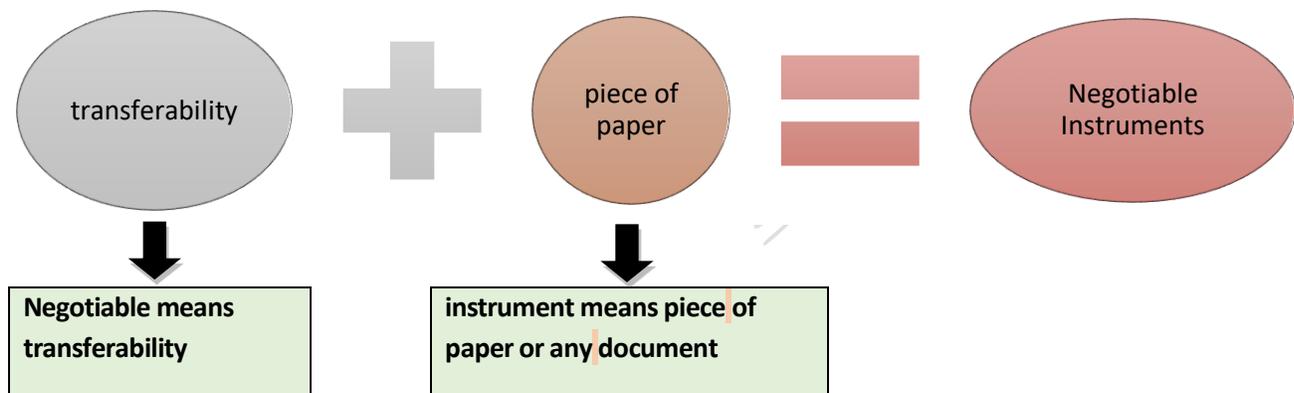


NEGOTIABLE INSTRUMENT ACT, 1881

➤ Introduction –

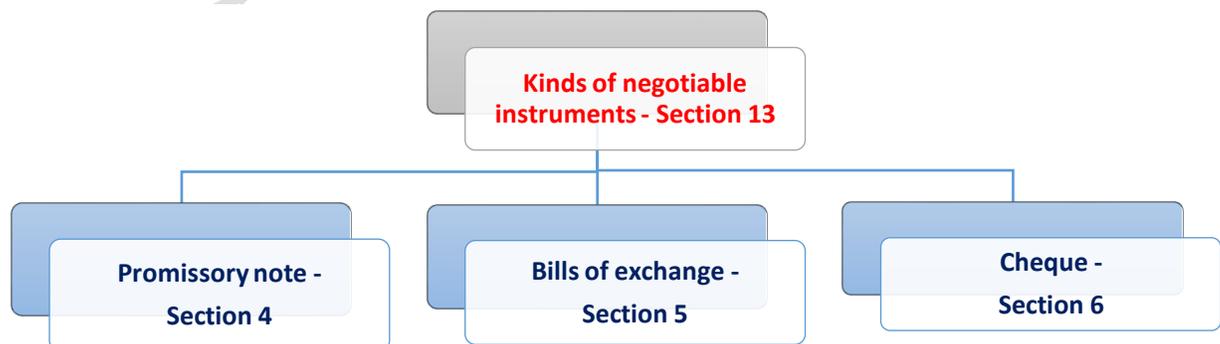
- This Act is enacted to define and amend laws relating to promissory note, bills of exchange and cheque.
- This Act is **applicable to whole of India** including Jammu and Kashmir.
- This act came into force on **1st March 1882**.

➤ Meaning of Negotiable instrument –



• A negotiable instrument is

- actually a **written document and is transferrable**.
- This document specifies **payment to a specific person or the bearer of the instrument** at a specific date.
- **Act does not define 'Negotiable instruments' however section 13 provides for 3 kind of negotiable instrument viz. promissory note, bills of exchange and cheque.**



Features of Negotiable Instruments –

- 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) A holder in due course acquires a good title irrespective of any defect in a previous holder's title.

b) A holder in due course is one who receives the instrument:

- **for consideration;**
- **without notice as to the defect in the title of the transferor; i.e. in good faith and**
- **before maturity**

5) **Transferability –**

A negotiable instrument can be **transferred in infinitum**, i.e., can be transferred any number of times, till its payment.

Presumptions – Section 118

A negotiable instrument is subject to certain **presumptions** (Section 118).

a) 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.

b) Date –

It shall be presumed that every negotiable instrument bearing a date was made or drawn on such date.

c) 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.

d) Transfer –

It shall be presumed that every transfer of the negotiable instrument was made before its maturity.

e) Order of Indorsement –

It shall be presumed that the indorsements were made in the order in which they appear thereon.

f) 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 – Section 4

✚ Meaning –

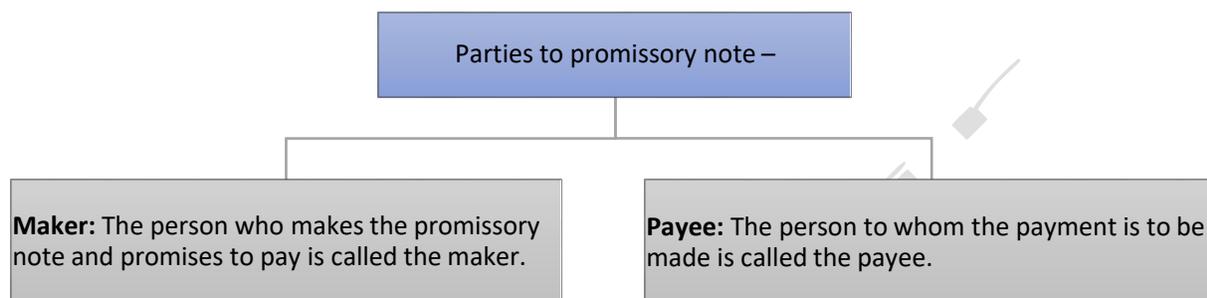
A Promissory Note is a legal financial instrument issued by one party, promising to pay the debt owed to another party



✚ Definition –

“A Promissory note is an instrument in writing 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”.

Note – Bank note or currency note is not a promissory note.



✚ Requisites (Essentials) of a Promissory Note –

- The promissory note must be in writing.
- It **must** contain an undertaking to pay
- There must be an express promise to pay.
- The promise to pay should be unconditional
- The promissory note must be signed by the maker.
- The sum payable must be certain
- The instrument must contain a promise to pay money and money only



Other important points –

- a) The maker and payee must be certain.
- b) Stamping of Promissory Note is essential under The Indian Stamp Act, 1899.
- c) An unstamped promissory note is not admissible in evidence and no suit can be maintained.
- d) It must contain date
- e) The **limitation period** for a promissory note to file a suit is **3 years** from the date of execution or from the date of acknowledgement

➤ Bills of Exchange – Section 5

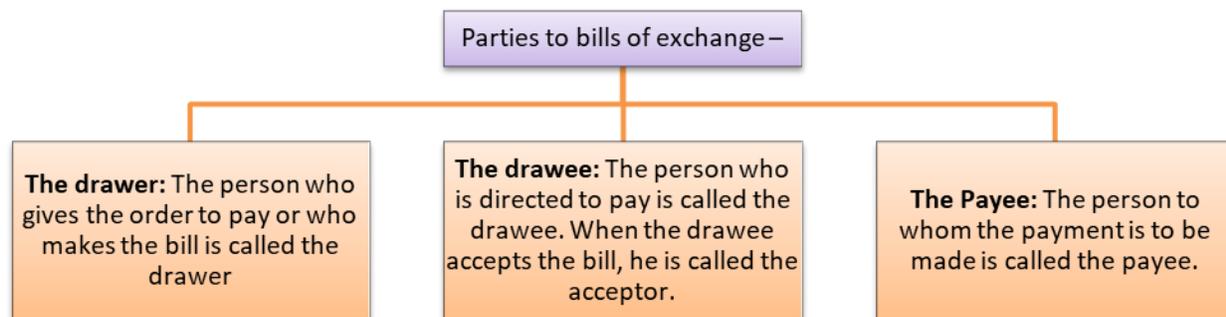
✚ Meaning –

Bill of Exchange can be understood as a written negotiable instrument, that carries an unconditional order to pay a specified sum of money to a person or the holder of the instrument, as directed in the instrument by the maker. The bill of exchange is either payable on demand, or after a specified term.



✚ Definition –

“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”.



✚ Requisites (Essentials) of a Bill of Exchange –

- Parties should be certain
- Every Bill of Exchange must be stamped according to the provisions of The Indian Stamp Act, 1899.
- It should specifically mention the date and place the payment or the place where it is drawn.
- Order to pay. Order in this section does not mean a command, but a request or a direction.
- The time of payment must be indicated in the bill with certainty.
- The amount payable must be certain
- The consideration of a bill of exchange should be paid only by way of money only.



Other important points –

- 1) A bill of Exchange must be drawn unconditionally, though the acceptor, or the indorser may make his liability conditional, direction of payment by the drawer must not be made to depend upon a contingency. Therefore, it is the essence of a bill of exchange that it should be payable at all events and it must appear so on its face
- 2) It is essential that a bill of exchange should point out with certainty the party who enters into the contract imported by its terms. Thus, the signature of the drawee is necessary and there cannot be a bill, even if the instrument is accepted without the signature of the drawee
- 3) It must indicate a drawee who should be called on to accept or pay it. The drawee must be named or otherwise indicated in the bill with reasonable certainty.

Types of Bills –

1) Inland Bills –

- a) Two essential conditions to make an inland instrument are:
 (1) the instrument must have been drawn or made in India; and
 (2) the instrument must be payable in India or the drawee must be in India.

2) Foreign Bills –

All bills which are not inland are deemed to be foreign bills. Normally foreign bills are drawn in sets of three copies.

3) Trade Bills –

A bill drawn and accepted for a genuine trade transaction is termed as a trade bill. When a trader sells goods on credit, he may make use of a bill of exchange.

4) Accommodation Bill –

- a) An accommodation bill is a bill in which a person lends or gives his name to oblige a friend or some person whom he knows.
 b) In other words, a bill which is drawn, accepted or endorsed without consideration is called an accommodation bill.
 c) The party lending his name to oblige the other party is known as the accommodating or accommodation party, and the party so obliged is called the party accommodated.
 d) An accommodation party is not liable on the instrument to the party accommodated because as between them there was no consideration and the instrument was only for help.
 e) But the accommodation party is liable to a holder for value, who takes the accommodation bill for value, though such holder may not be a holder in due course.

Trade Bill	Accommodation Bill
1. Trade bills are drawn and accepted for same consideration.	1. These bills are drawn and accepted without any consideration.
2. These bills are legally enforceable.	2. These bills are not legally enforceable.
3. Trade bills are the acknowledgment of the debt.	3. Accommodation bills are not the acknowledgment of debt.
4. The drawer can sue if bill is dishonored.	4. Drawer cannot sue if bill is dishonored.
5. Loss by way of discounting the bill is borne by drawer only.	5. Loss by way of discounting the bill is shared by drawer and drawee in the ratio of their sharing in the proceeds of the bill.

5) Bills in Sets –

- a) Foreign bills are usually drawn in sets to avoid the danger of loss.
 b) They are drawn in sets of three, each of which is called “Via” and as soon as any one of them is paid, the others become inoperative.

- c) All these parts form one bill and the drawer must sign and deliver all of them to the payee.
- d) The stamp is affixed only on one part and one part is required to be accepted.
- e) But if the drawer mistakenly accepts all the parts of the same bill, he will be liable on each part accepted as if it were a separate bill.

Bank Draft –

When a bill of exchange drawn by one bank on another bank, or by itself on its own branch, and is a negotiable instrument then it is called as bank draft.

Bank Draft	Cheque
A bank draft can be drawn only by a bank on another bank	Cheque can be drawn by any person
It cannot so easily be counter-manded (Cancelled)	It can be counter-manded (Cancelled)
It cannot be made payable to bearer.	It can be made payable to bearer

➤ Cheque – Section 6

✚ Meaning –

Cheque refers to a negotiable instrument that contains an unconditional order to the bank to pay a certain sum mentioned in the instrument, from the drawer's account, to the person to whom it is issued, or to the order of the specified person or the bearer. It also includes truncated cheque and cheque in electronic form.



✚ Definition –

“A cheque is a bill of exchange drawn upon a specified banker and payable on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form”.

Note –

A cheque is a species of a bill of exchange; but it has the following two additional qualifications:

1. It is always drawn on a specified banker, and
2. It is always payable on demand.

✚ Requisites (Essentials) of a Cheque –

- A cheque must be an order in writing.
- It must contain an unconditional order
- A cheque must be signed by the maker
- The amount must be specifically mentioned in figures and words
- A cheque may be drawn payable to order or bearer. There are two kinds of cheques prevailing now a days. They are: a) it may be a bearer or order cheque; and b) it may be a self cheque
- The cheque must contain the date.
- Payee to be certain

Acceptance – Section 7

A) 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

B) Essentials of Valid Acceptance –

- ✓ In writing,
- ✓ Signed by the drawee or his agent,
- ✓ On bill of exchange,
- ✓ Completed by delivery to the holder.
- ✓ Writing the word 'Accepted' is immaterial.
- ✓ An oral acceptance or writing of the word 'Accepted' without the drawee's signature is not an acceptance.

C) Acceptor for Honor –

1) Meaning –

Undertaking by a third party to accept and pay (in part or in full) a bill of exchange that was dishonored, either by non-acceptance or by non-payment by the party on whom it was drawn. **Also called acceptance supra protest.**

2) How acceptance for honor should be made –

A person desiring to accept the bill for honor must declare in writing that he accepts under protest the protested bill for the honor of the drawer or a particular endorser whom he names.

3) Rights and liabilities of acceptor for honor –

- a) He binds himself to pay the amount mentioned in the bill if drawee fails to pay.
- b) Liability of acceptor for honor is conditional and it arise only when the drawee makes the default to pay.
- c) He may recover all the losses and damages from the drawee.

Holder – Section 8

- 1) The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name –
 - a) to the possession thereof; **and**
 - b) to receive or recover the amount due thereon from the parties thereto.
- 2) His rights and title are dependent on the transferor. He has a right to demand and receive but does not have a right to sue.

Note –

- ✚ It is not every person in possession of the instrument who is called a holder.
- ✚ To be a holder, the person must be named in the instrument as the payee, or the endorsee, or he must be the bearer thereof.
- ✚ A person who has obtained possession of an instrument by theft, or under a forged endorsement, is not a holder, as he is not entitled to recover the instrument
- ✚ An agent holding an instrument for his principal is not a holder although he may receive its payment.
- ✚ The holder implies de jure (holder in law) holder and not de facto (holder in fact) holder.

Holder in Due Course – Section 9

A holder in due course is one who receives the instrument:

- a) for consideration;
- b) without notice as to the defect in the title of the transferor; i.e. in good faith; and
- c) before maturity.

Note –

- a) **His rights and title are independent on the transferor.**
- b) **He has a right to demand and receive and also have a right to sue.**

Payment in Due Course – Section 10

- a) Payment in due course refers to a payment in keeping with the evident tenor of the instrument, in good faith & without negligence to any person in possession thereof.
- b) **A payment will be regarded as a payment in due course if:**
 - Payment is done as per **apparent tenor** of instrument
 - It is **made in good faith** & without negligence
 - It is **made to the person who possesses the instrument** who is entitled as holder to obtain payment;
 - **Payment is made in money & money only.**

Classification of Negotiable Instruments –

A) Bearer Instruments –

- a) There are two important conditions for negotiable instruments to become payable to bearers.
 - 1) parties to the transactions must express it to be so payable; or
 - 2) The only endorsement for it should be an endorsement in blank.
- b) A person who is a holder of a bearer instrument can obtain the payment of the instrument.

B) Order Instruments –

- a) They are payable when the instruments expressly state them to be so.
- b) They may be payable to order only to a specific person.
- c) There should be no prohibition on their transferability.

C) Inland Instruments –

- a) An inland instrument is one which is either:
 - 1) drawn and made payable in India, or
 - 2) drawn in India upon some persons resident , even though it is made payable in a foreign country

D) Foreign Instruments –

- a) Every instrument that is not inland automatically becomes a foreign instrument.
- b) These instruments are drawn in a foreign country but may be payable within or outside India.
- c) it must be drawn in India and made payable outside India and drawn on a person resident outside India.

E) Demand Instruments –

- a) Negotiable instruments in which no time is mentioned is called as demand instruments.

F) Time Instruments –

- a) Time instruments carry a fixed future date for [payment](#).
- b) Time instruments are payable at a fixed date in the future.

G) Ambiguous Instruments –

- a) An ambiguous instrument is basically one that may be either a bill or a note for its holder.
- b) Under such circumstances, the holder of such instruments may treat them either as bills of exchange or as promissory notes.
- c) For example, sometimes the drawee may be a fictitious person or he may be incompetent to contract.

H) Incomplete instruments –

- a) Incomplete instruments lack certain essential requirements of typical negotiable instruments.
- b) In such cases, the holder of the instrument has the authority to complete it up to the amount mentioned therein.
- c) This, in turn, results in the creation of legally binding negotiable instrument payable by law.
- d) Not only the first holder but also any subsequent holder who procures such instruments can complete them.

When the amount stated in words and figures are different – 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.

Maturity – Section 22 23 and 24

A) Meaning of Maturity –

The maturity of a promissory note or bill of exchange is the date at which it falls due.

B) Days of grace –

- a) Every promissory note or bill of exchange 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.
- b) All instruments except for the instrument payable on demand are entitled for **3 days grace** period.

Note –

- 1) No grace period is allowed in the following cases –
 - A cheque
 - A bill or note payable 'at sight' or 'on presentment' or 'on demand', in which no time is mentioned
- 2) Where the instrument is payable on installment then each installment is entitled for 3 days grace period.

C) Calculation of days of maturity –

- Where a negotiable instrument is payable on specified date then it shall become payable on that specified date + 3 days of grace.

- Where a negotiable instrument is payable on a stated number of days after date or after sight or after happening of certain event then it shall become payable on –
 - ✓ The date on which the negotiable instrument is drawn + 3 days of grace.
 - ✓ The date on which negotiable instrument is presented for sight + 3 days of grace.
 - ✓ The date on which the event happens + 3 days of grace.
- Where a negotiable instrument is payable on a stated number of months after date or after sight or after happening of certain event then it shall become payable on –
 - ✓ The corresponding day of relevant month (The date on which the negotiable instrument is drawn) + 3 days of grace.
 - ✓ The corresponding day of relevant month (The date on which negotiable instrument is presented for sight) + 3 days of grace.
 - ✓ The corresponding day of relevant month (The date on which the event happens) + 3 days of grace.

Examples –

1. A negotiable instrument dated 31st January, 2020, is made payable at one months after date. The instrument is at maturity on the third day after the 28th February, 2020, i.e. on 3rd March, 2020.
2. A negotiable instrument dated 30th August, 2020, is made payable three months after date. The instrument is at maturity on 3rd December, 2020.
3. A negotiable instrument dated the 31st August, 2020, is made payable three months after date. The instrument is at maturity on 3rd December, 2020.

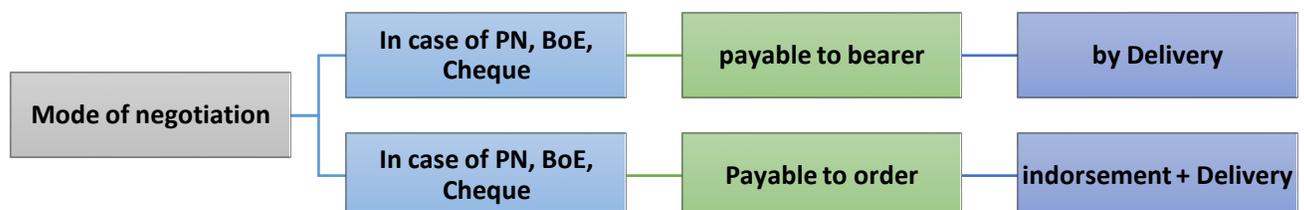
- If the last day of grace is a public holiday, then the instrument will be due on preceding business day – **Section 25**
- If the day of maturity is an emergency or unforeseen holiday, then the maturity day will be the following business day.

Negotiation (Transfer) of negotiable instruments –

A) Meaning of Negotiation –

When the instrument is transferred from one person to another with a view to make the other person as holder then the instrument is deemed to have been negotiated.

B) Modes of Negotiation –



C) Negotiation Back –

- 1) Where an endorser negotiates an instrument and again becomes its holder, the instrument is said to be negotiated back to that endorser and none of the intermediary endorsees are then liable to him.

Example –

Raju, the holder of a bill endorses it to Shyam, Shyam endorses to Babu Bhai, and Babu Bhai to Anuradha, and endorses it again to Raju. Raju, being a holder in due course of the bill by second endorsement by Anuradha, can recover the amount thereof from Shyam, Babu Bhai, or Anuradha and himself being a prior party is liable to all of them. Therefore, Raju having been relegated by the second endorsement to his original position, cannot sue Shyam, Babu Bhai and Anuradha.

- 2) Where an endorser so excludes his liability and afterwards becomes the holder of the instrument, all the intermediate endorsers are liable to him.

Example –

An illustration will make the point clear. Raju is the payee of a negotiable instrument. He endorses the instrument 'sans recourse' to Shyam, Shyam endorses to Babu Bhai, Babu Bhai to Anuradha, and Anuradha again endorses it to Raju. In this case, Raju is not only reinstated in his former rights but has the right of an endorsee against Shyam, Babu Bhai and Anuradha.

Delivery – Section 46

The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery which may be actual or constructive.

What is Endorsement –

A) Meaning of Endorsement –

- a) Endorsement means signing at the back of the instrument for the purpose of negotiation.
- b) The act of the signing a cheque, for the purpose of transferring to the someone else, is called the endorsement of Cheque.
- c) If no space is left on the instrument then the Endorsement may be made on a separate slip to be attached to the instrument.

B) Definition of Endorsement –

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 (attached) thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to endorse the same, and is called the “endorser”.

C) Kinds of Endorsement –

(a) Endorsement in Blank / General –

An endorsement is said to be blank or general when the endorser puts his signature only on the instrument and does not write the name of anyone to whom or to whose order the payment is to be made.

(b) Endorsement in Full / Special –

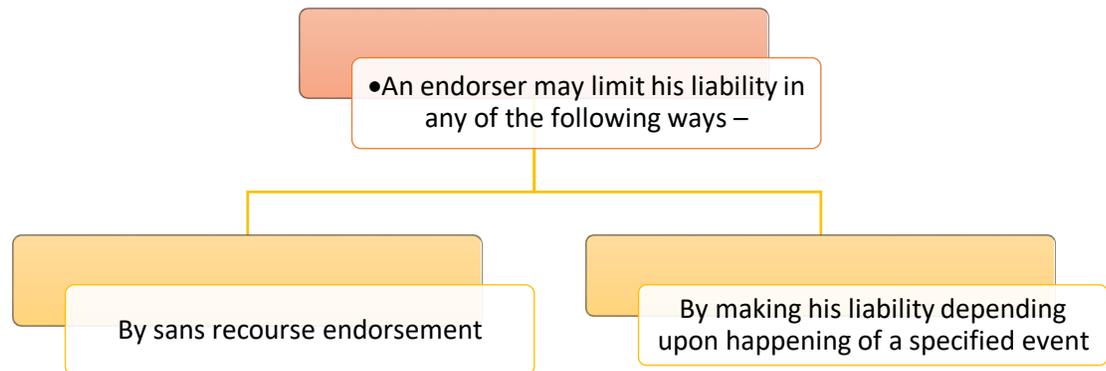
- An endorsement is 'special' or in 'full' if the endorser, in addition to his signature also mention the name of the person to whom or to whose order the payment is to be made.

- There is direction added by endorser to the person specified called the endorsee, of the instrument who now becomes its payee entitled to sue for the money due on the instrument.

- **Partial Endorsement** – Instrument which transfers the amount mentioned in the instrument partially and not fully is called as partial endorsement.
- As per **section 56 is invalid under law.**

(c) Conditional Endorsement –

- An endorsement is conditional or qualified which limits or negatives the liability of the endorser.



(d) Restrictive Endorsement –

- Restrictive endorsement seeks to put an end the principal characteristics of a Negotiable Instrument and seals its further negotiability.
- This may sound a little unusual, but the endorsee is very much within his rights if he so signs that its subsequent transfer is restricted.
- This prevents the risk of unauthorized person obtaining payment through fraud or **forgery** and the drawer losing his money.

(e) Endorsement Sans Recourse –

- Sans Recourse which means without recourse or reference.
- As such a when the property in a negotiable instrument is transferred sans recourse, the endorser, negatives his liability and excludes himself from responsibility to all subsequent endorsees.
- It is one of the commonest forms of qualified endorsement and virtually prohibits negotiation since the endorser says in effect.

Who may negotiate instrument – Section 51

Every sole maker, drawer, payee or endorsee, or all of several joint makers, drawers, payees or endorsees, of a negotiable instrument may, indorse and negotiate the same.

Instrument obtained by unlawful means or 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 in due course.

Liabilities of Parties –

A) 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 endorser, he is not liable on the instrument. Section 26 categorically excludes minor's liability by stating that a minor binds all parties except himself.

B) Liability of an agent –

- 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 authorized 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

C) Liability of Legal Representative –

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.

D) Liability of Drawer:

- 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 is primary and unconditional.
- The drawer's liability is conditional, i.e., it arises only in the event of a dishonor by the drawee or acceptor.
- Once there has been dishonor and the notice of dishonor has been given to the drawer, he is liable to compensate the holder whatever be the state of the account between himself and the drawee or acceptor.

E) Liability of drawee Bank of cheque –

Wrongful dishonor of customer's cheque entails exemplary damages against banker and the amount of damages is inversely related to the amount of the cheque dishonored.

F) Liability of drawee of Bill of Exchange/ Maker of Promissory Note –

- 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.

G) Liability of maker, drawer and acceptor as principals –

- a) The maker of a promissory note is liable as the principal debtor.
- b) 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.

H) Effect of forged indorsement on acceptor's liability –

- a) A bill may be accepted before or after indorsement by the payee.
- b) An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged.

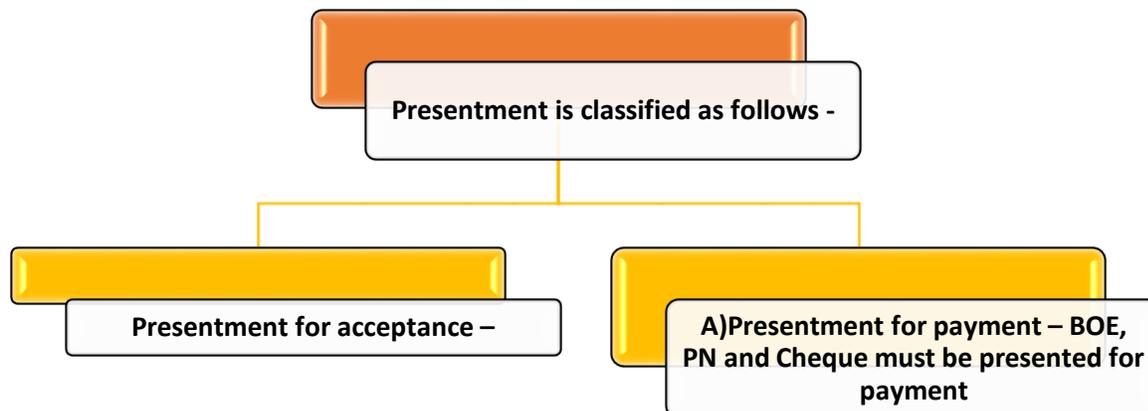
I) Liability of acceptor of a bill drawn in a fictitious name –

The acceptor is not relieved from liability by proving that the drawer is fictitious.

J) Liability on an instrument made drawn etc. without consideration –

An instrument made, drawn, accepted, indorsed, or transferred without consideration creates no obligation of payment between the parties to the instrument.

Presentment – Section 61 to section 67



A) Presentment for acceptance –

- a) Only Bills of exchange requires presentment for acceptance.
- b) Bill of exchange should be presented within a reasonable time, on business day and during business hours to the drawee for acceptance.
- c) Following bills must be presented for acceptance –
 - 1) A bill payable after sight – Presentment is necessary in order to fix maturity of the bills
 - 2) Express condition – A bill in which there is an express condition shall be presented for acceptance before it is presented for payment.
- d) In case it is not presented for acceptance the bill is dishonored due to non-acceptance and no party is liable.

B) Bills of exchange should be presented to whom for acceptance?

The following are the persons to whom a bill of exchange should be presented –

- a) The drawee or his agent

- b) If there are many drawees, bill must be presented to all of them.
- c) The legal representatives of the drawee if drawee is dead.
- d) The official receiver or assignee of insolvent drawee.
- e) To a drawee in case of need, if there is any
- f) The acceptor for honour.

C) Drawee's time for deliberation –

Holder of the bills of exchange should allow **48 hours** to the drawee for accepting the bill of exchange.

D) Presentment for payment –

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

E) Hours for presentment –

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

When presentment unnecessary –

Presentment for payment is unnecessary, and the instrument is dishonored at the due date for presentment, in any of the following cases:

- 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;
- if the maker has agreed to pay even without presentment.
- if the maker has done the part-payment even without presentment.

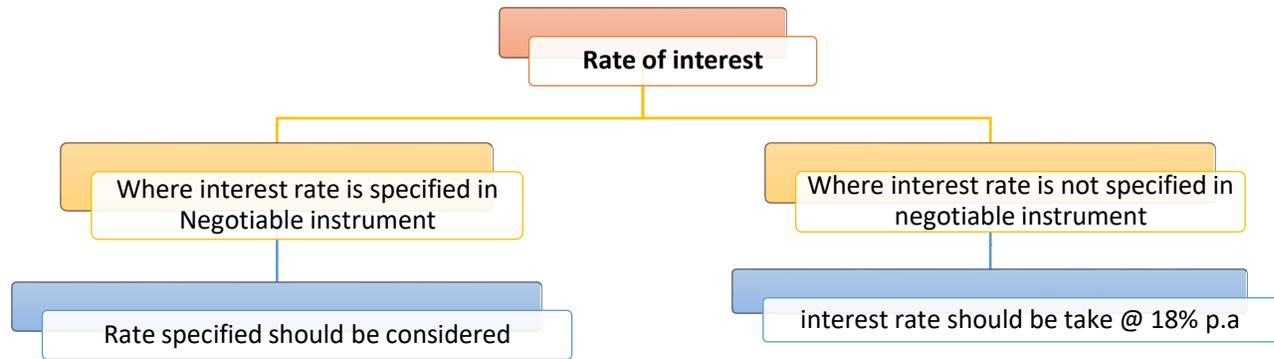
Presentment for acceptance is unnecessary in the following cases –

- Where the drawee cannot be found after reasonable search.
- Where drawee is a fictitious person.
- Where although the presentment is irregular, acceptance has been refused on some other ground.
- Where drawee is incompetent to contract, e.g., minor or lunatic.
- Where one or more of the several drawees (not being partners) refuse to accept the bill.

Payment and interest –

- A) To whom payment should be made?

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.



Discharge from Liability

Meaning –

Discharge from liability implies when the liability of the parties ceases to exist. Following are the different modes of discharge of instrument.

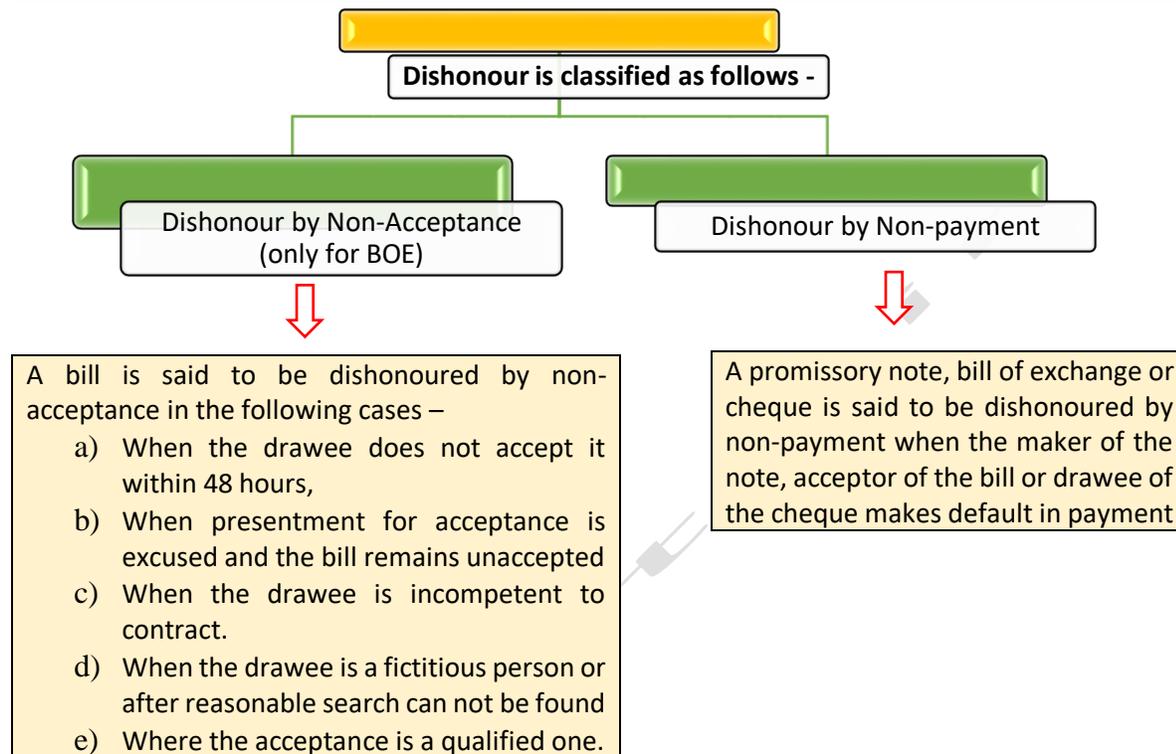
Modes of discharge:

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

- 1) **By cancellation, Release or Payment:**
 - a) **By cancellation:** Cancellation of acceptor's name will discharge the instrument and cancellation of any other party will discharge the party.
 - b) **By release:** Release of acceptor will discharge the instrument and release of any other party will discharge the party.
 - c) **By payment:** When the amount due on the instrument is paid by the party primarily liable on the instrument, the instrument is discharged.
- 2) **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) **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) **Forgery of Endorser's signature in case of Cheque:** The Bank is discharged by PIDC even if the signature of endorser 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 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. Again, it may be noted that alteration should be material and immaterial alterations will not affect the instrument and will not discharge any liability.

- 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 –



Dishonor of bill of exchange/ promissory note by non-payment – Section 92

An instrument is dishonored by non-payment when the party primarily liable, makes default in payment.

Notice of dishonor (Section 93 & 94):

- ❖ **By whom notice to be given:** When an instrument is dishonored either by non-acceptance or by non-payment, the holder thereof or some party thereto who remains liable thereon must give notice of dishonor.
- ❖ **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 endorsers. 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.
- ❖ **Effect of non-service of notice:** If a notice of dishonor is not sent to any prior party who is entitled to such notice within a reasonable time, he is discharged from liability.

- ❖ **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.

Notice of dishonor is not required in the following cases:

- When there is no intention to make prior party liable.
- When prior party is discharged.
- When drawer and drawee are same
- When drawer is fictitious.
- When the prior party has signed the indorsement 'without recourse'.
- When the party entitled to notice cannot, after reasonable search, be found.
- 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.
- When the prior party is incompetent.

Noting – Section 99

- When a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment, the holder may cause such dishonor 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 dishonor, and must specify the date of dishonor, the reason, if any, assigned for such dishonor, or, if the instrument has not been expressly dishonored, the reason why the holder treats it as dishonored, and the notary's charges.

Protest – Section 100

When a promissory note or bill of exchange has been dishonored by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonor 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, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Protest of foreign bills – Section 104

Foreign bills of exchange must be protested for dishonor when such protest is required by the law of the place where they are drawn.

➤ **Crossing a cheque –**

A) Meaning of crossing a cheque –

- ✚ **Crossing** a cheque refers to drawing **two parallel transverse lines** on the cheque on the corner of the cheque.
- ✚ by crossing the cheque the drawer instruct the banker to not to pay it over the counter but only credit to the account of the person named therein.
- ✚ It means the banker should pay the money only through banker.
- ✚ It adds to the security and thus ensures payment to the payee or to his order

- ✚ The crossing of cheque had developed gradually as a means of protection against misusing of cheques.
- ✚ **Payment is made to payee's banker** only, and not directly to the person presenting it at the counter. This ensures that payment is made to the actual payee.

General Crossing



B) Who can cross a cheque?

- ✚ The drawer of a cheque
- ✚ The holder of a cheque –
 - Where a cheque is issued uncrossed it may be crossed by the holder generally or specially
- ✚ The banker in whose favour the cheque has been crossed specially may again cross it specially in favour of another banker. The later bank in such a case acts as the agent of the former.

C) Object of Crossing –

- to give protection and safeguard to the owner of the cheque
- to prevent fraud
- to prevent misutiisation of cheque and detect the fraud

D) Kinds of crossing –

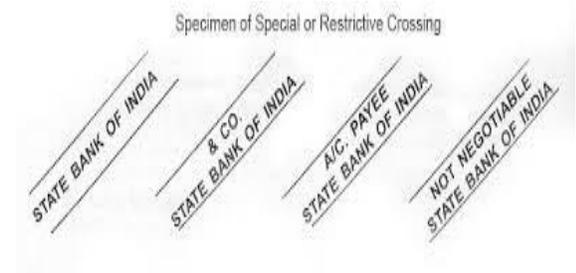
1) General crossing – Section 123

- **Meaning –**
 - ✚ Two parallel transverse lines are drawn on the face of the cheque, generally, on the top left corner of the cheque
 - ✚ Holder or payee cannot get the payment at the counter but through the bank only
 - ✚ Including the name of the banker is not essential, hence, the amount can be **encashed by any banker**
 - ✚ The words, “& Company”, “Not Negotiable”, “A/C. Payee” may or may not be written
 - ✚ It can be converted into Special Crossing.
- **Effect of General Crossing –**
 - ✚ the banker on whom it is drawn shall only pay to a banker.
 - ✚ this type of cheque cannot be paid at counter.
 - ✚ The payment should be made through an account only
 - ✚ General crossing gives protection and avoids fraudulent withdrawals.
 - ✚ It is the liability of the paying banker to verify proper payment in proper account.
 - ✚ The banker is answerable to his customer, if he pays the money to a third person without the direction of his customer

2) Special Crossing – Section 124

- **Meaning –**
 - ✚ It is also known as Restricted Crossing
 - ✚ Two transverse lines are not necessary to be drawn
 - ✚ Name of the banker is added across the face of the cheque

- ✚ The Name of the Banker may or may not carry the abbreviated word, ‘& Co.’, ‘Account payee’ or ‘Not Negotiable’
- ✚ Payment can be made **only through the bank mentioned** in the Crossing.
- ✚ Specially Crossed Cheques can never be converted to General Crossing.



▪ **Effect of Special Crossing –**

- ✚ It prevents the fraudulent transactions
- ✚ It is direction to the paying banker to pay the amount to the account holder of that bank, but not to others.
- ✚ If a cheque specially crossed on a particular bank, and if such cheque is presented in another bank, the paying bank should refuse the payment.
- ✚ Special crossing gives more protection than general crossing.

3) Account Payee Crossing –

▪ **Meaning –**

- ✚ It has developed in the trade and in common to use these terms on the left side of the cheque between the two transverse lines.
- ✚ However, there is no law mentioned about this type of crossing
- ✚ The terms mean that the amount should not be paid at counter but should be credited into the account of the payee only.
- ✚ However, the meaning of other crossings is also the same.
- ✚ This type of crossing only gives additional protection to the cheque.

▪ **Effect of Account Payee Crossing –**

- ✚ It is only in the form of direction to the receiving bank that the drawer desires to pay the particular cheque into bank which keeps the account of the payee.
- ✚ The collecting banker should credit the cheque only to the mentioned account of the payee.
- ✚ If the banker credits the cheque to another’s account and not to the account of the payee, the banker shall be held responsible for his negligence, and shall be held liable to pay the compensation.

4) Not Negotiable Crossing – Section 130

▪ **Meaning –**

- ✚ A person taking a cheque crossed generally or specially, bearing in either case the words not negotiable shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.
- ✚ It gives more protection than General Crossing and Special Crossing
- ✚ It is a warning upon the paying and collecting bankers. Both of them should be very careful in the transaction of this type of cheques.

Note –

The words “Not Negotiable” do not mean “not transferable”.

- **Objective –**

- ✚ The true owner is protected by this type of crossing more perfectly.
- ✚ If it is stolen, the finder cannot cash it so easily. The good title cannot be passed to him.
- ✚ He will be compelled to return it to the true owner.
- ✚ The owner's right is preserved safely against any subsequent holder.

- **Effects –**

- ✚ It gives more protection and safe to the holder of the cheque.
- ✚ A third person cannot cash it so easily.
- ✚ It can be transferred like any other cheque.
- ✚ If the banker is negligent and transfers the amount of that cheque to another account, he will be held responsible and he will be liable to make the compensation to the sufferer.

Crossing after issue.

- ✓ Where a cheque is uncrossed, the holder may cross it generally or specially.
- ✓ Where a cheque is crossed generally, the holder may cross it specially.
- ✓ Where a cheque is crossed generally, or specially, the holder may add the words "not negotiable".
- ✓ Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection

When Banker may Refuse Payment –

In the following cases the banker may refuse to pay a customer's cheque:

- a) When the cheque is post-dated.
- b) When the banker has no sufficient funds of the drawer with him and there is no communication between the bank and the customer to honour the cheque.
- c) When the cheque is of doubtful legality.
- d) When the cheque is not duly presented, e.g., it is presented after banking hours
- e) When the cheque on the face of it is irregular, ambiguous or otherwise materially altered.
- f) When the cheque is presented at a branch where the customer has no account.
- g) When some persons have joint account and the cheque is not signed jointly by all or by the survivors of them.
- h) When the cheque has been allowed to become stale, i.e., it has not been presented within 3 months of the date mentioned on it.

When Banker must Refuse Payment –

In the following cases the banker must refuse to honour cheques issued by the customer –

- a) When a customer countermands payment i.e., where or when a customer, after issuing a cheque issues instructions not to honour it, the banker must not pay it.
- b) When the banker receives notice of customer's death.
- c) When customer has been adjudged an insolvent.
- d) When the banker receives notice of customer's insanity.

- e) When an order of the Court, prohibits payment.
- f) When the customer has given notice of assignment of the credit balance of his account.
- g) When the holder's title is defective and the banker comes to know of it.
- h) When the customer has given notice for closing his account.

Protection of liability of the paying banker –

- **Where a cheque payable to order** purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
- **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 endorsement whether in full or in blank appearing, thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.
- **Payment of cheque crossed generally** – Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.
- **Payment of cheque crossed specially** - Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.
- **Payment in due course of crossed cheque. –**
Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.
- **Payment of crossed cheque out of due course. –**
Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.
- **Non-liability of banker receiving payment of cheque.– Section 131**
A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment
In order to avail such protection, the banker needs to prove the following –
 - The banker has received the payment of crossed cheque.
 - That the collection was made by the bank on behalf of the customer.
 - That the collecting bank must have acted in in good faith.

Dishonour of Cheque –

- 1) Sections **138 to 142 deals with dishonor of cheques and** provides for criminal penalties in the event of dishonor of cheques for insufficiency of funds.
- 2) **Penalty for dishonour of cheque –**

The drawer, under Section 138, may be punished with **imprisonment up to 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:

- ✓ The **cheque should have been dishonored 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.
- ✓ 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.
- ✓ The cheque should have been **presented within 3 months** from the date on which it is drawn.

Presumption in favor of holder - Section 139

It shall be presumed that the holder of a cheque received the cheque for the discharge of any debt or other liability.

Defense which may not be allowed in any prosecution under section 138 - Section 140

It shall not be a defense 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 dishonored on presentment because of insufficiency of funds

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 to be followed before charging penalty –

- Cheque is issued by drawer
- The payee/holder presents it for payment.
- The collecting bank informs payee/holder about dishonor of cheque.
- 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 dishonor of cheque from the bank.
- Notice can be served by ordinary post or even telegram.
- The drawer is liable only if he fails to make the payment within 15 days of such notice period.
- The payee or holder in due course of the cheque dishonored should have made a complaint within one month of cause of action arising out of Sec. 138.

Cognizance of offences – Section 142

A) Filing case –

- 1) Court shall take cognizance of any offence punishable under section 138 only if it is in writing.
- 2) Time limit for filing the complaint is **1 month**.
- 3) 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.

B) Place of Jurisdiction of court for the trial of offence:

The offence under section 138, which deals with the dishonor 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.

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.

Power to direct interim compensation – Section 143A

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—
 - a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
 - b) in any other case, upon framing of charge.
2. The interim compensation under sub-section (1) **shall not exceed 20%** of the amount of the cheque.
3. The interim compensation **shall be paid within 60 days** from the date of the order or within such further period not exceeding **30 days** as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
4. If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, **within 60 days** from the date of the order, or within such further period not exceeding **30 days** as may be directed by the Court on sufficient cause being shown by the complainant.

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.

Power of Appellate Court to order payment pending appeal against conviction – Section 148

- 1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

- 2) The amount mentioned above shall be deposited **within 60 days** from the date of the order, or within such further period not exceeding **30 days** as may be directed by the Court on sufficient cause being shown by the appellant.
- 3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the Court on sufficient cause being shown by the complainant

Hundis –

A) Meaning –

- 1) Hundis are negotiable instruments written in an oriental language.
- 2) They are sometimes bills of exchange and sometimes promissory notes, and are not covered under the Negotiable Instruments Act, 1881.
- 3) They are governed by the customs and usages in the locality but if custom is silent on the point in dispute before the Court, this Act applies to the hundis.

B) Types of Hundis –

Types	Description
Shah Jog Hundi	“Shah” means a respectable and responsible person or a man of worth in the bazar. Shah Jog Hundi means a hundi which is payable only to a respectable holder, as opposed to a hundi payable to bearer. In other words the drawee before paying the same has to satisfy himself that the payee is a ‘SHAH’.
Jokhmi Hundi	A “jokhmi” hundi is always drawn on or against goods shipped on the vessel mentioned in the hundi. It implies a condition that money will be paid only in the event of arrival of the goods against which the hundi is drawn. It is in the nature of policy of insurance. The difference, however, is that the money is paid before hand and is to be recovered if the ship arrives safely
Jawabee Hundi	According to Macpherson, “A person desirous of making a remittance writes to the payee and delivers the letter to a banker, who either endorses it on to any of his correspondents near the payee’s place of residence, or negotiates its transfer. On the arrival, the letter is forwarded to the payee, who attends and gives his receipt in the form of an answer to the letter which is forwarded by the same channel of the drawer or the order.” Therefore, this is a form of hundi which is used for remitting money from one place to another.

Nam jog Hundi	It is a hundi payable to the party named in the bill or his order. The name of the payee is specifically inserted in the hundi. It can also be negotiated like a bill of exchange. Its alteration into a Shah Jog hundi is a material alteration and renders it void.
Darshani Hundi	This is a hundi payable at sight. It is freely negotiable and the price is regulated by demand and supply. They are payable on demand and must be presented for payment within a reasonable time after they are received by the holder.
Miadi Hundi	This is otherwise called muddati hundi, that is, a hundi payable after a specified period of time. Usually money is advanced against these hundis by shroffs after deducting the advance for the period in advance. There are other forms of hundis also like.
Dhani Jog Hundi	A hundi which is payable to "dhani" i.e., the owner.
Firman Jog Hundi	which is payable to order if can be negotiated by endorsement and delivery

National Electronic Funds Transfer (NEFT)

- 1) National Electronic Fund Transfer (**NEFT**) is a nation-wide payments system that allows the transfer of funds from one bank's account to another.
- 2) Under this Scheme, individuals, firms and corporates can electronically transfer funds from any bank branch to any individual, firm or corporate having an account with any other bank branch in the country participating in the Scheme
- 3) NEFT is generally for transactions with smaller amount.
- 4) NEFT is an electronic fund transfer system that operates on a Deferred Net Settlement (DNS) basis which settles transactions in batches.
- 5) In DNS, the settlement takes place with all transactions received till the particular cutoff time.

Real Time Gross Settlement (RTGS) –

- Real Time Gross Settlement, abbreviated as RTGS systems are specialist funds transfer systems where the transfer of money or securities takes place from one bank to any other bank on a "real-time" and on a "gross" basis
- It is a safe and secure system for funds transfer.
- Real-time gross settlement is generally employed for large-value interbank funds transfers