

CHAPTER 2

THE NEGOTIABLE INSTRUMENTS ACT, 1881

PART I : THEORY

• BACKGROUND AND AIM OF THE ACT

- The Act was introduced on 1st March, 1881.
- The Law in India relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881. It deals with
 - (i) Promissory Notes
 - (ii) Bills of Exchange
 - (iii) Cheque.
- The Act applies to the whole of India and to all persons resident in India, whether foreigners or Indians.
- 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 and shall be deemed to have come into force on the **15th day of June, 2015**.

• MEANING AND CHARACTERISTICS OF NEGOTIABLE INSTRUMENT

Meaning: A Negotiable Instrument is a transferrable written piece of paper creating a right of a person to receive money and a corresponding liability of a person to pay money.

Characteristics:

1. It should be in writing
2. Freely transferable.
3. It should create a right of a person to receive money and a corresponding liability of a person to pay money.
4. Holder's title free from defects. A holder in due course acquires a good title irrespective of any defect in a previous holder's title. A holder in due course is one who receives the instrument: (i) for consideration (ii) without notice as to the defect in the title of the transferor; i.e in good faith and (iii) before maturity
5. A negotiable instrument can be transferred infinitum, i.e., can be transferred any number of times, till its payment.
6. A negotiable instrument is subject to certain presumptions (**Section 118**).
 - 1) **Consideration.** It shall be presumed that every negotiable instrument was made or drawn for consideration, and that every such instrument when it was accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.
 - 2) **Date.** It shall be presumed that every negotiable instrument bearing a date was made or drawn on such date.
 - 3) **Time of acceptance.** It shall be presumed that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity.

- 4) **Transfer.** It shall be presumed that every transfer of the negotiable instrument was made before its maturity.
 - 5) **Order of Indorsement.** It shall be presumed that the indorsements were made in the order in which they appear thereon.
 - 6) **Stamp.** It shall be presumed that an instrument is duly signed and stamped.
- The above presumptions are rebuttable by evidence to the contrary.**

• **PROMISSORY NOTE**

Meaning:	As per Section 4 , An instrument in writing (not being bank note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to a certain person or to the order of a certain person.
Parties to Promissory Note:	<ol style="list-style-type: none"> 1. Maker: The person who makes the promissory Note. He is Debtor who is liable to pay. 2. Payee: The person to whom amount is payable. He is creditor who has a right to receive money.
Essential requirements of a valid promissory note.	<ol style="list-style-type: none"> 1. Written. 2. Promise to pay. However, notice that the use of the word promise is not essential to constitute an instrument as promissory note. 3. Definite and unconditional promise. The promise to pay must not be conditional. Therefore, instruments payable on performance or non performance of a particular act or on the happening or non-happening of an event, are not promissory notes. However, the promise to pay may be subject to a condition, which according to the ordinary experience of mankind, is bound to happen. 4. Certain sum of money. 5. The maker and payee must be certain person. The maker and payee of the instrument must be certain, definite and different persons. A promissory note cannot be made payable to the bearer (Sec. 31 of RBI Act). Only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'. 6. Signature. The promissory note must be signed by the maker, otherwise it is incomplete and ineffective. 7. Promise in money only. 8. Stamping. A promissory note must be properly stamped in accordance with the provisions of the Indian Stamp Act and such stamp must be duly cancelled by maker's signatures or initials or otherwise.

• **BILL OF EXCHANGE**

<p>Meaning:</p>	<p>As per Section 5, An instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money to a certain person or to the order of a certain person or to the bearer of the instrument.</p>
<p>Parties to Bill of Exchange:</p>	<ol style="list-style-type: none"> 1. Drawer: The maker of a bill of exchange is called the drawer. 2. Drawee; The person directed by the drawer to pay is called the 'drawee' 3. Acceptor: The person who accepts the bill of Exchange. Normally acceptor and drawee are same. 4. 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.
<p>Essential requirements of a valid Bill of Exchange.</p>	<ol style="list-style-type: none"> 1. The bill of exchange must be in writing. 2. This order must be unconditional, as the bill is payable at all events. A conditional bill of exchange is invalid. However, the bill may be subject to a condition, which according to the ordinary experience of mankind, is bound to happen. 3. The drawer must sign the instrument.. 4. The drawer, the drawee (acceptor) and the payee are the necessary parties to a bill and are to be specified in the instrument with reasonable certainty. All these three parties may not necessarily be three different persons. One can play the role of two. But there must be two distinct persons in any case. 5. The sum must be certain 6. The medium of payment must be money and money only.

• **CHEQUE**

<p>Meaning: Section 6 defines a cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. Further, the expression includes the electronic image of a truncated cheque and a cheque in the electronic form.</p>
<p>Parties to Cheque:</p> <ol style="list-style-type: none"> 1. Drawer: The person who draws a cheque i.e. makes the cheque. (Debtor) 2. Drawee: The specific bank on whom cheque is drawn. 3. 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.

ACCEPTANCE

Meaning: The acceptance of a bill is the indication by the drawee of his assent to the order of the drawer. **Section 7** states that an acceptance is the signature of the drawee of a bill who has signed his assent upon the bill and delivered it. Thus, an acceptor is the drawee who has signed his assent upon the bill and delivered it to the holder

Essentials of valid Acceptance:	<ol style="list-style-type: none"> 1. In writing, 2. Signed by the drawee or his agent, 3. On bill of exchange, 4. Completed by delivery to the holder <ul style="list-style-type: none"> ▪ Writing the word 'Accepted' is immaterial. ▪ An oral acceptance or writing of the word 'Accepted' without the drawee's signature is not an acceptance.
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Bill can be accepted by following people:

- (a) **Drawee**, i.e., the person directed to pay.
- (b) **Where more than 1 drawees** are specified, then any or all can accept it. Only those who accept are liable to pay.
- (c) **Drawee in case of need:** When in the bill, 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'.
- (d) **An acceptor for honour:** When a bill of exchange has been dishonoured by non-acceptance and any person accepts it for honour of the drawer or of any indorsers, such person is called "an Acceptor for honour". The payment which he makes is known as "payment for honour"
- (e) **Agent** of any of the persons mentioned above.
- (f) **Acceptor by estoppels:** When no drawee has been named in a bill but a person accepts it, he may be estopped from denying his liability as an acceptor.

HOLDER, HOLDER IN DUE COURSE, PAYMENT IN DUE COURSE (Section 8 to 10)

Holder (Section 8)	<p>Holder is not a person who holds the instrument but he is a person who has a right to hold and who is entitled to receive or recover the amount due thereon from the parties thereto.</p> <p>His rights and title are dependent on the transferor</p> <p>He has a right to demand and receive but does not have a right to sue.</p>
Holder in due course (Section 9)	<p>A holder in due course is one who receives the instrument:</p> <ul style="list-style-type: none"> (i) for consideration (ii) without notice as to the defect in the title of the transferor; i.e in good faith and (iii) before maturity. <p>His rights and title are independent on the transferor</p> <p>He has a right to demand and receive and also have a right to sue.</p>
Payment in due course (Section 10)	<p>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.</p>

• **CLASSIFICATION OF INSTRUMENTS**

<p>1. Bearer and Order Instruments:</p>	<p>Bearer Instrument: It is an instrument where the name of the payee is blank or Where the name of payee is specified with the words "or bearer" or Where the last indorsement is blank. Such instrument can be negotiated by mere delivery.</p> <p>Order Instrument: It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or Where the last indorsement is fill Such instrument can be negotiated by indorsement and delivery.</p>
<p>2. Inland and Foreign Instruments : (Section 11 & 12)</p>	<p>Inland Instrument: Any instrument drawn or made in India and Either payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument. Example (i) A promissory note made in Chennai and payable in Delhi. (ii) A bill drawn in Pune on a person resident in Jaipur (although it is stated to be payable in London) The Negotiable Instruments Act is applicable.</p> <p>Foreign Instruments: Instrument which is not an inland instrument.</p>
<p>3. Inchoate and Ambiguous Instruments :</p>	<p>Inchoate Instrument: It means an Instrument that is incomplete in certain respects. (i) The person gives a blank instrument with authority to the holder to complete it with appropriate amount up to the stamp value of the instrument. (ii) Delivery of such a paper is essential. The words "when one person signs and delivers to another in Section 20 are important. (iii) The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course. However, there is a difference in their respective rights. The holder of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor. The holder in due course can, however, recover any amount on such instrument provided it is covered by the stamp affixed on the instrument.</p> <p>Ambiguous Instrument: An instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an Ambiguous instrument. In other words, such an instrument may be construed either as promissory note, or as a bill of exchange. Regarding such instruments, Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly. Thus, after exercising his option, the holder cannot change that it is the other kind of instrument.</p> <p>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</p>

<p>4. Demand and Time Instruments:</p>	<p>Demand Instruments (Section 19): A promissory note or bill of exchange in which no time for payment is mentioned is payable on demand. Bills and notes are payable either on demand or at a fixed future time. Cheques are always payable on demand. A bill or promissory note is also payable on demand when it is expressed to be payable on demand, or "at sight" or "presentment" (Section 21). 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.</p> <hr/> <p>Time instrument:</p> <ol style="list-style-type: none"> 1) Instrument payable after a certain period either in 'x' days or 'x' months (Section 22). 2) 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. 3) 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. 4) 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, 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. 5) 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. 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.
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• **TRANSFER OF INSTRUMENT**

- According to section 14, when a negotiable instrument is transferred to any person with a view to constitute the person holder thereof, the instrument is deemed to have been negotiated.
 Negotiable instruments may be negotiated either by delivery when these are payable to bearer or by indorsement and delivery when these are payable to order.
- **Delivery [Section 46]** The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.
- **Modes of negotiation of instrument?**
 - (i) A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof **(Section 47).**
 - (ii) A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof **(Section 48).**

- **INDORSEMENT OF INSTRUMENT (Section 15)**

- **Meaning:** 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 known as allonge-

he is said to indorse the same and as called the indorser.

The person to whom the instrument is indorsed is called the indorsee.

- **Various Classes / Kinds of Indorsements:**

1. **Indorsement in Blank:** Where the indorser just puts his signature without specifying the indorsee, the indorsement is said to be in blank (Section 16). The effect of such an indorsement is to render the instrument payable to bearer even though originally payable to order (Section 54).

2. **Indorsement in Full:** Where along with indorser's signature, the name of the indorsee is specified, the indorsement is called 'indorsement in full' (Section 16). Thus, where the instrument states, 'Pay X or order' and is signed by A, the payee, it constitutes 'indorsement in full'.

- **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.

- **Who may negotiate? [Section 51]** Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, indorse and negotiate the same.

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

The indorser of a negotiable instrument may,

- ✓ by express words in the indorsement,
- ✓ 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.

- **LIABILITIES OF PARTIES**

- **Capacity to incur liabilities (Section 26):** Regarding liability of a minor, it may be noted that a minor, being incompetent to contract, cannot bind himself by becoming a party to a negotiable instrument. Whether he is the drawer, maker, acceptor or indorser, he is not liable on the instrument. Section 26 categorically excludes minor's liability by stating that a minor binds all parties except himself.

- **Liability of an agent (Section 27 & 28):**

- Every person capable of legally entering into a contract, may make, draw, accept indorse, deliver and negotiate a promissory note, bill of exchange or cheque, himself or through a duly authorised agent.

- A general authority to transact business and to discharge debt does not confer upon an agent the power to indorse bills of exchange so as to bind his principal.
- An agent cannot escape personal liability unless he indicates that he signs as an agent and does not intend to incur personal liability

➤ **Liability of Legal Representative (Section 29):**

A legal representative of a deceased person, who signs his own name on an instrument, is personally liable for the entire amount; but he may expressly limit his liability to the extent of the assets received by him as legal representative.

➤ **Liability of Drawer (Section 30):**

- Usually, the liability of the drawer of a bill or cheque is secondary and conditional (the liability of the acceptor and maker of the bill and drawee of the cheque being primary and unconditional).
- The drawer's liability is conditional, i.e., it arises only in the event of a dishonour by the drawee or acceptor. Once there has been dishonour and the notice of dishonour has been served on the drawer, he is bound to compensate the holder whatever be the state of the account between himself and the drawee or acceptor.

- **Liability of drawee Bank of cheque (Section 31):** Wrongful dishonour of customer's cheque entails exemplary damages against banker and the amount of damages is inversely related to the amount of the cheque dishonoured. Smaller amount of the cheque, higher shall be the damages awarded.

➤ **Liability of drawee of Bill of Exchange/ Maker of Promissory Note (Section 32):**

The maker of a promissory note is bound to pay the amount at maturity.

The liability of the drawee only arises when he accepts the bills. Drawee's liability is primary and unconditional. He is liable for Principal amount along with interest and noting/ protesting charges if any.

➤ **Liability of maker, drawer and acceptor as principals (Sections 37 & 38):**

The maker of a promissory note is liable as the principal debtor. In a bill of exchange, the acceptor acts as a principal debtor and the drawer acts a surety as drawer is liable to pay only if acceptor defaults.

➤ **Nature of surety ship (Section 39):**

The holder of an accepted bill may waive his claim against the acceptor, but at the same time, he may expressly reserve his right to charge the other parties. Under Section 134 of the Indian Contract Act, 1872 the release of the principal debtor has the effect of discharging the surety, but in the case of a bill it is not so. But if the holder does not reserve his right expressly against the other parties, they too will be discharged if he releases the acceptor.

- **Discharge of indorser's liability (Section 40):** Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.
- **Effect of forged indorsement on acceptor's liability (Section 41):** A bill may be accepted before or after indorsement by the payee. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged.
- **Liability of acceptor of a bill drawn in a fictitious name (Section 42):** The acceptor is not relieved from liability by proving that the drawer is fictitious.
- **Liability on an instrument made drawn etc. without consideration (Section 43):** An instrument made, drawn, accepted, indorsed, or transferred without consideration creates no obligation of payment between the parties to the instrument.
- **RIGHTS AND OBLIGATIONS OF PARTIES TO AN INSTRUMENT OBTAINED ILLEGALLY.**
 - **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.
 - **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 indorsee 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 indorsee is a holder thereof in due course.
 - **Instrument acquired after dishonour or when overdue [Section 59]** The negotiable instrument, can be transferred even after dishonour or maturity but the person obtaining it can never become holder in due course.
 - **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.

- **PRESENTMENT**

- **Presentment for acceptance [Section 61]**

Bill of Exchange, be presented to the drawee thereof for 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.

- **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.

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

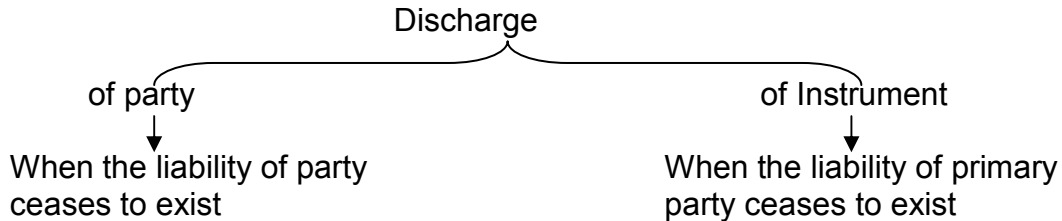
✓ If the instrument not being payable at any specified place, he cannot after due search be found;

(b) if the maker has agreed to pay even without presentment.

(c) if the maker has done the part-payment even without 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, he must compensate the holder for such loss

- **DISCHARGE FROM LIABILITY**



- **Modes of discharge:**

One or more parties to a negotiable instrument may be discharged from liability in either of the following ways :

1. **Sec. 82 - By cancellation, Release or Payment :**
 - By cancellation:** Cancellation of acceptor's name will discharge the instrument and cancellation of any other party will discharge the party.
 - By release:** Release of acceptor will discharge the instrument and release of any other party will discharge the party.
 - By payment:** When the amount due on the instrument is paid by the party primarily liable on the instrument, the instrument is discharged.
2. **Sec. 83 By allowing drawee more than 48 hours:** If the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holiday(s) to consider whether he will accept the same, all previous parties not consenting to such allowance are discharged from liability to such holder.
3. **Sec. 84 By delay in presenting cheques:** If a cheque is not presented within a reasonable time of its issue, and the bank fails and drawer suffers actual damages through such delay, he is discharged from the liability to the holder to the extent of such damage.
4. **Sec. 85. Forgery of Indorser's signature in case of Cheque :** The Bank is discharged by PIDC even if the signature of indorser is forged.
5. **By qualified acceptance:** If the holder of a bill of exchange agrees to accept qualified acceptance, all the previous parties whose consent is not obtained to such acceptance are discharged from liability, unless the holder gives notice thereof and the parties give their assent to such qualified acceptance.
6. **By material alteration.:** Any material alteration of a negotiable instrument renders the same void as against any one 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.
7. **Discharge of Bank:** As per Section 89, bank is discharged by payment in due course in case of alteration not apparent from records.
8. **As per Section 90, when the acceptor of bill of exchange or maker of promissory note becomes holder** on or after maturity, the instrument is discharged.

- **DISHONOUR OF BILL OF EXCHANGE/ PROMISSORY NOTE**

- **Dishonour of bill of exchange by non-acceptance (Section 91):**

In the following circumstances bill shall be considered as dishonoured by non-acceptance:

- 1) When the drawee does not accept it within 48 hours from the time of presentment for acceptance.
- 2) When presentment for acceptance is excused and it remains unaccepted. Presentment for acceptance is excused under the following circumstances:
 - (i) Where the drawee cannot, after reasonable search, be found (Section 61).
 - (ii) Where the drawee is a fictitious person.
 - (iii) Where though presentment is regular, the acceptance is refused on some other ground.
- 3) Where drawee is incompetent to contract, e.g., minor or lunatic.
- 4) Where the acceptance is qualified.
- 5) Where one or more of the several drawees (not being partners) refuse to accept the bill.

- **Dishonour of bill of exchange/ promissory note by non-payment (Section 92):** An instrument is dishonoured by non-payment when the party primarily liable, makes default in payment.

- **Notice of dishonour (Section 93 & 94):**

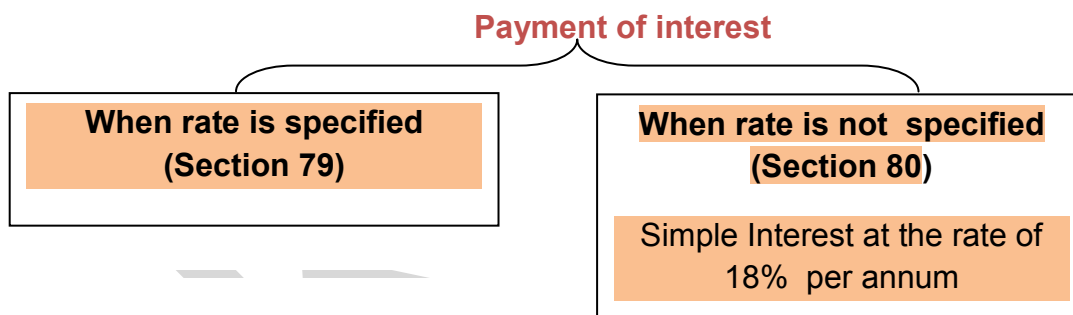
- (i) **By whom notice to be given:** When an instrument is dishonoured either by non-acceptance or by non-payment, the holder thereof or some party thereto who remains liable thereon must give notice of dishonour.
- (ii) **To whom notice is to be given:** Notice must be given to such parties whom the holder proposes to charge with liability severally or jointly, e.g., the drawer and the indorsers. Notice may be given either to the party himself or to his agent, or to his legal representative on his death, or to the official assignee on his insolvency. It is not necessary to give notice to the maker of a note or the drawee or acceptor of a bill or cheque.
- (iii) **Effect of non-service of notice:** If a notice of dishonour is not sent to any prior party who is entitled to such notice within a reasonable time, he is discharged from liability.
- (iv) **Requirements of valid notice:** The holder must inform the party to whom the notice has been given that the instrument has been dishonoured, and that he will be held liable thereon. It must give an exact description of the instrument dishonoured.
- (v) **Mode of service of notice :** The notice, if written, may be given by post at the place of business or at the residence of party for whom it is intended.
- (vi) **Transmission of notice of dishonour by party receiving it (Section 95):** Any party receiving notice of dishonour should communicate the same within a reasonable time to any prior party whom he intends to hold liable in respect of the instrument; but if the prior party receives otherwise, no such communication is necessary.

➤ **Notice of dishonour is not required in the following cases (Section 98):**

1. When there is no intention to make prior party liable.
2. When prior party is discharged.
3. When drawer and drawee are same
4. When drawer is fictitious.
5. When the prior party has signed the indorsement 'without recourse'.
6. When the party entitled to notice cannot, after reasonable search, be found.
7. Where the party liable to give notice is unable, without any fault of its own to give it, e.g., death or serious illness of the holder or his agent or any other accident.
8. When the prior party is incompetent.

PAYMENT AND INTEREST

To whom payment should be made (Section 78): 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. If payment is made to any person other than the holder, the holder can claim payment over again from the maker or acceptor.



NOTING AND PROTESTING

- **Noting:** It is a convenient mode of authenticating the fact that a bill or note has been dishonoured. When a note or a bill has been dishonoured by non-acceptance or nonpayment, the holder causes such dishonour to be noted by a Notary Public. Noting is a minute recorded by a notary public on the dishonoured instrument. When an instrument, say a bill of exchange, is to be noted for dishonour, is taken to Notary Public who presents it once again for acceptance or payment, as the case may be; and if the drawee or acceptor still refuses to accept or pay the bill, it is noted, i.e., a minute is prepared containing the date of dishonour, reason for such dishonour, etc. which is attached to the instrument; and the facts are noted on the instrument.
- **Protest:** When an instrument is dishonoured, the holder may cause the fact not only to be noted, but also to be certified by a Notary Public that the bill has been dishonoured. Such a certificate is referred to as a protest. The Court is bound to recognise a protest. But it may or may not recognise noting. Therefore, any bill or document which has been noted can be protested any time thereafter for taking legal action against the parties.

• DISHONOUR OF CHEQUE

- Sections 138 to 142 provides for criminal penalties in the event of dishonour of cheques for insufficiency of funds.
The drawer, under Sec. 138, may be punished with imprisonment upto 2 years or with a fine up to twice the amount of the cheque or with both. However, in order to attract the aforesaid penalties, following conditions must be satisfied:
 1. The cheque should have been dishonoured due to insufficiency of funds in the account maintained by him with a banker for payment of any amount of money to another person from out of that account.
As per the Case laws:
 - (i) ET & TD Corp. Ltd. V. Ind Technologies & Engrs. P Ltd, in case of stop-payment, it shall be deemed to have been so dishonoured for insufficiency of funds unless stop-payment can be justified.
 - (ii) N.E.P.C. Micon Ltd. V Maguna Leasing Ltd, dishonour due to closure of account has also been held to be dishonoured for insufficiency of funds
 - (iii) Modi Cements Ltd. V Kuchil Kumar Nandi, directing the payee not to present will be deemed to have the same effect
 2. The payment for which the cheque was issued should have been in discharge of a legally enforceable debt or liability in whole or part of it.
 3. The cheque should have been presented within 3 months from the date on which it is drawn.
- **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.
- **Defense 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)**
If the person committing an offence is a company, every person, who at the time the offence was committed and the company shall be jointly liable for the offence.
- **Procedure:**
 1. Cheque is issued by drawer
 2. The payee/holder presents it for payment.
 3. The collecting bank informs payee/holder about dishonour of cheque.
 4. The payee or the holder in due course of the cheque should have given notice demanding payment **within 30 days** from the drawer in receipt of information of dishonour of cheque from the bank. Notice can be served by ordinary post or even telegram.
 5. The drawer is liable only if he fails to make the payment within **15 days** of such notice period.
 6. The payee or holder in due course of the cheque dishonoured should have made a complaint within **one month** of cause of action arising out of Sec. 138.

➤ **Additional points in dishonour of cheque:**

1. Whether the payee or the holder of a cheque can initiate prosecution for an offence under the N. I. Act, for its dishonour for the second time if he had not initiated any prosecution on the first occasion?

No, as by not initiating prosecution for the first time, he has waived his right to sue.

2. Whether 'giving of notice of dishonour itself constitute 'receipt of notice' for constituting offence under Section 138 of the Negotiable Instruments Act, 1881 ?

No, as payee/holder's responsibility is just to give the notice and it is not his responsibility to make sure drawer receives the notice. Hence, even if drawer fails to make payment as a consequence of non-receipt of notice still gives a right to payee/holder to initiate prosecution under Section 138.

3. What is the starting point for 30 days notice?

The 30 days are to be counted from the receipt of information regarding the return of the cheque as unpaid.

4. Where an owner 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?

The amount can be recovered but since he is not the drawer of the cheque, which was dishonoured, and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the owner couldn't be said to have committed the offence under Section 138 of the Act.

➤ **Cognizance of offences [Section 142]**

- (1) Court shall take cognizance of any offence punishable under section 138 only if it is in writing.

Time limit for filing the complaint is 1 month.

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.

➤ **Validation for transfer of pending cases [Section 142A]**

- ✓ All cases of cheque bouncing which were pending in any court, before the Act came into force, will be transferred to a court with the appropriate jurisdiction.
- ✓ 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.
- ✓ 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]**

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.

➤ **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.
