

## Chapter 2

### Paying & Collecting Banker

#### Paying Banker

##### Meaning of Paying Banker

The bank on which a cheque is drawn (the bank whose name is printed on the cheque) and which pays the amount for which the cheque is written and deducts that sum from the customer's account.

The banker who is liable to pay the value of a cheque of a customer as per the contract, when the amount is due from him to the customer is called "Paying Banker" or "Drawee Bank."

**Definition:** Paying Banker is defined as "the banker on whom a cheque is drawn or the banker who is required to pay the cheque drawn on him by a customer".

##### Responsibilities of Paying Banker

Section 31 of Negotiable Instrument Act applies only to Banker and

- The banker must see that the customer has maintained sufficient credit balance with his/her account.
- The cheque must be properly drawn and signed by the Drawer.
- If bank refuses the payment wrongfully then it is liable only to drawer of cheque and not to endorse or holder.
- Loss or damage caused by default, the bank is liable for such compensate to the true owner.

##### Precautions to be taken by the Paying Banker

The Paying banker should take the following precautions while making payment of customer's cheques

1. **Proper form of cheques:** The cheque must be in proper form. That means the cheque should be in the manner prescribed under the provisions of the Negotiable Instruments Act. Bank in India requires that 'cheques must be drawn on the bank's printed forms' and 'the bank reserves its right to refuse payment of any cheques drawn otherwise'.

**Advantages of using Printed Forms:** The following are the uses of using printed forms of cheque

- **Convenient for the drawer:** It is convenient for the drawer to draw a cheque. He need not take necessary precautions while drafting a cheque as per the requirements of the Act. The chances of dishonor of the cheque are thus minimized.
- **Serve the purpose of record:** The counter foils of the cheques serve the purpose of record for future reference.
- **Instruction to the banker more conveniently:** If the drawer wishes to countermand payment of any cheque, he can issue instruction to the banker more conveniently and with certainty as every cheque form is serially numbered and can be easily identified.

## LAW & PRACTICE OF BANKING

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- **Chances of forgery can be minimized:** The serial numbers of the cheque forms issued to a customer are recorded by the banker, who verifies, at the time of presentation, that the cheque is drawn by a person to whom the relevant cheque book is issued.
2. **Date of the cheques:** The paying banker has to see the date of the cheque. It must be properly dated and undated cheques are not honoured. It should not be either a post-dated cheque or a stale cheque.
    - a. If the cheque is presented on the date mentioned in the cheque, the banker need not have any objection to honour it.
    - b. If the banker honours a cheque before the date mentioned in the cheque, he loses statutory protection.
    - c. If the drawer dies or becomes insolvent or countermands payment before the date of the cheque, he will lose the amount.
  3. **Amount of Cheque:** The amount written on the cheque must be certain and expressed both in words and figures. In case, any differences between the amounts expressed in words and figures, the paying banker may send back the cheque to the drawer with the remark "the amount in words and figures differ" and seek necessary correction by the drawer.
  4. **Balance in the Customer's account or Funds in the Customer's account must be sufficient:** The banker is under an obligation to pay his customer's cheques if the account shows sufficient credit balance. But if the funds in the customer's account are insufficient to pay the cheque, the banker is not bound to honour the cheque. Cheques are to be paid in full and not in part.

**For example:** If a cheque for Rs 50,000 is presented for payment to a banker while the drawer's account has the credit balance of Rs 10,000 only, the banker is not bound to honour the cheque or to make part payment to the extent of Rs 10,000 because the cheque contains the order of the drawer to pay a specified sum of money. While considering sufficient funds in the account of the drawer, the following points should be borne in mind by the banker.

    - a. **Use of loan or overdraft granted:** If the banker has already agree to grant a loan or overdraft to the customer up to a certain amount, cheques in excess of the credit balance in the account but within the limit of the loan or the overdraft must be honoured.

**For example:** If the banker agrees to grant Mr. Sunil an overdraft up to Rs 5,000 he should honour cheques issued by Mr. Sunil till the debit balance reaches the limit of Rs 5,000. If subsequently, the banker decides to reduce the overdraft limit to say Rs 2,000 only, he should not stop honouring the customer's cheques immediately. For this purpose he should give due notice to the customer and cheques in excess of the debit balance of the Rs 2,000 be dishonoured after the service of such notice.
    - b. **Use of minimum balance:** The minimum balance required to be maintained in a current account or savings accounts is deemed as available for honouring the cheques. That amount should not be regarded as frozen by the banker. If the minimum balance is reduced below the prescribed amount, the banker should honour the cheque and may charge an incidental charge from the customer for this default.

## LAW & PRACTICE OF BANKING

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- c. **Chronological order of Receipts:** Payment is made in chronological order of receipt. In case of a current account, any number of cheques may be presented for payment on a single day. The banker generally follows the rule of making payments of the cheques in the chronological order of their receipt. It means that the cheque first received by the banker on an account will be paid first, and so on. The serial number of the cheque or the date of its issue is into significant for this purpose.
- d. **Presenting two cheques at a time:** The banker may sometimes face a situation when a number of cheques are presented simultaneously for payment but the funds available in the account of the drawer are insufficient to pay all of them.  
For example: Two cheques for Rs 50,000 and Rs 30,000 are received by a banker for payment while the drawer's account shows a credit balance of Rs 60,000 only. There may be few viewpoints in such a situation
- Both the cheques could be dishonoured due to shortage of funds.
  - Secondly, the banker may honour the cheque till the credit balance is exhausted.
  - Thirdly, a cheque for a bigger amount is paid first and for a smaller amount is paid next. Sometimes it also depends upon the person or authority to whom/which the payment is to be made.
  - Fourthly, if both the cheques are equal amounts, then honouring any of them is left to the discretion of the banker.
5. **Material alterations and overwriting:** The banker should see whether there is any alteration or overwriting on the cheque. If there is any alteration, it should be confirmed by the drawer by putting his full signature. The banker should not pay a cheque containing the material alteration without confirmation by the drawer. The banker is expected to exercise reasonable care for the detection of such errors otherwise, banker has to take risk.
6. **Forgery of Drawer's Signature:** The paying banker should carefully ascertain that the cheque bears the genuine signature of the drawer after comparing the same with his specimen signature. The cheque must be signed by the drawer on its face and not on its back. The account holder may change his specimen signature any time and supply to the banker his fresh specimen signature. Banker is bound to accept the new specimen signature with effect from a specified date.
7. **Facsimile Signature:** It denotes any signature not made directly by hand, and includes signature made by stamp, print or any signature writing machine. A facsimile signature is valid and binding if impressed by authority. If in doubt, reference should be made to the specimen of drawer's signature. If need be, cheques should be examined with the help of special lamps. A person's signature is likely to change over a period of time and as such a banker should obtain fresh specimen signature of customers periodically.
8. **Cheque should not be mutilated:** When a cheque is torn in such a way that it's clear that the intention was to cancel it, it should be returned with the remark "Mutilated". When it's accidentally torn by the holder, confirmation by the drawer is needed.

## LAW & PRACTICE OF BANKING

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9. **Cheque must be presented within the banking hours:** Presentation of the cheque should be in right format and right place. A banker can honour the cheques provided it is presented with that branch of the bank where the drawer has an account or branch of the same bank.
10. **Proper Endorsements:** Cheques must be properly endorsed. In case of bearer cheques, endorsement is not necessary legally. In case of an order cheque, endorsement is necessary. The paying banker should examine all the endorsements on the cheque before making the payment.
11. **Account:** A customer might have opened two or more accounts in the same branch of a bank. Hence, the paying banker should see that the cheque of one account is not used for withdrawing money from another account.
12. **Type of cheque:** Before honoring the cheque, the banker must verify whether the cheque presented to him for payment is an open cheque or a crossed cheque.
  - a. If it is an open cheque, he should make the payment across the counter.
  - b. If it's a crossed cheque, he should pay it only when it's presented through a bank.

### **Statutory Protection to the Paying Banker**

The responsibility of paying banker is more risk oriented, because the duty of him is to pay the amount of the cheque to the right person according to the instructions of his customer. If he makes the payment to a wrong person knowingly or unknowingly, he himself will bear the loss. The banker should honour the cheques when it is presented in a legal condition. To minimize the losses likely to be suffered by the paying banker, the Negotiable Instruments Act provides him protection, provided he fulfills his obligations as laid in the act.

1. **Protection regarding the order cheque [Section 85(1)]:** In case of an order cheque, paying banker is protected if he makes payment of an order cheque with forged endorsement on behalf of the payee.

#### **Paying banker fulfill the following two conditions**

- **Endorsement must be regular:** To avail the statutory protection, the banker must confirm the endorsement made on the cheque is regular. That is the endorser in addition to his signature also mention the name of the person to whom or to whose order the payment is to be made. There is a direction added by the endorser to the person specified called endorsee of the instrument who now becomes its payee entitled to sue for the money due on the instrument.
  - **Payment must be made in due course:** The banker should pay the cheque in good faith and without negligence, otherwise statutory protection cannot be granted to the paying banker.
2. **Protection in case of bearer cheques [Section 85(2)]:** When a particular cheque includes "or bearer" on the face of the cheque and which is not cancelled, the cheque is called a Bearer cheque. This type of cheques are payable to the person specified in cheque or to any other person who presents it to the bank for payment. Banks are not required to verify the endorsements on bearer cheques. However such cheques are associated with risk; this is because if such cheques are lost,

## LAW & PRACTICE OF BANKING

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the finder of the cheque can collect the payment from the bank and if so happens the banker will be discharged of his obligations or claims and will be protected under Section 85(2).

3. **Protection in case of crossed cheques (Section 128):** The paying banker has to make payment of the crossed cheques as per the instructions of the drawer reflected through the crossing.

**Paying banker has to fulfill the following two conditions to avail the protection under section 128**

- **Payment in due course:** He has made payment in due course that is in good faith and without negligence and according to the apparent tenor of the cheque.
- **Requirement of crossing:** The payment has been made in accordance with the requirement of the crossing that is, through any banker in case of general crossing and through the specified banker in case of special crossing.

Thus the paying banker is free from any liability on a crossed cheque even if the payment was received by the collecting banker on behalf of a person who was not the true owner.

**Example:** A cheque in favour of X is stolen by Y. He endorses it in his favour by forging the signature of X and deposits it in his bank for collection. In this case, the paying banker shall be discharged if he makes the payment as mentioned above and shall not be liable to pay the same to X, the true owner.

**He cannot avail the statutory protection for a cheque crossed with**

- Irregular endorsement
- Material alterations
- Forged signature of the drawer

### **Dishonour of cheques**

Whenever the cheque is issued by the customer or drawer, it has to be honoured by the bank. But in some situations, the banker may dishonour or refuse the customer's cheque. Dishonour of cheque is an act of paying banker refusing to pay the amount of cheque drawn by customer due to certain definite reasons. A banker's obligation to honour his customer's cheques is terminated on the happening of any one of the following events

1. **Notice from the customer to stop payment / When the customer has countermanded the payment**

- ✓ When the drawer of the cheque countermands the payment that is drawer issues the instruction to the bank not to make the payment for the particular cheque issued by him, the banker is bound to comply with such instruction.
- ✓ It is important to note that the customer must duly sign the countermand notice, which should contain correct particulars of the cheques and give to the banker in sufficient time, i.e., before the banker makes the payment of the cheque that is desired for 'stop payment'. However, it is not necessary that such a notice be given in writing always. An oral countermand is equally effective.
- ✓ On receipt of a valid stop payment order, the banker must refuse to pay the cheque and the cheque must be returned unpaid with the remark "payment countermanded by drawer".

2. **When the customer has received a Garnishee order:** Garnishee order implies a prohibiting order by a court of law attaching the funds in the customer's account. On receipt of such order, the

## LAW & PRACTICE OF BANKING

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banker must refuse the payment of the customer's cheque. If the banker by mistake makes payment of any cheque after receipt of such order, it will have to bear the loss itself. In this case it cannot recover the amount from the payee.

3. **When the customer had become insolvent or insane:** Banker must also refuse payment of cheques when its customer has been adjudged insolvent or has become insane since in such cases its original authority to pay on behalf of the customer ceases to exist. A fresh authority is required on those accounts. If a banker makes any payment even after receiving a due notice as regards insolvency or insanity of the account holder, such payment is not good against the drawer and in such a case the banker cannot get a refund from the payee, who gets payment.
4. **When the customer has died:** If the banker receives notice of a customer's death, it must dishonor the cheque presented to it after the notice of death. However, a banker is justified in making payment if such payment is made before receiving the notice of death and the payment so made is valid.
5. **When the customer has lost the instrument:** When the customer has lost the cheque and has informed the banker about the loss of the instrument, the bank must in turn dishonor the cheque.
6. **When the banker has come to know any defect in the title:** When the banker comes across any defect in the title of the person presenting the cheque, it must refuse to honor the cheque. Even the holder of a bearer cheque is subject to this rule and the banker should insist on identification of the presenter in the event of any suspicion or doubt about the integrity of the possessor or holder of the instrument.
7. **When instrument has been materially altered:** When there is a material alteration on the instrument or where the signature of the drawer does not match with the specimen signature kept by the banker, the latter must dishonor such cheques. However, in case of payment by mistake, the banker is entitled to a refund from the wrong payee if traceable, failing which the banker will have to bear the loss itself.
8. **When the account is closed:** When the customer gives notice to the banker for closing his account, the banker must not pay the customer's cheques after that date, i.e., the date of closing of the account.
9. **Where the banker has received a notice of assignment:** When the banker receives notice of assignment from the customer about his credit balance, it must refuse payment of the cheques drawn by that customer.
10. **When a breach of trust is intended:** In the case of trust account, mere knowledge of the customer's intention to use the trust funds for his personal use is a sufficient reason to dishonour his cheque.
11. **Liquidation of companies:** When a bank receives notice from the liquidator in accordance with the provisions of Companies Act, requiring to pay the balance to liquidator's account, all the cheques by the companies should be returned unpaid.
12. **Other grounds:** A banker is justified in dishonouring a cheque under the following circumstances also
  - ✓ A conditional one
  - ✓ Drawn on an ordinary piece of paper
  - ✓ Stale cheque
  - ✓ Post-dated cheque

## LAW & PRACTICE OF BANKING

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- ✓ Mutilated cheque
- ✓ Drawn on another branch where the account is not kept
- ✓ Presented during non-banking hours
- ✓ If the words and figures differ
- ✓ If there is no sufficient funds
- ✓ If the signature of the customer is forged
- ✓ If the endorsement is irregular
- ✓ If a crossed cheque is presented at the counter

### Consequences of wrongful dishonour of cheques

The paying banker can dishonour customer's cheque on the reasons as specified in Negotiable Instruments Act, 1881. Sometimes, the banker may wrongfully dishonour customer's cheque. Dishonour of a cheque by a banker without any justifiable reason is called wrongful dishonour of a cheque. Then its consequences must be borne by the banker himself. The following are the consequences for wrongful dishonour of cheque

1. In case a bank fails to honour a customer's cheque, it can be held liable by the customer to pay him the damage. The damages will not only be the pecuniary loss that the customer might have suffered but also to his reputation.
2. The amount of damages claimed by the customer need not depend on the amount of the cheque dishonoured, the greater will be the amount of damages. This is because it is presumed that the dishonour of a cheque of a smaller amount will result in greater loss to the credit of customer.
3. The damages or compensation payable by Paying Banker to his customer for the wrongful dishonour of his cheque may be classified into four categories
  - ✓ General damages for breach of contract to pay the cheque
  - ✓ Special damages for pecuniary loss or financial loss
  - ✓ General damages for libelous loss or defamatory statement
  - ✓ Vinidictive damages for loss or goodwill or reputation

### Recovery of Money Paid by Mistake

Since, in a bank thousands of transactions take place every day, it is quite natural that mistakes do occur. By mistake, a banker may pay money to a wrong person. As a general rule, a person who has committed a mistake has every right to rectify the same. But, in rectifying the mistake, he should not bring any disadvantage to a party. In the same way, a banker can recover the money paid by mistake without adversely affecting the other party.

#### 1. Money can be Recovered

- **Money received mala fide is recoverable:** When a person receives money by mistake in bad faith, knowing that he is not entitled to receive that money then the banker is entitled to recover the same.
- **Money paid under a mistake of fact is recoverable:** If the mistake is a mistake of fact then the money wrongly paid is recoverable. For instance, a banker pays money to X, thinking that he is Y. This is a mistake of facts regarding the identity of the parties. Y is under a legal duty to pay the money back to the banker.

## LAW & PRACTICE OF BANKING

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- **Mistake between the party paying and the party receiving:** If the mistake is between the party paying and the party receiving then the money is recoverable. For instance, a banker by mistake, pays a cheque to X, the payee, in the absence of sufficient balance in the account of the drawer. In such, circumstances the banker cannot recover the money paid by mistake because the mistake is not between the party paying [banker] and the party receiving (X), but it is between the banker and the drawer. However, now the position has been entirely changed. When a person is under a statutory obligation to pay, the mistake committed by him is deemed to be between the party paying and the party receiving.

### **2. Money cannot be Recovered**

- **Money paid under a mistake of law is not recoverable:** Ignorance of law is no excuse. When a banker pays money misleading law, he cannot recover it. For instance, if the banker pays the amount in excess than specified in negotiable instrument cannot be recovered as it is a mistake of law.
- **Money paid on a negotiable instrument to an innocent holder is not recoverable:** When money is paid by mistake on a negotiable instrument to a holder in due course.  
**Example:** A banker who pays a bill to an innocent holder by mistake cannot recover the money. When a person, who receives money in good faith by mistake, alters his position relying upon it, need not return the same.
- **Money paid to an agent by mistake:** Where a banker pays money by mistake to an agent, who in turn has paid the same to the principal or used it before the mistake is found out, the money cannot be recovered.

### **Collecting Banker**

#### **Meaning**

The term "Collecting Banker" refers to the function of receiving cheques by a banker from his customer for the purpose of collecting the proceeds and crediting them to the respective customer account i.e, the banker who is assigned the job of collecting the amount of cheques from another banker, is called as "Collecting Banker".

A Collecting banker is one who undertakes to collect cheques, drafts, bill, pay order, traveller cheque, letter of credit, dividend, debenture interest, etc., on behalf of the customer. For undertaking this collection, the collecting banker will be charging commission.

A Collecting Banker is the one who undertakes to collect the amount of cheques for his customer from the paying banker.

**Legal status of Collecting Banker:** While collecting his customer's cheques, a banker act as

- A holder for value
- A agent of customer

#### **Holder**

**Meaning:** Holder is the person who has the possession of the instrument in his name and has the right to receive the value mentioned in that instrument.

## **LAW & PRACTICE OF BANKING**

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**In order to be called a 'holder' a person must satisfy the following two conditions**

- Possession of the instrument on his name (prepared on his name)
- He must have the right (entitled) to receive the value mentioned in it (Who can encash the amount mentioned in it)

**Definition:** According to Section 8 of the Negotiable Instruments Act, 1881, the holder of a negotiable instrument means any person entitled to the possession of the instrument (Cheque, Bills of Exchange, Promissory Note) in his own name and also entitled to receive or recover the amount mentioned in it.

### **Collecting Banker as a Holder for Value**

When client submit any draft/cheque to bank, if collecting banker pays draft/cheque money to customer before it has been collected, then the bank becomes holder for value and such circumstances bank collects money for himself and not for client. It is because client has been received draft/cheque money before it has been collected.

**A banker becomes its holder for value by giving its value to the customer in the following ways**

- When bank pays the amount of draft or cheque before it is collected from paying banker.
- When bank deliver cash over the counter for the cheque at the time it is presented for the collection.
- When bank grants advance payment against bill and takes title of the bill.
- When bank allows the customers to withdraw before it is cleared and reducing the existing overdraft.
- By lending further on the strength of the cheque.

### **Rights of Collecting Banker as a Holder for Value**

- The following right are available for collecting banker when he acts as holder for value: Right to collect cheque amount for himself. In case of holder for value, collecting banker pays amount to customer before it is collected and here banker collect amount for himself not for customer.
- In case the cheque which is sent for collection is dishonoured, in such circumstances collecting banker can recover money from all the endorser of the cheque.
- Collecting banker can recover amount from customer in case the title of the cheque is illegal, i.e. if collecting banker collects the cheque of third party which is deposited by customer.
- If the cheque has defective title and credited amount before it is collected by the banker, in such case banker can recover amount from all the previous endorser of the cheque.

### **Liabilities of Collecting Banker as a Holder for Value**

- He should not receive open cheque for collection if he receives any open cheque and if it is forged or defective titled cheque then he should be liable to the real owner of the cheque and damages and losses should be paid to true owner.
- In the event of crossed and defective titled cheque, i.e. forged cheque, banker becomes liable to the true owner. When customer deposit cheque for collection banker will pay before it is actually collected and here banker failed to ensure the owner of the cheque. It is pure negligence of the banker and for that banker should become liable to real owner of the cheque. Here banker can

## **LAW & PRACTICE OF BANKING**

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recover amount from his own customer but damages will be paid by banker to real owner of the cheque.

### **Precautions to be taken by Collecting Banker as a Holder for Value**

- **Credit Worthiness of the customer:** The banker must see worthiness of the customer while acting as holder for value. If the customer is loyal and has good relationship with the banker then customer can credit the cheque amount before it is actually collected and even in case of dishonor of the cheque banker can recover amount by the customer if he is loyal customer.
- **Title:** Acting as holder for value banker should confirm title of cheque. He should ensure that his customer is the true owner of the cheque to avoid risk.
- **Essentials:** Collecting banker should examine the state of cheque and essential contents of the cheque to avoid dishonor of the cheque. If everything is right in the cheque then he can go ahead.
- Collecting banker should advise customer to repay money or damage caused by the dishonor or defective title of the cheque.
- The banker should collect amount from paying banker with in stipulated time or as soon as possible.

### **Collecting Banker as an Agent of Customer**

Collecting banker becomes an agent of customer when he collects cheque amount for his customer. When customer deposits any cheque or draft for collection and if banker does not credit amount until it has been collected. In that situation banker acts as an agent for customer and collects the cheque for him and credits the same to his account after it is collected from paying banker. Here banker merely acts an agent for his customer and follows his instructions. The banker, thus, acts as an agent of the customer and charges him a commission for collecting the amount from outstation banks.

### **Rights of Collecting Banker as an Agent of Customer**

- As an agent of his customer, the collecting banker does not possess the title to the cheque better than that of the customer.
- If the customer has no title, or his title is defective, collecting banker cannot have good title to the cheque.
- In case, the cheque collected by him did not belong to his customer, he will be held liable for conversion of money i.e, illegally entering into right of the original owner of the cheque.

### **Liabilities of Collecting Banker as an Agent of Customer**

- Collecting banker should collect the cheque amount with in stipulated time and credit same to the customer account.
- In case of any dishonor of cheque collecting banker must serve notice to customer regarding dishonor of cheque with reason of dishonor.
- While collecting cheque banker must function in good faith and without negligence.
- While collecting customer cheque bank should show his skill and efficiency to collect cheque as soon as possible.
- Collecting banker should serve dishonor notice in case dishonor of cheque within reasonable time otherwise collecting banker is liable for damages causes to customer.

## LAW & PRACTICE OF BANKING

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- If any damages cause to customer by the negligence of collecting banker while performing function, he will become liable to customer.

### Difference between Holder for Value and Agent of Customers

Holder for Value	Agent of Customers
Collecting banker collects amount for himself but not for customer in case of holder for value.	Collecting banker collects cheque amount for customer in case of agent of customer.
Collecting banker will credit cheque amount to customer account before it has been collected from paying banker.	Collecting banker will credit the cheque amount to customer account after it has been collected from the paying banker and before that.
Collecting banker will be the owner of cheque not customer.	The actual owner of the cheque will be the customer only and he gets the title of the cheque.
When collecting banker acts as holder for value, he will not get any legal protection.	When collecting banker acts as agent for value he will get legal protection of cheque.

### Holder in Due Course

**Meaning:** A holder in due course is the holder of negotiable instruments who has given value in good faith without notice of any previous dishonour in taking the negotiable instrument, which appears to be complete and regular.

#### To be a holder in due course person should fulfill any of following conditions

- He must be the holder of the instrument (entitled on his name and right to receive)
- The instrument must have been issued or endorsed to that person or that person's order, or to bearer and he must have the right to receive the amount
- The instrument received must be for same consideration
- The instrument must be obtained in due course (before maturity)
- The instrument must be obtained in good faith
- The instrument should be complete and regular on the fact of it. Face here includes the back also.

**Definition:** According to Sec(9) of Negotiable Instrument Act, holder in due course, is a person who acquires the negotiable instrument bonafide for some consideration, in good faith, whose payment is still due.

#### Rights of a Holder in Due Course

1. **Defects of the instrument are eliminated:** The holder in due course gets a good title to the instrument even though the title of the transferor is defective.  
**Example:** If X obtains an instrument by fraud, he cannot get payment. But if X transfers the instrument to Y under circumstances under which makes Y a holder in due course, Y can sue on the instrument and get the amount due on it. The party liable to pay can take, as against X, the defence of fraud but as against Y he will not be allowed to take such a defence.
2. **Unauthorised acts of an agent may be valid:** Negotiable Instruments are sometimes handed over to agents for a particular purpose e.g., for collection. If the agent acts beyond his authority and transfer the instrument to a person who satisfies the conditions of holder in due course, the later

## LAW & PRACTICE OF BANKING

can recover the amount mentioned in the instrument. The party liable to pay cannot plead that the agent acted without authority.

3. **No effect of conditional delivery:** The other parties liable to pay cannot plead that the delivery of the instrument was conditional or for a specific purposes only.
4. **Good title in an inchoate stamped instrument:** The holder in due course gets a good title even though the instrument was originally an inchoate stamped instrument and the transferor completed the instrument for a sum greater than what was intended by the maker.
5. **Liability of prior parties to holder in due course:** Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.
6. **Holder can file a suit in his own name:** The holder in due course can file a suit, against the parties liable to pay, in his own name.
7. **Right to enforce payment in case of a fictitious bill:** The acceptor of a bill of exchange drawn in fictitious name is liable to pay to holder in due course, if there is an endorsement on the bill signed in the same hand as the drawer's signature and purporting to be made by the drawer. The acceptor cannot plead, by way of defence, that the bill is drawn in fictitious name.
8. **Rights in case of unlawful instrument:** Instrument obtained by unlawful means or for unlawful consideration is valid when the endorsee of the instrument is a holder in due course.
9. **Estoppel against denying original validity of instrument:** In a suit by holder in due course, the maker of a negotiable instrument is not permitted to deny the validity of instrument as originally made or drawn.
10. **Estoppel against denying capacity of payee to endorse:** In a suit by a holder in due course, maker of negotiable instrument cannot deny the payee's capacity, at the date of the negotiable instrument, to endorse the same.
11. **Estoppel against denying capacity of prior party:** The endorser of a negotiable instrument, in a suit by a subsequent holder, is not permitted to deny the signature or the capacity to contract of any prior party to the instrument.
12. **Transferee from a holder in due course:** A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

### Difference between Holder and Holder in Due Course

Basis	Holder	Holder in Due Course
Meaning	Holder is the person who has the possession of the instrument in his name and has the right to receive the value mentioned in that instrument.	A holder in due course is the holder of negotiable instruments who has given value in good faith without notice of any previous dishonour in taking the negotiable instrument, which appears to be complete and regular.
Nature	He is the person who will be entitled in his own name to the possession of the instrument and to recover the amount due thereon from the liable parties.	He is the person who has taken the instrument in good faith for value and before maturity.
Consideration	Consideration is not necessary. The	Consideration is a must. A person cannot

## LAW & PRACTICE OF BANKING

	instrument may be given as a gift or donation	be a holder in due course if he has taken the instrument without consideration.
<b>Maturity</b>	He may acquire the instrument even after maturity.	He must acquire the instrument before maturity.
<b>Title</b>	Holder's title is not better than that of the transferor.	Holder in due course gets a title which is better than that of the transferor. His title is free from all defects.
<b>Good faith</b>	The holder may or may not obtain the instrument in good faith.	The holder in due course always obtains the instrument in good faith.
<b>Instrument obtained by unlawful means</b>	A holder cannot enforce instrument obtained by unlawful means or unlawful consideration.	A holder in due course can enforce instrument obtained by unlawful means or unlawful consideration.
<b>Fictitious bill</b>	Holder cannot claim payment on a fictitious bill.	Holder in due course can claim payment on a fictitious bill.
<b>Right to recover the amount</b>	A holder of an instrument can recover the amount from maker and the transferor but not all the prior parties.	Holder in due course can recover the amount from any of the prior parties until the instrument is duly discharged.
<b>Right to sue</b>	A holder does not have right to sue prior parties related to the transaction.	A holder in due course has complete right to sue the all the prior parties in their own name.
<b>Privileges</b>	A holder does not enjoy any special privileges.	A holder in due course enjoys certain special privileges.

### Duties and Responsibilities

- **Due care and Diligence in collection of draft or cheque:** When collecting banker receives any cheque from its client for collection, bank should take extra care and the cheque should be sent for collection as soon as possible and the process of remittance should not be delayed.
  - ✓ If banker shows any negligence in collection of money, client can sue on banker. According to section 84 of Negotiable Instrument Act 1881, the collecting banker should borne the damage for the negligence of the collecting banker.
  - ✓ In case the collecting banker and the paying banker are the same bank, hence the bank can transfer the cheque money within next day of cheque submitted to ensure quality service; in other situation the collecting banker should show its best efforts and skill to collect money as soon as possible.
- **Scrutinizing the instruments:** Name of the holder, Branch name, Date, Amount in words and figures, Signature, Material alterations if any to be checked carefully.
- **Acts as Agent:** While collecting an instrument, the bankers work as agent of his customer. As an agent he has to take such steps and precautions to protect the interest of his customer.
- **Present of Cheque with in Stipulated Time:** When the bank receives cheque for collection, it should be sent for collection without any delay and the cheque should be sent in right channel for collection which ensures the bank to procure fund quickly from paying banker. If any delay caused by the collecting banker in presenting cheque then its customer may suffer loss and he can claim

## LAW & PRACTICE OF BANKING

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for that loss from his banker. As per law the collecting banker oblige the claim made by customer and compensate the damage caused by his own negligence.

- **Serve Notice for Dishonor of Cheque:** Dishonor of cheque means refusal of cheque by the paying banker without payment is called dishonor of cheque. When cheque is dishonored by the paying banker, the collecting banker must serve notice and the reason of dishonor to client within stipulated time. If it fails to do so, client can claim for damage for not serving notice or even he can claim damage for late notice serve.
- **Collection of Bill of Exchange:** Banker renders the service of collection of bill of exchange for its customers but here there is no legal compulsion to collect the bill while collecting bill of exchange banker acts agent of its customer and collects the bill on behalf of its client. Here collecting bill for its client banker should confirm the title of the depositor and carefully examines the capacity of the client towards the bill.
- **Checking the Endorsements:** Bankers has to check the instrument whether it has been endorsed properly.
- **Settlement of Proceeds:** It is the duty of the collecting banker to collect and credit the proceeds of the instrument to the proper or correct account.

### **Statutory Protection of Collecting Banker**

- **Protections for Crossed Cheques only:** Collecting banker will get legal protections only in the case of crossed cheques only and in case of open cheque banker will not get any legal protections because open cheque can be liquidated by customer itself through the counter of bank. In case of crossed cheque, the cheque has to be crossed by the customer and not by the banker and it has to be crossed before accepting for collection.
- **Protections are available for Banker in his capacity as Agent of the Customer:** When banker is acting as agent of customer, in that situation banker will get statutory protections. Here banker should collect amount without his personal interest on it and in his capacity as agent. The banker should not credit amount before it has been actually collected, if it does so it becomes holder for value and it does not avail any legal protections.
- **The Cheque should be collected for his Customer only:** When collecting banker collects cheque for his customer, in such case banker will get legal protections. Collection of any cheques deposited by any other third party who is not an account holder of the banker will not ensure any protection by the law.
- **He must act in Good Faith and Without Negligence:** Collecting banker will get protection if he is acting in good faith and has no negligence. It is the banker who had to prove that he had acted in good faith, normally banker will act in good faith only but negligence is the another criteria, banker should be particular in that. Banker should show reasonable care from receiving cheque to till the he credit amount to customer bank account.

# LAW & PRACTICE OF BANKING

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## Assignment Questions

### Section A

1. Give the meaning of Holder, Holder for value, Holder in due course.
2. Who is a paying and collecting banker?
3. State the difference between paying and collecting, holder for value and holder in due course.

(NOTE: Two precautions or duties of paying or collecting banker)

### Section B

1. Differentiate between Holder and Holder in due course, Holder for value and Holder in due course.
2. Explain the rights of holder in due course.

(NOTE: Holder for value and Holder in due course)

### Section C

1. Duties, Precautions and Statutory protection for paying banker.
2. Duties, Precautions and Statutory protection for collecting banker.
3. Consequences of wrongful dishonour of cheques.

(NOTE: Any one of these can be asked. Important both for Section B and Section C)