

## **Negotiable Instrument**

### **Lecture 8**

#### **Notes - Discharge Of Parties From Liability**

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##### **What does discharge from liability mean?**

When a party who is liable on a negotiable instrument ceases to be liable he is said to be discharged from liability. The liability of parties, if more than one are involved, are different and the discharge of one might not affect the other parties.

Discharge of liability happens under two heads, i.e. discharge of liability of a party to an instrument and the discharge of the instrument itself.

Discharge of liability of a party/ parties happens when a party completes his duties or in some way discharges his liability. In these kinds, the other parties are still liable. It may happen through cancellation, release, etc. Eg:- Discharge of endorser's liability to holder.

In discharge of an instrument, the rights against all parties on an instrument come to an end, the instrument is discharged. Discharge of a party ultimately liable on the instrument leads to the discharge of the instrument itself. Eg :- When the maker of a promissory note pays his due amount to the holder in due course.

Chapter VII i.e. Sections 82-90 of Negotiable instruments Act, 1881 deal with discharge from liability and it can be covered under 8 modes. THEY ARE :-

##### **1. By Cancellation**

When the holder of a Negotiable instrument cancels the name of a party to the negotiable instrument with the intention to discharge him from liability, the holder discharges that party and other parties who had a recourse against the canceled party.

It has been mentioned in Section 82(a) of the act. It can be done by striking the name of the person who is sought to be discharged from the instrument and a signature by the person canceling.

The effect of it is that a cancellation of an indorser's name would discharge him and all his subsequent indorsers.

2. By Release

It means a discharge by an agreement between the parties and includes waiver, release, accord and satisfaction. This topic of discharge includes all types of discharge other than discharge by cancellation and is mentioned under Section 82(b) of the act.

Eg:- A NI is made and indorsed from A to B to C to D and finally to E, who is the holder. C and E make an agreement where E discharges C of his liability instead of canceling it. Due to this, only C's liability is discharged, and unlike cancellation, subsequent party D is still liable.

3. By Payment

Payment of amount due on the instrument to the holder would result in discharge of parties to the instrument. This happens when the maker of a promissory note pays the holder, or when the acceptor (drawee) of a bill of exchange has paid the due amount.

This is the most common mode to discharge all parties to an instrument by fulfilling the obligation laid by the instrument and is covered under Section 82(c) of the act.

4. By the holder allowing the drawee of a bill more than 48 hours to accept

Generally in a bill of exchange, when the payment is required, the holder sends notice to the drawee to accept the note and the drawee on acceptance of such notice of direction becomes liable for payment. And the usual time provided for consent to that is 48 hours unless agreed otherwise by the parties. After 48 hours, on non-acceptance by the drawee, the holder has the right to consider the bill dishonored.

Thus, according to Section 83, if the holder has given more than 48 hours to the acceptor (excluding public holidays) and for acceptance, all previous parties whose consent has not been taken become discharged.

5. By the holder agreeing to a qualified or limited acceptance of Bill of exchange

Section 86 says that if the holder of a bill of exchange accepts without protest a qualified acceptance or a limited acceptance, all other drawees or parties which were not informed and not agreed to such acceptance shall be discharged.

A limited acceptance means accepting a part of the liability of the instrument such as paying only a part of the sum, whereas a qualified acceptance means putting some conditions for acceptance of the instrument such as payment on a later date.

6. By non-presentment of the cheque within a reasonable time

It is described in Section 84 of the act. It says that when a cheque came to the holder, the bank was able to pay for the cheque, but the holder did not present the cheque in reasonable time to the bank for payment and the cheque suffers damage due to the delay, the drawer is discharged from the liability to the payee/holder.

‘Reasonable time’ shall be determined by the nature of instrument and the usage and trade of bankers and the facts of that case. Also, the holder of that cheque can still try to recover the amount from the banker.

7. By the bill coming to the acceptor's hands after maturity

If a bill after being negotiated ends up with the acceptor himself, or on maturity the instrument is held by the original acceptor as a holder too, all rights of action are extinguished. It is based on the principle that the same right and corresponding liability united in the one person cancel out each other.

Eg:- A the drawer directs B (the drawee/acceptor) to pay C an amount of money. C negotiates it to D, who negotiates it to E who negotiates it to B again. Now B is the drawer as well as the holder of the bill, and he cannot be liable to himself for payment. Thus, he is discharged.

8. Discharge by material alteration

Section 87 says that “any material alteration of negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and

does not consent thereto, unless it was made in the order to carry out the common intention of all parties.”

Thus a material alteration of an instrument by a party without the consent of other parties renders it void and thus discharges all who did not consent to it.

In the case of *Gour Chandra Das v Prassana Kumar Chandra (1906)*, the court said that material alteration destroys the original identity of the instrument and a new one is created. And anyone who has not consented to this new instrument will be discharged.

A material alteration is an alteration which varies the rights, liabilities or legal position of the parties as ascertained by the original instrument. It changes the legal identity of the instrument.

There are various types of material alteration mentioned in books and ruled by Courts such as :-

1. Alteration of date (due date is added subsequent to execution of instrument)
2. Alteration in time of payment (bill payable 2 months after date is made payable 1 month after date)
3. Alteration of sum payable (a bill of 300 becomes a bill of 3000)
4. Alteration of place of payment (changing name of bank where bill is payable)
5. Alteration by addition of parties (from one payee to two payees)
6. Alteration by actual tearing off of a material part of the instrument (such as tearing away the stamps or names of parties of the instrument)
7. Alteration by increasing or affixing stamps
8. Alteration by making an order cheque a bearer cheque without the consent of the drawer, etc.