VII

UNIT

THE NEGOTIABLE INSTRUMENTS ACT, 1881

CHAPTER 1

THE NEGOTIABLE INSTRUMENTS ACT, 1881

LONG ANSWER QUESTIONS:

Q.1 What is a negotiable instrument? List its essential characteristics.

Ans. As per Sec. 13 of the Negotiable Instruments Act, 1881, "A negotiable instrument means a 'promissory note', 'bill of exchange' or 'cheque' payable either to order or to bearer." Thus, the Negotiable Instruments Act expressly provides for only three kinds of negotiable instruments', *viz.*, a Promissory Note, a Bill of Exchange and a Cheque. However, the definition does not exclude any other instrument from being included in this list provided it satisfies certain characteristics. Hundies, Treasury bills etc. are also considered as negotiable instruments by customs or usage of trade.

The essential characteristics of Negotiable Instruments are:

1. It is necessarily in writing.
2. It should be signed by the maker.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects provided he has acquired the instrument in good faith, for value (consideration) and before maturity.
5. It can be transferred infinitely, any number of times, till its satisfaction.
6. Every negotiable instrument must contain either an unconditional promise or an unconditional order to pay money. The promise or order to pay must relate to money only.
7. The sum payable, as well as the payee, must be certain and specific.
8. The instrument should be delivered validly. Mere drawing of an instrument does not result in creation of any liability until it is delivered.

Q.2 Define a Promissory Note and explain its essential features.

Ans. According to section 4 of the Negotiable Instruments Act, 1881, "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, or to the order of, a certain person, or to the bearer of the instrument." The person who makes the promise to pay is called the Maker.

He is in the capacity of a debtor and must sign the instrument. Payee is the person in the capacity of a creditor to whom the amount on the note is payable.

Essential Characteristics of a Promissory Note are as follows:

(*a*) **In writing:** A promissory note must be in writing. An oral promise to pay is not sufficient.

(*b*) **Express promise to pay:** The promissory note should contain a promise or undertaking to pay. Mere acknowledgement of debt is insufficient. However, use of the word "promise" is not essential for an instrument to be regarded as a promissory note.

(*c*) **Definite and unconditional promise:** The promise to pay should be definite and unconditional *i.e.* the performance of the promise should not be dependent on the happening or non-happening of any event. Thus, instruments payable on performance or non-performance of a particular act or on the happening or non-happening of an event, are not promissory notes. However, if the promise to pay is subject to a condition, which according to the ordinary experience of mankind, is bound to happen, then such a promissory note shall be treated as valid.

(*d*) **Signed by the maker:** A promissory note must be signed by the maker to be complete and effective.

(*e*) **Promise to pay a certain sum of money only:** A promissory note contains a promise to pay money only. A promise to pay anything other than money, in full or in part, is not a promissory note. Further the sum of money should be certain and specific.

(*f*) **The maker and payee must be certain, definite and different persons:** The make and the payee of a promissory note must be certain, definite and different persons. A promissory note cannot be made payable to the bearer [As per Section 31 of the Reserve Bank of India Act, 1934 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.3 Distinguish between Promissory Note & a Bill of Exchange.

Ans.

	Promissory Note	Bill of Exchange
1	**Definition :-** "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, or to the order of, a certain person, or to the bearer of the instrument."	A Bill of Exchange is defined by Section 5 of the Negotiable Instruments Act, 1881, as "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."

	Promissory Note	Bill of Exchange
2.	**Number of parties:-** There are only two parties - the maker and the payee.	There are three parties in case of a bill of exchange-the drawer, the drawee and the payee- although any two of these capacities may be filled by one and the same person.
3.	**Nature of instrument:-** A promissory note contains an unconditional promise to pay by the maker.	It contains an unconditional order to the drawee to pay to the payee or to his order or to the bearer.
4.	**Acceptance:-** A promissory note does not require any acceptance since it is made and signed by the person who is liable to pay it.	A bill of exchange must be accepted by the drawee or his agent before it is presented for payment.
5.	**Nature of liability of maker:-** In case of promissory note, the liability of the maker or drawer is primary and absolute.	The liability of the drawer of a bill of exchange is secondary and conditional upon non-payment by the drawee.
6.	**Notice of dishonour to the maker:-** A promissory note, if dishonoured, does not require any notice of dishonour to be given to the maker.	In the case of a bill of exchange, the holder/payee must give the notice of dis-honour to the drawer to hold him liable.
7.	**Payable to maker:-** A promissory note cannot be made payable to the maker himself since he himself is the creator of it and promises to pay on it.	In a bill of exchange the drawer and the payee may be one and the same person.
8.	**Payable to bearer:-** As per Sec. 31 of the RBI Act, 1934, a promissory note cannot be made payable to bearer by any person other than Reserve Bank or the Central Government.	A bill of exchange can be made payable to bearer. However, it cannot be made payable to bearer on demand.

Q.4 Define a Bill of Exchange. Who are the parties to a bill of exchange and list its essential characteristics.

Ans. A Bill of Exchange is defined by Section 5 of the Negotiable Instruments Act, 1881, as "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."

These are the parties to a bill of exchange:

- **Drawer:** The maker of a bill of exchange. His liability is secondary and conditional (*i.e.* his liability arises in the event of default by the drawee, the primarily liable party)
- **Drawee:** The person ordered/directed by the drawer to pay is the 'drawee'. He is the person on whom the bill is drawn. On acceptance of the bill, he is called an acceptor and is liable for the payment of the bill. His liability on the bill is primary and unconditional.

- **Drawee in case of need:** Sometimes, in case of foreign bills, the drawer may mention the name of another person, besides drawee, who may be approached for acceptance or/and payment in case the need arises. For instance, the need may arise when the drawee either refuses to accept or pay or is not be available at the given address. Such a person, whose name is mentioned as an alternative drawee, is called 'drawee in case of need'. Originally, the bill must be presented to the drawee and only when he refuses or fails to accept, it may be presented to the drawee in case of need.
- **Payee:** The person named in the instrument, to whom or to whose order the money under the instrument, is directed to be paid. Thus he is the person who is entitled to receive the payment on the instrument.

The following are the essential characteristics of bill of exchange:

(*a*) It must be in writing.

(*b*) Must contain an express and unconditional order to pay.

(*c*) The order to pay must be regarding a certain specific sum of money.

(*d*) The order must be issued to some specific person *i.e.* drawee. When he accepts the bill he becomes the acceptor. Where no person is mentioned as a drawee and a person signs his acceptance, then he shall be regarded as acceptor by estoppel.

(*e*) The drawer of the bill must sign the instrument.

(*f*) Acceptance of the bill is essential for the devolution of liability to pay on the drawee.

(*g*) It must be stamped.

Q.5 What is meant by bouncing of a cheque under the provisions of the Negotiable Instruments Act, 1881?

Ans. Bouncing of a cheque (Sec 138): - In the event of dishonour of a cheque due to insufficiency of funds in the drawers account the drawer shall not only be liable to pay the amount due to the payee in respect of his debt (civil liability), but he can also be held criminally liable u/s 138 for bouncing of the cheque.

Criminal Liability u/s 138: - The drawer can be subjected to imprisonment up to 2 yrs. or fine up to twice the amount of cheque dishonoured or both.

The liability u/s 138 arises only if:–

- The drawer had issued the cheque to discharge a legally enforceable debt.
- The cheque must have been dishonoured due to insufficiency of funds in drawer's account.
- The cheque must have been presented for payment to the bank within 3 months of date or period of validity whichever is earlier.

Procedure:—

- The payee/holder must give a written notice of dishonour to the drawer containing not only the fact of dishonour of the cheque, but also giving the drawer a time period for making payment on the cheque, failing which action u/s 138 shall be initiated.

- The notice must be served within 30 days of the receipt of information of dishonour of the cheque by the payee/holder from the bank. Further notice must demand the payment of the receipt of notice.
- The liability u/s 138 shall be attracted only if the drawer fails to make payment within 15 days of receipt of notice (Part payment shall be treated as default). Thus, the cause of action arises on the 16th day from the date of receipt of notice by the drawer.
- Thereafter the payee/holder must file a complaint within 1 month from the date of cause of action with a court not inferior to that of a metropolitan magistrate or judicial magistrate or first of class.

Note: -

- *The dishonoured cheque can be represented any number of times within its validity, provided the cause of action does not arise. Thus, once the cause of action arises in respect of the dishonoured cheque, it cannot be represented for payment.*
- *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 due to insufficiency of funds (Section 140).*

Q.6 What is meant by 'Presentment' of a Negotiable Instrument? State when the presentment is not necessary.

Ans. It means showing the instrument to drawee/acceptor or makes for acceptance, sight or payment.

Presentment can be of three types:

1. Presentment of NI (B/E) for acceptance
2. Present of NI (P/N) for sight
3. Present of NI (Ch/P/N/, B/E) for payment

1. Presentment for Acceptance: -

- In the following cases ***presentment for acceptance is required*** in order to make the parties to the bill liable:—
  (*i*) A bill payable some period (days/months) after sight or after presentment or
  (*ii*) A bill in which there is an express stipulation (terms/conditions) that it shall be presented for acceptance before it is presented for payment.

Presentment of B/E for acceptance is not required in the following cases:—

(*i*) When the B/E is payable on demand

(*ii*) A certain no. of days/months after date, or (*iii*) On a certain fixed date.

Thus, in the above-mentioned cases presentment for acceptance is not required, unless it is specifically mentioned in the bill.

- ***Where presentment for acceptance is essential but is not made, then all parties liable on the negotiable instrument are discharged.***
- Presentment for acceptance must be ***made within the time specified*** in the instrument. Where no time is ***specified*** the B/E must be ***presented*** for acceptance ***within a reasonable time after it is drawn and before its maturity.***
- Presentment for acceptance must be made ***by a person entitled to demand acceptance*** and must be made ***to the drawee/his authorised agent/drawee in case of need.***
- Presentment for acceptance must be ***made during the business hours, on a business day, at the specified place*** (if no place is specified then at the place of business or the place of usual residence).
- The holder must, ***if so required by the drawee, grant*** him ***48 hrs.*** (exclusive of public holidays) to consider his acceptance.
- ***If presentment is NOT valid, the refusal to accept the bill DOES NOT amount to dishonour by non-acceptance. (If presentment for acceptance is valid and the party still refuses to accept then it shall amount to dishonour by non-acceptance)***
- ***Presentment*** for acceptance is ***excused (i.e. was required but allowed even if not presented) when***:
  (*i*) Drawee cannot be found after reasonable search.
  (*ii*) Drawee is fictitious.
  (*iii*) Drawee is incompetent

Note:-

Presentment for acceptance/Sight is the same for B/E.

A P/N payable at a certain period after sight must be presented to the maker thereof for sighting. In case of default parties to P/N shall discharged.

2. Presentment for Payment [of all Negotiable Instruments]:

- P/N, B/E, Cheques must be ***presented for payment to the maker/acceptor or drawee*** thereof as the case may be by or on behalf of the holder.
- Presentment for payment must be ***made during the business hours on a business day on maturity*** of the instrument [Only in case of a cheque it must be presented for payment within a reasonable time after its delivery to the holder and within 3 months of its date. In case of NI payable at sight, Presentment for payment must be made during the business hrs. on a business day]
- A NI ***payable on demand*** must be ***presented for payment within a reasonable time after it is received*** by the holder.

- Presentment for payment must be made at the specified place and if no place is specified, at the place of business or at the place of usual residence of maker/drawee/acceptor as the case may be.
- ***Failure or delay in Presentment for payment, shall discharge all the prior parties to the NI other than the primarily liable party.***
- Delay/Failure in ***Presentment for payment is excused (i.e. required but allowed even if not made)*** in the following cases: -
  (*i*) The maker/drawee/acceptor intentionally prevents the Presentment for payment.
  (*ii*) The NI is payable at his place of business & he closes such place of business on a business day during the business hrs.
  (*iii*) If NI is payable at any other specified place & neither he/nor his authorised agent, attends at such place.
  (*iv*) If the drawee/acceptor maker cannot be found after reasonable search.
  (*v*) If drawee/acceptor/maker is incompetent.
  (*vi*) If drawee/acceptor/maker has promised to pay notwithstanding non-presentment.
  (*vii*) If the Presentment for payment has been waived by the maker drawee/acceptor.
  (*viii*) If the Presentment for payment becomes impossible for the holder due to any other reason beyond his control (*i.e.* not due to his fault).

SHORT ANSWER QUESTIONS:

Q.7 Define a Cheque as a negotiable instrument. Who are the parties to a cheque and what are its characteristics?

Ans. As per Section 6 of the Negotiable Instruments Act, 1881, "a cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form." The following are the parties to cheque:

- Drawer: Drawer is the person who draws a cheque *i.e.,* makes the cheque (Debtor). His liability is primary and conditional.
- Drawee: The specific banker on whom cheque is drawn is the drawee. Also known as the paying/drawee banker, the drawee makes the payment of the cheque. In case of cheque, drawee is always banker.
- Payee: The person as originally named in the instrument as the person entitled to receive the payment on the cheque (*i.e.*, the person in whose favour cheque is issued). The payee may be the drawer himself or a third party.

The following are the essential characteristics of a cheque:

a. Since cheque is a special kind of a bill of exchange it must contain all the essential characteristics of a bill of exchange.

b. Must be drawn on a specified banker.

c. It must be payable on demand only.

Q.8 Write a short notes on:

(*i*) Order Instrument
(*ii*) Bearer Instrument
(*iii*) Demand Instrument
(*iv*) Time Instrument
(*v*) Inland Instrument
(*vi*) Foreign Instrument
(*vii*) Ambiguous Instrument
(*viii*) Inchoate Instrument

Ans.

(*i*) Order Instrument: - An instrument is said to be an order instrument:

- If it is payable to a particular person, then it is generally deemed to be payable to his order;
- If it is expressed to be payable to order of a particular person; and
- If it does not contain any words prohibiting transfer or indicating an intention that it shall not be transferable.

An order instrument is negotiable by endorsement and delivery.

(*ii*) Bearer Instrument: An instrument is a bearer instrument:

- If it is expressed to be so payable, or
- If on which the only and/or last endorsement is an endorsement in blank.

A bearer instrument is negotiable by mere delivery.

(*iii*) Demand Instrument: An instrument which satisfies the following conditions is a demand instrument:

- If the time for payment is not specified;
- If it is expressed to be payable on deman;
- If it can be presented for payment at any time.

Note: A P/N or B/E, in which no time for payment is specified and a cheque are payable on demand.

(*iv*) Time Instrument: An instrument is a time instrument:

- In which time for payment is specified and may be payable –
  - after a specified period,
  - on a specified day, or

- certain period after sight, or
- on the happening of a certain event.

(*v*) Inland Instrument: A P/N, B/E or Cheque is said to be an inland instrument, if any one of the following conditions is satisfied:

(*a*) Drawn or made in India AND made payable in India, or

(*b*) Drawn or made in India and drawn upon a Person Resident in India. (Note : Even if an inland instrument is endorsed to a foreign country, it continues to be an inland instrument)

(*vi*) Foreign Instrument: An instrument which is not an Inland Instrument, is deemed to be a foreign instrument.

In the absence of a contract to the contrary, 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 endorser by the law of the place where the instrument is made payable (Section 134).

(*vii*) Ambiguous Instrument: According to section 17 of the Act, "Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly."Thus, an instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an ambiguous instrument. In other words, such an instrument may be construed either as promissory note, or as a bill of exchange. Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly. Thus, after exercising his option, the holder cannot change his option that it is the other kind of instrument.

(*viii*) Inchoate instrument: A negotiable instrument that is incomplete in certain respects is said to be an inchoate instrument. The drawer/maker/acceptor/endorser of a negotiable instrument may sign and deliver the instrument to another person while leaving the instrument, either wholly or partially blank/incomplete. Such an instrument is an inchoate instrument and it confers on its holder the right to complete it by filling in any amount either within limit stipulated therein or within the limits as covered by the stamp affixed. According to Section 20 of the Negotiable Instruments Act, 1881, a person, who signed & delivered to another a stamped and otherwise inchoate (incomplete) instrument, is stopped from asserting, as against a holder in due course, that the instrument has not been filled in accordance with the authority given by him provided the amount filled is covered by the stamp affixed.

Q.9 What is meant by negotiation of an instrument?

Ans. Section 14 of the Negotiable Instruments Act defines 'negotiation' as follows:

"When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated."

An instrument payable to bearer can be negotiated by mere delivery. The person, to whom the instrument is delivered, becomes the holder. However, a person, who steals or finds a bearer instrument, is not the holder, since it has not been delivered to him.

An instrument payable to order is negotiated by endorsement and delivery. Thus, negotiation of an order instrument requires fulfilment of two conditions: firstly, the holder should endorse it, and secondly, he should deliver it to the endorsee.

Negotiation is completed by the delivery of the instrument. The negotiation of an instrument, is incomplete and revocable until the delivery of the instrument is effected in favour of the endorsee/transferee.

Q.10 Write a short note on the Delivery of the Instrument.

Ans. Delivery of instrument implies voluntary transfer of the instrument with the intention to give lawful possession of the instrument to the transferee. The object of delivery should be to pass the property in the instrument to the person to whom it is delivered:

- The making, acceptance or endorsement of a P/N, B/E or Cheque is completed by delivery of the instrument (actual, symbolic or constructive).
- Order instrument is negotiable by endorsement and delivery, while a bearer instrument is negotiable by mere delivery.
- As between the immediate parties, delivery to be effective, it must be made by the party making accepting or endorsing the NI or by the person authorised by him in NI their behalf. The rights in the instrument are not transferred to the endorsee unless after the endorsement the same has been delivered. If a person makes the endorsement of instrument but before the same could be delivered to the endorsee, the endorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57)
- Section 46 on delivery of an instrument also lays down that when an instrument is delivered conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is endorsed to him, unless the instrument is negotiated to a holder in due course.

  Thus, conditional delivery will be effective only between immediate parties but not against HDC.
- However, to complete acceptance, often, notice of acceptance will also be sufficient without actual delivery. (*i.e.* if no delivery then also binding).

Q.11 What are the rules as to compensation payable in case of dishonour of a P/N, B/E or Cheque?

Ans. As per 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 untiltender 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.

CASE STUDY:

Q.12 'Anam' drew a promissory note for ₹ 50,000 payable to 'Binny' and delivered it to her. 'Binny' endorsed the note in favour of 'Rukhsaar' but kept it in her table drawer. Subsequently, 'Binny' died, and notee was found by 'Rukhsaar' in 'Binny's table drawer. 'Rukhsaar' filed the suit for the recovery of notee. Whether 'Rukhsaar' can recover the payment on the note under the provisions of the Negotiable Instruments Act, 1881?

Ans. According to section 48 of the Negotiable Instruments Act, 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by endorsement and delivery thereof. The contract on a negotiable instrument remains incomplete and revocable until delivery. 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 endorsee unless the instrument is delivered after the endorsement. If a person makes the endorsement of instrument but before the same could be delivered to the endorsee, the endorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57)

In the given case, note was endorsed properly in favour of Rukhsaar but not delivered to her and the endorser *i.e.* Binny died before making such delivery and thereby leaving the negotiation incomplete.

Thus applying the above stated provisions it is evident that Rukhsaar is not eligible to claim the payment of note.

Q.13 Ronit drew a cheque & issued the same in favour of Alekh. Later Ronit requested Alekh not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Alekh. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Ronit constitute an offence? Would your answer be the same had the cheque been issued as a wedding gift by Ronit to Alekh?

Ans. In the event of dishonour of a cheque due to insufficiency of funds in the drawer's account the drawer shall not only be liable to pay the amount due to the payee in respect of his debt (civil liability), but he can also be held criminally liable u/s 138 for bouncing of the cheque. Under section 138, the drawer can be subjected to imprisonment up to 2 yrs. or fine up to twice the amount of cheque dishonoured or both.

The liability u/s 138 arises only if:

- The drawer had issued the cheque to discharge a legally enforceable debt.
- The cheque must have been dishonored due to insufficiency of funds in drawer's account.
- The cheque must have been presented for payment to the bank within 3 months of date or period of validity whichever is earlier.

Further, 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 due to insufficiency of funds (Section 140).

In the given case the drawer, Ronit, after having issued a cheque, requests the payee- Alekh not to present the same and also issues a stop payment on the banker in respect of the same.

Thus applying the above stated provisions it is evident that the stop payment is irregular and without any sufficient cause and is rather imposed with a view to prevent liability under section 138. Accordingly, the act of Ronit, *i.e.*, his request of stop payment constitutes an offence under the provisions of section 138 of the Negotiable Instruments Act, 1881.

To constitute an offence under section 138 one of the essential pre-condition is that the cheque must have been issued for discharge of a legally enforceable debt. Therefore where the cheque is given without consideration, such as like a gift, then no grounds for action under section 138 arise. Thus if in this case the cheque has been issued by Ronit in favour of Alekh as his wedding gift then the request not to present the same and the stop payment request shall not comprise an offence under section 138.

Q.14 Identify whether the following are inland or foreign instrument:—

(*i*) A bill drawn in Mumbai on a businessman of Mysore and accepted payable in Houston, Texas.

(*ii*) A bill drawn in New York on a trader in Bangalore and accepted payable in Hyderabad.

(*iii*) A bill drawn in Varanasi on a trader in London and accepted payable in Kochi.

(*iv*) A bill drawn in Chennai on a trader in America & made in America.

Ans. According to the provisions of the Negotiable Instruments Act, 1881 , a P/N, B/E or Cheque is said to be an inland instrument, if any one of the following conditions is satisfied:

- Drawn or made in India AND made payable in India, or
- Drawn or made in India and drawn upon a Person Resident in India. (Note : Even if an inland instrument is endorsed to a foreign country, it continues to be an inland instrument)

Whereas an instrument which is not an Inland Instrument, is deemed to be a foreign instrument. Thus applying the above stated provisions to the given cases it is evident that:

(*i*) The bill in an inland instrument in this case since it is drawn in India & upon a person resident in India.(2nd condition fulfilled)

(*ii*) The bill in this case is a foreign bill since it drawn outside India.

(*iii*) The bill in this case is an inland instrument since it is drawn in India and is payable in India. (1st condition fulfilled)

(*iv*) The bill in this case is a foreign instrument since it is drawn India but it is neither made payable in India nor is it drawn on a person resident in India.

Q.15 Examine the validity of the following instrument:

(*i*) P/N drawn as – "I promise to pay ₹ 10,000 to X if I receive the goods from Bombay."

(*ii*) B/E drawn as – "I order X to pay some money to me 1 month after date."

(*iii*) P/N drawn as – "I promise to pay ₹ 50,000 to Z on the death of W"

(*iv*) B/E drawn as – "I order the payment of ₹ 12,000 along with some interest to me 20 days after date."

Ans. According to the provisions of the Negotiable Instruments a promissory note and bill of exchange to be valid must be made/drawn for a specific sum and the interest if any mentioned in the instrument should also be specific. Further the P/N is an unconditional promise to pay whereas the B/E is an unconditional order to pay. Moreover, payee in both the P/N & the B/E and the drawee in the B/E must be specific persons.

Thus applying the above mentioned provisions it is evident that:

(*i*) The P/N is not valid as it is a conditional promise to pay.

(*ii*) The B/E is not valid since the amount mentioned therein is not specific.

(*iii*) The P/N is valid since the condition on which the promise to pay depends is an event which by the ordinary experience of mankind is bound to happen and is therefore not regarded as conditional.

(*iv*) The B/E is not valid as the drawee is not a specific person. Further the rate of interest to be charged is not provided in the instrument.

Q.16 Manik signs a Blank stamp paper and authorizes Danny to fill the same as a note for ₹ 7,000. Danny contravenes the instructions of Manik and instead fills in ₹ 10,000 and endorses the same to his creditor Yuvaan who receives the same in good faith without knowledge of such contravention by Danny. Comment on the right of Yuvaan under the provisions of the Negotiable Instruments Act, 1881.

Ans. A negotiable instrument that is incomplete in certain respects is said to be an inchoate instrument. The drawer/maker/acceptor/endorser of a negotiable instrument may sign and deliver the instrument to another person while leaving the instrument, either wholly or partially blank/incomplete. Such an instrument is an inchoate instrument and it confers on its holder the right to complete it by filling in any amount either within limit stipulated therein or within the limits as covered by the stamp affixed. According to Section 20 of the Negotiable Instruments Act, 1881, a person, who signed & delivered to another a stamped and otherwise inchoate (incomplete) instrument, is stopped from asserting, as against a holder in due course, that the instrument has not been filled in accordance with the authority given by him provided the amount filled is covered by the stamp affixed.

In the given case, Malik the maker of the inchoate but stamped note has authorized Danny to fill in a sum of ₹ 7,000 but Danny wrongfully fills in ₹ 10,000 and endorses the same to Yuvaan who receives the same in the good faith.

Thus applying the above stated provisions to the given case it is evident that Yuvaan who is a holder in due course in the given case, as he has received the instrument in good faith for value and before maturity, shall be entitled to claim the full amount on the instrument, provided, the amount filled in is covered by the stamp .

Q.17 Anand made endorsement of a bill of exchange amounting ₹ 50,000 to Mr. Balkishan. But, before the same could be delivered to Mr. Balkishan, Mr. Anand passed away. Mr. Sadanand, son of Mr. Anand, who was the only legal representative of Mr. Anand approached Mr. Balkishan and informed him about his father's death. Now, Mr. Sadanand is willing to complete the instrument which was executed by his deceased father. Referring to the relevant provisions of the Negotiable Instruments Act, 1881, decide, whether Mr. Sadanand can complete the instrument?

Ans. According to section 48 of the Negotiable Instruments Act, 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by endorsement and delivery thereof. The contract on a negotiable instrument remains incomplete and revocable until delivery. 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 endorsee unless the instrument is delivered after the endorsement. If a person makes the endorsement of instrument but before the same could be delivered to the endorsee, the endorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57). Therefore, a legal representative cannot complete the instrument if the instrument was executed by the deceased but could not be delivered because of his death.

In the said case, Mr. Sadanand, son of Mr. Anand (the deceased) cannot complete the instrument which was executed by Mr. Anand but could not be delivered to Mr. Balkishan, because of his death.

Thus applying the above stated provisions it is evident that Sadanand cannot complete the negotiation of the instrument after the death of the endorser Anand by delivering the instrument.