

Date.....

Chapter - 7

The Negotiable Instruments

Act, 1881

Basics of the Act.

1.) Promissory Note :- Ek person jab dusre ko written Note me likh ke promise karita hai (Mein aapko paisa dunga).

eg:- HK Sir promises to pay ₹ 1000 to x after 1 month.

→ Such note is called 'Instrument'

Instrument shall be in Possession of 'x'.

HK is called as 'Maker'

'x' is called as 'payee'.

₹ 10,000/-	Pune 01/01/2025
I promise to pay x or his order ₹ 10,000 after 1 month, for value received.	
To, x Address	Stamp Sign HK

2.) Negotiation :- Means to transfer the right to
 Receive the ~~mon~~ money from such instrument
 ↳ Negotiable means transferable

3.) Such instrument can be payable to:-

[↳ Certain person
 ↳ To certain person or order of
 Certain person.] This is called as
 an 'Order instrument'.

[↳ To Bearer (The person who holds such
 Instrument.)
 ↳ To certain person or Bearer] This is called as
 an 'Bearer Instrument'.

[↳ To certain person only.] Such Instrument is not
 negotiable; hence it is not a
 Negotiable Instrument.

Illustrations :- (Assume Amount payable is ₹ 10,000)

1. I promise to pay Mr X.	Order
2. I promise to pay Mr X or his order.	Order
3. I promise to pay Mr X's order.	Order
4. I promise to pay Mr X or bearer.	Bearer
5. I promise to pay bearer.	Bearer
6. I promise to pay Mr X only.	Not a Negotiable Instrument.

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4.) Such instrument can be payable on :-

↳ On Demand

- I promise to pay mrs x on demand.

↳ At sight [Tab Instrument Present kiya Jayega]

- I promise to pay mrs x at sight.

↳ without any reference to time

- I promise to pay mrs x.

Such instrument is called (Demand Instrument)

↳ At Certain Date

- I promise to pay mrs 'x' on 01/01/2025

↳ After Date

- I promise to pay mrs 'x' ~~30 days~~
30 days after date.

Such instrument is called Time Instrument

↳ After Sight

- I promise to pay mrs 'x'
10 days after sight.

↳ After Certain event.

- I promise to pay mrs 'x' on next Independence day.

- I promise to pay mrs 'x' ₹ 10,000 10 days After death of mrs 'y'

(4)

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5.) How to Negotiate order Instruments & Bearer Instrument

• Negotiation of Bearer Instrument $\implies$ By delivery of such Instrument

eg:- B makes a Bearer promissory notes for Rs 10,000 and issues same to 'A'

- 'A' can deliver a Bearer promissory note to any person & such person has now a right to receive money on such note.

• Negotiation of order instrument $\implies$ Delivery & Endorsement / Indorsement *

~~* Endorsement means~~

* Endorsement / Indorsement means :- writing on back of the instrument the transferee's name and signing the same by transferor

eg- Shyam issues promissory notes to Ram which is payable to Ram or his order.

- Ram negotiates Such notes to Balram.

eg- ~~Shyam issues~~

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~~Front~~ Front side.

I promise to pay Rs 10,000 to Ram on his order

~~Shyam~~
shyam

Back side.

Pay to Balram on his order.

~~Address~~ Address: _____

~~Ram~~
Ram

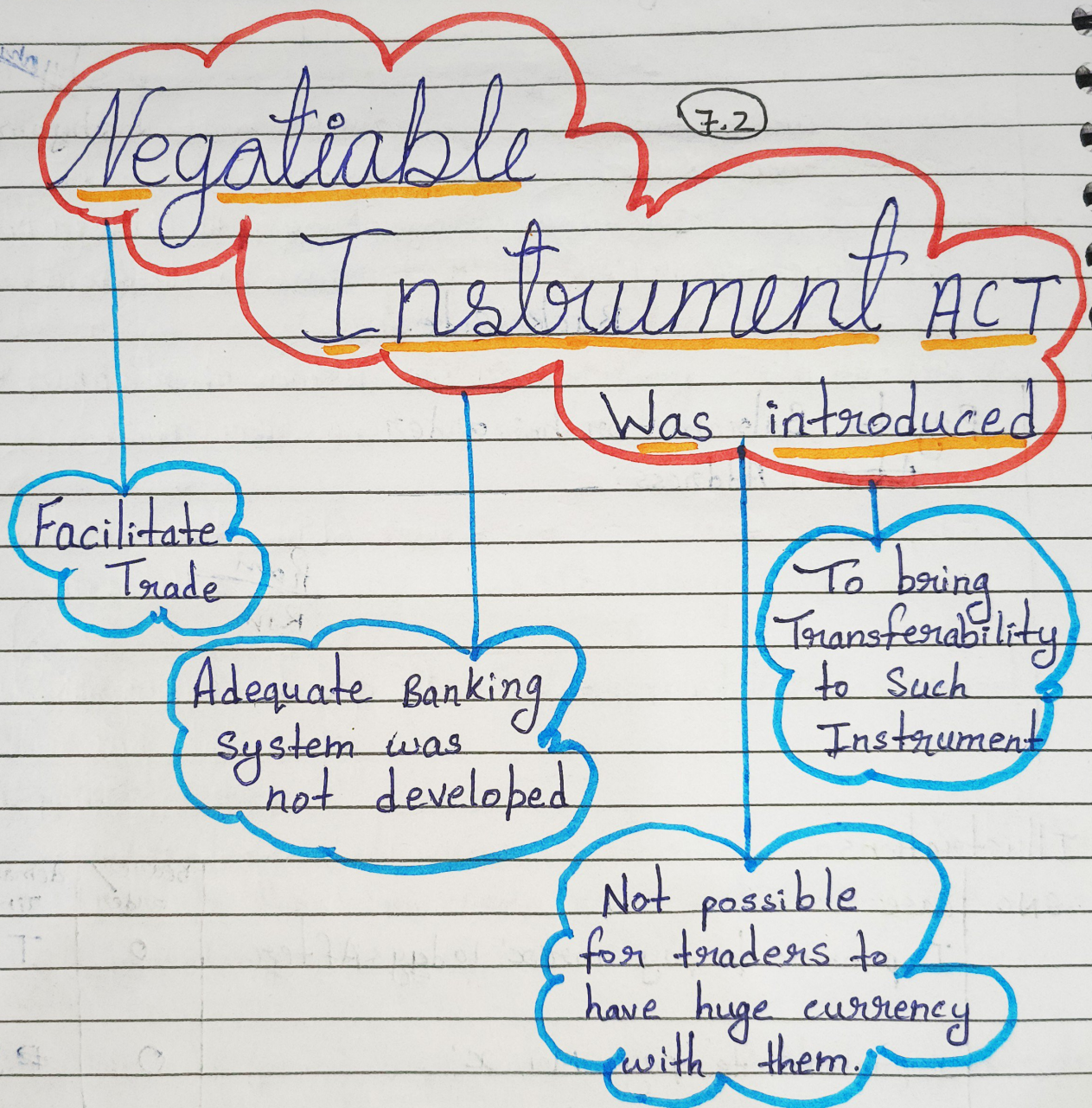
Illustrations

SNo.	Case	Bearer/ order	demand/ Time	Negotia- tion
	I promise to pay mri'x' 10 days After.	O	T	E + D
	I promise to pay Mri 'x'	O	D	E + D
	I promise to pay mri'x' on Bearer.	B	D	delivery.

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LESSON STARTS HERE



7.3 Only for knowledge

- Hundies :- less formal promissory note
- Treasury Bill :- Promissory note issued by RBI.
- Bearer debenture :- debt raising instrument.
- Railway Receipts :- Document issued by Railway as Acknowledgement of goods for transportation
- Delivery order :- list of goods that are ordered & name of owner.
- Bill of lading :- list of goods being transported, name of shipper and consignee.

Blank and full endorsement

7.3 end lines

Front side

I promise to pay ₹ 10,000 to Mr. 'x'
~~or his~~ or his order.

Negotiation By 'x'
requires delivery
& endorsement

Back side

Pay to 'Y' or his order

x
.....

Full endorsement
'Y' requires delivery &
endorsement to
Negotiate further.

Back side

Pay to 'Y' or Bearer

x
.....

Blank endorsement
'Y' can negotiate by
mere delivery.

Order and Bearer (7.12)

~~Order~~

ORDER Instrument

Payable to a person, or

Payable to a person/
his order, or

Payable to order of a
person, or

the last indorsement is
in full,

negotiated by indorsement
and delivery.

BEARER Instrument

Name of the payee is
blank, or

Name of payee is
specified with the
words "or bearer" or

the last indorsement is
blank

negotiated by mere
delivery.

Promissory Note

DEFINITION

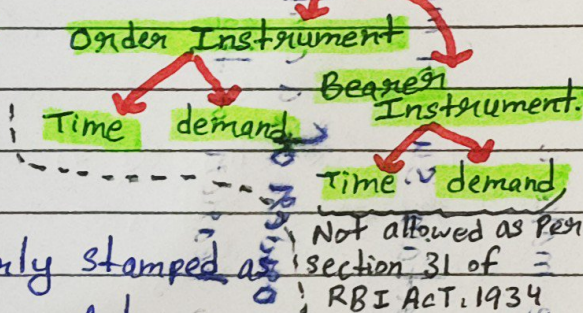
- Promissory note is an Instrument in writing. [Not being a bank Note or currency Note]
- Containing an unconditional undertaking (Promise)
- Signed by the maker
- To pay a certain sum of money.
- Only to, or to order of, a certain person, or Bearer of the instrument.

PARTIES TO PROMISSORY NOTE

- 1) maker :- The person who makes the promise to pay. He is debtor and must sign the instrument.
- 2) Payee :- Person to whom the amount on Note is payable.

ESSENTIALS OF PROMISSORY NOTE

- 1) Must be in writing.
- 2) Express promise to pay. mere Acknowledgement of debt is insufficient.
- 3) Promise should be definite and unconditional. [Uncertain event is not definite]
4. Signed by maker.
- 5) Promise to pay money only [kinds not allowed]
- 6) Promise to pay certain sum. even if sum can be ascertained easily it is considered valid.
- 7) maker and payee must be certain, definite and different person
(maker and payee) can't be same.
- 8) Must be properly stamped as per Indian Stamp Act



Stamp must be duly cancelled by :-

- maker's Signature
- maker's initials
- otherwise eg - write cancelled on stamp.

Spiral

DEFINITION

- B.O.E is an instrument in writing.
- Containing an unconditional order
- Signed by maker (Drawer)

Parties to the

- 1) Drawer :- The maker of B.O.E.

- 3) Payee :- The person named in the instrument, to whom or to whose order the money is, by instrument directed to be paid.

(Payee can be drawer himself or 3rd party)

ESSENTIALS OF

- must be in writing.
- order must be definite and unconditional
- drawer, drawer & payee must be certain. All parties may not be different.
- drawer can also be payee

ORDER BEARER

- Time demand
- Time demand
- Not allowed under sec- 31 of RBI ACT 1934

Bills of Exchange.

7.7

SECTION - 6

7.10

(Cheque)

Date

9-8

DEFINITION

- Directing certain person.
- To pay a certain sum of money.
- only to, or to order of, a certain person, or to Bearer of the Instrument

- Cheque is a B.O.E.
- drawn on a specified banker.
- and not expressed to be payable otherwise than on demand (Always payable on demand)
- And includes the electronic image of a truncated cheque. * (7.10)
- And a cheque in the electronic form * (7.1a)

Bills of Exchange

- 2) drawee: The person directed by drawer to pay is called drawee on Acceptance of the Bill, he is called Acceptor and liability is primary & Un conditional.

- 2 PARTIES TO CHEQUE**
- 1) Drawer:- Person who draws (make) cheque (debtor) liability primary and conditional.
- 2) drawee:- The specified bank on whom cheque is drawn. Bank makes the payment of cheque. Incase of cheque drawee is always bank.
- 3) Payee:- The person named in the instrument to whom or to whose order the money is, by Instrument, directed to be paid.
- ~~Payee~~ can Drawee in case of need:-

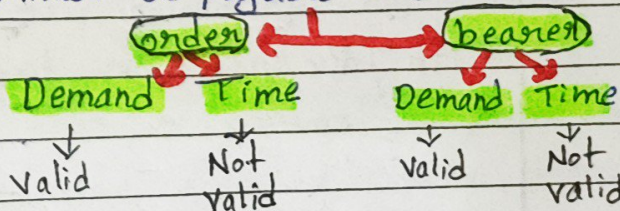
Bills Of Exchange

- must contain order to pay.
- drawer must sign the instrument.
- sum must be certain
- The order must be to pay money only
- It must be duly stamped.

- when in the bill or in any indorsement thereon the name of any person is given in addition to drawee to be resorted to in case of need such person is called a 'drawee in case of need' (Safety note to avoid default of Payment)

ESSENTIALS OF CHEQUE.

- 1.) All the essentials of B.O.E.
- 2.) must be drawn on specified banker (drawee always is bank)
- 3.) must be payable on demand.



Hence all cheques are BOE. while All BOE are not Cheques.

Promissory Note

DEFINITION

- Promissory note is an Instrument in writing. [Not being a bank note or currency note]
- Containing an unconditional undertaking (Promise)
- Signed by the maker
- To pay a certain sum of money.
- Only to, or to order of, a certain person, or Bearer of the instrument.

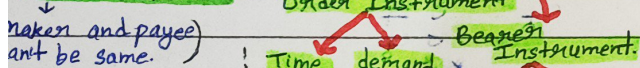
PARTIES TO PROMISSORY NOTE

- 1) Maker:- The person who makes the promise to pay. He is debtor and must sign the instrument.
- 2) Payee:- Person to whom the amount on Note is payable.

ESSENTIALS OF PROMISSORY NOTE

- 1) Must be in writing.
- 2) Express promise to pay, mere Acknowledgement of debt is insufficient.
- 3) Promise should be definite and unconditional. [Uncertain event is not definite]
4. Signed by maker.
- 5) Promise to pay money only [Kinds not allowed]
- 6) Promise to pay certain sum, even if sum can be ascertained easily it is considered valid.

maker and payee must be certain, definite and different person



Not allowed as per Section 31 of RBI Act, 1934

Must be properly stamped as per Indian Stamp Act

And stamp must be duly cancelled by:-

makers Signature or makers initials or otherwise eg- write cancelled on stamp.

Spiral

DEFINITION

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- Containing an unconditional order
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Parties to the

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(Payee can be drawer himself or 3rd party)

ESSENTIALS OF

- must be in writing.
- order must be definite and unconditional
- drawer, drawer & payee must be certain. All parties may not be different.

drawer can also be payee

ORDER BEARER

Not allowed under sec 31 of RBI ACT 1934

Time demand Time demand

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Bills of Exchange.

7.7

- Directing certain person.
- To pay a certain sum of money.
- only to, or to order of, a certain person, or to Bearer of the Instrument

Bills of Exchange

2) drawee:- The person directed by drawer to pay

is called drawee

on Acceptance of the

Bill, he is called Acceptor

and liability is primary

& Un conditional

Bills Of Exchange

→ must contain order

to pay.

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Not allowed under sec 31 of RBI ACT 1934

Spiral

(Cheque)

Date

9-B

DEFINITION

- Cheque is a B.O.E.
- drawn on a specified banker.
- and not expressed to be payable otherwise than on demand (Always payable on demand)
- And includes the electronic image of a truncated cheque. * (7.10)
- And a cheque in the electronic form * (7.10)

PARTIES TO CHEQUE

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→ liability primary and conditional.

2) drawee:- The specified bank on whom cheque

is drawn. Bank makes the payment of cheque.

In case of cheque drawee is always bank.

3) Payee:- The person named in the instrument

to whom or to whose order the money is, by Instrument, directed to be paid.

(Payee can be drawer himself or 3rd party)

Drawer in case of need:-

- when in the bill or in any indorsement thereon

the name of any person is given in addition

to drawee to be resorted to in case of

need such person is called a

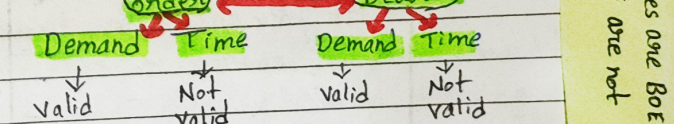
'drawee in case of need' (Safety note to avoid default of Payment)

ESSENTIALS OF CHEQUE

1) All the essentials of B.O.E.

2) must be drawn on specified banker (drawee, always is bank)

3) must be payable on demand.



Valid Not valid Valid Not valid

Time demand Time demand

Hence all cheques are BOE. while All BOE are not Cheques.

Difference blw Promissory Note & BOE Date.....

S.No	Basis	Promissory Note	Bills of exchange
1.	Definition	on the Previous ^{Page} ↓	on the Previous ^{Page} ↓
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 bills 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 bearer payable to bearer on demand.
Spiral			

Date.....

S.No.	Bills of Exchange	Cheque.
1.	Drawee may not be banker	drawee is always banker.
2.	May be payable on demand or after certain time	Always payable on demand.
3.	Can't be made payable to Bearer on demand	Can be made.
4.	Acceptance Required	Not Required.
5.	Stamping Required	Not Required.
6.	All B.O.E may not be cheques	All cheques are B.O.E.

Essential Characteristics of Negotiable Instrument

1. it is necessarily in writing. (7.4)
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 numbers of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise to 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.

Spiral eg:- cheque drawn and kept in drawer of office can't make person liable to pay it.

* Dishonour of cheques for insufficiency 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 discharge in whole or in part of any debt or other liability. * 1

- Is Returned by bank unpaid.

- either because of

1.) Insufficient Balance to honor the cheque

or
2.) It exceeds the amt. ~~amou~~ arranged to be paid from that account by Agreement made with that bank (eg: Bank was given instruction not to pay more than 1 lakh rs.)

- Such person shall be deemed to have committed an offence and shall be punished with

1.) Imprisonment for a term which may extend 2yrs.

2.) with fine which may extend to twice the amount of cheque.

3.) with Both.

Date.....

*1)

debt or other liability means legally enforceable debt & following are excluded from purview of Section 138

- a) Gift or donation
- b) or as security
- c) or as in discharge of moral obligation
- d) or for illegal consideration.

* Section 138 shall not be applicable unless the following conditions are complied.

1.) cheque had been presented within 3 months from the date on which it is drawn

⊕

2.) Payee or HDC makes demand for payment within 30 days by giving notice in writing to the drawer from receipt of information.

⊕

3.) Drawer fails to make payment of said Amount within 15 days of the receipt of said notice.

01/01/2025

01/02/2025

30/04/2025

Cheque was
issued dated
01/02/2025

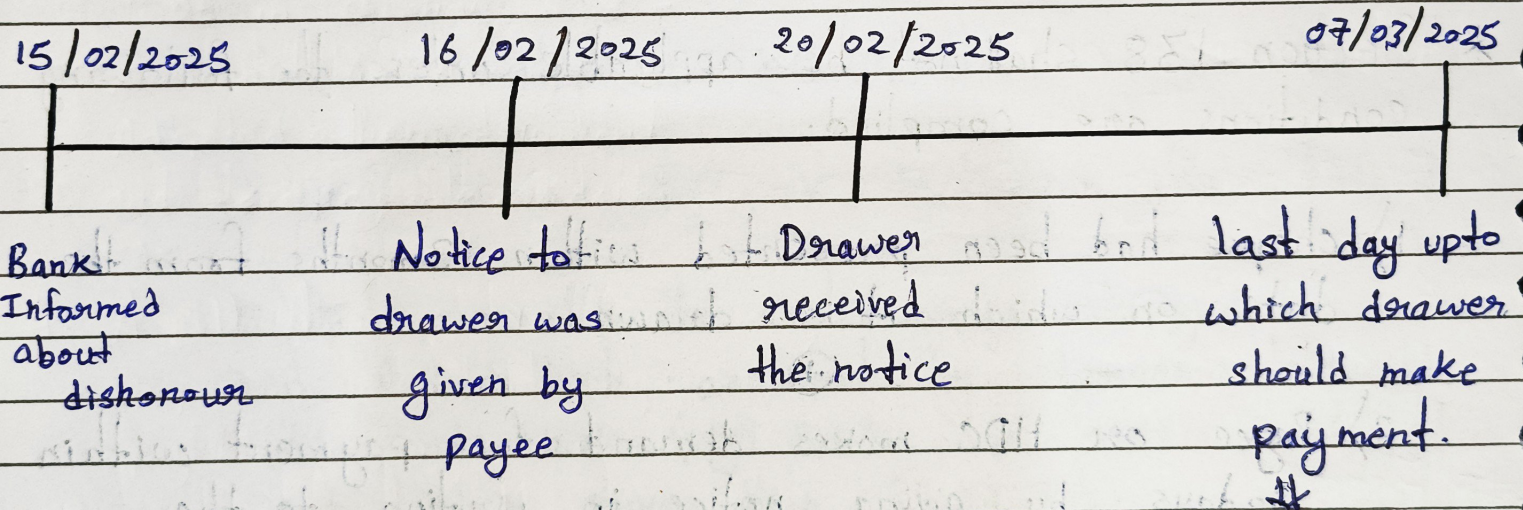
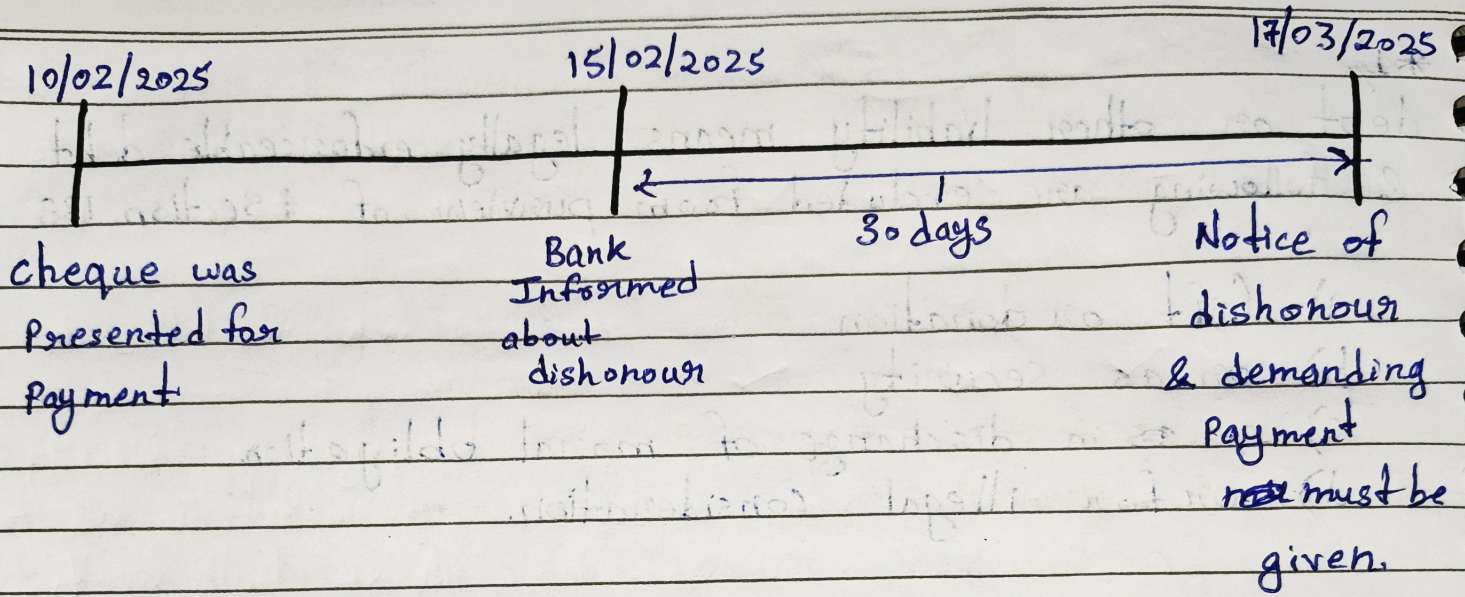
Validity
starts

3 months

Validity
end

Spiral

Date.....



Note: The notice period of 15 days starts from the date the notice is received by the drawer, Not from the date it is sent.

if he fails;
Payee can sue him
Under section -138

(7.19)

Date.....

* Presumption in favour of Holder [SECTION - 139]

- when cheque is dishonoured it is presumed that the holder of cheque received the cheque under purview of Section 138.



However the presumption is
Rebuttable (can be challenged)



Burden to prove that cheque is out of section 138 is at drawer/Accused.

* Defence which may not be allowed in any (7.19) prosecution (criminal proceedings) under section - 138.

→ Drawer had no reason to believe when he issued the cheque that cheque may be dishonoured on presentment.

(7.13)

Inland Instruments



PN. BOE. cheque



① drawn ~~or~~ made in india

(+)

made payable
in india

or Drawn upto
any person
Resident in india.

Remains Inland instrument even though
Spiral it has been endorsed in
foreign country.

foreign instrument



Not an inland
Instrument.

(16)

Illustrations

Drawn upon person
Date Resident in India

Questions	Drawn or made in India	Payable in India or	Inland/Foreign
1. A PN made in Kolkata and payable in Mumbai	✓	✓ -	Inland.
2. A Bill drawn in Varanasi on person resident in India payable in Singapore	✓	x ✓	Inland.
3. 'A' residents in Agra drew B.O.E in Chennai on 'B' a merchant in America 'B' Accepted the instrument and it is payable in Delhi	✓	✓ x	Inland.
4. A Bill drawn in Varanasi on person resident in Japan payable in Singapore	✓	x x	Foreign
5. 'A' Resident of Agra drew B.O.E on 'B' a merchant of Pune in Japan 'B' Accepted the instrument and it is payable in India	x	✓ ✓	Foreign
6. A Bill drawn in Varanasi on person resident in India payable in sg Singapore was later endorsed in France	✓	x ✓	Inland.

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* liability of maker/Drawer of foreign Bill (7.14)

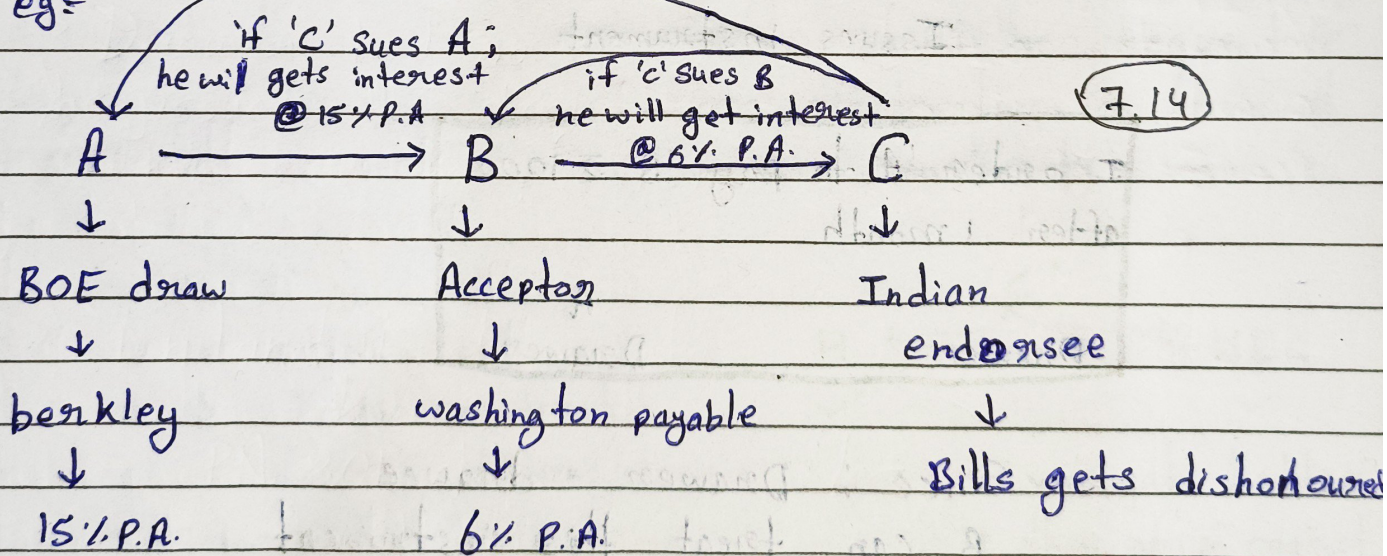
↓
In Absence of
contract between
countries

↓
Liability of

Maker/Drawer of
PN/BOE/cheque is
Regulated by Law
of place where
it was made.

Acceptor/Indorser of
PN/BOE/cheque is
Regulated by the law
of place where
Instrument is made
payable.

eg=



* Ambiguous Instrument

(7.15)

- definition = When an instrument may be treated either as B.O.E or PN; the holder may at his election treat it as either and the instrument shall be hence forward treated accordingly.

- The instrument is Vague and cannot be clearly identified either as B.O.E or PN.

- once holder exercises option; holder can't change it to other kind.

- eg-

A —————> B

Issues instrument.

I order 'A' to pay 'B' ₹ 1000.	
after 1 month	
Drawee,	A Drawee

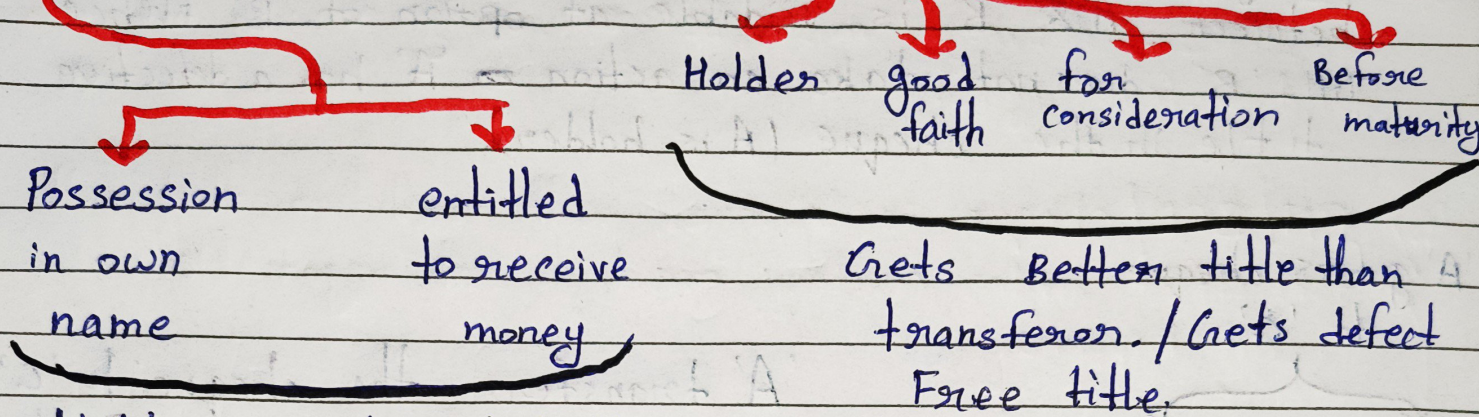
Since ; Drawee = drawee

B can treat this instrument
as PN or B.O.E.

7.14

Date.....

* Holder and Holder in due Course (Acquires instrument after negotiation.)

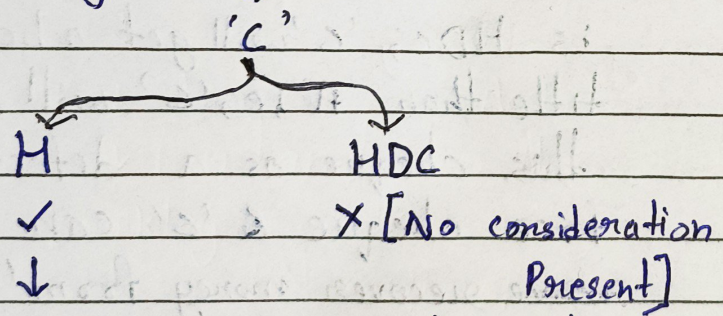


Holder can't get better title in instrument than transferor

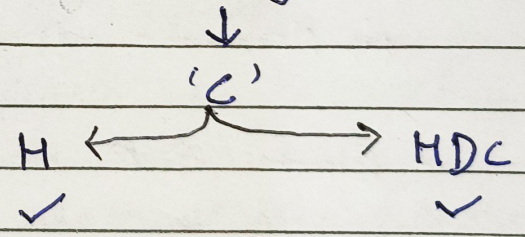
eg - 'A' a employee gets cheque from 'B' (A is holder)

'A' Negotiates the cheque to 'C' through gift

'A' transfers the cheque to 'C' for consideration in good faith Before maturity.



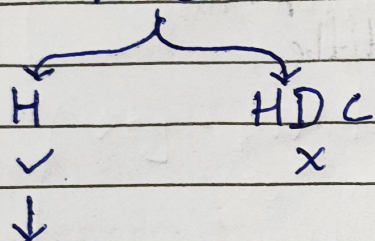
∴ C gets same rights & titles as of 'A' against the cheque.



'C' will get better title than of 'A' against the instrument; if A title has defective.

eg:- 'A' gets a cheque from 'B' under coercion. This contract between A & B is voidable at option of 'B' Hence Till 'B' does not take an action ~~on~~ 'A' has a defective title in the cheque (A is holder).

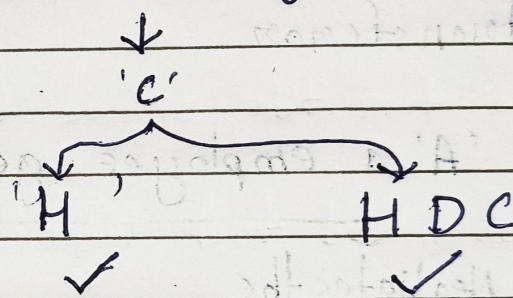
'A' gifts cheque to 'C'



'c' title ~~shall~~ shall also

be defective as his title is same like transferor & if 'B' decides to sue 'A' for coercion 'c' will also lose the right to recover the ~~the~~ money from 'B'

'A' transfers the cheque to 'C' for consideration in good faith before maturity.



Now in this case since is HDC; 'c' will get a better title than 'A' i.e; 'c' will get this cheque as a defect free cheque & 'c' can ~~recover~~ recover money from 'B' irrespective of the fact whether 'B' sues 'A' or not

Date.....

Inchoate Instrument (7.14)

(Incomplete)

- Instrument is incomplete in certain respects
- Drawer/maker/acceptor/Indorser sign & deliver the instrument to Another person in his capacity leaving the instrument either wholly Blank or having written on it word incomplete.
- It gives power to holder to make it complete by writing any amount.
- based on principle of estoppel
- Drawer of such instrument is liable to Both Holder & Holder in due course.

Can Recover any Amount on such instrument upto covered by the affixed stamp on the instrument.

Cannot Recover amount in excess of amount intended to be paid by the signor.

* Importance of delivery in negotiation (7.17)

1. Rights are not transferred until instrument was delivered.

- Even at time of drawing
- eg cheque drawn and kept in drawer of office

- Even at time of Negotiation
- eg. cheque Negotiated by payee but kept in drawer of office

2. delivery can be

→ Actual = Instrument ~~can~~ changes hand physically.

→ Constructive ⇒ Instrument is delivered to Agent, clerk or servant of indorser; or when indorser acts as agent of indorsee.

3. NI remains incomplete & revocable until delivery is completed. delivery must be voluntary & with intention to transfer rights.
4. PN/BOE/cheque is delivered with condition that will take effect after certain event is not negotiable unless event happens
 - eg:- PN to pay money after death of certain person is negotiable only after death.
 - exception:- HDC (who was not aware abt such condition)
5. Indorser dies after indorsement but before delivery; Indorsee gets no rights.
 - Even legal Representative of deceased person can't ~~to~~ Negotiate the same by delivery.
 - Since L.R. is not an agent.

Date.....

* Negotiate by delivery (Section - 47) (7.16)

→ PN/BOE/cheque which is Bearer can be negotiated by mere delivery.

→ PN/BOE/Cheque delivery should be of whole instrument delivery in parts is not valid.

→ PN/BOE/Cheque is delivered with ~~and~~ condition that it will take effect after certain event is not negotiable unless event happens.

eg:- PN to pay money after death of certain person is negotiable only after death.

exception :- HDC (who was not aware abt such condition)