

# Parties to a Negotiable Instrument

## LEARNING OBJECTIVES

- Identity various parties involved in bill of exchange promissory note and cheque.
- Make comparison between holder and holder in due course in terms of special privileges of holder in due course.
- Analyse contractual capacity of a minor, agents, representative, joint stock company, and insolvent in the context of negotiable instrument.
- Remember liability of various parties of negotiable instrument.

## INTRODUCTION

Every negotiable instrument has many parties, depending on nature of instruments. In addition to original parties like the maker, the payee and the drawee, there are many other parties associated with an instrument, such as indorser, indorsee and holder etc. As the instrument goes on negotiating, the number of parties also increases.

Following are the parties involved in various types of negotiable instruments:

- Parties to promissory note:** Maker, Payee, Holder, Indorser and Indorsee.
- Parties to a bill of exchange:** Drawer, Drawee, Payee, Holder, Drawee in case of need and Acceptor for honour.
- Parties to a cheque:** Drawer, Drawee (Bank) Payee, Holder, Indorser and Indorsee.

### ***Maker or Drawer of an Instrument***

Negotiable instruments are always drawn or made. The person who draws is known as maker or drawer. In case of promissory note he is primarily responsible for making payment. In bill of exchange and in cheque, the liability of the maker or drawer is secondary in nature.

***Drawee or Acceptor of an instrument***

The drawee or acceptor is a main party in a bill of exchange and cheque. In case of cheque, the banker becomes drawee and in a bill of exchange the person who accepts it become drawee. In both the cases, they have primary responsibility to pay.

***Holder or Indorser***

The person is said to be a holder of negotiable instrument who is legally entitled to possess the instrument, in his name and to get its payment on due date or on demand, as the case may be. Thus the holder is either the original payee or indorsee.

***Payee***

Negotiable instruments are used to facilitate the payment and settlement of transactions. The person who is entitled to get the payment of negotiable instrument from the person liable to pay, is technically known as 'payee'. In case of a bill of exchange and cheque, drawer and payee may be same and one individual.



## **HOLDER**

*get payment*

(Generally the holder is a person, who is bearing or holding an instrument and is legally entitled to get its payment from the party responsible to pay.)

According to Section 8 of this Act, "the holder of a negotiable instrument means any person, entitled in his own name to the possession thereof and to receive or recover, the amount due thereon from the party liable thereto."

It follows from the above contents that, the person is said to be holder of negotiable instrument, if he satisfies the following two conditions:

- (i) He should be entitled to possess the instrument in his own name e.g., legal custody of an instrument.
- (ii) He should have a right to receive or recover the amount due on the instrument from the party liable to pay.

However, it is not necessary that the instrument must be in his possession. Rather, to be a holder, he is required to have a right to possession under some valid and legal title. Thus, the holder should be 'de-jure' holder (holder in law).

Thus, for a holder to be entitled to the instrument in his own name, the holder must be named in the instrument either as a payee or the indorsee. The legal representative of the holder may also become the holder of instrument, by operation of law i.e., on obtaining certificate of succession.

Where the person, is in possession of negotiable instrument without having a right to possess it, he cannot be considered as a holder. The finder of goods or thief of lost goods and endorsee under forged indorsement, though may be having possession of an instrument, but cannot be called the holder. This is so because, he does not acquire legal title thereto. Similarly a payee, prohibited by an order of court from receiving the amount of the instrument will not be a holder. In addition to it, an agent holding the instrument, and beneficial owners through 'Benamindar' are also not holders.

**SARJOO PRASAD vs RAM PAYARI DEVI (1950, PAT 493):** In this case, S advanced a sum of Rs. 2,500 under a promissory note. The note, however was executed not in the name of S, but in the name of P who was 'Benamindar'. On maturity S sued to recover the amount from the debtor. It was held that he could not recover as he was not a holder having a right of possession and payment.

To become holder, it is not enough to have lawful possession of the instrument. But the person must also have right to receive or recover the amount from the party liable to pay so as to give him valid discharge. Thus, the holder of an instrument, must have:

- (i) Obtained an instrument in a lawful manner.
- (ii) Right to sue in his own name to recover the payment.



## **HOLDER IN DUE COURSE**

The holder in due course occupies key position in the instrument with regard to his relation with other parties of an instrument.

According to Section 9 of this Act, "holder in due course means any person who for consideration, becomes the possessor of a negotiable instrument if payable to bearer or payee or indorsee thereof if payable to order before the amount mentioned in it became payable and without sufficient cause to believe that any defect existed in the title of a person from whom he derived his title." Before a person can claim to be a holder in due course, he must satisfy the following conditions:

5) (a) ***He must be a Holder:*** He must have right to possess the instrument in his own name and to recover or receive payment thereof from the parties liable to pay.

(b) ***He must be a Holder for consideration:*** The holder must have given lawful consideration to acquire the instrument. In case if someone gets a cheque as a gift, he cannot become holder in due course of that cheque. Thus a person, who gets an instrument without consideration, cannot enforce it as a holder in due course.

(c) ***He must acquire the instrument before maturity:*** The holder must have acquired the instrument at or before the date of maturity. In case he acquires it after the date of maturity, he will not get better title than that of transferor.

However, an accommodation bill can be negotiated even after the date of maturity with all benefits of a holder in due course to the transferee. In case of instrument payable on demand e.g., cheque he must have got it within reasonable period of time of its issue.

(d) ***Instrument should be complete and regular:*** The holder in due course must take the negotiable instrument complete and regular on its face. He must examine its form, contents and material defects in the instrument such as defects regarding name of drawer, date, stamp duty etc.

(e) Holder must take the instrument in good faith: The holder must take the instrument in good faith without any negligence. But good faith, regarding title of transferor, on the part of the holder is not sufficient. Rather, he must have taken it without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

The circumstances leading to suspicion may be related to blank acceptance, incomplete bill, torn pieces of the bill pasted together, and improper indorsement etc. In all such cases, he must exercise reasonable care and due caution as to be on safe side.

Thus besides good faith, reasonable degree of care and diligence is to be exercised by him to hold his right good. A holder in due course occupies privileged position in Negotiable Instrument Act. He gets many special rights which are generally not available to an ordinary holder. He gets title of instrument free from all defects. The burden of proving his title does not lie on him. Once an instrument passes through his hands, it becomes clean and free from all defects.