

The Negotiable Instrument Act, 1881

Meaning of Negotiable Instrument → Negotiable Instrument is an instrument which is freely transferable from one person to another by mere delivery or by indorsement and delivery.

There are three kinds of Bill Negotiable instrument are:

- 1) Bill of exchange
- 2) Promissory Note
- 3) Cheque

} 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

2) A negotiable instrument is payable to bearer when:

a) It is expressly stated as payable to bearer
b) when the only indorsement on it is in blank, meaning that the Person who Power

it can demand 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 an written instrument containing ~~unconditional~~ 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.)

Promissory Note

A) Maker → The person who makes the promise to pay is called the maker. He is 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

- 1) Must be in writing → An oral promise to pay is not sufficient.
- 2) There must be express promise to pay → There must be an express promise to pay. Mere acknowledgement of debt is insufficient.
- 3) Definite and unconditional promise → The person to pay should be definite and unconditional.
- 4) Must be signed by the maker → Without the maker's signature, the instrument is incomplete and ineffective.
- 5) Promise to pay money only → The instrument must be a promise to pay money.

6] 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 cases, the promissory note will be valid.

7] The maker and payee must be certain, definite and different person → A promissory note cannot be made payable to the bearer → only the Reserve Bank or the central Government can make or issue a promissory note payable to bearer.

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

Bills of Exchange

→ A "Bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of a certain person or to the bearer of the instrument.

Parties to the Bills of Exchange

- 1] Drawer → The maker of a bill of exchange
- 2] Drawee → The person directed by the drawer to pay is called ~~drawee~~ ^{on acceptance} drawee on the acceptance of the bill, he is called an acceptor and is liable for the payable of the bill. His liability is primary and unconditional.
- 3] Payee → The person named in the instrument directed to be paid.

Essential characteristics of Bill of Exchange order

- All from the book same as the promissory note

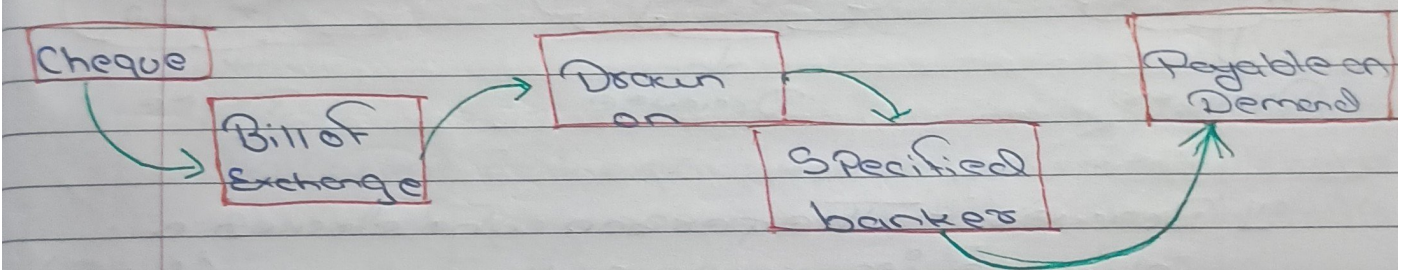
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Important → Drawer, drawee and payee must be certain. All these three parties may not necessarily be three different persons. As per RBI Act, 1984, a bill of Exchange cannot be made payable to bearer on demand.

However, a bill of exchange payable on demand, in which name of the payee is uncertain, 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 transferred cheque & a cheque in electronic form.

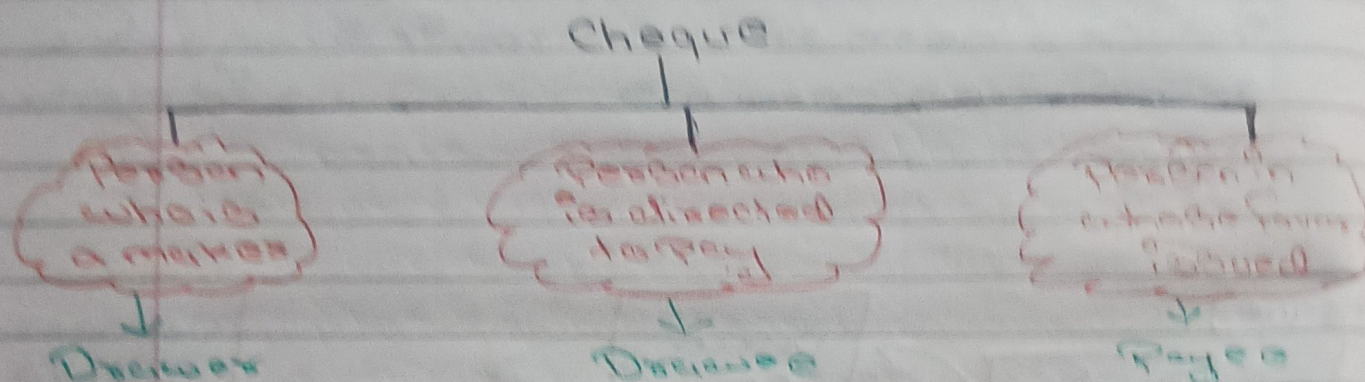


① Payable on Demand → A cheque is considered Payable on Demand when it is payable wherever the holder presents it to the drawee (banker) for payment.

② Cheque in electronic form → A cheque in electronic form refers to a cheque drawn electronically using any computer resource, and signed by in a secure system with a digital sign.

- ③ Transterred cheque - A transterred cheque is a cheque that is transterred during the clearing cycle, either by the clearing house or by the paying & receiving payment. The transterrence occurs immediately upon the generation of a clearing message.

Parties to a cheque



a) Drawer - The person who draws a cheque i.e. makes the cheque (drawn). This liability is primary & conditional.

b) Drawee - The specific bank on whose cheque is drawn, he makes the payment of the cheque. In case of cheque, drawee is always banker.

c) Payee - The person named in the instrument (i.e. the person in whose favour cheque is issued.)

Essential characteristics of cheque

→ A cheque is species of bill of exchange -

a) must be drawn on a specified banker
b) It must be payable on demand.

* As per book, all characteristics same as bill of exchange

Classification of Negotiable Instrument.

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 negotiable by mere delivery.

② Order Instrument → It is an instrument which is payable to a specific person, to S 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 Internal Instrument :- An internal 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 qualified as an internal instrument.
- ④ Foreign instrument :- An foreign instrument is one which is not an internal instrument.
- ⑤ Inchoate instrument :- An inchoate instrument is an incomplete negotiable instrument where, the maker, drawer, acceptor or indorser has signed and delivered it, either wholly blank or partially filled. The holder has the authority to complete it by inscribing an amount, subject to the limits specified in the instrument or the affixed stamp. This principle is based on the doctrine of Estoppel.
- 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 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.

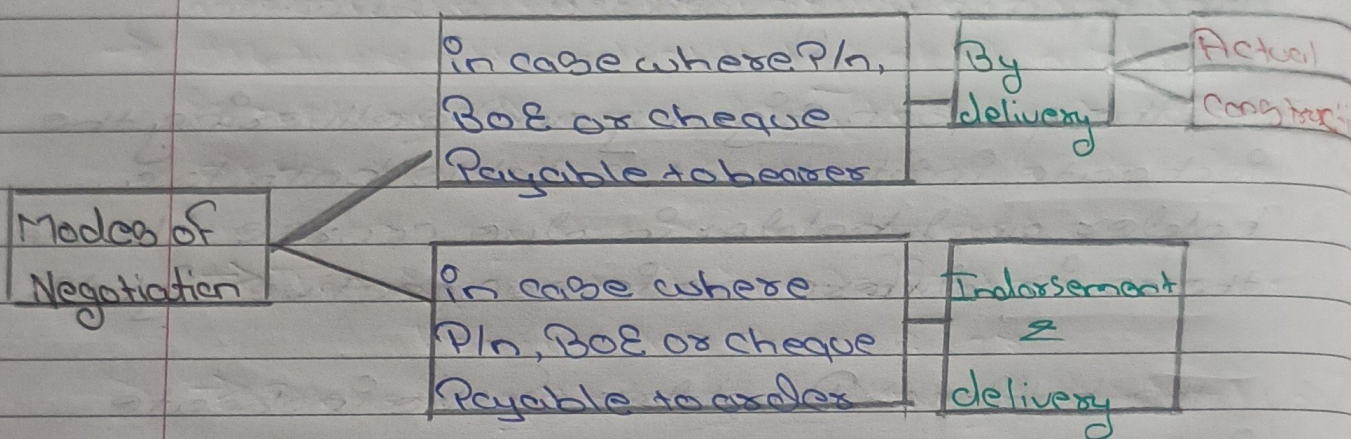
Liability on drawing Inchoate Instrument:

- The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course. However, there is difference in respective rights:-
- ✓ The holder → A holder of the inchoate instrument cannot recover an amount exceeding the sum intended to be paid by the Signor
- ✓ The holder in due course → The holder in due course can recover any amount filled in, provided it does not exceed the stamped amount. In the instrument, as per Section 20 of the Negotiable Instrument Act, 1881.

Negotiable (Transfer of Negotiable Instruments)

→ Negotiable instrument may be negotiable either by delivery when these are payable to bearer or by indorsement and delivery when these 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 negotiable, irrespective of whether the instrument is payable to bearer or to the order of effecting the negotiation.
- * The delivery must be voluntary, with the intent to transfer property in the instrument to the person ~~was~~ receiving it. The delivery can be actual or constructive.
- * The delivery is essential not only at the time of negotiable instrument negotiation both also at the time of making or drawing this of negotiable instrument.
- * Acc. to Section 57 A legal representative of a deceased person cannot negotiate a promissory note, bills 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.

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Dishonour of Cheque For Insufficiency of Funds In the Accounts (Sec. 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 an arrangement with the bank.

- Then, such drawer be deemed to have committed an offence and shall be liable to punishment as follow: -

✓ Imprisonment for a term which may extend 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 136, 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 amount due under the cheque.

→ The drawer shall 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 stoppayment -

1. If the drawer issue a stop payment order (concern and payment) to the bank, and the cheque is dishonoured due to such an order, proceeding under Section 138 may still be initiated against the drawer.
- It shall not be a valid defence under Section 138 for the drawer to contend that he had no reason to believe, at the time of issuing the cheque, that it would be dishonoured upon presentment.

Presentment of Instruments

* Presentment of acceptance -

- A bill of exchange payable after sight must be presented to the 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, the party shall be held liable to the party 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 place, 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 Note, bills of Exchange, and Cheque must be presented for payment to the maker, acceptor, or drawee, as applicable.

- ✓ In the event of default in presentment, the other party 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 place, presentment is not necessary to hold the maker liable
- * Hours for presentment - Presentment for payment must be made it during usual business hours and if at a banker's, then within banking hours
- * Presentment for payment of instrument payable on date or sight - A promissory note or bills 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 installments - If a promissory note is payable by installments, it must be presented for payment on the third day after the due date of each installment. Non-payment on such presentment shall be treated as non-payment at maturity.

* Presentment for payment of instrument payable at specified place and not elsewhere - where a promissory note, bill of exchange, or cheque is made, drawn, or accepted payable at a specified place and not elsewhere, it must be presented for payment at that specified place 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 special place, it must be presented for at the place of business or at the usual residence of the maker, drawer, or acceptor, as the case may be.

* Presentment when maker, etc... has no known place of business or residence - where the maker, drawer or acceptor of a negotiable instrument has no known place of business or fixed residence, and no

Place is specified in the instrument for presentment for acceptance or payment then the presentment may be made to him in person or by him, 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 drawer, 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 75A): Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder, and not 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 presents 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 authorised 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.

(B) As against other parties (liable even without presentment):-

→ If 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.

© 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 acquiesces (give up) his right to rely on the default in presentment

④ As against the drawer:-

→ As against the drawer if the drawer could not suffer damage from the lack of such presentment.

* 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 handle it negligently or returns it improperly, then the banker is liable to compensate the holder for any loss caused.

Important → 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 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 protecting 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 realization thereof, and

→ All expenses caused by the dishonour and such payment.

① → 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, 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.