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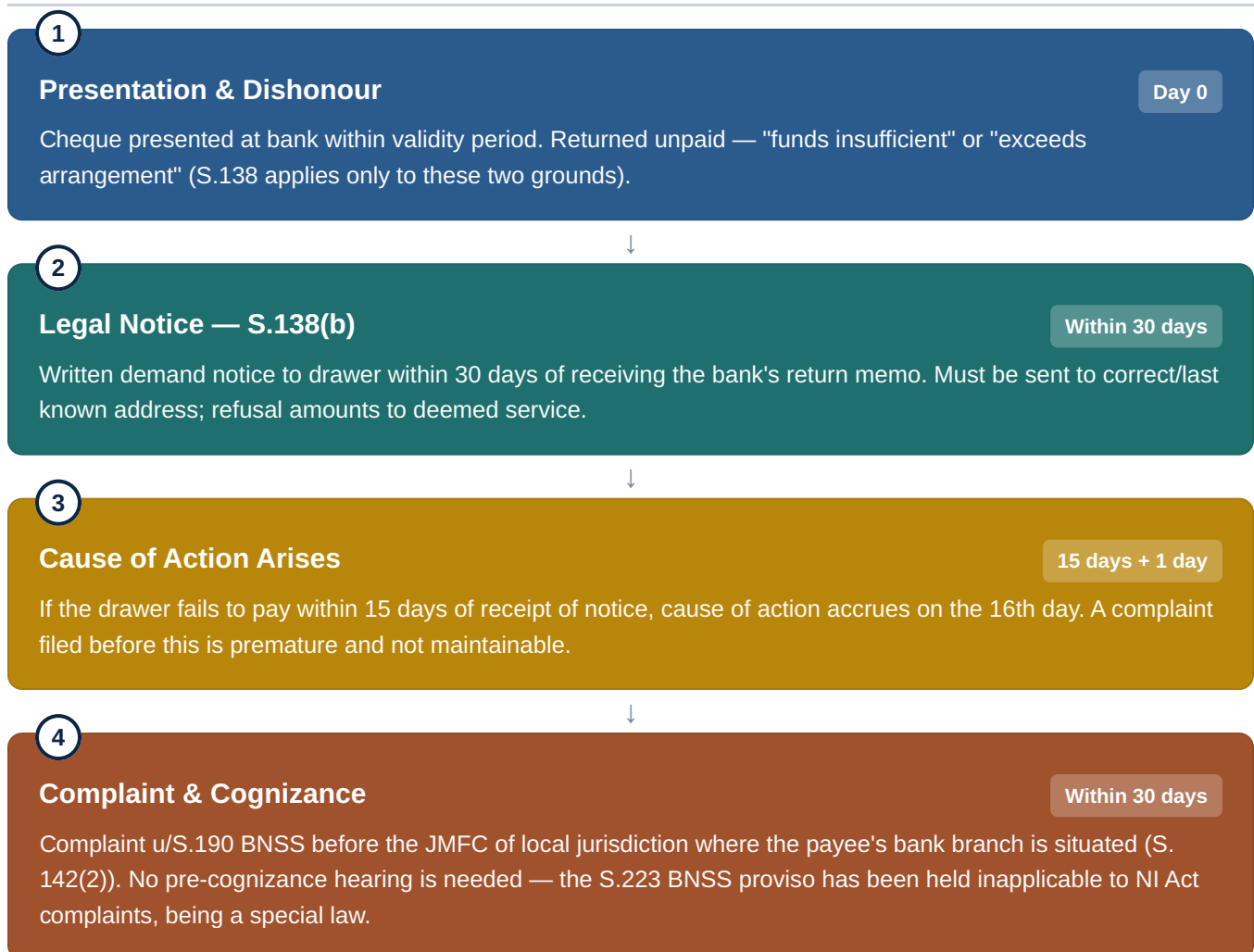
PRACTICE NOTE — CRIMINAL LAW

Cheque Dishonour — Section 138, Negotiable Instruments Act, 1881

Practice flow & quick reference: presentation to appeal (procedure read with BNSS, 2023, in force from 1 July 2024)

CHEQUE VALIDITY	3 months from date on cheque
LEGAL NOTICE	within 30 days of dishonour memo
DRAWER'S PAYMENT WINDOW	15 days from receipt of notice
COMPLAINT TO BE FILED	within 30 days after 15-day period expires
TRIAL	summary, target disposal within 6 months (S.143)

PROCESS FLOW — PRESENTATION TO APPEAL



PROCESS FLOW — CONTINUED

5

Summary Trial

Target: 6 months

Tried summarily under S.143. Presumptions u/S.118 & S.139 favour the holder. Court may direct interim compensation up to 20% of the cheque amount (S.143A — discretionary, requires a prima facie case).



6

Judgment & Appeal

Appeal to Sessions Court

Conviction: imprisonment up to 2 years and/or fine up to twice the cheque amount. On appeal, the appellate court shall (mandatory) direct deposit of at least 20% of the fine/compensation (S.148), over and above any S. 143A amount.

INGREDIENTS, PRESUMPTIONS & DEFENCES

ESSENTIAL INGREDIENTS — S.138

- **1** Cheque drawn on account for discharge, wholly/ partly, of a legally enforceable debt or liability.
- **2** Presented within 3 months of the date on the cheque (or before validity printed on it).
- **3** Dishonoured for insufficiency of funds or exceeding arrangement.
- **4** Valid demand notice issued within 30 days of dishonour intimation.
- **5** Drawer fails to make payment within 15 days of receipt of notice.
- All five must co-exist — absence of any one is fatal to the complaint.

PRESUMPTIONS & BURDEN

- **S.118:** Instrument presumed made/drawn for consideration.
- **S.139:** Cheque presumed issued in discharge of debt/liability — rebuttable presumption favouring the holder.
- Burden on the **accused** to rebut, on preponderance of probabilities (not proof beyond reasonable doubt).
- Accused may rely on complainant's evidence, cross-examination, or lead defence evidence to rebut.
- Mere denial is insufficient; a probable defence must be raised.

DEFENCES & PRACTICE NOTES

COMMON DEFENCES

- No legally enforceable debt/liability existed on the date of the cheque.
- Cheque given as security only, not for discharge of debt (must be proved).
- Signature/issuance disputed; cheque obtained by fraud/coercion or was blank/stolen.
- Notice not served, served late, or complaint filed beyond limitation.
- Debt time-barred or already discharged/settled before presentation.
- *Note*: "stop payment" instruction alone is not a defence if the debt subsists.

PRACTICE NOTES

- **Jurisdiction**: Court where the payee's bank branch collects the cheque — S.142(2), 2015 Amendment (overrides place of drawee bank).
- **Multiple cheques** from one transaction: single complaint permissible.
- **Company cheques**: signatories/directors liable u/S. 141 — must aver specific role in conduct of business; issue notice to company + signatory.
- **Delay condonation**: courts generally liberal u/ proviso to S.142(b) on sufficient cause shown.
- **Post-dated/security cheques**: S.138 attracted if debt subsisted on date of presentation.

QUICK REFERENCE

Punishment (S.138)

Imprisonment up to **2 years**, and/or fine up to **twice** the cheque amount, or both. Compensation may substitute/ accompany the fine.

Compounding (S.147)

The offence is compoundable at **any stage** — trial, appeal, or revision — by consent of both parties; effectively settles the criminal proceeding.

Interim Relief — S.143A vs S.148

S.143A (trial stage, discretionary, "may", up to 20%) vs **S.148** (appeal stage, mandatory, "shall", minimum 20%, reasons required if refused).

For internal practice reference only — cross-check against latest amendments, High Court/Supreme Court rulings, and BNSS notifications before relying in proceedings. Prepared 19 July 2026.