



THE NEGOTIABLE INSTRUMENTS ACT, 1881



LEARNING OUTCOMES

At the end of this chapter, you will be able to :

- Understand the meaning, characteristics and elements of different kinds of negotiable instruments
- Know the parties to notes, bills and cheques, various ways of negotiation of the instruments and their presentment.
- Know the concepts of Noting and Protest, and of dishonour of instrument

CHAPTER OVERVIEW

Negotiable Instruments Act can be broadly covered under following headings

Notes, Bills & Cheques and other related provisions [Section 4-25]

Parties to Notes, bills & Cheques [Section 26- 45A]

Negotiation [Section 46-60]

Presentment [Section 61-77]

Discharge from liability on instruments [Section 82- 90]

Notice of dishonour [Section 91- 98]

Noting and protest [Section 99-104A]

Compensation [Section 117]

Special Rules of evidence [Section 118- 122]

International law [Section 134- 137]

Penalties [Section 138- 147]

**1. INTRODUCTION**

The law relating to negotiable instruments is the law of the commercial world which was enacted to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, the trade and commerce activities were likely to be adversely affected as it was not practicable for the trading community to carry on with it the bulk of the currency in force. The source of Indian law relating to such instruments is admittedly the English Common Law. The main objective of the Act is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods.

The Law in India relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881. This is an Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The Act applies to the whole of India, but nothing herein contained affects the Reserve Bank of India Act, 1934, section 21 which provides the Bank to have the right to transact Government business in India, or affects any local usage relating to any instrument in an oriental language.

Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

The provisions of this Act are also applicable to Hundis, unless there is a local usage to the contrary. Other native instruments like Treasury Bills, Bearer debentures etc. are also considered as negotiable instruments either by mercantile custom or under other enactments.

Recent developments : The Act was amended several times. Recent two amendments made in the N.I. Act were the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and the Negotiable Instruments (Amendment) Act, 2015.

The Negotiable Instruments (Amendment) Act, 2015 received the assent of the President on 26th December, 2015 and has been notified in the Official Gazette on 29th December, 2015 by the Ministry of Law and Justice.

This is an Act further to amend the Negotiable Instruments Act, 1881 and shall be deemed to have come into force on the 15th day of June, 2015.

The Amendment Act, 2015 modifies the definition of a cheque in electronic form given in section 6, and clarifies the appropriate area of jurisdiction of courts by amendment in cognizance of offences in section 142 and through insertion of a new section 142A dealing with the transfer of pending cases related to the dishonour of cheques.



2. MEANING OF NEGOTIABLE INSTRUMENTS

Negotiable Instruments is an instrument which is transferable (by customs of trade) by delivery, like cash, and is also capable of being sued upon by the person holding it for the time being. The property in such an instrument passes to a *bona fide* transferee for value.

The Act does not define the term 'Negotiable Instruments'. However, section 13 of the Act mentions only three kinds of negotiable instruments namely, bills, notes and cheques.

Section 13 says, "A "**negotiable instrument**" means a promissory note, bill of exchange or cheque payable either to order or to bearer".

The section also provides that, a negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

Mode of Transfer of negotiable instruments :

A promissory note, bill of exchange or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

A promissory note, bill of exchange or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.]

But it does not necessarily follow that there can be no other negotiable instruments than those enumerated in the Act. Some examples of instruments that which are for the time being, by law of custom, usage or trade are negotiable :

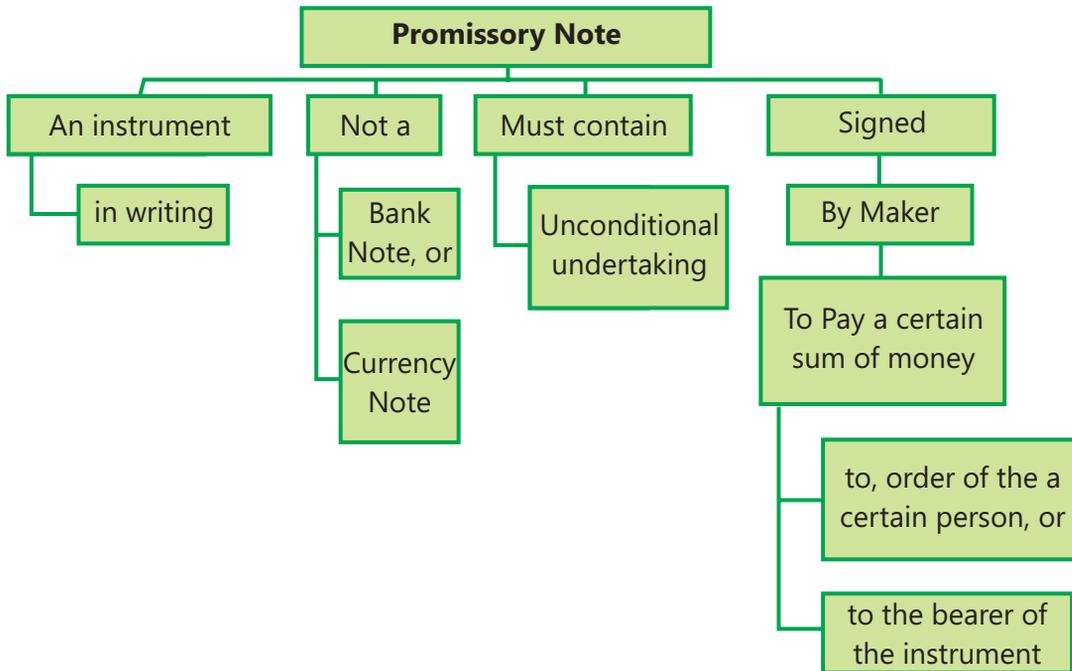
- Government promissory notes
- Shah Jog Hundis
- delivery orders
- railway receipts for goods
- Draft- A banker draft



3. NEGOTIABLE INSTRUMENTS AND OTHER RELATED CONCEPTS

Promissory Note

According to section 4 of the NI Act, 1881, "A "**promissory note**" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."



Examples :

A signs instruments in the following terms :

- (a) "I promise to Pay B or order ₹ 500".
- (b) "I acknowledge myself to be indebted to B in ₹ 1,000, to be paid on demand, for value received."
- (c) "Mr B I.O.U ₹ 1,000."
- (d) "I promise to pay B ₹ 500 and all other sums which shall be due to him."
- (e) "I promise to pay B ₹ 500 first deducting there out any money which he may owe me."
- (f) I promise to pay B ₹ 500 seven days after my marriage with C.
- (g) I promise to pay B ₹ 500 on D's death, provided D leaves me enough to pay that sum.
- (h) I promise to pay B ₹ 500 and to deliver to him my black horse on 1st January next.

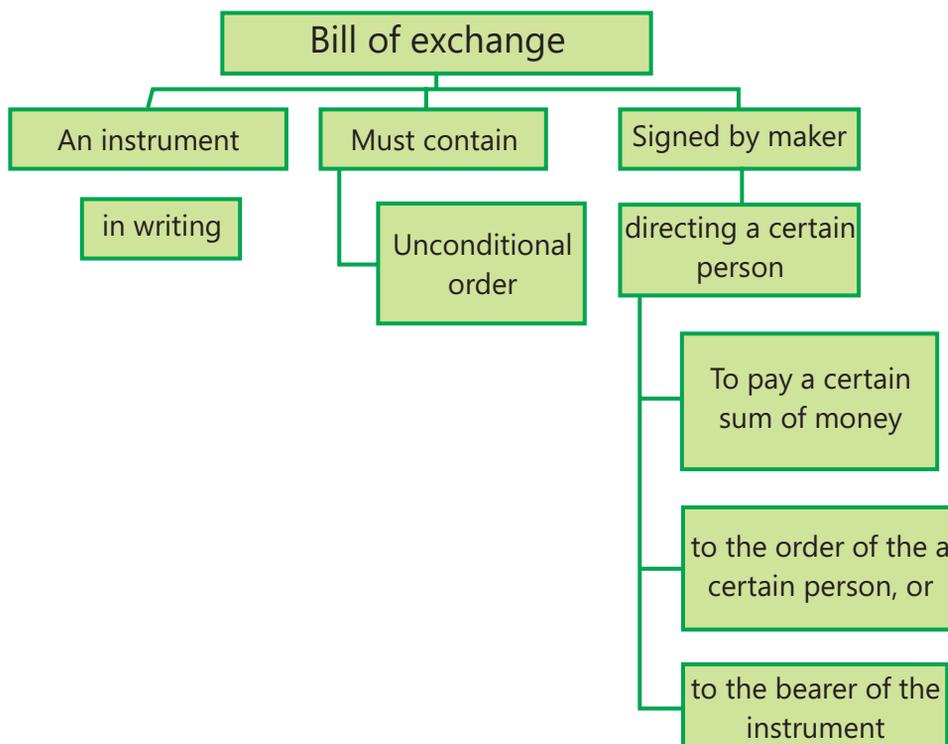
The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

Bill of Exchange A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not “conditional” within the meaning of this section and section 4, by reason of the time for payment of the amount or any installment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

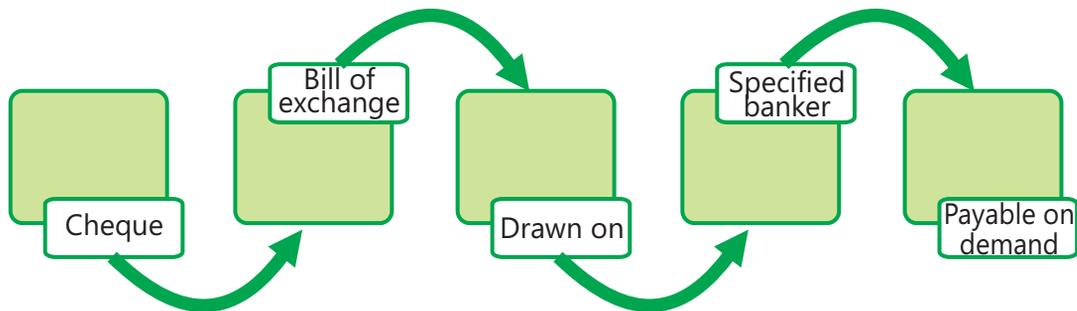
The sum payable may be “certain”, within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an installment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be “certain person”, within the meaning of this section and section 4, although he is misnamed or designated by description only.



Cheque [Section 6]

A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.



The expression "Banker" includes any person acting as a banker and any post office saving bank [Section 3]

Explanation I : For the purposes of this section, the expressions-

- (a) **Cheque in the electronic form**"-means a cheque drawn in electronic form by using any computer resource, and signed in a secure system with a digital signature (with/without biometric signature) and asymmetric crypto system or electronic signature, as the case may be;
- (b) "a **truncated cheque**" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II : For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India.

Explanation III : For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.

A combined reading of section 5 and 6 tells us that a bill of exchange is a negotiable instrument in writing containing an instruction to a third party to pay a stated sum of money at a designated future date or on demand. Whereas, a cheque is also a bill of exchange but is drawn on a banker and payable on demand.

Specimens of Promissory notes, bill of exchange and cheque

Specimen of Promissory notes

₹	
10,000	Lucknow April 10, 2017
Three months after date, I promise to pay Shri Ramesh (Payee) or to his order the sum of Rupees Ten Thousand, for value received.	
	Stamp Sd/- Ram
To, Shri Ramesh, B-20, Green Park, Mumbai. (Maker)	

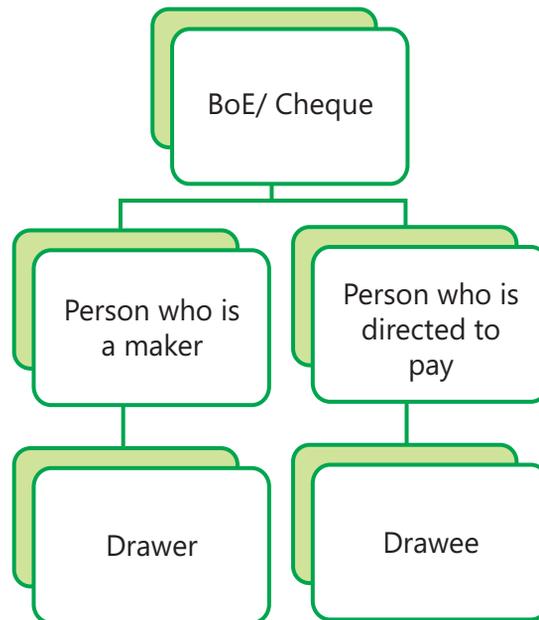
Specimen of Bill of Exchange

	Mr. A (Drawer) 48, MP Nagar, Bhopal (M.P.) April 10, 2015
₹ 10,000/-	
Four months after date, pay to Mr. B (Payee) a sum of Rupees Ten Thousand, for value received.	
To, Mr. C (Drawee) 576, Arera Colony, Bhopal (M.P.)	Signature Mr. A

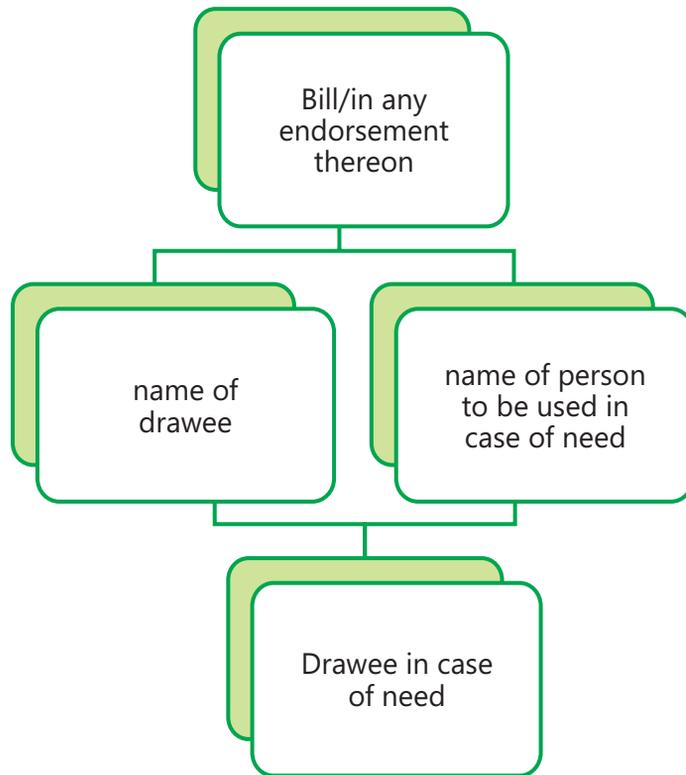
Specimen of Cheque

Pay		Date :
a sum of Rupees.....		Rs. <input type="text"/>
<input type="text" value="A/C No. 12345678910"/>		
ABC Bank 622, Vijay Nagar, Indore (M. P.)		Signature
01212 1125864 000053 38		

Drawer and drawee [Section 7]



“Drawer”, “drawee” —The maker of a bill of exchange or cheque is called the “drawer”; the person thereby directed to pay is called the “drawee”.

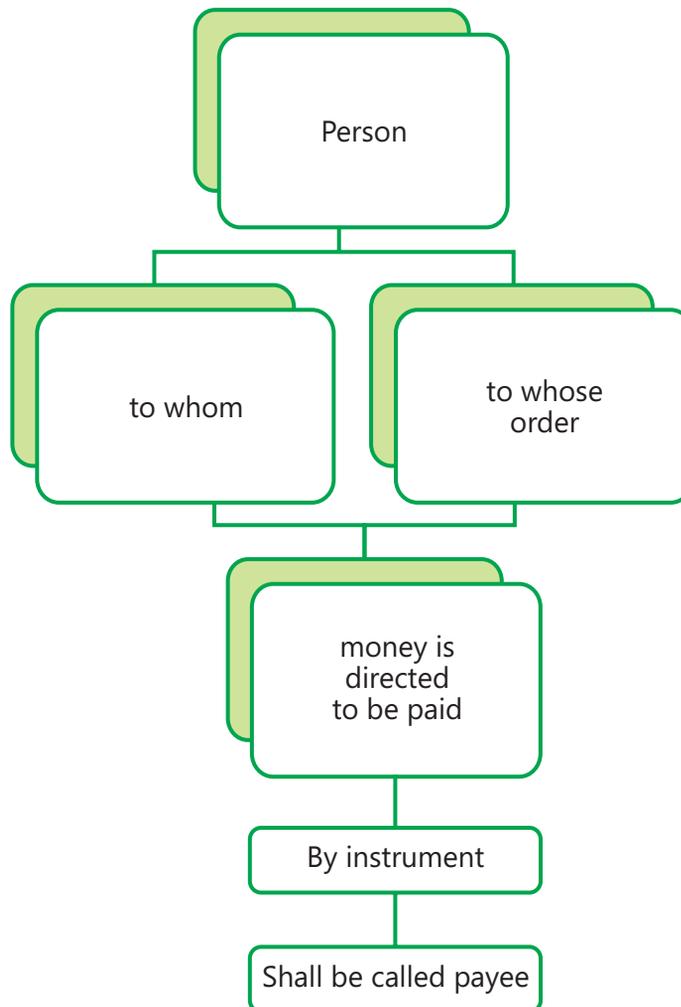


“drawee in case of need”— When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a “drawee in case of need”.



“acceptor” — After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor”.

“acceptor for honour” — When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour”.



“Payee” — The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the “payee”.

“Holder” [Section 8]— The “holder” of a promissory note, bill of exchange or cheque means—

- any person
- entitled in his own name to the possession thereof, and
- to receive or recover 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.

“Holder in due course” [Section 9]—“Holder in due course” means—

- any person
- who for consideration

- became the possessor of a promissory note, bill of exchange or cheque (if payable to bearer), or the payee or endorsee thereof, (if payable to order),
- before the amount mentioned in it became payable, and
- without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

Example 1 : A draws a cheque for ₹ 5,000 and hands it over to B by way of gift. B is a holder but not a holder in due course as he does not get the cheque for value and consideration. His title is good and bonafide. As a holder he is entitled to receive ₹ 5000 from the bank on whom the cheque is drawn.

Example 2 : On a Bill of Exchange for ₹ 1 lakh, X's acceptance to the Bill is forged. 'A' takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether 'A' can be considered as a 'Holder in due course' and whether he (A) can receive the amount of the Bill from 'X'.

Answer : According to section 9 of the Negotiable Instruments Act, 1881 'holder in due course' means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

As 'A' in this case *prima facie* became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

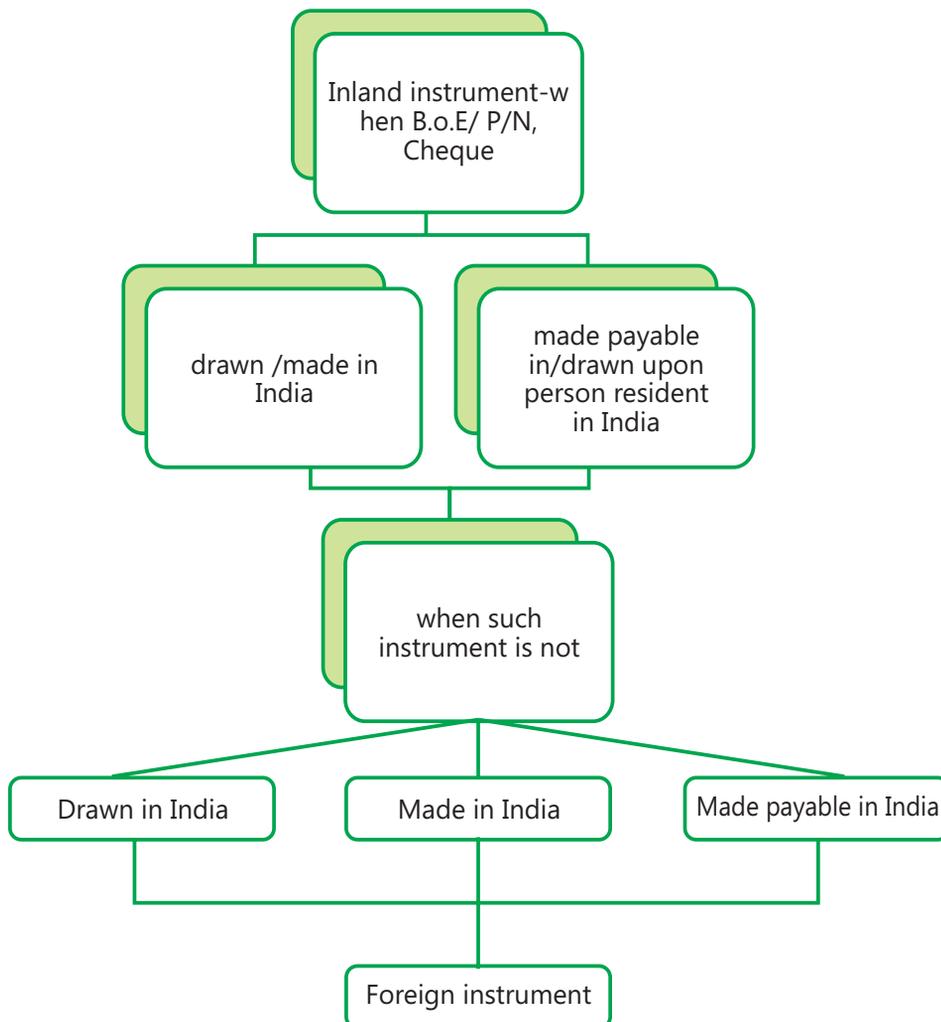
“Payment in due course” [Section 10]—“Payment in due course” means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

“Inland instrument” and “Foreign instrument” [Sections 11 & 12]

A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

“Foreign instrument”

Any such instrument not so drawn, made or made payable shall be deemed to be foreign instrument.

**Indorsement [Section 15]**

When the maker or holder of a negotiable instrument signs the same (otherwise than as such maker)—

- for the purpose of negotiation

- on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument,
- he (maker/holder) is said to indorse the same, and is called the "indorser".

Example : X, who is the holder of a negotiable instrument writes on the back thereof : "pay to Y or order" and signs the instrument. In such a case, X is deemed to have endorsed the instrument to Y. If X delivers the instrument to Y, X ceases to be the holder and Y becomes the holder.

Indorsement "in blank" and "in full" - "endorsee" [Section 16]

- (1) If the indorser signs his name only, the endorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be "in full", and the person so specified is called the "indorsee" of the instrument.
- (2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

Example: (1) **Blank (or general):** No indorsee is specified in an indorsement in blank, it contains only the bare signature of the indorser. A bill so indorsed becomes payable to bearer.

Specimen

Motilal Poddar

Example 2 : Special (or in full) : In such an indorsement, in addition to the signature of the indorser the person to whom or to whose order the instrument is payable is specified.

Specimen

Pay to B, Batliwala or order.

S. Shroff

Ambiguous instruments [Section 17]

Where an instrument may be construed either as a promissory note or bill of exchange (**example**, a bill drawn by a person on himself in favour of a third person or where the drawee is a fictitious person), the holder may at his election treat it as either and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words [Section 18]

If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Instruments payable on demand [Section 19]

A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Inchoate stamped instruments [Section 20]

Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

Example, a person signed a blank acceptance and kept it in his drawer and some person stole it and filled it up for ₹ 20,000 and negotiated it to an innocent person for value, it was held that the signer to the blank acceptance was not liable to the holder in due course because he never delivered the instrument intending it to be used as a negotiable instrument. Further, as a condition of liability, the signer as a maker, drawer, endorser or acceptor must deliver the instrument to another. In the absence of delivery, the signer is not liable. Furthermore, the paper so signed and delivered must be stamped in accordance with the law prevalent at the time of signing and on delivering otherwise the signer is not estopped from showing that the instrument was filled without his authority.

“At sight”, “On presentment”, “After sight” [Section 21]

In a promissory note or bill of exchange the expressions “**at sight**” and “**on presentment**” means on demand.

The expression “**after sight**” means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non-acceptance, or protest for non-acceptance.

“Maturity”

Where bill or note is payable at fixed period after sight, the question of maturity becomes important. The maturity of a note or bill is the date on which it falls due.

Days of grace : A note or bill, which is not expressed to be payable on demand, at sight or on presentment; is at maturity on the third day after the day on which it is expressed to be payable. Three days are allowed as days of grace(**Section 22**).

Calculation of maturity [Section 23] :

In calculating the date at which a promissory note or bill of exchange, made payable at stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month, which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens or, where the instrument is a bill of exchange made payable at stated number of months after sight and has been accepted for honor, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Sl. No.	Time at which instrument is payable	Maturity period
1.	When a note or bill is made payable, a stated number of months after date	when the period stated terminates on the day of the month which corresponds with the day on which the instrument is dated
2.	When it is made payable after a stated number of months after sight	The period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance.
3.	When it is payable a stated number of months after a certain event	The period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance.
4.	When the instrument is a bill of exchange made payable at stated number of months after sight and has been accepted for honor.	Maturity will be with the day on which it was so accepted.

Examples :

- (a) A negotiable instrument dated 29th January, 2017, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 2017.
- (b) A negotiable instrument, dated 30th August, 2016, is made payable three months after date. The instrument is at maturity on the 3rd December, 2016.
- (c) A promissory note or bill of exchange, dated 31st August, 2016, is made payable three months after date. The instrument is at maturity on the 3rd December, 2016.

Calculating maturity of bill or note payable so many days after date or sight [Section 24]

In calculating the date at which a promissory note or bill of exchange made payable at certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, **shall be excluded**.

Example: Bharat executed a promissory note in favour of Bhushan for ` 5 crores. The said amount was payable three days after sight. Bhushan, on maturity, presented the promissory note on 1st January, 2017 to Bharat. Bharat made the payments on 4th January, 2017. Bhushan wants to recover interest for one day from Bharat. Advise Bharat, in the light of provisions of the Negotiable Instruments Act, 1881, whether he is liable to pay the interest for one day ?

Answer : Claim of Interest : Section 24 of the Negotiable Instruments Act, 1881 states that where a bill or note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run.

Therefore, in the given case, Bharat will succeed in objecting to Bhushan's claim. Bharat paid rightly "three days after sight". Since the bill was presented on 1st January, Bharat was required to pay only on the 4th and not on 3rd January, as contended by Bharat.

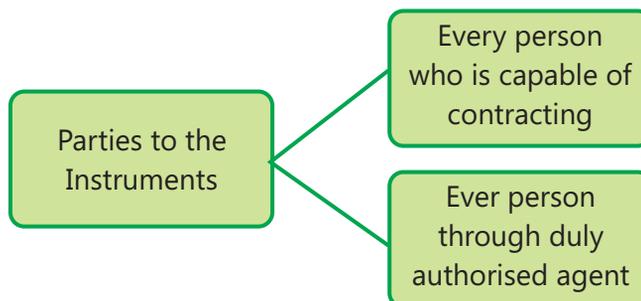
When day of maturity is a holiday [Section 25]

When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation : The expression "Public Holiday" includes Sundays and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday.

4. PARTIES TO NOTES, BILLS AND CHEQUES

(1) Capacity of the parties



Capacity to make, draw, accepts etc. of instruments (Section 26) : Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor : A minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, endorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Example : A draws a cheque in favour of M, a minor. M endorses the same in favour of X. The cheque is dishonoured by the bank on grounds of inadequate funds. Here in this case, M being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. X can, thus, proceed against A.

Authority to sign i.e. through Agency [Sections 27] : Every person, capable of incurring liability, may bind himself or be bound by a duly authorized agent acting in his name.

A general authority given to an agent to transact business and to receive and discharge debts does not empower him to accept or endorse bills of exchange so as to bind his principal.

An agent may have authority to draw bills of exchange, but not endorse them. An authority to draw does not, necessarily, imply an authority to endorse.

(2) Liability of the parties

Liability of agent

Liability of legal representative

liability of drawer

liability of drawee of cheque

Liability of maker of note and acceptor of bill

Liability of indorser

liability of prior parties to holder in due course

Liability of prior parties as principal in respect to subsequent party

Liability of agent signing [Section 28]

An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

An agent can be sued by the holder in an action for falsely representing that he had authority.

Liability of legal representative signing [Section 29]

A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of drawer [Section 30]

The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonor has been given to, or received by, the drawer as hereinafter provided.

Liability of drawee of cheque [Section 31]

The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of maker of note and acceptor of bill [Section 32]

In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

Liability of endorser [Section 35]

In the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity, without, in such endorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such endorser as hereinafter provided.

Every endorser after dishonour is liable as upon an instrument payable on demand.

Liability of prior parties to holder in due course [Section 36]

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Prior party a principal in respect of each subsequent party [Section 38]

As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Example :

A draws a bill payable to his own order on B, who accepts. A afterwards endorses the bill to C, C to D and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

(3) Other related concepts to the parties on the negotiation of the Instruments**Discharge of endorser's liability [Section 40]**

Where the holder of a negotiable instrument—

- without the consent of the endorser,
- destroys or impairs the endorser's remedy against a prior party,

The endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Example :

A is the holder of a bill of exchange made payable to the order of B, which contains the following endorsements in blank-

First endorsement, "B".

Second endorsement, "Peter Williams".

Third endorsement, "Wright & Co.".

Fourth endorsement "John Rozario".

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the endorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

Acceptor bound, although endorsement forged [Section 41]

An acceptor of a bill of exchange already endorsed is not relieved from liability by reason that such endorsement is forged, if he knows or had reason to believe the endorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name [Section 42]

An acceptor of a bill of exchange—

- drawn in a fictitious name, and
- payable to the drawer's order

is not (by reason that such name is fictitious) relieved from liability to any holder in due course claiming under an endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Example : X draws a bill on Y but signs it in the fictitious name of Z. The bill is payable to the order of Z. The bill is duly accepted by Y. M obtains the bill from X thus becoming its holder in due course. Can Y avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881.

Answer : Bill drawn in fictitious name : The problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege as against the holder in due course that such name is fictitious. Accordingly, in the instant case, Y cannot avoid payment by raising the plea that the drawer (Z) is fictitious. The only condition is that the signature of Z as drawer and as endorser must be in the same handwriting.

Negotiable instrument made, etc. without consideration [Section 43]

A negotiable instrument—

- made, drawn, accepted, endorsed, or transferred without consideration, or
- for a consideration which fails,

creates no obligation of payment between the parties to the transaction.

But if any such party has transferred the instrument with or without endorsement to a holder for a consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

Exception I : No party for whose accommodation a negotiable instrument has been made, drawn, accepted or endorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II : No party to the instrument who has induced any other party to make draw, accept, endorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover therein an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

Partial absence or failure of money-consideration [Section 44]

When the consideration for which a person signed a promissory note, bill of exchange or cheque **consisted of money**—

- which was originally absent in part, or
- has subsequently failed in part,

the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation : The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.

Example 1 :

A draws a bill on B for ₹ 500 payable to the order of A. B accepts the bill, but subsequently dishonors it by non-payment. A sues B on the bill. B proves that it was accepted for value as to ₹ 400, and as an accommodation to the plaintiff as to the residue. A can only recover ₹ 400.

Example 2 : A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favour of B, signs and delivers it to B with a request to fill up the amount due, payable by him. B fills up fraudulently the

amount larger than the amount due, payable by A and endorses the cheque to C in full payment of dues of B. Cheque of A is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C.

Answer : Section 44 of the Negotiable Instruments Act, 1881 is applicable in this case. According to Section 44 of this Act, B who is a party in immediate relation with the drawer of the cheque is entitled to recover from A only the exact amount due from A and not the amount entered in the cheque. However, the right of C, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from B.

Partial failure of consideration not consisting of money [Section 45]

Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, **though not consisting of money**, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Sl. no.	Instruments with/without consideration	Liabilities of the parties
1.	Instrument made without consideration	creates no obligation of payment between the parties to the transaction
2.	Instrument made with consideration consisted of money, absent in part	a holder standing in immediate relation with such signer is entitled to receive from signer the proportionally reduced sum.
3.	On partial failure of consideration not consisting of money	a holder standing in immediate relation with such signer is entitled to receive from him the proportionally reduced sum.

Holder's right to duplicate of lost bill [Section 45A]

Where a bill of exchange has been lost before it is overdue,

- the person who was the holder of it may apply
- to the drawer to give him another bill of the same tenor,
- giving security to the drawer, if required,

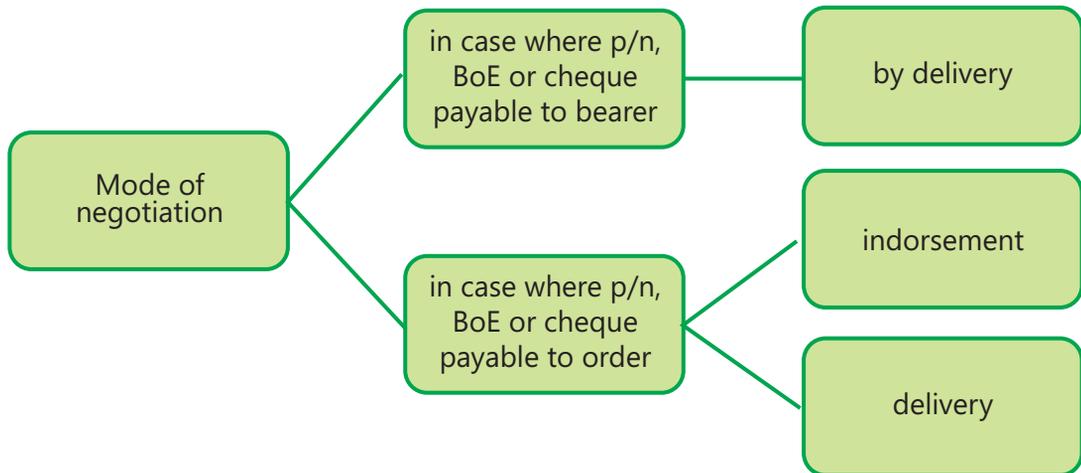
- to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.



5. NEGOTIATION

Modes of Negotiation



Delivery [Section 46]

The making, acceptance or endorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

Delivery when effective between the parties

Negotiation of instruments between the parties	How delivery is to be made
As between parties standing in immediate relation	Delivery to be effectual must be made by the party making, accepting or endorsing the instrument, or by a person authorized by him in that behalf.
As between such parties and any holder of the instrument other than a holder in due course	it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

Modes of negotiation of instrument ?

- (i) A promissory note, bill of exchange or cheque **payable to bearer** is negotiable by the **delivery thereof**.
- (ii) A promissory note, bill of exchange or cheque **payable to order** is negotiable by the holder by **endorsement and delivery thereof**.

Negotiation by delivery [Section 47]

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception : A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Examples :

- (1) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.
- (2) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation by endorsement [Section 48]

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by endorsement and delivery thereof.

Conversion of indorsement in blank into endorsement in full [Section 49]

The holder of a negotiable instrument endorsed in blank may—

- without signing his own name, by writing above the indorser's signature a direction to pay to any other person as endorsee,

convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

Effect of indorsement [Section 50]

The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation, but the indorsement may by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Examples :

B signs the following indorsements on different negotiable instruments payable to bearer,—

- (a) "pay the contents to C only".
- (b) "pay C for my use".
- (c) "pay C on order for the account to B".
- (d) "the within must be credited to C".

These indorsements exclude the right of further negotiation by C.

- (e) "pay C".
- (f) "pay C value in account with the Oriental Bank".
- (g) "pay the contents to C, bring part of the consideration in a certain deed of assignment executed by C to endorser and others".

These indorsements do not exclude the right of further negotiation by C.

Who may negotiate? [Section 51]

Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or endorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, endorse and negotiate the same.

Explanation : Nothing in this section enables a maker or drawer to endorse or negotiate an instrument, unless he is in lawful possession or is holder thereof, or enables a payee or indorsee to endorse or negotiate an instrument, unless he is holder thereof.

Example :

A bill is drawn payable to A or order. A endorses it to B, the endorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

Indorser who excludes his own liability or makes it conditional [Section 52]

The indorser of a negotiable instrument may,

- by express words in the endorsement,
- exclude his own liability thereon, or
- make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.
- Where an indorser so excludes his liability and afterwards becomes the holder of the instrument all intermediates indorsers are liable to him.

Examples :

- (1) The endorser of a negotiable instrument signs his name, adding the words "without recourse". Upon this endorsement he incurs no liability.
- (2) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement, "without recourse", he transfers the instrument to B, and B endorses it to C, who endorses it to A. A is not only reinstated in his former rights, but has the rights of an endorsee against B and C.

Instrument obtained by unlawful means or for unlawful consideration [Section 58]

- When a negotiable instrument has been lost, or
- has been obtained from any maker, acceptor or holder thereof by means of
 - an offence or
 - fraud, or
 - for an unlawful consideration,

no possessor or endorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or endorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument acquired after dishonour or when overdue [Section 59]

The holder of a negotiable instrument, who has acquired it after dishonour, whether by—

- non-acceptance
- or non-payment,
- with notice thereof, or
- after maturity,

has only, as against the other parties, the rights thereon of his transferor.

Accommodation note or bill : Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

Example :

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the

drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but endorsed the bill to A. A's title is subject to the same objection as the drawer's title.

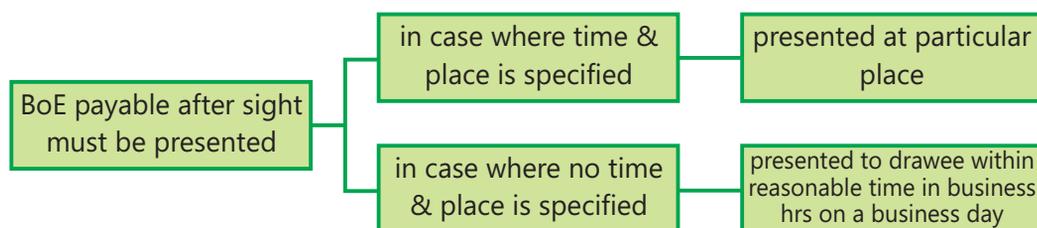
Instrument negotiable till payment or satisfaction [Section 60]

A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.



6. PRESENTMENT

Presentment for acceptance [Section 61]

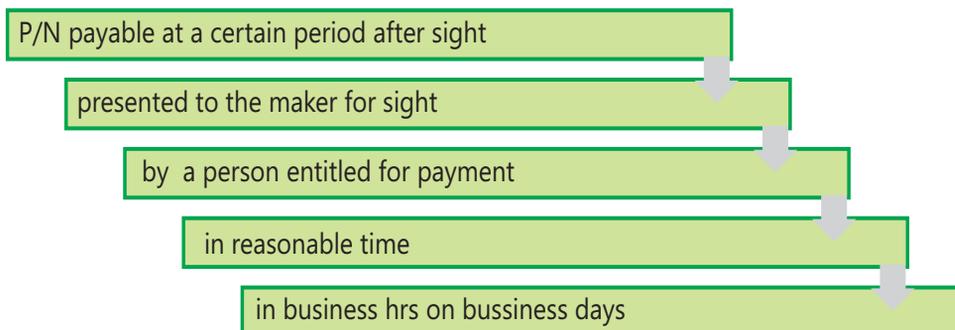


A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to drawee at a particular place, it must be presented at that place, and if at the due- date for presentment he cannot, after reasonable search, be found thereon, the bill is dishonoured.

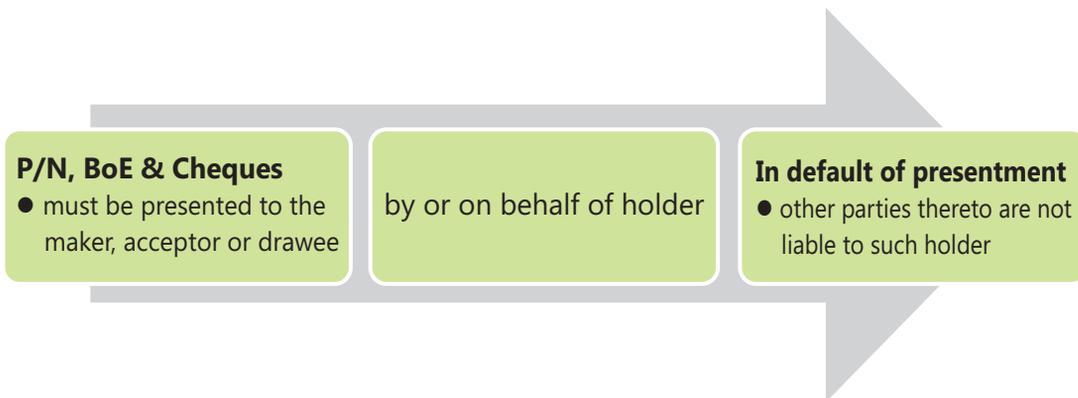
When authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Presentment of promissory note for sight [Section 62]



A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment for payment [Section 64]



Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.

In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Exception : Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for presentment

Presentment for payment must be made during the usual hours of business and, if at a banker's, within banking hours.

Presentment of cheque to charge drawer

Subject to the provisions of section 84, a cheque must, in order to charge the drawer, be presented at the bank on which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

Presentment of instrument payable at demand

Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Excuse for delay in presentment for acceptance or payment [Section 75A]

Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within reasonable time.

When presentment unnecessary

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

- (a) if the maker, drawee or acceptor **intentionally prevents the presentment** of the instrument, or
 - If the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
 - If the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or
 - If the instrument not being payable at any specified place, he cannot after due search be found;
- (b) as against any party sought to be charged therewith, if he has **engaged to pay notwithstanding non-presentment**;
- (c) as against any party if, after maturity, with knowledge that the **instrument has not been presented**—
 - he makes a part payment on account of the amount due on the instrument, or
 - promises to pay the amount due therein whole or in part, or
 - otherwise waives his right to take advantage of any default in presentment for payment;
- (d) as against the drawer, if the **drawer could not suffer damage from the want of such presentment**.

Liability of banker for negligently dealing with bill presented for payment [Section 77]

When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonored, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.



7. PAYMENT AND INTEREST

To whom payment should be made [Section 78]

Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Section 82(c) of the Act provides that the maker, acceptor, or endorser respectively of a negotiable instrument is discharged from liability thereon by payment to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

Interest when rate specified	Interest when no rate specified
<p>Where interest rate is expressly made payable on P/N, BoE—Interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the court directs.</p>	<p>When no rate of interest is specified in the instrument—Interest on the amount due thereon shall be calculated at the rate of 18% per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the court directs.</p> <p>Explanation : When the party charged is the indorser of an instrument dishonoured by non-payment- he is liable to pay interest only from the time that he receives notice of the dishonour.</p>

8. DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

Modes of discharge from liability on Instruments [Section 82]



The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon—

- (a) **By cancellation**—to a holder thereof who cancels such acceptor's or endorser's name with intent to discharge him, and to all parties claiming under such holder,
- (b) **By release**—to a holder thereof who otherwise discharges such maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge;
- (c) **By payment**—to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

Discharge by allowing drawee more than forty-eight hours to accept [Section 83]

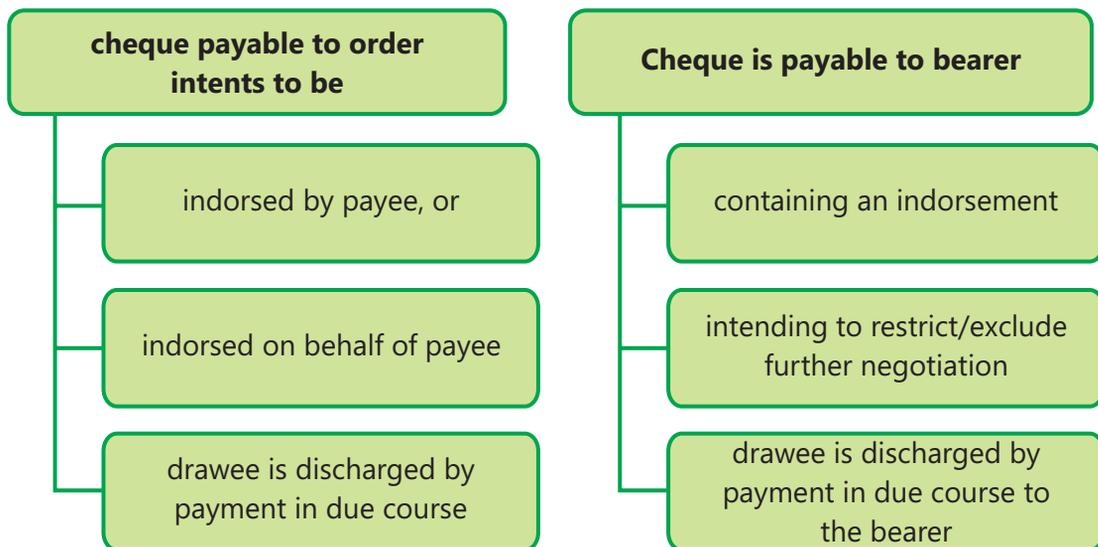
If the holder of a bill of exchange allows the drawee more than forty eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

When cheque not duly presented and drawer damaged thereby [Section 84]

- (1) **Cheque not presented for payment within reasonable time** : Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been if such cheque had been paid.
- (2) **Determination of reasonable time** : In determining what a reasonable time is, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.
- (3) **Remedy to a holder** : The holder of the cheques as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Examples :

- (1) A draws a cheque for ₹ 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.
- (2) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

Cheque payable to order [Section 85]

- (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
- (2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

Example : A cheque is drawn payable to "B or order". It is stolen and the thief forges B's indorsement and endorses it to C. The banker pays the cheque in due course. Can B recover the money from the banker ?

Answer : According to Section 85, the drawee banker is discharged when he pays a cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the endorsement of Mr. B is forged, the banker is protected and he is discharged. The true owner, B, cannot recover the money from the drawee bank.

Effect of material alteration [Section 87]

Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties.

Alteration by indorsee :

And any such alteration, if made by an indorsee, discharges his endorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

Example 1 : A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. As per the above provision of the Negotiable Instruments Act, 1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence adding the words "on demand" does not alter the business effect of the instrument.

Example 2 : State whether the following alterations are material alterations under the Negotiable Instruments Act, 1881?

- (i) The holder of the bill inserts the word "or order" in the bill,
- (ii) The holder of the bearer cheque converts it into account payee cheque,

Answer : The following materials alterations have been authorised by the Act and do not require any authentication :

- (a) filling blanks of inchoate instruments [Section 20]
- (b) Conversion of a blank endorsement into an endorsement in full [Section 49]

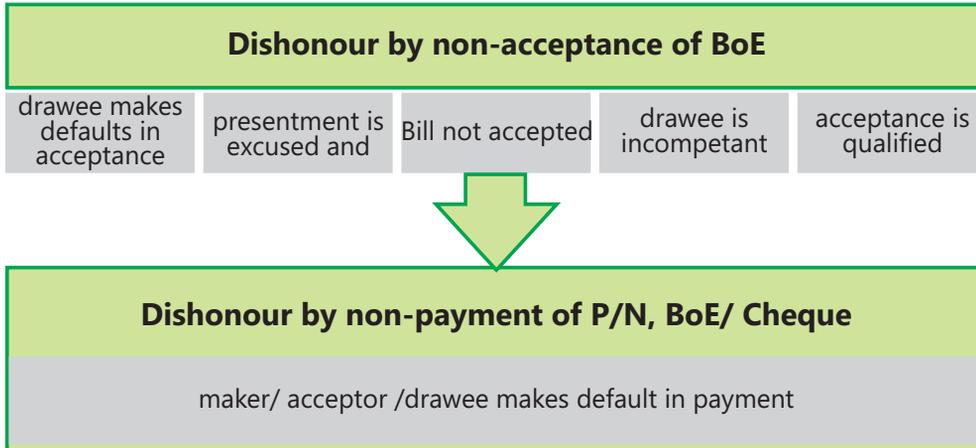
Payment of instrument on which alteration is not apparent [Section 89]

- Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, or
- where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

Payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such a person or banker from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.



9. NOTICE OF DISHONOUR



Dishonour by non-acceptance [Section 91]

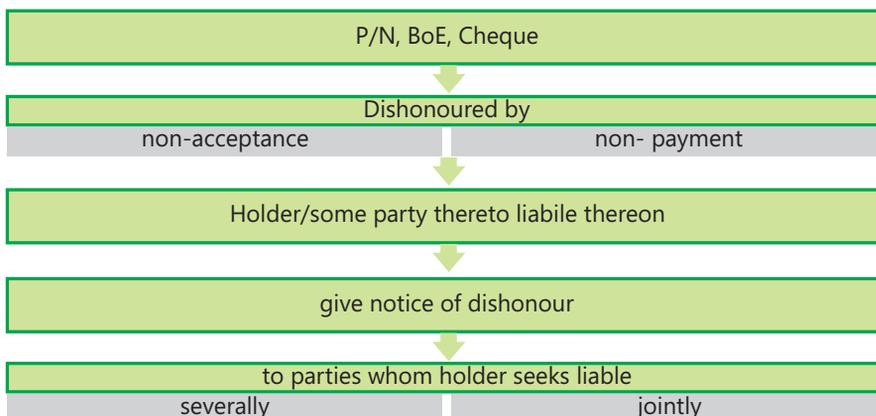
A bill of exchange is said to be dishonoured by non-acceptance when the drawees, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified the bill may be treated as dishonoured.

Dishonour by non-payment [Section 92]

A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given [Section 93]



When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.

When, notice of dishonour is unnecessary [Section 98]

No notice of dishonour is necessary,-

- (a) when it is dispensed with by the party entitled thereto;
- (b) in order to charge the drawer, when he has countermanded payment;
- (c) when the party charged could not suffer damages for want of notice;
- (d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- (e) to charge the drawers, when the acceptor is also a drawer;
- (f) in the case of a promissory note which is not negotiable;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

Examples : Is notice of dishonour necessary in the following cases :

- (1) X having a balance of ₹ 1,000 with his bankers and having no authority to over draw, drew a cheque for ₹ 5,000/-. The cheque was dishonoured when duly presented for repayment.
- (2) X, drawer of a Bill informs Y, the holder of the bill that the bill would be dishonoured on the presentment for payment.

Answer : Notice of dishonour is not necessary in both the cases. [Section 98 of the Negotiable Instruments Act, 1881].



10. NOTING AND PROTEST

Noting [Section 99]

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest [Section 100]

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security : When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Noting	Protest
P/N, BoE, Cheque has been dishonoured by non-acceptance or non-payment—the holder may cause such dishonour to be noted by a notary public upon— <ul style="list-style-type: none"> ● the instrument, or ● upon a paper attached thereto, or ● partly upon each 	P/N or BoE has been dishonoured by non-acceptance or non-payment—the holder may, cause such dishonour to be <ul style="list-style-type: none"> ● noted, and ● certified by a notary public



11. SPECIAL RULES OF EVIDENCE

Presumptions as to negotiable instruments [Section 118]

Presumptions made in relation of	Presumptions dawn
Until the contrary is proved, the following presumption shall be made :	
of consideration	every negotiable instrument was made or drawn for consideration
as to date	every negotiable instrument bearing a date was made or drawn on such date
as to time of acceptance	every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity

as to time of transfer	every transfer of a negotiable instrument was made before its maturity;
as to order of endorsements	endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon
as to stamps	lost promissory note, bill of exchange or cheque was duly stamped
that holder is a holder in due course	the holder of a negotiable instrument is a holder in due course

provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.



12. PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS

Dishonour of cheque for insufficiency, etc., of funds in the accounts [Section 138]

Where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from out of that account
- for the discharge, in whole or in part, of any debt or other liability,
- is returned by the bank unpaid,
- either because of the—
 - amount of money standing to the credit of that account is insufficient to honour the cheque, or
 - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

Such person shall be deemed to have committed an offence and shall, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both :

Provided that this section shall not apply, unless—

(a) Cheque presented within validity period : The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) Demand for the payment through the notice : the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) Failure of drawer to make payment : the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation : For the purpose of this section, “debt or other liability” means a legally enforceable debt or other liability.

Example : X issued a post dated cheque to Y on the account of discharge of its liability. Further, X instructed to the bank to make the stop payment due to unavailability of the adequate amount in the account. Here, in this instance section 138 of the Act is attracted as when a cheque is dishonoured on account of stop payment instructions sent by the drawer to his banker in respect of a post dated cheque irrespective of insufficiency of funds in the account. A post dated cheque is deemed to have been on the date it bears and the three months period for the purposes of section 138 is to be counted from that date. So, X will be liable for dishonour of cheque. Once a cheque is issued by the drawer a presumption under section 139 must follow.

Presumption in favour of holder [Section 139]

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability.

Presumption prescribed here is a “rebuttable presumption” as the provisions clearly provides that the person issuing the cheque is at liberty to prove to the contrary.

Defence which may not be allowed in any prosecution under section 138 [Section 140]

It shall not be a defence in a prosecution of an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

Offences by companies [Section 141]

- (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed—
- was in charge of, and
 - as responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Exception : Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Where a person is nominated as a director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or State Government, as the case may be, he shall not be liable for prosecution under the chapter.

- (2) Where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purpose of this section

- (a) "company" means anybody corporate and includes a firm or other association of individuals; and
- (b) "director", in relating to a firm, means a partner in the firm.

Example : A promoter who has borrowed a loan on behalf of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently, the cheque was dishonoured and the complaint was lodged against him. Is he liable for an offence under section 138 ?

Answer : According to Section 138 of the Negotiable Instruments Act, 1881 where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from/out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable. However, in this case, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was

dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, he has not committed an offence under section 138.

Cognizance of offences [Section 142]

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—
- (a) **Cognizance on written complaint** : no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
 - (b) **Limitation for filing of complaint** : such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;
 Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.
 - (c) **Jurisdiction of court** : no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.
- (2) **Place of Jurisdiction of court for the trial of offence** : The offence under section 138, which deals with the dishonour of cheque, shall be inquired into and tried only by a court within whose local jurisdiction,—
- (a) **if the cheque is delivered for collection through an account**, the branch of the bank where the payee or holder in due course, as the case may be, **maintains the account**, is situated; or
 - (b) **if the cheque is presented for payment by the payee or holder in due course, otherwise through an account**, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

Validation for transfer of pending cases [Section 142A]

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court

having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

The above sub-section deals with respect to filing of subsequent complaints. The payee has filed a complaint against the drawer in a court with the appropriate jurisdiction, all subsequent complaints against that person regarding cheque bouncing will be filed in the same court. This will be irrespective of the mode of presentation of cheque.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.

This sub-section deals with where more than one case filed by the same payee against the same drawer before different courts. If more than one case is filed by the same payee against the same drawer before different courts, the case will be transferred to the court with the appropriate jurisdiction before which the first case was filed.

Power of Court to try cases summarily [Section 143]

(1) **Trial of Offence** : Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials.

In case of summary trial : Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees.

In case where no summary trial can be made : Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) **Speedy Trial :** The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) **Speedy and efficient Disposal :** Every trial under this section shall be conducted as expeditiously as possible and an endeavor shall be made to conclude the trial within six months from the date of filing of the complaint.

Offences to be compoundable [Section 147]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be compoundable.



SUMMARY

- ◆ A promissory note is an unconditional undertaking, written and signed by the maker to pay a certain sum of money only to or to the order of a certain person. It does not include a bank note or currency note.
- ◆ A bill of exchange is an unconditional written order signed by the drawer, directing a certain person to pay a certain sum of money to the specified person or to his order or to the bearer of the bill.
- ◆ A cheque is a bill of exchange drawn on a specified banker and payable only on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.
- ◆ A bearer instrument is one which is expressed to be payable to its bearer or which has last endorsement in blank.
- ◆ An instrument payable to order is the one which is expressed to be payable to a particular person.
- ◆ A negotiable instrument drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be inland instrument.

- ◆ Any instrument which is not an inland instrument is a foreign instrument.
- ◆ When the nature of an instrument is not clear, it is termed as ambiguous instrument. There such an instrument may be treated as either promissory or as a bill of exchange.
- ◆ Inchoate instrument is an instrument that is signed and duly stamped but otherwise wholly or partially blank.
- ◆ "At sight", "on presentment", expressions in reference to promissory note or bill of exchange means on demand. Whereas expression "After sight" in a case of promissory note means after presentment for sight and in reference to bill of exchange means after acceptance/noting/protest for non-acceptance.
- ◆ Maturity is the date of any instrument at which its payment becomes due. Any instruments are at maturity on the third day after the day on which it is expressed to be payable.
- ◆ Negotiation means transfer of a negotiable instrument by one person to another in order to make the transferee the holder of the instrument.
- ◆ Negotiation may be made by delivery or by endorsement and delivery.
- ◆ Parties to an instruments- Every person capable of contracting may bind himself and be bound by the making/drawing/acceptance/indorsement/delivery and negotiation of an instruments. Minor is an exception binding all the parties except himself.
- ◆ An agent can make, accept or indorse a negotiable instrument only if express authority has been granted to him by his principal.
- ◆ A bank under certain conditions may refuse payment of cheque or is bound to dishonour cheque and when the cheque is dishonoured for insufficiency of funds in the account of a customer, it is treated as offence. The guilty may be punished with imprisonment for a term which may extend to two years or with fine of twice the amount of the cheque or with both.
- ◆ Mode of discharge–The instrument is discharged when rights and obligations or claims of all the parties are extinguished.
- ◆ Material Alteration means the alteration in the material part of the instrument resulting in the alteration in the basic parts of the nature and legal effects of the instruments and the liabilities of the parties.
- ◆ An instrument is dishonoured by non-acceptance and non-payment of the instrument when duly presented.

- ◆ Notice of dishonour is served by the holder formally against the parties to the effect that instrument has been dishonoured by non-acceptance or non-payment.
- ◆ Noting is the process of recording the fact and reasons of dishonour of a negotiable instrument by the notary public.
- ◆ Protest is a certificate issued by a notary public attesting the fact of dishonour of a negotiable instrument recorded upon the instrument.
- ◆ Important difference between the two is that noting consists of recording the fact and reasons of dishonour of N.I upon the instrument whereas protest is the certificate as to the fact that instrument has been dishonoured.
- ◆ Payment of the amount due on instruments must be made to the holder with an interest at the specified rate expressly made payable on a promissory note or a bill of exchange. When no rate of interest is specified in the instrument, interest on the amount due shall be calculated at the rate of 18% per annum from the date at which the instrument ought to have been paid until realization of such amount.
- ◆ In respect, to decide the rights of parties on the basis of negotiable instrument, the Court is entitled to make certain presumptions of consideration, as to date, as to time of acceptance, as to time of transfer, as to order of indorsements, as to stamps and that holder is a holder in due course.
- ◆ The compensation payable by any party liable to the holder or any endorser in case of dishonour of an instruments shall be determined by the rules given under Section 117 of the Act.

 **TEST YOUR KNOWLEDGE****Multiple Choice Questions**

1. Person named in the instrument to whom money is directed to be paid—
 - (a) Drawer
 - (b) Acceptor
 - (c) Maker
 - (d) Payee
2. Maker of a bill of exchange is called as—
 - (a) Drawer
 - (b) Drawee
 - (c) Acceptor
 - (d) Payee
3. Days of grace provided to the Instruments at maturity is—
 - (a) 1 day
 - (b) 2 days
 - (c) 3 days
 - (d) 5 days
4. Parties to a negotiable instrument can be discharged from liability by—
 - (a) Cancellation
 - (b) Payment
 - (c) Release
 - (d) All of the above
5. Validity period for the presentment of cheque in bank is—
 - (a) 3 months
 - (b) 6 months
 - (c) 1 year
 - (d) 2 years
6. Offences committed under the Negotiable Instruments Act can be—
 - (a) Compoundable
 - (b) Non compoundable
 - (c) Non compoundable and non-bailable
 - (d) bailable

Answers to MCQs

1. (d)	2. (a)	3. (c)	4. (d)	5. (b)	6. (a)
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Question and Answer

Question 1

Explain the meaning of 'Holder' and 'Holder in due course' of a negotiable instrument. The drawer, 'D' is induced by 'A' to draw a cheque in favour of P, who is an existing person. 'A' instead of sending the cheque to 'P', forgoes his name and pays the cheque into his own bank. Whether 'D' can recover the amount of the cheque from 'A's banker. Decide.

Answer

Meaning of 'Holder' and the 'Holder in due course' of a negotiable instrument:

'Holder': Holder of negotiable instrument means as regards all parties prior to himself, a holder of an instrument for which value has at any time been given.

'Holder in due course': (i) In the case of an instrument payable to bearer means any person who, for consideration became its possessor before the amount of an instrument payable. (ii) In the case of an instrument payable to order, 'holder in due course' means any person who became the payee or endorsee of the instrument before the amount mentioned in it became payable. (iii) He had come to possess the instrument without having sufficient cause to believe that any defect existed in the title of transferor from whom he derived his title.

The problem is based upon the privileges of a 'holder in due course'. Section 42 of the Negotiable Instrument Act, 1881, states that an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due cause claiming under an endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer. In this problem, P is not a fictitious payee and D, the drawer can recover the amount of the cheque from A's bankers

Question 2

Discuss with reasons, whether the following persons can be called as a 'holder' under the Negotiable Instruments Act, 1881 :

- (i) X who obtains a cheque drawn by Y by way of gift.
- (ii) A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.
- (iii) M, who finds a cheque payable to bearer, on the road and retains it.

- (iv) *B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee.*
- (v) *B, who steals a blank cheque of A and forges A's signature.*

Answer

Person to be called as a holder: As per section 8 of the Negotiable Instruments Act, 1881 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.

On applying the above provision in the given cases—

- (i) Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.
- (ii) No, he is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.
- (iii) No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name.
- (iv) No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.
- (v) No, B is not a holder because he is in wrongful possession of the instrument.

Question 3

M drew a cheque amounting to ₹ 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N endorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881?

Answer

No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. (Section 48, the Negotiable Instruments Act, 1881)

Question 4

M owes money to N. Therefore, he makes a promissory note for the amount in favour of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return the half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how a rights of the parties are to be adjusted.

Answer

The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a P/N is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So the claim of N to have the other half of the P/N sent to him is not maintainable. M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.

Question 5

P draws a bill on Q for ₹ 10,000. Q accepts the bill. On maturity the bill was dishonored by non-payment. P files a suit against Q for payment of ₹ 10,000. Q proved that the bill was accepted for value of ₹ 7,000 and as an accommodation to the plaintiff for the balance amount i.e. ₹ 3,000. Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether P would succeed in recovering the whole amount of the bill ?

Answer

As per Section 44 of the Negotiable Instruments Act, 1881, when the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.

On the basis of above provision, P would succeed to recover ₹ 7,000 only from Q and not the whole amount of the bill because it was accepted for value as to ₹ 7,000 only and an accommodation to P for ₹ 3,000.

Question 6

State briefly the rules laid down under the Negotiable Instruments Act for determining the date of maturity of a bill of exchange. Ascertain the date of maturity of a bill payable hundred days after sight and which is presented for sight on 4th May, 2017.

Answer

Calculation of maturity of a Bill of Exchange : The maturity of a bill, not payable on demand, at sight, or on presentment, is at maturity on the third day after the day on which it is expressed to be payable (Section 22, of Negotiable Instruments Act, 1881). Three days are allowed as days of grace. No days of grace are allowed in the case of bill payable on demand, at sight, or presentment.

When a bill is made payable at stated number of months after date, the period stated terminates on the day of the month which corresponds with the day on which the instrument is dated. When it is made payable after a stated number of months after sight the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance. When it is payable a stated number of months after a certain event, the period terminates on the day of the month which corresponds with the day on which the event happens (Section 23).

When a bill is made payable a stated number of months after sight and has been accepted for honour, the period terminates with the day of the month which corresponds with the day on which it was so accepted.

If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month (Section 23).

In calculating the date a bill made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or the day of presentment for acceptance or sight or the day of protest for non-accordance, or the day on which the event happens shall be excluded (Section 24).

Three days of grace are allowed to these instruments after the day on which they are expressed to be payable (Section 22).

When the last day of grace falls on a day which is public holiday, the instrument is due and payable on the next preceding business day (Section 25).

Answer to Problem : In this case the day of presentment for sight is to be excluded i.e. 4th May, 2017. The period of 100 days ends on 12th August, 2017 (May 27 days + June 30 days + July 31 days + August 12 days). Three days of grace are to be added. It falls due on 15th August, 2017 which happens to be a public holiday. As such it will fall due on 14th August, 2000 i.e. the next preceding business day.

Question 7

A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide-

- (i) Whether D can sue the prior parties of the bill, and*
- (ii) Whether the prior parties other than D have any right of action inter se?*

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.

Answer

Problem on Negotiable Instrument made without consideration : Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

- (i)** In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to D with consideration. Therefore, D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration.
- (ii)** As regards to the second part of the problem, the prior parties before D i.e., A, B, and C have no right of action inter se because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

