

## The Negotiable Instruments Act, 1881



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## Meaning of Negotiable Instruments:-

Negotiable Instruments is an instrument which is freely transferable from one person to another by mere delivery or by indorsement and delivery.

## Promissory Notes:-

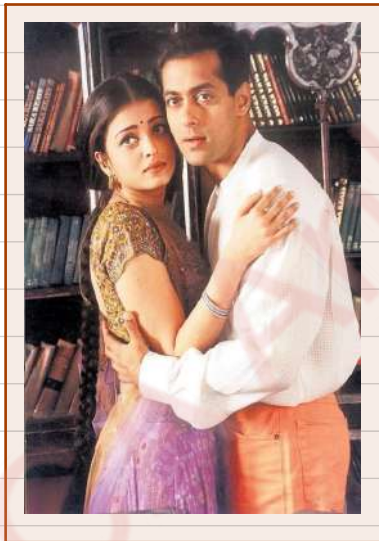
'A promissory note' is an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

### 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.

## 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 acknowledgement of debt is insufficient.
- c) The promise to pay should be definite and unconditional. However, The promise to pay may be subject to a condition, which according to the ordinary experience of mankind, is bound to happen.



Salman Khan promises to pay ₹ 5,00,000 to Ankita mam, seven days after his marriage with Aishwarya Rai.

(The promissory note is invalid as marriage with Aishwarya Rai may or may not happen)

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

e) Promise to pay money only.

f) Promise to pay a certain sum.

g) The maker and payee must be certain, definite and different persons. A promissory note cannot be made payable to the bearer.

h) Stamping:- A Promissory note must be properly stamped in accordance with the provisions of the Indian Stamp Act.



## Bills of exchange:-

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.

### 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.  
On Acceptance of the bill, he is called an acceptor and he 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.

## 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.
- e) Drawer, drawee and payee must be certain.
- f) The sum must be certain.
- g) The order must be to pay money only.
- h) It must be stamped.

## Diffrence 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: i. the maker and ii. the payee	In a bill of exchange, there are 3 parties which are as under: i. the drawer ii. the drawee iii. the payee
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 exchange needs acceptance from the drawee.
5.	Payable to bearer	A promissory note cannot be made 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.

## Cheque:-

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.

### Parties to cheque

- i) Drawer:- The person who draws a cheque i.e. makes the cheque (Debtor). His liability is primary and conditional.
- ii) 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 restored to in case of need such person is called a “drawee in case of need”
- iii) Payee:- The person named in the instrument, 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 third party.

## Essential characteristics of a cheque:-

A cheque is a species of Bill of exchange. Thus, it should fulfil:-

- a) All the essential characteristics.
- b) Must be drawn on a specified banker.
- c) It must be payable on demand.

## Classification of Negotiable instruments:-

### 1) Bearer Instrument:-

It is an instrument where the name of the payee is blank.

### 2) Order Instrument:-

It is an instrument which is payable to a person, such instrument can be negotiated by indorsement and delivery.

### 3) 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.

#### 4) Foreign Instrument:-

A foreign instrument is one which is not an inland instrument.

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

The liability of the maker of the 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.

#### 5) 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 on 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 stamps affixed on it.

## 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, The holder of such an instrument cannot recover the amount in the 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.

## 6] Ambiguous Instrument:-

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. 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.

## Negotiation (Transfer) of Negotiable Instruments:-

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.

- 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.

**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 unless such event happens.

## Importance of Delivery in Negotiation

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 and the instrument to the person to whom it is delivered.

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.



## Dishonour of Cheques for Insufficiency of funds in the accounts:-

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-
  - i) amount of money standing to the credit of that account is insufficient to honor the cheque, or.

ii) 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.

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 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.

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.

## Presumption in favour of holder:-

When a cheque is dishonoured, it shall be presumed that the holder of a cheque received the cheque for the discharge, in whole or in part of any debt or other liability.

Defence which may not be allowed in any prosecution under section 138

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 may be dishonoured on presentment for the reasons stated in that section.

### Presentment in Instruments:-

Presentment for acceptance:-

A Bill of exchange payable after sight must be presented to the drawee thereof for acceptance 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.

Presentment of promissory note for sight -

A Promissory note, payable at a certain period after sight, must be presented to the maker thereof for the sight 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:-

The holder must, allow the drawee 48 hours to consider whether he will accept it

Presentment for payment:-

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

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

**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.

**Hours for presentment :-**

Presentment for payment must be made during the usual hours of business.

**Presentment for payment of instrument payable after date or sight.**

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

**Presentments for payment of promissory note payable by instalments:-**

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

Presentment for payment of instrument payable at specified place and not elsewhere:-

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:-

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

A Promissory note or Bill of exchange, not made payable at a specified place must be presented for payment at the place of business 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.

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

## Presentment of cheque to charge drawer:-

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:-

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

## Presentment of instruments payable on demand:-

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:-

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 or his legal representative or where he has been declared insolvent to his assignee.

Excuse for delay in presentment for acceptance or payment:-

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 delay ceases to operate, presentment must be made within a reasonable time.

When presentment unnecessary:-

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
- iii) If the instrument being payable at the 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 is not being payable at any specified place, he cannot after due search be found.

b) As against any party sought to be charged there with, 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.

## Rules of Compensation:-

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.