NEGOTIABLE INSTRUMENTS ACT PROFESSIONAL CORPUS - BATCH 02

Chapter III - Parties to Notes, Bills and Cheques

Map capacity, signature authority, agency, primary/secondary liability and consideration before assigning responsibility.

Source review: 2026-07-18 | Act 26 of 1881 | Authors: CA Nikhil Gupta - Kajri Singh

Source status: The complete section architecture is mapped to India Code and the operational layer includes identified RBI cheque/CTS directions. India Code does not list standalone central Rules or Act-specific circulars in its repository tables. The official Act/Gazette, binding judgments and current RBI directions prevail. Exact local line-by-line statutory text is not claimed until source-hash certification is complete.

Dedicated Finin2min Summary - Chapter in 2 Minutes

- Map capacity, signature authority, agency, primary/secondary liability and consideration before assigning responsibility.
- Primary control: capacity and authority gate.
- Verify legal capacity, signatory authority, agency disclosure, consideration and primary/secondary liability.
- Apply the exact current section text, amendment history and transaction evidence together.
- Do not confuse a negotiable instrument remedy with automatic proof of the underlying transaction.

Section-by-section provision map

Provision / control	Subject	Legal effect / rule	Implementation	Evidence
Section 26	Capacity to make, etc., promissory notes, etc.	Section 26 addresses capacity to make, etc., promissory notes, etc.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.
Section 27	Agency.	Section 27 addresses agency.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.
Section 28	Liability of agent signing.	Section 28 allocates or releases liability concerning liability of agent signing.	Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.	Keep instrument, authority, consideration, notices, releases and payment records.
Section 29	Liability of legal representative signing.	Section 29 allocates or releases liability concerning liability of legal representative signing.	Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.	Keep instrument, authority, consideration, notices, releases and payment records.
Section 30	Liability of drawer.	Section 30 allocates or releases liability concerning liability of drawer.	Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.	Keep instrument, authority, consideration, notices, releases and payment records.
Section 31	Liability of drawee of cheque.	The drawee bank must pay a properly presented cheque where it has sufficient	Confirm funds, mandate, stop-payment, freeze, garnishee, signature,	Keep return code, system logs, mandate and

Provision / control	Subject	Legal effect / rule	Implementation	Evidence
		funds properly applicable to payment, and may face loss liability for wrongful dishonour.	date, alteration, crossing and fraud flags.	customer communication.
Section 32	Liability of maker of note and acceptor of bill.	Section 32 allocates or releases liability concerning liability of maker of note and acceptor of bill.	Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.	Keep instrument, authority, consideration, notices, releases and payment records.
Section 33	Only drawee can be acceptor except in need or for honour.	Section 33 addresses only drawee can be acceptor except in need or for honour.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.
Section 34	Acceptance by several drawees not partners.	Section 34 addresses acceptance by several drawees not partners.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.
Section 35	Liability of indorser.	Section 35 allocates or releases liability concerning liability of indorser.	Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.	Keep instrument, authority, consideration, notices, releases and payment records.
Section 36	Liability of prior parties to holder in due course.	Section 36 allocates or releases liability concerning liability of prior parties to holder in due course.	Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.	Keep instrument, authority, consideration, notices, releases and payment records.
Section 37				

Provision / control	Subject	Legal effect / rule	Implementation	Evidence
	Maker, drawer and acceptor principals.	Section 37 addresses maker, drawer and acceptor principals.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.
Section 38	Prior party a principal in respect of each subsequent party.	Section 38 addresses prior party a principal in respect of each subsequent party.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.
Section 39	Suretyship.	Section 39 addresses suretyship.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.
Section 40	Discharge of indorser liability.	Section 40 allocates or releases liability concerning discharge of indorser liability.	Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.	Keep instrument, authority, consideration, notices, releases and payment records.
Section 41	Acceptor bound, although indorsement forged.	Section 41 controls transfer/title through acceptor bound, although indorsement forged.	Trace physical/ electronic custody, endorsement wording, value, date and title defects.	Keep original/ image, transfer agreement, payment proof and custody log.
Section 42	Acceptance of bill drawn in fictitious name.	Section 42 addresses acceptance of bill drawn in fictitious name.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.
Section 43				

Provision / control	Subject	Legal effect / rule	Implementation	Evidence
	Negotiable instrument made, etc., without consideration.	Section 43 controls transfer/title through negotiable instrument made, etc., without consideration.	Trace physical/ electronic custody, endorsement wording, value, date and title defects.	Keep original/ image, transfer agreement, payment proof and custody log.
Section 44	Partial absence or failure of money-consideration.	Section 44 addresses partial absence or failure of money-consideration.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.
Section 45	Partial failure of consideration not consisting of money.	Section 45 addresses partial failure of consideration not consisting of money.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.
Section 45A	Holder right to duplicate of lost bill.	Section 45A addresses holder right to duplicate of lost bill.	Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.	Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Finin2min clause-by-clause decode

Section 26 - Capacity to make, etc., promissory notes, etc.

Decode: Section 26 addresses capacity to make, etc., promissory notes, etc.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Section 27 - Agency.

Decode: Section 27 addresses agency.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Section 28 - Liability of agent signing.

Decode: Section 28 allocates or releases liability concerning liability of agent signing.

Implementation: Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.

Evidence: Keep instrument, authority, consideration, notices, releases and payment records.

Section 29 - Liability of legal representative signing.

Decode: Section 29 allocates or releases liability concerning liability of legal representative signing.

Implementation: Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.

Evidence: Keep instrument, authority, consideration, notices, releases and payment records.

Section 30 - Liability of drawer.

Decode: Section 30 allocates or releases liability concerning liability of drawer.

Implementation: Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.

Evidence: Keep instrument, authority, consideration, notices, releases and payment records.

Section 31 - Liability of drawee of cheque.

Decode: The drawee bank must pay a properly presented cheque where it has sufficient funds properly applicable to payment, and may face loss liability for wrongful dishonour.

Implementation: Confirm funds, mandate, stop-payment, freeze, garnishee, signature, date, alteration, crossing and fraud flags.

Evidence: Keep return code, system logs, mandate and customer communication.

Section 32 - Liability of maker of note and acceptor of bill.

Decode: Section 32 allocates or releases liability concerning liability of maker of note and acceptor of bill.

Implementation: Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.

Evidence: Keep instrument, authority, consideration, notices, releases and payment records.

Section 33 - Only drawee can be acceptor except in need or for honour.

Decode: Section 33 addresses only drawee can be acceptor except in need or for honour.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Section 34 - Acceptance by several drawees not partners.

Decode: Section 34 addresses acceptance by several drawees not partners.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Section 35 - Liability of indorser.

Decode: Section 35 allocates or releases liability concerning liability of indorser.

Implementation: Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.

Evidence: Keep instrument, authority, consideration, notices, releases and payment records.

Section 36 - Liability of prior parties to holder in due course.

Decode: Section 36 allocates or releases liability concerning liability of prior parties to holder in due course.

Implementation: Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.

Evidence: Keep instrument, authority, consideration, notices, releases and payment records.

Section 37 - Maker, drawer and acceptor principals.

Decode: Section 37 addresses maker, drawer and acceptor principals.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Section 38 - Prior party a principal in respect of each subsequent party.

Decode: Section 38 addresses prior party a principal in respect of each subsequent party.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Section 39 - Suretyship.

Decode: Section 39 addresses suretyship.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Section 40 - Discharge of indorser liability.

Decode: Section 40 allocates or releases liability concerning discharge of indorser liability.

Implementation: Map every party, capacity, signature, notice, consent, payment and loss before concluding exposure.

Evidence: Keep instrument, authority, consideration, notices, releases and payment records.

Section 41 - Acceptor bound, although indorsement forged.

Decode: Section 41 controls transfer/title through acceptor bound, although indorsement forged.

Implementation: Trace physical/electronic custody, endorsement wording, value, date and title defects.

Evidence: Keep original/image, transfer agreement, payment proof and custody log.

Section 42 - Acceptance of bill drawn in fictitious name.

Decode: Section 42 addresses acceptance of bill drawn in fictitious name.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Section 43 - Negotiable instrument made, etc., without consideration.

Decode: Section 43 controls transfer/title through negotiable instrument made, etc., without consideration.

Implementation: Trace physical/electronic custody, endorsement wording, value, date and title defects.

Evidence: Keep original/image, transfer agreement, payment proof and custody log.

Section 44 - Partial absence or failure of money-consideration.

Decode: Section 44 addresses partial absence or failure of money-consideration.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Section 45 - Partial failure of consideration not consisting of money.

Decode: Section 45 addresses partial failure of consideration not consisting of money.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Section 45A - Holder right to duplicate of lost bill.

Decode: Section 45A addresses holder right to duplicate of lost bill.

Implementation: Identify trigger, parties, conditions, exceptions, consequence and linked sections before execution.

Evidence: Keep the current source, instrument, authority, commercial records, notices and outcome evidence.

Finin2min implementation explanation

Use a capacity and authority gate. Verify legal capacity, signatory authority, agency disclosure, consideration and primary/secondary liability. Assign an owner, due date, reviewer, source version and exception approver. No step is complete merely because a cheque exists.

Practical examples and calculations

Section 26 illustration

Example control: before relying on section 26, prepare a one-page fact matrix for capacity to make, etc., promissory notes, etc, identify the document and date that proves each condition, and quantify principal, interest, fees or loss only from source records.

Section 27 illustration

Example control: before relying on section 27, prepare a one-page fact matrix for agency, identify the document and date that proves each condition, and quantify principal, interest, fees or loss only from source records.

Section 28 illustration

Example control: before relying on section 28, prepare a one-page fact matrix for liability of agent signing, identify the document and date that proves each condition, and quantify principal, interest, fees or loss only from source records.

Section 29 illustration

Example control: before relying on section 29, prepare a one-page fact matrix for liability of legal representative signing, identify the document and date that proves each condition, and quantify principal, interest, fees or loss only from source records.

Section 30 illustration

Example control: before relying on section 30, prepare a one-page fact matrix for liability of drawer, identify the document and date that proves each condition, and quantify principal, interest, fees or loss only from source records.

Section 31 illustration

Example control: before relying on section 31, prepare a one-page fact matrix for liability of drawee of cheque, identify the document and date that proves each condition, and quantify principal, interest, fees or loss only from source records.

Practical transaction application

At transaction inception, document the underlying obligation, consideration, invoice/delivery/acceptance, payment terms, instrument purpose, signatory mandate, crossing, custody and alternative payment/return consequences. Reconcile books, GST/tax records and bank entries.

Authority, consent and execution controls

For a company/LLP/firm, verify board/partner authority, bank mandate, delegated limits, specimen signatures, signing capacity and complaint/settlement authority. Avoid ambiguous signatures and preserve appointment/resignation dates.

Stamp duty and registration alerts

Promissory notes and bills may attract the Indian Stamp Act and applicable State/territorial stamp framework. Cheque, agreement, guarantee, settlement and security documents can have distinct treatment. Verify current place of execution, instrument character, rate, timing and admissibility consequences before signing.

Evidence and document-retention checklist

- Current official Act and amendment source
- Original instrument / bank image and custody log
- Underlying contract, invoice, delivery and acceptance
- Authority, mandate and signatory records
- Consideration, ledger, bank and tax/GST reconciliation
- Presentation proof and bank return memo
- Notice, dispatch, tracking, service and response
- Interest, part-payment, credit-note and loss calculation
- Settlement, compounding and court orders
- Electronic record export, metadata and certification
- Case-law/limitation/jurisdiction research note
- Exception, mitigation and closure log

Use a legal-hold folder with immutable scans, originals register, metadata/export logs, bank-certified records, emails, delivery/acceptance, notices, service proofs, court filings and source-version records. Define retention beyond ordinary finance policy while litigation or limitation remains open.

Performance, delivery and payment controls

Link payment obligation to objective delivery/acceptance milestones. Record disputed quantity/quality, credit notes, set-off, part payment, interest and extension. Do not issue replacement cheques without cancelling and accounting for the earlier instrument.

Breach, loss, mitigation and remedy framework

Stop continuing loss, preserve evidence, verify the legally enforceable amount, issue contract/statutory notice, offer cure where appropriate, mitigate, quantify recoverable loss and select civil, criminal, insolvency or negotiated remedies without double recovery.

Limitation and forum controls

Maintain separate clocks for instrument maturity/presentation, notice, payment window, complaint, civil recovery, arbitration and appeal. Confirm territorial and subject-matter jurisdiction, filing authority, court holiday rules, service and condonation.

Arbitration and mediation interface

Arbitration/mediation can resolve the underlying commercial dispute and settlement terms, but cannot privately override mandatory criminal-court procedure. Coordinate compounding/withdrawal/disposal orders and default consequences.

Company, partnership, GST and tax overlays

Company/LLP law governs authority and officer responsibility; partnership law affects firm/partner exposure; GST and income-tax records help evidence supply, consideration and write-offs; IBC may alter recovery/proceeding strategy; FEMA applies to cross-border instruments; accounting standards govern recognition and impairment.

Finin2min Q&A

Does possession of a cheque alone prove the entire claim?

No. Statutory presumptions may assist, but the transaction, authority, amount, presentation, notice and other conditions should be evidenced.

Can a contract arbitration clause eliminate section 138 procedure?

No. It may govern the underlying civil dispute, while statutory criminal-court and compounding procedure continues to require proper handling.

Should altered cheques be manually corrected?

Ordinarily use a fresh instrument and preserve the cancelled instrument; CTS and material-alteration controls make overwriting high risk.

What is the first control after a cheque is returned?

Obtain and verify the bank memo, freeze the timeline, preserve the underlying debt file and assign notice/settlement/litigation owners.

How should entity liability be assessed?

Identify the drawer entity, signatory and persons in charge/responsible at the relevant time, plus any consent, connivance or neglect route and statutory defence evidence.

Is the cheque amount always the recoverable commercial amount?

Not necessarily. Reconcile part payments, credit notes, set-off, interest, tax, settlement and the legally enforceable balance.

Can the case be settled?

Section 147 permits compounding, but payment terms, default, court disposal and parallel civil remedies must be documented.

What source prevails?

The current official Act/Gazette, binding court law, applicable RBI direction and fact-specific court order prevail over the educational explanation.

Chapter-specific decision flowchart

FININ2MIN DECISION FLOW - Chapter III - Parties to Notes, Bills and Cheques

Classify instrument / obligation
↓
Verify authority, debt and amount
↓
Check presentation / operational rule
↓
Preserve return, notice and evidence
↓
Choose cure, payment, settlement or filing
↓
Close with order, accounting and retention