

Chapter 4: The Negotiable Instruments Act, 1881

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History

The Act was originally drafted in 1866 by the 3rd India Law Commission and introduced in December, 1867 in the Council and it was referred to a Select Committee.

Objections were raised by the mercantile community to the numerous deviations from the English Law which it contained.

The Bill had to be redrafted in 1877. After the lapse of a sufficient period for criticism by the Local Governments, the High Courts and the chambers of commerce, the Bill was revised by a Select Committee. In spite of this Bill could not reach the final stage.

In 1880 by the Order of the Secretary of State, the Bill had to be referred to a new Law Commission. On the recommendation of the new Law Commission the Bill was re-drafted and again it was sent to a Select Committee

The draft thus prepared for the fourth time was introduced in the Council and was passed into law in 1881 being the Negotiable Instruments Act, 1881

Introduction

Before Negotiable Instrument Act



After Negotiable Instruments Act



1. The law relating to negotiable instruments is the law of the commercial world.
2. It is enacted to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another.
3. In the absence of such instruments, the trade and commerce activities were likely to be adversely affected as it was not practicable for the trading community to carry with it the bulk of the currency in force.
4. The source of Indian law relating to such instruments is admittedly the English Common Law.
5. The main objective of the Act is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods.

Meaning of Negotiable Instruments

Provisions

<u>Normal Meaning</u> It is an instrument which is transferable (by customs of trade) by delivery, like cash, and is also capable of being sued upon by the person holding it for the time being. The property in such an instrument passes to a <i>bona fide</i> transferee for value.	 By delivery
<u>Definition Under Act</u> Section 13 of the Negotiable Instruments Act, 1881 does not define a "negotiable instrument" although it mentions only three kinds of negotiable	3 Act Define only 3

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instruments namely, bills, notes and cheques. But it does not necessarily follow that there can be no other negotiable instruments than those enumerated in the Act.

instruments.

Reference of other Act

Section 17 of the Transfer of Property Act, 1882 speaks of “instruments which are for the time being, by law of custom, negotiable”, implying thereby that the Courts in India may follow the practice of the English Courts in extending the character of Negotiable Instruments Act. Thus in India, Government promissory notes, Shah Jog Hundis, delivery orders and railway receipts for goods have been held to be negotiable by usage or custom of trade.



Chart for Understanding

Negotiable Instrument Meaning



Normal Meaning

Instrument transferable by mere delivery.



Definition under Act

Act only defines 3 types of negotiable instruments. Bills, Notes and cheque.



Reference of other Act

Instruments which are time being negotiable like Notes, Hundis, Orders.

Characteristics of Negotiable Instruments

Provisions



Written instrument with signature

A negotiable instrument is a written document and is considered as complete and effective only when it is duly signed.



Negotiable Instrument made or drawn for consideration

It is presumed by law that every negotiable instrument is made or drawn for a consideration. Consequently, there is no necessity to state such a position. But it is not an irrefutable presumption. It must be rebutted by proof that the instrument had been obtained from its lawful owner by means of fraud, undue influence or for an unlawful consideration. The onus of proof is on the person who challenges the existence of consideration (i.e., the defendant). If the defendant is able to make out a good case by proving want of consideration then the responsibility to prove that there was consideration would shift on to the plaintiff.



**Issued for
Consideration**



**Transfer by
Delivery**

Transfer/negotiation by endorsement/ delivery

A negotiable instrument can be transferred from one person to another by endorsement and delivery if it is an instrument payable to order, and by mere delivery, if it is a bearer instrument.



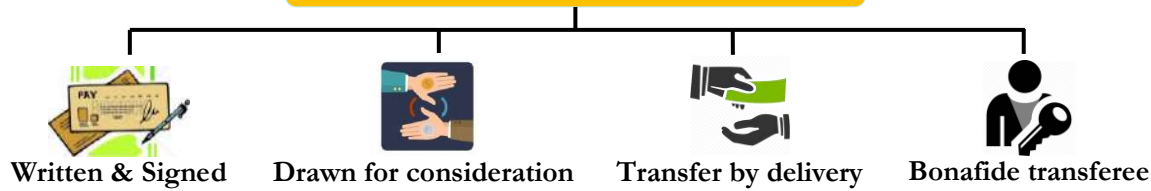
**Bona fide
transferee for
consideration.**

Bona fide and valuable consideration entitles good title to transferee

The transferee, who takes the instrument bona fide and for valuable consideration, obtains a good title despite any defects in the title of the transferor, to this extent, it constitutes an exception to the general rule that no one can give a better title than he himself has.

Chart for Understanding

Characters of Negotiable Instrument



Definitions

Promissory Note (4)

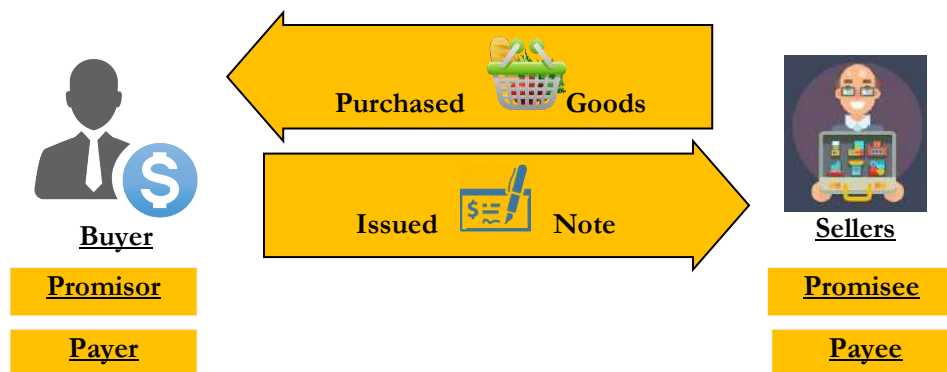
Definitions

According to section 4 of the Act, A promissory note is:

- an instrument (not being a bank note or a currency-note) in writing;
- 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



Promissory Note - Specimen

Rs. 500	Promissory Note	June, 1, 1985
Two months after date, I promise to pay M/s Singh and Company or order, the sum of Five Hundred Rupees only for value received with interest at the rate of 5 per cent.		
20 P. Stamp	Shyam Lal Per Pro M/s S. Chand & Co.	

Promissory Note - Examples

Example	Yes or No
I promise to pay "B" or order Rs. 500	
I acknowledge myself to be indebted to "B" in Rs. 1,000, to be paid on demand, for the value received.	
I promise to pay "B" Rs. 500 seven days after my marriage with "C"	

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I promise to pay "B" Rs. 500 and to deliver him my black horse on 1st January.

Promissory Note - Requirements

	<u>It must be in writing</u> This means that the engagement cannot be oral. There is no prescribed form or language for this; even the word 'promise' need not be used. What is necessary is that whatever language is used, it must clearly show that the maker is unconditionally bound to pay the sum.
 Unconditional Promise  Certain conditions are valid	<u>The promise to pay must be unconditional</u> If a condition is attached to the promissory note say 'promise to pay' then the instrument will not be construed as a promissory note. Suppose, A signs an instrument made out as follows, "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay that sum". The instrument will not be a promissory note. But if an instrument turns as: "I acknowledge myself to be indebted to B of Rs. 500 to be paid on demand, for value received". This instrument would be a promissory note. <u>Exception</u> It may be noted that a promise to pay will not be conditional under Section 4, where it depends upon an event which is certain to happen but the time of its occurrence may be uncertain. For <i>example</i>, where a promissory note is in this form: "I promise to pay B Rs. 2,000, 15 days after the death of C", it is not conditional as it is certain that C will die though the exact time of his death is uncertain.
 Amount must be certain	<u>The amount promised must be certain and a definite sum of money</u> Certainty is one of the essential characteristics of a promissory note. Certainty must be as to the amount and also as to the person by whose order and to whom payment is to be made. For <i>example</i>, where an instrument contains: "I promise to pay B Rs. 350 and all other sums which shall be due to him", it is not a valid promissory note as the sum is not certain within the meaning of Section 4.
	<u>The instrument must be signed by the maker</u> It is incomplete till it is so signed. Since the signature is intended to authenticate the instrument it can be on any part of the instrument.
 Promisee must be definite	<u>The person to whom the promise is made must be a definite person</u> The payee must be certain person. Where the name of the payee is not mentioned as a party, the instrument becomes invalid. Remember that a promissory note cannot be made payable to the maker himself. Thus, a note which runs "I promise to pay myself" is not a promissory note and hence invalid. However, it would become valid when it is endorsed by the maker. This is because it then becomes payable to bearer, if endorsed in blank, or it becomes payable to the endorsee or his order, if endorsed specially.
 No specific words required  Assumption against consideration	<u>Miscellaneous Points</u> (a) no particular form of words is necessary to constitute a promissory note. (b) not necessary to insert in pro-note a statement of consideration that it is "for value received" because law itself presumes that every negotiable instrument is made for consideration; (c) place of payment and date of making it, need not be stated in the note; (d) an undated instrument is valid and it will be treated as having been made on the date of its delivery; and (e) an ante-dated or post dated instrument is not invalid. (f) not necessary that the words 'or order' must be written after the name of the payee. (g) no attestation is needed in a pro-note though attestation of a pro-note

is neither required nor prohibited by law .

Chart for Understanding

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Requirements of Promissory Note



It must be writing



It must be unconditional



The amount must be certain



Signed by Maker



Promisee must be certain

Bill of Exchange (5)

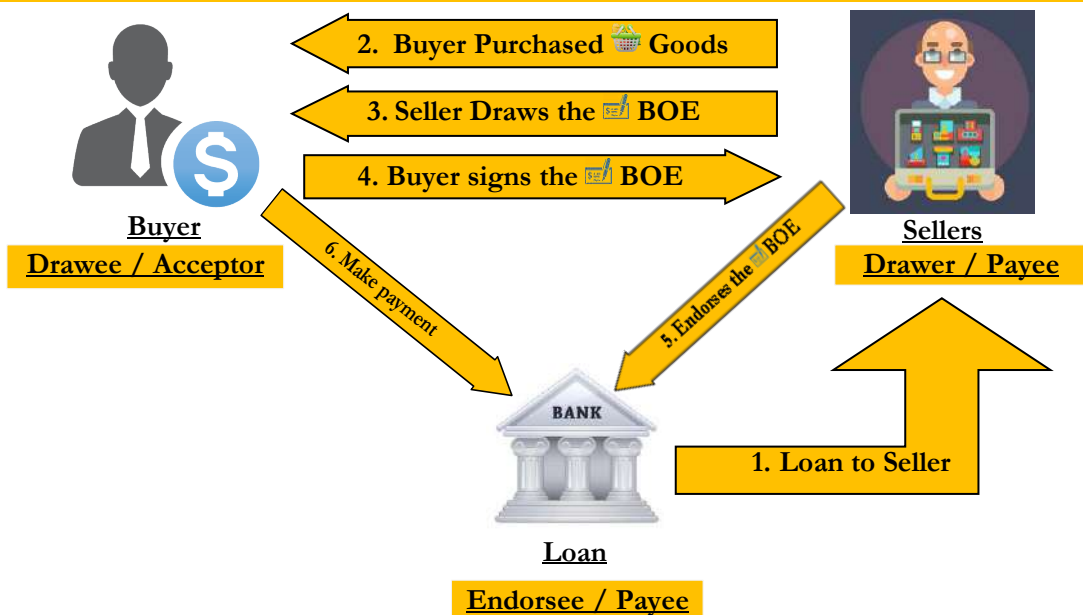
Definitions

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 Promissory Note



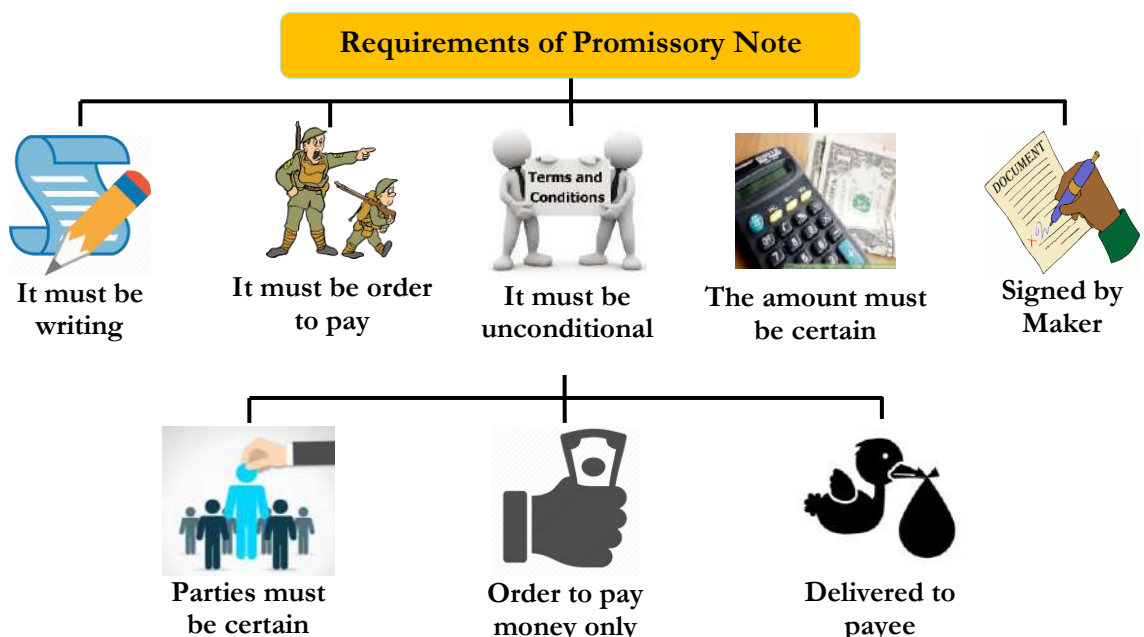
Bill of Exchange - Requirements

	It must be in writing The bill of exchange must be in <i>writing</i> and be drawn in any form complying with the requirements of section 5.
	It must be order to pay There must be an <i>order to pay</i>. It is the essence of the bill that its drawer orders the drawee to pay money to the payee. Order in this section does not mean a command, but a direction for payment.
	The order to pay must be unconditional This order must be <i>unconditional</i>, as the bill is payable at all events. Thus, it is absolutely necessary for the drawer's order to the drawee to be

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Unconditional order  Certain conditions are valid	<i>unconditional</i>. The order must not make the payment of the bill <i>dependent on a contingent</i> event. A conditional bill of exchange is invalid. Exception It may be noted that a order to pay will not be conditional under Section 4, where it depends upon an event which is certain to happen but the time of its occurrence may be uncertain. For <i>example</i>, where a order to pay is in this form: "I order to pay B Rs. 2,000, 15 days after the death of C", it is not conditional as it is certain that C will die though the exact time of his death is uncertain.
 Amount must be certain	<u>The amount ordered must be certain and a definite sum of money</u> Certainty is one of the essential characteristics of a BOE. Certainty must be as to the amount and also as to the person by whose order and to whom payment is to be made. For <i>example</i>, where an instrument contains: "I order to pay B Rs 350 and all other sums which shall be due to him", it is not a valid BOE as the sum is not certain within the meaning of Section 4.
 Persons must be definite	<u>The instrument must be signed by the drawer / acceptor</u> The <i>drawer & acceptor must sign</i> the instrument. The instrument without a proper signature will be inchoate and hence ineffective. It is permissible to add the signature at any time after the issue of the bill. But if it is not so added, the instrument remains <i>ineffectual</i>.
 Persons must be definite	<u>The parties of bill of exchange must be a definite person</u> The drawer, the drawee (acceptor) and the payee are the <i>necessary parties to a bill</i> and are to be specified in the instrument with reasonable certainty. You should remember that 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.
 Order to pay money and money only	<u>Order to pay money and money only</u> The <i>medium of payment must be money</i> and money only. The distinctive order to pay anything in kind will vitiate the bill. Thus, a bill must contain an order to pay in terms of money only and should be definite amount of money.
 Delivered to Payee	The bill must be delivered to the payee, otherwise the bill be inchoate and hence ineffective.

Chart for Understanding



Cheque

Definitions

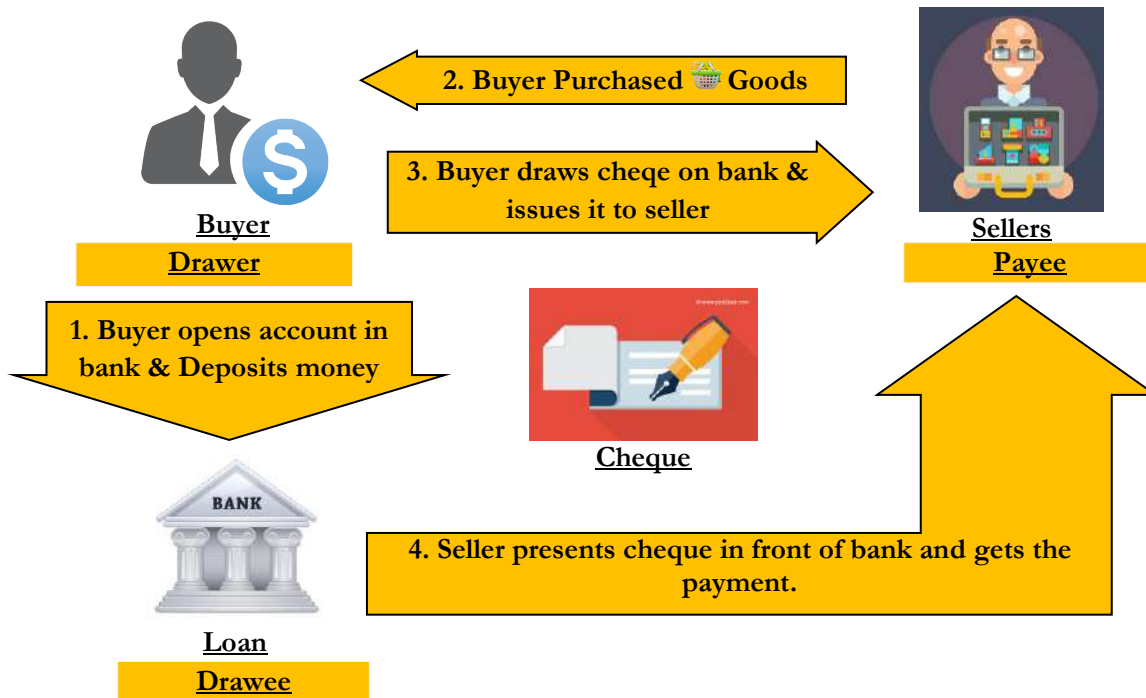
A "cheque" is:

- a. a bill of exchange
- b. drawn on a specified banker and
- c. not expressed to be payable otherwise than on demand and
- d. it includes the electronic image of a truncated cheque and a cheque in the electronic form.



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Parties to Promissory Note



Cheque - Requirements

It has the same requirements as that of bill of Exchange.

Difference between: Promissory Note / Bill of Exchange / Cheque

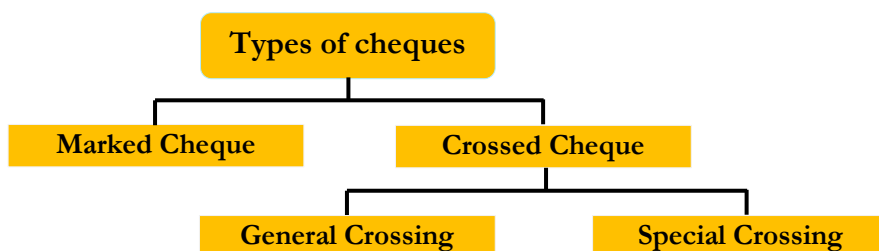
Headings	Promissory Note	Bill of Exchange	Cheque
Intention	It contains a <i>promise</i> to pay	It contains an <i>order</i> to pay.	It contains an <i>order</i> to pay on bank.
Liability of Maker	The liability of the maker of a note is <i>primary and absolute</i> .	The liability of the drawer is <i>secondary</i> . He would be liable if the drawee, fails to pay the money.	The liability of maker (a/c holder) is <i>secondary</i> when bank fails to pay the dues.
Relation between parties	The <i>maker</i> of a PN stands in <i>immediate relationship</i> with the <i>payee</i> and is primarily liable to the payee or the holder.	The <i>maker or drawer</i> of an accepted bill stands in <i>immediate relationship</i> with the <i>acceptor</i> and <i>the payee</i> .	The maker of the cheque is the account holder of the bank and stands in immediate relation with payee.
Payment to Self	It cannot be made payable to the maker himself, that is the <i>maker and the payee cannot be the same person</i> .	The drawer may order the payment to be made to him also. Thus, <i>the drawer and payee may be the same person</i> .	The person can draw cheque on bank which can be made payable to self. So drawer of cheque & payee may be same person.

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Parties to Instrument	There are only <i>two parties</i> , viz., the maker (debtor) and the payee (creditor).	In the case of a bill of exchange there are <i>three parties</i> , viz., drawer, drawee and payee.	In the case of a cheque of exchange there are <i>three parties</i> , viz., drawer, drawee and payee.
Drawing in sets	A promissory note <i>cannot be drawn in sets</i> .	The bills can be <i>drawn in sets</i> .	The cheque can be drawn in sets.
Conditional	A promissory note can <i>never be conditional</i> .	A bill of exchange too cannot be drawn conditionally.	The cheque cannot be conditional.
Notice of dishonour	In case of <i>dishonour</i> of note, <i>notice is not required</i> to be given to its maker.	<i>Notice of dishonour</i> of a bill is <i>required</i> to be given to all the parties.	<i>Notice of dishonour</i> of a cheque is <i>required</i> to be given to all the parties.
Noting & Protesting	There must be Noting and Protest to prove that the note has been dishonoured.	There must be Noting and Protest to prove that the bill has been dishonoured.	Bank only gives the reason in writing but there is no system of Noting or Protest.
Involvement of banker	The banker may or may not be involved.	The banker may or may not be involved.	The drawee of the cheque is compulsorily banker.
Grace days	3 days' grace is allowed in the case of a note which is not payable on demand.	3days' grace is allowed in the case of a bill which is not payable on demand.	No grace is allowed in the case of a cheque, as it is as a rule, payable immediately on demand.
Payable on demand	PN can be time note or payable on demand.	Bill can be time bill or payable on demand.	A cheque is always payable on demand.
Stamping	PN must be stamped according to law.	Bills must be stamped according to the law.	Cheques do not require to be stamped in India.
Crossing	The PN is not crossed.	The bill is not crossed.	A cheque may be crossed.

Types of Cheque

Chart for Understanding

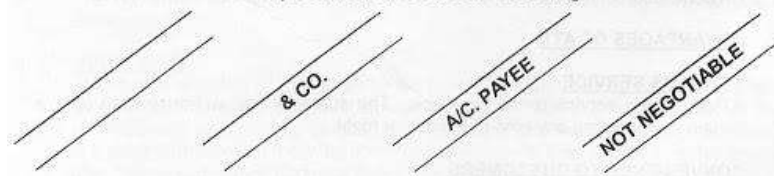


Provisions

The usage of crossing cheques

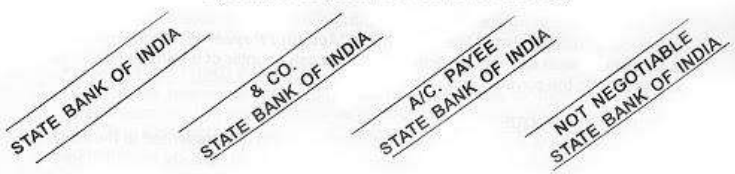
Cheques are usually crossed as a measure of safety. According to section 123, crossing is made by drawing two parallel transverse lines across the face of the cheque with or without the addition of certain words. This is known as general crossing. The usage of crossing distinguishes cheques from other bills of exchange. The object of general crossing is to direct the drawee banker to pay the amount of the cheque only to a banker, to prevent the payment of the cheque being made to wrong person.

Specimen of General Crossing

**Special crossing**

According to section 124, where a cheque bears across its face an entry of the name of a banker either with or without the words "not negotiable", the cheque is considered to have been crossed specially to that banker. In the case of special crossing the addition of two parallel transverse lines is not essential though generally the name of the bank to which the cheque is crossed specially is written between two parallel transverse lines.

Specimen of Special or Restrictive Crossing



A non-crossed cheque can be crossed afterwards.

**Crossing after issue**

As per section 125 of the Act:

- (i) If cheque has not been crossed, the holder thereof may cross it either generally, or specially.
- (ii) If it is crossed generally, the holder may cross it, specially.
- (iii) If it is crossed, either generally or specially the holder may add the words "not negotiable".
- (iv) If a cheque is crossed specially, the banker to whom it is crossed, may again cross it specially to another banker, his agent, for collection. This is the only case where the Act allows a second special crossing by a banker and for the purpose of collection [*Akrokerri(Atlantic) Mines Ltd vs. Economic Bank (1904) 2 K.B. 465*].

It may be noted that the crossing of a cheque is an instance of an alteration which is authorised by the Act.

General Crossing



Specimen of Special

**Payment of cheque, crossed generally or specially (126 & 127)**

If a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Again, where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed or his agent for collection.

According to section 127, where a cheque is crossed specially to more than one banker except when it is crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof. This is because, in such a case, the instruction by the drawer would not be clear.

Note: It is necessary in all cases, to specify in the second special crossing, that the banker in whose favour it is made is an agent of the first banker for collection.



Banker acting in due course is not liable

Payment in due course of crossed cheque

According to section 128, where the banker on whom a crossed cheque is drawn, pays it in due course, it is to be presumed that he has made payment to the true owner of cheque, though in fact, the amount of the cheque may not reach the true owner. In other words, banker making payment in due course is protected, whether the money is or is not, in fact, received by the true owner of the cheque.

**Payment out of due course**

According to section 129, any banker paying a crossed cheque otherwise than in accordance with the provisions of Section 126 shall be liable to the true

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owner of the cheque for any loss he may have sustained. Thus, if the bank pays a cheque out of due course, that is, in contravention of section 126, and the money does not reach the true owner, he can claim payment over again from the banker.



HDC will not give good title in case of non negotiable bill

Cheque marked "not negotiable"

According to section 130, a person taking a cheque crossed generally or specially bearing in either case the words 'not negotiable' shall not have or shall not be able to give a better title to the cheque than that title the person from whom he took had. In consequence if the title of the transferor is defective, the title of the transferee would be vitiated by the defect. But, in the case of a bill negotiated in the ordinary way, the title of the holder in due course would not be affected by the defect in the title of the transferor. Cheque crossed 'not negotiable' does not affect the transferability of the negotiable instrument in anyway. The cheque still continues to be transferable but only those rights are conveyed to the transferee which the transferor has. In short non negotiable transfer does not give good title to transferee HDC if transferor is defective.

Great Western Railway Co. vs. London and Country Banking Co. (1901) A.C. 414

X, by means of fraud, obtained from Y a cheque crossed 'not negotiable' and got it cashed at a bank other than the drawee bank. Y sued the bank for conversion. Is the bank liable for conversion? The effect of Section 130 of the Act, broadly, is that if the holder has a good title, he can still transfer it with a good title, but if the transferor has a defective title, the transferee is affected by such defects, and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value. As X in the case in question had obtained the cheque by fraud, he had no title to it and could not give to the bank any title to the cheque or the money, and the bank would be liable for the amount of the cheque for conversion.



Banker shall not cash the cheque of person other than payee.



Cheque marked "A/C Payee"

As per the instructions issued by the Reserve Bank of India (9-9-1992) it would be safer for the drawer to cross a cheque "not negotiable" with the words "account payee" added to it. The courts of law have held that "an account payee" crossing is a direction to the collecting banker as to how the proceeds are to be applied after receipt. The banker can disregard the direction only at his own risk and responsibility. In other words, an 'account payee' cheque can be collected only for the account of the payee named in the cheque and not for anyone else. A banker collecting an 'account payee' cheque for a person other than the payee named in the cheque may be held liable for conversion. In other words, if the bank collects an account payee cheque for a person other than the payee it does so at its own risk. It is imperative on the part of collecting bank, therefore to take utmost care to enquire into the title of its customer and satisfy itself that there is no defect in the title of the customer presenting such cheque for collection.



Protection in respect of uncrossed cheque

When a cheque payable to order purports to be endorsed by or on behalf of the payee and the banker on whom it is drawn pays the cheque in due course, he is authorised to debit the account of his customer with the amount so paid, even though the endorsement of the payee subsequently turns out to be a forgery, or though the endorsement may have been made by payee' agent without his authority. In other words, the banker is exonerated for the failure to direct either the genuineness of the validity of the endorsement on the cheque purporting to be that of the payee or his authorised agent.

For example, a cheque is drawn payable to B on order and it is stolen. Thereafter, the thief or someone else forges B's endorsement and presents the cheque to the bank for encashment. On paying the cheque, the banker would be able to debit the drawer's account with the amount of the cheque. Likewise, if the cheque, in the above case, was not stolen but instead presented for

payment by B's agent on endorsing the same "Per pro" for B and the cheque is cashed, the banker could debit the account of the drawer. He would not be held guilty of the ground that he has cashed the cheque endorsed by the agent of B who has misappropriated the amount thereof.

Example: X drew a cheque payable to 'Y or on order'. Unfortunately it was lost and Y's endorsement was forged. Subsequently, the banker pays for the cheque. Is the banker discharged from liability? What will be the consequences if the drawer's signatures were forged? The paying banker is discharged from liability, despite the forged endorsement in favour of the payee, because of special protection granted by section 85(1) of the Negotiable Instruments Act, 1881.

In another instance, where the drawer's signature is forged, a banker remains liable to the drawer even by a payment in due course and cannot debit the drawer's account.



Protection in respect of crossed cheques

When a banker pays a cheque (drawn by his customer), if crossed generally then to any banker, and if crossed specially then to banker, to whom it is crossed or his agent for collection (also being a banker), he can debit the drawer's account so paid, even though the amount of the cheque does not reach true owner.

The protection in either of the two cases aforementioned can be availed of, if the payment has been made in due course: *i.e.*, according to the apparent tenor of the instrument, in good faith and without negligence, to any person in possession thereof in the circumstances which do not excite any suspicion that he is not entitled to receive payment of the cheque.

Bank Draft

Definitions

A bank draft is a bill of exchange drawn by one bank upon itself or another bank for a sum of money payable to order on demand.



Provisions applicable to bank draft

Section 85A is added to protect the bankers against forged or unauthorized endorsements on demand drafts, drawn by one branch of a bank upon another branch of the same bank. According to section 131A of the Act, the provisions as given from section 123 to 131 shall be applicable to any draft, as defined in section 85A, as if the draft were a cheque. Thus a banker collecting the crossed bank draft is entitled to the same protection under Section 131A as available under Section 131 to a bank collecting a crossed cheque.

A draft is drawn either against cash deposited at the time of its purchase or against debit to the buyer's operational bank account with the banker. The buyer of the draft generally furnishes particulars of the person to whom the amount thereof should be paid. The banker charges for his services a small commission. The draft like a cheque, can be made payable to drawer on demand without any legal objection thereto, since the Reserve Bank of India Act, under Section 31, specially allows such a draft be issued.

Essentials of Valid Acceptance (27 & 28)

Provisions

Acceptance must be written

The drawee may use any appropriate word to convey his assent. It may be sufficient acceptance even if just a bare signature is put without additional words. But it should be remembered that an oral acceptance is not valid in law. However, oral acceptance may be sufficient only in the case of hundis and that too only if a special custom is proved to exist.



**No oral only
written
acceptance**

Acceptance must be signed

A mere signature would be sufficient for the purpose. Alternatively, the words 'accepted' may be

written across the face of the bill with a signature underneath; if it is not so signed, it would not be an acceptance.

Acceptance must be on the bill

It is to be noted that it is not necessary that the acceptance should be on the face of the bill; an acceptance written on the back of a bill has been held to be sufficient in law. What is essential is that it must be written on the bill; else it creates no liability as acceptor on the part of the person who signs it. Now what will happen if acceptance is signed upon a copy of the bill and the copy is not one of the part of it or if acceptance is made on a paper attached to the bill; in either of the cases, acceptance would not be sufficient.

Acceptance on bill or on back of bill.

Acceptance must be completed by delivery

It is not complete and the drawee would not be bound until the drawee has either actually delivered the accepted bill to the holder or tendered notice of such acceptance to the holder of the bill or some person on his behalf. Where a bill is drawn in sets, the acceptance should be put on one part only. Where the drawee signs his acceptance on two or more parts, he may become liable on each of them separately.



Acceptance must be delivered

Acceptance may be either general or qualified

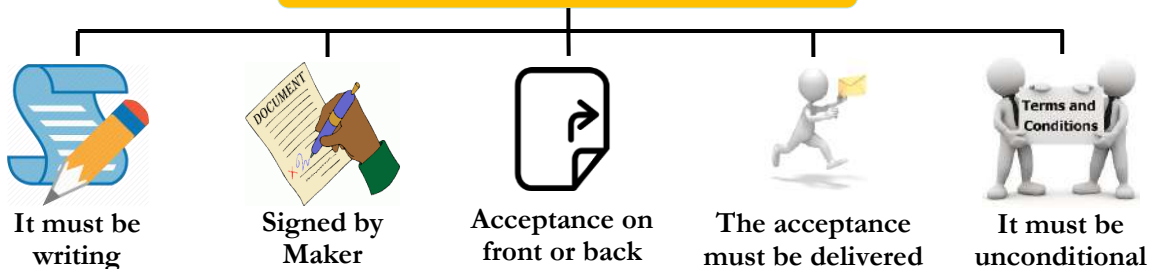
By a general acceptance, the acceptor assents without qualification to the order of the drawer. The acceptance of a bill is said to be qualified, when the drawee does not accept it according to the apparent tenor of the bill but attaches some conditions or qualification which have the effect of either reducing his (acceptor's) liability or acceptance of the liability subject to certain conditions. The holder of a bill is entitled to require an absolute and unconditional acceptance as well as to treat it as dishonoured, if it is not so accepted. However he may agree to qualified acceptance, but he does so at his own peril, since thereby he discharges all parties prior to himself, unless he has obtained their consent.



Acceptance may be general or Conditional

Chart for Understanding

Essentials of valid acceptance



Qualified Acceptance Examples

According to the *Explanation* to Section 86 of the Act, an acceptance to be treated as qualified.

- Where it is *conditional*, declaring the payment to be dependent on the happening of an event therein stated, *e.g.*,
 - "accepted payable when in funds" (*Julian vs. Shobrooke* (1753, 2 Wills, 9))
 - "accepted payable in giving up bills of lading for 76 bags of cloves per ship A at the L&W Bank" [*Smith vs. Vertue* (1860) 30 LJCP]
 - "accepted payable when a cargo consigned to me is sold" (*Smith vs. Abbot*).
- When it is *partial* i.e, when it *undertakes to pay part only* of the sum ordered to be paid by the drawer, *e.g.*, a bill drawn for 5,000 but "accepted for 4,000 only".
- Where it undertakes the *payment at a time other than that at which under the order it would be legally due* *e.g.*, a bill drawn "payable three months after date" is accepted as "accepted, payable six months after date."

4. It expressly states that the bill will be paid at the place noted in the acceptance and not otherwise or elsewhere, it amounts to a conditional acceptance. For example, "accepted payable at the Diwala Bank". This is general acceptance, whereas "acceptance payable at the Diwala Bank and not elsewhere" is an instance of qualified acceptance.

4.13

Holder, Holder for Value, Holder in Due Course (HDC) (8 & 9)

Provisions

<u>Holder</u> "Holder" of a negotiable instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto. In other words, holder means the payee or endorsee of a bill of exchange, cheque, or promissory note, who is in possession of it. The finder of a lost instrument payable to bearer, or a person in wrongful possession of such instrument, is not a holder.	
<u>Holder for Value</u> "Holder for value" means, as regards all parties prior to himself, a holder of an instrument for which value has at any time been given.	
<u>Holder in due course</u> Holder in Due Course is defined as a holder who acquires the negotiable instrument in good faith for consideration before it becomes due for payment and without any idea of a defective title of the party who transfers the instrument to him. Therefore, a holder in due course. When the instrument is payable to bearer, HDC refers to any person who becomes its possessor for value, before the amount becomes overdue. On the other hand, when the instrument is payable to order, HDC may mean any person who became endorsee or payee of the negotiable instrument, before it matures. Further, in both the cases, the holder must acquire the instrument, without any notice to believe that there is a defect in the title of the person who negotiated it.	 Bonafide Holder for value before maturity in good faith.

Difference between holder & holder in due course

Heading	Holder	Holder in Due Course
Meaning	A holder is a person who legally obtains the negotiable instrument, with his name entitled on it, to receive the payment from the parties liable.	A holder in due course (HDC) is a person who acquires the negotiable instrument bonafide for some consideration, whose payment is still due.
Consideration	Not necessary	Necessary
Right to sue	A holder cannot sue all prior parties.	A holder in due course can sue all prior parties.
Good faith	The instrument may or may not be obtained in good faith.	The instrument must be obtained in good faith.
Privileges	Comparatively less	Comparatively More
Maturity	A person can become holder, before or after the maturity of the negotiable instrument.	A person can become holder in due course, only before the maturity of negotiable instrument.

Privileges of the HDC

<u>In case of Inchoate Instrument</u> A person signing and delivering to another a stamped but otherwise inchoate instrument is debarred from asserting, as against a holder in due course, that the instrument has not been filled in accordance with the authority given by him, the stamp being sufficient to cover the amount	
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4.14

(Section 20).

Example: A signs his name on a blank but stamped instrument which he gives to B with an authority to fill up as a note for a sum of Rs. 3000 only. But B fills it for Rs. 5,000. B then transfers it to C for a consideration of Rs. 5000 who takes it in good faith. Here in this case, C is entitled to recover the full amount of the instrument because he is a holder in due course whereas B, being a holder cannot recover the amount because he filled in the amount in excess of his authority.



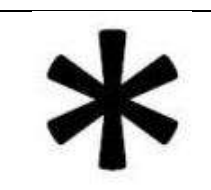
In case of fictitious bill

In case, a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for acceptor to allege as against the holder in due course that such name is fictitious (Section 42).



In case of conditional instrument or 'escrow'

In case a bill or note is negotiated to a holder in due course, the other parties to the bill or note cannot avoid liability on the ground that the delivery of the instrument was conditional or for a special purpose only (Sections 46 and 47).



In case of instrument obtained by unlawful means or for unlawful consideration

The person liable in a negotiable instrument cannot set up against the holder in due course the defences that the instrument had been lost or obtained from the former by means of an offence or fraud or for an unlawful consideration (Section 58).



In case original validity of the instrument is denied

No maker of a promissory note, and no drawer of a bill or cheque and no acceptor of a bill for the honour of the drawer shall, in a suit thereon by a holder in due course be permitted to deny the validity of the instrument as originally made or drawn (Section 120).



In case Payee's capacity to endorse is denied

No maker of a promissory note and no acceptor of a bill payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to endorse the same (Section 121). In short, a holder in due course gets a good title to the bill.



Negotiability Vs Assignability

4.15

Headings	Negotiability	Assignability
Rights of transferee	Transferee acquires all the rights of a holder in due course i.e., rights from equities (Mohammad Khunerali vs. Ranga Rao, 24 M. 654).	The assignee does not acquire the right of a holder in due course but has only the right, title and interest of his assignor.
Notice of transfer	Notice of transfer is not necessary.	Notice of assignment must be served by the assignee on his debtor.
Consideration	In the case of transfer of negotiable instrument, consideration is presumed.	in the case of transfer by assignment, consideration must be proved as in the case of any other contract.
Delivery of instrument	Negotiation requires either delivery only in the case of "bearer" instrument, or indorsement and delivery only in the case of "order instrument"	But assignment of an instrument according to Section 130 of the Transfer of Property Act, 1882 has to be made by a written document and signed by the transferor and this procedure is required both in respect of bearer and order instruments.
Stamp Duty.	Indorsement do not require payment of stamp duty	Assignment under Section 130 of the Transfer of Property Act requires payment of stamp duty

Delivery of Negotiable Instrument

Importance of delivery (Section 46)

Delivery is an incident of the utmost importance in the case of an instrument. It is essential to the issue of an 'instrument'; for "issue" means the delivery of the instrument, complete in form, to a person who takes it as a holder. It is equally essential to the negotiation of an instrument, for a bearer instrument, must be transferred by delivery and in the case of any other instrument, endorsement is incomplete without delivery. In fact, a negotiable instrument is nothing but a contract which is incomplete and revocable until the delivery of the instrument is made. For instance, in the case of a promissory note so long as the note, remains with the maker, the payee cannot claim payment; it is the delivery of the note to the payee that entitles him to claim payment; Section 46 of the Act provides as follows: "The making, acceptance or endorsement of promissory note, bill of exchange or cheque is completed by delivery, actual or constructive".



How to deliver

As between parties standing in immediate relation, delivery to be effectual, must be made by the party making, accepting or endorsing the instrument, or by a person authorised by him in this behalf. Thus a promissory note must be handed over to the payee by the maker himself or by someone authorised by the maker. Similarly, a bill of exchange must be delivered to the transferee by the maker, acceptor or endorser, as a case may be.



Conditional and unconditional delivery

An instrument may be delivered conditionally or only for a special purpose, and not for the purpose of transferring absolutely the property in the instrument. A bill delivered conditionally is called an 'escrow'. Although a conditional delivery is valid, the condition attaches exclusively



4.16

to the delivery and not to the making or drawing of an instrument. A bill must be drawn and a note made unconditionally. When an instrument is delivered conditional or for special purpose, the property in the instrument does not pass on to the transferee until the condition is fulfilled and the transferee holds such instrument in law as trustee or agent of the transferor.

Example: If, an instrument delivered conditionally to X is transferred by him for value to Y without notice of the condition, Y can claim payment even if the condition is not complied with. The reason is obvious - Y is bona fide transferee for value without notice of the condition and, as such, he should not suffer for suppression of fact by X.



Negotiation by delivery (Section 47)

An instrument payable to bearer is negotiable by delivery thereof. But when such instrument is delivered on condition that it is not to take effect except in certain event, it is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens. The distinction between 'delivery' and 'negotiation' should be noticed. An instrument is said to be negotiated, when it is transferred from one person to another in such a manner as to constitute the transferee the holder thereof.



Negotiation by endorsement

In order to negotiate, that is to transfer title to an instrument payable to order, it is at first to be endorsed and then delivered by the holder. The endorsement consists of the signature of the holder made on the back of the negotiable instrument with the object of transferring the instrument. If there is no space on the instrument, the endorsement may be made on a slip of paper attached to it. This attachment is known as "Allonge" and it then becomes part of the bill. According to Section 15 of the Negotiable Instruments Act, 1881 "when the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as negotiable instrument, he is said to endorse the same, and is called the endorser."



Types of Endorsement

	<u>Blank (or general)</u> No endorsee is specified in an endorsement in blank, it contains only the bare signature of the endorser. A bill so endorsed becomes payable to bearer.
	<u>Special (or in full)</u> In such an endorsement, in addition to the signature of the endorser the person to whom or to whose order the instrument is payable is specified.
	<u>Restrictive</u> Such an endorsement has the effect of restricting further negotiation and transfer of the instrument.
	<u>Conditional or qualified endorsement</u> Such an endorsement combines an order to pay with condition.
	<u>Sans Recourse</u> By adding these words after the endorsement, the endorser declines to accept any liability on the instrument of any subsequent party. Sometimes, where an endorser who so excludes his liability as an endorser afterward becomes the holder of the same instrument. In such a case, all intermediate endorsers are liable to him.

	<u>Sans Frais</u> These words when added at the end of the endorsement, indicate that no expenses should be incurred on account of the bill.
	<u>Facultative</u> When it is desired to waive certain right, the appropriate words are added to indicate the fact, <i>e.g.</i> , "notice of dishonour dispensed with".

Negotiation, endorsement, etc. (14 & 15)

	<u>Negotiation</u> Negotiation means the transfer of an instrument for value to a person who, thereupon, become entitled to hold in and sue thereon in his own name.
	<u>Endorsement means</u> Signing - On the face or back of negotiable instrument - On the slip of paper annexed to the negotiable instrument By - The holder of negotiable instrument For the purpose of - Negotiating such negotiable instrument

Payment in due course (10)

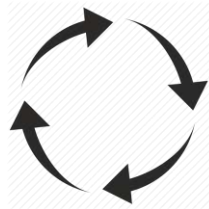
	The payment should be in accordance with the apparent tenor of the instrument
	The person to whom payment is made should be in possession of the instrument.
	The payment should be made in good faith
	The payment should be made without negligence
	The payment should be made in money only

Classification of Instruments (13,19,21,11,12)

Order Instrument	• A negotiable instrument is payable to a particular person or his order • A negotiable instrument is payable to the order of particular person
Bearer Instrument	• A negotiable instrument which is expressed to be payable to bearer • A negotiable instrument on which the last endorsement is in blank
Instrument payable on demand	(a) A negotiable instrument on which time for payment is not specified. (b) A negotiable instrument which is expressed to be payable on demand • A cheque is always payable on demand • A demand instrument may be presented for the payment at anytime • A demand instrument is not entitled to any days of grace.
Sight / Time Instrument	(a) A negotiable instrument on which time for payment is specified (b) A time instrument may be payable – • On a specified day; or • After a specified period; or • A certain period after sight; or • A certain period after happening of an event which is certain to happen.
Inland Instrument	A negotiable instrument is an inland instrument if – (a) It is drawn or made in India; and (b) It is payable in India or is drawn on the person resident in India
Foreign Instrument	A negotiable instrument which is an inland instrument is called foreign instrument

Different Provisions relating to Negotiation

4.18



Negotiation Back

An instrument is said to have been negotiated back to him and he is said to have taken up or taken back the negotiable instrument when a person who has been a party to the negotiable instrument takes it again. For *example*, suppose that the endorsements on a negotiable instrument are as under:

P, A, B, X, Y, A

Here A is person who is a prior party to the instrument. He negotiated it to B, B to X, X to Y and Y again to this very A. On account of this last endorsement, A should have right to claim money from X, Y and B. The rule is that every prior party is liable to every subsequent party.

Thus, conversely, every subsequent party may sue every prior party. As a result of the prior party (*i.e.*, A) having taken back the instrument subsequently, he (*i.e.*, A) becomes a 'subsequent' party. Therefore A, by reason of the last endorsement mentioned above, comes to have the rights to claim money from Y, X or B. A is permitted by law to sue Y, X or B then Y, X or B in his turn can sue A because of A's prior endorsement. This will lead to a circuitry of action. To prevent this, Section 52 of the Negotiable Instruments Act enacts an exception to the general rule to provide that the holder in due course of a negotiable instrument may sue all prior parties thereto. Thus A, in the above case cannot sue Y, X or B. But A can sue P since the latter is prior to A's original endorsement. If however A, in original endorsement, had signed "sans recourse" there could be no circuitry of action and A could sue Y, X or B.



**Minor will not
be liable for
Negotiable
instrument**

Capacity to incur liability under instrument

Every person competent to contract (according to the law to which he is subject) has capacity to bind himself and be bound by the making, drawing, accepting, endorsing, delivering and negotiating an instrument.

A party having such capacity may himself put his signature or authorize some other person to do so.

A minor may draw, indorse, deliver and negotiate an instrument so as to bind all the parties except himself. A minor may be the drawer where the instrument is drawn or endorsed by him. In that case he does not incur any liability himself although other parties to the instrument can be made liable and the holder can receive payment from any other party thereto.