

Difference Between Holder And Holder In Due Course

[Negotiable instruments](#) are a very important tool in the world of business and finance. This financial tool helps the parties of business in doing business with ease. A negotiable instrument is a document which has financial value and is easily transferable. In India, it is governed by the [Negotiable Instruments Act 1881](#). This Act manages these instruments separately but it doesn't contain a proper definition for this term. By the statute, Negotiable instruments include promissory notes, bills of exchange and cheques. Here, this article focuses on the concept of holder and holder in due course and the difference between them along with related case laws.

The Negotiable Instruments Act administers the utilization of promissory notes, Bill of trade and cheques. There are other payments techniques in India but the Act doesn't cover them.

The concept of the holder

It is important to understand the complexities of the parties involved for the purpose of understanding the operation of negotiable instruments. Let us discuss these two matters one by one. Section 8 and Section 9 of the Negotiable Instruments Act talk about them.

What is Holder

Any person who has the custody of promissory note, bill of exchange or cheque can be termed as a holder. The negotiable instruments should be entitled in his own name.

According to [Section 8 of The Negotiable Instruments Act 1881](#), the 'holder' means 'any person entitled in his own name to the possession thereof and to receive or return the amount due thereon

from the parties thereto. Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.^[1]

Essential elements of Holder

Following are the essential elements to be satisfied to be a holder.

1. Possession of instrument

- i. The person must be entitled to possessing the instrument in his own name. Actual physical possession of the instrument is not necessary.
- ii. The person must be named as a payee or indorsee in the instrument. He can also be a bearer of instrument, in such cases if the holder dies the heir of such holder becomes the holder even when that person is not payee or indorsee or a bearer of instrument.
- iii. He must be holder as per law (de jure) not as per fact (de facto).

2. Entitled to receive the amount

- i. When a person has possession of a **negotiable instrument** and he does not have a title to possess it then he will not become a holder. For example, a person who finds an instrument lying somewhere or a thief who acquires possession of such an instrument. They cannot be termed as a holder.
- ii. Not only the possession of negotiable instrument but the right to receive or recover amount is also an important aspect of becoming a holder.
- iii. When the amount is received by the holder the person who is liable to pay is discharged from the liability.
- iv. A person who acquires an instrument by either committing theft or finding is not a holder.^[2]

Kinds of holder

1. **De jure:** It means the holder of a negotiable instrument as a matter of [legal right](#).
2. **De facto:** It means the holder of a negotiable instrument by virtue of possession but not entitled in his / her own name. [\[3\]](#)

Rights of holder

Following are the rights available to a holder.

1. Right to possess an instrument and to receive and recover the amount due as per the instrument. It is provided in Section 8 of the Act. [\[4\]](#)
2. Right to endorse the instrument. It is provided in Section 50 of the Act. [\[5\]](#)
3. Right to convert blank endorsement to full endorsement by Section 49 of the Act. [\[6\]](#)
4. Right to cross the instrument after it is issued. When a cheque is crossed, the holder can cross it generally or specifically. In such cases, he has the option of adding words like not negotiable or account payee. This right is discussed in Section 125 of the Act. [\[7\]](#)
5. Right to get a copy of instrument which is lost by Section 45A of the Act. [\[8\]](#)
6. Right to present the instrument for approval if it is bill and if it is some other instrument then get paid for it. It is by virtue of Section 61 and Section 64 of the Act. [\[9\]](#)

Concept of Holder in due course

In simple terms holder on the due course means a person who has possession of the negotiable instrument.

[Section 9 of the Negotiable Instruments Act 1881](#) provides that 'any person who becomes the possessor of a promissory note, bill of exchange or cheque for consideration and the instrument is payable to bearer or payee or endorsee before the became payable and he believes that no defect exists in the title of the person from whom he derived his title is called a holder in due course.'^[10]

For instance, a person holds a negotiable instrument bonafide for a value and he believes that there is no defect in title from whom he took that in good faith then he becomes the true owner of the instrument.

Essentials elements

1. There should be the possession of instruments.
2. Holder has to acquire it in good faith for some consideration ie; consideration is necessary.
3. He should acquire the instrument with bonafide intention.
4. He should be free from the defective title of the prior party.
5. A person can become a holder in due course only before the maturity of a negotiable instrument.

If a person obtains an instrument after it has matured then he doesn't become a holder in due course.

Rights of the holder in due course

Following are the rights available.

1. As per Section 118 they can file suit in his own name against the parties who are liable to pay.^[11]

2. As per Section 20 the holder in due course gets a good title even though the instruments were originally stamped but were incomplete instruments. The person who has signed and delivered an incomplete instrument cannot plead as against the holder in due course that the instrument has not been filled in accordance with the authority given by him but a holder who himself completes the instrument is not a holder in due course.^[12]

3. As per Section 46 the other parties liable to pay cannot claim that the delivery of the instrument was for a specific purpose.^[13]

4. As per Section 36 every prior party to the instrument is liable to a holder in due course till the instrument is duly satisfied.^[14]

5. As per Section 42 acceptor cannot claim against a holder in due course that the bill is drawn in a fake name.^[15]

In ***Bank of England v. Vagliano Brothers*** ^[16] it was held that before signing acceptance in the bill the acceptor should consider whether the bill is genuine or false.

6. As per Section 53 he gets a good title to the instrument even though the title of the transferor is defective. He can recover the full amount unless he was a party to fraud; or if the instrument is negotiated by means of a forged endorsement.^[17]

7. If a negotiable instrument gets into the hands of the holder in due course which is made without consideration, he can recover the amount on it from any of the prior parties thereto.

8. As per Section 58 the person liable cannot claim against the holder in due course that the instrument has lost or was acquired by means of committing fraud or for an unlawful consideration.^[18]

9. As per Section 120 the validity of the instrument originally made cannot be denied by the maker of a negotiable instrument or by the acceptor of a bill of exchange for the honor drawer. ^[19]

10. By Section 121 the maker of note or acceptance of a bill payable to order cannot deny the payee's capacity to indorse the same at the date of the note or bill. ^[20]

11. By Section 122 the endorser is not permitted as against the holder in due course to deny the sign or capacity to contract of any prior party to the instrument. ^[21]

In ***Sukhan Rajkhim Raja a firm of Merchants, Bombay v. N. Raja Gopalan***, ^[22] and the court held that the plaintiff was conscious that the cheque has been dishonoured and endorsement in his favour was only after it was returned by the bank. Moreover, it has lost its negotiability. Thus, the plaintiff cannot be holder in due course. ^[23]

Related Case Laws

In ***Milind Shripad Chandurkar v. Kalim Khan***, ^[24] it was held that the holder in due course of a negotiable instrument is the only person who can file a suit for recovery of the amount which is liable through that instrument.

In the case of ***Braja Kishore Dikshit v. Purna Chandra Panda*** ^[25] court stated certain prerequisites for a person to become a holder in due course of a negotiable instrument.

1. He must become a holder by way of consideration.
2. He must have got the possession of the instrument before its maturity or become overdue, he must be transferor in good faith and he should have no cause to believe that the title was defective of the transferor.

In ***S V Prasad v. Suresh Kumar*** ^[26] it was held that the holder in due course obtains a right to recover the amount from the holder of the instrument. The endorsement can take place without having participation from the maker of the instrument.

The holder in due course obtains the same right which was with the holder. He can neither upgrade nor alter the liability.

In the case of ***Gemini v. Chandran***, ^[27] It was held that a holder in due course cannot be presumed to be a holder by the Negotiable Instruments Act 1881 i.e.; there is no provision for it. There is a presumption as per section 118 of the Act that a holder is a holder in due course in some specific situations. So holders in due course and holder do not mean the same.

Conclusion

Consequently, it can be concluded that a holder and holder in due course do not mean the same. A holder is a person who may or may not possess a legal instrument. He must entitle to possess it legally and also can receive the amount due from the instrument. He must have the legal capacity to enforce his rights in his own name. Considering a holder in due course, he is a person who can possess a negotiable instrument for consideration. He must become the holder of it before it gets matured. The instrument must satisfy all the requisites and he must receive it in good faith.

A person needs to be a holder first to become a holder in due course, but in the case of a holder, he need not be a holder in due course first. Here we have discussed both the concept of holder and holder in due cause and their differences along with related case laws.