



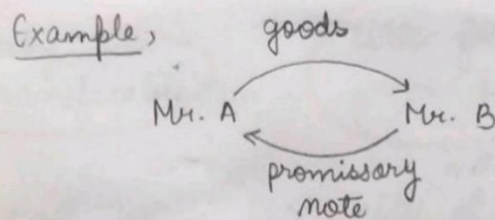
# THE NEGOTIABLE INSTRUMENTS ACT, 1881

## MEANING OF NEGOTIABLE INSTRUMENTS

- Negotiable Instruments is an instrument (document) which is freely transferable from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument pass to a bonafide transferee for value.
- The act does not define the term 'Negotiable Instruments'.  
Section 13 - provides only three kinds of negotiable instruments -
  - ✓ 1) Bills of Exchange
  - ✓ 2) Promissory notes
  - ✓ 3) Cheques, payable either to order or bearer.

## ESSENTIAL CHARACTERISTICS OF NEGO. INSTRUMENTS

- 1) Written
- 2) signed
- 3) transferable
- 4) title free from defects
- 5) can be transferred number of times
- 6) unconditional promise / order to pay
- 7) certainty of sum payable, time of payment & the payee
- 8) delivered.



Three months after date, I promise to pay Mr. A or his order the sum of ₹10,000, for value received.

Mr. B



## • PROMISSORY NOTE



### (1) Meaning

acc. to Section 4 of NI 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.

### (2) Parties to Promissory Note

#### (i) Maker

- person who makes the promise to pay.
- He is the debtor & must sign the instrument.

#### (ii) Payee

- person to whom the amount on the note is payable.

### (3) Essential Characteristics of a Promissory Note

- ✓ in writing
- ✓ an express promise to pay.
- ✓ promise to pay should be definite & unconditional.
- ✓ signed by the maker
- ✓ to pay money only
- ✓ Certain sum
- ✓ maker & payee must be certain, definite & different persons.
- ✓ stamping

## • BILLS OF EXCHANGE

### (1) Meaning

- A BOE is an instrument in writing
- containing an unconditional order,
- signed by the maker, directing a certain person
- to pay certain sum of money only to, or to the order of,
- a certain person, or to the bearer of the instrument.

### (2) Parties to the Bill of Exchange

- #### (i) Drawer - makes of a bill of exchange



(ii) Drawee :-

- person directed by the drawer to pay
- on acceptance of the bill, he is called an acceptor.

(iii) Payee :-

Person named in the instrument to whom or to whose order the money is, by the instrument, directed to be paid.

As per Section 31 of RBI Act, 1934,

a BOE cannot be made payable to bearer on demand. However, a BOE payable on demand, in which name of the payee is mentioned, is valid.

## • CHEQUE (Sec 6)

(1) Meaning

- a cheque is a Bill of exchange
- drawn on a specified banker
- & not expressed to be payable otherwise than on demand
- & it includes the electronic image
- of a truncated cheque and
- a cheque in the electronic form.

Electronic cheque :-

Cheque drawn by any computer resource & signed in a secure system using digital signature.

Truncated Cheque :-

→ Cheque truncated during clearing cycle → either by clearing house or by bank → immediately after generating electronic image.

(2) Parties to Cheque

(i) Drawer :-

- person who makes the cheque (debtor)
- liability is primary and conditional.

(ii) Drawee :-

- specific bank on whom cheque is drawn.
- makes the payment of the cheque
- is always banker.

Drawee in case of need :-

- when in the bill or in any indorsement,
- the name of any person is given in add. to the drawee
- to be resorted in case of need
- such person is called a 'Drawee in case of need.'





(iii) Payee :-

- person named in the instrument
- to whom or to whose order the money is,
- by the instrument, directed to be paid.
- Payee maybe drawer himself or a third party.

→ cheque drawn to self

(3) Essential Characteristics of a cheque

a cheque is a species of BOE. Thus, it should fulfil :-

- all essential characteristics of BOE.
- must be drawn on a specified banker. } differentiate a
- must be payable on demand. } cheque from BOE.

All cheques are bills while all bills are not cheques.

### • DIFFERENCE BETWEEN PROMISSORY NOTE & BILL OF EXCHANGE

BASIS	PROMISSORY NOTE	BILLS OF EXCHANGE
<u>Definition</u>	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.	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.
<u>Nature of instrument</u>	promise to pay money.	order for making payment.
<u>Parties</u>	only <u>2 parties</u> , namely, maker & payee.	<u>three parties</u> , namely, drawer, drawee & payee.
<u>Acceptance</u>	does not require any acceptance	needs acceptance from the drawee.
<u>Payable to bearer</u>	cannot be made payable to bearer.	can be drawn payable to bearer. However, it cannot be payable to bearer on demand.



## CLASSIFICATION OF NEGOTIABLE INSTRUMENTS

### 'Bearer Instrument' and 'Order Instrument' (Sec 13)

- (i) Bearer Instrument is an instrument where the name of the payee is blank or where the name of the payee is specified with the words "or bearer" or where the last endorsement is blank. Such instrument can be negotiated by mere delivery.
- (ii) Order Instrument is an instrument which is payable to a person or his order or payable to order of a person where the last indorsement is in full, such instrument can be negotiated by indorsement & delivery.

### 'Inland Instrument' and 'Foreign Instrument' (Sec 11 & 12)

- (i) Inland Instrument is a promissory note, BOE or cheque
- drawn or made in India and made payable in, or
  - drawn upon any person resident in India.
- (ii) Foreign Instrument is one which is not an inland instrument.

### Liability in case of foreign instrument

Liability of maker or drawer

Regulated by law of country where instrument was made.

Liability of acceptor or indorser

Regulated by law of country where instrument was payable.

### Examples of Inland Inst. :-

- Promissory note
  - made in Kolkata.
  - payable in Mumbai
- A (resident of Mumbai) drew a BOE in Mumbai on B (merchant in Mathura). A & B accepted the BOE as payable in London.

### 'Inchoate Instruments' and 'Ambiguous Instruments'

#### (i) Inchoate Instrument

- instrument that is incomplete in certain aspect.
- drawer / maker / acceptor / indorser of a NI may sign & deliver it to another person
- leaving the instrument either wholly blank or having written on it the word incomplete.





Based on the principle of estoppel.

(ii) Ambiguous Instrument

- instrument may be construed either as a promissory note or BOE,
- the holder may at his election treat it as either,
- instrument shall be thenceforward treated accordingly.
- after exercising his option, the holder cannot change that it is the other kind of instrument.

Liability on drawing inchoate instrument :-

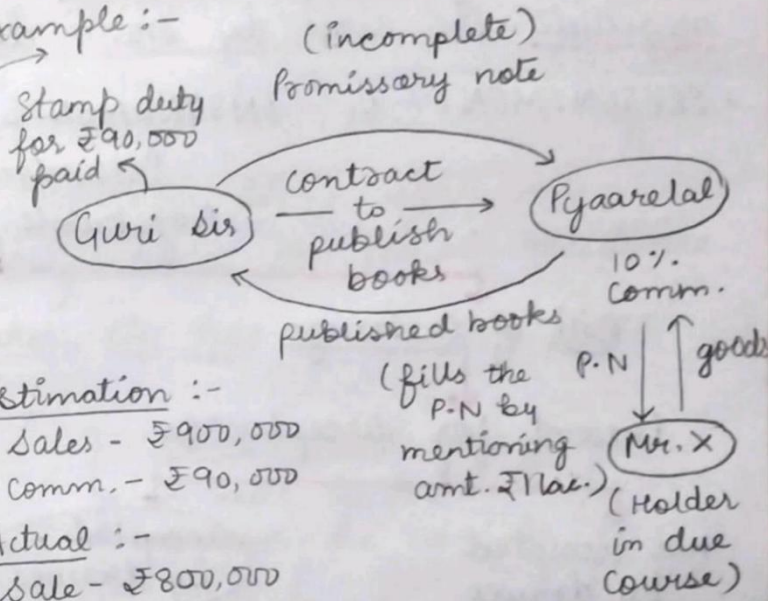
Holder

↓  
Cannot recover more than amount intended

Holder in due course

↓  
can recover any amount, provided it is adequately stamped (within instrument limit)

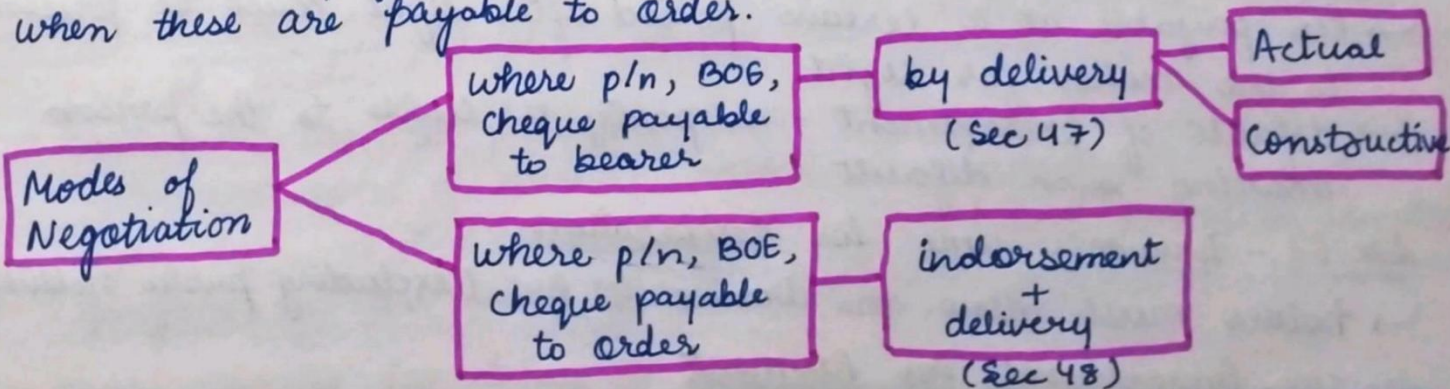
Example :-



{ Only ₹90,000 can be recovered because of stamp duty limit }

• NEGOTIATION OR TRANSFER OF NI

Negotiable instruments may be negotiated either by delivery when these are payable to bearer or by indorsement and delivery when these are payable to order.



• IMPORTANCE OF NEGOTIATION DELIVERY IN NEGOTIATION (SEC 46)

- Delivery of Instrument is essential whether the instrument is payable to Bearer or order.
- delivery must be voluntary



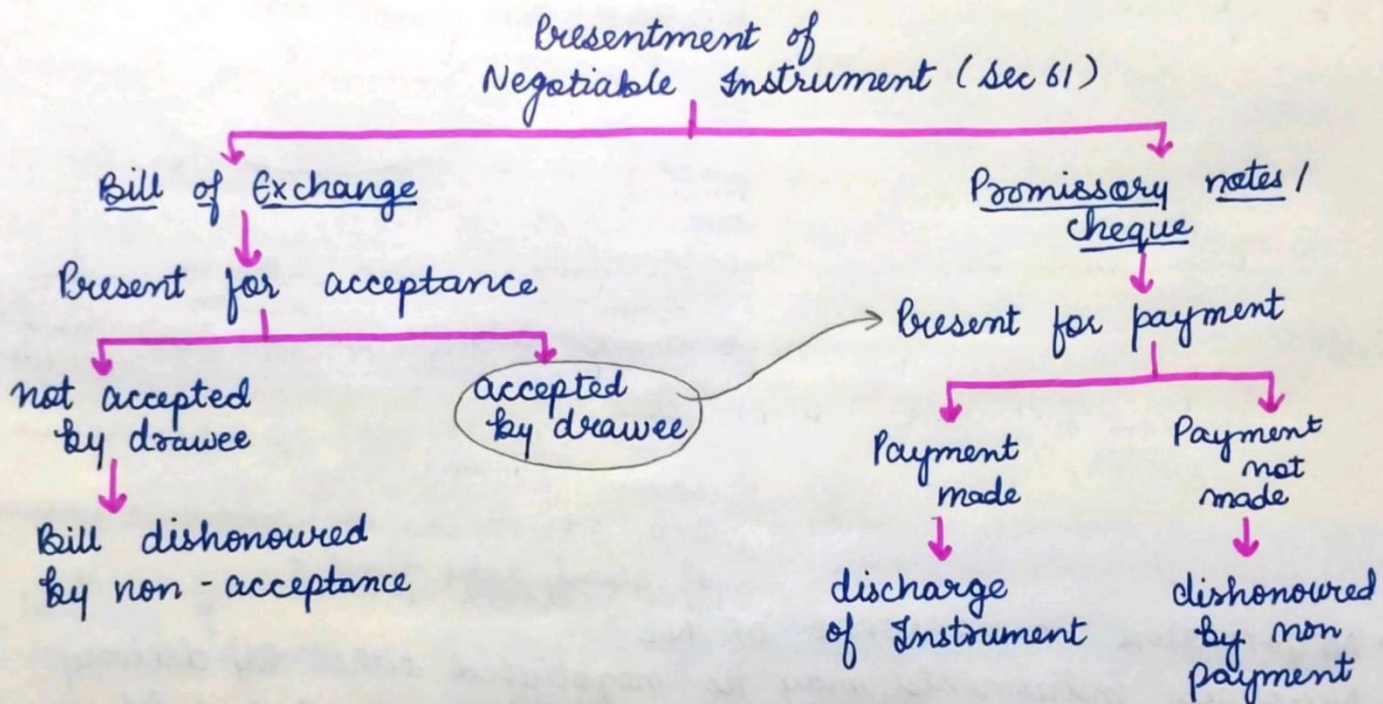
→ the object of delivery should be to pass the property in instrument to the person to whom it is delivered.

→ delivery can be actual or constructive (instrument delivered to the agent, clerk or servant of endorsee)

### Section 57

If a person makes the indorsement of instrument but before the same could be delivered to the indorsee, the indorser dies, the legal representatives of the deceased person cannot negotiate the same by mere delivery.

## PRESENTMENT OF INSTRUMENTS



### Sec 62 :- Presentment of P/n for sight

- P/n payable at a certain period after sight, must be presented to the maker for sight.
- default of presentment - no party is liable to the person making such default

### Sec 63 :- Drawee's time for deliberation

- holder must allow the drawee 48 hrs (excluding public holidays)

### Sec 64 :- Presentment for payment

- negotiable instruments must be presented for payment to the maker, acceptor or drawee respectively.

### Sec 65 :- Hours of presentment

- usual hours of business
- if at bankers, within banking hours



Sec 66:- Presentment for payment of instrument payable after date or sight

→ must be presented for payment at maturity.

Sec 67:- Presentment for payment of P/n payable by instalments

→ must be presented for payment on the 3rd day after the date fixed for payment of each instalment.

Sec 69:- Instrument payable at specified place

→ in order to charge the maker or drawer thereof, be presented for payment at that place.

Sec 70:- Presentment where no exclusive place specified

→ at the place of business (if any) or at the usual residence.

Sec 71:- Presentment when maker, etc has no known place of business or residence

- no known place of business

- no fixed residence

- no place specified in instrument

} presentment may be made to him in person wherever he can be found.

Sec 72:- Presentment of cheque to charge drawer

→ must be presented to bank upon when it is drawn.

Sec 74:- Presentment of instrument payable on demand

→ presented within reasonable time.

→ after it has been received by holder.

Sec 75:- Presentment by or to agent, representative of deceased, or assignee of insolvent

→ Instrument can be presented to :-

- authorised agent of drawer, maker or acceptor.

- legal representative in case of death of drawee, maker or acceptor.

- assignee, in case when drawee becomes insolvent

Sec 75(A):- Excuse for delay in presentment for acceptance or payment

Excused if delay is beyond control of party (not imputable to his default)

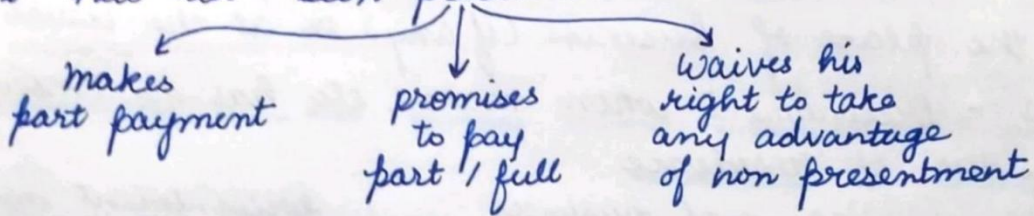
When delay cease to operate, present within reasonable time





## (Section 76) When presentment is not necessary

- ① (i) maker / drawee / acceptor intentionally prevents presentment  
(ii) instrument payable at place but he closes such place in usual business hours.  
(iii) instrument payable at place specified neither he or authorised person visits the place during business hours.  
(iv) not being payable at any specified place, he cannot after due search be found.
- ② as against any party (Bank) sought to be charged, if he has engaged to pay notwithstanding non-presentment.
- ③ against any party if any maturity with knowledge that instrument has not been presented



- ④ drawer was not suffering any damages.

## (Sec 77) Liability of Banker for negligently dealing with bill presented for payment

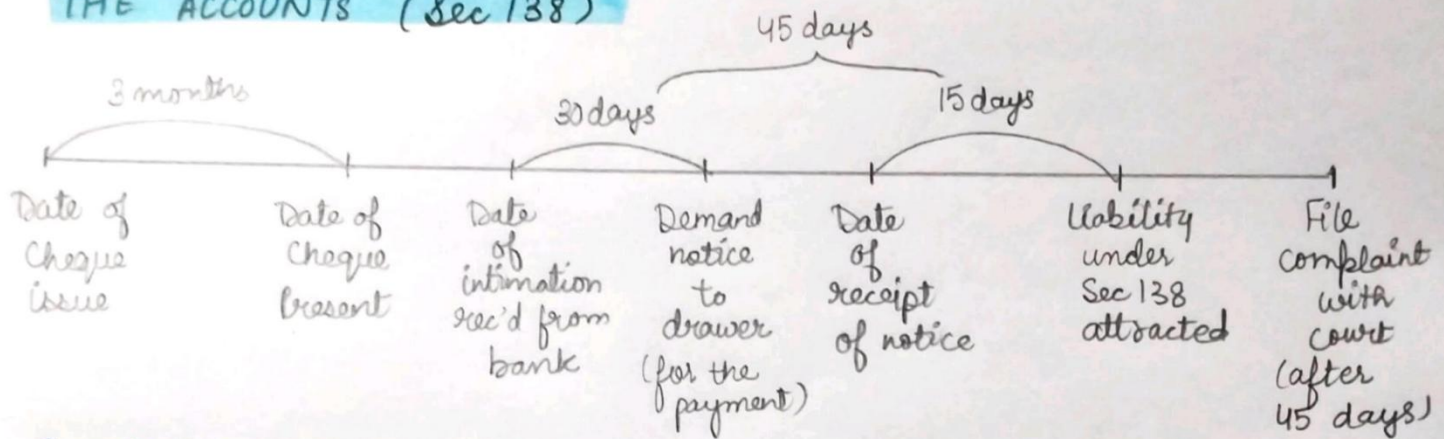
→ Bank will compensate holder for loss.

### RULES FOR COMPENSATION (Sec 117)

- (1) Holder entitled to -
  - amount
  - expenses incurred
  - noting & protesting.
- (2) If person charged resides at different place from that where instrument is payable, holder is entitled to receive sum at current exchange rate.
- (3) Endorser who was liable to pay can claim amount with @ 18% p.a interest along with all other expenses of dishonour.
- (4) Party entitled to compensation may draw a bill upon party liable to compensate with all damages payable after sight or demand.



**DISHONOUR OF B+ CHEQUE FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS (Sec 138)**



**Penalty :-**

→ Acc. to Sec 138 of the act, the dishonour of cheque is a criminal offence & is punishable with imprisonment up to 2 years or fine upto twice the amount of cheque or both.

**PRESUMPTION IN FAVOR OF HOLDER (Sec 139)**

- cheque issued is presented presumed to be of nature to discharge debt / liability.
- It is rebuttable presumption as issuer can prove to contrary.
- Effect - Burden of proof - Issuer / maker

**DEFENCE WHICH MAY NOT BE ALLOWED IN ANY PROSECUTION UNDER SEC 138 (Sec 140)**

Drawer had no reason to believe when cheque was issued that cheque may be dishonoured on presentment due to reasons in Sec 138.