**Cheque dishonour case under Negotiable Instrument Act, 1881**

When a cheque is dishonoured, no matter whatever the reason is considered a violation of law and there is a legal procedure to follow to recover the money, moreover, it could put the original cheque provider under criminal charge, fine or even criminal sentencing.

Please note: "Drawer" is the person who authorised the cheque or signed the cheque. Here drawer, payee, provider can be used interchangeably. on the other hand, Drawee is the person who wants to receive the money by submitting the cheque to the bank, here Drawee and holder in due course is used interchangeably.

**What is a cheque?**

Cheque defined under section 6 of [The Negotiable Instrument Act, 1881](http://bdlaws.minlaw.gov.bd/act-46.html).  It articulated, A “Cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

In simple terms, a cheque is a document that is negotiable and exchangeable and the bank who issued the cheque is liable to pay the amount mentioned in the cheque on demand.

**What is cheque dishonour?**

A cheque is said to be dishonoured when the cheque is presented before the authorised bank within six months of the issue date of the cheque and the amount mentioned in the cheque is not paid by the bank for any default of the drawer of the cheque.

That means when drawee or the person who is a holder in due course get rejected by the bank in other word dishonoured by the bank by not providing the mentioned amount as instructed by the drawer (via cheque) by the fault of the drawer.

**Reasons for dishonour of cheque**

Generally, a cheque is dishonoured when;

* The amount not available in the account is not sufficient to pay the cheque or no money in the amount.
* Where instruction is given to stop payment.
* If the sign does not match with the sign of the drawer.
* When the written amount (by words) does not match the amount mentioned in the cheque.
* When the cheque is not filled up correctly.
* When it is evident that the cheque is edited improperly and not confirmed by additional signature at the place of editing.

In the mentioned situation a cheque can be dishonoured but the **drawer of the cheque would only be liable if he is responsible for any such matter or when he dishonoured the cheque with criminal intention.**

**Cause of action**

Cause of action means when you can start the procedure a case or suit. In case of a cheque, a cheque must be presented before the bank within **six months from the issuance of the cheque** and after that if the cheque is dishonoured by the bank the cause of action shall initiate for the cheque dishonour case.

If a bank dishonours the cheque ask them to provide a written document for such dishonour. They will provide a written document/cheque dishonour slip providing the reason for dishonour and other details.

**Cheque dishonour law in Bangladesh**

The law regarding cheque dishonour is provided under section 138 of the Negotiable Instrument Act, 1881. This is criminal law. an accused can be imprisoned up to one year or fine up to thrice the amount of the cheque. In cases where the accused party is a company, the procedure to be followed in the same manner as section 138, which is mentioned under section 140 of the Negotiable Instrument Act, 1881 and in that case the responsible person shall be liable.

Though this is a criminal case it must be initiated with a complainant initiation from the magistrate court. The complainant must follow some procedure before the initiation of the suit.

**Punishment for cheque dishonour**

An accused, if proved guilty of cheque dishonour, can be punished with imprisonment for a term which may extend to one year, or with fine which may extend to thrice the amount of the cheque, or with both.

The court may provide both imprisonment and fine (general practice) but if the court wants to punish the offender only by imprisonment he can do so. The court may provide fine up to thrice the amount of the cheque. It solely depends on the court’s discretion.

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**Procedure**

**Issue notice**

The first step to initiate a case under section 138 of the Negotiable Instrument Act, 1881 to issue a [legal notice](https://lawhelpbd.com/criminal-law/notice-under-section-138-of-negotiable-instrument-act-1881-sample/)via the [registered post with AD](https://lawhelpbd.com/advocacy/what-is-registered-post-ad/) to the drawer and this is a must precondition. The notice must be issued within 30 days of the dishonour of the cheque;  informing the drawer that his cheque has been dishonoured by his bank and he must pay the amount in full within 30 days of the notice otherwise you will take legal action.

The payee or the holder in due course of the cheque can file a complaint case after the compilation of 30 days or notice, if the drawer does not provide the money within 30 days after receiving the notice or does not reply or where replied to legal notice but did not provide any satisfactory answer to the notice provided.

**Time frame**

1. Cheque rejected
2. Issue legal notice within 30 days
3. After notice
   1. If the reply is satisfactory or agreed to pay within 30 days after receiving the notice, accept the money or negotiate further.
   2. If the reply is not satisfactory or did not reply to the answer then file a complaint case within 30 days after the drawer’s legal time of reply is over.

**Documents needed to issue notice and initiate a case**

Following documents and information would be necessary to issue a notice and initiate a cause under section 138 or section 140 of the Negotiable Instrument Act, 1881.

* The cheque
* Issue date of the cheque and rejection date of the cheque
* cheque dishonour document provided by the bank
* Copy of the notice and reply of that notice (if provided)
* Receipt of acknowledgement of the notice
* Why the cheque was provided or reason behind the transaction
* Details of the cheque
* Details of the complainant

**How to file a case**

A case under section 138 or 140 can be filed in the court of Judicial magistrate or in the court of Metropolitan magistrate having the jurisdiction over the subject matter.  After taking the cognizance of the case the magistrate shall transfer the case to session court for trial then the court of the session shall hear the case and provide judgment based on the documents and evidence.

Punishment

In case of a cheque dishonour, where the dishonour is proved, the accused can be punished up to one-year imprisonment or with fine which may extend to thrice the amount of the cheque or both; as provided under section 138 of the Negotiable instrument act, 1881.

There is a misconception that if the cheque dishonour is proved the accused shall be punished with fine with the thrice the amount of the cheque which is not correct, court may punish him with such fine but that is not necessarily the case in every case, moreover, the complainant shall only get the cheque amount, not the full fine. Rest of the amount shall be deposited to the account of the government.

**How to avoid cheque case against you**

Use of cheque must deal with care and people should not use a cheque just like another document. Here are some matters that you should keep in mind if you often use a cheque for transaction or you have a cheque book to use.

1. Keep your cheque book in a safe and secure place.
2. Count the remaining pages/leaf after every use.
3. Do not leave the cheque book/page signed.
4. In case your cheque book or page of the cheque book is missing file a GD immediately and inform your bank about the issue.
5. Do not provide a cheque for any future promise, in our society it is often practised, we often take money/loan and as security provide a cheque with a future date. This is not permitted under law, a cheque should only be used when your account holds enough money to pay.
6. During the drawing the cheque / writing the cheque check that
   1. The date is correct
   2. The information is correct
   3. The amount is correct
   4. The amount is properly written both in numeric and in words in addition to that you have used “/=”  and “only” accordingly.
   5. No extra should be allowed.
7. Try not to provide bearer cheque where possible instead use a cross-account cheque.
8. Do not use your cheque just to help others.
9. The cheque shall be used as a consideration, as an alternative of money. Do not provide any cheque where there is no contract or no consideration.

**Appeal against judgment under section 138 of the Negotiable Instrument Act**

Any aggrieved can prefer an appeal to the higher court against the judgment of the lower court under section 138 of Negotiable instrument act by following the procedure.

* 50% of the fine (that is awarded by the lower court) must be submitted before the appeal.
* Appeal against the judgment of session judge shall be preferred before the High Court Division of Bangladesh Supreme court, it must be filed within 60 days.
* Appeal against the judgment of an additional session judge shall be preferred before the High Court Division of Bangladesh Supreme court and it must be filed within 60 days.
* Appeal against the judgment of a joint session judge shall be preferred before the High Court Division of Bangladesh Supreme court and it must be filed within 30 days.

**Time**

There is a common question before any case or suit that, “How much will it take to get a judgment after filing a case?” Well, that depends on various factors but generally, in Dhaka, it can take 1-2 years. In other districts, it takes around one year to get the judgment from the lower court.

Therefore it is always wise to [settle with ADR](https://lawhelpbd.com/cpc/alternative-dispute-resolution-adr/) but keep it in mind you need a proper [legal person](https://lawhelpbd.com/professional-legal-help/) to deal with these things otherwise you may lose both ends together.

**Cheque case under other law**

In many situations you may fail to use this special act of Negotiable Instruments, such as a person can fail to serve the legal notice within one month, or a person may be the victim of a fraud document etc. In such a situation a prompt remedy shall be unavailable for the sufferer but that will not be an end of justice. A victim can file a case under general criminal law, like fraud or he may also follow civil suit for recovery of money, etc.

Section 138 and section 140 of the Negotiable Instrument Act, 1881 is a special law made for Negotiable instrument Act. This act is most used for cheque dishonour purpose. This act made it very easy to file a cheque dishonour case udert this act following the procedure, therefore we should use this law to keep trust in the negotiable instrument and prevent misuse of it.