discharged because none of the intermediate parties are liable on it.

2.3.2.3 By cancellation :

When the holder intentionally cancels the instrument by crossing out his signature or by destroying it physically.

2.3.2.4 By express waiver :

Where the holder of an instrument unconditionally renounces in writing or gives up his right against all the parties to the instrument at or after its

maturity the instrument is discharged. The waiver must be made in writing unless the instrument is delivered up to the party primarily liable.

2.3.2.5 Discharge as simple contract :

A negotiable instrument may be discharged by a way as simple contract of payment is discharged, such as by novation or rescission or by expiry of period of limitation.

Self Check Exercise-1

What are the various ways in which an instrument is discharged from negotiation?

2.3.3 Discharge of Party or parties :

The liability of the party to a negotiable instrument may be terminated by any of the following ways :

2.3.3.1 By cancellation :

If a holder or his agent cancels the name of any party on the instrument, with an intention to discharge him, such a party is discharged from the liability to the holder. The cancellation not only discharges a particular party but it also discharges all the subsequent parties who have a right of action against the party so discharged by holder. It may be noted that cancellation should be intentional and apparent. A cancellation by a mere mistake is inoperative. A cancellation of the drawer's name would discharge all the endorsers.

Example : A endorses the instrument to B, B to C, C to D and D to E. If E cancels the name of C then D shall also be discharged but B and prior parties will continue to be liable.

2.3.3.2 By release :

When the holder of an instrument releases any party to the instrument by any method other than cancellation, the party so released is discharged from his liability towards the holder. The liability of all the subsequent parties will also come to end if the holder releases one of the joint parties it does not release all of them

2.3.3.3 By payment :

When the party primarily liable, makes the payment of whole amount on the instrument to the holder or his agent the instrument is discharged and also all the parties thereto.

2.3.3.4 By allowing more than 48 hours to accept :

Where the holder allows the drawer more than 48 hours exclusive of public

holiday whether he will accept the instrument or not, all the prior parties not consenting to such allowance will be discharged from their liability to the holder.

2.3.3.5 By making delay in presenting the cheque :

Where the holder fails to present cheque within the reasonable time of its issue and as a result of it the drawer suffers some actual damage, the drawer is discharged to the extent of loss or damage.

Example : A draws a cheque for Rs. 2000 and at that time there were sufficient funds to meet this 'cheque. There was delay in presenting the cheque and in the meanwhile bank fails. Thus, the drawer is discharged from his liability towards the holder.

2.3.3.6 When the bank makes payment in due course :

Where the bank makes a payment in due course against a bearer cheque the bank is discharged from his liability. The bank will not be liable even if the cheque is forged one. The bank is also discharged if the payment is made against an order cheque in due course.

2.3.3.7 By taking qualified acceptance :

Where the holder of the bill takes the qualified acceptance, all the prior parties not consenting to it are discharged. But the parties who have given the consent to the qualified acceptance continue to be liable.

2.3.3.8 Draft drawn by one branch on another :

Where a demand draft is drawn by one of the bank upon another branch of the same bank, for a sum of money payable to order, the banker is discharged from the liability if it makes the payment in due course. The banker is also discharged even though the payee was forged or unauthorized.

2.3.3.9 By not giving notice of dishonour :

When the holder does not give notice of dishonour to the prior parties to whom he wishes to make them liable and the parties are also entitled to the notice of dishonour. In such a case the parties are discharged in the absence of notice of dishonour.

2.3.3.10 By operation of law :

The parties are discharged from liability on an instrument by operation of law in the following case :-

①) By an order of insolvency discharging the insolvent.

⓪ By lapse of time when remedy becomes barred by limitation.

2.3.3.11 By material alteration :

Where the material alteration has been made in the negotiable instrument without the consent of all the parties, such parties who have not given their consent are discharged thereon.

2.3.3.2.3 By payment of altered instrument :

Section 89 deals with all payments in case of altered instruments. The person or banker who makes payment of altered note, bill or cheque is discharged from liability if the following conditions are satisfied :

- ⓪) The alteration should not be apparent.
- ⓪ The payment must be made in due course.
- ⓪ The payment must be by a person or banker liable.

Self-Check Exercise-2

1. What are the various ways in which a party or parties to a negotiable instrument is / are discharged from liability?

2.3.4 Dishonour of Negotiable Instrument :

A negotiable instrument may be dishonoured either

- (i) by non-acceptance or
- (ii) by non-payment

Where the instrument is dishonoured, the holder is required to give notice of dishonour to the drawer or his previous parties in order to make them liable.

2.3.4.1 Dishonour by Non-Acceptances (Sec. 91) :

A bill of exchange is said to have been dishonoured by non-acceptance in the following way:-

1. When the drawer does not accept the bill within 48 hours from the time of presentment for acceptance.
2. When the presentment of bill is not necessary and the bill remains unaccepted.
3. When the drawee is incompetent to contract.
4. When the drawee is fictitious person or he cannot be found after reasonable search.
5. When the drawee gives qualified acceptance.
6. When the drawee has been declared insolvent or he is no more.

7. Where one or some of several drawees not being partners makes default in acceptance, on being duly required to accept.

2.3.4.2 Dishonour by Non-Payment :

Section 92 lays down that

'A promissory note, a bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill, or drawer of the cheque makes default in payment upon being duly required to pay the same'.

When this section is read along with sec. 76 the instrument is dishonoured for non-payment in the following cases.

1. When the instrument is duly presented for payment and the payment is refused or cannot be obtained.
2. When the presentment is not necessary and the instrument remains unpaid at maturity and
3. When the instrument has become overdue but remains unpaid.

2.3.5 Notice of Dishonour :

Notice of dishonour means the actual notification of the dishonour of the instrument by non-acceptance or by non-payment. The formal communication of the fact that the instrument has been dishonoured either by non-acceptance or by non-payment is known as 'notice of dishonour'.

When a negotiable instrument is dishonoured by non-acceptance or non-payment, the notice of dishonour must be given immediately to the parties to whom the holder wishes to make liable. In case the holder fails to give a notice of dishonour all the parties other than the maker or acceptor would be discharged .

Object :

The object of giving notice of dishonour is not to demand payment but to notify the concerned party that the instrument has been dishonoured and he being the surety be liable for the payment.

2.3.5.1 Requisites of Notice :

The notice of dishonour to be valid must fulfill the following requirements :-

1. It may be oral or in writing.
2. It must contain something, which shows that it has been dishonoured for non-acceptance or non-payment.
3. It must be given within a reasonable time.

4. It must be given at a place of business or at the residence of the party for whom it is intended.

It may be noted that if the notice of dishonour has been lost in postal transit, the party to whom it is sent is not discharged.

2.3.5.2 Notice by whom?

The notice of dishonour may be given by any of the following parties:-

1. Notice of dishonour must be given by the holder or by some party to the instrument who remains liable thereon (sec. 93)
2. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to Such party within a reasonable time unless such party otherwise receives due notice (sec. 95)
3. When the instrument is deposited with the agent for presentment and it is dishonoured to the parties liable on the instrument or he may give notice to his principal. He must do so within the same time as if he were the holder, and the principal' upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder. (Sec. 96).

2.3.5.3 Notice to whom?

The notice of dishonour may be given to the following parties :-

1. It may be given to all the parties whom the holder seeks to make liable.
2. It may be given-
 - (i) to the party liable or his duly authorized agent or
 - (ii) to the legal representative in case such person has died or
 - (iii) to the official assignee/receiver, in case such person has been declared insolvent.

2.3.5.4 What is a reasonable time?

In determining what is the reasonable time for giving the notice of dishonour, regard shall be given to the nature of the instrument and the usual course of dealing with respect to similar instruments, the distance between the parties and the nature of communication between them. In calculating the reasonable time, public holidays shall be excluded (Sec. 105). However, Sec. 106 lays down two rules for determining the reasonable time-

1. When the holder and the party entitled to receive notice carry on business or live in different places, the notice must be dispatched by the

next post or on the next after the day of dishonour.

2. When the parties live or carry on business in the same place, the notice should reach its destination on the day next after dishonour.

2.3.5.5 When the notice of dishonour is unnecessary (sec. 98) :

The notice of dishonour by a holder is mandatory to the persons to whom he wishes to make liable on the instrument, However it is not necessary in the following circumstances:-

1. When it is dispensed with by the party entitled to it. It means that the party who is entitled to the notice may expressly or impliedly waive the same.
2. When the drawer has countermanded the payment.
3. When the party charged would not suffer damage for want of a notice.
4. When the party entitled to notice after due search, cannot be found.
5. Where there has been accidental omission to give the notice, provided the omission has been caused by an unavoidable circumstances e.g. death or dangerous illness of the holder or agent or any other accident.
6. Where the drawer and the acceptor are the same person.
7. In case of a promissory note which is not negotiable.
8. When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

Self Check Exercise-3

1. When, how and to whom should the notice of dishonour of a bill of exchange be given?

2.3.6 Noting & Protesting :

These are as follows :

2.3.6.1 Noting

The purpose of 'noting' is to have a sufficient proof that the instrument has been really dishonoured. When a note or bill has been dishonoured by non-acceptance or non-payment, the holder causes such dishonour to be noted by a Notary Public. When an instrument say a bill of exchange, is to be noted by a dishonour, it is taken to Notary public who presents it once again for acceptance or payment as the case may be, and if the drawer or acceptor still refuses to accept or pay the bill, it is noted. Notary public records the fact of dishonour on the dishonoured instrument or paper attached to it. This noting of a fact is also known as 'minutes'.

2.3.6.2 Particulars which Noting must contains :Noting must contain the following particulars :

- (i) the fact of dishonour;
- (ii) the date of dishonour;
- (iii) the reasons, if any assigned for such dishonour;
- (iv) if the instrument has not been expressly dishonoured, the reasons why the holder treats it as dishonoured;
- (v) the notary's charges;
- (vi) a reference to the notary's register and ;
- (vii) the notary's initial.

Noting should be done with in a reasonable time after dishonour. Noting is not compulsory in case of an inland bill or note. Actually noting has no legal effect. So, the right of the holder remains unaffected if the instrument has not been noted after its dishonour.

2.3.6.3 Protesting

The protest is the formal certificate of notary public attesting the dishonour of the bill by non-acceptance or by non-payment on the basis of noting. The protest must be made within a reasonable time. The notary issues a certificate of protest which is a formal declaration with regard to the dishonour of bill. The court on proof of the protest shall presume the fact of dishonour.

2.3.6.4 Particulars which Protesting must contain : The following particulars must exist in protesting:

- (i)) The instrument itself or a literal transcript of the instalment ;
- (ii)) The name of the person for whom and against whom the instrument been protested ;
- (iii)) The fact and the reasons for dishonour ;
- (iv)) The place and the time of dishonour ;
- (v)) The signature of the notary 'public ;
- (vi)) In case of an acceptance or payment for honour , the names of the person by whom and for whom it is accepted or paid.

2.3.6.5 Advantages of protesting :

- (i)) It is authentic proof of dishonour to a drawer or endorsee living abroad ;

① Courts shall present the fact of dishonour on the basis of proof of protest and;

② The acceptor for honour may be available ;

Protesting is not necessary in case of inland bills. But the foreign bills must be protested for dishonour when such protest is required by the law of the place where they are drawn. However, the noting and protesting is not required in case of cheques.

Self-Check Exercise-4

1. What is Noting and Protesting? Is there any difference between them and are they necessary at the time of dishonour of an instrument?

2.3.7 Summary :

From the above lesson it is clear that the discharge of instrument has much wider implication than the discharge of a party. When an instrument is discharged, the liability of all the parties comes to an end. Where one or more parties to instrument discharge only the liability of such parties, is extinguished but the instrument continues to be negotiable. A negotiable instrument may be dishonoured in two ways- by non-acceptance and second is by non-payment.

When a negotiable instrument is dishonoured by non-acceptance or non-payment, the notice of dishonour must be given immediately to the parties to whom the holder wishes to make liable. In case the holder fails to give a notice of dishonour, all the parties other than the maker or acceptor would be discharged.

The object of giving notice of dishonour is not to demand payment but to notify the concerned party that the instrument has been dishonoured and the surety will be liable for the payment. After dishonouring, noting must be done. The purpose of 'noting' is to have a sufficient proof that the instrument has been really dishonoured. When a note or bill has been dishonoured by non-acceptance or non-payment, the holder causes such dishonour to be noted by a Notary Public.

When an instrument e.g. a bill of exchange, is to be noted for dishonour, it is taken to Notary public who presents it once again for acceptance or payment as the case may be, and if the drawer or acceptor still refuses to accept or pay the bill, it is noted. The notary issues a certificate of protest which is a formal declaration with regard to the dishonour of bill.

2.3.8 Answers to self check Exercises :

1. See 2.3.2.1 to 2.3.2.5
2. See 2.3.3.1 to 2.3.3.2.3
3. See 2.3.5.1 to 2.3.5.5
4. See 2.3.6.1 to 2.3.6.5

2.3.9 Glossary

1. negotiate : Discussion for reaching to a solution
2. endorsement : to assign by writing on the back of
3. forgery : act of counterfeiting

2.3.10 Questions for exercise**Long questions:**

Q. 1 What is meant by discharge of an instrument? Explain the various modes of discharge of an instrument.

Q. 2 What is meant by discharge of a party? Explain the various modes of discharge of party.

2.3.11 Short questions:

Q. 1 What do you mean by noting?

Q. 2 What do you mean by protesting?

Q. 3 What is meant by dishonor by non-acceptance?

Q. 4 What is meant by dishonor by non-payment?

2.3.11 Suggested readings

1. Mercantile Law : Kapoor G.K.
2. Business & Mercantile Law : Kapoor N.D.
3. Principles of Mercantile Law : Singh Avtar

CONSUMER PROTECTION ACT, 1986

- 2.4.0 Objectives of the Lesson
- 2.4.1 Introduction
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2.4.0 Objectives of the Lesson

Consumer Protection Act is a step taken by the Government in favour of consumerism. Our market was totally a seller's market, so the sellers are tempted to follow diverse practices which turn out to be unfair to the consumers. Although so many other Acts were in existence like MRTP Act, Essential Commodities Act, Sale of Goods Act, etc., but an individual consumer in India does not find his complaint worth pursuing due to disproportionate costs involved in redressal, unduly long time consumed in court process, and embarrassment. The Consumer Protection Act, 1986, marks the growth of the enlightened consumer movement in our country.

2.4.1 Introduction

The Act provides simple, speedy and inexpensive redressal to consumer's grievances, particularly against unfair trade practices or exploitation of

consumers. The main aim of the act is to provide protection to the Indian Consumer class who are not aware of their rights and can be easily exploited by the sellers.

2.4.2 Extent and Coverage of the Act : The Act applies to all goods and services unless specially exempted by the Central Government. It covers all the sectors whether private, public or cooperative. The provisions of the Act are lot preventive but compensatory in nature. The Act gives the following rights to the consumers :

- (i) The right to be protected against the marketing of goods which are hazardous to life and property.
- (ii) The right to access to a variety of goods at competitive prices. It becomes the duty of the seller to make all the varieties available to the consumer.
- (iii) The right to be informed about the quality, potency, purity, standards and prices of the goods. This right also protects the consumer against unfair trade practices.
- (iv) The right to be heard and be assured that consumer's interest will receive due consideration at appropriate forums.
- (v) The right to consumer education. It also includes the right of having proper information related to the product by the supplier.
- (vi) Right to know about the details of the product like configuration, expiry date etc.

2.4.3 Redressal Machinery

The Act envisages establishment of Consumer Protection Council at the Central and State levels whose main object will be to promote and protect the right of the consumers. The hierarchy of three redressal forums is given below :

- District Forums
- State Commissions
- National Commissions

2.4.3.1 District Forum

A district forum established by the State Government in each district of the State by its notification.

At lowest level, it is the district forum where Consumer can file his complaint. Each district forum shall consist of

(i) a person, who is or who has been qualified to be a District Judge, who is its President.

(ii) two other members, one of whom shall be a woman, who shall have a bachelor's degree from a recognised University, should not be less than 35 years of age, and should be the person of ability, integrity and standing and have adequate knowledge and experience of at least ten years in dealing with the problems related to law, economics, commerce, public affairs etc.

However, if a person has been convicted and sentenced to imprisonment, if he is insolvent and of unsound mind, or has been removed or dismissed from the service of the government or disqualified by the State Government.

2.4.3.2 State Commission

A State Commission established by the State Government in each State by its notification.

State Commission is the second highest authority where a consumer can file a complaint. Composition of State Commission consists of a President who shall be or has been a judge of High Court, appointed by State government. Along with him, there should be at least 2 other persons, out of which, one should be a woman, their age should be more than 35 years, and shall possess the bachelor's degree and should be persons of ability, integrity, standing and having adequate knowledge of the subjects like law, accountancy, commerce, public affairs etc. However, not more than 50% of the members should have judicial background.

2.4.3.3 National Commission

It is established by Central Government by notification. It is National Consumer Disputes Redressal Commission. The National Commission shall consist of a person who is or has been a judge of Supreme Court to be appointed by Central Government, will be the President of the Commission. Not less than four other members, one of whom should be a woman, and should not be less than 35 years of age, having a bachelor's degree and should be a person of ability, integrity, adequate knowledge, and having experience of at least ten years. However, not more than 50% of the members shall be from judicial background.

According to the Amendment made in 2002 in the Act the cases for the claims upto Rs. 20 lakhs will be dealt by District Forums, from Rs. 20

lakhs to Rs. 1 crore will be dealt by the State Commission and the cases for more than Rs. 1 crore come under the perview of National Commission.

2.4.4 The Limit for Deciding Complaint/Appeal

To ensure speedy disposal of consumer grievances, as far as possible, within a period of three months from the date of notice received, the decision should be taken by the district Forums. In case testing of commodities is also required, within 5 months the case should be decided. The National Commission and State Commission are required to decide the appeal, as far as possible, within 90 days from the first date of hearing.

2.4.5 Procedure for Filing the Appeal

Appeal against the decision of a District Forum can be filed before the State Commission within a period of 30 days. Appeal against the decision of a State Commission can be filed against the order of the National Commission can be filed before the Supreme Court within 30 days.

2.4.6 Who is a Consumer ?

The producer of some goods and services is also consumer for various services produced by others. The word 'consumer' under this Act, has been defined separately for the purpose of goods and services.

For the purpose of goods, a consumer means a person belonging to the following categories :

1. One who buys any goods for consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment.
2. It includes any user of such goods other than the person who actually buys goods and such use is made with the approval of the purchaser.

For the purpose of services, a consumer means a person belonging to the following categories :

1. One who hires any services or services for a consideration which has been paid or promised or partly paid and partly promised under any system of deferred payment.
2. It includes any beneficiary of such service other than the one who actually hire the service for consideration and such services are availed with the approval of such person.

2.4.7 Who can File a Complaint ?

A Consumer, any voluntary consumer organisation, registered under the Societies Registration Act, 1860, or the Companies Act, 1956 or under any other law for the time being in force. The Central Government, the State Government or Union Territory Administration.

Self Check Exercise No.1

According to the definition of consumer under the Act, a government hospital which is not charging any fees or money from the patients, Does it come under the purview of Consumer Protection Act ?

2.4.8 How to File a Complaint ?

The procedure is very simple. There is no fee for filing a complaint before the District Forum, the State Commission or the National Commission. The complaint can be sent by post. A complaint should contain the following information :

- the name, description and address of the opposite party or parties;
- the name, description and address of the complainant;
- the facts relating to complaint and when and where it arose;
- document, if any, in support of the allegation contained the complaint;
- the relief which the complainant is seeking.

The complaint should be duly signed by the complainant or his authorised agent.

2.4.9 Relief Available to Consumers.

Depending on the nature of relief sought by the consumer and facts, the Redressal Forum may give orders for one or more the following reliefs :

- (i) removal of defects from the goods,
- (ii) replacement of the goods.
- (iii) Refund of the price-paid or
- (iv) award of compensation for the loss or injury suffered.

2.4.10 Coverage of Consumer Protection Act.

The range of consumer law is vast. There is remedy for defective goods, deficient services and excess prices charged from consumers. The following are some complaints against companies selling goods and offering services.

Defective Goods : It will not only include private business but public utility services, government departments and public sector undertaking. It may include impure blood, repressed oil tragedy, minor defect in brand new car, manufacturing defect in car, iodization of salt, defective edible oil, certified seeds, defective medicines, cement, textile, defective tea, footwear, defective bicycle, defective lathe machine, defective tailoring, washing machine with defect, defective electronic items like computers, television sets, etc. The above mentioned defective items are already brought to the notice of Consumer Protection Act and the people receive the appropriate reliefs for these defects.

Deficient Services : Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for time being in practice has undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any services. It may include.

Banking Services : Consumer forums are hearing a number of complaints against banks, e.g., where a bank made the payment of a cheque, despite stop notice of the customer, bank was held liable for deficient service. State Commission directed the bank to compensate the customer by giving Rs. 500 as general damages plus Rs. 250 as expenses.

Insurance Services : Almost everything may be insured these days. Insurance provides pool of funds to which many contribute a certain sum called the premium and out of which the few who suffer losses are compensated. So many cases have been dealt by consumer forums in the context of life insurance, and general insurance both.

Medical Services : Doctor's help is indispensable in our lives. A doctor is supposed to keep information about his patient confidential. Because of medical negligence so many people even have to lose their lives. Consumer forums have granted huge compensations for such negligence by pinpointing the person responsible for it.

Courier Services : In a case where the consignment was lost in transit, the National Commission held it was a deficient service and compensation was awarded to the complainant.

Telephone Services : It is the duty of the (telephone authority to serve bills to the subscribers and not of the subscriber's duty to keep collecting the bills. Where the subscriber was told to collect his bill and he refused to do so, he was subjected to disconnection and the service of a bill for

Rs. 48,000, it was held that the bill had to be set aside. A compensation of Rs. 3500 was awarded to the plaintiff.

Electricity Services : Electricity authorities can also be held responsible for high voltage, loss due to fluctuation, illegal disconnection, excessive billing etc.

Postal and Railway Services : Failure to deliver a registered letter, any fraudulent or wilful act of postal employees, non delivery of postal articles etc. are some issues which consumers can raise. In the same way, any kind of negligence on the railways can also be challenged. Alongwith the above mentioned services, some other services are Airlines services, cargo services, building and housing services, transport services, lawyers etc. are also included under the purview of the Consumers Protection Act.

2.4.11 Some Cases of Consumer Protection :

1. In the case in Madras District Consumer Forum, the Crompton Greaves Ltd. had to pay the compensation of Rs. 69,420 with 12% interest to Amanullah. He had purchased a washing machine from R.S. enterprised Madras, which caused a major fire in his house. The forum held that dealer and manufacturer are jointly liable for this mishap.

2. The doctors also come under the perview of Consumer Protection Act. Two doctors had to pay a compensation of Rs. 9.7 lakhs for their negligence. The compensation was awarded for loss of marital happiness and for the pain and sufferings which Mrs. K. Ramalkshmi had borne. Two doctors of Christian Medical Centre, Pithapuram, had left a blade in the stomach of Mrs. Ramalakshmi during the operation.

3. A person was forced to make 13 visits to the tehsildar's office in Khandapara from Cuttak to get the certified copies of an order. The Orissa State Commission directed Puri District Official to compensate the harassed consumer Rs. 1200 as compensation and Rs. 700 for travel cost.

4. In another case against Indian Airlines, Bihar State Commission awarded a compensation of Rs. 2000 to Mr.S.N. Sinha. He was served a piece of wire with dinner, when he was travelling by Indian Airline flight. He had an injury on his tongue for which Indian Airlines did not provide even first aid.

2.4.12 Summary : This lesson includes a drastic step taken by the government to help the consumers in form of making Consumer Protection Act because Indian consumer has a tendency to get exploited.

It is a positive step taken by the Government in order to help the Consumer Protection Act. The Act was introduced in 1986 in order to have a simple and speedy redressal for consumers.

Extent and Coverage of the Act

Redressal Machinery: There is a three tier redressal machinery for listening consumer's complaints.

District Forums, State Forums, and National Commission

Procedure for Filing the Appeal

Who is Consumer?

Who can file Complaint?

How to file a Complaint?

Relief available to Consumers

Coverage of Consumer Protection Act

Some Cases of Consumer Protection

2.4.13 Answer to Self Check Exercise

A Government hospital which treats patients free of charge is not covered by the Consumer Protection Act. This is because consumer is a person who purchases some goods or hires some services for consideration or payment. However, it may be noted that Government hospitals and doctors working there can be sued in the regular civil courts.

2.4.14 Key Words Meaning

Respondent	Against Whom the complaint has been filed
Expensive	Costly
Hazardous	Harmful
Consideration	Something in return
Compensatory	Providing some relief as compensation
Allegation	Blame
Plaintiff	A person who files the complaint

2.4.15 Questions for exercise

Long questions

1. Briefly explain the meaning of consumer with reference to consumer protection act, 1986.
2. What are the remedies available to consumer under consumer protection act, 1986? Discuss.

Short questions:

- Q. 1 Who is a consumer.
- Q. 2 What is district forum.
- Q. 3 What is state commission.
- Q. 4 Who can file a complaint?

2.4.16 Suggested Readings

1. Business Environment By K. Aswathappa
2. Business Environment by Francis Cherunilam
3. Consumer Protection in India by Neeraj Kumar

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Centre for Distance and Online Education, Punjabi University,
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