

# CA FOUNDATION

Cheque ←  
BOE ←  
PN ←

Kyun - To make payments or promise of payments valid

Kab - 1881

Kaha - Whole of India

## LAW

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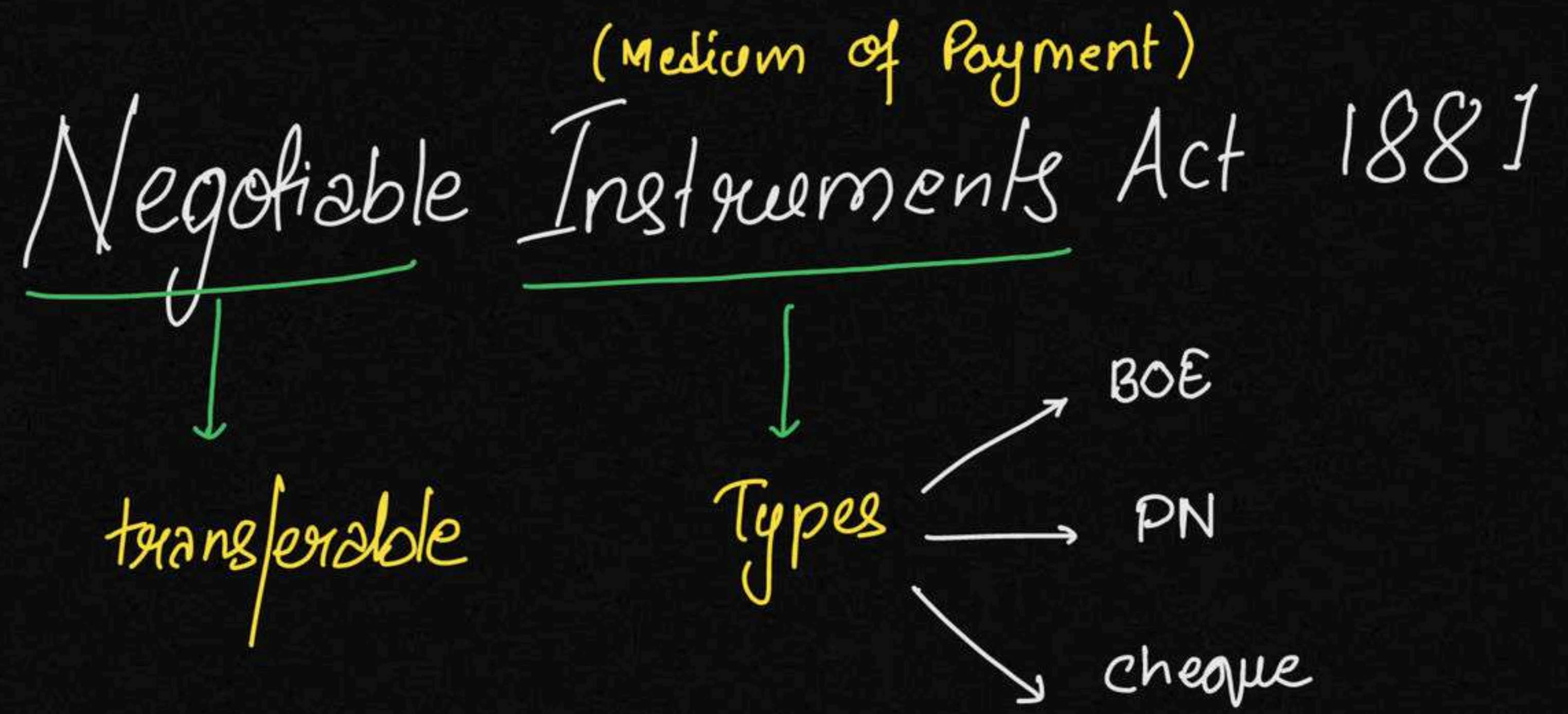
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Country - Central Bank

India Central Bank — RBI Act 1934

RBI Body 1st April 1935

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Exempted from NI Act 1881

↓  
RBI & Currency do not follow Negotiable  
Instrument

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ICAI new Syllabus 22nd June 2023 (09)

↓  
Applicable from - 1st July 2023

example:

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## Negotiable Instruments

- The Act does not cover Reserve Bank of India Act 1934

- This means currency which has features of Negotiable Instruments is Not covered under this Act.

- Applicable from 1<sup>st</sup> March 1882

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Only the following three are Negotiable Instruments

Covered by this act.

- Promissory Note
- Bills of Exchange
- Cheque

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Negotiable Instruments means any instrument which is **freely transferable** from one person to another **by delivery** or indorsement (writing on back of any instrument) and delivery.

Section 13

Promissory Note

Bill of Exchange

Cheque

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When is a Negotiable instrument on order

- ① It is written to be payable at order.
- ② It is at order but does not deny its transferability (example in case of Cheque "indorsement and delivery" is required for negotiation)

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When is the Negotiable Instrument bearer

- ① When it is specified that it is a bearer instrument
- ② The negotiation of a bearer instrument can happen just by delivery

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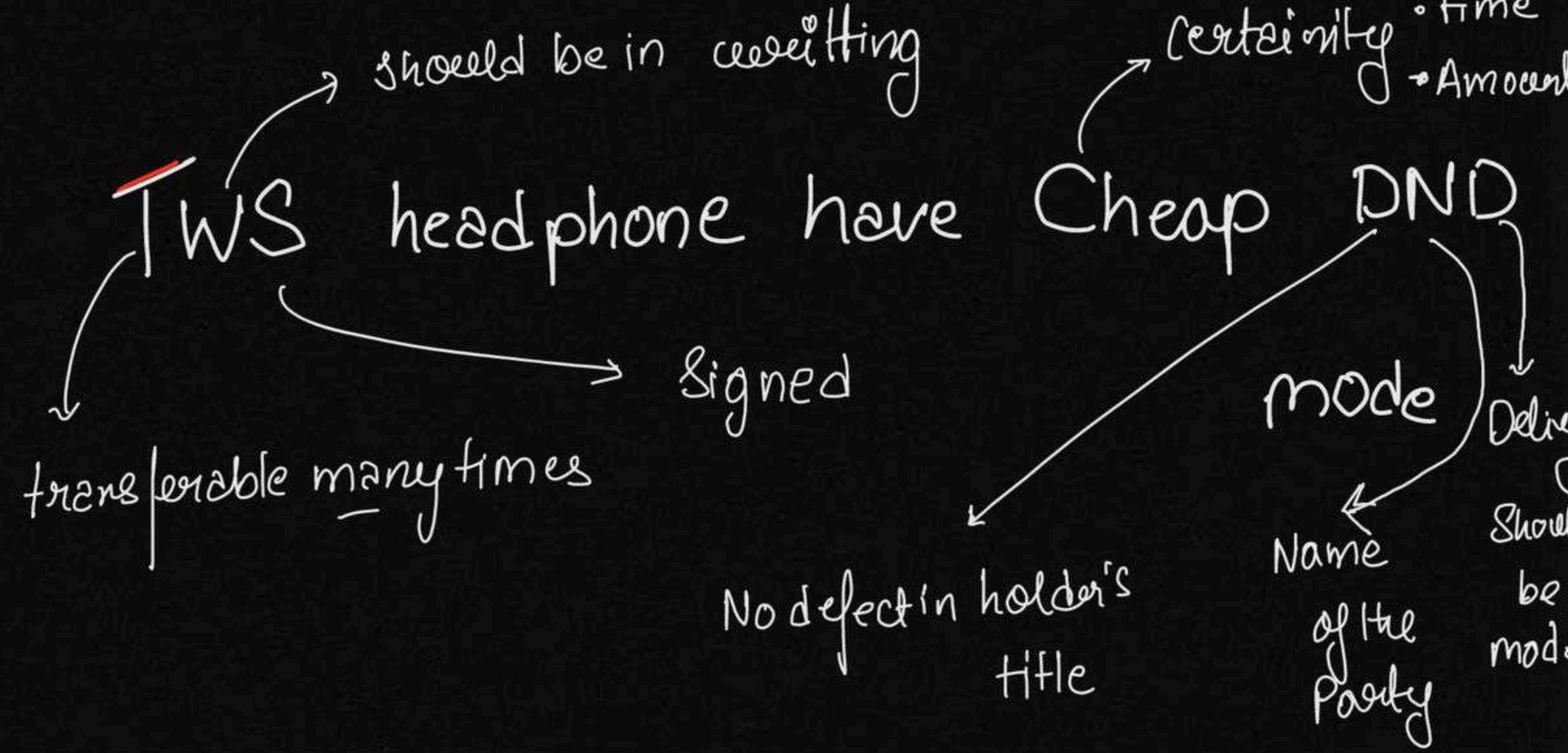


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## Characteristics



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Promissory Note (Section 4)

It is an instrument in writing containing an unconditional undertaking signed by the maker, to pay money only to the order of a person or bearer of <sup>eg. emi that payment is not subject to any condition</sup> instrument \*

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Note: In India Promissory Note which is  
bearer can ONLY be issued by  
RBI ie. in form of currency  
notes.

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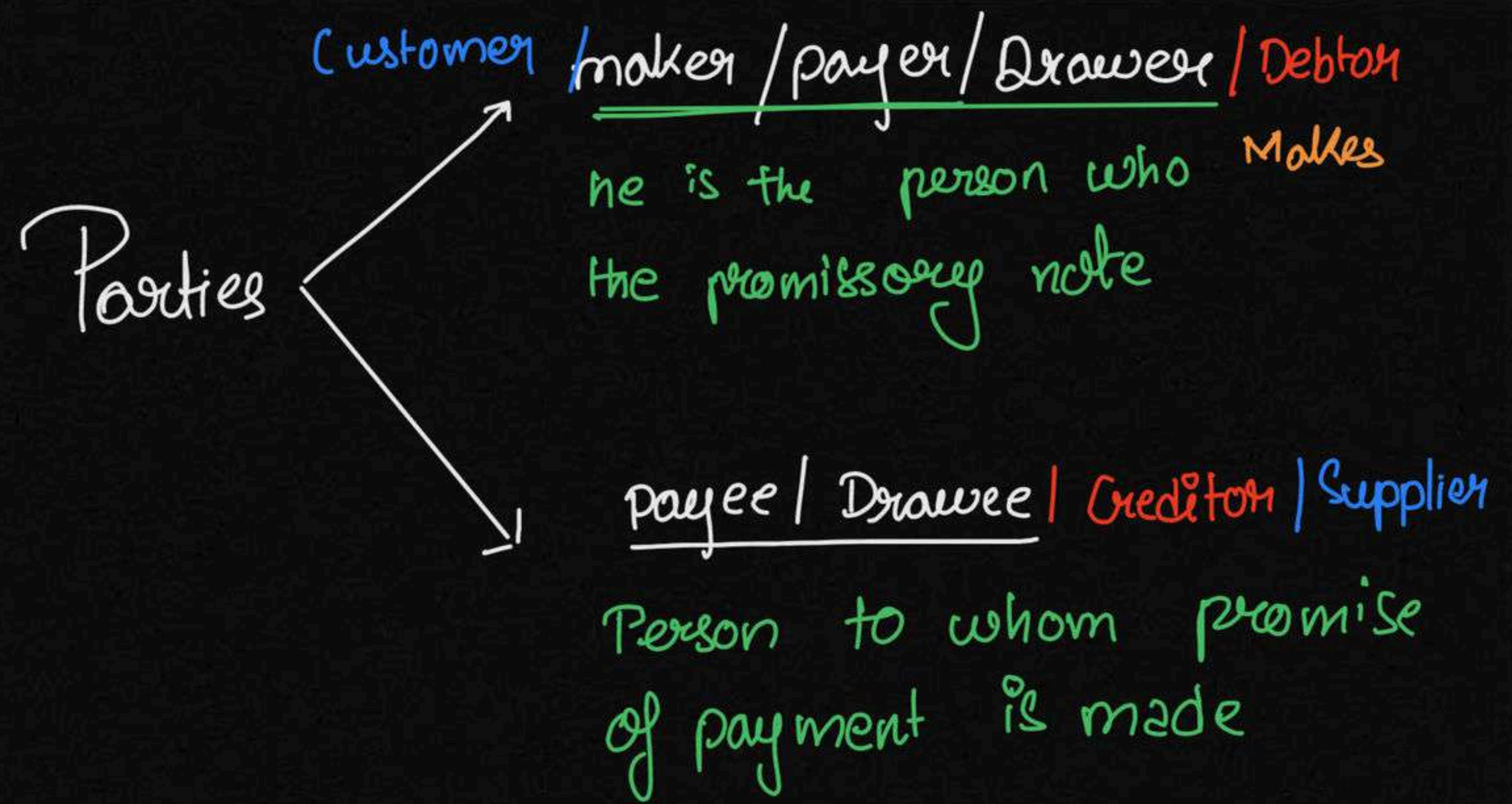
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Instrument

Time Instrument

which is payable only on due date i.e. maturity date.

Based on

when

can

they

be

ENCASHED

On

demand

where the amount is payable to the payee on his demand.

eg. Cheque in Bank

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## Section 5 - Bills of Exchange (BOE)

A BOE is an instrument in writing which is an unconditional order to pay money and money only to a certain person or to an order of a person or bearer of the instrument.

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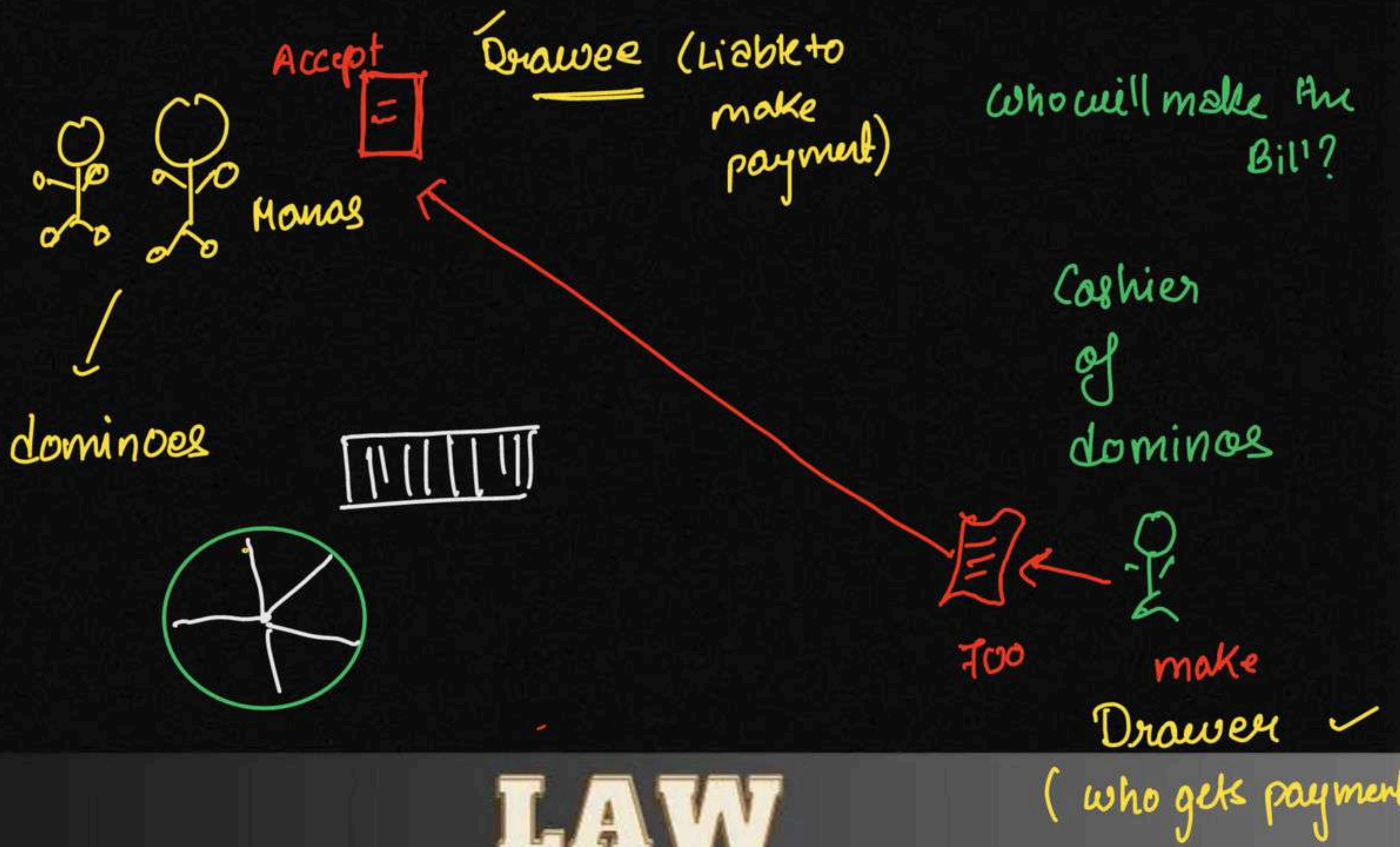
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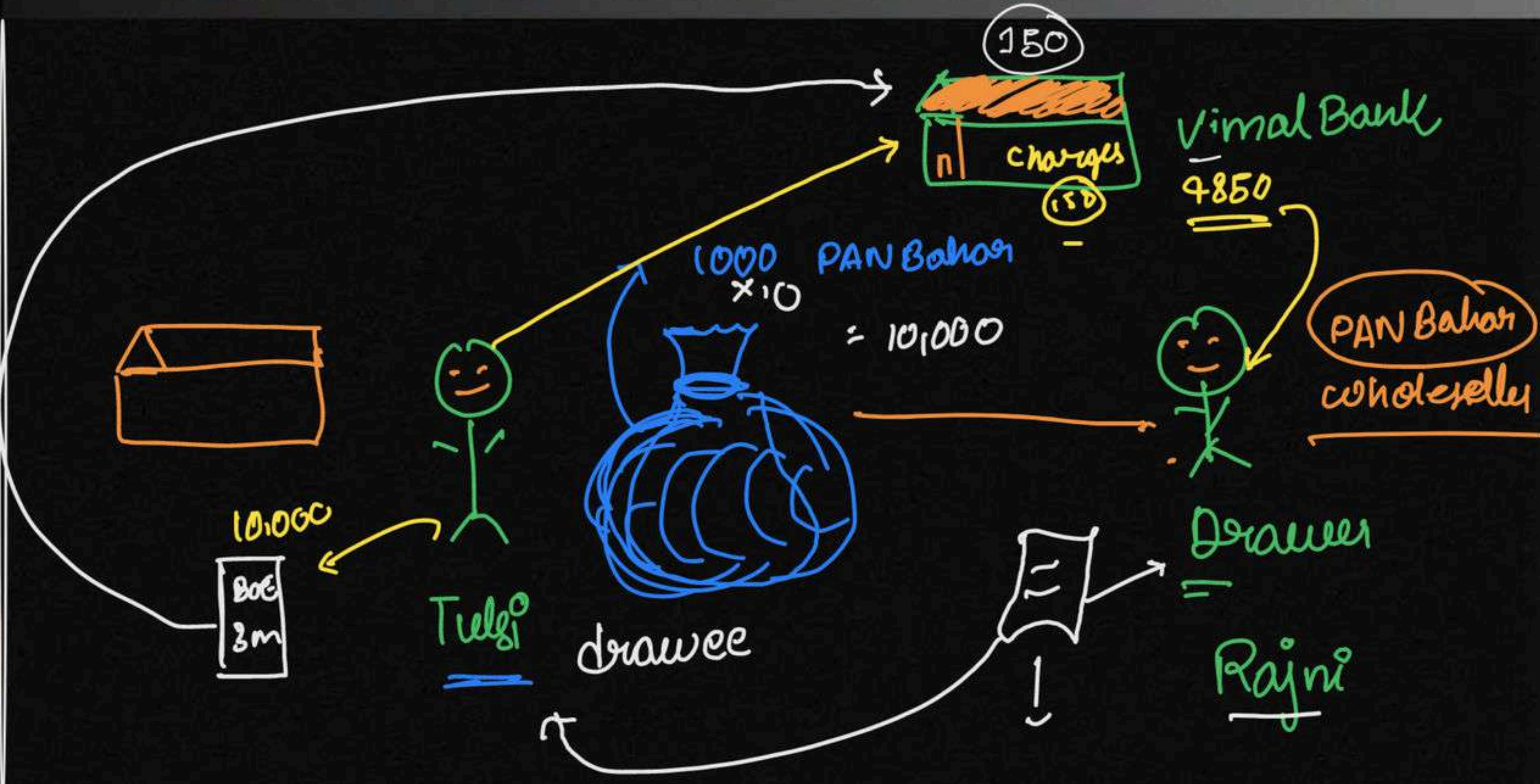
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PN	BOE
<ul style="list-style-type: none"><li>• 2 parties</li><li>• maker payee</li><li>• payable only on due date (No discounting from Bank)</li></ul>	<ul style="list-style-type: none"><li>• 3 parties</li><li>• Drawer Bank Drawee</li><li>• payable on due date as well as discounting possible</li></ul>

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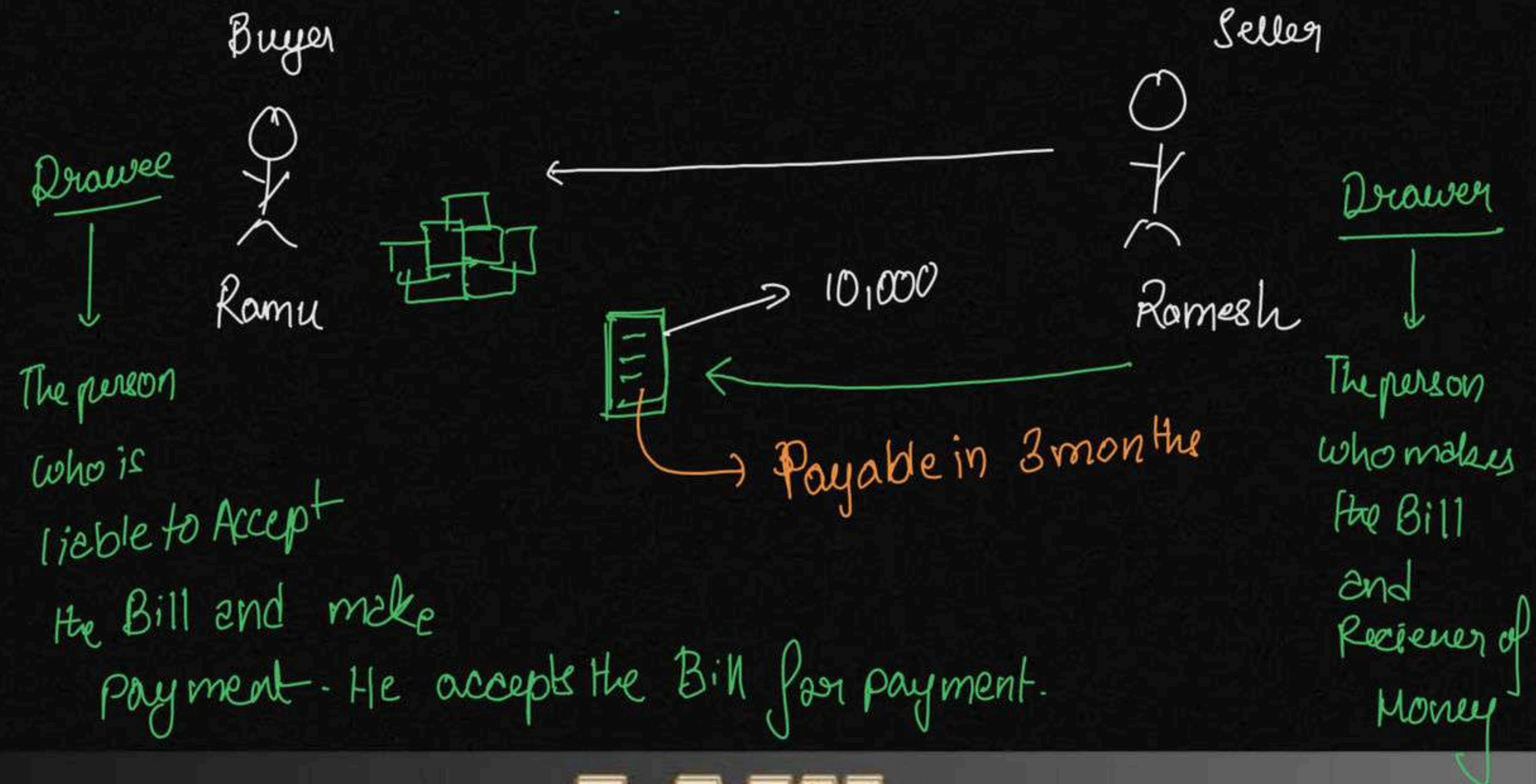
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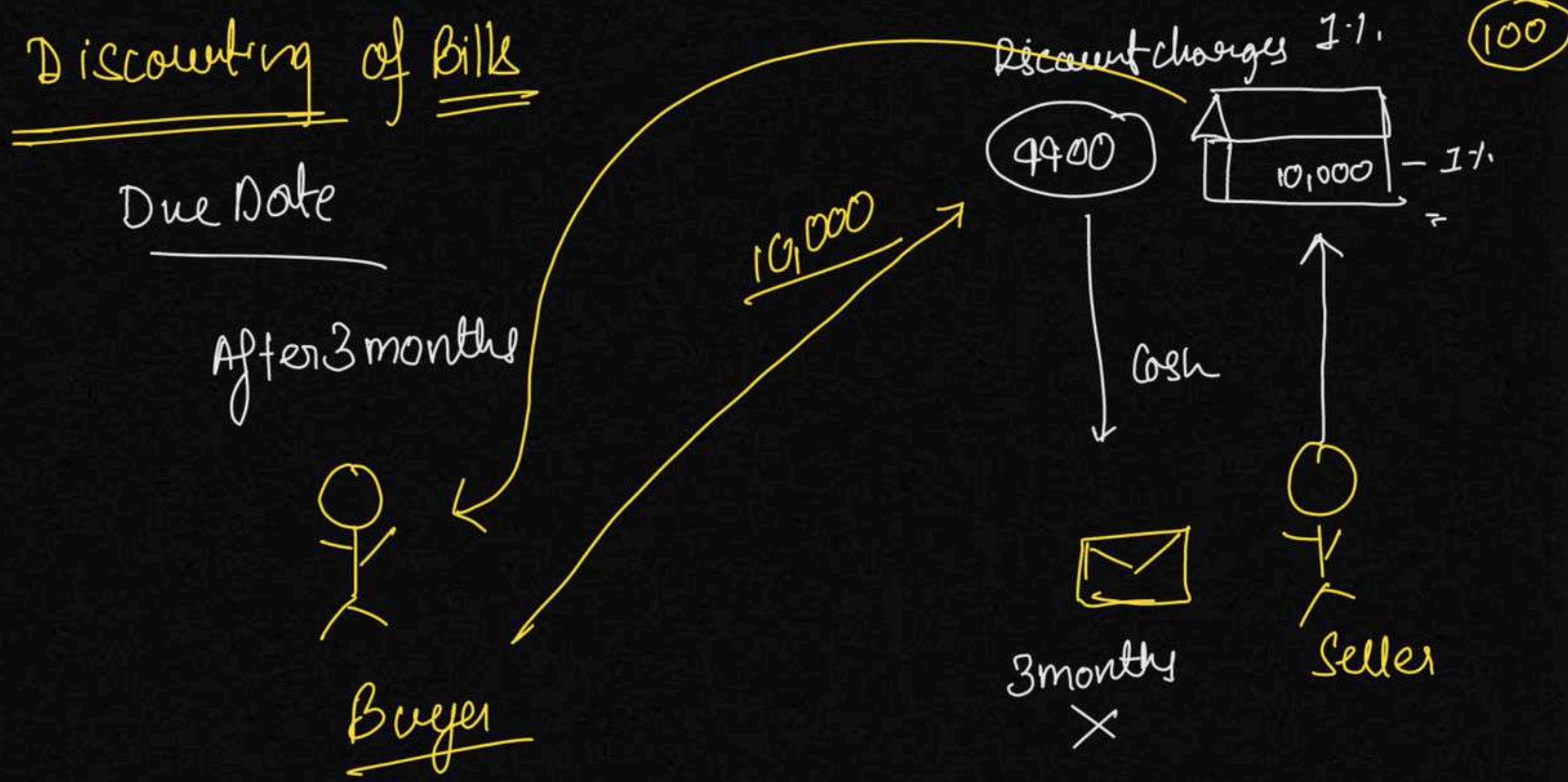
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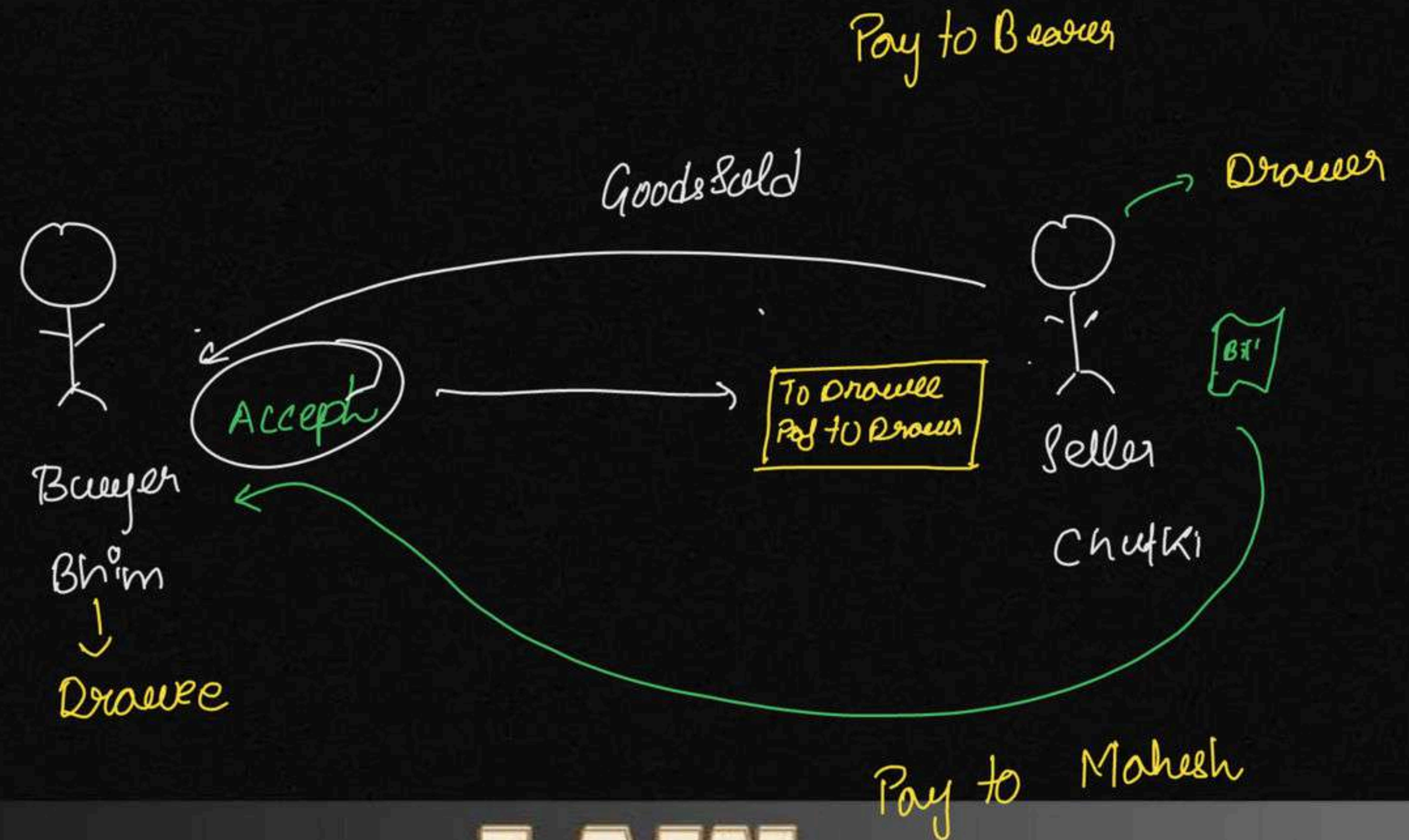
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Drawer → BOE → pay to Bearer  
Payee — the Bearer of instrument

Drawer → BOE → Pay to Third Party  
Pay to order of ← Payee — Such third Party

Drawer → BOE → Pay to himself  
Queen — Name of drawer

Payee →  
Drawer

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Drawer and Payee can be the same person - When the Drawer himself takes payment on the Negotiable instrument.

Payee - Is a person who collects payment on the instrument.

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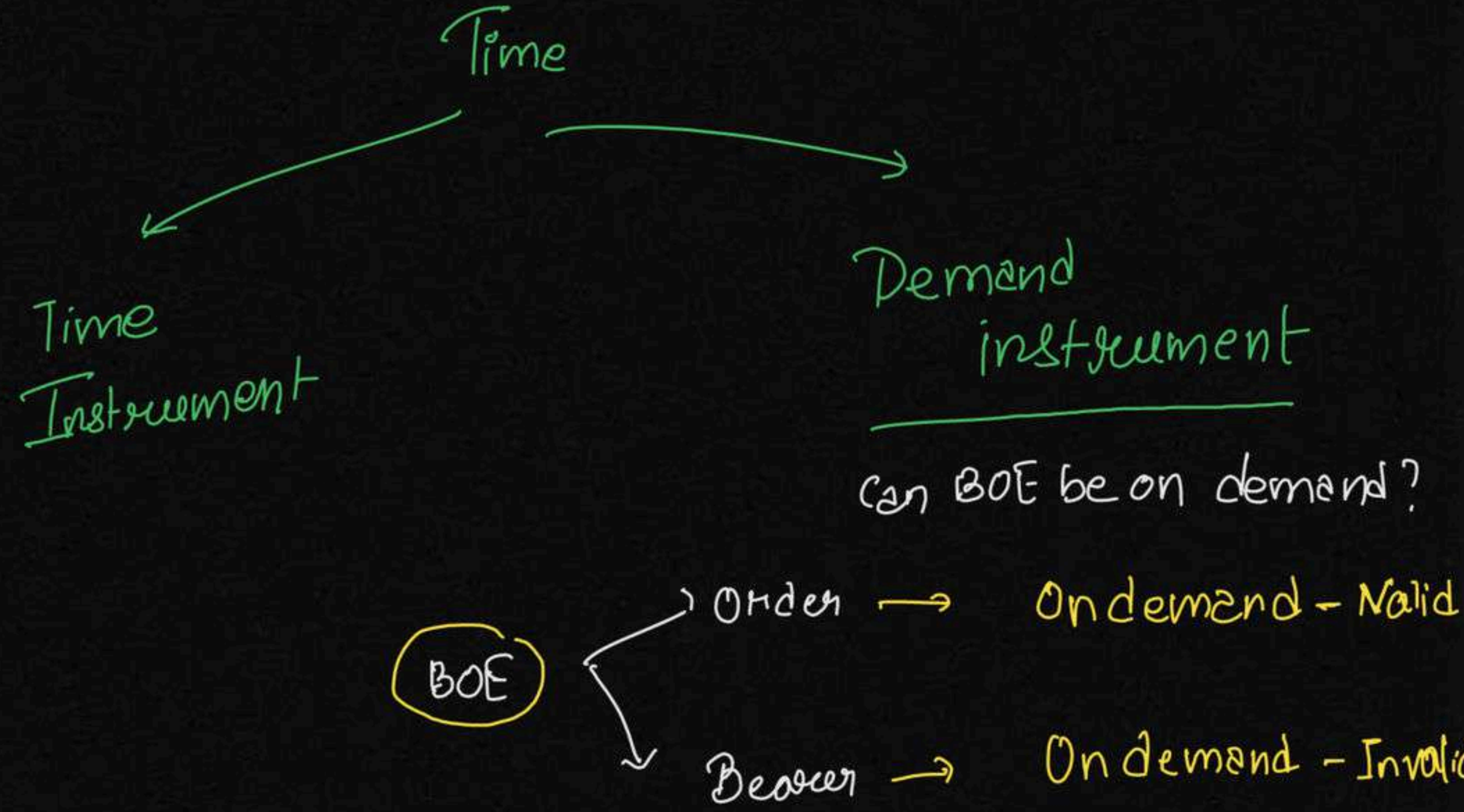
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Promissory Note → Newer Bearer (RBI stops you)

Bills of Exchange → Bearer (yes) → On time (yes)

Bearer (NO)

On Demand

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Afreen - Since RBI issues currency which is bearer if does not allow anyone else to issue bearer DN otherwise everyone will be able to issue currency

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## Characteristics of Bills of Exchange

- ① It must be in writing
- ② Must be an express order to pay  
(ie. the person has made an express promise to make payment)
- ③ The order must be definite and unconditional



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- ④ Drawer must sign the Instrument
- ⑤ The sum must be certain, payer and payee must also be certain
- ⑥ The order must be to pay money only.
- ⑦ It must be stamped.

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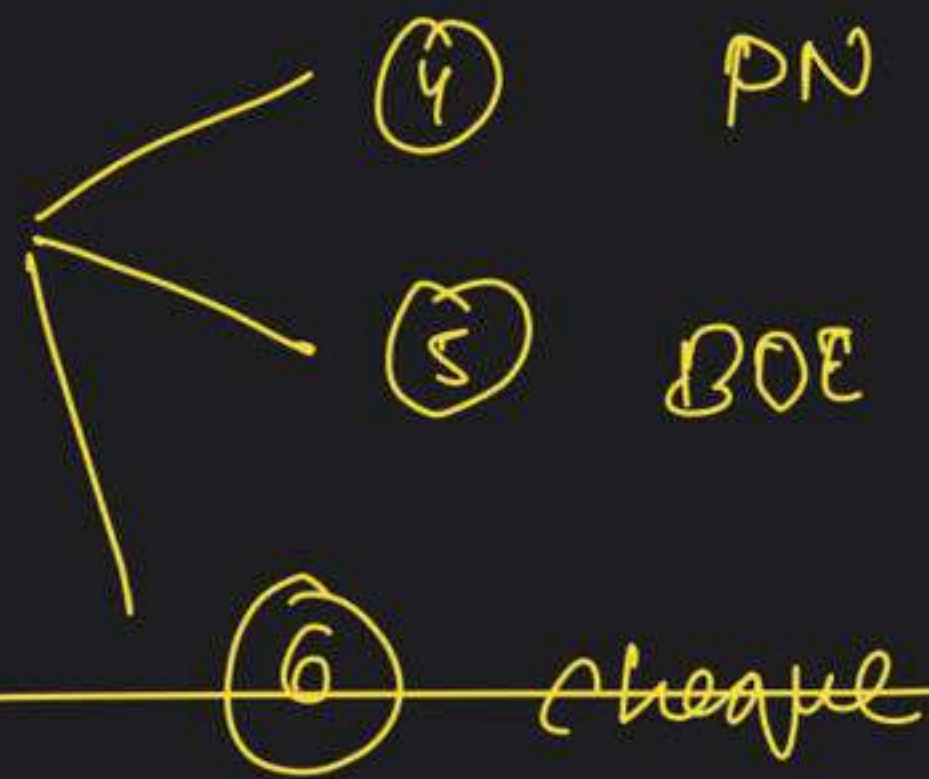
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COMPLET E  
R E V I S I O N



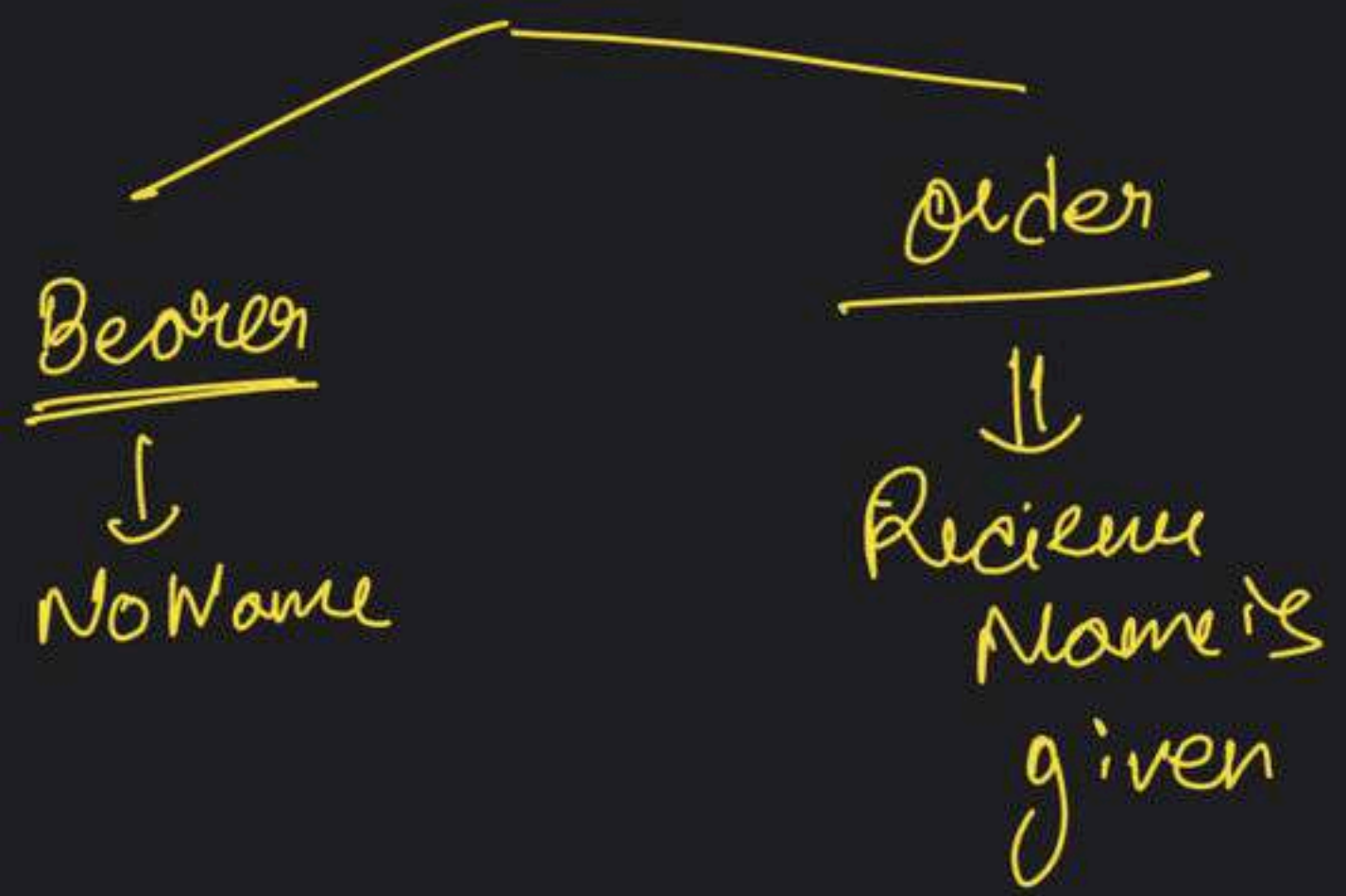
Kab -  
Kaha -

- transferable



RBI  
1934 → NI  
Exempt

Instrument  
whom it is  
Given



Instrument  
time



P.N  
Maker  
Payee  
Bearer X

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## Cheque – Section 6

A cheque is a bill of exchange drawn on a specified banker, payable only on demand and if it includes truncated cheque and an electronic image of a cheque.

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Payable of demand - The cheque drawn on the banker is payable on demand i.e. at the time of presentment during banking hours.

Cheque in electronic form - means any cheque drawn in electronic form and signed

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using digital signature or any asymmetric  
crypto system.

A system of encrypting and  
decrypting data.

Truncated Cheque - The electronic image of  
a cheque used for clearing house

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facility or in the process of transmission to ensure payments are made without physical movement of the cheque.

Note. A cheque is only valid for 3 months from the date mentioned on the cheque as per notification passed by RBI in 2011

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## Parties to the Cheque

① Drawer - Is the person who makes the cheque his liability is

primacy and

conditional

↓  
in case of dishonour  
maker is liable

↓  
only if sufficient  
funds are present

bank will  
honour the cheque

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② Drawee - It is the bank in case of a cheque

Drawee in case of need - where a person's name is mentioned in addition to the name of the drawee to be resorted to in case of failure or

payment, he **LAW** is referred to as

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drawee in case of need.

- ③ Payee - It is the person in whose favour the cheque is drawn, i.e. the person named in the instrument.  
The payee can be the drawer himself.

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BOE

Drawn  
on

Person  
(Drawee)

On  
demand

Not on  
demand if  
bearer

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Cheque

Bank  
(Drawee)

Cheque  
whether  
bearer or

order is always  
on demand

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Instrument

Order

The name of the  
recipient is on the  
instrument. The instrument  
can be negotiated by  
endorsement and delivery

Bearer

The name of  
the person is  
not mentioned  
anyone can claim  
payment. The instrument  
can be transferred by delivery

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Indorsement means writing on the instrument other than the party who is already mentioned transferring the right to receive payment.

PN / BOE / Cheque

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Inland Instrument

It is an instrument

which is

drawn in

India

(Yeh Zaruri hai)

=

← AND

(In dono mein se, ek chahiye)

i) Payable in India

OR

ii) drawn on a person Resident in India

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A Bill drawn in Russia on a Resident of India, payable in India

This is a foreign instrument.

A Bill was drawn in India, on a person resident in Mexico and payable in Mexico

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## Foreign Instrument

Where an Instrument is not an inland Instrument it is a foreign instrument.

In other words

Case 1  
Where an instrument is drawn outside India

Case 2  
Where an instrument is drawn in India but payable outside India, on a resident outside India.

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both these cases make the instrument foreign.

Liability in case of a bill drawn and endorsed to foreign country

In absence of any condition to the contrary, where an instrument is dishonoured and a case is submitted against it the

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law of country where the bill was  
drawn or endorsed, the holder  
can claim interest at the rate  
prevailing in such other country.

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## Inchoate Instrument

An Instrument which is incomplete in certain respect. The drawer / drawee / Payee / Indorsee can transfer the instrument by delivery and can complete the instrument and

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obtain amount promised from it.

The Principle of Estoppel applies to the  
inducement.

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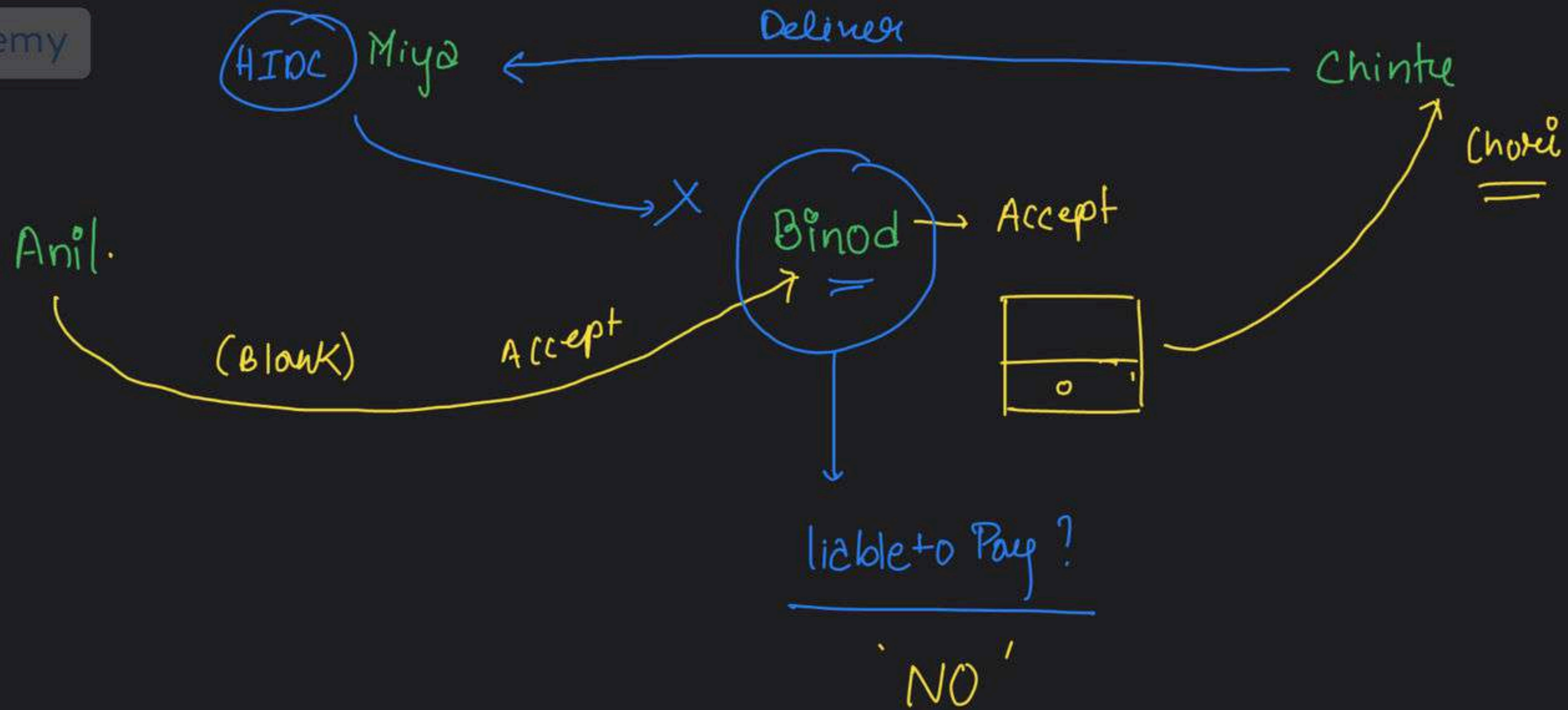
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"Binod did not deliver the instrument to Chintu"

Instrument  $\longrightarrow$  Negotiate (Transfer)

Bearer Instrument (Inchoate)  $\longrightarrow$

Only Delivery is Needed



Order Instrument (Complete)  $\longrightarrow$

Delivery + Indorsement





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holder  
person in possession  
of the instrument -

अपने पास  
control mein  
hai

without any valuable -

Consideration → something  
in

cannot withdraw  
any amount more than  
what was intended  
to be drawn.

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holder in due course  
person in possession  
of the instrument  
for a valuable  
consideration

can withdraw any  
amount unless there  
is a limit on the  
instrument.

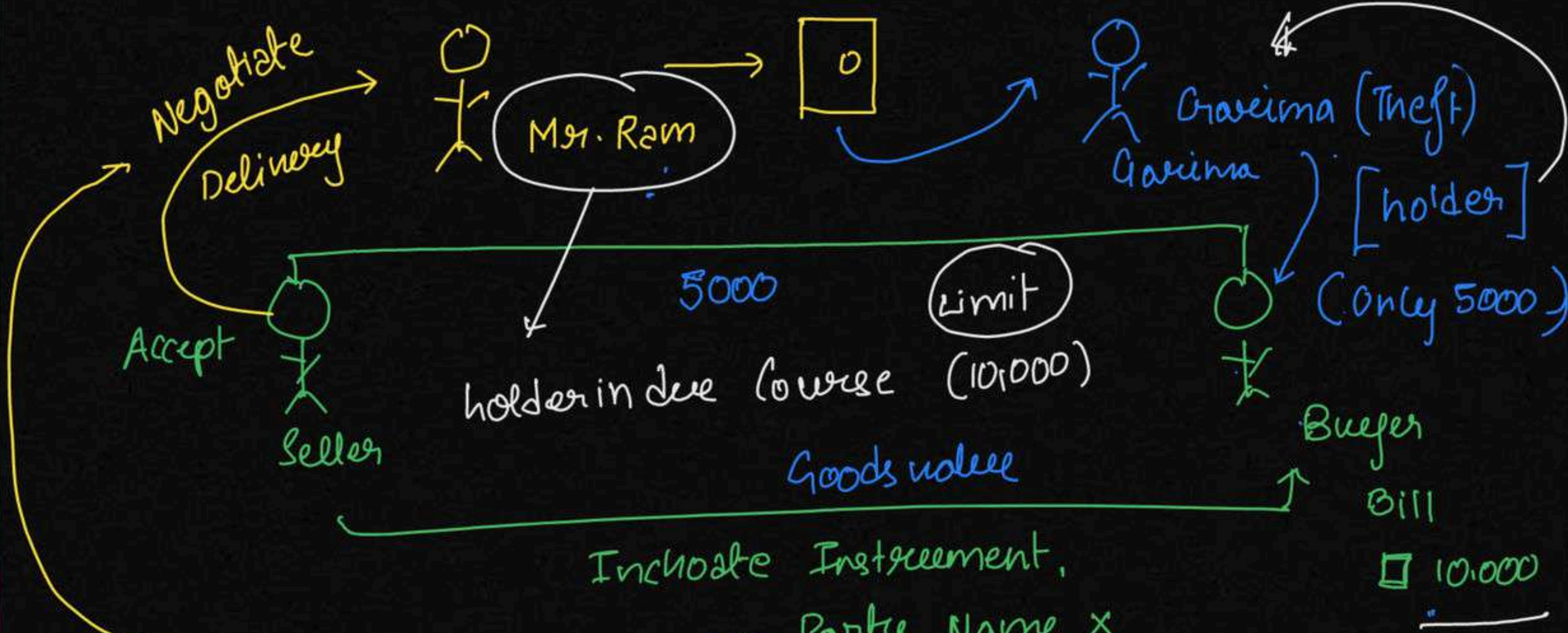
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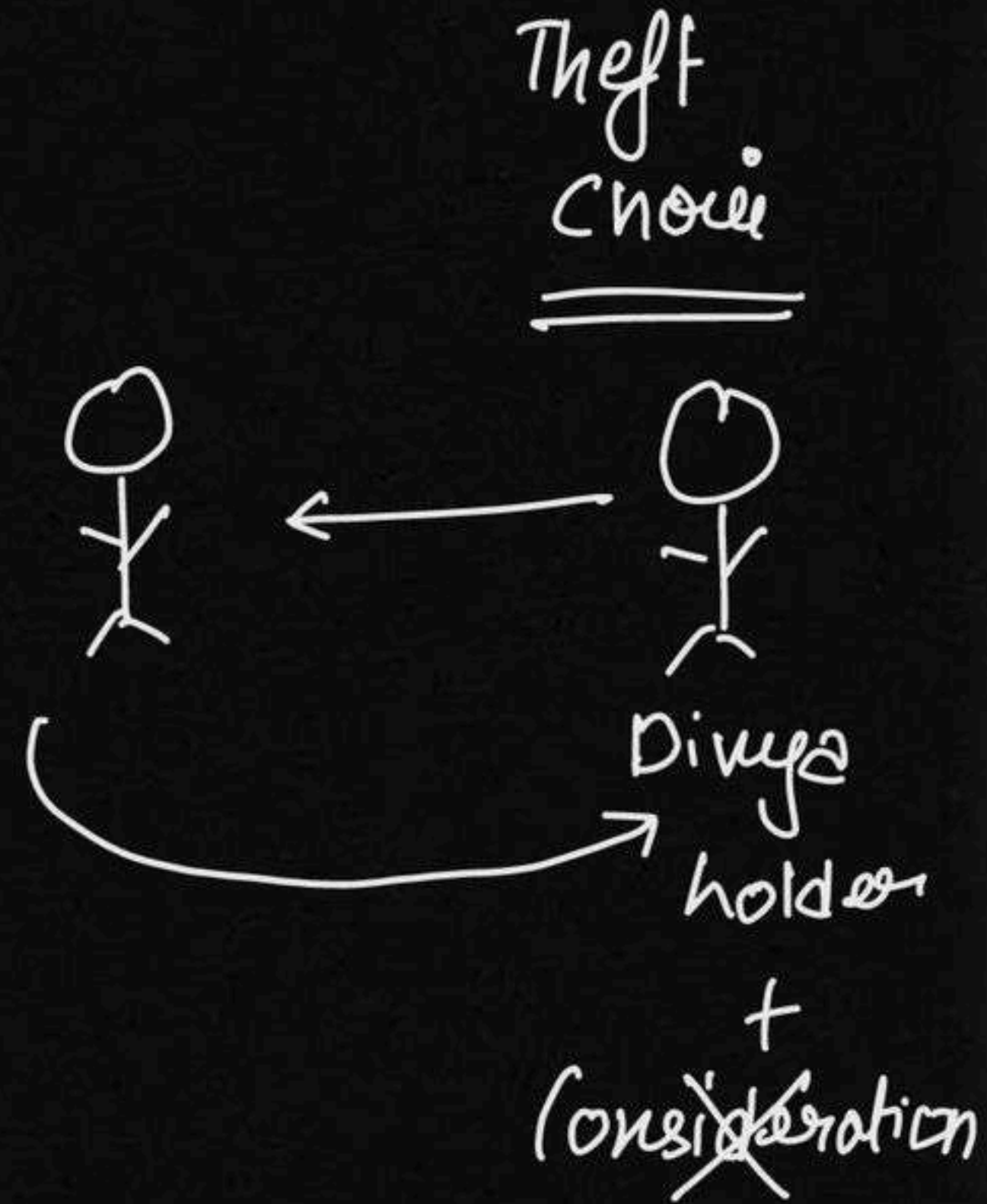
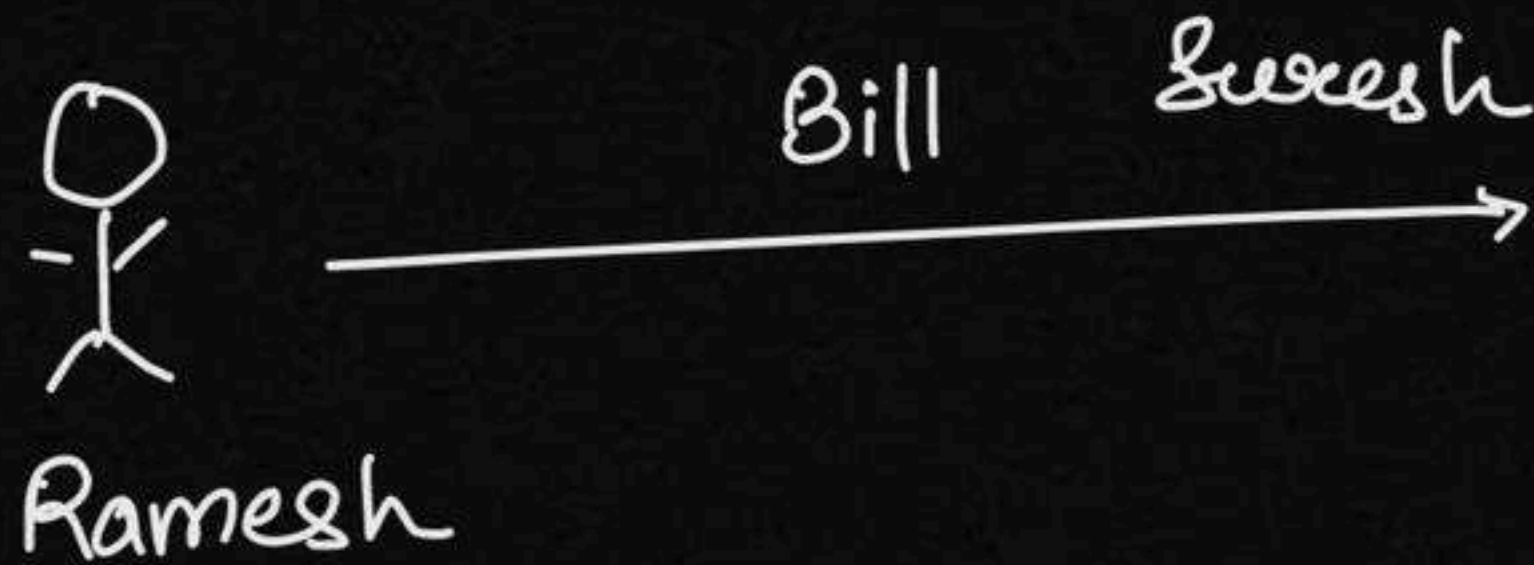
Inchoate Instrument,

- Party Name x
- Amount x
- Stamp ✓
- Signature

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Section 20

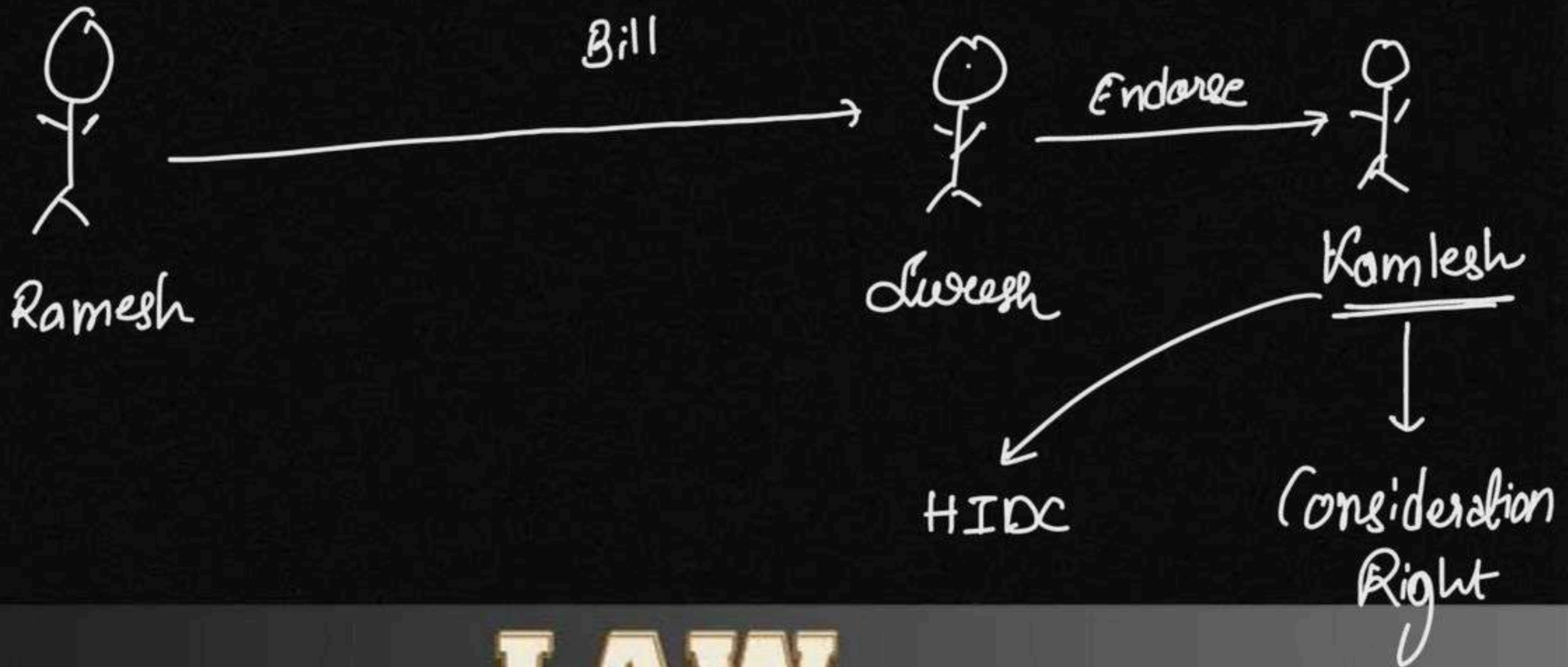


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Morale holder → Bill + holding + Good faith + Consideration = HIDC  
Plain Holder → Bill + holding + Not Good faith + No Consideration = Holder



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Section 20 (\*) Jo dekhne se lagta hai

Where one person signs and delivers to another a paper stamped in accordance of the law in force in India, the holder of the instrument on a prima facie basis in capacity of a holder in due course can only complete the instrument for the amount

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stated in it.

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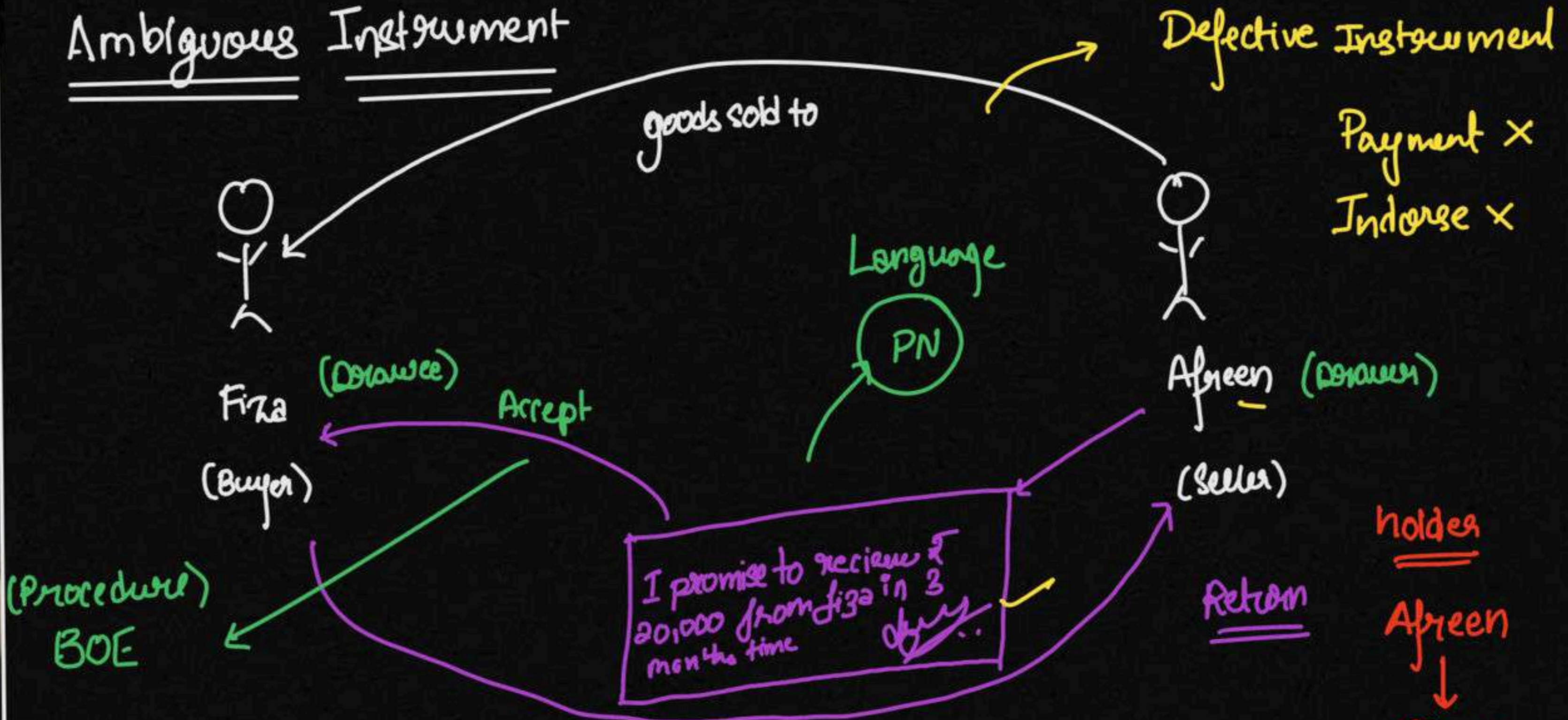
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discretion  
Permanent  
once selected

holder  
Afreen  
Choice  
BOE      DN

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Section 17 \* choice

An Ambiguous Instrument can be a bill of exchange or promissory note having defect in its formation, the holder of the instrument can at his discretion treat it as a Promissory note or a bill of exchange at his own choice, but

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decision once made is permanent

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Negotiation — transfer

Order Instrument

(Indorsement + Delivery)

where the name of  
the payee is mentioned

Negotiation

Bearer instrument

where the name of  
the payee is not given

Only Delivery is  
Needed

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Negotiation is transfer of ownership made from one entity to another, has the effect of making the holder the rightful owner of the instrument. In case of a bearer instrument it is required to be delivered and indorsement needs to be made to make the negotiation complete.

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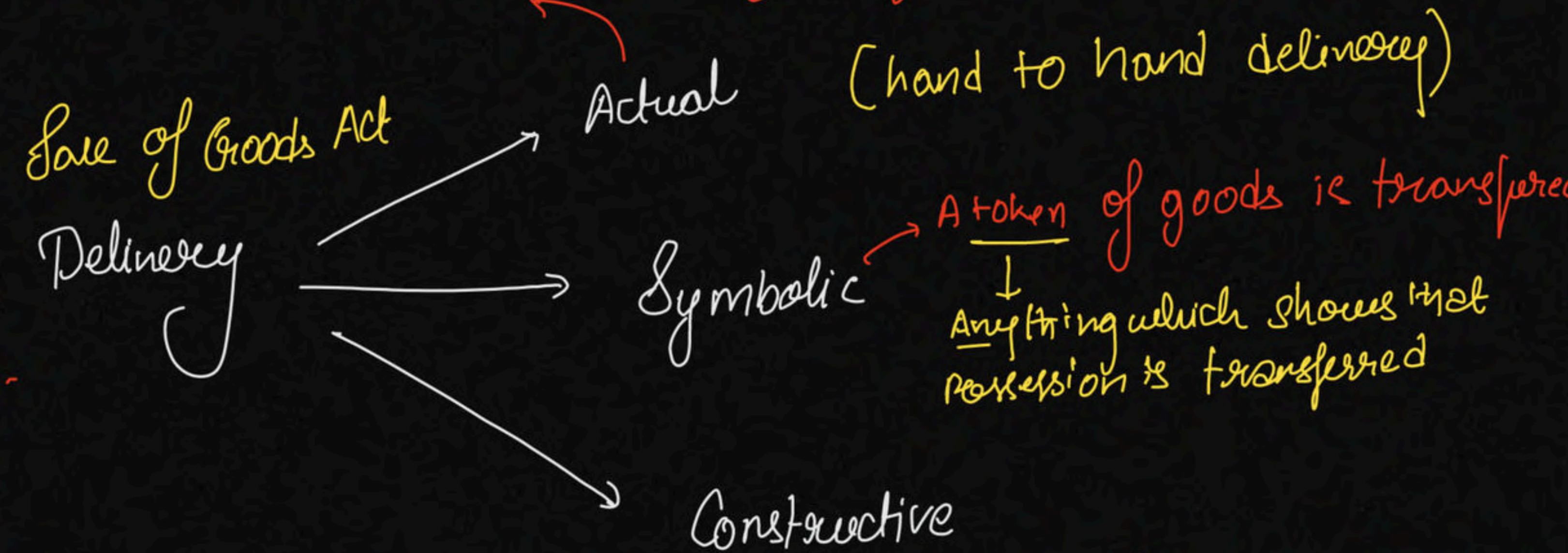
Negotiation by delivery

An instrument which is bearer can be transferred by delivery.

Exception: Where the instrument is a bearer instrument but made on a specific event, negotiation is possible only on happening **LAW** of such event.

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where the physical possession of the goods is transferred



In case of constructive delivery, the instrument is kept in hands on another party to be transferred to the bearer or person named it order

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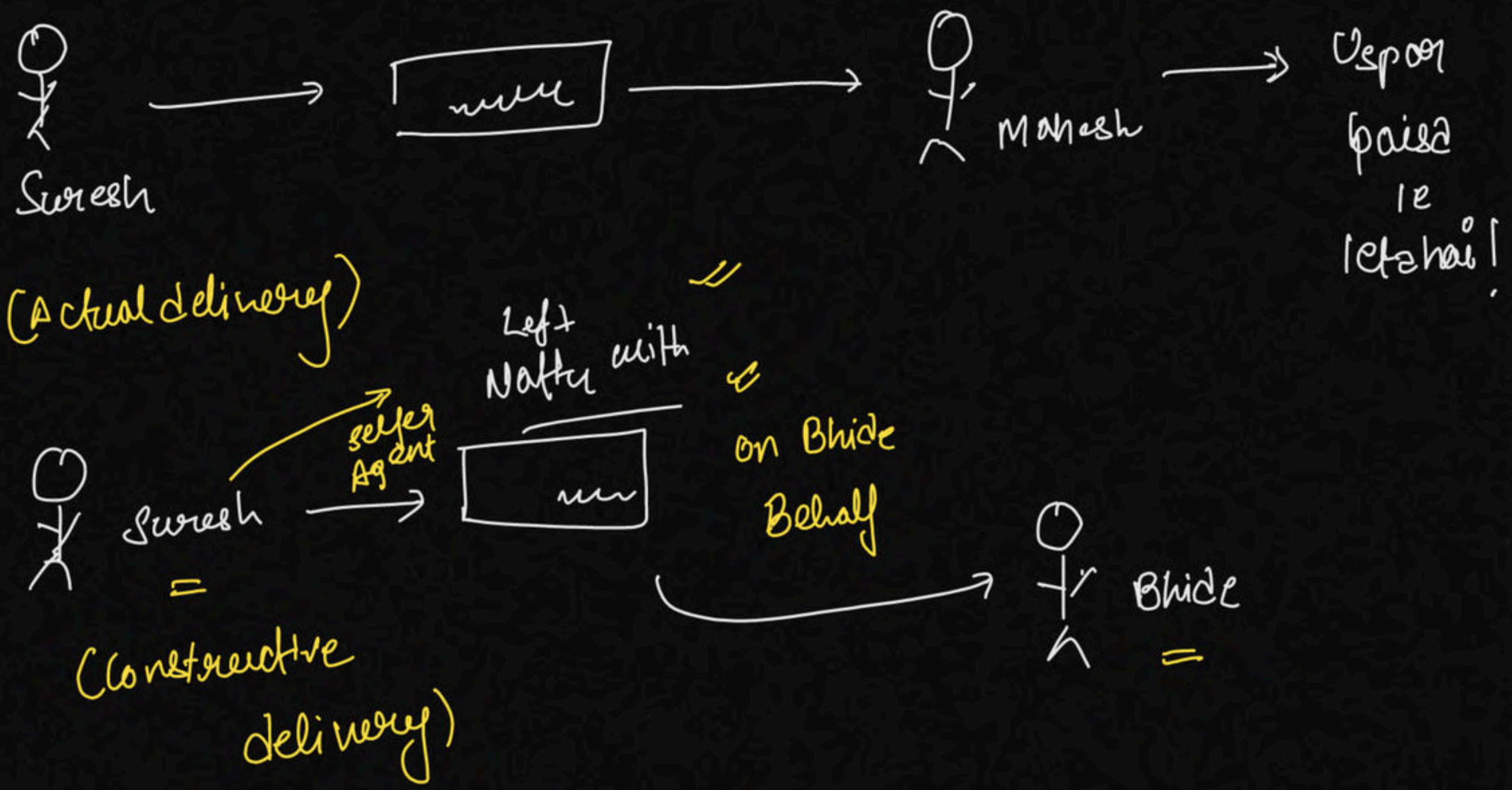


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Negotiable Instrument

① Actual

② Constructive

x Symbolic → Negotiable Instrument (token) of Moneybeing transferred.

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## Importance of Delivery

Delivery means transfer of possession from one person to another. Delivery is very essential whether the instrument is an order instrument, bearer instrument or an instrument which has been negotiated.

Delivery can be Actual or Constructive, Constructive

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delivery is when the instrument is held by an agent of the endorser (पोपाताल) in behalf of the indorsee (Bhiche)

If Delivery of the instrument is not made and the maker or the endorser is dead prior to delivery of the instrument, the legal representative cannot complete the Negotiation, with the view that delivery made by him can create right to receive

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payment for the receiver or endorsee. (uske paas pada hai)

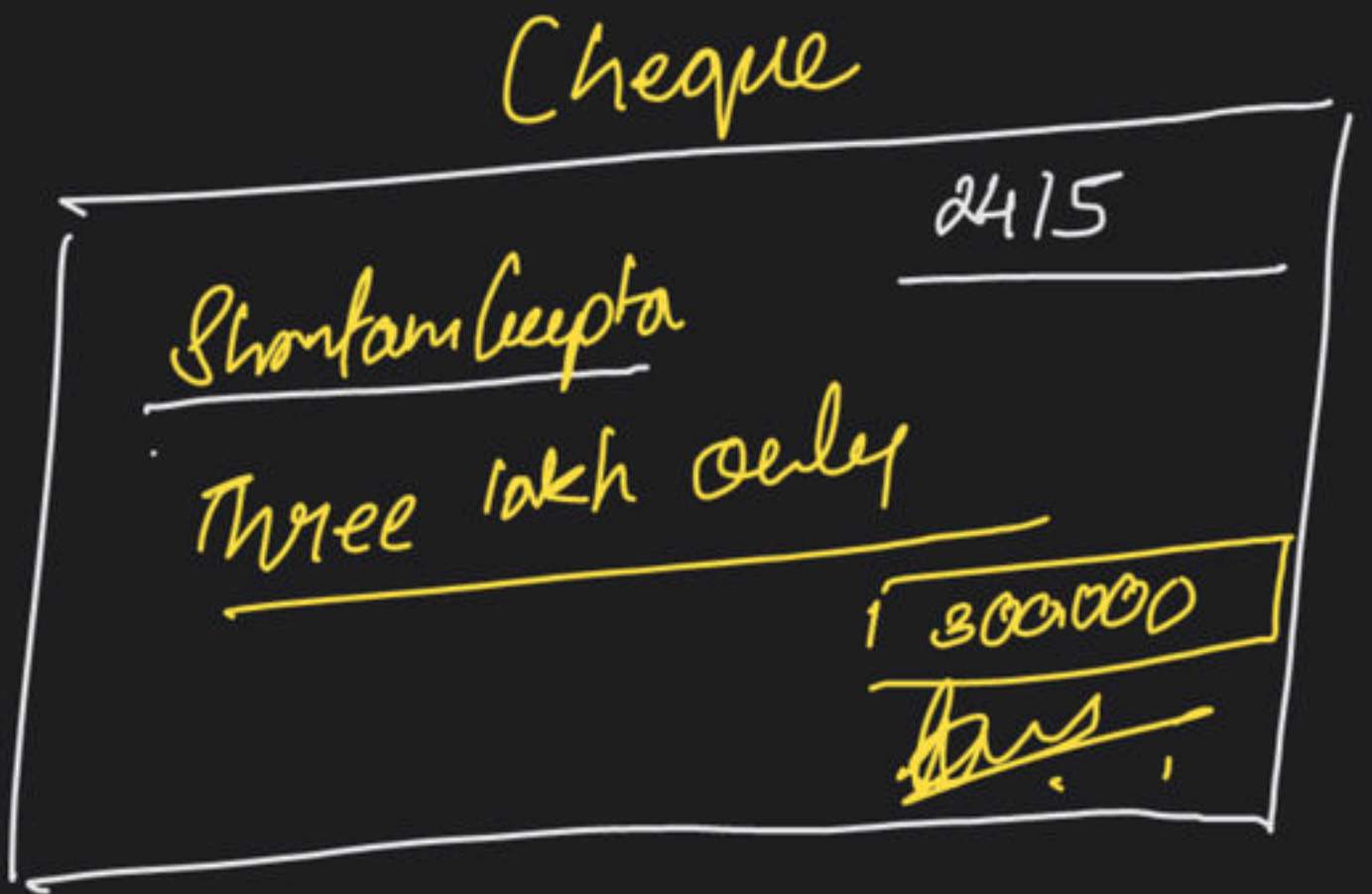
Logic - Since the Legal representative is not an Agent, instrument lying with him, cannot create a right to receive money even if he delivers it to someone.

(Agent aap choose karke ho LR aap choose nahi karke)

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② ✓ → 250,000  
cheque Bounce dishonour

Rakesh



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Deposit

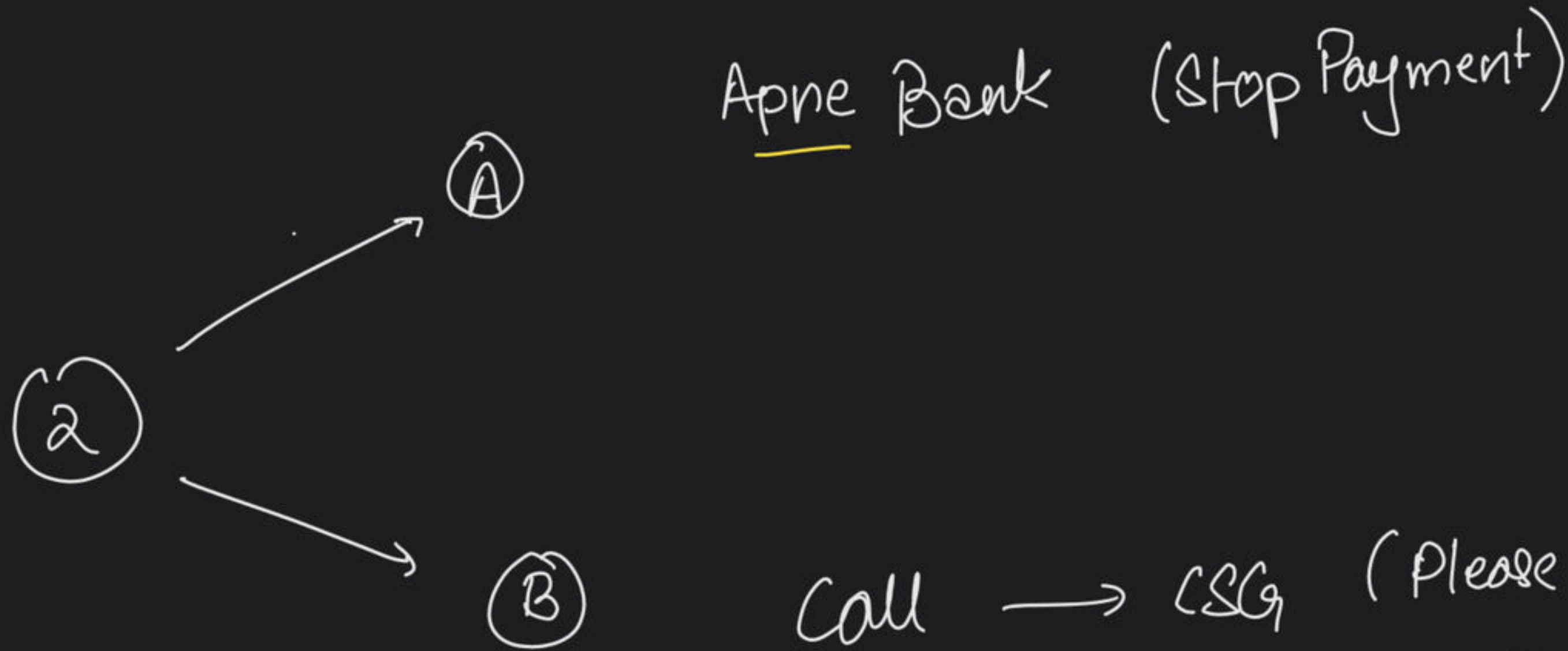
① ✓

dishonour

Rakesh a/c

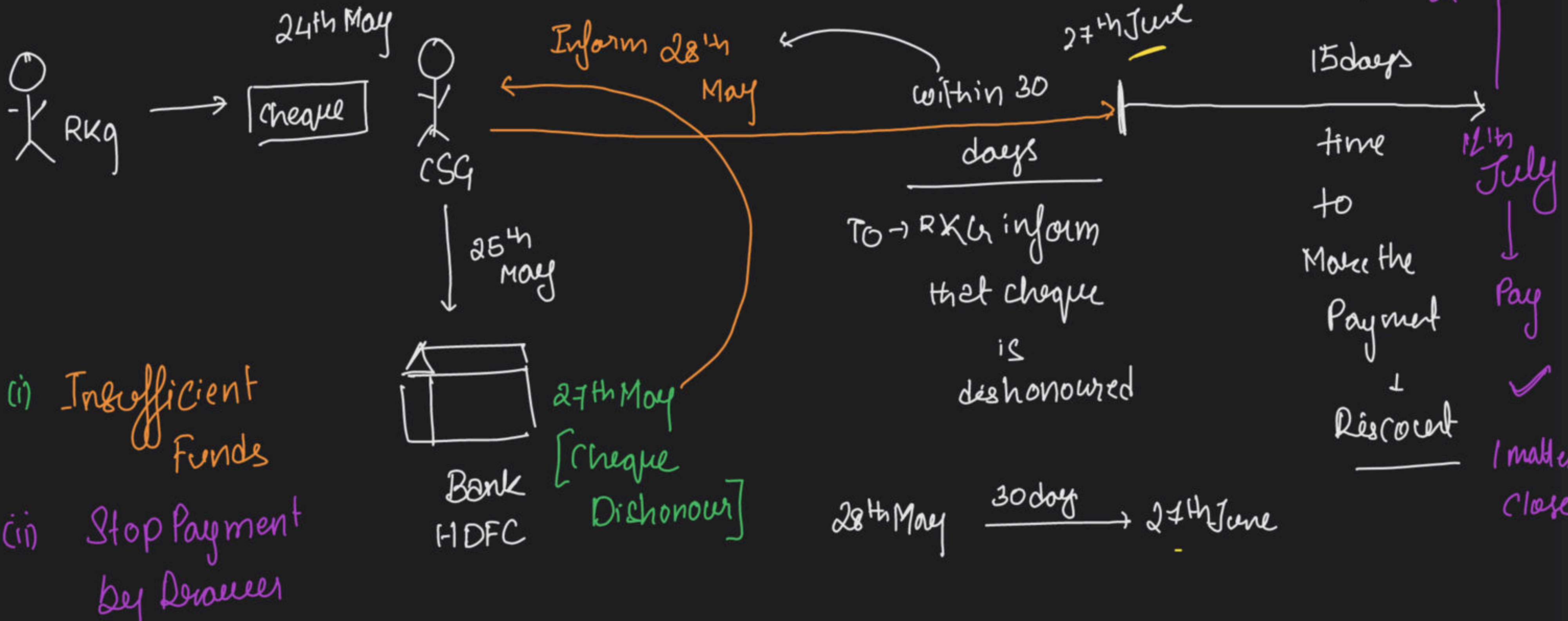
"Insufficient funds"

HOPE



"Dishonour"

Dishonour of Cheque



(i) Inefficient Funds

(ii) Stop Payment by Drawer

28th May  $\xrightarrow{30\text{ days}}$  27th June

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Dishonour of Cheque due to insufficiency of funds or Stop Payment (Section 138)

Note: This section is only attracted if Dishonour or stop payment<sup>t</sup> is due to insufficient funds.

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e.g. A cheque may be dishonoured due to sign mismatch or amount mismatch or other technical defects

- Where the drawer of the cheque has drawn the cheque on the bank and the same is deposited by the payee, if the cheque is dishonoured due to insufficient funds or payment stopped by bank on request

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of the drawer, such an offence is liable  
for a penalty of : (Gunaah)

- imprisonment upto 2 years  
or
- penalty twice the amount of  
cheque or
- Both

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When section 138 Not Apply (No Penalty)

- ① If the cheque relates to any gift, donation, or illegal consideration.
- ② After the cheque is dishonoured the bank informed the payee but payee did not inform drawer in 30 days.
- ③ Payee informed the drawer in 30 days and the drawer made the payment in 15 days.

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When 138 apply i.e. Penalty

→ where the cheque was dishonoured due to insufficient funds bank informed the payee and within 30 days the payee informed the drawer about the fact of dishonour, and the drawer has failed to make the payment in 15 days.

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Section 139 - Presumption → can be revoked if proved otherwise.

It is a rebuttable presumption, that the holder of the cheque has the cheque in good faith and for a valuable consideration i.e. he is a holder in due course.

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140 - Defence not allowed in 138

The fact that the drawer had no knowledge or was unaware about the balance in the account was insufficient will not act as a valid protection in this case.

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Presentment - Shall mean an action of presenting the instrument on the due date for payment

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Section 61 - BOE

- (i) A BOE is made payable after sight (ie. no time or place is given on the instrument) be presented to drawee if drawee located and found instrument is valid.
- (ii) If the drawee in case (i) above is not located then the instrument is dishonoured.
- (iii) Where place of presentment for acceptance is given and drawee is unavailable and not found instrument

dishonour.

**LAW**

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Section 62 - **PN**

(ii) where a PN is made for sight, by the maker to be payable at demand after the due date of maturity, the presentment can be made at any time after maturity and during reasonable time but within reasonable time and during business hours. If not done the party

→ i.e. payable after a period

\* Limitation Act (2 years)

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in default shall be responsible.

Section 63 - **BOE**

The Drawer shall allow the drawee a period of at least 48 hours to accept the BOE made by the Drawer.

**LAW**

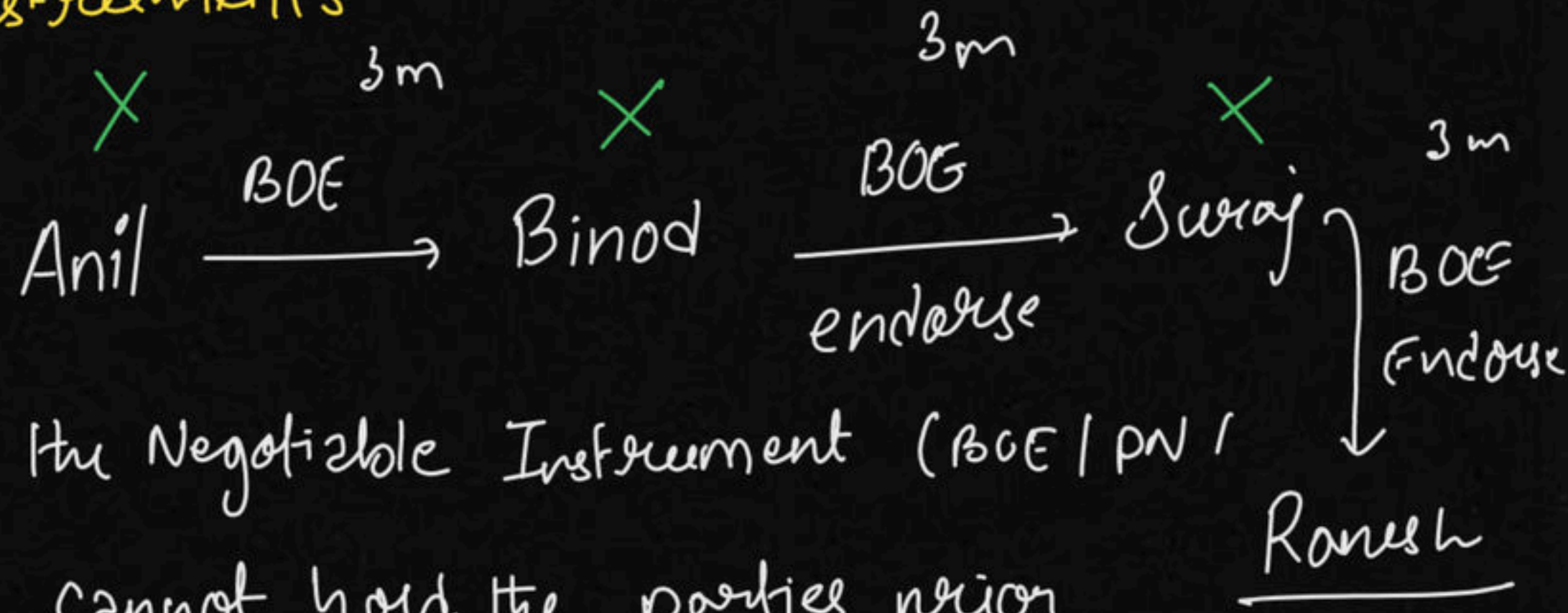


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Section 64 - All Instruments



If the Party to whom the Negotiable Instrument (BOE / PN / Cheque) is endorsed, cannot hold the parties prior to him liable for payment if he has failed to present the instrument in reasonable time.

legal recovery time is over

Present x  
2 year passed by x  
(Time barred)

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Section 65 - All Instruments

Presentment shall be made within business hours or  
(BOE / PN)  
in case of banker during banking hours.  
(Cheque)

**LAW**

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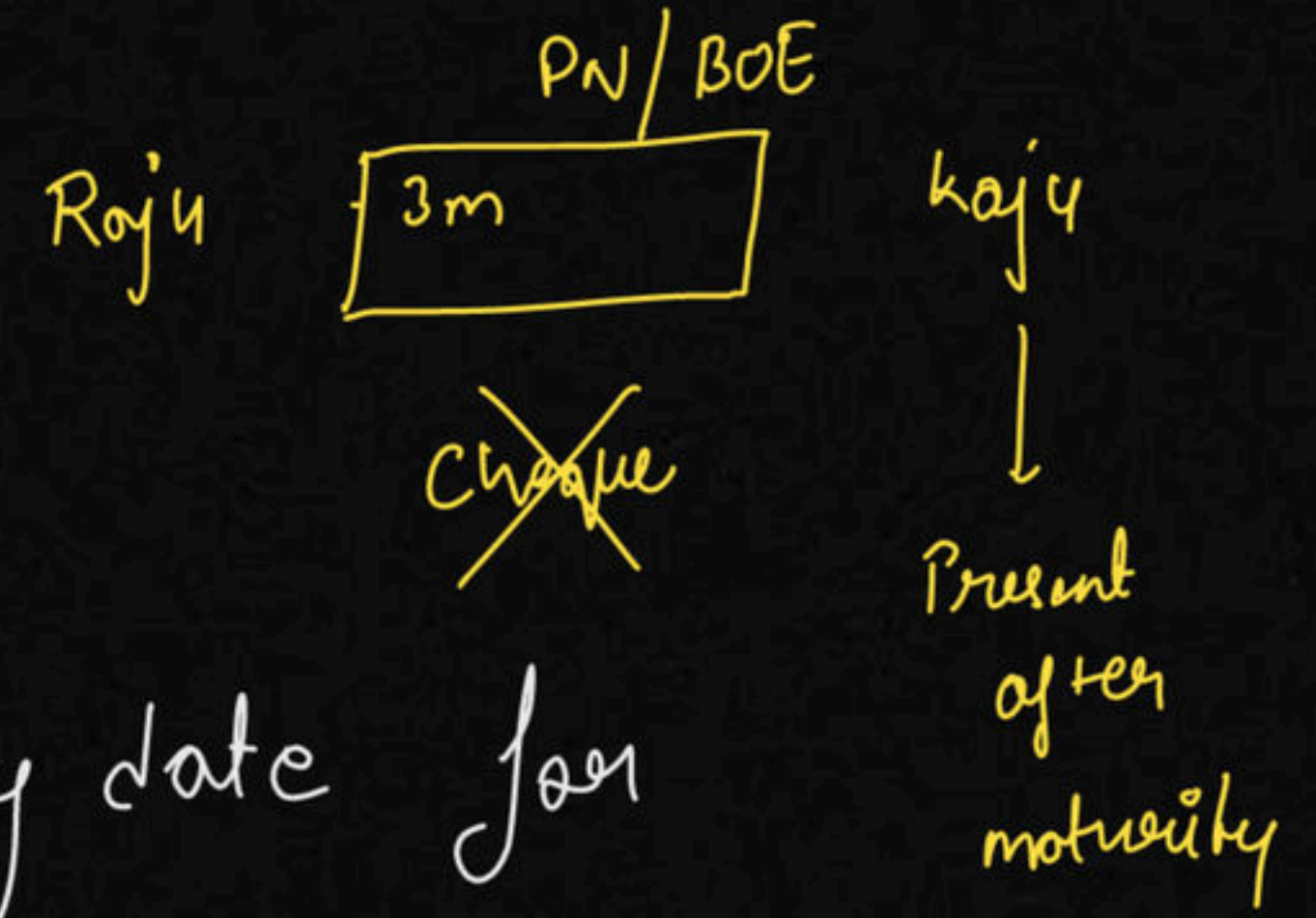
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Section 66 -

Bills of Exchange / Promissory Note

shall be presented on or after maturity date for

payment. [In case of cheque there is no maturity as it is payable on demand]



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Section 67 - Promissory Note

If PN Payable in Installment should be presented 3 days after the due date if not paid on such date it is dishonoured

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Section 68 - BOE / PN

If PN / BOE is to be payable at a specified place then 'presentment' shall be made at such place.

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Section 69 - PN/BOE

If a BOE/PN is drawn/made payable at a specified place payment can be charged only at such place

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# CA FOUNDATION

Section 70 - BOE/PN

Where no place is specified for BOE/PN  
it is payable at a business place or  
at the residence of the person.

**LAW**

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Section 71 - BOE/PN

If maker / Drawee of PN / BOE does not have  
place of business or a fixed residence, then presentment  
is in person.

**LAW**



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# CA FOUNDATION

Section 72 - Cheque

A cheque shall be presented to the Bank before the relation between the drawer and the Bank ends.

**LAW**

# CA FOUNDATION

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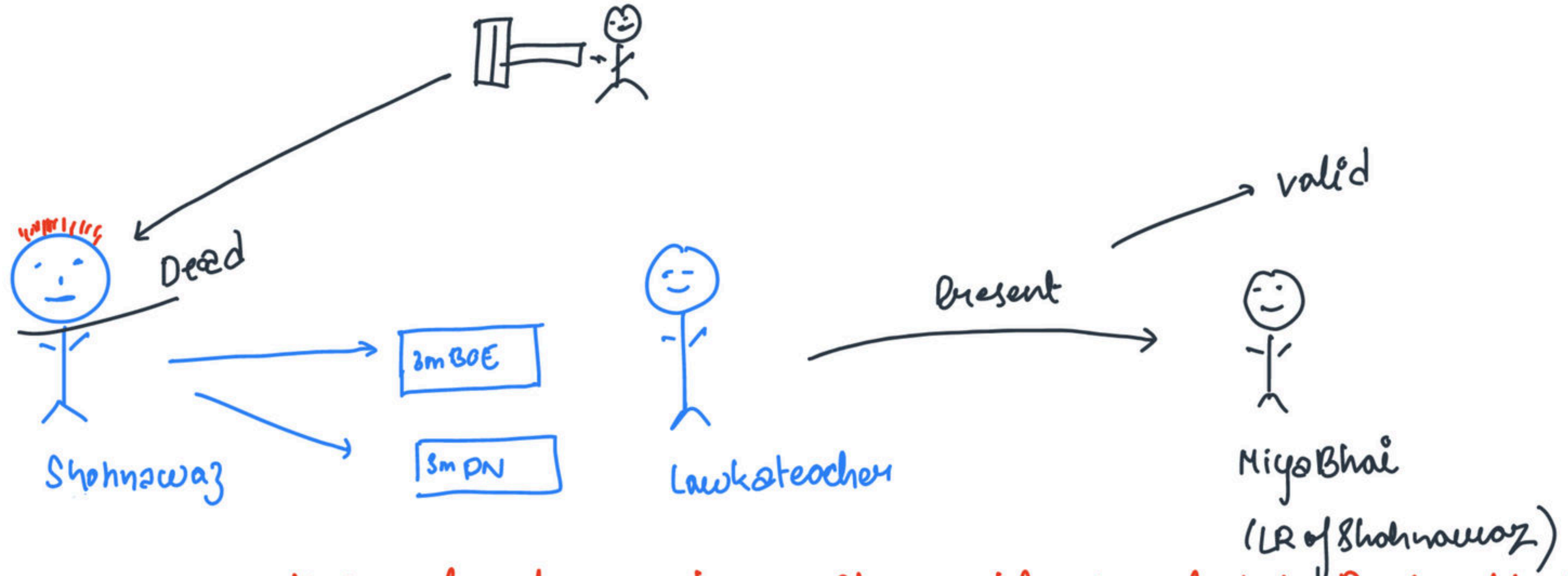
Section 73 - Cheque:

Drawer of Cheque died after delivery of Cheque  
The same shall be presented to the bank  
in time to charge payment from the legal  
representative.

**LAW**

Section 75 (BOE / PN)

Presentment can be made to the Agent or Legal Representative of a dead drawer/maker, it is valid.



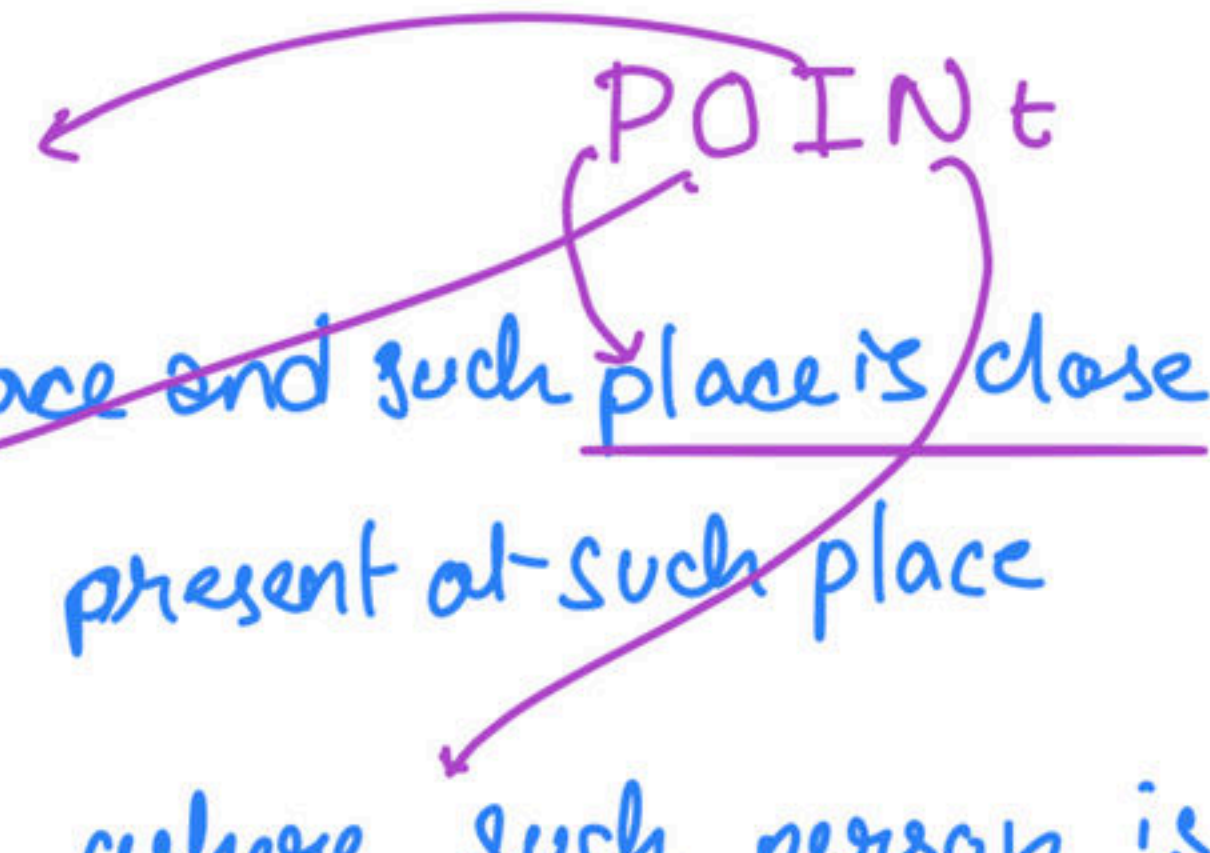
Note: Not applicable for cheque since cheque is presented in Bank not to LR

## Section 75A (BOE/PN/Cheque)

where the presentment is delayed due to uncontrollable circumstances, such presentment delay can be excused.

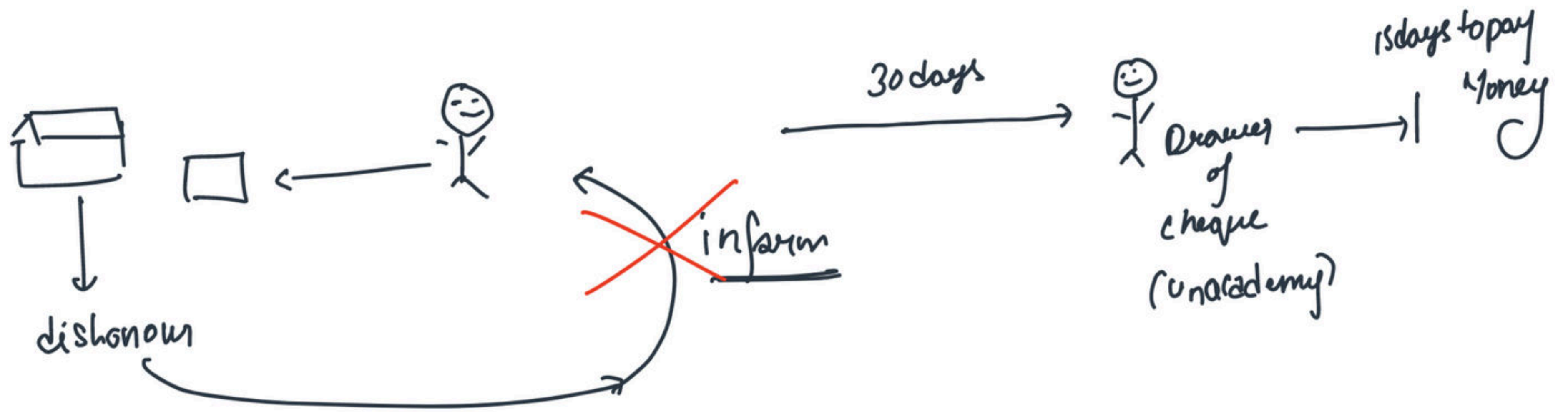
## Section 76 (BOE/PN)

No Presentment is needed and the Instrument is dishonoured

- ① drawee intentionally prevents presentment
  - ② presentment is to be done at business place and such place is close
  - ③ if payable at other place and no one present at such place
  - ④ Presentment to be made to a person where such person is not found.
- 

# uracademy Section 77 - Cheque

If the cheque is dishonoured it is the responsibility for the bank to inform the payee, if the bank fails to communicate such information, the banker shall compensate the loss.



PN bearer X  
demand ✓  
order ✓

Cheque bearer ✓  
Order ✓

BOE demand ✓  
order ✓

bearer on demand X  
order on demand ✓  
bearer ✓

unacademy  
Section 117

Rules of Compensation - The Person against whom dishonour has occurred shall be eligible for compensation, drawer, endorsee.

① The <sup>BOE</sup> drawer or endorsee or <sup>Any</sup> payee has the right to recover <sup>cheque</sup> amount of instrument along with expenses of presentment, noting and protesting it.

② If the person charged stays at a place different from, where instrument is payable, then payment to be made at current exchange rate.

③ The person against whom dishonour has occurred is entitled to an amount equivalent to the debt due and interest of 18% pa on it.

④ Where the party being sued and the endorser are in different places (i.e. Instrument endorsed) - then the payment shall be made at the exchange rate between two places.

⑤ Where the instrument is dishonoured, the party involved can issue another instrument with its total amount due and all expenses incurred at sight



or on demand. The charged party will require handing over the dishonoured instrument and proof of protest if any. Further if this instrument is dishonoured the same procedure to be followed.

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Negotiable Instrument<sup>t</sup>  
Ends