

Liability of Parties on Negotiable Instrument

The provisions relating to the liability of parties to negotiable instruments are under section 30 to 32 and 35 to 42 of the Negotiable Instrument Act, 1881.

The Liability of parties is as follows:

1. Liability of Drawer (Section 30)

Drawer means a person who signs a cheque or a bill of exchange ordering his or her bank to pay the amount to the payee.

In case of dishonour of cheque or bill of exchange by the drawee or the acceptor, the drawer of such cheque or bill of exchange needs to compensate the holder such amount. But, the drawer needs to receive due notice of dishonour.

So, the nature of the drawer's liability on drawing a bill is:

- (i) On due presentation: - It should be accepted and paid accordingly.
- (ii) In the case of dishonour: - Drawer needs to compensate the holder such amount, only when he receives a notice of dishonour by the drawee.

2. Liability of the Drawee of Cheque (Section 31)

The person who draws a cheque i.e. drawer having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required to do so and, or in default of such payment, he shall compensate the drawer for any loss or damage caused by such default.

The drawee of a cheque will always be a banker. As a cheque is a bill of exchange, drawn on a specified banker by the drawer, the banker is bound to pay the cheque of the drawer, i.e., the customer. For the following conditions are need to be satisfied:

- (i) Sufficient amount of funds to the credit of customer's account should be there with the banker.

(ii) Such funds are required to be properly applied against the payment of such cheque, e.g., the funds are not under any kind of lien etc.

(iii) The cheque is duly required to be paid, during banking hours and on or after the date on which it is made payable.

If the banker unjustifiably refuses to honour the cheque of its customer, it shall be liable for damages.

3. Liability of Acceptor of Bill and Maker of Note (Section 32)

As per section 32 of negotiable instrument act, in the absence of a contract to the contrary, the maker of a promissory note and the acceptor before the maturity of a bill of exchange are under the liability to pay the amount thereof at maturity.

They need to pay the amount according to the apparent tenor of the note or acceptance respectively. The acceptor of a bill of exchange at or after maturity is liable to pay the amount thereof to the holder on demand.

The liability of the acceptor of a bill or the maker of a note is absolute and unconditional but is subject to a contract to the contrary and may be excluded or modified by a collateral agreement.

4. Liability of Endorser (Section 35)

An endorser is the one who endorses and delivers a negotiable instrument before maturity. Every endorser has a liability to the parties that are subsequent to him.

Also, he is bound thereby to every subsequent holder in case of dishonour of the instrument by the drawee, acceptor or maker, to compensate such holder of any loss or damage caused to him by such dishonour. However, he is to compensate only after the fulfilment of the following conditions:

(i) There is no contract to the contrary

(ii) The Endorser has not expressly excluded, limited or made conditional his own liability

(iii) And, such endorser shall receive due notice of dishonour

5. Liability of Prior Parties (Section 36)

Until the instrument is duly satisfied, every prior party to a negotiable instrument has a liability towards the holder in due course. The prior parties include the maker or drawer, the acceptor and all the intervening endorsers. Also, there liability to a holder in due course is joint and several. In the case of dishonour, the holder in due course may declare any or all prior parties liable for the amount.

6. Liability Inter-se

Every liable party has a different footing or stand with respect to the nature of liability of each one of them.

7. Liability of Acceptor when Endorsement is Forged (Section 41)

An acceptor of a bill of exchange who had already endorsed the bill is not relieved from liability even if such endorsement is forged. This is so even if he knew or had reason to believe that the endorsement was forged when he accepted the bill.

8. Acceptor's Liability when Bill is drawn in a Fictitious Name

An acceptor of a bill of exchange who draws a bill in a fictitious name, payable to the drawer's order will be liable to pay any holder in due course. He or she will not be relieved from such liability by reason that such name is fictitious.