

Ch-7

## The Negotiable Instrument Act, 1881

### \* Negotiable Instrument:

⇒ Every document which entitles a person to a sum of money and which is transferable by delivery or by endorsement and delivery, is entitled to be called a negotiable instrument.

⇒ Therefore an instrument may be negotiable either by

i) Statute (PN, BOE, Cheques)

ii) Usage (Kudi, bearer debentures, share warrants, dividend warrants, delivery orders and railway receipts)  
"In India"

### \* Characteristics:

1. In writing

2. Signed

3. Freely transferable

4. Title free from defects

5. Can be transferred any no. of times

6. Unconditional promise or order to pay money

≠ Certainty of sum payable, time of payment & payee.

8. Delivery.

\* Promissory Note (P/N) Meaning:

• An instrument in writing (not being a bank note or a currency note) containing

⇒ an unconditional undertaking signed by maker

⇒ to pay a certain sum of money only to a certain person;

⇒ or the order of a certain person; or the bearer of the instrument.

\* Characteristics:

a) In Writing

b) Express promise to pay

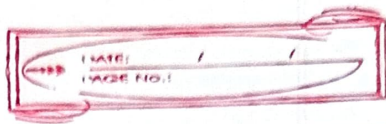
c) Definite and unconditional promise

d) Signed by maker

e) Promise to pay money only

f) Promise to pay a certain sum





g) Payee must be certain

h) Stamped.

\* Bills of Exchange (BOE) Meaning:

• 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 a certain person;

⇒ On the order of a certain person; or the bearer on demand of the instrument.

\* Note: BOE cannot be made payable to bearer on demand.

\* Characteristics:

a) In Writing

b) Express order to pay

c) Definite and unconditional

d) Signed by drawer

e) Order to pay money only

- f) Order to pay a certain sum
- g) Drawer, Drawee & Payee must be certain
- h) Stamped

\* Cheque [Sec. 6]:

- A Cheque is a bill of exchange
  - ⇒ drawn on a specified banker and
  - ⇒ not expressed to be payable otherwise than on demand (i.e., it is always payable on demand) and it includes
    - "the electronic image of truncated cheque" and
    - 'a cheque in electronic form'

\* Characteristics:

- ⇒ All the essentials of a BOE
- ⇒ Drawn on a specified banker
- ⇒ Payable on demand
- A cheque does not
  - a) Stamping ; or
  - b) Acceptance



\* Classification:

- **Bearer Instrument:**  
Expressed to be payable to bearer or the last endorsement is in blank.
- **Order Instrument:**  
Payable to a particular person or order and which does not restrict its further transfer.
- **Inland Instrument:**  
Drawn in India + (Payable in India or Drawn on any person resident in India)
- **Foreign Instrument:**  
Which is not an Inland Instrument.
- **Inchoate Instrument:**  
Incomplete Instrument in certain respects.
- **Ambiguous Instrument:**  
Which either be treated as P/N or BOE. (Once holder exercises his option, he is bound by it.)

\* Presentment for acceptance (Only for BOE):-

- BOE payable after sight must:

Must be presented within a reasonable time  $t$  in business hours on a business day. (NOTE: 48 hours, excluding public holidays, are given to drawee for acceptance).

□ In default of such presentment:  
no party liable thereto

□ If BOE is directed to drawee at a particular date:  
must be presented at that place

⇒ If drawee not found after reasonable search,  
BOE is dishonored

\* Presentment of ~~Pro~~ Promissory Note for Sight:-

- P/N payable at a certain period after sight:

⇒ Must be presented within a reasonable time  $t$  in business hours on a business day

• In default of such presentment:

⇒ no party liable thereto



\* Rules regarding presentment for payment (P/N, BOE, CH)

i) To Whom:

Maker (P/N), Acceptor (BOE), Drawee (CH)

ii) If default in presentment:

No party liable thereto

iii) Exception:

If P/N is payable on demand and is not payable at a specified place, no presentment is necessary.

iv) Time:

During usual business hours

v) If instrument payable after date or sight:

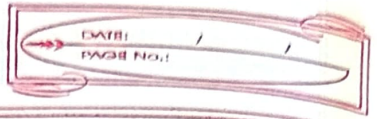
Must be presented for payment at maturity.

vi) P/N payable by instalments:

Must be presented for payment on 3<sup>rd</sup> day after date fixed for payment of each instalment.

vii) Instrument payable at specified place:

Must be presented for payment at that place.



viii) Where no exclusive place specified:  
Must be presented for payment at the place of business (if any) or at the usual residence.

ix) No known place of business or residence:  
Presentation may be made to him in person wherever he can be found.

x) Instrument payable on demand:  
Must be presented for payment within a reasonable time after it is received by the holder.

=> NOTE: Delay in presentation for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder.

\* When presentation unnecessary:  
(NI is dishonoured on due date)

1. Maker, drawee or acceptor prevents the presentation.
2. Payable at business places & that's closed on business day during usual business hours.
3. Payable at specified place & liable party doesn't attend place.



4. Not payable at specified place & liable party not found after due search.

5. Liable party engaged to pay not withstanding non-presentment.

6. Liable party makes part payment.

7. Liable party waives off his right to take advantage.

8. If drawer could not suffer damage from want of such presentment.

\* Rules as to Compensation (Sec. 117):

⇒ In case of dishonour of NI, holder can claim,

1. Amounts due on NI

2. Expenses incurred in presenting, noting & protesting

3. Interest 18% p.a. from due date of payment to date of realization.

• NOTE: In case of foreign currency, current rate of exchange.

DATE: / /  
PAGE NO.:

\* Dishonour of Cheques for Insufficiency of Funds in the Accounts: [Sec. 138 to 142]

⇒ Debt - Cheque was issued to discharge a legally enforceable debt.

⇒ Reason for dishonour - Insufficiency of funds

⇒ Presentment of cheque - Within 3 months

⇒ Demand made from drawer - Within 30 days of dishonour

⇒ Default by drawer to pay - Within 15 days of demand made