

Shri Jai Narayan P.G.College, Lucknow

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Paper II- Business Laws

Dr. K.K. Shukla

Unit IV (Important Questions with Answers)

Endorsement and its types

Q1) What is **Endorsement and what are the essentials of a valid endorsement?**

The word 'endorsement' in its literal sense means, writing on the back of an instrument. But under the Negotiable Instruments Act it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein. Thus, endorsement is signing a negotiable instrument for the purpose of negotiation. The person who affects an endorsement is called an 'endorser', and the person to whom negotiable instruments are transferred by endorsement is called the 'endorsee'.

The payee of an instrument is the rightful person to make the first endorsement. Thereafter the instrument may be endorsed by any person who has become the holder of the instrument.

Essentials of a valid endorsement

The following are the essentials of a valid endorsement:

1. It must be on the instrument. The endorsement may be on the back or face of the instrument and if no space is left on the instrument, it may be made on a separate paper attached to it called allonge. It should usually be in ink.
2. It must be made by the maker or holder of the instrument. A stranger cannot endorse it.
3. It must be signed by the endorser. Full name is not essential. Initials may suffice. Thumb-impression should be attested. Signature may be made on any part of the instrument. A rubber stamp is not accepted but the designation of the holder can be done by a rubber stamp.
4. It may be made either by the endorser merely signing his name on the instrument (it is a blank endorsement) or by any words showing an intention to endorse or transfer the instrument to a specified person (it is an endorsement in full). No specific form of words is prescribed for an endorsement. But the intention to transfer must be present. When in a bill or note payable to order the endorsee's name is wrongly spelt, he should when he endorses it, sign the name as spelt in the instrument and write the correct spelling within brackets after his endorsement.

5. It must be completed by delivery of the instrument. The delivery must be made by the endorser himself or by somebody on his behalf with the intention of passing property therein. Thus, where a person endorses an instrument to another and keeps it in his papers where it is found after his death and then delivered to the endorsee, the latter gets no right on the instrument.
6. It must be an endorsement of the entire bill. A partial endorsement i.e. which purports to transfer to the endorsee a part only of the amount payable does not operate as a valid endorsement.

Q2) What are the different kinds of endorsements?

Kinds of Endorsement -

(a) Endorsement in Blank / General - An endorsement is said to be blank or general when the endorser puts his signature only on the instrument and does not write the name of anyone to whom or to whose order the payment is to be made.

(b) Endorsement in Full / Special - An endorsement is 'special' or in 'full' if the endorser, in addition to his signature also mention the name of the person to whom or to whose order the payment is to be made. There is direction added by endorsee to the person specified called the endorsee, of the instrument who now becomes its payee entitled to sue for the money due on the instrument.

(c) Conditional Endorsement - If the endorser of a negotiable instrument by express words in the endorsement makes his liability dependent on the happening of a specified event although such event may never happen, such an endorsement is called a conditional endorsement. Ex. Pay B or order on his marriage.

d) Restrictive Endorsement - Restrictive endorsement seeks to put an end the principal characteristics of a Negotiable Instrument and seals its further negotiability. This may sound a little unusual, but the endorsee is very much within his rights if he so signs that its subsequent transfer is restricted. This prevents the risk of unauthorized person obtaining payment through fraud or forgery and the drawer losing his money.

(e) Endorsement Sans Recourse - Sans Recourse which means without recourse or reference. As such a when the property in a negotiable instrument is transferred sans recourse, the endorser, negatives his liability and excludes himself from responsibility to all subsequent endorseees. It is one of the most common form of qualified endorsement and virtually prohibits negotiation since the endorser says in effect.

(f) Facultative Endorsement - Facultative Endorsement is an endorsement where the endorser waives some right to which he is entitled. For example, the endorsee is liable to give notice of dishonour to the endorser and normally failure to give notice will absolve the endorser from his liability.

Holder and Holder in Due Course

Q3) Who is a **Holder in Due Course**?

A Holder in Due Course is any person who (i) for valuable consideration, (ii) becomes the possessor of a negotiable instrument payable to bearer or the indorsee or payee thereof, (iii) before the amount mentioned in the document becomes payable, and (iv) without having sufficient cause to believe that any defect existed in the title of the person from whom he derives his title. (English law does not regard payee as a holder in due course).

Examples:

(i) A obtains B's acceptance to a bill by fraud. A indorses it to C who takes it as a holder in due course. The instrument is purged of its defects and C gets a good title to it. In case C indorses it to some other person he will also get a good title to it except when he is also a party to the fraud played by A.

(ii) A bill is payable to "A or order". It is stolen from A and the thief forges A's signatures and indorses it to B who takes it as a holder in due course. B cannot recover the money. It is not a case of defective title but a case where title is absolutely absent. The thief does not get any title therefore, cannot transfer any title to it.

(iii) A bill of exchange payable to bearer is stolen. The thief delivers it to B, a holder in due course. B can recover the money of the bill.

Q4) What is the difference between **holder and holder in due course**?

Various differences between holder and holder-in-due-course can be explained on the basis of the following:

1. **Entitlement:** Holder is a person who is entitled for the possession of a negotiable instrument in his own name. Hence he shall receive or recover the amount due thereon. Whereas a Holder-in-due-course is a person who has obtained the instrument for consideration and in good faith and before maturity.

2. **Consideration:** Consideration is not necessary to become a holder. The instrument may also be given by way of a donation or gift and thus, the donee of an instrument can also become a holder of it. However, consideration is a must to become a holder-in-due-course and thereby the donee of a negotiable instrument can be a holder but not holder-in-due-course.

3. **Maturity:** A holder may acquire the instrument even after its maturity. But a holder-in-due-course must acquire the instrument before its maturity failing which he will not enjoy the rights of a holder-in-due-course.

4. **Title:** A holder does not acquire a better title than that of transferor. In simple words, if the title of any of the prior party is defective, his title will not be defect free. Whereas, a holder-

in-due-course derives a good title freed from all defects. His title is better than that of the transferor.

5. **Right to recover amount:** A holder has a right to recover the amount due on the instrument from the transferor (i.e., just preceding party) only from whom he has obtained the instrument. Holder-in-due-course, on the other hand, can recover the amount due on the instrument from any of the prior parties till the instrument is duly discharged. Thus, all prior parties shall remain liable towards the holder-in-due-course, jointly as well as severally, till the instrument is duly discharged.

6. **Notice of defect in the Title:** A holder-in-due-course is not only supposed to have acquired the instrument without any notice of the defect of the title of the person from whom he obtained it, but also there should be no cause on his part to believe that any defect sustains in the transferor's title. But a holder is exempt from this condition. He may have notice of defect in the title but he shall not be liable for it unless he is a party to that defect, fraud, or forgery.

7. **Privileges:** A holder-in-due-course enjoys certain privileges under the Negotiable instruments Act (as discussed earlier), which are not available to a holder.

Consumer Protection Act, 1986

Q5) Explain the objectives and salient features of the Consumer Protection Act, 1986.

1. It aims at providing overall/holistic protection to the consumers.
2. The Act is applicable to entire, except for the state of Jammu and Kashmir.
3. The Act is applicable to all goods and services, unless explicitly stated by the Central Government.
4. The Act protects consumer against defective and hazardous goods, deficient and inappropriate services and unfair trade practices like hoarding, black marketing, insider trading, monopolies etc.
5. The Act provides redressal of consumer grievances in a simple and inexpensive way.
6. The most important aspect of the Act is that it has a set time frame for settlement.
7. Consumers having common interests and grievances can collectively file complaint, under 'class action' provided under the Act.
8. The Act cover both public and private sector suppliers of goods and services.
9. The Act provides for formation of Consumer Protection Councils, which promote consumer protection under the consumer rights (Section 6, Consumer Protection Act, 1986). It is important that these councils do not have any legal authority under the Act and merely facilitate addressable of consumer grievances.
10. The Act has a comprehensive definition of services. It considers services of any description rendered/offered by any individual or organization, including public sector undertakings or government agency. This excludes free services and contracts of personal services. The following services also do not fall under the purview of the Act: (a) Civil amenities provided by municipal authorities. (b) Medical services provided by government hospitals.

11. The Act also provides for unfair trade practices like food adulteration, overcharging or short weighing on fixed price items and packaged commodities etc. Such grievances can be directly taken to District Forums.
12. The Act is customer-oriented and safeguards the interests of the consumers against unjust and exploitative business practices like selling of defective goods, rendering poor services etc.
13. The Act provides for a simple procedure for filing grievances. The complaint can be made in a simple form, where the name and address of aggrieved party and opposing party are duly mentioned. The complaint can be written in a form of a letter to the Redressal Forum. It is not obligatory for the parties to engage advocate. The Act allows the complainant or authorized agent to appear before the Redressal Forum.

Q6) What are the various rights of the consumers under the Consumer Protection Act?

Consumers' rights under section-6 of the Consumer Protection Act are as follows:

(1) Right to Safety: A consumer has the right to safety against such goods and services as are hazardous to his health, life and property. For example, spurious and substandard drugs; appliances made of low quality raw material, such as, electric press, pressure cooker, etc. and low quality food products like bread, milk, jam, butter, etc. The consumers have the right to safety against the loss caused by such products.

2) Right to be Informed/Right to Representation: A consumer has also the right that he should be provided with all the information on the basis of which he decides to buy goods or services. Such information relate to quality, purity, potency, standard, date of manufacture, method of use, etc. of the commodity. Thus, a producer is required to provide all such information in a proper manner, so the consumer is not cheated.

(3) Right to Choose: A consumer has the absolute right to buy any goods or services of his choice from among the different goods or services available in the market. In other words, no seller can influence his choice in an unfair manner. If any seller does so, it will be deemed as interference in his right to choice.

(4) Right to be Heard: A consumer has the right that his complaint be heard. Under this right, the consumer can file a complaint against all those things which are prejudicial to his interest. First, their rights mentioned above (Right to Safety; Right to be informed and Right to choose) have relevance only if the consumer has the right to file his complaint against them. These days, several large organisations have set up Consumer Service Cells with a view to providing the consumer the right to be heard. The function of the cell is to hear the complaints of the consumers and to take adequate measures to redress them. Many daily newspapers have also special columns to entertain the complaints of the consumers.

(5) Right to Seek Redressal: This right provides compensation to the consumers against unfair trade practice of the seller. For instance, if the quantity and quality of the product do not conform to those promised by the seller, the buyer has the right to claim compensation. Several redressal forum are available to the consumer by way of compensation,

such as free repair of the product, taking back of the product with refund of money, changing of the product by the seller.

(6) Right to Consumer Education: Consumer education refers to educating the consumer constantly with regard to their rights. In other words, consumers must be aware of the rights they enjoy against the loss they suffer on account of goods and services purchased by them. Government has taken several measures to educate the consumers. For instance, Ministry of Civil Supplies publishes a quarterly magazine under the title “Upbhokta Jagran”. Doordarshan telecasts a programme like the “Sanrakshan Upbhokta Ka” and apart from this, Consumer Day is observed on March 15 every year.

Note: *In addition to the above mentioned six rights of the consumers, the United Nations Organisation guidelines also contain two more rights. These are the following:*

(7) Right to Basic Needs: The basic needs mean those goods and services which are necessary for a dignified living of people. It includes adequate food, clothing, shelter, energy, sanitation, health care, education and transportation. All the consumers have the right fulfil these basic needs.

(8) Right to Healthy Environment: This right provides the consumers, protection against environmental pollution so that the quality of life is enhanced. Not only this, it also stresses the need to protect the environment for the future generations as well.

Q7) Short Notes.

a) **Bill in Sets:** When a bill is drawn in sets of three, it is known as drawing the bill in sets. Bills in sets are usually drawn when they are to be sent from one country to another. The three parts of a bill in set are sent by different mail routes in order to ensure the safe transmission of at least one part to the drawee and its acceptance by him as early as possible. The drawer must sign each part of the bill and should deliver all the parts. But only one part of the bill is required to be stamped and only one part is to be accepted by the drawee. If payment is made on one of the parts of the bill, the whole bill is extinguished.

b) **Accommodation Bill:** Bill of exchange usually comes into existence due to the same trading activities. A creditor draws a bill on his debtor for the consideration of goods sold. Bills drawn for consideration are called “Trade Bills. On the other hand, a bill of exchange which is drawn to oblige a friend or to give him a temporary assistance or to provide him a loan or to accommodate one or more parties, is called an "**accommodation bill of exchange**". Such a bill is drawn and accepted without any sale and purchase of goods.

As the bill is drawn to fulfil the temporary need of money so there is no question of retaining this bill by the drawer until the due date. The bill will be discounted and cash will be received immediately. The drawer before maturity date is required to provide the acceptor with funds so that he may need his acceptance on the due date. Ex. Suppose A is in need of money, he approaches

his friend B and asks him to give him a loan for Rs. 5,000. B also shows his inability but agrees that he will accept a bill of exchange. A draws a bill on B which he accepts at three months. A discounts the bill with his bank and gets the money. After three months but before the due date, A sends Rs.5,000 to B in order to meet his acceptance. B receives amount and pays his acceptance.

Readings:

1. M.C.Kuchhal and Vivek Kuchhal, **Mercantile Law**, Eighth Edition, Chapters 28 and 29
2. www.ddegjust.ac.in/studymaterial/mcom/mc-207-f.pdf
3. <https://accountlearning.com/differences-between-holder-holder-in-due-course/>
4. <https://www.legalaims.com/objectives-and-scope-of-consumer-protection-act/>
5. <https://consumeraffairs.nic.in/organisation-and-units/division/consumer-protection-unit/consumer-rights>