



# ***BRAHMASTRA SERIES***

***THE NEGOTIABLE  
INSTRUMENTS ACT, 1881***

**BUSINESS LAWS**



***By – CA Gurpreet sir***



# TOPICS COVERED

➔ **ALL TOPICS OF ICAI MATERIAL**





**one SHOT**  
**CA FOUNDATION**  
**THE NEGOTIABLE**  
**INSTRUMENT ACT, 1881**  
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4:20:48

**CA FOUNDATION**  
**THE NEGOTIABLE INSTRUMENTS**  
**ACT, 1881**  
**ब्रह्मास्त्र**  
**SERIES**  
**BUSINESS LAWS**  
UPCOMING



# Topic : Meaning Of Negotiable Instruments

Pg. No. 7.3

Negotiable Instruments is an instrument (document)  
which is freely transferable (by customs of trade)  
from one person to another  
by mere delivery or  
by indorsement and delivery.

The property in negotiable instrument passes to a bonafide transferee for value.



# Topic : Meaning Of Negotiable Instruments

Pg. No. 7.3

The Act does not define the term 'Negotiable Instruments'.

However, Section 13 of the Act provides for only three kinds of negotiable instruments namely bills of exchange, promissory notes and cheques, payable either to order or bearer.



# Topic : Meaning Of Negotiable Instruments

Pg. No. 7.3

It is to be noted that  
Hundies,  
Treasury Bills,  
Bearer Debentures,  
Railway Receipts,  
Delivery Orders,  
Bill of Lading etc.

are also considered as negotiable instruments either by mercantile custom or usage.



# Topic : Meaning Of Negotiable Instruments

Pg. No. 7.4

## Essential Characteristics of Negotiable Instruments

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.



# Topic : Meaning Of Negotiable Instruments

Pg. No. 7.3

- (1) A negotiable instrument is payable to order when:
- a. It is expressed to be so payable
  - b. When it is expressed to be payable to a specified person and does not contain words prohibiting its transfer. (i.e. it is transferrable by indorsement and delivery)





# Topic : Meaning Of Negotiable Instruments

Pg. No. 7.3

- (2) A negotiable instrument is payable to bearer when:
- a. When it is expressed to be so payable e.g. pay bearer
  - b. When the only or last indorsement (indorsement means signing of the instrument) on the instrument is an indorsement in blank i.e., the person who possesses it can demand payment. For example,. A cheque made payable to specified person and that cheque is endorsed by signing on the back of the cheque by that specified person.

# Topic : Classification of Negotiable Instruments



Pg. No. 7.12

## “Bearer instrument” and “order instrument” [Section 13]

**Bearer Instrument:** It is an instrument where the name of the payee is blank or where the name of payee is specified with the words “or bearer” or where the last indorsement is blank. Such instrument can be negotiated by mere delivery.

**Order Instrument:** It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or where the last indorsement is in full, such instrument can be negotiated by indorsement and delivery.

# Topic : Classification of Negotiable Instruments



Pg. No. 7.12

<b>Bearer Instrument</b>	<b>Order Instrument</b>
name of the payee is blank or	payable to a person, or
name of payee is specified with the words “or bearer” or	Payable to a person / his order, or
the last indorsement is blank	Payable to order of a person, or
negotiated by mere delivery	the last indorsement is in full,
	negotiated by indorsement and delivery



# Topic : PROMISSORY NOTE

Pg. No. 7.4

## Meaning

1. According to section 4 of the NI Act, 1881,
2. “A 'promissory note' is an instrument in writing
3. (not being a bank-note or a currency-note)
4. containing an unconditional undertaking
5. signed by the maker,
6. to pay a certain sum of money
7. only to, or to the order of, a certain person, or
8. to the bearer of the instrument.”



# Topic : PROMISSORY NOTE

Pg. No. 7.5

## Parties to promissory note

1. **Maker:** The person who makes the promise to pay is called the Maker. He is the debtor and must sign the instrument.
2. **Payee:** Payee is the person to whom the amount on the note is payable.



# Topic : PROMISSORY NOTE

Pg. No. 7.5

## Essential Characteristics of a Promissory Note

- a. **In writing**- An oral promise to pay is not sufficient.



# Topic : PROMISSORY NOTE

Pg. No. 7.5

- There must be an express promise to pay. Mere acknowledgment of debt is insufficient.

Example 1: I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received. (Valid promissory note as the promise to pay is definite)

Example 2: “Mr. B, I.O.U Rs. 1,000.” – Invalid promissory note as there is no promise to pay. It is just an acknowledgement of debt.



# Topic : PROMISSORY NOTE

Pg. No. 7.6

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 notes.

However, the promise to pay may be subject to a condition, which according to the ordinary experience of mankind, is bound to happen.





# Topic : PROMISSORY NOTE

Pg. No. 7.6

Example 3: I promise to pay B Rs. 500 seven days after my marriage with C.  
(the promissory note is invalid as marriage with C may or may not happen.)

Example 4: I promise to pay B Rs. 500 on D's death- as the death of D is certain, promise is unconditional. Thus, the promissory note is valid.

Example 5: I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum. Invalid promissory note as promise is dependent on D's leaving behind money which is not certain.



# Topic : PROMISSORY NOTE

Pg. No. 7.6

d. A promissory note must be signed by the maker otherwise it is incomplete and ineffective.



# Topic : PROMISSORY NOTE

Pg. No. 7.6

- Promise to pay money only.

Example 6: I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next. It is not a valid promissory note, as the promisor needs to deliver its black horse which is not money.



# Topic : PROMISSORY NOTE

Pg. No. 7.6

## f. Promise to pay a certain sum.

Example 7: “I promise to pay B Rs. 500 and all other sums which shall be due to him.”- Promissory note invalid as the amount payable is not certain.

But sometimes, the language of a promissory note is such that the amount payable can be easily ascertained. In such cases, the promissory note will be valid.

Example 8: “I promise to pay B Rs. 500 along with simple interest at the rate of 12% per annum.



# Topic : PROMISSORY NOTE

Pg. No. 7.6

- g. The maker and payee must be certain, definite and different persons. **A promissory note cannot be made payable to the bearer** [Section 31 of the Reserve Bank of India Act, 1934 (RBI Act)]. **Only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'.**



# Topic : PROMISSORY NOTE

Pg. No. 7.6

- 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 on such stamp or otherwise.



# Topic : BILLS OF EXCHANGE

Pg. No. 7.7

- 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.



# Topic : BILLS OF EXCHANGE

Pg. No. 7.7

## Parties to the bill of exchange

- a. Drawer: The maker of a bill of exchange.
- b. Drawee: The person directed by the drawer to pay is called 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 is primary and unconditional.
- c. Payee: The person named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.





# Topic : BILLS OF EXCHANGE

Pg. No. 7.7

## Essential characteristics of bill of exchange

- (a) It must be in writing.
- (b) Must contain an express order to pay.
- (c) The order to pay must be definite and unconditional.
- (d) The drawer must sign the instrument.



# Topic : BILLS OF EXCHANGE

Pg. No. 7.8

- (e) Drawer, drawee, and payee must be certain. All these three parties may not necessarily be three different persons. One can play the role of two. But there must be two distinct persons in any case. As per Section 31 of RBI Act, 1934, a bill of exchange cannot be made payable to bearer on demand.

Example 9: “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 10: “On demand pay to A or order the sum of rupees five hundred for value received.” It is valid BOE.



# Topic : BILLS OF EXCHANGE

Pg. No. 7.8

However, a bill of exchange payable on demand, in which name of the payee is mentioned, is valid.

Example 10: “On demand pay to A or order the sum of rupees five hundred for value received.” It is valid BOE.

- (f) The sum must be certain.
- (g) The order must be to pay money only.
- (h) It must be stamped.



# Topic : BILLS OF EXCHANGE

Pg. No. 7.9

## Difference between promissory note and bill of exchange

S.no	Basis	Promissory Note	Bill of Exchange
1.	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.
2.	Nature of Instrument	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.
3.	Parties	In a promissory note, there are only 2 parties namely: <ul style="list-style-type: none"><li>i. the maker and</li><li>ii. the payee</li></ul>	In a bill of exchange, there are 3 parties which are as under: <ul style="list-style-type: none"><li>i. the drawer</li><li>ii. the drawee</li><li>iii. the payee</li></ul>

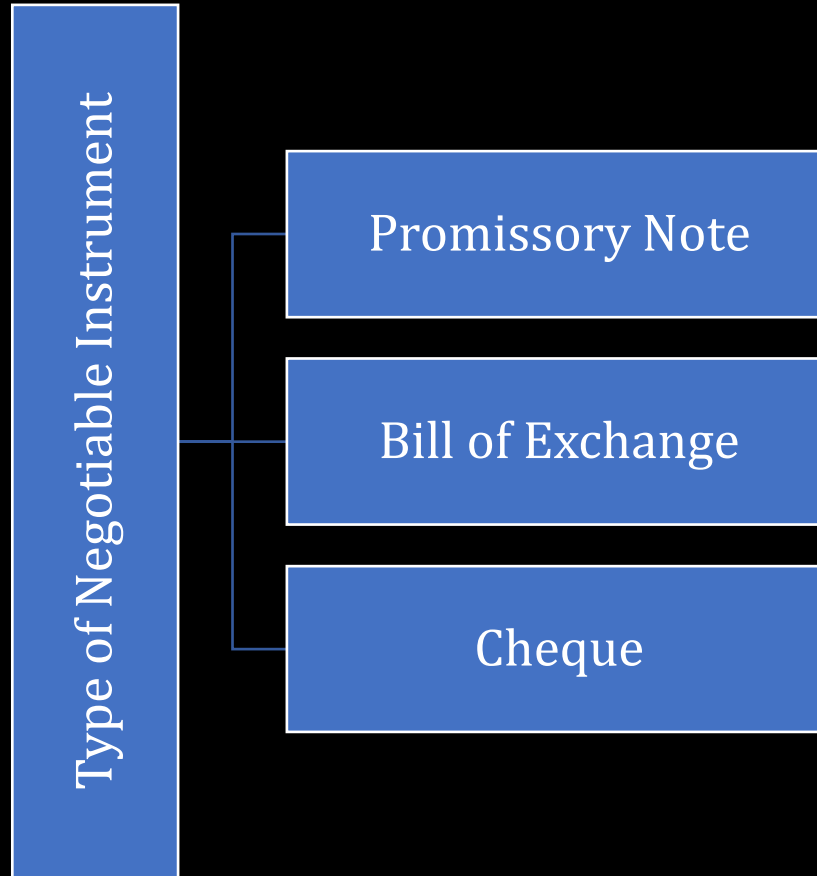


# Topic : BILLS OF EXCHANGE

Pg. No. 7.9

## Difference between promissory note and bill of exchange

S.no	Basis	Promissory Note	Bill of Exchange
4.	Acceptance	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bills of exchangenneedsacceptance from the drawee.
5.	Payable to bearer	A promissory note cannot bemade payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.



# Topic : CHEQUE [SECTION 6]



- 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.



# Topic : CHEQUE [SECTION 6]

Pg. No. 7.10

Explanation I: For the purposes of this section, the expressions-  
**Cheque in the electronic form-**

- (a) means a cheque drawn in electronic form
- (b) by using any computer resource,
- (c) and signed in a secure system
- (d) with a digital signature (with/without biometric signature)
- (e) and asymmetric crypto system or
- (f) electronic signature, as the case may be;





# Topic : CHEQUE [SECTION 6]

Pg. No. 7.10

“a truncated cheque”

(b) means a cheque

(c) which is truncated during a clearing cycle,

(d) either by the clearing house or by the bank

(e) whether paying or receiving payment,

(f) immediately on generation of an electronic image

(g) for transmission,

(h) substituting the further physical movement of the cheque in writing.



## Topic : CHEQUE [SECTION 6]

Pg. No. 7.11

A combined reading of sections 5 and 6 tells us that a bill of exchange is a negotiable instrument in writing containing an instruction to a third party to pay a stated sum of money at a designated future date or on demand. Whereas a cheque is also a bill of exchange but is drawn on a banker and payable on demand.



# Topic : CHEQUE [SECTION 6]

Pg. No. 7.11

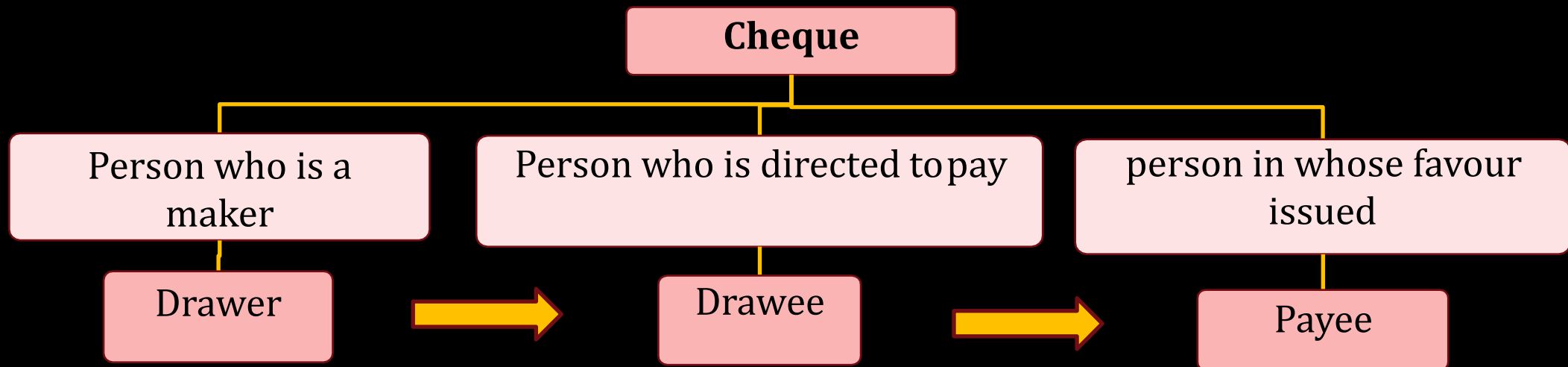
## Parties to Cheque

1. **Drawer:** The person who draws a cheque i.e., makes the cheque (Debtor). His liability is primary and conditional.
2. **Drawee:** The specific bank on whom cheque is drawn. He makes the payment of the cheque. In case of cheque, drawee is always banker.  
“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”.
3. **Payee:** The person named in the instrument (i.e., the person in whose favour cheque is issued), to whom or to whose order the money is, by the instrument, directed to be paid, is called the payee. The payee may be the drawer himself or a third party.



# Topic : CHEQUE [SECTION 6]

Pg. No. 7.11





# Topic : CHEQUE [SECTION 6]

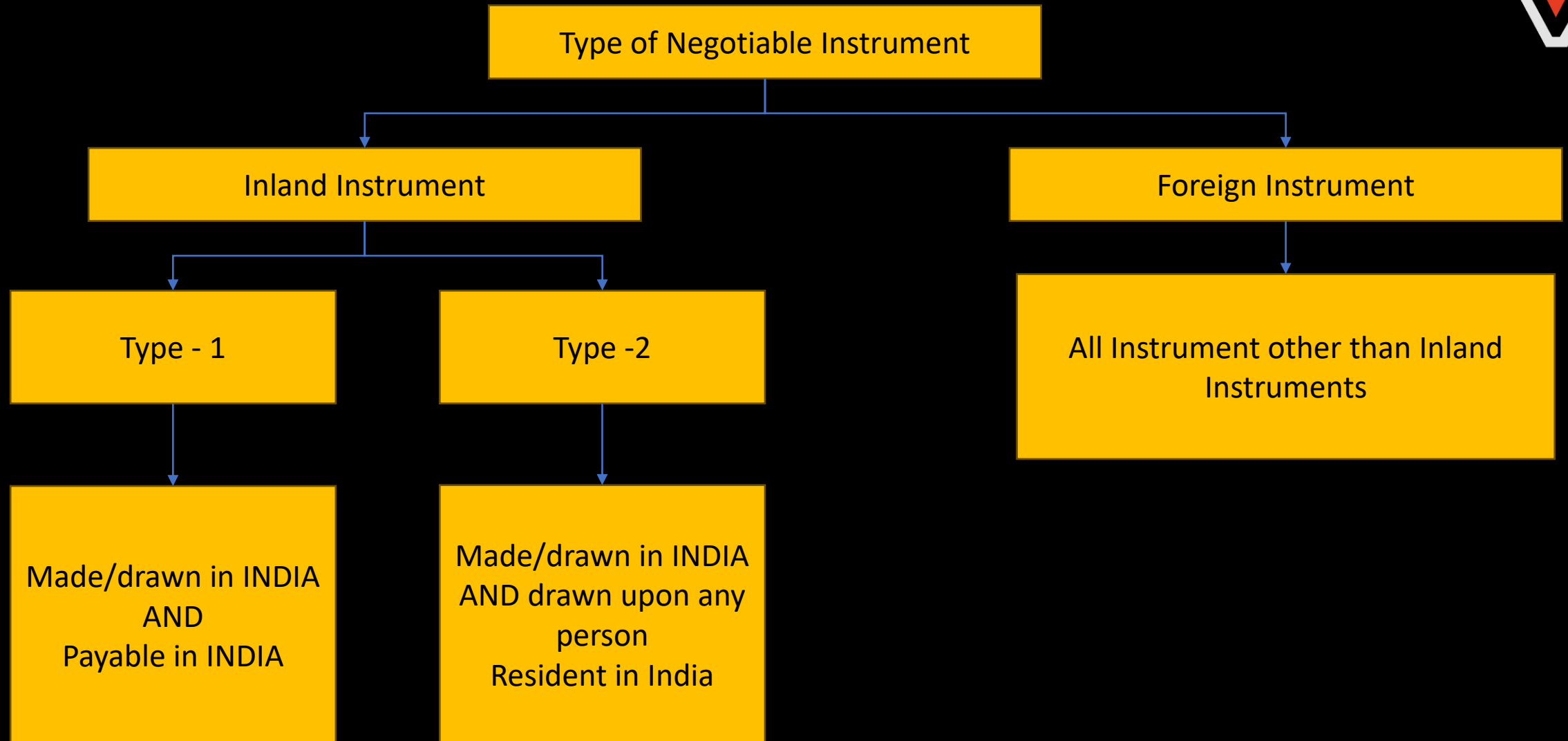
Pg. No. 7.12

## Essential Characteristics of a cheque

According to the definition of cheque under section 6, a cheque is a species of bill of exchange. Thus, it should fulfil:

- a. all the essential characteristics of a bill of exchange
- b. Must be drawn on a specified banker
- c. It must be payable on demand.

**Note:** These two additional features distinguish a cheque from bill. Thus, all cheques are bills while all bills are not cheques.



# Topic : Classification of Negotiable Instruments



Pg. No. 7.12

**“Inland instrument” and “Foreign instrument” [Sections 11 & 12]**

**“Inland instrument”:** A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

An inland instrument remains inland even if it has been endorsed in a foreign country.

# Topic : Classification of Negotiable Instruments



Pg. No. 7.13

- Example 11:
- (i) A promissory note made in Kolkata and payable in Mumbai.
  - (ii) A bill drawn in Varanasi on a person resident in Jodhpur (although it is stated to be payable in Singapore)
  - (iii) A, a resident of Agra, drew (i.e., made) a bill of exchange in Agra on B, a merchant in New York. And B accepted the bill of exchange as payable in Delhi. It is an inland bill of exchange. In this case, the bill of exchange was drawn in India and also payable in India.



# Topic : Classification of Negotiable Instruments



Pg. No. 7.13

Example 11: (iv) A, resident of Mumbai, drew a bill of exchange in Mumbai on B, a merchant in Mathura. And B accepted the bill of exchange as payable in London. It is also an inland bill of exchange. In this case, the bill of exchange was drawn in India on a person resident in India. It is immaterial that the amount is payable in London.

An inland instrument remains inland even if it has been endorsed in a foreign country.

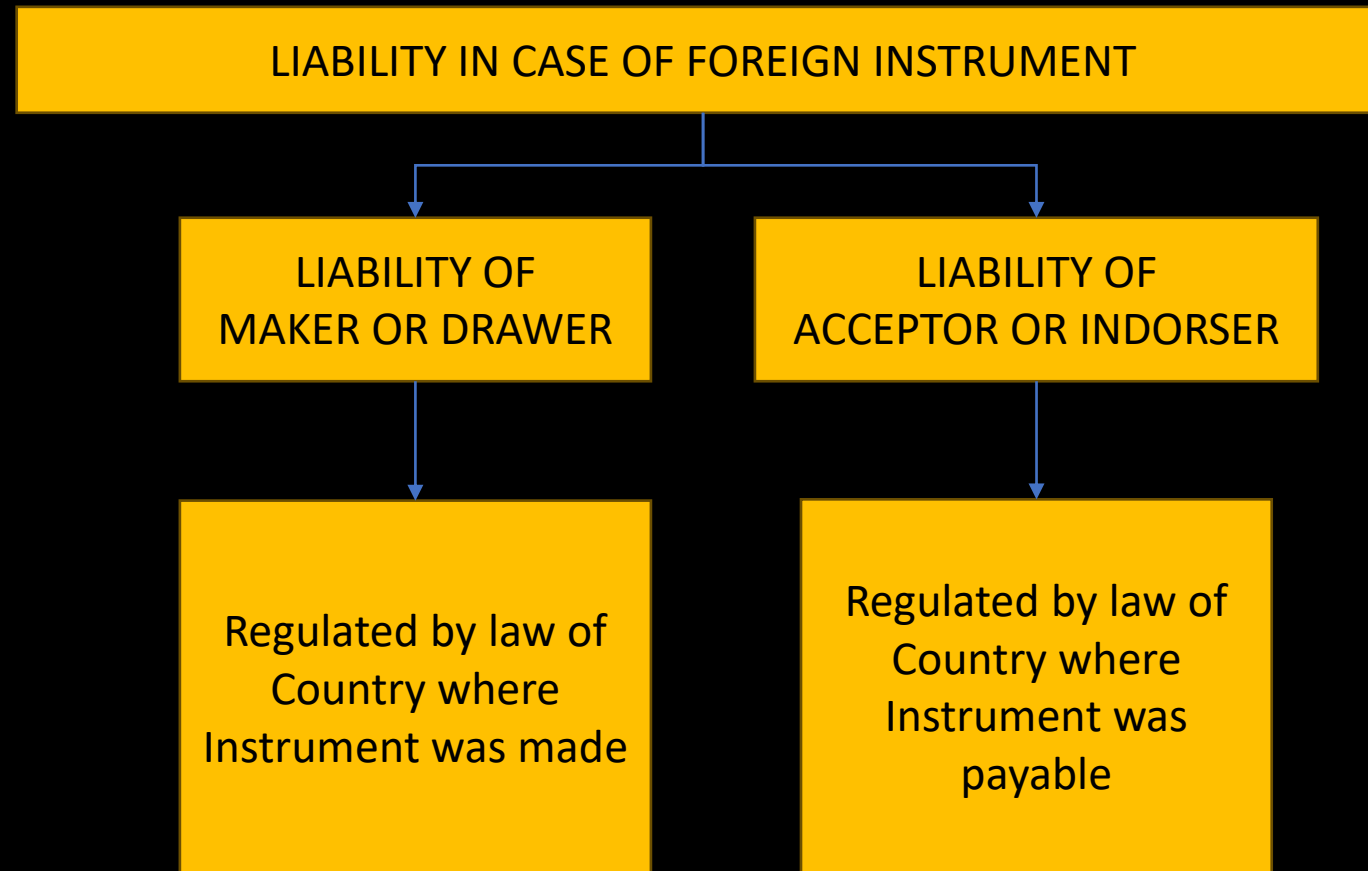
(v) If the bills of exchange mentioned in above two examples, are endorsed in France, they will remain inland bills.

# Topic : Classification of Negotiable Instruments



Pg. No. 7.13

**“Foreign instrument”:** A foreign instrument is one which is not an inland instrument.



# Topic : Classification of Negotiable Instruments



Pg. No. 7.14

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%.

# Topic : Classification of Negotiable Instruments



Pg. No. 7.13

## **Liability of maker/ drawer of foreign bill**

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 indorser  
by the law of the place where the instrument is made payable (Section 134).

# Topic : Classification of Negotiable Instruments



Pg. No. 7.14

## Inchoate and Ambiguous Instruments

Inchoate Instrument:

It means an instrument that 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.

Such an instrument is called an inchoate instrument and

this gives a power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it.

# Topic : Classification of Negotiable Instruments



Pg. No. 7.14

The principle of this rule of an inchoate instrument is based on the principle of estoppel.

# Topic : Classification of Negotiable Instruments



Pg. No. 7.14

Liability on drawing inchoate instrument: The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course. However, there is a difference in their respective rights:

The holder of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor.

The holder in due course can, however, recover any amount on such instrument provided it is covered by the stamp affixed on the instrument.



# Topic : Classification of Negotiable Instruments



Pg. No. 7.15

Section 20 of the Act reads as “Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount. Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder”.

# Topic : Classification of Negotiable Instruments



Pg. No. 7.15

Example 13: A person signed a blank acceptance on a bill of exchange and kept it in his drawer. The bill was stolen by X and he filled it up for Rs. 20,000 and negotiated it to an innocent person for value. It was held that the signer to the blank acceptance was not liable to the holder in due course because he never delivered the instrument intending it to be used as a negotiable instrument. Further, as a condition of liability, the signer as a maker, drawer, indorser or acceptor must deliver the instrument to another. In the absence of delivery, the signer is not liable. Furthermore, the paper so signed and delivered must be stamped in accordance with the law prevalent at the time of signing and on delivering otherwise the signer is not estopped from showing that the instrument was filled without his authority.

# Topic : Classification of Negotiable Instruments



Pg. No. 7.15

Ambiguous Instrument: Section 17 of the Act, reads as: “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 that it is the other kind of instrument.

# Topic : Negotiation (Transfer) Of Negotiable Instruments



Pg. No. 7.15

One of the essential characteristics of a negotiable instrument is that it is freely transferable from one person to another. The rights in a negotiable instrument can be transferred from one person to another by negotiation.

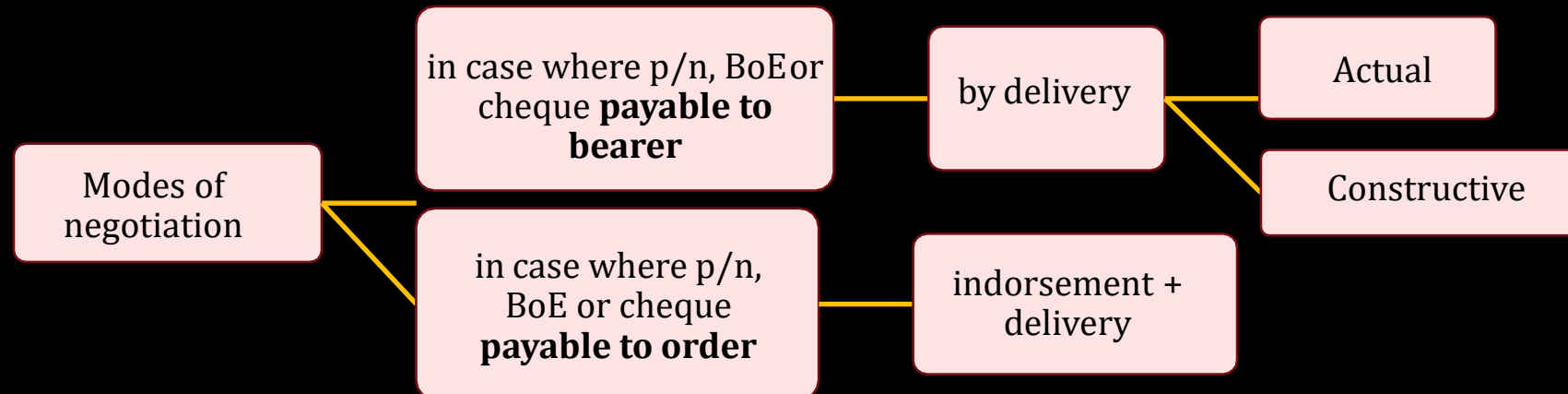
According to Section 14 of the N.I. Act, when a negotiable instrument is transferred to any person with a view to constitute the person holder thereof, the instrument is deemed to have been negotiated. Thus, there is a transfer of ownership of the instrument. **Negotiable instruments may be negotiated either by delivery when these are payable to bearer or by indorsement and delivery when these are payable to order.**

# Topic : Negotiation (Transfer) Of Negotiable Instruments



Pg. No. 7.16

## Modes of Negotiation



# Topic : Negotiation (Transfer) Of Negotiable Instruments



Pg. No. 7.16

- (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.

# Topic : Negotiation (Transfer) Of Negotiable Instruments



Pg. No. 7.16

Example 14: 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.

# Topic : Negotiation (Transfer) Of Negotiable Instruments



Pg. No. 7.16

## Negotiation by delivery [Section 47]

Subject to the provisions of section 58 [Instrument obtained by unlawful means or for unlawful consideration], **a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.**



# Topic : Negotiation (Transfer) Of Negotiable Instruments



Pg. No. 7.16

## Example 15

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.

# Topic : Negotiation (Transfer) Of Negotiable Instruments



Pg. No. 7.17

## Negotiation by indorsement [Section 48]

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

# Topic : Negotiation (Transfer) Of Negotiable Instruments



Pg. No. 7.17

## Importance of Delivery in Negotiation [Section 46]

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.

# Topic : Negotiation (Transfer) Of Negotiable Instruments



Pg. No. 7.17

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 representatives of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57)1**

# Topic : Dishonour Of Cheques for Insufficiency of Funds in The Accounts [Sec. 138 To 142]



Pg. No. 7.18

## DISHONOR OF CHEQUE FOR INSUFFICIENCY, ETC., OF FUNDS IN THE ACCOUNTS [SECTION 138]

Where any cheque drawn by a person on an account maintained by him with a banker—

- for payment of any amount of money
- to another person from that account
- for the discharge, in whole or in part, of any 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]
- is returned by the bank unpaid,
- either because of the—

# Topic : Dishonour Of Cheques for Insufficiency of Funds in The Accounts [Sec. 138 To 142]



Pg. No. 7.18

- o amount of money standing to the credit of that account is insufficient to honor the cheque, or
- o that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

such person shall be deemed to have committed an offence and shall, be punished with 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.

# Topic : Dishonour Of Cheques for Insufficiency of Funds in The Accounts [Sec. 138 To 142]



Pg. No. 7.18

When section 138 shall be not apply: unless the below given conditions are complied with—

- (a) Cheque presented within validity period: The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- (b) Demand for the payment through the notice: the payee or the holder in due course of the cheque, as the case may be, makes 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

# Topic : Dishonour Of Cheques for Insufficiency of Funds in The Accounts [Sec. 138 To 142]



Pg. No. 7.19

(c) Failure of drawer to make payment: the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, “debt or other liability” means a legally enforceable debt or other liability.

Therefore we may conclude that compliant can be filed after 45 days of dishonor of the cheque i.e., 30 days of notice period +15 days of the receipt of the said notice.



## **Topic : Dishonour Of Cheques for Insufficiency of Funds in The Accounts [Sec. 138 To 142]**



Pg. No. 7.19

Example 16 X issued a post-dated cheque to Y on the account of discharge of its liability. Further, X instructed to the bank to stop the payment due to unavailability of the adequate amount in the account. Here, in this instance section 138 of the Act is attracted as when a cheque is dishonoured on account of stop payment instructions sent by the drawer to his banker in respect of a post- dated cheque irrespective of insufficiency of funds in the account. A post-dated cheque is deemed to have been drawn on the date it bears and the three months period for the purposes of section 138 is to be counted from that date. So, X will be liable for dishonour of cheque. Once a cheque is issued by the drawer, a presumption under section 139 must follow.

# **Topic : Dishonour Of Cheques for Insufficiency of Funds in The Accounts [Sec. 138 To 142]**



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**Penalty:** According to Section 138 of the Act, the dishonour of cheque is a criminal offence and is punishable with imprisonment up to 2 years or fine up to twice the amount of cheque or both.

# Topic : Dishonour Of Cheques for Insufficiency of Funds in The Accounts [Sec. 138 To 142]



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## **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.

# **Topic : Dishonour Of Cheques for Insufficiency of Funds in The Accounts [Sec. 138 To 142]**



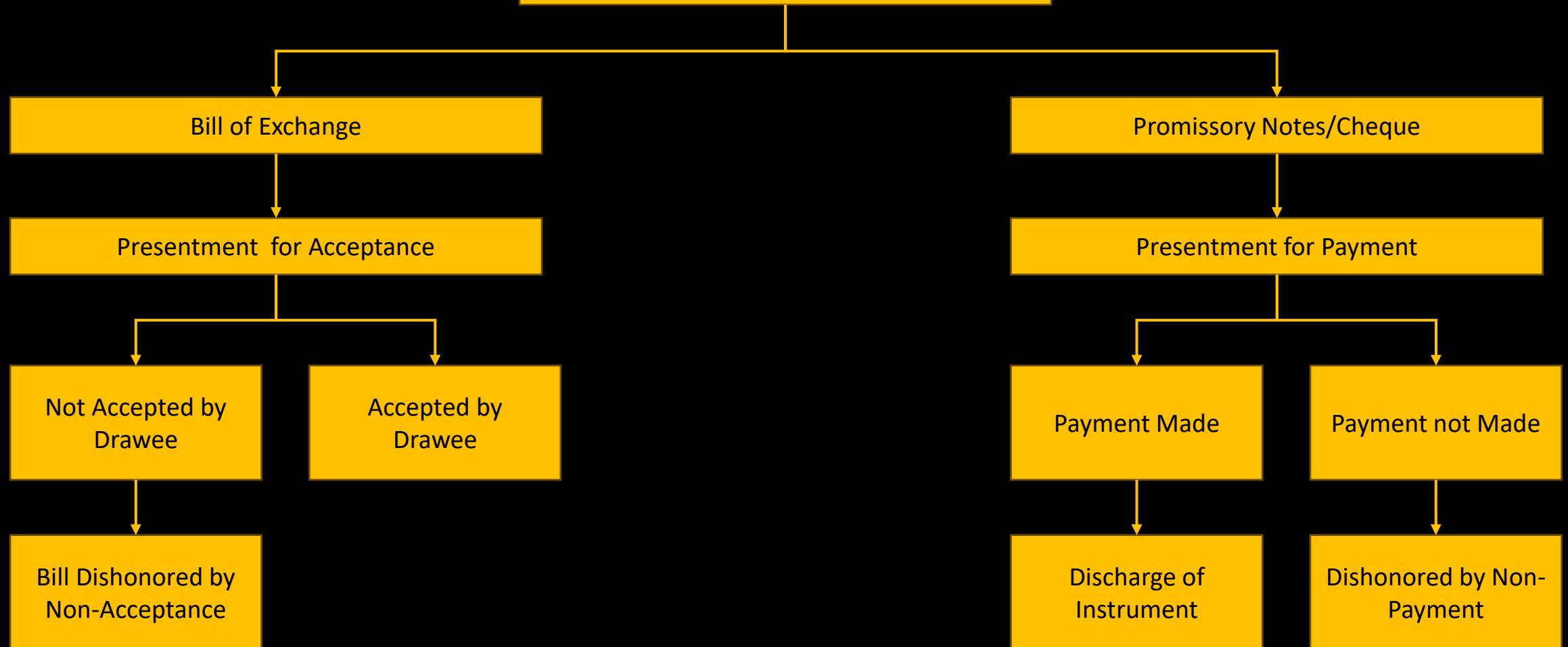
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## **DEFENCE WHICH MAY NOT BE ALLOWED IN ANY PROSECUTION UNDER SECTION 138 [SECTION 140]**

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.



## Presentment of Negotiable Instrument





**Presentment for acceptance  
(Only for BOE)**

<b>BOE payable after sight must</b>	Must be presented within a reasonable time & in business hours on a business day. ( <b>Note:</b> 48 hours, excluding public holidays, are given to drawee for acceptance)	
<b>In default of such presentment</b>	no party liable thereto	If Drawee not found after reasonable search, BOE is dishonored.
<b>If BOE is directed to drawee at a particular place</b>	must be presented at that place	



## **Presentation of Promissory Note for sight**

**P/N payable  
at a certain  
period after  
sight**

Must be presented  
within a  
reasonable time &  
in business hours  
on a business day.

**In default of  
such  
presentation**

no party liable  
thereto

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



To whom	Maker (P/N), Acceptor (BOE), Drawee (CH)
If default in presentment	no party liable thereto
Exception	If P/N is payable on demand and is not payable at a specified place, no presentment is necessary.
Time	During usual business hours
If instrument payable after date or sight	must be presented for payment at maturity
P/N payable by instalments	must be presented for payment on 3rd day after date fixed for payment of each instalment
instrument payable at specified place	Must be presented for payment at that place.
where no exclusive place specified	must be presented for payment at the place of business (if any) or at the usual residence
no known place of business or residence	presentment may be made to him in person wherever he can be found
Instrument payable on demand	Must be presented for payment within a reasonable time after it is received by the holder.
Note: Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder	





# Topic : Presentment Of Instruments

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## **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

1. Maker, drawee or acceptor prevents the presentment,
2. Payable at business place & that's closed on business day during usual business hours,
3. Payable at specified place & liable party doesn't attend place,
4. Not payable at specified place & liable party not found after due search,
5. Liable party engaged to pay notwithstanding non- presentment,
6. Liable party makes part payment,
7. Liable party waives off his right to take advantage.
8. If drawer could not suffer damage from want of such presentment.



## Rules as to Compensation (Sec.117)

In case of dishonour of NI, holder can claim:

1. Amount due on Negotiable Instrument
2. Expenses incurred in presenting, noting & protesting.
3. Interest 18% p.a. from due date of payment to date of realisation.

Note: In case of foreign currency, current rate of exchange.



Thank  
you