

## Holder and holder in due course

### Holder

The definition given in section 8 implies that any person (a) who is entitled in his own name to the possession of the negotiable instrument and (b) has right to receive or recover the amount from the parties thereto.

(a) Possession of instrument

(b) Entitled to receive the amount

### Following persons are considered the holders of the negotiable instruments:

- (a) A principal whose name appears on an instrument as the holder though it is executed in the name of his agent for him.
- (b) Where a negotiable instrument is a bearer one, any person who is in the possession of such instrument is the holder.
- (c) Where a negotiable instrument is in the name of a partner of a firm, it naturally becomes a holder, as it is not a separate entity from the partner.
- (d) The endorsee of a cheque is called a holder.
- (e) If a holder of a negotiable instrument is dead, the heirs of the deceased holder become the holders.
- (f) A principal on whose behalf a promote is endorsed in blank and is delivered to his agent, he is a holder of the instrument though his name does not appear on the instrument.

- (b) he obtains it by way of a gift; or**
- (c) he obtains it for any unlawful consideration, or**
- (d) he obtains it by some illegal method, or**
- (e) he does not obtain it bonafide**

**he is not considered to be a holder in due course.**

**Right and Privileges of a Holder in Due Course:**

- (a) Liability of prior parties**
- (b) Instalment purged or cleansed of all defects**
- (c) Privilege in case of inchoate stamped instrument not affected**
- (d) No effect of conditional delivery or of special delivery**
- (e) No effect of absence of consideration or presence of an unlawful consideration:**
- (f) Privilege in case of a fictitious bill**
- (g) Estoppel against denying original validity of instrument**
- (h) Estoppel against denying capacity of payee to endorsee**
- (i) Estoppel against endorser to deny capacity of prior parties**

**Distinction between holder and holder in due course:**

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- (i) A thief or a finder of an instrument is not a holder though he is in possession of an instrument.
  - (ii) The word "entitled" used in the definition of a holder shows that the title of the person who claims to be the holder must be acquired in a lawful manner. A person obtaining the instrument under forgery is not a holder.
  - (iii) When the endorsement of a bill is 'for collection only' the endorsee cannot be a holder.
  - (iv) The above mentioned lists are not complete.

### Holder in Due Course

The definition of holder in due course in Section 9 means that any person who for the consideration paid becomes the possessor of a negotiable instruments, before its maturity, in good faith and without any sufficient reason to believe that any defect existed in the title of the person from whom he obtained it.

- (a) He must be a holder in due course
- (b) He must be a holder of valuable consideration
- (c) He must become a holder of the negotiable instrument before the date of maturity
- (d) He must become a holder of the negotiable instrument in good faith

If:

- (a) he obtains the negotiable instrument after its maturity, or

**acquires a good title even if the instrument is inchoate.**

**(c)A holder of an instrument may acquire the instrument if it becomes payable. But the persons is not treated as a holder in due course if he acquires an instrument when it becomes payable.**

**(d)A holder need not bother about the defect, if any, in the title. But no holder is considered a holder in due course who acquires an instrument knowingly the defect of the title.**