

Negotiable Instruments Act, 1881

Meaning of Negotiable Instruments

- Negotiable Instruments is an instrument (document) which is freely transferable from one person to another by mere delivery or by indorsement and delivery. The property in such an instrument pass to a Bonafide transferee for value. (Applicable to whole of India)

Kinds of Negotiable Instruments

- The Act does not define the term 'Negotiable Instruments'. However, Section 13 of the Act provides for only three kinds of negotiable instruments namely bills of exchange, promissory notes and cheques, payable either to order or bearer.

Characteristics of Negotiable Instruments

1) Writing	2) Signed	3) Freely transferable	4) Holder's title is free from defects.
4) Transferred any number of times	5) Promise or order to pay money only	6) Sum payable, time of payment & payee must be certain	7) Must be delivered (Drawing not sufficient)

Promissory Note (Section - 4)

- A 'promissory note' is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.
- In case of promissory note - Customer is the Drawer i.e. Maker/Debtor/Payer and the supplier is the Drawee i.e. Bearer/Creditor/Payee

Specimen of Promissory note

₹ 10,000

Lucknow
April 10, 2022

Three months after date, I promise to pay Shri Ramesh (Payee) or to his order the sum of Rupees Ten Thousand, for value received.

Stamp
Sd/-
Ram

To,
Shri Ramesh,
B-20, Green Park,
Mumbai.
(Maker)

Parties to Promissory Note

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

- Essential Characteristics of a Promissory Note

- In writing - An oral promise to pay is not sufficient. There must be an express promise to pay. Mere acknowledgment of debt is insufficient.
 - The promise to pay should be definite and unconditional. (Dependent on happening or non-happening of an event are not PN's) However, promise to pay may be subject to condition which according to ordinary experience of mankind is bound to happen.
 - Must be signed by the maker otherwise it is incomplete and ineffective.
 - Pay money only.
 - Pay a certain sum. But if the amount payable can be easily ascertained - PN is valid.
 - Maker & Payee must be certain, definite and different persons.
- A promissory note cannot be made payable to the bearer [Section 31 of RBI Act, 1934]
Only RBI or the Central Government can make or issue a PN 'payable to bearer'.
- Must be properly stamped & cancelled in accordance with the Indian Stamp Act

Bills of Exchange (Section - 5)

- 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.

Specimen of Bill of Exchange

<p>Mr. A (Drawer) 48, MP Nagar, Bhopal (M.P.) April 10, 2022</p>	
<p>₹ 10,000/- Four months after date, pay to Mr. B (Payee) a sum of Rupees Ten Thousand, for value received.</p>	
<p>To, Mr. C (Drawee) 576, Arera Colony, Bhopal (M.P.)</p>	<p>Signature Mr. A</p>

Parties to Bill of Exchange

- 1) Drawer - The maker of a bill of exchange.
- 2) Drawee: Person directed by drawer to pay is called 'drawee' on whom bill is drawn. On acceptance, called an acceptor and is liable for payment primarily and unconditional.
- 3) Payee: Person named to whom or to whose order money is directed to be paid.

- Essential characteristics of bill of exchange

1) Writing	2) Express order to pay	3) Definite & Unconditional	4) Must sign the instru.
5) Certain Sum	6) Money only	7) Must be Stamped	
8) Drawer, drawee, and payee must be certain. May not necessarily be three different persons. One can play the role of two. As per Section 31 of RBI Act, 1934, BoE can't be made payable to bearer on demand.			

However, BoE payable on demand, in which name of the payee is mentioned, is valid.

- Difference between promissory note and bill of exchange

1) Definition	2) Nature	3) Parties	4) Acceptance	5) Payable to bearer
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Cheque (Section - 6)

- A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.
- Payable on demand means payable whenever holder chooses to present it to drawee (banker).
- Cheque in the electronic form-means a cheque drawn in electronic form by using any computer resource, and signed in a secure system with a digital signature (with/without biometric signature) and asymmetric crypto system or electronic signature, as the case may be;
- "A truncated cheque" means a cheque which is truncated during a clearing cycle, either by the clearing house (managed by clearing house) or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.
- Cheque is also a bill of exchange but is drawn on a banker and payable on demand.

Specimen of cheque

Date:.....	Signature
Pay a sum of Rupees..... A/C No. 12345678910	01212 1125864 000053 38
ABC Bank 622, Vijay Nagar, Indore (M. P.)	

Parties to Cheque

- 1) Drawer - The person who draws a cheque i.e., makes the cheque (Debtor). His liability is primary and conditional.
- 2) Drawee: The specific bank on whom cheque is drawn. He makes payment of cheque. In case of cheque, drawee is always a banker.
"Drawee in case of need"— When in the bill or in any indorsement thereon, the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a "drawee in case of need".
- 3) Payee: The person named in the instrument (i.e., the person in whose favour cheque is issued), to whom or to whose order the money is, by the instrument, directed to be paid, is called the payee. The payee may be the drawer himself or a third party.

- Essential Characteristics of a cheque

- All the essential characteristics of a BoE.
- Must be drawn on a specified banker.
- It must be payable on demand.

Classification of Negotiable Instruments

"Bearer instrument" and "order instrument" [Section 13]

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.

Order Instrument: It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or where the last indorsement is in full (payable to a specified person and does not contain words prohibiting its transfer), such instrument can be negotiated by indorsement and delivery.

Inland instrument [Sections 11]

Place where Instrument is drawn and made payable	Residence of Person on whom Instrument is drawn	Nature of Instrument
P/N, BOE, C drawn/made in India	+ Payable in India OR	are Inland Instruments
	+ drawn upon a person resident in India.	

An inland instrument remains inland even if it has been endorsed in a foreign country.

Foreign instrument [Sections 12]

Place where bill is drawn	Residence of Person on whom drawn and place where made payable	Nature of Instrument
P/N, BOE, C drawn/made outside India	on a person resident in or outside India + made payable in India	are foreign bills.
	on a person residing outside India + payable outside India.	
	on a person residing in India + payable outside India	

Note: The liability of the maker or drawer of a foreign PN or BoE or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable unless contract to the contrary. (Section 134).

Inchoate Instrument

- Means an instrument that is incomplete in certain respects

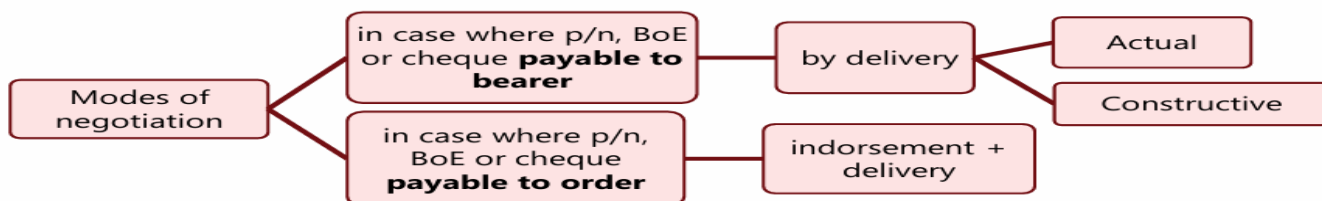
- Drawer/Maker/Acceptor/Indorser of NI may sign & deliver it to another person in his capacity leaving instrument either wholly blank or having written on it the word incomplete.
- This gives a power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it.
Principle of inchoate instrument is based on the principle of estoppel.
- The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course.
- Holder of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor.
- Holder in due course can, however, recover any amount on such instrument provided it is covered by the stamp affixed on the instrument.
- In the absence of delivery, the signer is not liable. Also instrument must be stamped

Ambiguous Instrument (Section 17)

- Where an instrument may be construed either as a PN or BoE, Holder may at his discretion treat it as either. Thus, An instrument which is vague & cannot be clearly identified either as a BoE, or as a PN, is an ambiguous instrument. However, after exercising his option, Holder can't change that it is other kind of instrument.

Negotiation (Transfer) of Negotiable Instruments (Section 14)

- NI's & its rights are freely transferable from one person to another by negotiation. There is a transfer of ownership of the instrument.



Negotiation by delivery (Section 47)

- A PN, BoE or cheque payable to bearer is negotiable by delivery thereof, subject to Instrument obtained by unlawful means or for unlawful consideration,

Exception: A PN, BoE or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable unless such event happens (except in the hands of a holder for value without notice of the condition).

Negotiation by indorsement (Section 48)

- A PN, BoE or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof, subject to Instrument obtained by unlawful means or for unlawful consideration,

Importance of Delivery in Negotiation [Section 46]

- Delivery is essential whether payable to bearer or order for effecting the negotiation. It must be voluntary, and the object should be to pass the property in the instrument.
- The delivery can be, actual or constructive.
Actual delivery takes place when the instrument changes hand physically.
Constructive takes place when it is delivered to the agent, clerk or servant of indorsee on his behalf or when indorser, after indorsement, holds instrument as an agent of the indorsee.
- When Instrument is conditionally or for special purpose only, the property in it does not pass to the transferee, even though indorsed, unless instrument is negotiated to a HIDC.
- Contract on a NI remains incomplete and revocable until delivery.
Delivery is essential not only at time of negotiation but also at time of making/drawing of NI. Rights in instrument are not transferred to indorsee unless after indorsement delivered.
- If a person makes the indorsement but before delivery to indorsee, Indorser dies, the LR of the deceased person cannot negotiate the same by mere delivery thereof. (Section 57)
LR is not an agent of deceased. Therefore, cannot complete the instrument if it was executed by the deceased but could not be delivered because of his death.

Dishonour of Cheque for Insufficiency of Funds (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 the discharge, in whole or in part, of any debt or other liability (legally enforceable) is returned by the bank unpaid, either because of the -
 - Amount standing to the credit of that a/c is insufficient to honor the cheque, or It
 - Exceeds the amount arranged to be paid from that a/c by an agreement made with bankSuch person shall be deemed to have committed an offence (criminal in nature) & shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.
- A cheque given as gift/donation/security/discharge of a mere moral obligation/for an illegal consideration, would be outside the purview of this section
- Provided that this section shall not apply, unless:

- Cheque presented within validity period i.e. within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.
 - Demand for payment through the notice in writing to drawer of cheque, within 30 days of the receipt of information from bank regarding the return of cheque as unpaid, and
 - Failure of drawer to make payment to the payee or to HIDC within fifteen days of the receipt of the said notice.
- Therefore, we may conclude that complaint can be filed after 45 days of dishonor of the cheque i.e., 30 days of notice period +15 days of the receipt of the said notice.
 - Sec 138, applies when a cheque is dishonoured on account of stop payment instructions sent by drawer to banker in respect of post- dated cheque irrespective of insufficiency of funds.
 - Penalty: Dishonour of cheque is a criminal offence and is punishable with imprisonment up to 2 years or fine up to twice the amount of cheque or both.

Presumption in favor of Holder (Section 139)

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

Defence not allowed in any prosecution under section 138 (Section 140)

- That the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

Presentment of Instruments

Presentment for Acceptance (Section 61)	
BoE payable after sight (No time/place specified)	Reasonable time in Business Hour & Day
In Default	No party is liable
If drawee can't be found after reas. Search	Bill is dishonoured.
Directed at particular place	Present at that place (Not found - Dish)
Agreement or usage	Through post office registered letter
Presentment of promissory note for sight [Section 62]	
Present	Reasonable time in business hour & day.
Drawee's time for deliberation [Section 63]	

Holder must allow the drawee for acceptance 48 hours (Exclusive of public holidays) to consider whether he will accept it.

Presentment for payment [Section 64]

All points same as for acceptance of Sec - 61	Exception: Where a PN is payable on demand and not at specified place, no presentment is necessary in order to charge the maker.
Hours for presentment (Sec - 65)	Usual hours (Banking hours in case of banks)
Payable after date or sight (Sec - 66)	Must be presented for payment at maturity.
Payable by Instalments (Sec - 67)	On the third day after date fixed for each instalment
Instalment payable at specified place (Sec -68)	At that place
No exclusive place specified (Sec - 70)	At the place of business or At usual residence of maker/drawee/acceptor
When maker etc has no known place of business or residence (Sec - 71)	wherever he can be found.
cheque to charge drawer (Sec - 72)	at the bank upon which it is drawn
cheque to charge any other person (Sec - 73)	presented within a reasonable time after delivery thereof by such person.
payable on demand (Sec - 74)	within a reasonable time after receiving.
by or to agent/LR/assignee (Sec - 75)	May be made to agent/LR/Assignee
Excuse for delay in presentment for acceptance or payment (Sec - 75A)	If caused by circumstances beyond control of holder. When cause of delay ceases - Present within Reasonable time

When presentment unnecessary (Section 76) (Instrument dishonoured at due date)

- If the maker/drawee/acceptor intentionally prevents the presentment or
 - Payable at place of business - Closes such place on business day in business hours, or
 - Payable at some other specified place - neither he nor any person authorised to pay it attends at such place during the usual business hours, or
 - Not being payable at any specified place, he cannot after due search be found;

- Against the party sought to be charged, if he has engaged to pay without presentment.
- If after maturity, party with knowledge that the instrument was not presented makes a part payment or promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in presentment.
- Against drawer, if the drawer could not suffer damage due to non-presentment.

Liability of banker for negligently dealing with bill presented for payment (Section 77)

- If the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Rules of Compensation (Section - 117) (Rules in case of dishonour of PN, BoE or Cheque)

- Holder is entitled to amount due with expenses incurred in presenting, noting & protesting it;
- When person charged resides at place different from that at which instrument was payable, Holder is entitled to receive sum at current rate of exchange between the two places;
- Endorser liable if paid amount due, entitled to amount so paid with interest at 18% per annum from date of payment until tender thereof with expenses caused by dishonour and payment;
- when person charged & such endorser reside at different places, Endorser is entitled to receive such sum at the current rate of exchange between the two places;
- Party entitled to compensation can draw a bill on the party liable to compensate him, payable at sight/demand, for amount due with all expenses incurred, accompanied by instrument dishonoured and the protest (if any).
If such bill is dishonoured, make compensation in same manner as in case of original bill.