NEGOTIABLE INSTRUMENTS ACT PROFESSIONAL CORPUS - BATCH 02

Chapter XIII - Special Rules of Evidence

Separate statutory presumptions, evidentiary burden and permissible rebuttal; preserve originals, bank records and transaction proof.

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

- Separate statutory presumptions, evidentiary burden and permissible rebuttal; preserve originals, bank records and transaction proof.
- Primary control: evidence burden gate.
- Map presumptions, rebuttal, estoppel and independent transaction evidence.
- 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 118		The Act creates presumptions including	Build both the presumption case and independent	Preserve contract, invoice, delivery, ledger, tax records,

Provision / control	Subject	Legal effect / rule	Implementation	Evidence
	Presumptions as to negotiable instruments.	consideration, date, acceptance/transfer timing and holder-in-due-course matters, subject to rebuttal and specific statutory qualifications.	transaction proof; presumptions are not a substitute for a coherent debt and document trail.	correspondence, cheque and bank evidence.
Section 119	Presumption on proof of protest.	Section 119 supplies an evidentiary rule: Presumption on proof of protest.	State the presumed fact, who bears the burden and what evidence can rebut or support it.	Keep originals, bank data, contract, ledger, correspondence and witness foundation.
Section 120	Estoppel against denying original validity of instrument.	Section 120 supplies an evidentiary rule: Estoppel against denying original validity of instrument.	State the presumed fact, who bears the burden and what evidence can rebut or support it.	Keep originals, bank data, contract, ledger, correspondence and witness foundation.
Section 121	Estoppel against denying capacity of payee to indorse.	Section 121 supplies an evidentiary rule: Estoppel against denying capacity of payee to indorse.	State the presumed fact, who bears the burden and what evidence can rebut or support it.	Keep originals, bank data, contract, ledger, correspondence and witness foundation.
Section 122	Estoppel against denying signature or capacity of prior party.	Section 122 supplies an evidentiary rule: Estoppel against denying signature or capacity of prior party.	State the presumed fact, who bears the burden and what evidence can rebut or support it.	Keep originals, bank data, contract, ledger, correspondence and witness foundation.

Finin2min clause-by-clause decode

Section 118 - Presumptions as to negotiable instruments.

Decode: The Act creates presumptions including consideration, date, acceptance/transfer timing and holder-in-due-course matters, subject to rebuttal and specific statutory qualifications.

Implementation: Build both the presumption case and independent transaction proof; presumptions are not a substitute for a coherent debt and document trail.

Evidence: Preserve contract, invoice, delivery, ledger, tax records, correspondence, cheque and bank evidence.

Section 119 - Presumption on proof of protest.

Decode: Section 119 supplies an evidentiary rule: Presumption on proof of protest.

Implementation: State the presumed fact, who bears the burden and what evidence can rebut or support it.

Evidence: Keep originals, bank data, contract, ledger, correspondence and witness foundation.

Section 120 - Estoppel against denying original validity of instrument.

Decode: Section 120 supplies an evidentiary rule: Estoppel against denying original validity of instrument.

Implementation: State the presumed fact, who bears the burden and what evidence can rebut or support it.

Evidence: Keep originals, bank data, contract, ledger, correspondence and witness foundation.

Section 121 - Estoppel against denying capacity of payee to indorse.

Decode: Section 121 supplies an evidentiary rule: Estoppel against denying capacity of payee to indorse.

Implementation: State the presumed fact, who bears the burden and what evidence can rebut or support it.

Evidence: Keep originals, bank data, contract, ledger, correspondence and witness foundation.

Section 122 - Estoppel against denying signature or capacity of prior party.

Decode: Section 122 supplies an evidentiary rule: Estoppel against denying signature or capacity of prior party.

Implementation: State the presumed fact, who bears the burden and what evidence can rebut or support it.

Evidence: Keep originals, bank data, contract, ledger, correspondence and witness foundation.

Finin2min implementation explanation

Use a evidence burden gate. Map presumptions, rebuttal, estoppel and independent transaction evidence. 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 118 illustration

Example control: before relying on section 118, prepare a one-page fact matrix for presumptions as to negotiable instruments, identify the document and date that proves each condition, and quantify principal, interest, fees or loss only from source records.

Section 119 illustration

Example control: before relying on section 119, prepare a one-page fact matrix for presumption on proof of protest, identify the document and date that proves each condition, and quantify principal, interest, fees or loss only from source records.

Section 120 illustration

Example control: before relying on section 120, prepare a one-page fact matrix for estoppel against denying original validity of instrument, identify the document and date that proves each condition, and quantify principal, interest, fees or loss only from source records.

Section 121 illustration

Example control: before relying on section 121, prepare a one-page fact matrix for estoppel against denying capacity of payee to indorse, identify the document and date that proves each condition, and quantify principal, interest, fees or loss only from source records.

Section 122 illustration

Example control: before relying on section 122, prepare a one-page fact matrix for estoppel against denying signature or capacity of prior party, 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 XIII - Special Rules of Evidence