CHAPTER 7

THE NEGOTIABLE INSTRUMENTS ACT, 1881

Introduction

Meaning	• Negotiable Instruments is an **instrument** (the word instrument means a document) which is **freely transferable** (by customs of trade) from one person to another by mere **delivery** or by **indorsement and delivery**. • This is an Act to define and amend the law relating to promissory notes, bills of exchange and cheques
Kinds of Negotiable Instrument	(i) Negotiable Instrument by Statue – As per Sec.13, Negotiable Instrument means **Promissory Notes, bill of exchange and Cheque**. (ii) Negotiable Instrument by Custom – The provisions of this Act are also applicable to Hundis, unless there is a local usage to the contrary. Other native instruments like Treasury Bills, Bearer Debentures, Railway Receipts, Delivery Orders, Bill of Lading etc
Objective	• to **facilitate** the activities in **trade** and **commerce** making provision for giving **sanctity to the instruments of credit** which could be deemed to be convertible into money and easily passable from one person to another • to **legalise the system** by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods
Applicability	The Act applies to the whole of India, but nothing herein contained affects the Reserve Bank of India Act, 1934, (section 21 which provides the Bank to have the right to transact Government business in India), or affects any local usage relating to any instrument in an oriental language
Essential Characteristics of Negotiable Instrument	1. It is necessarily in writing. 2. It should be signed. 3. It is freely transferable from one person to another. 4. Holder's title is free from defects. 5. It can be transferred any number of times till its satisfaction. 6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only. 7. The sum payable, the time of payment, the payee, must be certain. 8. The instrument should be delivered. Mere drawing of instrument does not create liability.

Types of Negotiable Instruments

Basically	On the Basis of Receiver of payment	On the Basis of Maturity	On the Basis of Location	Others
1. Promissory Note 2. Bills of Exchange 3. Cheque	1. Order 2. Bearer	1. Time 2. Demand	1. Inland 2. Foreign	1. Ambiguous 2. Inchoate 3. Fictitious 4. Accommodation 5. Trade

Bearer or Order Instruments [Sec. 13]

Type of Instrument	Meaning	Example
Bearer Instrument [Section 13]	A negotiable instrument is a Bearer Instrument if: (a) It is expressed to be payable to bearer or (b) **The only or last endorsement is an endorsement in blank**. **Notes:** (i) A promissory note cannot be made payable to the bearer. [Section 31 of the Reserve Bank of India Act, 1934] (ii) A bill of exchange cannot be made payable to bearer on demand. **(iii) A bearer instrument can be transferred by mere delivery.**	(i) Pay to A or bearer. (ii) Pay to the bearer. (iii) A cheque is payable to A. A endorses it by merely his signatures on the back of the instrument and delivers it to C.
Order Instrument [Explanation to Section 13(1)]	A negotiable instrument is an Order Instrument if : (a) It is expressed to be payable to order, or (b) It is expressed to be payable to a particular person and it does not contain words which prohibit transfer or indicate an intention that it shall not be transferable. **Note: An order instrument can be transferred by an endorsement on it and then its delivery**.	(i) "Pay to R or order" (ii) "Pay to the order of R" (iii) "Pay to R"

Time or Demand Instrument

Instruments payable on demand [Section 19 and 21]	A promissory note or bill of exchange is payable on demand if (a) no time for payment is specified, ***or*** (b) it is expressed to be payable on demand, or **at sight or on presentment** ***Notes:*** (i) A cheque is always payable on demand. (ii) An instrument payable on demand may be presented for payment at anytime. (iii) An instrument payable on demand is not entitled to any days of grace.	(i) "I Promise to pay B Rs. 500" (ii) "I promise to pay B Rs. 500 on demand." (iii) "Pay B Rs 500 at sight." (iv) "Pay B Rs 500 on presentment."
Time Instrument [Sec. 22]	Time instruments mean the instruments in which **time for payment is mentioned.** A promissory note or bill of exchange is a time instrument when it is expressed to be payable— a) after a specified period b) on a specific day **c) after sight** d) on the happening of event which is certain to happen **Notes:** A cheque cannot be a time instrument because the cheque is always payable on demand.	(i) "I promise to pay ***B*** Rs 500 after 3 months." (ii) "I promise to pay Rs 500 on 1st Jan., 1998." (iii) "I promise to pay ***B*** Rs 500 after sight" (iv) "I Promise to pay ***B*** Rs 500 after C's death."

Inland or Foreign Instrument

Inland Instrument [Section 11]	A negotiable instrument is an inland instrument if : (a) It is drawn in India, **and** (b) It is payable in India, **or** (c) It is drawn upon any person resident in India.
Foreign Instrument [Section 12]	(i) An instrument which is not an inland instrument is deemed to be a foreign instrument. **Note:** Foreign bills must be protested for dishonour if such protest is required by the law of the place where they are drawn [Section 104]. **Liability of maker/ drawer of foreign bill**

	In the absence of a contract to the country, the liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable (Section 134). Example 12: A bill of exchange is drawn by A in Berkley where the rate of interest is 15% and accepted by B payable in Washington where the rate of interest is 6%. The bill is indorsed in India and is dishonoured. An action on the bill is brought against B in India. He is liable to pay interest at the rate of 6% only. But if A is charged as drawer, he is liable to pay interest at 15%.

State with reasons whether each of the following instruments is an Inland Instrument or a Foreign Instrument as per The Negotiable Instruments Act, 1881:

1. **Ram draws a Bill of Exchange in Delhi upon Shyam a resident of Jaipur and accepted to be payable in Thailand after 90 days of acceptance.**
2. **Ramesh draws a Bill of Exchange in Mumbai upon Suresh a resident of Australia and accepted to be payable in Chennai after 30 days of sight.**
3. **Ajay draws a Bill of Exchange in California upon Vijay a resident of Jodhpur and accepted to be payable in Kanpur after 6 months of acceptance.**
4. **Mukesh draws a Bill of Exchange in Lucknow upon Dinesh a resident of China and accepted to be payable in China after 45 days of acceptance. (4 Marks)(NOV 2020)**

   1. is an Inland instrument.
   2. is an Inland instrument.
   3. is a Foreign instrument.
   4. is a Foreign instrument

Ambiguous, Inchoate

Ambiguous Instruments [Sec. 17]	(i) An instrument which is vague and cannot be clearly identified either as a bill of exchange or as a promissory note is an ambiguous instrument. (ii) Sec. 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly. Thus, after exercising his option, the holder cannot change that it is the other kind of instrument.
Inchoate Instrument [Sec. 20]	A negotiable instrument is an Inchoate Instrument if : (a) it is duly stamped + duly signed + delivered by person signing such instrument to another person, and (b) is incomplete in certain respects

	The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete. **Legal Effect:** The holder gets a prima facie authority to make or complete the negotiable instrument by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it **Liability on An Inchoate Instrument—** (a) The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course (b) The holder of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor. (c) A holder in due course can recover the whole amount stated in the instrument but not exceeding the amount covered by the stamp.

Ram purchases some goods on credit from Singh, payable within 3 months. After 2 months, Ram makes out a blank cheque in favour of Singh, signs and delivers it to Singh with a request to fill up the amount due, as Ram does not know the exact amount payable by him. Singh fills up fraudulently the amount larger than the amount payable by Ram and endorses the cheque to Chandra in full payment of Singh's own due. Ram's cheque is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of Singh and Chandra.(MAY 2019) **Hint**: In the given question, Singh is a party in immediate relation with the drawer (Ram) of the cheque and so he is entitled to recover only the exact amount due from Ram and not the amount entered in the cheque. However, the right of Chandra, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from Singh.

Promissory Note [Sec. 4]

Meaning of Promissory Note	A 'Promissory note' is an instrument in **writing** (not being a bank-note or a currency-note) • containing an **unconditional** undertaking • Signed by the **maker** • to pay a **certain sum** of **money only** to – • a **certain person**; or • the order of a certain person, or to the bearer of the instrument **NOTE**: As per sec 31 of RBI Act, 1934 **Promissory Note can never be payable to bearer** except by

	(i) RBI (ii) CG
Parties to Promissory Notes	(i) **Maker**: The person who makes the promissory note is called as maker. His liability is primary and unconditional. (ii) **Payee**: The person to whom money is to be paid is named in the promissory note. He is called as payee.
Essential Characteristics of a promissory Note	(a) In **writing-** An oral promise to pay is not sufficient. (b) There must be an **express promise to pay**. Mere acknowledgment of debt is insufficient. **Examples**: (i) I acknowledge myself to be indebted to B in ` 1,000, to be paid on demand, for value received. (Valid promissory note as the promise to pay is definite) (ii) "Mr. B I owe you ` 1,000." – Invalid promissory note as there is no promise to pay. It is just an acknowledgement of debt. (c) The promise to pay should be definite and **unconditional.** Therefore, instruments payable on performance or non-performance of a particular act or on the happening or non-happening of an event, are not promissory no tes. However, the promise to pay may be subject to a condition, which according to the ordinary experience of mankind, is bound to happen. **Examples**: (i) I promise to pay B ` 500 seven days after my marriage with C. (the promissory note is invalid as marriage with C may or may not happen.) (ii) I promise to pay B ` 500 on D's death- as the death of D is certain, promise in unconditional. Thus, the promissory note is valid. (iii) I promise to pay B ` 500 on D's death, provided D leaves me enough to pay that sum. Invalid promissory note as promise is dependent on D leaving behind money which is not certain. (d) A promissory note must be **signed by the maker** otherwise it is incomplete and ineffective. (e) Promise to pay **money only**. (f) The **maker and payee must be certain, definite and different persons**. A promissory note cannot be made payable to the bearer (Section 31 of RBI Act). Only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'.

	(g) **Stamping**: A promissory note must be properly stamped in accordance with the provisions of the Indian Stamp Act and such stamp must be duly cancelled by maker's signatures or initials or otherwise

Q. 1 State whether the following statements are promissory notes or not?

(a) "I promise to pay B or order Rs. 500"
(b) "Mr. B, I owe you Rs. 500"
(c) "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on demand, for value received".
(d) "I am liable to B, in a sum of Rs. 500 to be paid by instalments.
(e) "I am bound to pay the sum of Rs. 500 which I received from you".
(f) "I promise to pay B Rs. 500 and all other sums which shall be due to him".
(g) "I promise to pay B Rs. 1000 and the fine according to the rules".
(h) "I promise to pay B Rs. 500, first deducting there out any money which he may owe me".
(i) "I promise to pay B Rs. First deducting there out any money which he may owe me".
(j) "I promise to pay B a sum of Rs. 500 when convenient or able".
(k) "I promise to pay B Rs. 500 when he delivers the goods".
(l) "I promise to pay B Rs. 500 seven days after my marriage with C".
(m) "I promise to pay B Rs. 500 on D's death
(n) "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum".
(o) "I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next"
(p) "I promise to pay B in 20 shares and 10 bonds of XY Ltd.

Bill of Exchange [Sec. 5]

Meaning	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.
PARTIES TO A BILL OF EXCHANGE (Generally 3 parties)	➢ **Drawer** ✓ The person who draws the bill (i.e.the person who makes the bill) is called as drawer. ➢ **Drawee** ✓ The person on whom the bill is drawn is called as drawee. On acceptance of the bill • he is called as acceptor; • he becomes liable for the payment of the bill; • his liability is **primary and unconditional.** ➢ **Payee.** ✓ The person to whom money is to be paid is named in the bill. He is called as payee.

	✓ Drawer and payee can be same or different
“drawee in case of need”	When in the bill or in any indorsement thereon, the name of any person is given **in addition to the drawee** to be resorted to in case of need such person is called a “drawee in case of need”.
Essential Features of bill of exchange	1. It must be in **writing**. 2. There must be an **order to pay**. 3. The order to pay must be **unconditional.** Order in a bill of exchange is not conditional if the event mentioned therein is certain to happen, though timing of happening is uncertain. 4. The order is a direction to a **certain person** to pay **certain sum of money**. The sum of money payable is a certain sum, even if the BE mentions future interest or it contains an exchange rate. 5. It must be signed by the drawer. 6. Parties to BE viz., Drawer, Drawee / Acceptor and Payee must be specified in the instrument with reasonable certainty. 7. It must be **stamped.** 8. It must be **delivered**. 9. **a bill of exchange cannot be made payable to bearer on demand**. **Example :** “On demand pay to the bearer the sum of rupees five hundred, for value received.” It is invalid BOE. However, a bill of exchange payable on demand, in which name of the payee is mentioned, is valid. **Example :** “On demand pay to A or order the sum of rupees five hundred for value received

Distinction between Promissory Note and Bill of Exchange.

Basis of Distinction	A Bill of Exchange	A Promissory Note
Definition	"A Promissory Note" is an instrument in writing (not being a banknote or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.	“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.

No. of Parties	There are **three** parties— drawer, drawee and payee.	There are **two** parties—maker and payee.
Promise/order	It contains an unconditional **order** given by a creditor to a debtor.	It contains an unconditional **promise** given by a debtor to a creditor.
Liability of drawer/maker	The liablity of the drawer is **secondary and conditional.**	The liability of the maker is **primary and absolute.**
Acceptance	It **requires** acceptance to become a valuable instrument.	It **does not require** any acceptance since it is a valuable instrument right from the beginning.
Same identity of payer or and payee	The drawer and payee **may be** the same person.	The maker and payee **cannot be** the same person.
Payable to bearer	It **can be** payable to bearer. It cannot be drawn as payable to bearer on demand.	It **cannot be** payable to bearer.

Cheque [Sec. 6]

Meaning of cheque	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 – ▪ Truncated cheque; and ▪ Electronic cheque.
Essential characteristics of a cheque	✓ All same like bill of exchange so has all essential characteristics of BOE ✓ It is **always drawn upon a specified banker** ✓ It is **always payable on demand** **Note - Payable on demand means-** It should be payable whenever the holder chooses to present it to the drawee (the banker). ✓ A cheque does not require stamping or acceptance
Parties of a cheque	**(1) Drawer** ✓ The person who draws the cheque, i.e., the person who makes the cheque (debtor) is called as drawer. ✓ His liability is primary and conditional **(2) Drawee** ✓ The bank on whom the cheque is drawn is called as drawee.

<table>
<tr><td></td><td>✓ He makes the payment of the cheque.
(3) Payee
✓ The person to whom money is to be paid (i.e., the person in whose favour cheque is issued) & is named in the cheque. He is called as payee.
✓ The payee may be the drawer himself or a third party.</td></tr>
<tr><td>Truncated cheque</td><td>means a cheque which is truncated during a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.</td></tr>
<tr><td>Electronic cheque</td><td>means a cheque drawn in electronic form by using any computer resource, and signed in a secure system with a digital signature (with/without biometric signature) and asymmetric crypto system or electronic signature, as the case may be;

Note- For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.</td></tr>
<tr><td>Forms of cheque</td><td><table>
<tr><td>1) Bearer cheque</td><td>To be paid to bearer of cheque</td></tr>
<tr><td>2) Order cheque</td><td>Payable to person mentioned</td></tr>
<tr><td>3) Crossed cheque</td><td>Bearer or order collected only through banker.</td></tr>
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Distinction between Bill of Exchange and Cheque

Basis	Bill of Exchange	Cheque
Drawee	Can be drawn on any person including a Banker.	Should be drawn only on a specified Banker.
Payment	Payment either – (a) on demand, or (b) after a specified time	Always payable on demand.
Grace days	Generally, B/E is entitled to 3 days of grace.	Cheque is not entitled to any days of grace.
Acceptance	A bill must be accepted before payment can be demanded.	Acceptance is not required for a cheque.
Crossing	Crossing of a B/E is not possible	A cheque may be crossed.
Stamping	Stamping is required as per relevant law.	Stamping is not required.
Stop payment	Countermanding is not possible.	Stop payment may be made before it is presented for payment.

Bouncing or Dishonor of Cheques [Sec. 138]

Meaning of Bouncing or Dishonor of Cheque	A cheque is said to be bounced or dishonored by non-payment when the drawee of the cheque makes default in payment upon being duly required to pay the same.
Punishment	• **Imprisonment** for a term which may **extend to 2 years,** or • **Fine** which may extend to **twice the amount of the cheque;** or • **Both** imprisonment and fine.
Reason for dishonor	• The **funds in the account are insufficient** to honor the cheque; or • **Stop payment**
Conditions necessary for presentment of cheque	a) If the cheque was drawn to discharge a **legally enforceable debt** or other liability; [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section] b) If the cheque is returned by the bank unpaid due to **insufficiency of funds(stop payment as well)** in the account of drawer; c) If the cheque has been **presented** to the bank **within** a period of **3 months** from the date on which it is drawn or within the period of its validity, whichever is earlier; d) If the payee or the holder in due course of the cheque has made a **demand** for the payment of the said amount of money **by giving a notice, in writing,** to the drawer of the cheque **within 30 days of the receipt of information** by him from the bank regarding the return of the cheque as unpaid; and **e)** If the drawer of such cheque has **failed to make the payment** of the said amount of money to the payee or to the holder in due course of the cheque, **within 15 days of the receipt of the said notice.**
Judical Rulings	**even stop payment cannot prohibited action u/s 138 (**Modi Cements Ltd. Vs. Kuchil Kumar Nandi, 1998.)

Bholenath drew a cheque in favour of Surendar. After having issued the cheque; Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence? **(module)**

Conclusion –

Note	**PRESUMPTION IN FAVOR OF HOLDER [SECTION 139]** When a cheque is dishonoured, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability. Presumption prescribed here is a "rebuttable presumption" as the provisions clearly provides that the person issuing the cheque is at liberty to prove to the contrary. The effect of this presumption is to place the evidential burden on the accused. **DEFENCE WHICH MAY NOT BE ALLOWED IN ANY PROSECUTION UNDER SECTION 138 [SECTION 140]** It shall not be a defence in a prosecution of an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

Negotiation

Meaning of Negotiation [Sec. 14]	Negotiation means **transfer of instrument** from one person to another person, so that the person receiving the instrument is entitled to hold the instrument in his name and sue upon the instrument in his name. **Example**: X drew a cheque for Rs. 50,000 payable to Y and delivered it to him. Y indorsed the cheque in favour of Z but kept it in his table drawer. Subsequently, Y died, and cheque was found by Z in Y's table drawer. In this case, Z does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him.
Modes of Negotiation	(i) A promissory note, bill of exchange or cheque payable to **bearer** is negotiable by the **delivery** thereof. (ii) A promissory note, bill of exchange or cheque payable to **order** is negotiable by the holder by **indorsement and delivery** thereof.
How to effect negotiation	There are two methods of transfer by negotiation as follows:

<table>
<tr><td></td><td>(i) Negotiation by delivery [Section 47]: A bearer instrument is negotiable by voluntary delivery thereof.
(ii) Negotiation by endorsement and delivery [Section 48]: An order instrument is negotiable by endorsement and delivery thereof.</td></tr>
<tr><td colspan="2">Explain the meaning of ‘Negotiation by delivery’ with the help of an example. Give your answer as per the provisions of the Negotiable Instruments Act, 1881.(MTP MAY 2019)
According to section 47 of the Negotiable Instruments Act, 1881, subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.
Exception: A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.
Example: A, the holder of a negotiable instrument payable to bearer, delivers it to B’s agent to keep for B. The instrument has been negotiated.</td></tr>
<tr><td>Delivery in Negotiation [Section 46]</td><td>• Delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary, and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered.
• The delivery can be, actual or constructive.
• Actual delivery takes place when the instrument changes hand physically.
• Constructive delivery takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.
• Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is indorsed to him, unless the instrument is negotiated to a holder in due course.
• The contract on a negotiable instrument until delivery remains incomplete and revocable.
• The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument.
• The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered.
• If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal</td></tr>
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	representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57)[1]

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

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

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

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

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

Negotiation of instruments between the parties	**How delivery is to be made**
As between parties standing in immediate relation	Delivery to be effectual must be made by the party making, accepting, or endorsing the instrument, or by a person authorized by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course	It may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

PRESENTMENT OF INSTRUMENTS

Presentment for acceptance [Section 61]

A bill of exchange payable after sight must [if no time or place is specified therein for presentment] be presented to the drawee thereof for acceptance [if he can, after reasonable search, be found] by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day.

In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured. If the bill is directed to the drawee at a particular place, it must be presented at that place, and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

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

Presentment of promissory note for sight [Section 62]

A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day.

In default of such presentment, no party thereto is liable thereon to the person making such default.

Drawee's time for deliberation [Section 63]

The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it.

Presentment for payment [Section 64]

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

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

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

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

Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.

Hours for presentment (Section 65)

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

Presentment for payment of instrument payable after date or sight (Section 66)

A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments (Section 67)

A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of instrument payable at specified place and not elsewhere (Section 68)

A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Instrument payable at specified place (Section 69)

A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment where no exclusive place specified (Section 70)

A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any) or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment when maker, etc., has no known place of business or residence (Section 71)

If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer (Section 72)

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

Presentment of cheque to charge any other person (Section 73)

A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand (Section 74)

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

Presentment by or to agent, representative of deceased, or assignee of insolvent (Section 75)

Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

Excuse for delay in presentment for acceptance or payment (Section 75A)

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

When presentment unnecessary (Section 76)

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

a)

(i) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or

(ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

(iii) if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or

(iv) if the instrument not being payable at any specified place, he cannot after due search be found;

b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;
c) as against any party if, after maturity, with knowledge that the instrument has not been presented—
   - he makes a part payment on account of the amount due on the instrument,
   - or promises to pay the amount due thereon in whole or in part,
   - or otherwise waives his right to take advantage of any default in presentment for payment;
d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

Liability of banker for negligently dealing with bill presented for payment (Section 77)

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

RULES OF COMPENSATION

Rules as to compensation (Section 117)

The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until tender or realisation thereof, together with all expenses caused by the dishonour and payment;
d) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;
e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

TEST YOUR KNOWLEDGE

1. A negotiable instrument is an instrument which is freely transferable from one person to another by:
   a. Simple delivery
   b. Indorsement and delivery
   c. Indorsement
   d. Registered post
2. An instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is called as:
   a. bearer instrument
   b. Ambiguous instrument
   c. Order instrument
   d. Inland instrument
3. As per Negotiable Instruments Act, 1881, Negotiable Instruments means **(module)**
   a. Promissory Note
   b. Bills of Exchange
   c. Cheque
   d. All the above
4. How many parties in Bills of exchange: **(module)**
   a. 2
   b. 3
   c. 4
   d. 5
5. On which of the followings, even not defined in Negotiable Instruments Act 1881, provisions of Act are applicable: **(module)**
   a. Hundies
   b. Treasury Bills
   c. Bearer Debentures
   d. All of the above
6. Which is not the essential characteristic of Bill of exchange: **(module)**
   a. Must be in writing
   b. Must contain an express promise to pay
   c. Instrument must be signed
   d. Must be stamped
7. Which is not an Inland Instrument: **(module)**
   a. P/N made in India + payable in India + drawn upon person resident in India
   b. P/N made in India + payable in India + drawn upon person resident outside India
   c. P/N made in India + payable outside India + drawn upon person resident in India
   d. P/N made in India + payable outside India + drawn upon person resident outside India
8. Negotiable Instrument which can be treated either P/N or BOE, is known as: **(module)**
   a. Inland Instrument
   b. Inchoate Instrument
   c. Ambiguous Instrument
   d. Foreign Instrument
9. Order Instrument can be negotiated by: **(module)**
   a. By delivery only
   b. By endorsement only
   c. By endorsement & delivery
   d. None of above
10. Where any cheque drawn by a person is dishonoured due to insufficiency of funds, such person shall be punished with: **(module)**

a. imprisonment for a term which may extend to two years,
b. with fine which may extend to twice the amount of the cheque,
c. imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both,
d. No punishment