



CMA INTERMEDIATE • PAPER 5 • BUSINESS LAWS AND ETHICS

Student Notes

Chapter 4 • Negotiable Instruments Act, 1881



5 Topics • 5 Examined • 67 Classified Questions

ICMAI Study Material, Syllabus 2022 • Shuchita Scanner, 2026 July Edition

How to use this booklet

For each topic, first read the Study Material paragraphs named in the “Read first” line. Then prepare level by level — each level tells you what kind of mastery the examiner expects, and lists the exact Scanner questions to practise at that level.

Question lines show: **label • source & exam • question reference • category • marks • Scanner page**, then the **category** again in the column beside it and the **difficulty** of the question.

The category — **OQ** objective, **SN** short note, **DB** distinguish between, **DESC** descriptive, **CSQ** case scenario — is the **Scanner’s own**, printed in the book. A **{C}** after the exam reference means the question was **compulsory** in that paper.

The heading above each group names the **skill the question calls for** — **OBJECTIVE, REMEMBERING, UNDERSTANDING, APPLYING, ANALYSING, EVALUATING, CREATING**, and **PRACTICE** for a model question set by the Scanner rather than taken from a past paper. It is assigned by the SITS rubric from the directive verb and the question type. **ICMAI publishes no skill-assessment grid** for the Intermediate papers, so no weighting is implied here on the Institute’s behalf.

STUDY PRIORITY GUIDE

Chapter 4 at a Glance

This chapter carries 67 classified Scanner questions across 5 declared topics, 5 of which the examiner has actually asked. The table below breaks the chapter down by the skill each question calls for, and by the marks that skill is worth.

SKILL REQUIRED Chapter 4 • share of the chapter's 225 marks

Recall — objective questions	19.1%	43 of 225 marks • 33 questions
Remembering	9.8%	22 of 225 marks • 4 questions
Understanding	20.9%	47 of 225 marks • 10 questions
Applying	16.9%	38 of 225 marks • 7 questions
Analysing	17.3%	39 of 225 marks • 7 questions
Evaluating	16.0%	36 of 225 marks • 6 questions

Recalling and explaining **49.8%** • applying, analysing and judging **50.2%** — this chapter reads **weighted towards application**

50% of this chapter's marks are earned by recalling and explaining, and 50% by applying, analysing and judging. Across Paper 5 as a whole the split is 67% and 33%. This chapter is examined harder than the paper as a whole. Reading it once will not earn the marks; the questions ask you to take the provision to a set of facts.

Every band is assigned by the SITS rubric v1-CMA and weighted on the marks printed in the Scanner. ICAI publishes no skill-assessment grid for the Intermediate papers, so the comparison is against this paper's own profile drawn from the Scanner, and no weighting is implied on the Institute's behalf.

SKILL REQUIRED	WHAT THE EXAMINER ASKS FOR	QUESTIONS
Recall — objective questions	recognise the right answer — Section A of the Scanner, 1 and 2 marks	33
Remembering	recall and reproduce	4
Understanding	explain with reasons	10
Applying	take the provision to the facts	7
Analysing	break down and compare	7
Evaluating	judge and justify	6

The Scanner's own categories for this chapter: 33 objective, 15 descriptive, 14 case scenario, 4 distinguish, 1 short note.

The band on each question line is SITS-assigned by written rubric. ICMAl publishes no skill-assessment grid for the Intermediate papers, so no institute weighting is implied. The category beside it — OQ, SN, DB, DESC, CSQ — is the Scanner's own, printed in the book.

CHAPTER 4

Negotiable Instruments Act, 1881

Topic 1: Definition and Features of Negotiable Instrument

CMAL2P5-C4-T01

Read first Read §4.1 Definition and Features of Negotiable Instrument, ICAI Study Material Module 4, pages 121–128 — sections 4, 5, 6, 8, 9, 10 and 13, the three comparison tables, the types of instrument, and maturity under sections 22 and 23.

NOTES

What a negotiable instrument is, and the three the law recognises: negotiable instruments are documents which are used to transfer money between designated persons, containing either a promise or an instruction to pay an assigned sum at a particular time. Indian law denotes three instruments as negotiable and legally valid — the **promissory note, the bill of exchange and the cheque**. Section 13 defines a negotiable instrument as a **promissory note, bill of exchange or cheque payable either to order or to bearer**. Negotiability differs from mere transferability: by delivery, or endorsement and delivery, the acquirer gets the **best title** by becoming the holder.

The eight essential features: it must be **in writing**; it should be **signed by the maker or drawer**; there must be a **promise or order to pay**; the promise or order must be **unconditional**; it must call for payment **in money and money only**; it should call for payment of a **certain sum**; the property in it may pass **by mere delivery or by indorsement and delivery**; and the **consideration is presumed to have passed**.

Section 4 — the promissory note: an instrument **in writing (not being a bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument**. There are **two parties**. In *Santsingh v. Madandas Panika*, AIR 1976 MP 144, the four elements were set out — an **unconditional undertaking to pay**, a **certain sum of money**, payment to a **certain person or to the bearer**, and the **maker's signature**. In *Bahadurrisa v. Vasudev*, AIR 1967 AP 123, three types were identified: a promise to pay a certain person, to the order of a certain person, or to the bearer.

Section 5 — the bill of exchange: 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**. In *Sinha v. Bidhu Bhusan De*, AIR 1955 Cal. 562, the essential character was said to be that it **contains an order to accept or to pay and that the acceptor should accept it**. Treated as bills of exchange are a **banker's draft**, a **demand draft even if drawn on another office of the same bank**, and an order by a District Board

Engineer on a Government Treasury.

Section 6 — the cheque, and the two additional qualifications: a cheque is a **bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand**, and it includes the electronic image of a truncated cheque and a cheque in the electronic form. Its two distinctive features are that it is **always drawn on a specified banker** and **always payable on demand**. There are **three parties** — drawer, drawee and payee — and the drawee is **always the bank**. A **cheque in the electronic form** is drawn using a computer resource and signed in a secure system with a digital or electronic signature; a **truncated cheque** is one truncated during a clearing cycle on generation of an electronic image, the **clearing house** being one managed or recognised by the RBI.

The three comparison tables: note against bill — sections 4 and 5, **two parties against three**, a **promise against an order**, no condition in a note while a bill **may be accepted conditionally**, and the maker's liability **primary and absolute** against the drawee's **secondary and conditional**. **Note against cheque** — a note is **not crossed** and a cheque **may be crossed**; **no protection to the payee of a note** against **statutory protection to the drawee banker under section 128**; a note **cannot be self-drawn**; **no criminal liability** on the maker; **stamp necessary** for a note and not for a cheque; limitation **three years against six months**.

Bill against cheque, the third table: both have three parties, but **bills are not crossed and cheques may be**; **three days of grace** are generally given on a bill, none on a cheque; **anybody including a banker may be the drawee** of a bill, while the drawee of a cheque is **always a banker**; a bill **must be accepted** before the acceptor is liable, while a cheque **requires no acceptance**; on dishonour of a bill a **notice of dishonour must be sent**, while on a cheque the banker's memo **Refer to Drawer** is sufficient notice; **section 85** protects bankers; and dishonour of a bill attracts **civil liability** while dishonour of a cheque attracts **criminal liability under section 138**.

The parties: the **drawer** makes the bill or cheque and the person directed to pay is the **drawee** — in **Shivanth v. Bishambar**, AIR 1935 Lah. 153, the definition of drawer was held not exhaustive, so the maker of a note may also be called a drawer. A **drawee in case of need** is a person named in addition to the drawee to be resorted to in case of need. The **acceptor** is the drawee who has signed his assent on the bill and delivered it or given notice of the signing. An **acceptor for honour** accepts **supra protest** after noting or protest, for the honour of the drawer or an endorser. The **payee** is the person named in the instrument to whom, or to whose order, the money is directed to be paid.

Section 8 — the holder: any person **entitled in his own name to the possession of the instrument and to receive or recover the amount due thereon from the parties thereto**; where the instrument is lost or destroyed, the holder is the person so entitled at the time of the loss. In **Anjaniah v. Nagappa**, AIR 1967 AP 61, it was held that a person in possession **with no right to recover** is not a holder — not the **finder of a lost bearer instrument**, not a **thief** in possession, and not even the **payee** where a court order prohibits him from receiving the amount.

Section 9 — the holder in due course: any person who **for consideration** became the **possessor of**

a note, bill or cheque if payable to bearer, or the **payee or endorsee** if payable to order, **before the amount mentioned in it became payable**, and **without having sufficient cause to believe that any defect existed in the title** of the person from whom he derived his title. **Braja Kishore Dikshit v. Purna Chandra Panda**, AIR 1957 Ori. 153, reduces it to three conditions — **for consideration**, **before the amount became payable**, and **no sufficient cause to believe in a defect of title**.

Holder against holder in due course: a **holder** is entitled in his own name to possess the instrument and the amount from the parties; a **holder in due course** possesses it **for consideration, before maturity and in good faith**. The holder's title is **subject to the title of his transferor**; the holder in due course gets a **better title than his transferor**. A holder **may receive the instrument without consideration**; a holder in due course **always receives it for consideration**. And the holder **does not get the privileges available to a holder in due course**. The sections are **section 8 against section 9**.

Section 10 payment in due course, and the types of instrument: payment in due course is payment **in accordance with the apparent tenor of the instrument, in good faith and without negligence, to any person in possession** under circumstances which do not afford reasonable ground for believing he is not entitled. The types are **inland** (drawn or made in India and payable in, or drawn on a person resident in, India), **foreign** (not drawn, made or payable in India), **ambiguous** (construable as either a note or a bill, the **holder electing** which), **payable on demand** (a note or bill in which **no time for payment is specified**, and any cheque), and **inchoate stamped instruments** under section 20.

OBJECTIVE recognise the right answer — Section A of the Scanner, 1 and 2 marks • 12 questions

- Twelve of the chapter's thirty-three objective questions sit here — more than a third of Section A on one topic. Almost all are single-sentence definitions from pages 121 to 127, so this is the cheapest revision in the chapter.
- Learn these as sentences, because each has been set verbatim: the Act **extends to the whole of India**; **banker** includes any person **acting as a banker and any post office saving bank**; the Act makes specific mention of three instruments — cheque, bill of exchange and **promissory note**; a **digital instrument** is not a category the Act knows, while inland, foreign, ambiguous and inchoate instruments are; the undertaking in a promissory note is **unconditional**; and negotiable instruments transfer money between **designated** persons.
- Two turn on things the Study Material states only in passing. A **draft cannot be drawn on a private individual**, and a **cheque** is the instrument that may be payable to the bearer on demand. Both appear in the Study Material's own exercise answers on pages 154 and 157, so work those exercises.
- One question falls outside 4.1 altogether: where the day of maturity is a **public holiday**, the instrument falls due on the **next preceding business day**. Section 25 is not reproduced in the Study Material's module, so learn the rule from the Scanner's answer and do not look for it in the text.

OQ • PYQ 2016-Jun [1] (a) (viii) • 1M • Pg 203	OQ Objective	Easy
OQ • PYQ 2017-Dec [1] (d) (ii) • 1M • Pg 204	OQ Objective	Easy
OQ • PYQ 2019-Jun [1] (a) (iii) {C} • 1M • Pg 205	OQ Objective	Easy
OQ • PYQ 2023-Jun [1] (a) (iv) {C} • 1M • Pg 206	OQ Objective	Easy
OQ • MQP 2023-Jun S2 [1] (c) (i) • 1M • Pg 206	OQ Objective	Easy
OQ • PYQ 2023-Jun [1] (c) (ii) {C} • 1M • Pg 206	OQ Objective	Easy
OQ • PYQ 2023-Dec [1] (iv) {C} • 2M • Pg 206	OQ Objective	Easy
OQ • MQP 2024-Dec S1 [1] (iv) • 2M • Pg 207	OQ Objective	Easy
OQ • MQP 2024-Dec S2 [1] (iv) • 2M • Pg 207	OQ Objective	Easy
OQ • PYQ 2025-Jun [1] (iv) {C} • 2M • Pg 208	OQ Objective	Easy
OQ • PYQ 2025-Dec [1] (vii) {C} • 2M • Pg 208	OQ Objective	Easy

REMEMBERING recall and reproduce • 2 questions

- Two questions sit here and they are opposite in kind. The eight-mark question asks for the **circumstances in which a banker is bound to refuse payment of a cheque** — countermand of payment, notice of the customer's death, and the further grounds the Scanner's answer sets out. The Study Material's 4.1 does not carry this list at all, so learn it from the Scanner's own answer.
- The four-mark forged-acceptance question is a two-part answer and the marks split evenly. Part one: the taker for value, in good faith, before maturity **is a holder in due course** within section 9. Part two: where a **signature on the instrument is forged, the instrument is not an instrument at all**, so he cannot **enforce payment** against the person whose acceptance was forged.
- That two-part shape recurs across the chapter. When a question grants a status and then asks what follows from it, answer both halves separately and never let the second collapse into the first.

CSQ 1.1 • PYQ 2014-Jun [5] (b) • 4M • Pg 216	CSQ Case scenario	Medium
TQ 1.3 • PYQ 2016-Jun [2] (d) (i) • 8M • Pg 210	DESC Descriptive	Hard

UNDERSTANDING explain with reasons • 4 questions

- Four questions sit at this level, from two marks to seven, and every one is a definition question dressed as an explanation.

- For a **cheque** is a **specie of bill of exchange** with **two additional qualifications** (3 marks), quote **section 6**, then name the two qualifications — **always drawn on a specified banker** and **always payable on demand** — and close on the Scanner's own sentence, that **all cheques are bills of exchange but all bills of exchange are not cheques**.
- For the **special characteristics of negotiable instruments** (5 marks) give the **eight features** as a numbered list and stop. There are eight marks' worth of items for five marks, so completeness beats elaboration.
- For the **various types of instruments** (7 marks) take the five in order — **inland (11), foreign (12), ambiguous (17), payable on demand, inchoate stamped (20)** — with the defining clause of each. The Scanner's answer attaches section numbers, so attach them too.
- For the two-mark question on a **holder who fails to give notice of dishonour**, the answer is a single proposition: except where notice is excused, **all parties liable on the instrument are discharged**. Say it and stop.

TQ 1.1 • PYQ 2013-Dec [4] (a) (i) • 2M • Pg 209	DESC Descriptive	Easy
TQ 1.2 • PYQ 2015-Dec [2] (a) (iv) • 3M • Pg 209	DESC Descriptive	Easy
TQ 1.7 • MQP 2023-Jun S2 [2] (b) • 5M • Pg 215	DESC Descriptive	Medium
TQ 1.8 • PYQ 2024-Dec [3] (b) • 7M • Pg 215	DESC Descriptive	Medium

APPLYING take the provision to the facts • 1 question

- The four-mark inchoate-instrument question — a blank stamped paper signed and authorised for ₹500, fraudulently completed for ₹2,000, and advanced against in good faith — is decided by **section 20** and by nothing else.
- Answer in three moves. State that a duly signed blank stamped instrument is an **inchoate instrument** and that the signer gives **prima facie authority** to complete it for **any amount not exceeding the amount covered by the stamp**. State the two limits: the claimant must be a **holder in due course**, and the **stamp must cover the amount** filled in. Then apply both to the figures given.
- The Study Material carries this fact pattern twice among its unsolved cases on page 156, with different figures each time. Work both before the exam; the reasoning is identical and only the arithmetic changes.

CSQ 1.2 • PYQ 2015-Jun [2] (c) (iv) • 4M • Pg 217	CSQ Case scenario	Medium
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ANALYSING break down and compare • 2 questions

- Both questions at this level are distinguish-between questions worth five marks each, and both are marked row by row. Use a two-column table every time.

- For **holder against holder in due course**, take the four rows the Study Material prints — entitlement, whether title is subject to the transferor's, whether consideration is required, and the privileges — and add **section 8 against section 9** as a fifth. The Scanner's model answer does exactly that.
- For **promissory note against bill of exchange**, take five rows: the **defining sections**, the **number of parties** named individually, **promise against order**, whether it **may be conditional** — a note may not, but a bill's **acceptance** may be — and the **primary and absolute** liability of the maker against the **secondary and conditional** liability of the drawer.
- Note the one place the Scanner and the Study Material diverge: the Study Material names the three parties to a bill as **drawer, acceptor and payee**, while the Scanner's answer names them **drawer, drawee and payee**. Write **drawer, drawee and payee**, and add that the drawee becomes the **acceptor** once he has signed his assent.

TQ 1.5 • PYQ 2023-Jun [2] (b) • 5M • Pg 213

DB
Distinguish

Medium

TQ 1.6 • MQP 2023-Jun S1 [2] (b) • 5M • Pg 214

DB
Distinguish

Medium

EVALUATING judge and justify • 1 question

- The seven-mark question gives you a statement of law to set out and then a term of acceptance to judge — **Accepted but payment will be made when goods delivered to me is sold** — so the answer must reach a verdict, not stop at the list.
- Set out the essentials of a valid acceptance from 4.3 first: it must be **written on the face of the bill**, **signed by the drawee or his authorised agent**, and the accepted bill must be **delivered to the holder** or notice given. An **oral acceptance is not valid**, and a **mere signature suffices** without the word 'accepted'.
- Then judge it. Making payment depend on the sale of goods consigned to the acceptor is a **qualified acceptance** under **section 86(a)** — payment undertaken on the happening of a stated event — and the Study Material lists it as such. The holder may therefore **treat the bill as dishonoured by non-acceptance** and, after due notice, sue the drawer and prior endorser; if he accepts it, **all prior parties whose consent was not obtained are discharged**. That last sentence is the judgement the question is asking for.

TQ 1.4 • PYQ 2016-Dec [2] (a) (ii) • 7M • Pg 212

DESC
Descriptive

Hard

Topic 2: Crossing, Endorsement and Material Alteration

CMAL2P5-C4-T02

Read first Read §4.2 Crossing, Endorsement and Material Alteration, ICAI Study Material Module 4, pages 129–134 — sections 123 to 131 on crossing, sections 15, 16 and 49 to 56 on endorsement, and the two lists of what is and is not a material alteration.

NOTES

Crossing — sections 123 to 125: under **section 123**, where a cheque bears across its face the words 'and company' or any abbreviation of them, **between two parallel transverse lines, or two parallel transverse lines simply**, with or without the words 'not negotiable', it is **crossed generally**. Under **section 124**, where it bears across its face the **name of a banker**, with or without 'not negotiable', it is **crossed specially** and crossed to that banker. Under **section 125** the **holder** may cross an uncrossed cheque generally or specially, may make a general crossing special, may **add the words 'not negotiable'**, and where it is crossed specially the banker may **cross it again specially to another banker, his agent, for collection**.

Payment of a crossed cheque — sections 126 to 129: where a cheque is **crossed generally** the banker on whom it is drawn **shall not pay it otherwise than to a banker**; where it is **crossed specially to more than one banker**, except to an agent for collection, the banker **shall refuse payment**. Under **section 128**, a banker who has paid a crossed cheque **in due course** is placed in the same position as if the amount had been **paid to and received by the true owner**. Under **section 129**, a banker paying a generally crossed cheque **otherwise than to a banker**, or a specially crossed cheque otherwise than to the banker to whom it is crossed, is **liable to the true owner for any loss he sustains**.

Section 130 — 'not negotiable': a person taking a cheque crossed generally or specially and bearing the words 'not negotiable' **shall not have, and shall not be capable of giving, a better title to the cheque than that of the person from whom he took it**. The consequence: a holder with a good title can still pass a good title, but where the **transferor's title is defective the transferee takes it subject to the same defect**, and he **cannot claim the rights of a holder in due course** by proving that he bought in good faith and for value.

Section 131 — protection of the collecting banker: a banker who has **in good faith and without negligence** received payment for a **customer** of a cheque crossed generally or specially to himself **incurs no liability to the true owner** if the title to the cheque proves defective. He is treated as receiving payment for the customer even though he **credits the customer's account before receiving payment**. Where he receives payment on an **electronic image of a truncated cheque** he must **verify the prima facie genuineness** of the cheque and any fraud, forgery or tampering apparent on its face that can be found with due diligence.

Section 15 — what an endorsement is: where the **maker or holder** of a negotiable instrument signs it, **otherwise than as such maker, for the purpose of negotiation, on the back or face of it or on a slip of paper annexed to it**, he is said to **indorse** it and is called the **indorser**. Endorsement is the **writing of a person's name, other than the maker's, on the face or back of an instrument or on a slip attached to it, for the purpose of negotiation**. The signer is the **endorser** and the person in whose favour it is endorsed the **endorsee**.

The essentials of a valid endorsement, and who may endorse: it must be **on the instrument itself or on a separate slip attached to it, called an allonge**; it must be **signed by the endorser** for the purpose of negotiation; it may but need not name the endorsee, and **no particular form of words is necessary**; and it is **complete when the instrument is delivered to the endorsee** with the

intention of passing the property. The **first endorsement can be made by the payee only**; subsequent endorsements may be made by **any person who becomes the holder**. Under **section 51** every **sole or all joint makers, drawers, payees or indorsees** may endorse and negotiate.

The four types of endorsement: blank, full, restrictive and conditional. Under **section 16(1)**, if the endorser **signs his name only** the endorsement is **in blank**; if he adds a direction to pay the amount to, or to the order of, a specified person, it is **in full**. Under **section 49** the holder of an instrument endorsed in blank may, **without signing his own name**, write a direction to pay above the endorser's signature and **convert the blank endorsement into a full one**, without incurring an endorser's liability. Under **section 54**, an instrument **endorsed in blank is payable to the bearer** even though originally payable to order.

Restrictive endorsement — section 50, and its effect: endorsement followed by delivery transfers the property **with the right of further negotiation**, but the endorser may by **express words restrict or exclude that right**, or merely constitute the endorsee an **agent to endorse or to receive the contents**. The effect is that the endorsee **gets the right to full payment and may sue any party**, but has **no right to transfer that right** unless expressly authorised: the **negotiability comes to an end and the last endorsee is the person to sue upon**. In **Wasudev v. National Savings Bank**, AIR 1953 Bom. 209, it was held that section 50 deals with endorsements restrictive **in express words** and not with an endorsee proving an oral limited purpose.

The five ways an endorser limits or excludes his liability: **sans recourse**, adding 'without recourse to me' or 'at his own risk', after which the subsequent holder **cannot look to him**, and if he later becomes holder again **all intermediate endorsers remain liable to him** (section 52); **sans frais**, where he does not want the endorsee or any other holder to **incur any expense on his account**, also called a without-expense endorsement; making his liability **contingent on an uncertain event**, in which case the endorsee **may still sue prior parties before the event**; making the **endorsee's right to receive payment** depend on such an event, in which case the endorsee **may not sue prior parties before it**; and a **facultative** endorsement, where he **abandons a right or increases his liability**, as in 'notice of dishonour waived'.

Partial endorsement — section 56: no writing on a negotiable instrument is valid for the purpose of negotiation if it purports to transfer only a part of the amount appearing to be due. The whole amount must be endorsed. But where part of the amount has been paid or received and a note to that effect is endorsed on the instrument, the instrument may then be negotiated for the balance. A partial endorsement is invalid because it would **subject the prior parties to a plurality of actions** and interfere with the **free circulation** of instruments; an endorsement to two or more endorsees **separately and not jointly** is treated the same way.

Material alteration, and the definition to quote: any material alteration renders the instrument void as against anyone who was a party at the time of the alteration and did not consent, unless it was made **to carry out the common intention of the original parties**; an alteration by an **endorsee discharges his endorser**. The alteration must be **intentional and not accidental**, and it must be **material**. In **Lokaram Sethiya v. Ivon E John** (1977) the Supreme Court defined a material alteration as **one which varies the rights, liabilities or legal position of the parties as ascertained**

by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or which may otherwise prejudice the party bound by the deed as originally executed.

The two lists — **material and not material**: held **material** are altering an **order cheque** into a **bearer cheque** without the drawer's consent, tearing a material part, erasing an **account payee crossing**, affixing stamps without the promisor's knowledge, and altering the **date, time or place of payment, the sum payable, the rate of interest**, or adding a **new party**. Held **not to vitiate** are alteration **before the instrument is completed**; **crossing an open cheque or converting a general crossing into a special one**; **making a qualified acceptance**; **completing an inchoate instrument**; **converting a blank endorsement into a full one**; **converting a bearer cheque into an order cheque**; alteration **with the consent of the party liable**; and alteration **to correct a mistake**.

OBJECTIVE recognise the right answer — Section A of the Scanner, 1 and 2 marks • 8 questions

- Eight objectives sit here, second only to topic 1, and every one of them is about endorsement rather than crossing. Prepare pages 130 to 132 for Section A and pages 129 to 130 for Section B.
- Four are repeats of the same two facts. The **first endorsement can be made by the payee**, not by the banker — set once as a multiple choice and once as a true-or-false. And endorsement is the **writing of a person's name on the face or back of an instrument or on a slip of paper attached to it** — set once as a definition and once through the Latin **indorsum**, meaning **upon the back**.
- The rest are single words. The slip attached to a full instrument is an **allonge** — not escrow, not zikri chit, not peth. An instrument **endorsed in blank is payable to the bearer**. **Sans frais** is the endorsement where no expense is to be incurred on the endorser's account. And the four types are blank, full, restrictive and conditional, so **written** is not a type of endorsement.
- Escrow is offered as a distractor here and is the answer elsewhere in the chapter. Keep the two apart: an **allonge** is a slip for signatures, an **escrow** is an instrument delivered conditionally.

OQ • PYQ 2017-Jun [1] (a) (ii) {C} • 1M • Pg 204	OQ Objective	Easy
OQ • PYQ 2018-Jun [1] (a) (iii) {C} • 1M • Pg 204	OQ Objective	Easy
OQ • PYQ 2018-Dec [1] (c) (ii) {C} • 1M • Pg 204	OQ Objective	Easy
OQ • PYQ 2019-Dec [1] (a) (iii) {C} • 1M • Pg 205	OQ Objective	Easy
OQ • PYQ 2021-Dec [18] • 1M • Pg 206	OQ Objective	Easy
OQ • MQP 2023-Jun S1 [1] (c) (i) • 1M • Pg 206	OQ Objective	Easy
OQ • PYQ 2024-Jun [1] (iv) {C} • 2M • Pg 207	OQ Objective	Easy

OQ • PYQ 2024-Dec [1] (iv) {C} • 2M • Pg 207

OQ
Objective

Easy

REMEMBERING recall and reproduce • 1 question

- The single question is a three-mark short note on **endorsement**. Quote **section 15** in full, give the plain restatement — writing a person's name other than the maker's on the face or back or on an attached slip, for the purpose of negotiation — and name the **endorser** and the **endorsee**.
- If space allows, add the four essentials of a valid endorsement. A short note is marked on coverage, and the four essentials are the fastest way to widen it without wandering.

TQ 2.1 • PYQ 2021-Dec [4] • 3M • Pg 218

SN
Short note

Easy

UNDERSTANDING explain with reasons • 1 question

- The three-mark 'not negotiable' question asks three things and each carries a mark: the liability of the **collecting banker**, the liability of the **paying banker**, and whether the innocent taker can be **compelled to refund**.
- The answer is that **neither banker incurs any liability**, because of the statutory protection in **sections 128 and 131**, and that the true owner **can compel the taker to refund**, because a '**not negotiable**' crossing means the transferee **cannot get a better title than his transferor** under section 130.
- Answer the three parts as three sentences under three headings. Merging them into a paragraph is how students lose the middle mark.

CSQ 2.4 • PYQ 2015-Dec [2] (e) (ii) • 3M • Pg 221

CSQ
Case scenario

Medium

APPLYING take the provision to the facts • 1 question

- The three-mark bearer-cheque question — the word 'bearer' struck out and the cheque crossed, then dishonoured for **payment countermanded** — is decided in two steps and students routinely stop after the first.
- Step one: both changes **are alterations, but both are authorised by the Act** — crossing an open cheque is in the list of alterations that do not vitiate the instrument, and so is the striking out of 'bearer'. So the instrument is **not discharged** and the drawer's liability is **unaffected**.
- Step two: the cheque was returned for **payment countermanded, not for material alteration**, so the drawer's plea is irrelevant to the reason for dishonour and he **remains liable to pay**. Say both steps expressly.

CSQ 2.3 • PYQ 2015-Dec [2] (c) (i) • 3M • Pg 220

CSQ
Case scenario

Medium

ANALYSING break down and compare • 1 question

- The four-mark question on a fraudulently obtained '**not negotiable**' cheque has two limbs and the examiner has written the second one into the question — would the answer be the same if the fraudster had encashed it himself.
- Take **section 130** first: the fraudster had **no title**, so he **could give none** to the transferee, and the transferee cannot rely on good faith and value. Then take the bank: the collecting bank acting **in good faith and without negligence** has the **section 131** protection, so the claim against the bank fails on that ground even though the title was bad.
- For the second limb, say what changes and what does not. The absence of a transfer removes the section 130 point but leaves the bank's position under section 131 to be judged on the same test of good faith and absence of negligence. A question that asks 'would your answer be the same' is marked on whether you answer it at all.

CSQ 2.2 • PYQ 2014-Dec [2] (a) (iii) • 4M • Pg 219

CSQ
Case scenario

Medium

EVALUATING judge and justify • 2 questions

- Both questions here ask you to **discuss whether** a party's position is valid, so each needs a stated verdict in its closing sentence.
- The open bearer cheque struck and crossed: the drawer's argument is **not valid**, because both alterations are **authorised by the Act** and the dishonour was for **countersand**. Add, as the Scanner's answer does, that the drawer is also exposed under **section 138**.
- The endorsement of ₹60,000 out of a ₹75,000 bill after ₹15,000 was received and **recorded on the back of the bill**: the endorsement is **valid**. Section 56 forbids endorsing part of the amount due, but where part has been **paid and noted on the instrument**, the **remaining unpaid balance may be endorsed in full**. Say that the recording on the back is what saves it — that is the fact the examiner planted.

CSQ 2.1 • PYQ 2014-Jun [3] (b) • 3M • Pg 219

CSQ
Case scenario

Medium

CSQ 2.5 • PYQ 2022-Dec [3] (b) • 5M • Pg 222

CSQ
Case scenario

Medium

Topic 3: Acceptance, Assignment and Negotiation

CMAL2P5-C4-T03

Read first Read §4.3 Acceptance, Assignment and Negotiation, ICAI Study Material Module 4, pages 135–142 — acceptance and section 86, negotiation under sections 46 to 60, presentment under Chapter V, assignment, and the discharge provisions in sections 82 to 85.

NOTES

Acceptance — what it is, and its essentials: a bill is **accepted** when the **drawee**, after putting his

signature on it, either **delivers it or gives notice of the acceptance to the holder** or to someone on his behalf; he is then the **acceptor**. The essentials are that it must be **written on the face of the bill**, the bill must be **signed by the drawee or his authorised agent**, and the accepted bill must be **delivered to the holder**. Only a **bill of exchange, other than a cheque, requires acceptance**, and **acceptance is not necessary to make a valid bill** — an unaccepted bill is not invalid, it is merely **dishonoured by non-acceptance**.

When presentation for acceptance is necessary, and when it is excused: it is **necessary** where the bill is **payable at a given time after acceptance or after sight**; where the bill **expressly stipulates** presentment for acceptance before presentment for payment; and where the bill is **payable at a place other than the drawee's residence or place of business**. In no other case is it necessary to render any party liable. It is **excused** where the drawee is **dead or insolvent**, where he is a **fictitious person or one incapable of contracting**, where he **cannot be found with reasonable efforts**, and where **acceptance has been refused on some other ground**.

General and qualified acceptance — section 86: acceptance is **general** where the drawee accepts **without qualification** to the order of the drawer; where it is **not absolute** the holder may treat the bill as **dishonoured by non-acceptance**. It is **qualified** where he accepts **subject to a qualification**, and it will not be treated as qualified **unless the qualification is expressed on the bill in the clearest language**. The five circumstances are: payment **on the happening of a stated event**; payment of **part only of the sum ordered**; payment **at a specified place of his choice and not otherwise or elsewhere**; payment **at a time other than that at which it would legally be due**; and where it is **not signed by all drawees who are not partners**.

The effect of a qualified acceptance: the holder may **treat the bill as dishonoured by non-acceptance** and, after due notice, **sue the drawer and prior endorser**s; if instead he **accepts the qualified acceptance**, all prior parties whose consent is not obtained are **discharged** as against him and those claiming through him. The examples include '**accepted payable when in funds**', '**accepted payable when a cargo consigned to me is sold**', a bill drawn for ₹1,000 **accepted for ₹900 only**, '**accepted payable at Delhi only**' where no place was specified, and '**accepted payable four months after date**' where the bill was drawn payable three months after date.

Negotiation and delivery — sections 14 and 46: under **section 14**, when a note, bill or cheque is **transferred to any person so as to constitute that person the holder**, the instrument is said to be **negotiated**. Under **section 46**, the **making, acceptance or indorsement is completed by delivery**, which may be **actual or constructive**. Between parties in **immediate relation** delivery must be made by the party making, accepting or endorsing, or by his authorised agent; and as between such parties and any holder **other than a holder in due course** it may be shown that the instrument was **delivered conditionally or for a special purpose only**, and not to transfer the property absolutely.

The two modes of negotiation — sections 47 and 48: an instrument **payable to bearer is negotiable by delivery**; one **payable to order is negotiable by the holder by indorsement and delivery**. The exception to negotiation by delivery is the instrument **delivered on condition that it is not to take effect except in a certain event**, which is **not negotiable unless the event happens**,

except in the hands of a **holder for value without notice of the condition**. In **Chaitram v. Mohanlal**, AIR 1957 Nag. 65, it was held that there must be an **intention of the endorser to constitute the endorsee as holder, accompanied by delivery**, and unless that is proved **negotiation is not complete**.

Sections 50 to 60: 50, endorsement with delivery transfers the property with the **right of further negotiation**, unless restricted; 52, an endorser may **exclude his own liability** or make it depend on an event; 53, a **holder deriving title from a holder in due course has the rights of that holder in due course**; 54, an instrument endorsed in blank is **payable to the bearer**; 55, once a blank endorsement is made full the amount **can be claimed only by the person to whom it was endorsed in full**; 56, **no partial endorsement**; 57, an instrument **lost or obtained by offence, fraud or unlawful consideration** gives no right to a possessor claiming through the wrongdoer **unless he, or someone he claims through, was a holder in due course**; 59, a holder acquiring after dishonour or maturity **has only the rights of his transferor**.

Presentment — Chapter V, sections 61 to 76: the chapter runs from **presentment for acceptance (61)** through **presentment of a note at sight (62)**, the **drawee's time for deliberation (63)**, **presentment for payment (64)**, **hours for presentment (65)** and the special cases in sections 66 to 75. In **Jagjivan Mavji v. Ranchoddas**, AIR 1954 SC 553, the Supreme Court held that a bill payable after sight has **two distinct stages** — presentment for acceptance under section 61 and presentment for payment under section 64 — and that **presentment for acceptance must always precede presentment for payment**, though on a demand bill the two **synchronise**. Whether payable after sight, at sight or on demand, **acceptance by the drawee is necessary before he can be fixed with liability**.

Section 76 — when presentment for payment is not necessary: where the maker, drawee or acceptor **intentionally prevents** presentment; where, the instrument being payable at his place of business, he **closes it on a business day during usual business hours**; where, it being payable at some other specified place, **neither he nor an authorised person attends** there during usual business hours; where, it not being payable at any specified place, he **cannot after due search be found**; against a party who **engaged to pay notwithstanding non-presentment**; and against a party who, after maturity and knowing of the non-presentment, **makes a part payment, promises to pay, or otherwise waives** his right to take advantage of the default.

Payment and interest — sections 78 to 80: payment must be made **to the holder or his accredited agent**. Interest is payable on an amount paid after the due date, running from the date it fell due to the date of realisation; and where **no rate is specified in the instrument the interest is 18% per annum** over that period. A person called upon to pay is **entitled to have the instrument shown before payment and delivered up on payment**, or, if it is lost, to be **indemnified against any further claim**.

Assignment, and how it differs from negotiation: assignment takes place where the holder transfers the instrument so as to confer on the transferee a right to receive payment. All negotiable instruments are **choses in action** and so transferable by assignment **without endorsement** under **sections 130 to 132 of the Transfer of Property Act**; assignment is effected by

writing without endorsement, and the assignee obtains only the rights of the assignor, so a defective title in the assignor makes the assignee's title defective. In **Vaddadi Venkitasami v. Md. Begum**, AIR 1956 AP 9, transfer by **operation of law** and transfer as a **chose in action** were recognised as two further modes beyond section 46.

Discharge from liability — sections 82 to 85: section 82 gives three methods — **by cancellation, by release, and by payment**. Under section 83, if the holder allows the drawee **more than 48 hours, exclusive of public holidays**, to consider whether to accept, **all previous parties not consenting are discharged**. Under section 84, where a cheque is **not presented within a reasonable time** and the drawer **suffers actual damage through the delay**, he is discharged **to the extent of that damage** — and **Abdul Majid v. Ganesh Das Kalooram**, AIR 1954 Ori. 124, requires him to prove **both** that he had **sufficient funds** and that he **suffered actual damage**. Under section 85, where a cheque payable to order **purports to be endorsed by or on behalf of the payee**, the drawee is **discharged by payment in due course**.

OBJECTIVE recognise the right answer — Section A of the Scanner, 1 and 2 marks • 6 questions

- Six objectives sit here and four of them are about acceptance. Learn **section 86** as a list: an acceptance is qualified where it undertakes payment **on a stated event**, of **part only of the sum**, at a **place of the acceptor's choice and not elsewhere**, at a **different time**, or where it is **not signed by all non-partner drawees**. Accepting ₹10,000 on a bill drawn for ₹15,000 is therefore qualified; accepting 'payable at Delhi' where no place was named is qualified only because of the word 'only'.
- Where the drawee accepts **subject to qualification**, the term is **qualified acceptance** — set as a fill-in-the-blank in 2021 and as a multiple choice in 2015.
- For presentation for acceptance, learn the four cases in which it is **excused** — drawee dead or insolvent, fictitious or incapable, not findable with reasonable efforts, or acceptance refused on other grounds. The question asks which case is **not** excused, and the answer is the invented one, a drawee **in a special economic zone**.
- The remaining two are single facts: a method of **discharge from liability** is **cancellation** under section 82; and an instrument **drawn conditionally or for a special purpose as collateral security**, and not to transfer the property in it, is an **escrow** — a term the Study Material describes in section 46 without naming.

OQ • PYQ 2015-Jun [1] (iv) • 2M • Pg 202

OQ
Objective

Easy

OQ • PYQ 2015-Dec [1] (ix) • 1M • Pg 203

OQ
Objective

Easy

OQ • PYQ 2017-Dec [1] (a) (ii) {C} • 1M • Pg 204

OQ
Objective

Easy

OQ • PYQ 2021-Dec [10] • 1M • Pg 205

OQ
Objective

Easy

OQ • PYQ 2021-Dec [16] • 1M • Pg 205

OQ
Objective

Easy

OQ • PYQ 2026-Jun [1] (vii) [C] • 2M • Pg 208

OQ
Objective

Easy

UNDERSTANDING explain with reasons • 2 questions

- Both questions at this level are three-mark provisions applied to short facts, and both want the **consequence** named, not just the rule.
- For the maturity question — a bill dated 1 February payable two months after date, presented ten days after maturity — give the date first: **4 April**, being the third day of grace after two months. Then **section 64**: on default of presentment the parties **other than those primarily liable are not liable**. So the **endorser is discharged** and the **maker remains liable**. The Scanner marks the date, the section and the two consequences separately.
- For a **partial endorsement does not operate as a negotiation**, cite **section 56**, say that an endorsement transferring the right to only part of the amount due is **invalid**, and give the two reasons the Study Material gives — it would subject prior parties to a **plurality of actions** and would **interfere with the free circulation** of instruments. Add that an endorsement to two or more endorsees **separately rather than jointly** is treated as partial and is equally invalid.

TQ 3.1 • PYQ 2014-Dec [2] (e) (iv) • 3M • Pg 222

DESC
Descriptive

Easy

TQ 3.2 • PYQ 2015-Jun [2] (a) (iv) • 3M • Pg 223

DESC
Descriptive

Easy

ANALYSING break down and compare • 2 questions

- Both questions at this level are the **negotiation against assignment** comparison, once at six marks on its own and once at seven marks with an explanation of assignment attached. Prepare the table once.
- Six rows, kept parallel: **consideration presumed until the contrary is proved** against consideration that **must be proved**; a holder in due course takes **free from defects** against an assignee whose title is **always subject to defences and equities**; **notice of transfer not necessary** against **notice of assignment must be given**; **negotiation by delivery, or by endorsement and delivery** against assignment **only by writing**; the transferee **may sue in his own name** and the assignee **may not**; and **presumptions in favour of a holder in due course** against **none**.
- Where the seven-mark version asks you to **explain assignment** first, give it a short paragraph of its own: instruments are **choses in action**, transferable by assignment **without endorsement** under **sections 130 to 132 of the Transfer of Property Act**, and the **assignee takes only the rights of the assignor**. Then the table.

TQ 3.3 • PYQ 2021-Dec [1] • 6M • Pg 224

DB
Distinguish

Medium

TQ 3.5 • PYQ 2024-Jun [3] (b) • 7M • Pg 226

DESC
Descriptive

Medium

EVALUATING judge and justify • 2 questions

- The seven-mark question on the validity of an acceptance **by mere signature without the word 'Accepted'**, and of an **oral acceptance**, has two parts and each is worth roughly half.
- The first is **valid**: the Study Material's essentials require only that the acceptance be **written on the face of the bill and signed by the drawee**, and a **mere signature is sufficient** without additional words. The second is **invalid**: acceptance must be **in writing on the instrument**, and an **oral acceptance is not valid in law**.
- Read the Scanner's model answer here with care. It sets out the essentials of acceptance of an **offer under the general law of contract** — oral or written, express or implied — which is not the law of acceptance of a bill under this Act. Answer from the Study Material's own essentials at page 135 and from **section 86**, not from the Scanner's first list.
- The seven-mark fraud-and-endorsement chain — a bill obtained by fraud, endorsed to a holder in due course, and endorsed back to the fraudster for value — is decided by **section 53** read with the second limb of **section 57**: a holder who **derives title from a holder in due course has the rights of that holder in due course**, so the fraudster, taking back through one, **can sue**. State the general rule in section 57 first, then the exception, then the conclusion.

CSQ 3.1 • PYQ 2017-Dec [3] (b) • 7M • Pg 226

CSQ
Case scenario

Medium

TQ 3.4 • MQP 2023-Dec S2 [3] (b) • 7M • Pg 225

DESC
Descriptive

Hard

Topic 4: Rights and Liabilities of Parties

CMAL2P5-C4-T04

Read first Read §4.4 Rights and Liabilities of Parties, ICAI Study Material Module 4, pages 143–146 — sections 26 to 45A, taking the capacity, agency and liability of each party in the Study Material's own order.

NOTES

Section 26 — capacity, and the minor rule: every person **capable of contracting** may bind himself by the making, drawing, acceptance, indorsement, delivery and negotiation of a note, bill or cheque. A **minor may draw, indorse, deliver and negotiate such an instrument so as to bind all parties except himself**. Nothing in the section empowers a **corporation** to make, indorse or accept instruments except where the law so empowers it. In **Sulochana v. Pandyan Bank Ltd.**, AIR 1975 Mad 70, where a minor and another executed a note together, **no liability could be enforced against the minor but the other executant could not escape his**.

Sections 27 and 28 — agency: under **section 27** every person capable of binding himself may be bound by a **duly authorised agent acting in his name**; but a **general authority to transact business and to receive and discharge debts does not confer power to accept or indorse bills** so as to bind the principal, and an **authority to draw does not import an authority to indorse**. Under **section**

28, an agent who signs his name without indicating that he signs as agent, or that he does not intend to incur personal responsibility, is personally liable — except to those who induced him to sign on the belief that the principal only would be liable.

Section 29 — the legal representative: a legal representative of a deceased person who signs his name to a note, bill or cheque is personally liable thereon unless he expressly limits his liability to the extent of the assets received by him as such. Two consequences follow: without a limit he is liable for the **full amount of the instrument even if he inherited less**; with a limit written into the instrument before signing, his liability is **confined to the stated amount even if he inherited more**.

Sections 30 and 31 — drawer and drawee of a cheque: under section 30 the drawer of a bill or cheque is bound, on dishonour by the drawee or acceptor, to compensate the holder, provided due notice of dishonour has been given to or received by him. In *Silchar Bank v. Pioneer Bank*, AIR 1951 Assam 127, it was held that where the drawee bank dishonours after the drawer has **stopped payment**, the question of notice **does not arise** and the drawer is liable to compensate the holder. Under section 31, the **drawee of a cheque having sufficient funds of the drawer properly applicable to its payment must pay it when duly required, and in default must compensate the drawer for any loss or damage**.

Section 32 — maker of a note and acceptor of a bill: in the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill are bound to pay at maturity according to the apparent tenor of the note or acceptance, and an acceptor at or after maturity is bound to pay **on demand**; in default, the maker or acceptor must **compensate any party for any loss or damage caused**. In *Jagjivan Mavji v. Ranchoddas*, AIR 1954 SC 554, it was held that the **drawee is not liable to the payee unless he has accepted**; his liability under section 32 **arises only on acceptance**, and under section 31 his liability, where he holds sufficient funds, is **only to the drawer, not to the payee**.

Sections 33 and 34 — who may accept: under section 33, no person except the drawee, or all or some of several drawees, or a person named as drawee in case of need, or an acceptor for honour, can bind himself by an acceptance. In *Manikchand v. Chartered Bank*, AIR 1961 Cal. 653, the section was held not to prevent a drawee from **accepting through an agent**, since sections 26 and 27 permit it. Under section 34, where there are **several drawees who are not partners, each may accept for himself, but none may accept for another without his authority** — which is why an acceptance not signed by all such drawees is a **qualified acceptance**.

Sections 35 and 36 — the endorser, and the prior parties: under section 35, whoever indorses and delivers before maturity, without expressly excluding or making conditional his own liability, is bound to every subsequent holder, in case of dishonour, to compensate him for any loss or damage, provided due notice of dishonour has been given to or received by him. Under section 36, every prior party is liable to a holder in due course until the instrument is duly satisfied.

Sections 37 and 38 — principals and sureties: the maker of a note or cheque, the drawer of a bill until acceptance, and the acceptor are liable as principal debtors, and the other parties as

sureties for them. As between the parties liable as sureties, **each prior party is also liable as a principal debtor in respect of each subsequent party**. The illustration: A draws on B, who accepts; A endorses to C, C to D, D to E. As between E and B, **B is the principal debtor and A, C and D are his sureties**; as between E and A, **A is the principal and C and D his sureties**; as between E and C, **C is the principal and D his surety**.

Sections 39 and 40 — reservation of rights, and discharge of the endorser: under **section 39**, where the holder of an accepted bill enters into a contract with the acceptor which under **sections 134 or 135 of the Contract Act** would discharge the other parties, he may **expressly reserve his right to charge them**, and they are then **not discharged**. Under **section 40**, where the holder, without the consent of the indorser, **destroys or impairs the indorser's remedy against a prior party**, the indorser is **discharged to the same extent as if the instrument had been paid at maturity**. The example strikes out two of four blank endorsements and concludes the holder is **not entitled to recover anything** from the fourth endorser.

Sections 41 and 42 — the acceptor cannot escape on a forgery or a fictitious name: under **section 41**, an acceptor of a bill **already indorsed** is **not relieved from liability by reason that the indorsement is forged**, if he knew or had reason to believe it was forged when he accepted. Under **section 42**, an acceptor of a bill **drawn in a fictitious name and payable to the drawer's order** is not relieved from liability to a **holder in due course claiming under an indorsement by the same hand as the drawer's signature** and purporting to be made by the drawer.

Section 43 — no consideration: an instrument **made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction**. But if such a party has **transferred it, with or without endorsement, to a holder for consideration, that holder and every subsequent holder deriving title from him may recover the amount from the transferor for consideration or any prior party**. **Explanation 1:** no party for whose **accommodation** the instrument was made can, having paid it, recover from a person who became a party **for his accommodation**. **Explanation 2:** a party who induced another to transfer for a consideration he failed to pay **cannot recover more than the value he actually paid or performed**.

Sections 44, 45 and 45A — partial failure of consideration, and the lost bill: under **section 44**, where the consideration **consisted of money and was originally absent in part or has since failed in part**, the sum a holder **standing in immediate relation** with the signer may recover is **proportionately reduced** — and the Explanation names those in immediate relation: **drawer with acceptor, maker with payee, indorser with indorsee**. **Section 45** applies the same reduction where the failed part of the consideration **did not consist of money but is ascertainable in money without collateral enquiry**. Under **section 45A**, where a bill is **lost before it is overdue**, the holder may require the drawer to **give him another bill of the same tenor**, giving **security to indemnify him**, and the drawer **may be compelled to do so**.

OBJECTIVE recognise the right answer — Section A of the Scanner, 1 and 2 marks · 4 questions

- Four objectives sit here and each is a single sentence of statute. A **minor** may draw, endorse, deliver and negotiate so as to bind **all parties except himself**. A bill **drawn, accepted or endorsed without consideration** is an **accommodation bill**.
- Where a banker **refuses to honour a cheque despite sufficient funds**, he is **liable to compensate the drawer** under section 31 — not the payee, and not criminally under section 138. The direction of that liability is the point of the question.
- The true-or-false on the **holder's right to a duplicate of a lost bill** is **false as printed**: under **section 45A** the holder of a bill lost **before it is overdue** does have that right, on giving security, and the drawer may be compelled to give it.

OQ · PYQ 2014-Jun [1] (vi) {C} · 1M · Pg 202

OQ
Objective

Easy

OQ · PYQ 2014-Dec [1] (iii) · 2M · Pg 202

OQ
Objective

Easy

OQ · PYQ 2016-Dec [1] (a) (v) · 1M · Pg 203

OQ
Objective

Easy

OQ · PYQ 2018-Jun [1] (c) (ii) {C} · 1M · Pg 204

OQ
Objective

Easy

REMEMBERING recall and reproduce · 1 question

- The seven-mark accommodation question — a bill accepted without consideration to accommodate the drawer, then transferred for good consideration — is answered out of **section 43** and its two Explanations, and the Scanner's own answer sets them out in that order.
- Give three propositions: an instrument made **without consideration creates no obligation between the parties to that transaction**; a holder for consideration, and every subsequent holder deriving title from him, may recover from the transferor for consideration or any prior party; and no accommodated party who has paid may recover from a party who became a party for his accommodation.
- The question adds a second limb — would the answer differ if the transfer were **after maturity** — and it must be answered. **Section 59** gives a holder who acquires after maturity **only the rights of his transferor**, so the transferee takes subject to the want of consideration.

TQ 4.1 · PYQ 2018-Jun [3] (b) · 7M · Pg 227

DESC
Descriptive

Medium

UNDERSTANDING explain with reasons · 1 question

- The seven-mark struck-out endorsements question is **section 40** and one sentence of arithmetic. Where the holder, **without the endorser's consent, destroys or impairs that endorser's remedy against a prior party, the endorser is discharged to the same extent as if the instrument had been paid at maturity**.
- Apply it by naming the parties. Striking out the second and third endorsements ends the liability of those two endorsers, but it also **destroys the fourth endorser's remedy against them**, so the fourth endorser

is **discharged** and the holder **recovers nothing from him**. The Study Material's example at page 145 is the same fact pattern with English names.

- Add the second sentence of section 40's neighbourhood — any party may be discharged by the **intentional cancellation of his signature by the holder**. It costs a line and it is the Scanner's own framing.

CSQ 4.4 • MQP 2024-Dec S2 [8] (a) • 7M • Pg 231

CSQ
Case scenario

Medium

APPLYING take the provision to the facts • 4 questions

- Four of the chapter's seven questions at this level sit here, at six to eight marks each, and all four are scenarios with named parties. Answer each in the same four moves: **section, rule in the Act's words, application naming each party, conclusion**.
- For the **chain of transfers without consideration** (8 marks), **section 43** decides both limbs. The party who took **for value** may recover from his transferor and any prior party; the parties who took **without consideration** have **no right of action** among themselves. Answer the second limb explicitly, because it is separately marked.
- For the **minor payee** (6 marks), **section 26** gives the whole answer: a minor may endorse so as to **bind all parties except himself**, so the endorsee has a **good claim against the drawer** and **no recourse against the minor**.
- For the **legal representative** (7 marks), **section 29** gives two outcomes and the question asks for both — liable for the **full amount** where he signs without limiting, and liable **only to the limit written into the instrument** where he does limit, whatever he inherited.
- For the **forged endorsement encashed by the drawee bank** (7 marks), **section 85(1)** protects the bank: where a cheque payable to order **purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course**. The notice of the theft came after the payment, so the bank had no reason to doubt the tenor and is **not liable**.

CSQ 4.2 • PYQ 2019-Dec [3] (b) • 6M • Pg 229

CSQ
Case scenario

Medium

CSQ 4.3 • MQP 2024-Jun S1 [8] (a) • 7M • Pg 230

CSQ
Case scenario

Medium

CSQ 4.5 • PYQ 2024-Dec [8] (a) • 7M • Pg 232

CSQ
Case scenario

Medium

CSQ 4.1 • PYQ 2019-Jun [3] (b) • 8M • Pg 228

CSQ
Case scenario

Hard

Topic 5: Dishonour of a Negotiable Instrument (with special emphasis on Section 138)

CMAL2P5-C4-T05

Read first Read §4.5 Dishonour of a Negotiable Instrument (with special emphasis on Section 138),

ICMAI Study Material Module 4, pages 147-153 — sections 91 to 102 on dishonour, notice, noting and protest, sections 118 to 122 and 134 to 137, and then sections 138 to 147 in full.

NOTES

The two ways an instrument is dishonoured — sections 91 and 92: under **section 91** a bill is **dishonoured by non-acceptance** when the drawee, or one of several drawees not being partners, **makes default in acceptance on being duly required to accept**, or where **presentment is excused and the bill is not accepted**; and where the drawee is **incompetent to contract**, or the **acceptance is qualified**, the bill **may be treated as dishonoured**. Under **section 92** an instrument is **dishonoured by non-payment** when the **maker of the note, the acceptor of the bill or the drawee of the cheque** makes default in payment on being duly required to pay.

Notice of dishonour — sections 93 to 97: under **section 93** the **holder must give notice** of the dishonour. Under **section 94** the notice may be **oral or in writing**; if written it **must be sent by post**, may be in **any form**, but must inform the party **in express terms or by reasonable intendment** that the instrument has been dishonoured and that he will be held liable; and it must be given **within a reasonable time after dishonour, at the party's place of business or residence**. Under **section 95** a party receiving notice must, to render a prior party liable to himself, **give notice to that party within a reasonable time**. Under **section 96** an agent notifies **his principal**, who has a **further like period**; under **section 97**, notice **sent to a party who has died, the sender not knowing of the death, is sufficient**.

Section 98 — when notice is not necessary, seven heads: where it is **dispensed with by the party entitled to it**; **to charge the drawer, where he has countermanded payment**; where the party charged **could not suffer damage for want of notice**; where the party entitled to notice **cannot after due search be found**, or the party bound to give it is **unable to do so without any fault of his own**; **to charge the drawer where the acceptor is also the drawer**; in the case of a **promissory note which is not negotiable**; and where the party entitled to notice, **knowing the facts, promises unconditionally to pay** the amount due.

Noting and protest — sections 99 to 102: under **section 99**, **noting** is causing the dishonour to be noted by a notary public upon the instrument, or upon a paper attached to it, or partly on each, **within a reasonable time after dishonour**, specifying the **date of dishonour, the reason assigned or the reason the holder treats it as dishonoured, and the notary's charges**. Under **section 100**, a **protest** is the notary public's **certificate** of the noted dishonour; where the acceptor becomes **insolvent or his credit is publicly impeached before maturity**, the holder may have the notary **demand better security** and, on refusal, certify the fact — a **protest for better security**. **Section 101** lists the six contents of a protest, and **section 102** requires **notice of protest to be given instead of notice of dishonour**, and it may be given by the notary himself.

Presumptions and estoppels — sections 118 to 122: until the contrary is proved it is presumed that every instrument was **made or drawn for consideration**, and accepted, indorsed, negotiated or transferred for consideration; that it was **made on its date**; that a bill was **accepted within a**

reasonable time after its date and before maturity; that every transfer was made before maturity; that the indorsements were made in the order in which they appear; that the instrument was duly stamped; and that the holder is a holder in due course. But where it was obtained by offence, fraud or unlawful consideration, the burden of proving that the holder is a holder in due course lies on him. Under section 119, on proof of the protest the court presumes the fact of dishonour, and sections 120 to 122 supply three estoppels.

International law — sections 134 to 137: under section 134, absent a contract to the contrary, the liability of the maker or drawer of a foreign instrument is regulated by the law of the place where he made it, and the liabilities of the acceptor and endorser by the law of the place where it is made payable — hence the example of a bill drawn in California at 25% and payable in Washington at 6%, where B pays 6% and A as drawer pays 25%. Under section 135, where the instrument is payable in a different place from that in which it is made or indorsed, the law of the place of payment determines what constitutes dishonour and what notice is sufficient. Section 137 presumes foreign law to be the same as Indian law until the contrary is proved.

Section 138 — the offence, and its exact wording: where a cheque drawn by a person on an account maintained by him with a banker for payment of any money to another person from out of that account, for the discharge in whole or in part of any debt or other liability — a legally enforceable debt or other liability — is returned by the bank unpaid, either because the amount standing to the credit of that account is insufficient to honour it, or because it exceeds the amount arranged to be paid from that account by an agreement made with that bank, the drawer shall be deemed to have committed an offence. Both limbs matter: the offence covers not only insufficiency of funds but also exceeding an arranged limit.

The punishment, and the three conditions on which the whole section depends: the offender shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both. The penal provision shall not apply unless — the cheque is presented to the bank within three months from the date on which it is drawn, or within the period of its validity, whichever is earlier (three months from 1 April 2012; six months before that); the payee or holder in due course demands payment by notice in writing to the drawer within 30 days of the bank's information of the return of the cheque; and the drawer fails to make payment within 15 days of receipt of that notice.

Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., AIR 2000 SC 954 — the five ingredients of section 138: a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount to another person from out of that account, for the discharge of any debt or other liability; the cheque must have been presented within the statutory period or the period of its validity, whichever is earlier; it must have been returned unpaid for insufficiency of funds or for exceeding the arranged amount; the payee or holder in due course must have made a written demand within the notice period of receiving the bank's information; and the drawer must have failed to pay within fifteen days of receiving that notice.

Sections 139, 140 and 141 — the three provisions that make prosecution work: under section 139 it is presumed, unless the contrary is proved, that the holder received the cheque for the

discharge in whole or in part of a debt or other liability; in **B. Mohan Krishna v. Union of India**, 1996 CrLJ 683, it was held **not violative of Article 20(3)**. Under **section 140** it is **no defence that the drawer had no reason to believe when he issued the cheque that it might be dishonoured**. Under **section 141**, where the offence is by a **company**, the company and **every person in charge of and responsible to it for its business at the time of the offence** are liable — with a defence for one who proves it was committed **without his knowledge** or that he **exercised due diligence**, and an exemption for a **government nominee director**.

Procedure — sections 142, 143 and 143A: under **section 142** no court takes cognizance **except on a complaint in writing by the payee or the holder in due course**, made **within one month of the date on which the cause of action arises**, delay being condonable for **sufficient cause**; and **no court inferior to a Metropolitan Magistrate or a Judicial Magistrate of the First Class** may try the offence. Jurisdiction lies where the **payee's collecting branch** is, or, on presentment otherwise than through an account, where the **drawer's branch of the drawee bank** is. Under **section 143** the offence is tried **summarily**, with a sentence not exceeding **one year** and an endeavour to conclude **within six months of filing**. **Section 143A**, inserted in **2018**, allows **interim compensation up to 20% of the cheque value**, and a further **20% deposit** on appeal.

Sections 144 to 147 — service, evidence and compounding: under **section 144** summons may be served by **speed post or an approved courier** at the place where the accused or witness **ordinarily resides, carries on business or personally works for gain**, and a **refusal to take delivery** lets the court declare service duly effected. Under **section 145** the **complainant's evidence may be given on affidavit**, and the court may — and on the application of either side **shall** — summon and examine the deponent. Under **section 146** the court **shall presume the fact of dishonour on production of the bank's slip or memo** bearing the official mark, unless disproved. Under **section 147** **every offence punishable under this Act is compoundable**, and in **M. Rangaswamiah v. R. Shettappa**, 2002 CrLJ 4792, compounding was held permissible where the parties have settled and the cheque amount has been paid.

OBJECTIVE recognise the right answer — Section A of the Scanner, 1 and 2 marks • 3 questions

- Only three objectives sit here, which understates the topic badly — this is where the descriptive marks are. Do not let the small Section A count decide how long you spend on section 138.
- Two of the three are the same fill-in-the-blank: the dishonour of an instrument may be due to **non-acceptance and non-payment**. Give both words in either order.
- The third asks for the **formal notarial certificate attesting the dishonour of a bill or note**, and the answer is a **protest** under section 100. **Noting** under section 99 is the notary's minute on the instrument itself; the **protest** is the certificate that follows it. Objective questions in this topic are built on exactly that pair.

OQ • PYQ 2018-Dec [1] (d) (i) {C} • 1M • Pg 204

OQ
Objective

Easy

OQ • PYQ 2021-Dec [6] • 1M • Pg 205

OQ
Objective

Easy

UNDERSTANDING explain with reasons • 2 questions

- Both questions at this level are seven marks, and both are about section 138 or the dishonour machinery around it. Answer them with the **numbers** in place — three months, thirty days, fifteen days, two years, twice the cheque amount — because that is where the marks sit.
- The 'sell or order' cheque question is decided by a point students miss: the cheque was **not originally drawn to discharge a legally enforceable debt or other liability** owed by the drawer to the endorsee, so the drawer **cannot be made liable under section 138**. Say what the section requires before you say the requirement failed.
- For the **circumstances when a bill of exchange is dishonoured and the role of notice**, structure it in two halves. Half one: **sections 91 and 92**, dishonour by non-acceptance and by non-payment, with the two extra cases in section 91 — an **incompetent drawee** and a **qualified acceptance**. Half two: **sections 93 to 97** on who must give notice, in what form, to whom and within what time, closing with the **seven cases in section 98** in which no notice is needed.
- The consequence of failing to give notice is the sentence to end on, and it earns a mark on its own: except where notice is excused, **all parties liable on the instrument are discharged**.

TQ 5.2 • PYQ 2018-Dec [3] (b) • 7M • Pg 234

DESC
Descriptive

Medium

TQ 5.3 • MQP 2024-Dec S1 [3] (b) • 7M • Pg 235

DESC
Descriptive

Medium

APPLYING take the provision to the facts • 1 question

- The three-mark accommodation question — a bill for ₹10,000 accepted for value as to ₹8,000 and as an accommodation as to ₹2,000 — is decided by **section 44** and needs no more than four sentences.
- State the rule: where the consideration **consisted of money and was originally absent in part**, the sum recoverable by a holder **standing in immediate relation** with the signer is **proportionately reduced**. Note that the **drawer stands in immediate relation with the acceptor**, by the section's own Explanation. Then give the figure — **₹8,000 only** — and say that the balance **lacks consideration**.
- In a three-mark computation question the number is the mark. Put it in its own sentence at the end so it cannot be missed.

CSQ 5.1 • PYQ 2013-Dec [3] (a) (ii) • 3M • Pg 239

CSQ
Case scenario

Medium

ANALYSING break down and compare • 2 questions

- The five-mark question asks first for the **circumstances in which the drawer of a cheque is liable for an offence relating to dishonour**, and then whether an offence is committed where the drawer **tells the payee not to present the cheque and instructs the bank to stop payment**. Both halves are marked.

- For the first half give the five conditions from the Scanner's own answer: the cheque **returned unpaid for insufficiency of funds**; drawn to discharge a **legally enforceable debt or other liability**; presented **within three months or the period of validity, whichever is earlier**; **written demand within 30 days** of the information of dishonour; and **failure to pay within 15 days** of that notice. Then the punishment — **up to two years, or a fine up to twice the cheque amount, or both**.
- For the second half, note what **section 140** does and does not settle: it removes the defence that the drawer had no reason to believe the cheque would be dishonoured, and **section 98** dispenses with notice of dishonour where the drawer has **countermanded payment**. Reason from the section's requirements rather than from an intuition about intention.
- The seven-mark 2026 question on **negotiable instruments in international law** is printed in the Scanner **with no answer at all**, so build your own from 4.5.3: **section 134** on the law governing the maker's and the acceptor's liability, **section 135** on the law of the place of payment governing dishonour and notice, and **section 137** on the presumption that foreign law is the same as Indian law. Use the California and Washington example — it is the Study Material's own.

TQ 5.1 • PYQ 2014-Dec [2] (d) (ii) • 5M • Pg 233

DB
Distinguish

Medium

TQ 5.5 • PYQ 2026-Jun [3] (b) • 7M • Pg 238

DESC
Descriptive

Medium

EVALUATING judge and justify • 1 question

- The seven-mark question asks you to **examine the validity of the statement that issuing a cheque that bounces is an offence**, so the answer must qualify the statement rather than simply agree with it.
- Open with **section 138** in the Act's own words — the cheque must be drawn **on an account maintained by the drawer**, for the discharge **in whole or in part of a legally enforceable debt or other liability**, and returned unpaid either for **insufficiency of funds** or because it **exceeds the arranged amount**. Then state the punishment.
- The judgement lies in the three conditions precedent. A bounced cheque is **not** an offence unless it was presented **within three months or the period of validity, whichever is earlier**, unless the payee gave **written notice within 30 days**, and unless the drawer **failed to pay within 15 days**. Say that the proposition is therefore **true only subject to those conditions** — that sentence is the evaluation.
- Name **Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.** for the five ingredients, and add **sections 139 and 140** — the presumption in favour of the holder, and the removal of the defence that the drawer had no reason to expect dishonour. An eight- or seven-mark answer on section 138 with no case name and no procedure is an incomplete answer.

TQ 5.4 • MQP 2024-Dec S2 [3] (b) • 7M • Pg 236

DESC
Descriptive

Hard