

## **306 F: Principles of Negotiable Instruments**

### **OBJECTIVES OF THE COURSE :**

In a fast growing society, no business transaction is possible in absence of any Negotiable Instrument. It has now become very essential, not only for the law students but even for a common man to know the provisions relating to transaction of the Negotiable Instruments like Promissory Notes, Bills of Exchange and Cheques. It is very important to know all the rights conferred to the payee and remedies available to him to recover the debts from the debtor under the Act. Being innocent and bonafide payee of any instrument, one can claim all the rights available over any Negotiable Instrument and claim the amount mentioned therein. The provisions relating to Electronic Cheque is also required to be studied along with the basic concept and types of the Negotiable Instruments under the Act.

There is a drastic change in the provisions relating to dishonour of cheque and its remedies available to the creditor under the Negotiable Instruments Act, 1881. In the year 2002, there are significant amendments made in Chapter XVII of the Negotiable Instruments Act, 1881 in order to effectively protect the right of the Payee of a cheque. The Burden of Proof is upon the drawer of the cheque in the criminal prosecution. Mens rea is not considered at all. The entire chapter is to be studied taking into consideration various important decisions of the Supreme Court on the different issues arising out of civil and criminal litigations relating to dishonour of cheque.

### **Syllabus:**

#### **1. Introduction:**

- 1.1 The Negotiable Instruments Act, 1881 : Object and Reasons
- 1.2 Types of Negotiable Instruments
- 1.3 Negotiable Instruments covered under the Act : Promissory Notes, Bills of Exchange and Cheques including Electronic Cheque, Validity period of cheque (3 months by RBI amendment)
- 1.4 Definition and Characteristics of the Negotiable Instruments
- 1.5 Presumptions relating to Negotiable Instruments
- 1.6 Drawer, Drawee and Payee : Definition, Rights and duties
- 1.7 Honder and Holder in due course : advantages, rights and powers
- 1.8 Distinction between Holder and Holder in due course

## **2. Various terms and phenomenon under the Act:**

- 2.1 Ambiguous Instrument, Inchoate Stamped Instrument
- 2.2 Drawee in case of need
- 2.3 Acceptance for honour, Payment for honour
- 2.4 Notice of Dishonour, liabilities of Drawee and Drawer
- 2.5 Maturity of Negotiable Instrument and Days of Grace
- 2.6 Endorsement: Types and advantages
- 2.7 Crossing of Cheque: kinds of crossing, advantages of crossing
- 2.8 Negotiation of Instrument, Negotiation Back
- 2.9 Noting and Protest

## **3. Special provisions relating to Dishonour of Cheque and its remedies:**

(Section 138 to 147 of the Negotiable Instruments Act, 1881)

- 3.1 Remedy to initiate criminal proceedings in case of dishonour of Cheque
- 3.2 Absolute Liability of Drawer of Cheque in case of its dishonour, absence of Mens rea no defence at all (Sec.139), Object and reasons of inserting chapter XVII under the Act
- 3.3 Modes of Dishonour of Cheque : Stop Payment, Funds not arranged for, Account Closed, Referred to the Drawer, Insufficient Funds, Post Dated Cheque etc. – its consequences
- 3.4 Essentials for criminal proceedings in case of dishonour of cheque :
  - 3.4.1 Cheque must be written pursuant to Legal Debt
  - 3.4.2 Notice of dishonour within prescribed time
  - 3.4.3 Cheque: can be deposited in bank more than once within its validity period before initiating criminal proceedings
  - 3.4.4 Filing of criminal complaint : formalities, Forum of Criminal court, time limit, jurisdiction of criminal courts
- 3.5 Penal Provisions under the Act in case of dishonour of cheque
- 3.6 Dishonour of cheque by a company or a firm : consequences, joint and several liabilities, Discharge from liability in case of Ex-officio Directors of Government Companies
- 3.7 Offence committed against a company or firm, persons competent to file criminal complaints, prior formalities
- 3.8 Delay in filing of criminal complaint u/s 138 of the Act : consequences
- 3.9 Compounding of offences under the Act : Powers of the Magistrate
- 3.10 Defences available to the Drawer of the Cheque
- 3.11 Important decisions of the Supreme Court

### **Suggested Readings:**

1. Avtar Singh, Negotiable Instruments Act, 1881 : Eastern Book Company
2. Bhashyam & Adiga, Negotiable Instruments Act, 1881, Bharat Law House, Delhi
3. Tannan's Banking Law & Practice in India, India Law House
4. Avtar Singh, Law of Banking & Negotiable Instruments, Central Law Publication
5. P. L. Malik, Negotiable Instruments Act, Eastern Book Company
6. Saharay, Negotiable Instruments Act with Special Emphasis on Dishonour of Cheques, Central Book Agency, Kolkotta
7. R. K. Suri, Dishonour of Cheques (Prosecution & Penalties), ALT Publications, Hyderabad
8. K. S. Gopala, Dishonour of Cheques (Law, Practice & Procedure), ALT Publications
9. P. S. Narayan, Law of Negotiable Instruments and Dishonour of Cheques, Asia Law House
10. Khergauwala, Negotiable Instruments Act, Butterworths
11. S. N. Gupta, Dishonour of Cheques- Liability – Civil and Criminal, Universal Law Book Co.
12. R. K. Bangia, Negotiable Instruments Act, Allahabad Law Agency
13. S. M. Chaturvedi, Negotiable Instruments Act, Central Law Agency
14. R. Swaroop, A Case Book on Dishonour of Cheques, Jain Book Depot.