

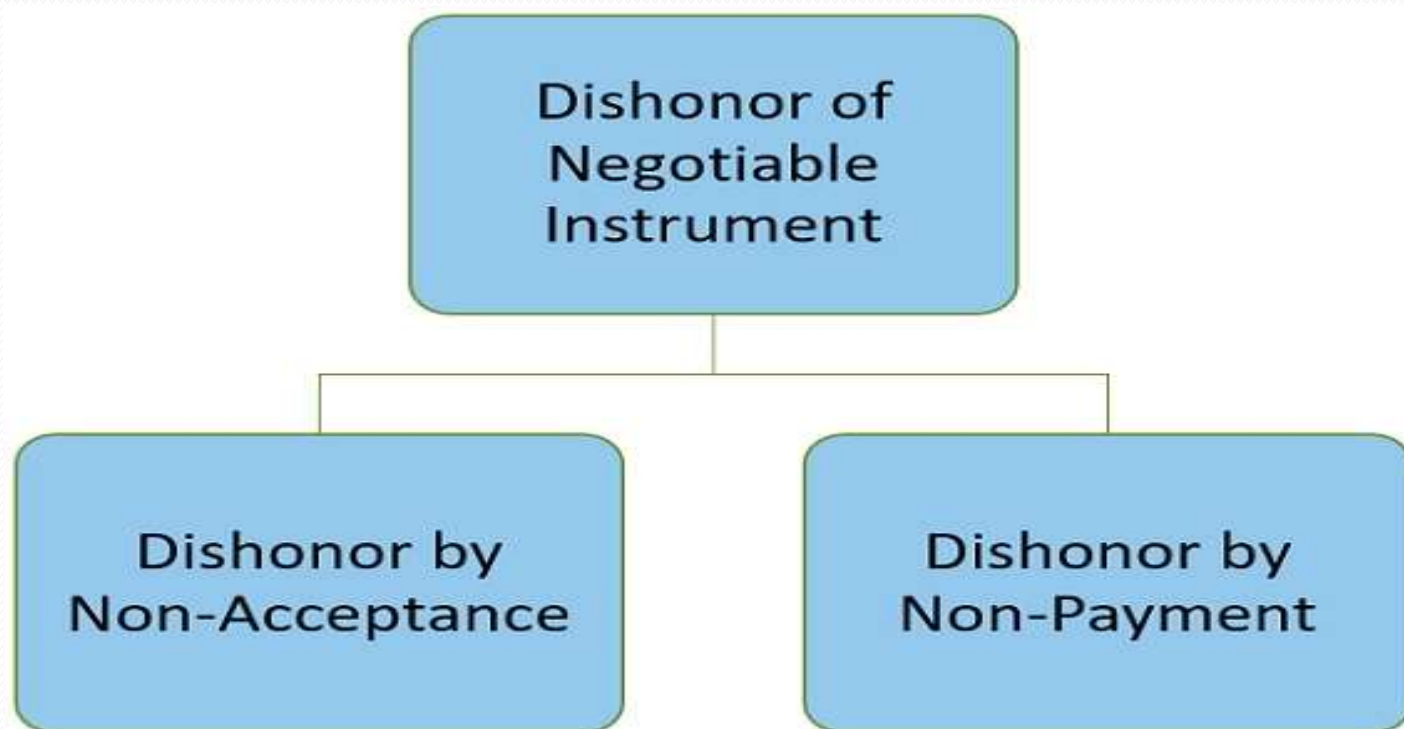
PRESENTATION OF BUSINESS LAW- | |

Dishonour of
Negotiable
Instrument

CHEQUE DISHONOUR



- When a negotiable instrument is dishonoured, the holder must give a notice of dishonour to all the previous parties in order to make them liable. A negotiable instrument can be dishonoured either by non-acceptance or non-payment.



Dishonour By Non-Acceptance

- Since presentment for acceptance is required only of a bill of exchange , it is only the bill of exchange which could be dishonoured by non-acceptance . A bill of exchange can be dishonoured by non-acceptance in the following ways :
- When the drawee is a fictitious person or if he cannot be traced after reasonable search .
- When the drawee is incompetent to contract , the bill is treated as dishonoured .
- When the drawee has either become insolvent or is dead .

- When presentment for acceptance is excused and the bill is not accepted .

Dishonour By Non-Payment

- A bill after being accepted has got to be presented for payment on the date of its maturity . If the acceptor fails to make payment when it is due , the bill is dishonoured by non-payment .
- **Effect Of Dishonour :** When a negotiable instrument is dishonoured either by non acceptance or by non-payment , the other parties thereto can be charged with liability . For example if the acceptor of a bill dishonours the bill, the holder may bring an action against the drawer and the indorser

NOTICE OF DISHONOUR

- Notice of dishonour means the actual notification of the dishonour of the instrument by non-acceptance or by non-payment. When a negotiable instrument is refused acceptance or payment notice of such refusal must immediately be given to parties to whom the holder wishes to make liable. Failure to give notice of the dishonour by the holder would discharge all parties other than the maker or the acceptor. The object of giving notice of dishonour is not to demand payment.

(Date)

(NAME OF DRAWER)

(Address)

Re: Notice of Dishonor and Demand for Payment

Dear _____:

This is to advise you that _____ Check No. _____ dated _____ in the amount of _____ Pesos (P_____) you issued in favor of _____ has been dishonored for insufficiency of funds (or state reason for dishonor).

When you issued said check, you made an assurance that there are more than sufficient funds in your bank account to cover the said amount. However, the check was returned dishonored.

Final demand is now made upon you to make good the face value of the check within five (5) days from receipt hereof. Otherwise, we will be constrained to file the necessary criminal action against you.

Please be guided accordingly.

Very truly yours,

NOTICE BY WHOM

- Where a negotiable instrument is dishonoured either by non- acceptance or non-payment , the holder of the instrument or some party to it who is liable thereon must give a notice of dishonour to all the prior parties whom he wants to make liable on the instrument. The agent of any such party may also be given notice of dishonour

● NOTICE TO WHOM

- Notice of dishonour must be given to all parties to whom the holder seeks to make liable . No notice need be given to

a maker, acceptor or drawee , who are the principal debtors. Notice of dishonour may be given to an endorser.

Mode Of Notice: The notice of dishonour may be oral or written or partly oral and partly written . No . Special form of words is necessary for a notice of dishonoured . It may be sent by post. It may be in any form but it must inform the party to whom it is given either in express terms or by reasonable intendment that the instrument has been dishonoured and in what way it has been dishonoured and that the person served with the notice will be held liable thereon.

TIME AND PLACE OF NOTICE

- Notice should be given within a reasonable time after dishonour. Notice of dishonour is to be given at the place of business or in case there is no such place of business, at the residence of the party for whom it is intended.

● EFFECT OF OMISSION TO GIVEN NOTICE OF DISHONOUR

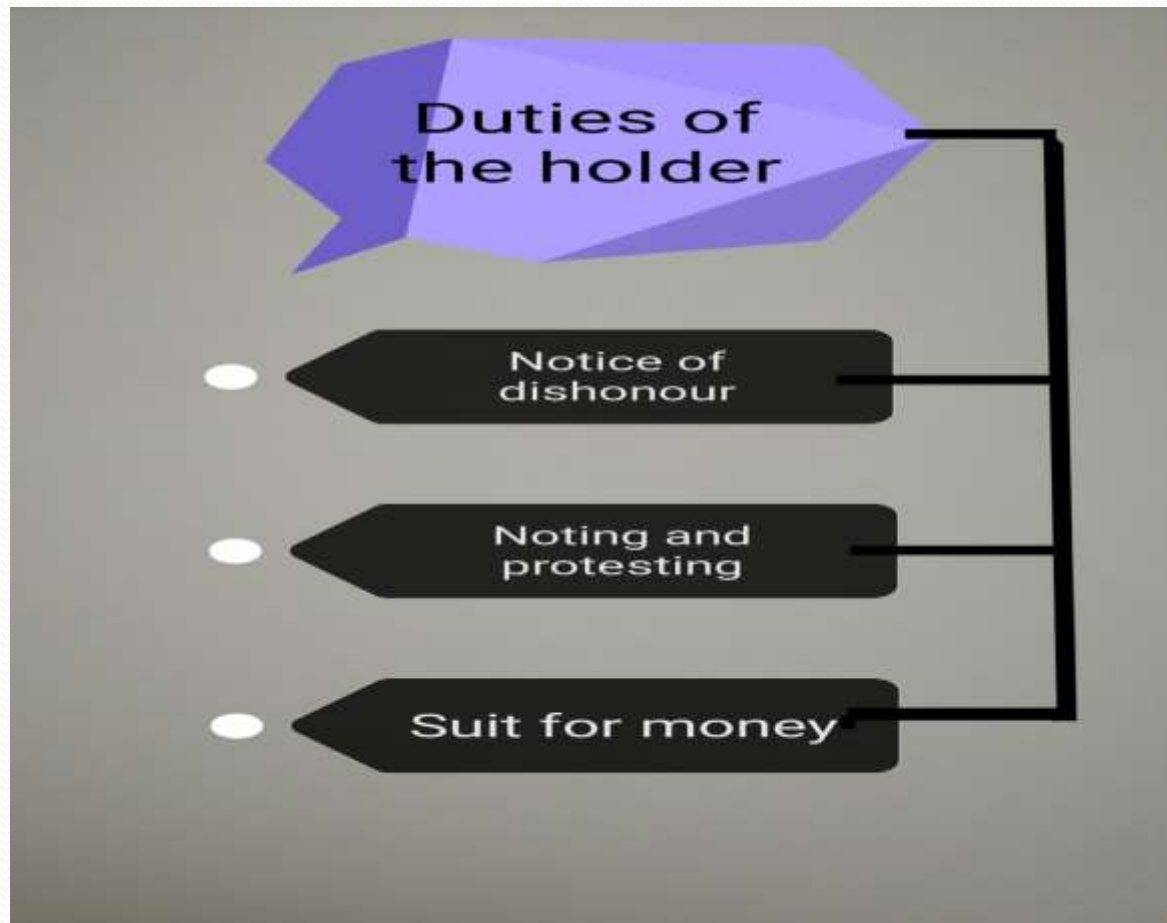
- The consequences of omission to give notice of dishonour required by section 93, except in cases in which notice is dispensed with under section 98, is to discharge all parties who are entitled to such notice.

WHEN NOTICE OF DISHONOUR IS UNNECESSARY

Notice of dishonour must be given by a holder to the persons whom he seeks to make liable on the instrument . But notice of dishonour is not necessary in the following cases:

- In order to charge the drawer, when he has countermanded payment.
- When the party charged could not suffer damage for want of notice.
- Where the drawer and acceptor are the same person.
- In the case of a promissory note which is not negotiable.

DUTIES OF THE HOLDER UPON DISHONOUR



INSTRUMENT ACQUIRED AFTER DISHONOUR

The holder for value of a negotiable instrument, as a rule, is not affected by the defect of title in the transferor. But this rule is subject to two important exceptions.

- When the holder acquired it after maturity
- When he acquired it with notice of dishonour.

NOTING AND PROTESTING

- When a negotiable instrument is dishonoured , the holder may sue the prior parties i.e the drawer and the indorsers after he has given a notice of dishonour to them . The holder may need an authentic evidence of the fact that a negotiable instrument has been dishonoured.



NOTING

- As soon as a bill of exchange or a promissory note is dishonoured, the holder can after giving the parties due notice of dishonour, sue the parties liable thereon. Section 99 provides a mode of authenticating the fact of the bill having been dishonoured.

PROTEST

- Protest is a formal certificate of the notary public attesting the dishonour of the bill by non-acceptance or by non-payment. After noting, the next step for notary is to draw a certificate of protest, which is a formal declaration on the bill or a copy thereof.

CONTENT OF PROTEST

- Section 101 of the Act lays down the contents of a regular and perfect which are as follows:
- The instrument itself or a literal transcript of the instrument; and of everything written or printed thereupon.
- The name of the person for whom and against whom the instrument has been protested.
- The fact of and reasons for dishonour.
- The time and place of demand and dishonour.
- The signature of the notary public
- In the case of acceptance or payment the person by whom or for whom such acceptance or payment.

DISHONOUR OF CHEQUES

- When a bank returns a cheque to the payee normally it is called as dishonour of a cheque although dishonour of cheques actually means non-payment of cheques due to insufficient balance in drawer account.

भारतीय स्टेट बैंक
State Bank Of India

वैधता 3 महीने के लिए है / VALID FOR 3 MONTHS ONLY

D D M M Y Y Y Y

PAY को या उस पर आदेश पर OR ORDER

रुपये RUPEES अदा करें ₹

अ/c No. Pr. No. 51500007

ALIMON Rs. 1000000/- & UNDER

MULTI-CITY CHEQUE Payable at Par at All Branches of SBI Please sign above

⑈ 6 7 4 6 4 1 ⑈ 7 5 3 0 0 2 0 1 9 ⑈ 0 0 8 3 1 6 ⑈ 3 1

A cheque may be returned by a bank for various reasons, such as:

- Drawers signature differs
- Refer to drawer
- Payment stopped by drawer
- Full cover not received
- Exceeds arrangement
- Cheque post dated
- Cheque out of date
- No account or account closed.

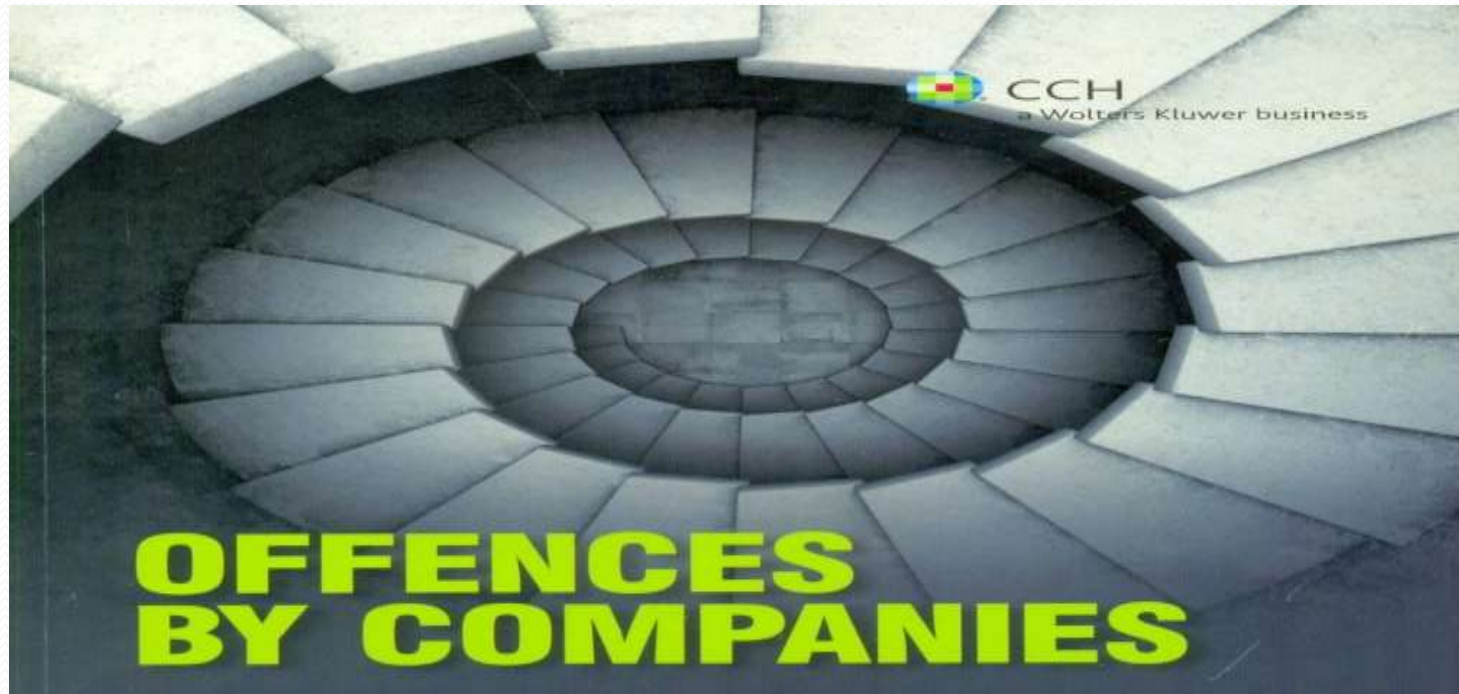
PRESUMPTION IN FAVOUR OF HOLDER

- It shall be presumed unless contrary is proved that the holder of a cheque received the cheque of the nature referred to in section 138 for discharge , in whole or in part of any debt or other liability.
- **PRESUMPTION OF FACT OF DISHONOUR OF CHEQUE**
- The court shall , on production of banks slip or memo having thereon the official mark denoting that the cheque has been dishonoured , presume the fact of dishonour of such cheque, unless and until such fact is disproved.


DEFENCE WHICH MAY NOT BE ALLOWED IN ANY PROSECUTION UNDER SECTION 138

- It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe that when he issued the cheque that the cheque may be dishonoured for the reasons mentioned in section 138. [section 140]

OFFENCES BY COMPANIES



- Liability to artificial persons as well and thus the



debate about their criminal liability no longer subsists. Section 141 expressly extends to corporate bodies, including partnership firms, companies or other association of individuals, the provisions of section 138, which thus applies to drawers who are either natural or juristic persons , or association of persons . The section would apply to chief executives of the body corporate , unless they can escape liability under the proviso thereof.

*Cognizance
of Offences
by
Criminal Courts*

COGNIZANCE OF OFFENCES

- Notwithstanding anything contained in the code of criminal procedure, 1973-
- No court shall take cognizance of any punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
- No court inferior to that of a metropolitan magistrate or a judicial magistrate of the first class shall try any offence punishable under section 138.

SUMMARY TRIAL

- As per newly inserted section 143 court can try the cases summarily, provided that in the case of any conviction in a summary trial under this section ,it shall be lawful for the magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of five thousand rupees.



SERVICE OF SUMMONS

- Stipulates that where postal department or courier services conveys that the accused or the witness has refused to take the delivery of summons, the court can declare that the summons have been duly served.





THANK YOU