Chapter - 7

The Negotiable Instruments Act, 1881.

Meaning of Negotiable Instruments — Negotiable Instruments is an instrument (the word instrument means a document) which is freely transferable from one person to another by mere delivery or by indorsement and delivery.

✓ The three kinds of Negotiable Instruments are :-

(A) • Bills of Exchange
(B) • Promissory Note
(C) • Cheques.

→ ✓ These instruments may be either to order or to bearer

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 it is transferable by indorsement and delivery.

A negotiable instrument is payable to bearer when :

(a) It is expressly stated as payable to bearer.
(b) The only Indorsement on it is in blank, meaning that the person who possesses it can demand ~~money~~. payment.

[essential Characteristics of Negotiable Instrument]

1) It is necessarily in writing.
2) It should be Signed
3) It is freely transferable from one person to another.
4) It can be transferred any number of times till its Satisfaction.
5) The every negotiable instrument must contain an unconditional promise to pay money. The promise to pay must consist of money only.

[By order → Money is paid only to the person whose name is written, or to someone they sign and give it to.
Bearer → Money is paid to whoever holds the paper, no name needed.]

Promissory Note :-

→ A promissory note is a written instrument containing an unconditional undertaking, signed by the maker, to pay a specified sum of money (only to, or to the order of, a specific person, or to the bearer of the instrument.)

Parties to promissory note.

(A) Maker → The person who makes the promise to pay is called the maker. He is the debtor and must sign the instrument.

(B) Payee → Payee is the person to whom the amount on the note is payable.

Essential characteristics of a promissory note. → Promise

✓ Must be in writing → An oral promise to pay is not sufficient.

✓ There must be express promise to pay → There must be an express promise to pay. Mere (Acknowledgement of debt is insufficient.)

✓ Definite and unconditional promise → The promise to pay should be definite and unconditional.

✓ Must be signed by the maker → without the maker's signature, the instrument is incomplete and ineffective.

✓ Promise to pay money only → The instrument must be a promise to pay money.

✓ (Promise to pay certain amount) → But sometimes, the language of a promissory note is such that the amount payable can be easily ascertained. In such case, the promissory note will be valid

Important ↓

→ The maker and payee must be certain, definite and different persons. A promissory note cannot be made payable to the bearer. Bank of India Act, 1934 (RBI Act).

→ only the Reserve Bank or the Central ~~bank~~ Government can make or issue a promissory note payable to bearer.

Stamping → A promissory note must be properly stamped in accordance with the provisions of the Indian Stamp Act.

Bills of Exchange.

unconditional order

→ 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 the 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 name in the instrument. directed to be paid.

Essential characteristics of the Bill of Exchange. → order

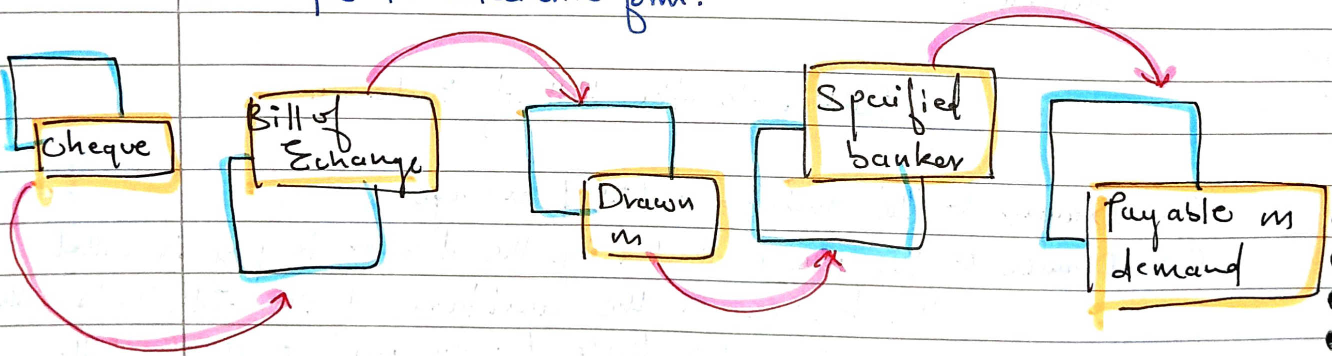
* All from the book or just like the promissory note ——

Again Important → Drawer, drawee, and payee must be certain. All these three parties may not necessarily be three different persons. As per RBI Act, 1934, a bill of exchange cannot be made payable to bearer on demand.

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

→ Cheque →

A cheque is a bill of Exchange drawn on a specified banker & not Expressed to be payable otherwise than on demand. It includes both the electronic image of a truncated cheque & a cheque in Electronic form.



→ Payable on demand – A cheque is Considered payable on demand when it is payable whenever the holder presents it to be drawee (banker) for payment.

→ Cheque in the Electronic form -

A cheque in Electronic form refers to a cheque drawn electroni-Cally using any Computer resource, and Signed in a Secure System will a digital Signature.

→ Truncated cheque -

A troncated cheque is a cheque that is troncated during the clearing cycle, either by the clearing house or by the ~~payment~~ paying & Receiving ~~bank.~~ payment. This troncation occur immediately upon the generation of an Electronic image.

* Parties to Cheque →

Cheque

- erson who is a maker → rawer
- Person who is directed to pay → Drawee
- Person in whose favour issued → Payee

1) ✓ Drawer - The person who draws a cheque i.e; makes the Cheque (debtor). His liability is primary & 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.

3) ✓ Payee - The person named in the Instrument i.e; the person in whose favour cheque is issued.

→ Cheque in the Electronic form -
A cheque in Electronic form refers to a cheque drawn electronically using any Computer resource, and Signed in a Secure System will a digital Signature.

→ Truncated cheque -
A truncated cheque is a cheque that is truncated during the

Difference between Electronic cheque & Truncated Cheque.

Basis of Difference	Electronic cheque	Truncated cheque.
① use of paper	paper is not used at any stage in the Creation of an Electronic cheque.	A truncated cheque is originally a paper cheque which is truncated (i.e; Converted into an Electronic Image) during the clearing cycle.
② Signature	It Contains a digital Signature, Which is mandatory for the Electronic cheque.	It Contains the Signature in ink as originally Signed on the paper cheque; no digital Signature is required after truncation.
③ original form.	The original writing and Creation of an Electronic cheque is Entirely in Electronic form.	The original writing is in physical (paper) form, which is later Converted into an Electronic image; this Converted form is termed as a truncated cheque.

makes the payment of the cheque. In Case of cheque, drawee is always banker.

③ Payee - The person named in the Instrument (i.e; the person in whose favour cheque is issued.

Essential characteristics of a Cheque —

→ A cheque is a species of bill of Exchange —

(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.

Classification of Negotiable Instruments —

① → 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.

② → order Instrument → It is an Instrument which is payable to a specific person, to a specific person or their order, or to the order of specified person where the last indorsement is in full. Such instrument can be negotiated by Indorsement and delivery.

③ → Inland Instrument → An Inland Instrument refers to a promissory note, bill of Exchange, or cheque that is made or drawn in India and is Either payable in India, or drawn on a person resident In India. Such an Instrument qualifies as an Inland Instrument.

④ → foreign Instrument → A foreign Instrument is one which is not an Inland Instrument.

⑤ → Inchoate Instrument → An Inchoate Instrument is an Incomplete negotiable Instrument where, the maker, drawer, acceptor or indorser has Signed & delivered it. Either wholly blank or partially filled. The holder has the authority to Complete it by inserting an amount, Subjects to the limits specified in the instrument or the affixed stamp. This principle is based on the doctrine of Estopped.

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 → A holder of the Inchoate instrument cannot recover an amount exceeding the sum intended to be paid by the Signatory.

✓ The holder in due Course → The holder in due Course Can recover any amount filled in, provided it does not Exceed the stamped amount. ~~The Signatory Cannot~~ on the Instrument, as per section 20 of the Negotiable Instrument Act, 1881.

✓ (6) Ambiguous Instrument → An ambiguous instrument is a negotiable instrument that can be interpreted as Either a promissory note or a bill of Exchange.

→ If an instrument Can be interpreted as Either a promissory note or a bill of Exchange, the holder has the right to choose (election) how to treat it.

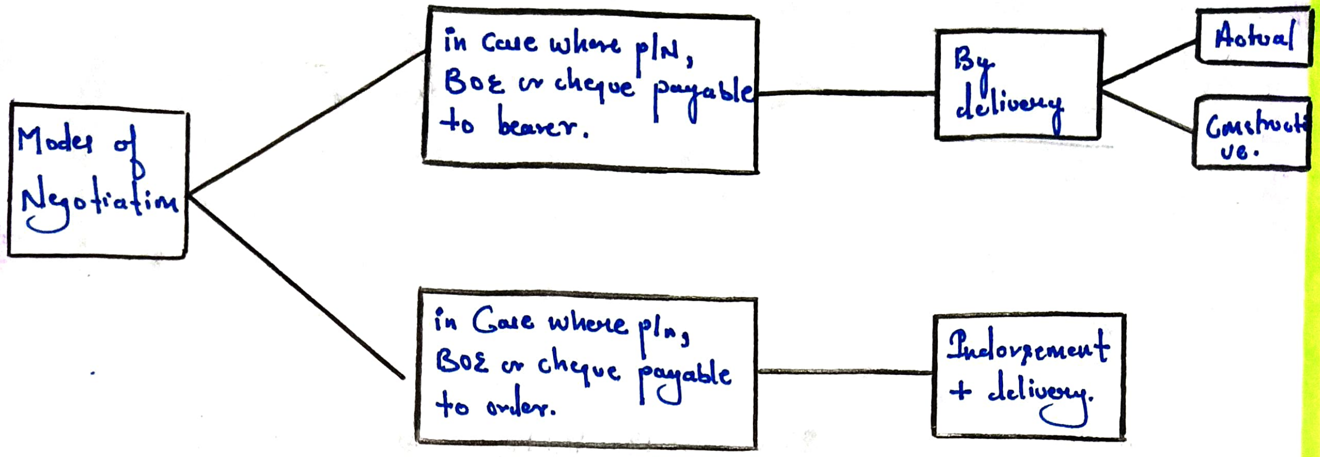
→ Once the holder Exercises this option, the instrument shall be treated accordingly for all legal purposes.

→ The holder Cannot later alter the classification of the Instrument.

Negotia. (Transfer of Negotiable Instruments)

→ Negotiable instruments may be negotiated Either by delivery when there are payable to bearer or by indorsement and delivery when there are payable to order.

MODES OF NEGOTIATION→



(i) A promissory note, bill of Exchange or cheque payable to bearer is negotiable by the delivery.

(ii) A promissory note, bill of Exchange or cheque payable to order is negotiable by the holder by indorsement and delivery.

Importance of Delivery In Negotiation (Section 46)

* The delivery of an negotiable instrument is an Essential requirement for negotiation, irrespective of whether the instrument is payable to bearer or to order for effecting the negotiation.

* The delivery must be voluntary, with the intent to transfer property in the instrument to the person receiving it. The delivery can be actual or Constructive.

* The delivery is Essential not only at the time of negotiation but also at the time of making or drawing the of negotiable instrument.

Acc. to the Section 57

* A legal representative of a deceased person Cannot negotiate a promissory note, bill of Exchange, or cheque payable to order by the mere delivery if it was indorsed by the deceased but remained undelivered.

* A legal representative is not an agent of the deceased. If an instrument was Executed but not delivered, the legal representative Cannot Complete its delivery. Due to death

Dishonour of Cheques for Insufficiency of funds In the Accounts (Section 138 to 142)

→ **Dishonour of Cheque for Insufficiency etc... of funds In the Accounts [Section 138].**

* Where a cheque is drawn by a person on an account maintained by him with a banker for the payment of a Sum of money to another person, in full or partial discharge of any debt or other liability, and Such Cheque is returned unpaid by the bank on account of —

  → Insufficient of funds in the account to honour the cheque, or
  → Exceeding the agreed overdraft limit as per the an arrangement with the bank.

• Then, Such drawer be deemed to have Committed an offence and shall be liable to punishment as follows:-

  ✓ Imprisonment for a term which may extent up to two years, or

✓ fine which may Extend to twice the amount of the cheque, or
✓ Both imprisonment and fine.

Exception under Section (138)

→ The provisions of Section 138 shall not apply in the following Cases:-
- If the Cheque was issued as a gift, donation, or Security.
- If the cheque was issued in discharge of a mere moral obligation.
- If the cheque was issued for an illegal Consideration

Condition for Applicability of Section 138.

for the application of Section 138, the following Conditions must be satisfied:-

✓✓ → The burden of proving that the cheque was issued for a legally Enforceable debt or liability lies on the drawer of the cheque.

✓✓ → The cheque must be presented within three months from the date on which it was drawn or within the period of validity whichever is Earlier.

✓✓ → The payee (or holder in due Course) must issue a written notice to the drawer informing about the dishonour of the cheque. The notice must fulfill the following Conditions:-

→ It must be in Writing.

→ It must be issued within 30 days from the date on which the payee receives information of dishonour from the bank

→ The notice must Contain a demand for payment of the amt due under the cheque.

✓✓ → The drawer shall ~~not~~ be liable under Section 138 only if, within 15 days from the date of receipt of the notice, the drawer fails to pay the Entire amount due under the cheque.

If the drawer makes only a partial payment, it shall still be Considered a default. The Cause of action arises on the 16th day from the receipt of the notice.

Effect of Stop Payment order –

→ legal Consequences of stop payment –

1. If the drawer issues a stop payment order (Countermands payment) to the bank, and the cheque is dishonoured due to Such an order, proceedings under Section 138 may still be initiated against the drawer.

2. It shall not be a valid defence under Section 138 for ~~payment~~ the drawer to Contend that he had no reason to believe, at the time of issuing ~~a~~ the cheque, that it would be dishonoured upon presentment.

Separate point.

PRESENTMENT OF INSTRUMENTS.

* Presentment for acceptance –

→ A bill of Exchange payable after Sight must be presented to the ~~drawer~~ drawee for acceptance by a person Entitled to demand Such acceptance. The presentment must be made within a reasonable time after the bill is drawn and during business hours on a business day.

→ In the Event of Non-presentment, no party shall be held liable to the person making Such default. If the drawee Cannot be found after a reasonable Search, the bill shall be deemed dishonoured.

→ Where a bill is directed to the drawee at a particular palace, it must be presented at that specific location. If, at the due date for presentment, the drawee cannot be found there despite a reasonable search, the bill shall be treated as dishonoured.

→ If authorised by agreement or usage, a presentment through the post office by means of a registered letter shall be deemed sufficient.

Presentment for Payment [Section 64)

✓ Promissory Notes, bills of Exchange, and cheque must be presented for payment to the maker, acceptor, or drawee, as ~~payable~~ applicable.

✓ In the Event of default in presentment, the other parties shall not ~~be~~ held liable to the holder of the instrument.

✓ If authorised by agreement or usage, a presentment through the post office by means of a registered letter shall be deemed sufficient.

Exception to the Presentment for Payment

→ Where a promissory note is payable on demand and is not payable at a specified palace, presentment is not necessary to hold the maker liable.

* Hours for presentment – Presentment for payment must be made ?? during usual business hours and if at a banker's, then within banking hours.

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* Presentment for payment of Instrument payable after date or Sight -
A promissory note or bill of Exchange, payable at a specified period after date or Sight, must be presented for payment at maturity.

* Presentment for payment of promissory Note payable by Instalments —
If a promissory note is payable by Instalments, it must be presented for payment on the third day after the due date of each instalment. Non-payment on such presentment shall be treated as non-payment at maturity.

* Presentment for payment of ~~instrat~~ instrument payable at specified palace and not Elsewhere -
Where a promissory note, bill of Exchange, or cheque is made, drawn, or accepted payable at a specified palace and not Elsewhere, it must be presented for payment at that specified palace in order to charge any party thereto.

* Presentment where no Exclusive place specified -
Where a promissory note or bill of Exchange is not made payable at a specified place, it must be presented for payment at the place of business or at the usual residence of the maker, drawee, or acceptor, as the Case may be.

* Presentment when maker, etc.... has no known place of business or residence
Where the maker, drawee, or acceptor of a negotiable instrument has no known palace of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, then the presentment may be made to him in person, wherever he can be found.

* Presentment by or to Agent, legal Representative, 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.
- or, if such person has died, to his legal representative.
- or, if he has been declared insolvent, to his assignee.

* Excuse for delay in presentment for acceptance or payment (Section 75 A).

Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder, and not due to his default, misconduct, or negligence. Once the cause of delay ceases (ends), the presentment must be made within a reasonable time;

Important ***

* When presentment unnecessary (Section 76) -

→ Presentment is not necessary, and the instrument is treated as dishonoured on due date, in the following cases:-

(A) As Against Maker, Drawee, or Acceptor:-

→ If the maker, drawee, or acceptor intentionally prevents the presentment of the instrument;

→ If the instrument is payable at his place of business, and he closes such place on a business day during usual business hours;

→ If the instrument is payable at another specified place, and neither he nor an authorized person is present at that place during usual business hours;

→ If the instrument is not payable at any specified place, and such person cannot be found after due search.

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(B) As against other parties (liable Even without Presentment):-

→ If ~~the~~ a person has promised to pay Even if the bill or note is not presented, they Cannot refuse payment on the ground of non-presentment.

(C) As against any party, if After maturity and with knowledge that the Instrument has not been presented:

(i) → He makes a part payment of the amount due on the instrument;
(ii) → He promises to pay the amount due, in whole or in part;
(iii) → He waives (gives up) his right to rely on the default in presentment.

(d) As against the drawer:-

→ As against the drawer if the drawer Could not Suffer damage from the lack of Such presentment.

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* liability of Banker for negligently dealing with bill presented for payment (Section 77) -

If a bill accepted as payable at a specific bank is presented there and gets dishonoured, and the banker handles it negligently or returns it improperly, then the banker is liable to Compensate the holder for any loss Caused.

Important → Tough to learn to learn with 2-3 day of Regular Revision

RULES AS TO COMPENSATION (SECTION 117) -

(Section 117 - Negotiable Instrument Act, 1881) applies when a promissory note, bill of Exchange, or cheque is dishonoured.

When any negotiable instrument is dishonoured, compensation is payable by the party liable to the holder or to an Endorsee. The rules for determining such Compensation are as follows:-

(a) ⇒ The holder of the Instrument is Entitled to recover the amount due upon the instrument together with the Expenses properly incurred in presenting, noting, and protesting the same.

(b) ⇒ If the person liable (charged) resides in a different location from where the instrument is payable the holder is Entitled to receive Compensation based on the Current rate of Exchange between the two places.

(c) ⇒ When the Endorser, being liable, has made payable of the amount due upon the instrument, such Endorser shall be Entitled to recover:-

- → The amount paid by him,
- → Together with interest at the rate of 18% per annum from the date of payment until tender or realisation thereof, and.
- → All Expenses caused by the dishonour and such payment.

(d) ⇒ The party Entitled to Compensation may draw a bill upon the party liable to Compensate him. Such a bill shall be payable at sight or on demand for the amount due to him, along with all properly incurred Expenses.

If this Compensation bill is dishonoured, the drawer of that bill is Entitled to Compensation again, in the same manner as the original bill.

Complete