

# THE NEGOTIABLE INSTRUMENTS ACT, 1881 (UNIT-IV)



## LEARNING OUTCOMES

**At the end of this chapter, you will be able to:**

- ❑ Understand the meaning, characteristics and elements of different kinds of negotiable instruments
- ❑ Know the parties to notes, bills and cheques, various ways of negotiation of the instruments and their presentment.
- ❑ Know the concepts of Noting and Protest, and of dishonour of instrument

## CHAPTER OVERVIEW



Negotiable Instruments Act can be broadly covered under following headings

Notes, Bills & Cheques and other related provisions (Section 4-25)

Parties to Notes, bills & Cheques (Section 26-45A)

Negotiation (Section 46-60)

Presentment (Section 61-77)

Discharge from liability on instruments (Section 82-90)

Notice of dishonour (Section 91- 98)

Noting and protest (Section 99-104A)

Compensation (Section 117)

Special Rules of evidence (Section 118-122)

International law (Section 134-137)

Penalties (Section 138-147)



## 1. INTRODUCTION

The law relating to negotiable instruments is the law of the commercial world which was *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. 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 on with it the bulk of the currency in force. The source of Indian law relating to such instruments is admittedly the English Common Law. 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.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

The Law in India relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881. This is an Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. **The Act applies to the whole of India**, but nothing herein contained affects the Reserve Bank of India Act, 1934, (section 21 which provides the Bank to have the right to transact Government business in India), or affects any local usage relating to any instrument in an oriental language.

Provided that such usages may be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

The provisions of this Act are also applicable to Hundis, unless there is a local usage to the contrary. Other native instruments like Treasury Bills, Bearer debentures etc. are also considered as negotiable instruments either by mercantile custom or under other enactments.

**Recent developments:** The Act was amended several times. Recent three amendments made in the N.I. Act were the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and the Negotiable Instruments (Amendment) Act, 2015 and Negotiable Instruments (Amendment) Act, 2018.

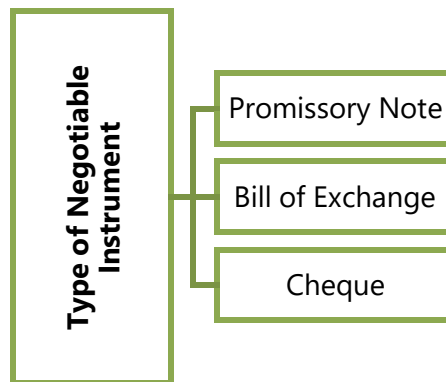
The Negotiable Instruments (Amendment) Act, 2018 received the assent of the President and was notified in the official gazette on 2<sup>nd</sup> August, 2018 and came into effect from September 1, 2018.

The Amendment Act 2018 contains two significant changes – the introduction of Section 143A and Section 148. These sections provide interim compensation during the pendency of the criminal complaint and the criminal appeal.

## 2. MEANING OF NEGOTIABLE INSTRUMENTS

Negotiable Instruments is an instrument (the word instrument means a document) which is **freely transferable** (by customs of trade) from one person to another by mere delivery or by **endorsement** and **delivery**. The property in such an instrument passes to a *bonafide* transferee for value.

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**.



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 does not contain words prohibiting its transfer. (i.e. it is transferrable by endorsement and delivery)

A negotiable instrument **is payable to bearer** when

- a. When it is expressed to be so payable e.g. pay bearer
- b. When the only or last endorsement (endorsement means signing of the instrument) on the instrument is an endorsement in blank

### **Essential Characteristics of Negotiable Instruments**

1. It is necessarily in writing
2. It should be signed
3. It is free transferable from one person to another
4. Holders title is free from defects
5. It can be transferred any number of times till its satisfaction
6. Every negotiable instrument must contain either a promise or order to pay money. Also, the promise or order must be unconditional.
7. The promise or order to pay must consist of money only. Nothing should be payable, whether in addition or in substitution of money. Also, the sum payable must be certain.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

### Presumptions as to Negotiable Instruments [Section 118]

Presumptions made in relation	Presumptions drawn
Until the contrary is proved, the following presumption shall be made:	
of <b>consideration</b>	every negotiable instrument was made or drawn for consideration
as to <b>date</b>	every negotiable instrument bearing a date was made or drawn on such date
as to <b>time of acceptance</b>	every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity
as to <b>time of transfer</b>	every transfer of a negotiable instrument was made before its maturity;
as to <b>order of endorsements</b>	endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon
as to <b>stamps</b>	lost promissory note, bill of exchange or cheque was duly stamped
as to <b>holder</b>	the holder of a negotiable instrument is a holder in due course

The above presumptions are rebuttable by evidence to the contrary.



### 3. PROMISSORY NOTE

#### Meaning

According to section 4 of the NI Act, 1881, "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."

The person who makes the promise to pay is called the **Maker**. He is the debtor and must sign the instrument. The person who will get the money (the creditor) is called **Payee**.

## Essential Characteristics of a Promissory Note

- a. In **writing**- An oral promise to pay is not sufficient.
- b. There must be **an express promise to pay**. Mere acknowledgment of debt is insufficient.

**Example:** I acknowledge myself to be indebted to B in ₹ 1,000, to be paid on demand, for value received. (Valid promissory note as the promise to pay is definite)

**Example:** "Mr. B I.O.U ₹ 1,000." – Invalid promissory note as there is no promise to pay. It is just an acknowledgement of debt.

- c. The promise to pay should be **definite** and **unconditional**. Therefore, instruments payable on performance or non-performance of a particular act or on the happening or non-happening of an event, are not promissory notes. However, the promise to pay may be subject to a condition, which according to the ordinary experience of mankind, is bound to happen.

**Example:** I promise to pay B ₹ 500 seven days after my marriage with C. (the promissory note is invalid as marriage with C may or may not happen.)

**Example:** I promise to pay B ₹ 500 on D's death- as the death of D is certain, promise is unconditional. Thus, the promissory note is valid.

**Example:** I promise to pay B ₹ 500 on D's death, provided D leaves me enough to pay that sum. Invalid promissory note as promise is dependent on D leaving behind money which is not certain.

- d. A promissory note must be **signed by the maker** otherwise it is incomplete and ineffective.
- e. Promise **to pay money only**.

**Example:** I promise to pay B ₹ 500 and to deliver to him my black horse on 1st January next. – It is not a valid promissory note, as the promisor needs to deliver its black horse which is not money.

- f. Promise to pay a **certain sum**

**Example:** "I promise to pay B ₹ 500 and all other sums which shall be due to him."- Promissory note invalid as the amount payable is not certain.

- g. The **maker and payee must be certain, definite and different persons**. A promissory note cannot be made payable to the bearer (Sec. 31 of RBI Act).

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

Only the Reserve Bank or the Central Government can make or issue a promissory note 'payable to bearer'.

- h. **Stamping** A promissory note must be properly stamped in accordance with the provisions of the Indian Stamp Act and such stamp must be duly cancelled by maker's signatures or initials or otherwise.



### 4. BILLS OF EXCHANGE

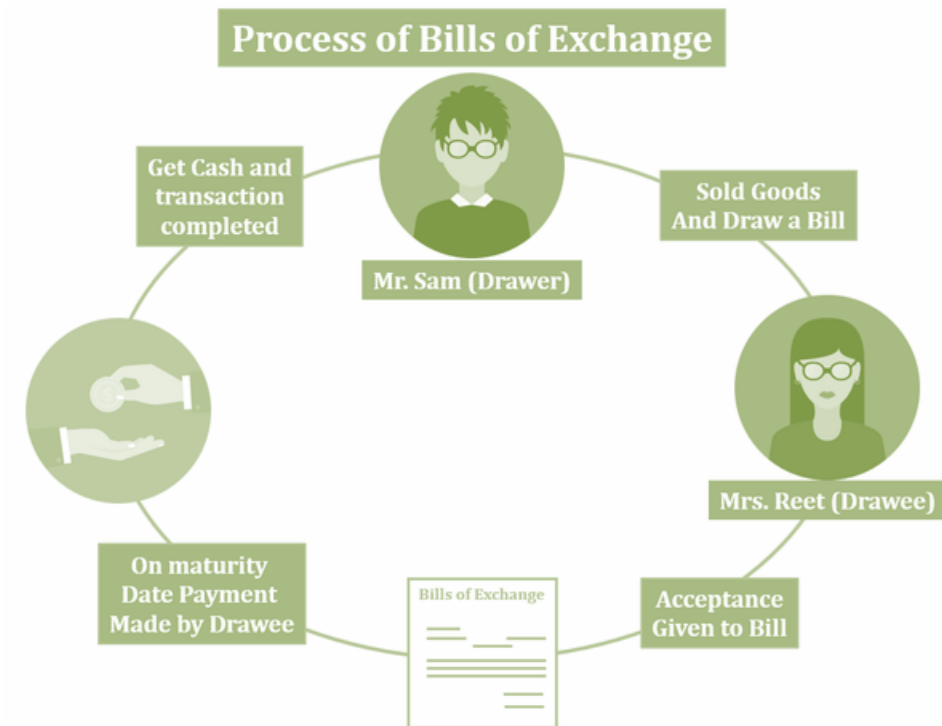
A "bill of exchange" is an **instrument in writing** containing an **unconditional order, signed** by the maker, **directing a certain person to pay a certain sum of money only** to, or to **the order of**, a **certain person** or to **the bearer** of the instrument.

#### Parties to the 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'. He is the person on whom the bill is drawn. On 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 named in the instrument, to whom or to whose order the money is, by the instrument, directed to be paid.

#### Essential characteristics of bill of exchange

- a) It must be in writing
- b) Must contain an express order to pay
- c) The order to pay must be definite and unconditional
- d) The drawer must sign the instrument
- e) Drawer, drawee and payee must be certain. 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. As per Section 31 of RBI Act, 1934, a bill of exchange cannot be made payable to bearer on demand.
- f) The sum must be certain
- g) The order must be to pay money only
- h) It must be stamped.



In above image, firstly seller sold goods to the buyer/customer and then draw a bill on him. Buyer received a bill and accepts it without any condition. On maturity of bill buyer will pay a sum of amount to the payee. (Payee may be a bank or Drawer himself)

### Difference between Promissory note and Bill of Exchange

S.no	Basis	Promissory Note	Bill of Exchange
1.	Definition	"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.	"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.

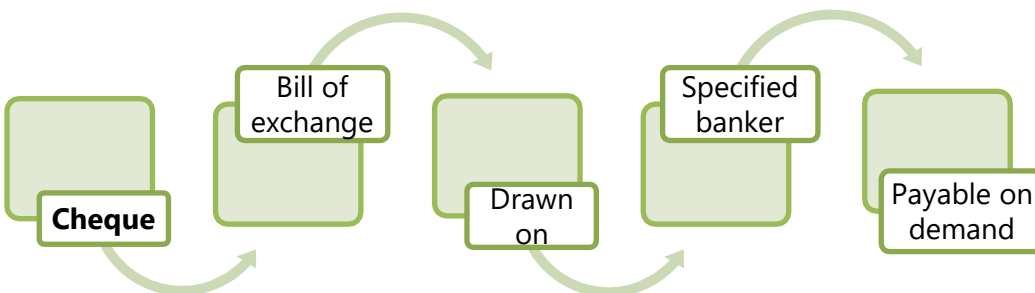


## THE NEGOTIABLE INSTRUMENTS ACT, 1881

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 bill of exchange, there are 3 parties which are follows 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.	The Bills of Exchange need a 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 payable to bearer on demand

### 5. 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- It should be payable whenever the holder chooses to present it to the drawee (the banker).

The expression "Banker" includes any person acting as a banker and any post office saving bank **[Section 3]**

**Explanation I:** For the purposes of this section, the expressions-

- (a) **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;

Note- For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000

- (b) "a **truncated cheque**" means a cheque which is **truncated** during the course of a clearing cycle, either by the **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.

**Explanation II:** For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India.

**Explanation III:** For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.

A combined reading of section 5 and 6 tells us that a bill of exchange is a negotiable instrument in writing containing an instruction to a third party to pay a stated sum of money at a designated future date or on demand. Whereas, a cheque is also a bill of exchange but is drawn on a banker and payable on demand.

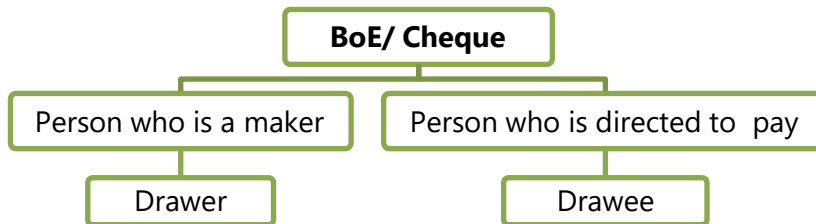
### **Parties to Cheque**

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 the payment of the cheque. In case of cheque, drawee is always banker.

**"drawee in case of need"**— When in the bill or in any endorsement 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"

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

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

According to the definition of cheque under section 6, a cheque is a species of bill of exchange. Thus, it should fulfill:

- all the essential characteristics of a bill of exchange
- Must be drawn on a specified banker
- It must be payable on demand

**Note:** These two additional features distinguish a cheque from bill. Thus, all cheques are bills while all bills are not cheques.

### Specimens of Promissory notes, bill of exchange and cheque

#### Specimen of Promissory notes

₹ 10,000	Lucknow
	April 10, 2018
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)	

### Specimen of Bill of Exchange

	Mr. A (Drawer)
	48, MP Nagar, Bhopal (M.P.)
	April 10, 2018
₹ 10,000/-	
Four months after date, pay to Mr. B (Payee) a sum of Rupees Ten Thousand, for value received.	
To,	
Mr. C (Drawee)	
576, Arera Colony, Bhopal (M.P.)	
	Signature
	Mr. A

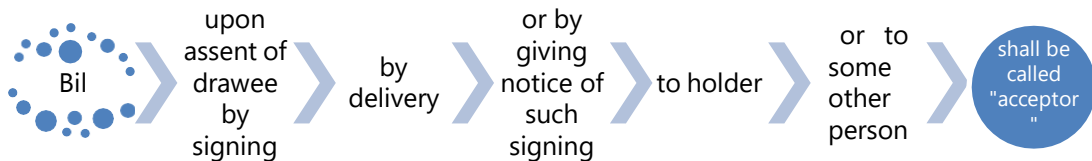
### Specimen of Cheque

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

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

### ACCEPTANCE:

The acceptance of a bill is the indication by the drawee of his assent to the order of the drawer. Section 7 states that an acceptance is the signature of the drawee of a bill who has signed his assent upon the bill and delivered it.



**“acceptor”** — After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “acceptor”. **Thus, an acceptor is the drawee who has signed his assent upon the bill and delivered it to the holder.**

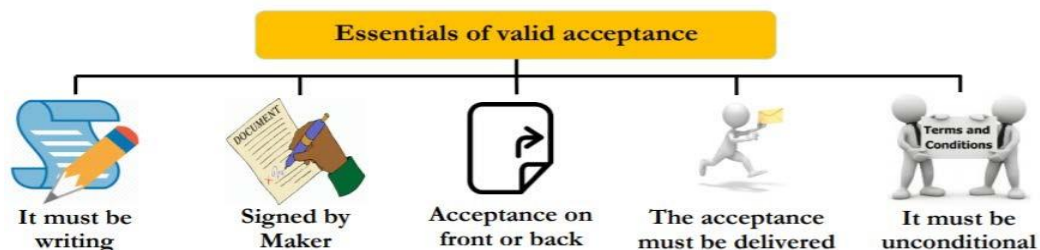
**“Acceptor for honour”** When a bill of exchange has been dishonoured by non-acceptance and any person accepts it for honour of the drawer or of any indorsers, such person is called “an Acceptor for honour”. The payment which he makes is known as “payment for honour. In other words, it is an undertaking by a third party to accept and pay a bill of exchange that was dishonored, either by non-acceptance (see dishonor by non-acceptance) or by non-payment (see dishonor by non payment) by the party on whom it was drawn. It is also called acceptance supra protest.

**How acceptance for honor must be made:** A person desiring to accept for honor must, [by writing on the bill under his hand], declare that he accepts under protest the protested bill for the honor of the drawer or of a particular endorser whom he names, or generally for honor.

### **Essentials of valid acceptance for honor**

- 1) The **holder must consent** to acceptance for honor. The holder cannot be compelled to assent to acceptance for honor.
- 2) The **bill must have been noted or protested** for the non-acceptance or for better security.
- 3) Acceptance for honor can be made by a person who is not already liable on the bill. Drawee of the bill when he refuses to accept the bill becomes a stranger. He may therefore accept the bill for honor of any party thereto.

- 4) It must be made **by writing** on the bill.
- 5) It must be for the whole amount due on the bill
- 6) Acceptance must be for the honor of any party already liable on the bill.
- 7) Acceptance for honor must be made before to bill is overdue.
- 8) Stranger paying for honor must, before payment, declare before a Notary Public the party for whose honor he pays and the Notary Public must have recorded such a declaration.



### **A specimen of Acceptance for Honor**

The acceptor for honor writes as below, across the bill as given under specimens of bills of exchange above: Accepted Supra Protest or Accepted for AB.

### **Rights and liabilities of an acceptor for honour (Sec 111& 112)**

- 1) Acceptor for honor binds himself to all the subsequent parties to pay the amount of the bill if the drawee does not pay.
- 2) The party for whose honor he accepts to pay the amount and all price parties are liable to compensate the acceptor for honor for all loss or damage sustained by him in consequence of such acceptance. The liability of an acceptor or honor is conditional he is liable only if the drawee fails to pay the bill.

The bill of exchange should be presented at its maturity to the drawer for payment and it must be dishonored by the drawer and noted or protested for non-payment to charge an acceptor for honor (Sec 112). The bill must be presented or forwarded for presentment to the drawee not later than the day next after the day of its maturity.

### **HOLDER AND HOLDER IN DUE COURSE**

**“Holder” [Section 8]**— The “holder” of a promissory note, bill of exchange or cheque means—

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

- any person
- entitled in his own name to the possession thereof, and
- to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

Broadly speaking, a holder means the owner of a negotiable instrument. What is required is a right to possession. A person in possession of an instrument without having a right to possess can't be called a holder.

**Example:** A person who finds or steals a bearer instrument or takes an instrument under forged endorsement is not holder: The reason is that holder of a negotiable instrument must have right to receive or recover the money thereon from the parties thereto.

**Example:** An agent holding an instrument for his principal is not a holder: The reason being that, although agent can receive payment of the instrument, he has no right to sue on the instrument in his own name.

**“Holder in due course” [Section 9]**— “Holder in due course” means—

- any person
- who for consideration
- became the possessor of a promissory note, bill of exchange or cheque (if payable to bearer), or the payee or endorsee thereof, (if payable to order),
- before the amount mentioned in it became payable, and
- without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

**Example 1:** A draws a cheque for ₹ 5,000 and hands it over to B by way of gift. B is a holder but not a holder in due course as he does not get the cheque for value and consideration. His title is good and bonafide. As a holder he is entitled to receive ₹ 5000 from the bank on whom the cheque is drawn.

**Example 2:** On a Bill of Exchange for ₹ 1 lakh, X's acceptance to the Bill is forged. 'A' takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether 'A' can be considered as a 'Holder in due course' and whether he (A) can receive the amount of the Bill from 'X'.

**Answer:** According to section 9 of the Negotiable Instruments Act, 1881 'holder in due course' means any person who for consideration becomes the possessor of

a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

As 'A' in this case *prima facie* became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

### **ESSENTIALS TO BECOME HOLDER IN DUE COURSE (HDC):**

- a) The holder must have paid **valuable consideration**:
  - i) To become a holder in due course, a person must obtain a negotiable instrument by paying valuable and lawful consideration for it.
  - ii) When given as a gift or has been inherited, the transferee cannot be a holder in due course.
- b) A holder must **acquire the instrument before its maturity** in order to attain the status of holder in due course.
- c) The holder must have **obtained the instrument in good faith**
- d) The instrument must be **complete and regular** on the face of it.
- e) He must have received the instrument as a holder- ie. A HDC may be either payee, or the possessor (if the instrument is payable to bearer), or the indorsee (if the instrument is payable to order).

### **PRIVILEGES OF BEING A HOLDER IN DUE COURSE:**

- (i) **In case of Inchoate Instrument:** A person signing and delivering to another a stamped but otherwise inchoate instrument (When you execute an unfilled up but duly signed negotiable instrument such as a cheque or a promissory note, it is an inchoate negotiable instrument) is debarred from asserting, as against a holder in due course, that the instrument has not



## THE NEGOTIABLE INSTRUMENTS ACT, 1881

been filled in accordance with the authority given by him, the stamp being sufficient to cover the amount (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 ₹ 3 000 only. But B fills it for ₹ 5,000. B then transfers it to C for a consideration of 5000 who takes it in good faith. Here in the 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.

- (ii) **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).
- (iii) **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).
- (iv) **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). Thus, a holder in due course acquires a title free from all defects.
- (v) **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 short, a holder in due course gets a good title to the bill.
- (vi) **In case Payee's capacity to indorse 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.

**"Payment in due course" [Section 10]**—"Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith

and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

## **CLASSIFICATION OF NEGOTIABLE INSTRUMENTS**

### **“Bearer instrument” and “order instrument”**

**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 fill Such instrument can be negotiated by indorsement and delivery.

### **“Inland instrument” and “Foreign instrument” [Sections 11 & 12]**

A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be an inland instrument.

**Example:** (i) A promissory note made in Kolkata and payable in Mumbai.

(ii) A bill drawn in Varanasi on a person resident in Jodhpur (although it is stated to be payable in Singapore)

### **“Foreign instrument”**

Any such instrument not so drawn, made or made payable shall be deemed to be foreign instrument. In other words,

- (a) Bills drawn outside India and made payable in or drawn upon any person resident in any country outside India,
- (b) Bills drawn outside India and made payable in India, or drawn upon any person resident in India;
- (c) Bills drawn in India made payable outside India or drawn upon any resident outside India, but not made payable in India.

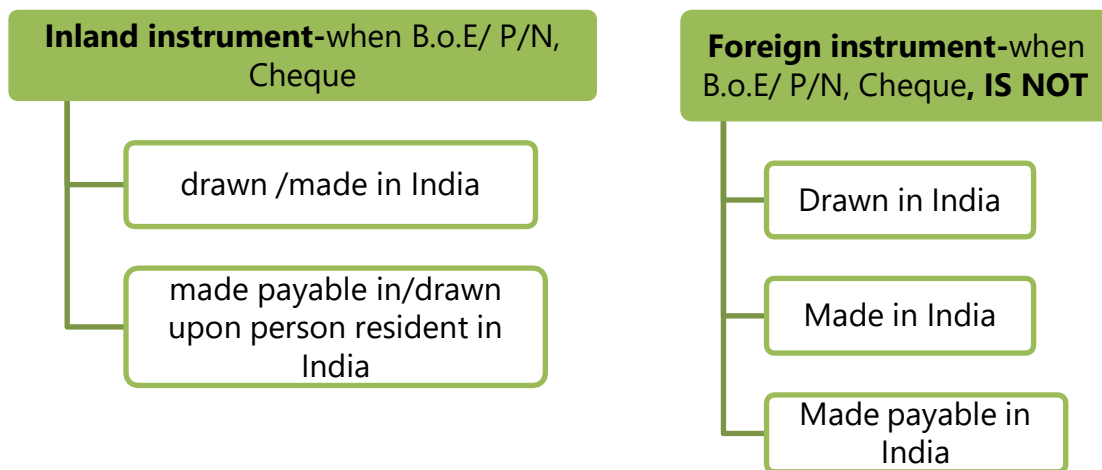
are foreign bills.

In the absence of a contract to the country, the liability of the maker or drawer of a foreign promissory note or bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

respective liabilities of the acceptor and endorser by the law of the place where the instrument is made payable (Section 134).

For example, a bill of exchange is drawn by A in Berkley where the rate of interest is 15% and accepted by B payable in Washington where the rate of interest is 6%. The bill is endorsed in India and is dishonoured. An action on the bill is brought against B in India. He is liable to pay interest at the rate of 6% only. But if A is charged as drawer, he is liable to pay interest at 15%.



### Inchoate and Ambiguous Instruments

**Inchoate Instrument:** According to section 20 where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

It means an Instrument that is incomplete in certain respects. (i) The person gives a blank instrument with authority to the holder to complete it with appropriate amount up to the stamp value of the instrument. (ii) Delivery of such a paper is essential. The words "when one person signs and delivers to another" in Section 20 are important. (iii) 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 of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor. The holder in due course can, however, recover any amount on such instrument provided it is covered by the stamp affixed on the instrument.

**Example,** a person signed a blank acceptance and kept it in his drawer and some person stole it and filled it up for ` 20,000 and negotiated it to an innocent person for value, it was held that the signer to the blank acceptance was not liable to the holder in due course because he never delivered the instrument intending it to be used as a negotiable instrument. Further, as a condition of liability, the signer as a maker, drawer, endorser or acceptor must deliver the instrument to another. In the absence of delivery, the signer is not liable. Furthermore, the paper so signed and delivered must be stamped in accordance with the law prevalent at the time of signing and on delivering otherwise the signer is not estopped from showing that the instrument was filled without his authority.

**Ambiguous Instrument:** According to section 17, where an instrument may be construed either as a promissory note or bill of exchange (**example,** a bill drawn by a person on himself in favour of a third person or where the drawee is a fictitious person), the holder may at his election treat it as either and the instrument shall be thenceforward treated accordingly.

An instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an Ambiguous instrument. In other words, such an instrument may be construed either as promissory note, or as a bill of exchange. Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly. Thus, after exercising his option, the holder cannot change that it is the other kind of instrument.

### **Where amount is stated differently in figures and words [Section 18]**

If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

### Demand and Time Instrument

**Demand Instruments (Section 19):** A promissory note or bill of exchange in which no time for payment is mentioned is payable on demand. Bills and notes are payable either on demand or at a fixed future time. Cheques are always payable on demand. A bill or promissory note is also payable on demand when it is expressed to be payable on demand, or "at sight" or "presentment" (Section 21). The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non-acceptance, or protest for non-acceptance.

**Time instrument (Section 22):** A bill or note which is payable: a) After a fixed period or b) After sight or c) On a specified day or d) On the happening of an event which is certain to happen is known as time instrument.

### "AT SIGHT", "ON PRESENTMENT", "AFTER SIGHT" [SECTION 21]

In a promissory note or bill of exchange the expressions "**at sight**" and "**on presentment**" means on demand.

The expression "**after sight**" means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non-acceptance, or protest for non-acceptance.

### "MATURITY OF NEGOTIABLE INSTRUMENT"

Where bill or note is payable at fixed period after sight, the question of maturity becomes important. The maturity of a note or bill is the date on which it falls due.

**Days of grace:** A note or bill, which is not expressed to be payable on demand, at sight or on presentment; is at maturity on the third day after the day on which it is expressed to be payable. Three days are allowed as days of grace (**Section 22**).

### **Calculation of maturity [Section 23]:**

In calculating the date at which a promissory note or bill of exchange, made payable at stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month, which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance, or protested for non-acceptance, or the event happens or, where the instrument is a bill of exchange made payable at stated number of months after sight and has been accepted for honor, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Sl. No.	Time at which instrument is payable	Maturity period
1.	When a note or bill is made payable, a stated number of months <b>after date</b>	when the period stated terminates on the day of the month which corresponds with the day on which the instrument is dated
2.	When it is made payable after a stated number of months <b>after sight</b>	The period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance.
3.	When it is payable a stated number of months <b>after a certain event</b>	The period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance.
4.	When the instrument is a bill of exchange made payable <b>at stated number of months after sight and has been accepted for honor.</b>	Maturity will be with the day on which it was so accepted.

### Examples:

- (a) A negotiable instrument dated 29th January, 2017, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 2017.
- (b) A negotiable instrument, dated 30th August, 2019, is made payable three months after date. The instrument is at maturity on the 3rd December, 2019.
- (c) A promissory note or bill of exchange, dated 31st August, 2019, is made payable three months after date. The instrument is at maturity on the 3rd December, 2019.

### Calculating maturity of bill or note payable so many days after date or sight [Section 24]

In calculating the date at which a promissory note or bill of exchange made payable at certain number of days after date or after sight or after a certain event

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, **shall be excluded**.

**Example:** Bharat executed a promissory note in favour of Bhushan for ₹ 5 crores. The said amount was payable three days after sight. Bhushan, on maturity, presented the promissory note on 1<sup>st</sup> January, 2017 to Bharat. Bharat made the payments on 4<sup>th</sup> January, 2017. Bhushan wants to recover interest for one day from Bharat. Advise Bharat, in the light of provisions of the Negotiable Instruments Act, 1881, whether he is liable to pay the interest for one day?

**Answer: Claim of Interest:** Section 24 of the Negotiable Instruments Act, 1881 states that where a bill or note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run.

Therefore, in the given case, Bharat will succeed in objecting to Bhushan's claim. Bharat paid rightly "three days after sight". Since the bill was presented on 1<sup>st</sup> January, Bharat was required to pay only on the 4<sup>th</sup> and not on 3<sup>rd</sup> January, as contended by Bhushan.

### **When day of maturity is a holiday [Section 25]**

When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

**Explanation:** The expression "Public Holiday" includes Sundays and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday.



## **6. NEGOTIATION (TRANSFER) OF NEGOTIABLE INSTRUMENTS**

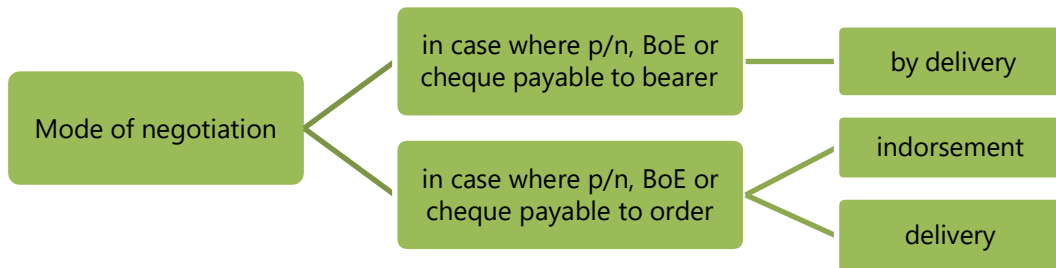
One of the essential characteristics of a negotiable instrument is that it is freely transferable from one person to another. The rights in a negotiable instrument can be transferred from one person to another by

- a. Negotiation under the N.I act
- b. Assignment under Transfer of Property act

According to Section 14 of N.I act, when a negotiable instrument is transferred to any person with a view to constitute the person holder thereof, the instrument is deemed to have been negotiated. Thus, there is a transfer of ownership of the

instrument. Negotiable instruments may be negotiated either **by delivery** when these are payable to bearer or **by indorsement and delivery** when these are payable to order.

### Modes of Negotiation



### Modes of negotiation of instrument?

- (i) A promissory note, bill of exchange or cheque **payable to bearer** is negotiable by the **delivery thereof**.
- (ii) A promissory note, bill of exchange or cheque **payable to order** is negotiable by the holder by **endorsement and delivery thereof**.

### Negotiation by delivery [Section 47]

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque **payable to bearer** is negotiable by delivery thereof.

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

### Examples:

- (1) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.
- (2) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.



## THE NEGOTIABLE INSTRUMENTS ACT, 1881

### **Negotiation by endorsement [Section 48]**

Subject to the provisions of section 58, a promissory note, bill of exchange or cheque **payable to order**, is negotiable by the holder by endorsement and delivery thereof.

### **Importance of Delivery in Negotiation [Section 46]**

Delivery of an instrument is essential whether the instrument is payable to bearer or order for effecting the negotiation. The delivery must be voluntary and the object of delivery should be to pass the property in the instrument to the person to whom it is delivered. The delivery can be, actual or constructive. Actual delivery takes place when the instrument changes hand physically, constructive delivery take place when the instrument is delivered to the agent, clerk or servant of the endorsee on his behalf or when the endorser, after endorsement, holds the instrument as an agent of the endorsee.

Section 46 also lays down that when an instrument is conditionally or for a special purpose only, the property in it does not pass to the transferee, even though it is endorsed to him, unless the instrument is negotiated to a holder in due course.

The contract on a negotiable instrument **until delivery remains incomplete** and revocable. The delivery is essential not only at the time of negotiation but also at the time of making or drawing of negotiable instrument. The rights in the instrument are not transferred to the indorsee unless after the indorsement the same has been delivered. If a person makes the indorsement of instrument but before the same could be delivered to the indorsee the indorser dies, the legal representatives of the deceased person can't negotiate the same by mere delivery thereof. (Section 57)

### **Delivery when effective between the parties**

<b>Negotiation of instruments between the parties</b>	<b>How delivery is to be made</b>
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 authorized by him in that behalf.
As between such parties and any holder of the instrument other than a holder in due course	it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

## **INDORSEMENT OF INSTRUMENT (Section 15)**

**Meaning:** 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 a slip of paper annexed thereto known as *allonge* (a French word meaning a slip of paper attached to the end of a BoE to give room for further indorsements)- he is said to indorse the same and called as the indorser. The person to whom the instrument is indorsed is called the indorsee. The indorsement, therefore, means, signatures of the person which are generally made at the back of the instrument, for the purpose of negotiation ie. transfer of rights to another person. The signature may also be on the face of the instrument. No particular form of words is necessary for an indorsement.

INDORSEMENT: 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 a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument,
- he (maker/holder) is said to indorse the same, and is called the “indorser”.

**Example:** X, who is the holder of a negotiable instrument writes on the back thereof: “pay to Y or order” and signs the instrument. In such a case, X is deemed to have en-dorsed the instrument to Y. If X delivers the instrument to Y, X ceases to be the holder and Y becomes the holder.

## **Indorsement “in blank” and “in full”-“endorsee” [Section 16]**

- (1) If the indorser signs his name only, the endorsement is said to be “in blank”, and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be “in full”, and the person so specified is called the “indorsee” of the instrument.
- (2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

**Example 1: Blank (or general):** No indorsee is specified in an indorsement in blank, it contains only the bare signature of the indorser. A bill so indorsed becomes payable to bearer.

## **Specimen**

*Motilal Poddar*

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

**Example 2: Special (or in full):** In such an indorsement, in addition to the signature of the indorser the person to whom or to whose order the instrument is payable is specified.

### Specimen

Pay to B, Batliwala or order.

*S. Shroff*

### Various Kinds of Indorsement:

- 1. Indorsement in Blank (only signature):** Where the indorser just puts his signature without specifying the indorsee, the indorsement is said to be in blank (Section 16). The effect of such an indorsement is to render the instrument payable to bearer even though originally payable to order (Section 54).
- 2. Indorsement in Full (name and signature):** Where along with indorser's signature, the name of the indorsee is specified, the indorsement is called 'indorsement in full' (Section 16). Thus, where the instrument states, 'Pay X or order' and is signed by A, the payee, it constitutes 'indorsement in full'.
- 3. Partial indorsement:** An indorsement which purports to transfer only a part of amount of the instrument is called as partial indorsement. As per section 56 such an indorsement is invalid under law.

**Example:** A is a holder of a bill for ₹ 10000. A indorses it thus: "Pay B or order ₹ 5000". This is partial indorsement and invalid for the purpose of negotiation.

**Exception:** Second part of section 56 states that if a bill has been paid in part, the fact of the part payment may be indorsed on the instrument and it may then be negotiated for the residue. **Example:** A bill may be indorsed: Pay A or order ₹ 5000 being the unpaid residue of the bill. It is a valid indorsement.

- 4. Restrictive Indorsement:** An indorsement is restrictive when the indorser while making indorsement restricts or excludes the right of the indorsee to further transfer the instrument or constitutes the indorsee as an to indorse the instrument or to receive its content for the indorser or for some other specified person (Section 50). An indorsement is "restrictive" when it prohibits or restricts the further negotiability of the instrument. It merely entitles the holder of the instrument to receive the amount on the instrument for a specific purpose.

**Example:** D signs the following indorsements on different negotiable instruments payable to bearer:

- (a) Pay the contents to G only
- (b) Pay G for my use
- (c) Pay G or order for the account of H

These indorsements exclude the right of further negotiation by G.

5. **Conditional indorsement:** Section 52 gives power to an indorser to insert in the indorsement by express words, a stipulation negating (excluding) or limiting his own liability to the holder by making such liability or the right of the indorsee to receive the amount due thereon upon the happening of a specified event although such event may never happen.

**Condition indorsement** can be achieved by an indorser in any of the following ways:

- (1) **Sans recourse indorsement-** By excluding his liability e.g. the holder of a bill may indorse it thus: 'Pay A or order without recourse to me, or Pay A or order sans recourse, or Pay A or order at his own risk'. In these cases, the holder does not incur any liability on the bill as an indorser.
- (2) **Liability dependent upon a contingency-** By making his liability dependent upon the happening of a specified event which may never happen, in such a case the liability of the holder as an indorser, arises only upon the happening of the event specified, and is extinguished if the event becomes impossible, or the conditions specified are not fulfilled. But, the indorsee can sue the prior parties before the happening of the event.
- (3) **Facultative indorsement** – In it, an indorser by express words abandons some right or increases his liability under an instrument. For example, the holder may waive presentment of the instrument for acceptance or notice of dishonor by the holder. An indorsement, 'Pay A order. Notice of dishonor waived' is a facultative indorsement.
- (4) **'Sans frais' indorsement** – Where the indorser does not want the indorsee or any subsequent holder to incur any expenses on his account on the instrument, the indorsement is 'sans frais'.

## **CONVERSION OF INDORSEMENT IN BLANK INTO ENDORSEMENT IN FULL [SECTION 49]**

The holder of a negotiable instrument endorsed in blank may—

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

- without signing his own name, by writing above the indorser's signature a direction to pay to any other person as endorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

According to **Section 55**, if a negotiable instrument, after having been indorsed in bank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

For example, A is the payee holder of a bill. A endorses it in blank and delivers it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. D as the bearer is entitled to receive payment or to sue drawer, acceptor, or A who endorsed the bill in blank, but he cannot sue B or C. C can sue B as he received the bill from B by endorsement in full. If, however, C instead of passing the bill to D without endorsement passes it by a regular endorsement, D can claim against all prior parties.

Thus, if an endorsement in blank is followed by an endorsement in full, the instrument still remains payable to bearer and negotiable by delivery against all parties prior to the endorser in full, though the endorser in full is only liable to a holder who made title directly through his endorsement, and person deriving title through such holder.

### Essentials of a valid indorsement

- Signature of indorser:** The indorsement must be signed. The indorsement may be made by the indorser either by merely signing his name on the instrument or by specifying in addition to his signature, the person to whom or to whose order the instrument is payable. When, in a bill payable to order, the indorsee's name is wrongly spelled, he should when he indorses it, sign the name as spelled in the instrument and write the correct spelling within brackets after his indorsement.
- Who may indorse or negotiate-** Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsee's of a negotiable instrument may indorse and negotiate the same unless negotiability of such instrument has been restricted or excluded as mentioned in Sec. 50 and 51.

**Explanation:** It is however, necessary that such maker or drawer who wants to indorse is in lawful possession of the instrument. (section 51)

**Example:** A bill is drawn payable to A or order. A endorses it to B, the endorsement not containing the words "or order" or any equivalent words. B may negotiate the instrument.

- c. **Effect of indorsement:** The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation, but the indorsement may by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

**Examples:** B signs the following indorsements on different negotiable instruments payable to bearer,—

- (a) "pay the contents to C only".
- (b) "pay C for my use".
- (c) "pay C on order for the account to B".
- (d) "the within must be credited to C".

These indorsements exclude the right of further negotiation by C.

- (a) "pay C".
- (b) "pay C value in account with the Oriental Bank".
- (c) "pay the contents to C, bring part of the consideration in a certain deed of assignment executed by C to endorser and others".

These indorsements do not exclude the right of further negotiation by C.

### **Indorser who excludes his own liability or makes it conditional [Section 52]**

The indorser of a negotiable instrument may,

- by express words in the endorsement,
- exclude his own liability thereon, or
- make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.
- Where an indorser so excludes his liability and afterwards becomes the holder of the instrument all intermediates indorsers are liable to him.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

### Examples:

- (1) The endorser of a negotiable instrument signs his name, adding the words "without recourse". Upon this endorsement he incurs no liability.
- (2) A is the payee and holder of a negotiable instrument. Excluding personal liability by an endorsement, "without recourse", he transfers the instrument to B, and B endorses it to C, who endorses it to A. A is not only reinstated in his former rights, but has the rights of an endorsee against B and C.

### **INSTRUMENT OBTAINED BY UNLAWFUL MEANS OR FOR UNLAWFUL CONSIDERATION [SECTION 58]**

- When a negotiable instrument has been lost, or
- has been obtained from any maker, acceptor or holder thereof by means of
  - an offence or
  - fraud, or
  - for an unlawful consideration,

no possessor or endorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or endorsee is, or some person through whom he claims was, a holder thereof in due course.

### **INSTRUMENT ACQUIRED AFTER DISHONOR OR WHEN OVERDUE [SECTION 59]**

The holder of a negotiable instrument, who has acquired it after dishonour, whether by—

- non-acceptance
- or non-payment,
- with notice thereof, or
- after maturity,

has only, as against the other parties, the rights thereon of his transferor.

**Accommodation note or bill:** Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

**Example:** The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but endorsed the bill to A. A's title is subject to the same objection as the drawer's title.

### **Instrument negotiable till payment or satisfaction [Section 60]**

A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

**Cancellation of endorsement:** Where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity (Sec.40).

**Example:** A is the holder of a bill of exchange made payable to the order of B. which contains the following endorsements in blank: 1st endorsement - 'B', 2nd endorsement - C, 3rd endorsement - D, 4th endorsement - E. A puts this bill in suit against C and strikes out, without E's consent, the endorsements by C and D. A is not entitled to recover anything from E.

### **Negotiation Back ("taking up of a bill")**

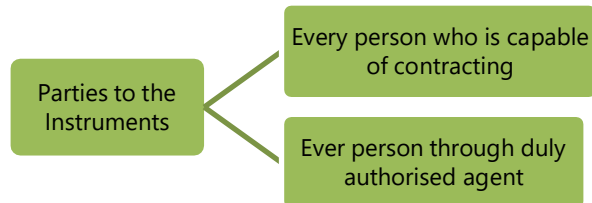
In the course of Negotiation, if a negotiable instrument is circulated/negotiated back by an Endorser to any of the prior party on the negotiable instruments it is termed as negotiation back. The person who becomes the holder in due course under this negotiation back cannot make any of the intermediate Endorsers liable on the instruments. But where an Endorser had excluded his liability, by the use of the words 'sans recourse' or 'without recourse to me' and after that becomes the holder of the instrument in his own right under the 'negotiation back' all intermediate Endorsers are liable to him and in case of dishonour, he can recover the amount from all or any one of them.





## 7. PARTIES TO NOTES, BILLS AND CHEQUES

### (1) CAPACITY OF THE PARTIES



**Capacity to make, draw, accepts etc. of instruments (Section 26):** Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

**Minor:** A minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself. A minor's agreement is void and cannot be ratified when he attains the age of maturity. A minor cannot bind himself under a negotiable instrument as his contract is absolutely void.

Nothing herein contained shall be deemed to empower a corporation to make, endorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

**Example:** A draws a cheque in favour of M, a minor. M endorses the same in favour of X. The cheque is dishonoured by the bank on grounds of inadequate funds. Here in this case, M being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. X can, thus, proceed against A.

**Authority to sign i.e. through Agency [Sections 27]:** Every person, capable of incurring liability, may bind himself or be bound by a duly authorized agent acting in his name.

**Legal representative** A legal representative of a deceased person, who signs his name on a promissory note, bill exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him **(Sec 29)** thus, in the absence of an express contract to the contrary, the liability of a legal representative is unlimited. However, a legal representative may, by an express agreement, limit his liability. Further, he may exclude his liability i.e. by adding the words "Sans recourse or without recourse."

**Endorsement by legal representative:** The legal representative of a deceased person cannot negotiate by delivery only, a promissory note, bill of exchange or cheque payable to order and endorsed by the deceased but not delivered (sec 57)

A legal representative is not an agent of the deceased. Therefore, a legal representative cannot complete the instrument if the instrument was executed by the deceased but could not be delivered because of his death.

For example, A, the holder of a bill to B, before delivering the bill died, the legal representative of A subsequently delivered the bill to B. The Indorsement is invalid and B cannot sue on the bill.

A general authority given to an agent to transact business and to receive and discharge debts does not empower him to accept or endorse bills of exchange so as to bind his principal.

An agent may have authority to draw bills of exchange, but not endorse them. An authority to draw does not, necessarily, imply an authority to endorse.

## (2) **LIABILITY OF THE PARTIES**

Liability of agent

Liability of legal representative

liability of drawer

liability of drawee of cheque

Liability of maker of note and acceptor of bill

Liability of indorser

liability of prioir parties to holder in due course

Liability of prior parties as principal in respect to subsequent party

### **Liability of agent signing [Section 28]**

An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

An agent can be sued by the holder in an action for falsely representing that he had authority.

## **THE NEGOTIABLE INSTRUMENTS ACT, 1881**

### **Liability of legal representative signing [Section 29]**

A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

### **Liability of drawer of a bill of exchange/ cheque [Section 30]**

The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

The liability of the maker of promissory note is primary, while the liability of the drawer of a bill arises on dishonour by acceptance or non-acceptance by the drawee or acceptor respectively. The drawer of a bill, however, can exclude or limit his liability upon the bill

The liability of the drawer of a cheque is primary as in case of dishonour the holder of the cheque has no remedy against the banker. He can only sue the drawer.

### **Liability of drawee of cheque [Section 31]**

The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

The drawee of cheque must always be a banker. The drawee bank is bound to honour the customer's cheque if he has sufficient funds of the drawer applicable to the payment of such cheque. If the drawee bank wrongfully dishonours the cheque it can be made liable for such default. The liability for such default is not towards the payee or the holder but towards the drawer. A bank is liable for dishonour of the cheque, to the drawer (his customer) only and not to the payee or the holder of the cheque as there is no privity of contract between the bank and the payee or the holder.

### **Liability of maker of note and acceptor of bill [Section 32]**

In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

### **Liability of endorser [Section 35]**

In the absence of a contract to the contrary, whoever endorses and delivers a negotiable instrument before maturity, without, in such endorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such endorser as hereinafter provided.

Every endorser after dishonour is liable as upon an instrument payable on demand.

### **Liability of prior parties to holder in due course [Section 36]**

Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

### **Prior party a principal in respect of each subsequent party [Section 38]**

As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

**Example:** A draws a bill payable to his own order on B, who accepts. A afterwards endorses the bill to C, C to D and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

## **(3) OTHER RELATED CONCEPTS TO THE PARTIES ON THE NEGOTIATION OF THE INSTRUMENTS**

### **Discharge of endorser's liability [Section 40]**

Where the holder of a negotiable instrument—

- without the consent of the endorser,
- destroys or impairs the endorser's remedy against a prior party,

The endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

**Example:** A is the holder of a bill of exchange made payable to the order of B, which contains the following endorsements in blank-

First endorsement, "B".

Second endorsement, "Peter Williams".

Third endorsement, "Wright & Co.".

Fourth endorsement "John Rozario".

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the endorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

### **Acceptor bound, although endorsement forged [Section 41]**

An acceptor of a bill of exchange already endorsed is not relieved from liability by reason that such endorsement is forged, if he knows or had reason to believe the endorsement to be forged when he accepted the bill.

### **Acceptance of bill drawn in fictitious name [Section 42]**

An acceptor of a bill of exchange—

- drawn in a fictitious name, and
- payable to the drawer's order

is not (by reason that such name is fictitious) relieved from liability to any holder in due course claiming under an endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

**Example:** X draws a bill on Y but signs it in the fictitious name of Z. The bill is payable to the order of Z. The bill is duly accepted by Y. M obtains the bill from X thus, becoming its holder in due course. Can Y avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881.

**Answer: Bill drawn in fictitious name:** The problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. 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 the acceptor to allege as against the holder in due course that such name is fictitious. Accordingly, in the instant case, Y cannot avoid payment by raising the plea that the drawer (Z) is fictitious. The only condition is that the signature of Z as drawer and as endorser must be in the same handwriting.

### **Negotiable instrument made, etc. without consideration [Section 43]**

A negotiable instrument—

- made, drawn, accepted, endorsed, or transferred without consideration, or
- for a consideration which fails,

creates no obligation of payment between the parties to the transaction.

But if any such party has transferred the instrument with or without endorsement to a holder for a consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

**Exception I:** No party for whose accommodation a negotiable instrument has been made, drawn, accepted or endorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

**Exception II:** No party to the instrument who has induced any other party to make draw, accept, endorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover therein an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

### **Partial absence or failure of money-consideration [Section 44]**

When the consideration for which a person signed a promissory note, bill of exchange or cheque **consisted of money**—

- which was originally absent in part, or
- has subsequently failed in part,

the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

**Explanation:** The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.

**Example 1:** A draws a bill on B for ₹ 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to ₹ 400, and as an accommodation to the plaintiff as to the residue. A can only recover ₹ 400.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

**Example 2:** A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favour of B, signs and delivers it to B with a request to fill up the amount due, payable by him. B fills up fraudulently the amount larger than the amount due, payable by A and endorses the cheque to C in full payment of dues of B. Cheque of A is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C.

**Answer:** Section 44 of the Negotiable Instruments Act, 1881 is applicable in this case. According to Section 44 of this Act, B who is a party in immediate relation with the drawer of the cheque is entitled to recover from A only the exact amount due from A and not the amount entered in the cheque. However, the right of C, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from B.

### **Partial failure of consideration not consisting of money [Section 45]**

Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, **though not consisting of money**, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Sl. no.	Instruments with/without consideration	Liabilities of the parties
1.	Instrument made without consideration	creates no obligation of payment between the parties to the transaction
2.	Instrument made with consideration consisted of money, absent in part	a holder standing in immediate relation with such signer is entitled to receive from signer the proportionally reduced sum.
3.	On partial failure of consideration not consisting of money	a holder standing in immediate relation with such signer is entitled to receive from him the proportionally reduced sum.

### **Holder's right to duplicate of lost bill [Section 45A]**

Where a bill of exchange has been lost before it is overdue,

- the person who was the holder of it may apply

- to the drawer to give him another bill of the same tenor,
- giving security to the drawer, if required,
- to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

## 8. PRESENTMENT OF NEGOTIABLE INSTRUMENTS

Presentation means showing the instrument to the drawee, acceptor or maker for acceptance, sight or payment. There are three kinds of presentments:

1. Presentment of bills of exchange for acceptance.
2. Presentment of promissory notes for sight.
3. Presentment of negotiable instrument for payment.

### **Presentment for acceptance**

The bill should be presented for acceptance by a person entitled to receive the payment. Thus, a bill must be presented by the holder or his duly authorised agent (Sec. 64)

It is only bills of exchange of certain types that need acceptance. A bill payable on demand or at sight or on a certain fixed date need not be presented for acceptance unless in such a case it is specially mentioned that such a bill is to be presented for acceptance. In case of a bill payable at sight or on demand as there is only one presentment if the bill is not paid, it is really dishonoured for non-acceptance.

“Acceptance” in regard to a bill of exchange is a technical term. It does not mean ‘taking’ or ‘receiving’. Acceptance of a bill of exchange is the signification by the drawee of his assent to the order of the drawer. In other words, it is the drawee’s signed engagement to honour the bill of exchange as presented.

The following bills must be presented for acceptance in order to make the parties to the bill liable thereon:

- (a) A bill payable after sight. Bills payable after sight mean bills payable after acceptance. Such bills of exchange must be presented for acceptance. In order to fix their date of maturity, but they may be negotiated even before acceptance.

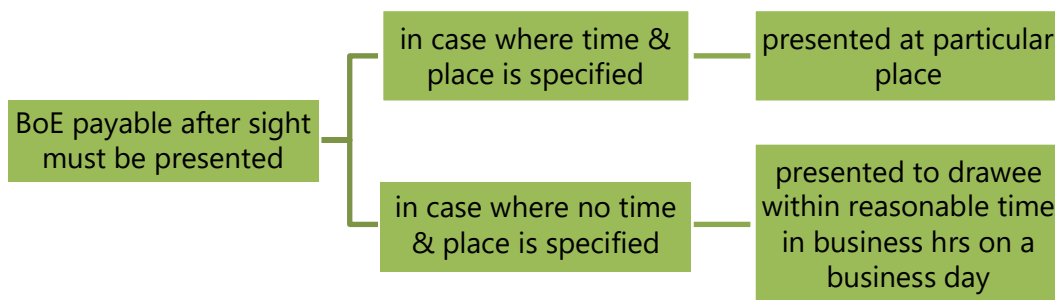


## THE NEGOTIABLE INSTRUMENTS ACT, 1881

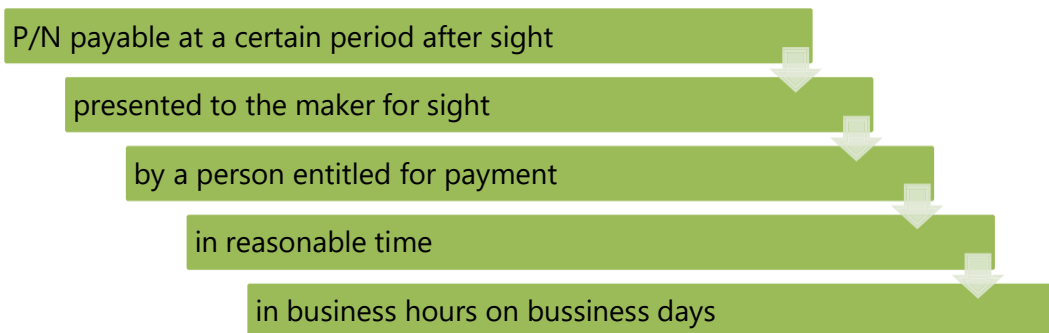
- (b) A bill in which there is an express condition that it shall be presented for acceptance before it is presented for payment.

Unless otherwise provided, it is only a bill of exchange payable after sight which requires acceptance (Sec. 61). With respect to other bills there is no express provision in the Act requiring presentation of acceptance before presenting them for payment and there is nothing in the Act to prevent such bill being presented for acceptance. But whether the bill is payable after sight or at sight or on demand, acceptance by the drawee is necessary before he can be fixed with liability on it.

Sec. 63 provides that the holder of a bill must allow the drawee 48 hours (excluding of public holidays) to consider whether he will or will not accept the bill. It may be noted that as per Sec. 83 if the holder allows more time, all the previous parties not consenting to such allowance are discharged from liability to such holder.



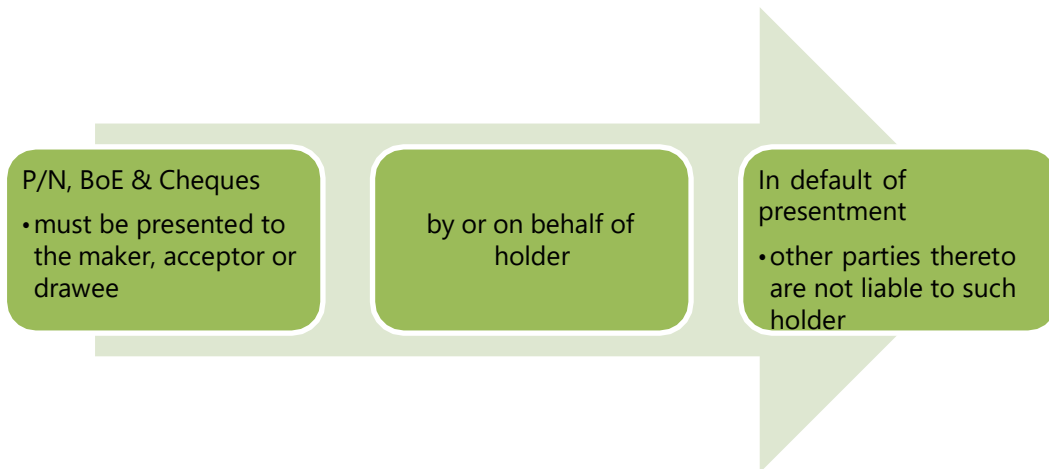
### Presentment of promissory note for sight [Section 62]



A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and

in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

### **Presentment for payment [Section 64]**



Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided.

In default of such presentment, the other parties thereto are not liable thereon to such holder.

Where authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

**Exception:** Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

### **Time for presentment**

As per sec. 65, presentment for payment must be made during usual (actual) hours of business of the maker of acceptor and in case of banker presentment must be made within banking hours. Thus, a presentment made during unusual hours of business, though valid for the purposes of acceptance and sight, is valid for purposes of acceptance and sight, is valid for purpose of payment.

Sec. 66 lays down that a promissory note or bill of exchange payable at a specified period after date or sight thereof, must be presented for payment at maturity. Presentment before maturity is not a valid presentment.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

According to Sec. 67, a promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment (thus every instalment is entitled to three days of grace). Non-payment of single instalment has the same effect as non-payment of a note at maturity. Thus, if a single instalment is not paid the whole of the note can be treated as dishonoured by non-payment

### **Place of presentment**

A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place (Sec. 68). Thus, acceptor will also be discharged in case an instrument is not presented at the specified place. "specified place" implies the precise address of the place; the mere mention of a big city like 'Madras' is not sufficient [*Sivaram v Jayaram AIR 1996 Mad 297*].

Sec. 69 provides for the presentment of a bill or note made payable at a specified place in order to charge the drawer or the maker. Sec 70 provides that where no place is specified, the note or bill must be presented for payment at the place of business (if any) or at usual place of residence, of the maker drawee or acceptor thereof, as the case may be.

It has been held that if the place of business is closed or abandoned, and there is some other place where his business is conducted which can be ascertained from reasonable inquiries, presentment at the former place is not sufficient.

Sec. 71 provides for cases when maker, etc. has no known place of business or residence. If the maker, drawee or acceptor of a negotiable instrument has no known place of business of fixed residence, and no place is specified in the instrument, presentment for acceptance for payment may be made to him in person wherever he can be found

### **Presentment of cheque to charge drawer**

Subject to the provisions of section 84, a cheque must, in order to charge the drawer, be presented at the bank on which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

### **Presentment of instrument payable at demand**

Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

### **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 holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within reasonable time.

### **When presentment unnecessary**

No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

- (a)
  - if the maker, drawee or acceptor **intentionally prevents the presentment** of the instrument, or
  - If the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
  - If the instrument being payable at some other specified place, neither he nor any person authorized to pay it attends at such place during the usual business hours, or
  - If the instrument not being payable at any specified place, he cannot after due search be found;
- (b) as against any party sought to be charged therewith, if he has **engaged to pay notwithstanding non-presentment**;
- (c) as against any party if, after maturity, with knowledge that the **instrument has not been presented**—
  - he makes a part payment on account of the amount due on the instrument, or
  - promises to pay the amount due therein whole or in part, or
  - otherwise waives his right to take advantage of any default in presentment for payment;
- (d) as against the drawer, if the **drawer could not suffer damage from the want of such presentment.**

### **Liability of banker for negligently dealing with bill presented for payment [Section 77]**

When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonored, if the banker so negligently or

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

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

### 9. PAYMENT AND INTEREST

#### To whom payment should be made [Section 78]

Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Section 82(c) of the Act provides that the maker, acceptor, or endorser respectively of a negotiable instrument is discharged from liability thereon by payment to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

Interest when rate specified	Interest when no rate specified
<p><b>Where interest rate is expressly made payable on P/N, BoE</b>—Interest shall be calculated at the rate specified on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the court directs.</p>	<p><b>When no rate of interest is specified in the instrument</b>—Interest on the amount due thereon shall be calculated at the rate of 18% per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the court directs.</p> <p><b>Explanation:</b> When the party charged is the indorser of an instrument dishonoured by non-payment- he is liable to pay interest only from the time that he receives notice of the dishonour.</p>



## 10. DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

**When a party, who is liable on a negotiable instrument, ceases to be liable he is said to be discharge from liability.** Discharge from liability of a party to an instrument is different from the discharge of negotiable instrument itself. When only some of the parties to an instrument are discharged from liability but others continue to be liable thereon, it is only discharge of some of the parties from liability.

When the rights against all the parties on an instrument come to an end, the instrument is discharged. After the instrument is discharged no person, even a holder in due course, can claim the amount of the instrument from any party thereto.

Thus, when the maker of a promissory note or the acceptor of a bill is discharged, all the other parties liable on the instrument are automatically discharged and in that case the instrument itself is deemed to be discharged. So long as the instrument is discharged it can continue to be negotiated.

Chapter VII (Sections 82 to 90) of the N.I Act deal with the discharge of the parties on a negotiable instrument.

### Modes of discharge from liability on Instruments



- Cancellation
- Release
- Payment

As per section 82 the maker, acceptor or indorser of a negotiable instrument is discharged from liability thereon by cancellation, release or payment. Further, there are other modes of discharge of liability that co-exist (along with section 82) as prescribed under various sections of the Negotiable Act.

Thus, the parties to the negotiable instrument may be discharged in the following ways—

- By cancellation [S. 82 (a)]**— When the holder of a negotiable instrument or his agent cancels the name of a party on the instrument with an intention to discharge him, such party and all subsequent parties, who have a right of recourse against the party whose name is cancelled, are discharged from liability to the holder.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

- (b) **By release [S. 82 (b)]**— Where the holder of a negotiable instrument releases any party to the instrument by any method other than cancellation, the party so released is discharged from liability.

For **example** discharge by an agreement between the parties, and includes waiver, release, accord and satisfaction.

The party so released and all parties subsequent to him who have a right of action against the party so released are discharged from liability. Thus, the effect of release is the same as that of cancelling a party's name.

- (c) **By payment**— When payment on an instrument is made in due course, both the instrument and the parties to it are discharged subject to the provision of Sec. 82 (c)[Sec. 78]. The payment on an instrument may be made by any party to the instrument. It may even be made by a stranger provided it is made on account of the party liable to pay
- (d) **By the holder allowing the drawee of a bill more than 48 hours to accept-** If the holder of a bill of exchange allows the drawee more than forty eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder. [Section 83]
- (e) **By the holder agreeing to a qualified or limited acceptance of bill of exchange [Section 86]:** If the holder of a bill agrees to a qualified acceptance all prior parties whose consent is not obtained to such an acceptance are discharged from liability. Acceptance of a bill is deemed to be qualified, for example, when the acceptance is conditional, declaring the payment to be dependent on the happening of an event therein stated, or wherein alters the payment of the sum ordered to be paid, or when the acceptor accepts to pay at a specified place only and not elsewhere.
- (f) **By the drawer not duly presenting a cheque for payment** [Section 84]: If a holder does not present a cheque within reasonable time after its issue, and the bank fails causing damage to the drawer, the drawer is discharged as against the holder to the extent of the actual damage suffered by him.

**Example:** "A draws a cheque for ` 1000 and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque"

**Example:** "A draws a cheque at Ambala on a bank in Kolkata. The bank fails before the cheque could be presented in ordinary course. A is not

discharged, for he has not suffered actual damage through any delay in presenting the cheque”.

**(g) By the bill coming to the acceptor’s hands after maturity**

If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished (Sec. 90). This rule is based on the general principle that a **present right and liability united in the same person cancel each other.**

**(h) Discharge by material alteration**

“Any material alteration of negotiable instruments renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties” (First para, Sec. 87)

The second para of sec. 87 provides that “if a material alteration is made by an indorsee, the indorser will be discharged from his liability even in respect of the consideration thereof.” If the holder of a negotiable instrument makes a material alteration of instrument he loses his right of action against those parties who would otherwise have been liable towards him.

The provisions of Sec. 87 are subject to those of sections 20, 49, 86 and 125. It is generally an accepted rule of law that a material alteration of an instrument by a party to it, without the consent of the other party, renders it void.

**By material alteration the identity of original instrument is destroyed** and those parties who had agreed to be liable on the original instrument can’t be made liable on the new contract contained in the altered instrument to which they never consented (*Gour Chandra vs Prasanna Kumar 33 Cal 812*). It makes no difference whether the alteration is made by a party who is in possession of the same, or by a stranger while the instrument was in the custody of a party, because the party in custody of instrument is bound to preserve it in its integrity. The rule is defended on the ground that no man shall be permitted to take the chance of committing a fraud without running any risk of loss by the event when it is detected.

The party who consents to the alteration as well as the party who makes the alteration are disentitled to complain against such alteration e.g. the drawer of the cheque himself altered the date of the cheque for validating or re-validating the same instrument, he cannot take advantage of it by saying



## THE NEGOTIABLE INSTRUMENTS ACT, 1881

that the cheque becomes void as there was a material alteration thereto. It is always open to a drawer to voluntarily re-validate a negotiable instrument including a cheque [*Veera Exports v T. Kalavathy (2002) 1 SCC97*].

**Alteration must be material:** An alteration is **material** which in any way alters the operation of the instrument and affects the liability of parties thereto. **Any alteration is material (a) which alters the business effect of the instrument if used for any business purpose; (b) which causes it to speak a different language in legal effect form that which it originally spoke or which changes the legal identity or character of the instrument.**

By material alteration, the liability of the parties is avoided, whether the change be prejudicial or beneficial to the parties. A material alteration is one which varies the rights, liabilities or legal position of the parties as ascertained by the original instrument [*Loonkaran sethiya v Ivan E. John (1977) SCC*].

"The following alteration are specifically declared to be material: any alteration of (i) the date, (ii) the sum payable, (iii) the time of payment, (iv) the place of payment, or the addition of a place of payment."

Following are the examples of material alteration:-

- a. Alteration of date e.g. time of payment accelerated or postponed, or where date in the instrument inserted subsequent to the execution of instrument (*A. Subba Reddy v Neelapa Reddy AIR 1966 A.P. 267*).
- b. Alteration of rate of interest (if specified) [*Seth Tulsidas Lalchand v Rajagopal (1967) 2 MLJ 66*].
- c. Alteration of the sum payable, e.g. a bill for ₹ 5000 altered into a bill for ₹ 500.
- d. Alteration in the time of payment, e.g. a bill payable 3 months after date is altered to be payable 1 month after date.
- e. Alteration of the place of payment e.g. change of bank at which the bill is payable [*Tidamarsh v Grover (1813) 23 LJ QB 261*]. Likewise, alteration by addition of place for payment e.g. where a place of payment is not given but is subsequently added without the acceptor's consent.

- f. Alteration by addition of parties (from one maker/payee to two makers/payees).
- g. Alteration by tearing material part of the instrument.
- h. Alteration by increasing or affixing stamps (*Challamma v Padmanabhan Nair 1970 KLR 682*).
- i. Alteration by erasure of an "account payee" crossing (*J. Ladies Beauty v State Bank of Indian AIR 1984 Guj33*).
- j. Alteration of an order cheque to a bearer cheque, except by or with consent of the drawer.

The following alterations do not affect the liability of parties thereto

- (a) If the alteration is unintentional and due to pure accident (e.g. accidental disfigurement of document).
- (b) Alteration made by a stranger without the consent of holder and without any fraud and negligence on his part
- (c) An alteration made to correct a clerical error or a mistake, thus, if instead of 1823, the date entered was 1832, the agent of drawer held entitled to correct mistake [*Brutt v pikard (1824) Ry & M 37*]. Such correction is deemed to be giving effect to the original intention of the parties.
- (d) Alteration made to carry out common intention of original parties is permitted by Sec. 87. For example, where the words "or order" after the name of payee, inserted subsequently [*Byrom v Thomson (1839) 11 A&E 31*]
- (e) Alteration with the consent of the parties liable thereto.
- (f) An alteration made before the completion or the issue of negotiable Instrument.
- (g) A material alteration doesn't affect the liability of those parties who become liable after the alteration is made. Sec. 88 provides that the acceptor or indorser is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.
- (h) An alteration which is not material e.g. when a bill payable to bearer is converted to bill payable to order/or an incomplete name of a person converted into the complete name of same person.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

- (i) **Alterations permitted by Sec. 87 (Exceptions to Sec. 87)**
- (a) **Sec. 20** – Incomplete instrument (e.g. column of sum left blank) can be filled up by the holder.
  - (b) **Sec. 49** – It enables the holder of an instrument indorsed in blank to convert it into indorsement in full (BY writing above the indorser's signature a direction to pay to any other person as indorsee). Thus, addition of parties allowed here.
  - (c) **Sec. 125**- the holder of an uncrossed cheque may cross it, or may convert general into special crossing or may make it 'not negotiable'.
  - (d) **Apparent alteration** – The alteration should be apparent on the face of the instrument otherwise it remains a valid security in the hands of a HDC. Sec. 89 provides that where a an instrument has been materially altered but doesn't appear to have been so altered, the party paying it will be discharged by payment in due course.

But in such case, the acceptor is liable only for the original tenor of the instrument and not for its altered tenor.

Similarly, where a cheque at the time of presentment is crossed but the crossing is not apparent, the banker will be discharged by payment in due course.

**Example 1:** A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. As per the above provision of the Negotiable Instruments Act, 1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence adding the words "on demand" does not alter the business effect of the instrument.

**Example 2:** State whether the following alterations are material alterations under the Negotiable Instruments Act, 1881?

- (i) The holder of the bill inserts the word "or order" in the bill,
- (ii) The holder of the bearer cheque converts it into account payee cheque,

**Answer:** The following materials alterations have been authorised by the Act and do not require any authentication:

- (a) filling blanks of inchoate instruments [Section 20]
- (b) Conversion of a blank endorsement into an endorsement in full [Section 49]



## 11. DISHONOR OF NEGOTIABLE INSTRUMENTS

### Dishonour of a bill

A bill may be dishonoured by:

- (a) Non-acceptance, or
- (b) Non- payment.

### Dishonour by Non-acceptance

*A bill of exchange is said to be dishonoured by non-acceptance is any one of the following ways (Sec. 91):*

- (a) When a bill is duly presented for acceptance, and the drawee, or one of several drawees not being partners, refuse acceptance within forty eight hours form the time of presentment, the bill is dishonoured. In other words, when the drawee makes default in acceptance upon being duly required to acceptance upon being duly required to accept the bill.
- (b) Where the drawee is incompetent to contract, the bill may be treated as dishonoured.
- (c) When a drawee gives a qualified acceptance, the holder may treat the instrument dishonoured.
- (d) When presentment for acceptance is excused, and the bill is not accepted, it said to be dishonoured.

Also, when the drawee is a fictitious person or after reasonably search cannot be found, the bill may be treated as dishonoured

The effect of dishonoured by non-acceptance is that the holder of the bill can start an action against the drawer and the indorsers and need not wait for maturity of the bill.

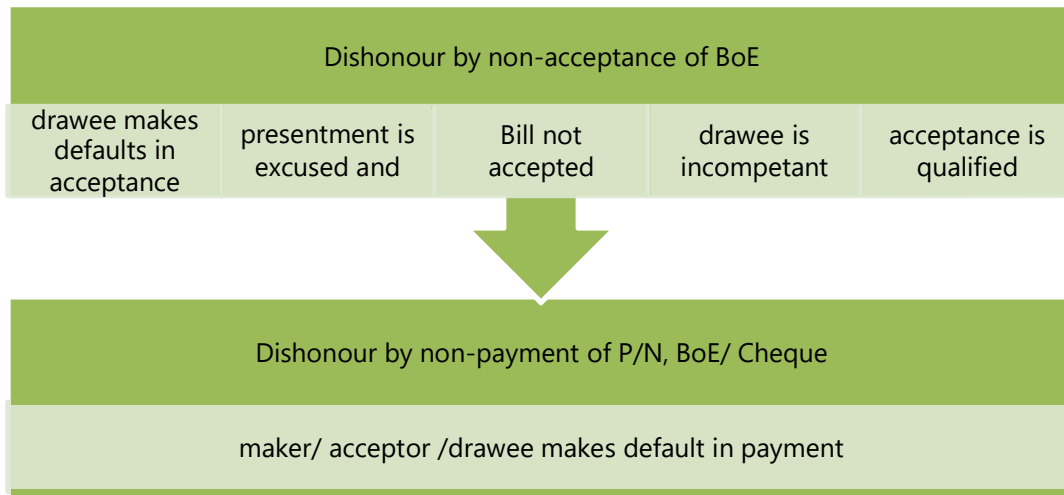
### Dishonour by non-payment

A promissory note, bill of exchange and cheque is said to be dishonoured by **non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same (Sec. 92).**

Again, a negotiable instrument is dishonoured by non-payment when presentment for payment is excused and the instrument when overdue remains unpaid (Sec. 76).

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

Where a promissory note was sent by registered post and the party liable refused to receive the post, the bill was held to be dishonoured [*K. Venkatasubbayya v P.R. Rao Tobacco Co. AIR 1972 A.P.72*]



### Notice of Dishonor

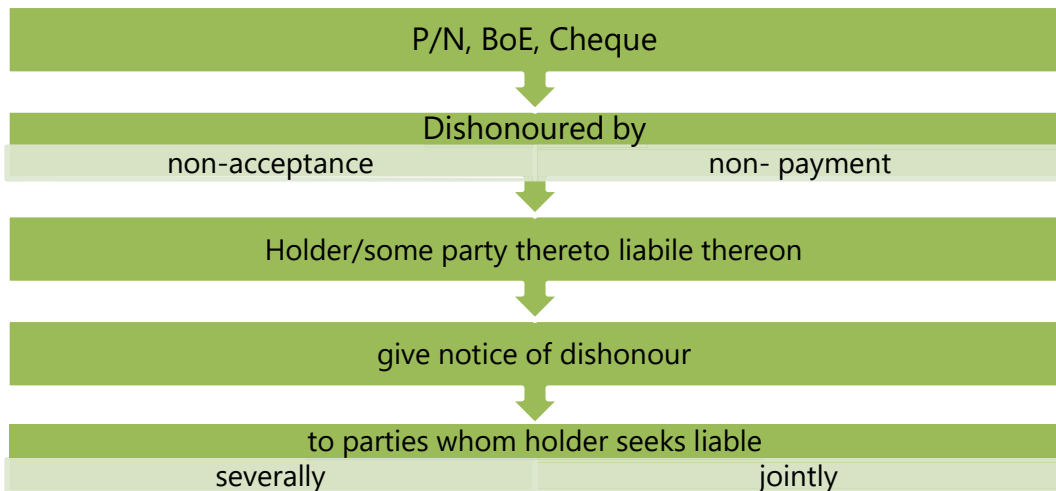
When negotiable instrument is dishonoured either by non-acceptance or by non payment, **the holder must give a notice of dishonour to the drawer or his previous holder** in order to make them liable on the instrument. If he fails to do so, except in cases when notice of dishonour maybe excused, he will forfeit his right of action against prior parties entitled to the notice of dishonour.

### Object of notice of Dishonour

The object of notice of dishonour is **to inform (or warn) the party** or the person who is liable on instrument about the dishonour of the instrument. Also, in the case of drawer to enable him to protect himself as against the drawee or acceptor who has dishonoured his bill. The notice is necessary whatever the nature of the instrument i.e. whether it is payable at sight or on demand or whether it is an accommodation bill.

In order to make the drawer liable, on the dishonour by the drawee or the acceptor, it is necessary that a 'notice of dishonour' must have been given to him. The omission on the part of holder to give due notice of dishonour would discharge the drawer not only from his liability upon the cheque, but also upon the original debtor consideration. The doctrine of notice of dishonour is based upon the principle of just and equity.

## By and to whom notice should be given [Section 93]



**Notice by whom:** Notice of dishonour must be given by the holder, or by a person liable on the instrument. But it is not necessary that the notice should always emanate from the holder, for he is entitled to avail himself of a notice given by any party liable on the instrument. Notice of dishonour given by the stranger is of no effect. Even a notice given by a party to the instrument is not valid, if at the time of giving such notice he is not liable thereon.

**Notice to whom:** Notice of dishonour must be given to all parties other than the maker or the acceptor or the drawee whom the holder seeks to make liable. Notice of dishonour to the acceptor of a bill or to the maker of a note or the drawee of cheque is not necessary. They are the parties primarily liable upon the instrument, on the due date and at the proper place. It is they who dishonour the instrument by no-acceptance or non-payment, and notice to them will merely be notice of fact already known to them.

### Modes of giving notice

Notice of dishonour may be given to a duly authorized agent of the person to whom it is required to be given, or, where he has died, to his legal representative or, where he has been declared insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express term or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid (Sec. 94).

### **Party receiving must transmit notice of dishonour**

Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within reasonable time, unless such party otherwise receives due notice as provided by Sec. 93 (Sec. 95).

Thus, a person receiving notice must transmit it to prior parties whom he wishes to make liable to himself because the holder may have omitted to give notice to some of the prior parties.

### **Agent of presentment**

When instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour (Sec. 96).

### **When party to whom notice given is dead**

When the party to whom notice of dishonour is dispatched is dead, but the party dispatching the notice is ignorant of his death, the notice is sufficient (Sec. 97).

### **When notice of dishonor is unnecessary [Section 98]**

No notice of dishonour is necessary,-

- (a) **waiver:** when it is dispensed with by the party entitled thereto; A waiver of notice may be made at the time of drawing or indorsing the instrument, or before or after the time for giving notice has arrived. A waiver by a party to receive notice ensures for the benefit of all the parties coming after him.
- (b) in order to charge the drawer, when he has **countermanded payment;**
- (c) **No damage:** when the party charged could not suffer damages for want of notice;
- (d) when the **party** entitled to notice **cannot** after due search **be found;** or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- (e) to charge the drawers, when **the acceptor is also a drawer;**
- (f) in the case of a promissory note which is not negotiable;

- (g) **Promise to pay:** when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

**Examples:** Is notice of dishonour necessary in the following cases:

- (1) X having a balance of ₹ 1,000 with his bankers and having no authority to over draw, drew a cheque for ₹ 5,000/-. The cheque was dishonored when duly presented for repayment.
- (2) X, drawer of a Bill informs Y, the holder of the bill that the bill would be dishonored on the presentment for payment.

**Answer:** Notice of dishonour is not necessary in both the cases. [Section 98 of the Negotiable Instruments Act, 1881].



## **12. NOTING AND PROTEST**

### **Noting [Section 99]**

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any assigned for such dishonour, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

'Noting' must contain the following particulars (Sec. 90):

- (1) The fact of dishonour
- (2) The date of dishonour,
- (3) The reasons, if any, assigned for such dishonour,
- (4) If the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured; and
- (5) The notary's charges.

'Noting' must be made by the notary within a reasonable time after dishonour (Sec. 99).



## THE NEGOTIABLE INSTRUMENTS ACT, 1881

Noting is not compulsory in the case of an inland bill or note. The omission to get the instrument noted does not in any way affect the rights of the holder thereon. Noting is, however, compulsory in case of foreign bills.

### **Protest [Section 100]**

When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

### **Contents of protest**

Protest is based upon noting. A protest, in order to be valid, must contain all the following particulars:

1. The instrument itself or a literal transcript of the instrument and of everything written or printed thereupon.
2. The name of the person for whom and against whom the instrument has been protested.
3. The fact and reasons for dishonour (a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found). A notary public may make the demand either in person or by his clerk or, where authorized by agreement or usage, by registered letter.
4. The place and time of dishonour (and, when better security has been refused, the place and time of refusal).
5. The subscription (signature) of the notary public.
6. In case of acceptance for honor or payment for honor, the name of the person accepting or paying and the name of the person for whose honor it is accepted or paid (sec. 101)

**Protest for better security:** When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Noting	Protest
P/N, BoE, Cheque has been dishonoured by non-acceptance or non-payment— the holder may cause such dishonour to be noted by a notary public upon- <ul style="list-style-type: none"> <li>• the instrument, or</li> <li>• upon a paper attached thereto, or</li> <li>• partly upon each</li> </ul>	P/N or BoE has been dishonoured by non-acceptance or non-payment— the holder may, cause such dishonour to be <ul style="list-style-type: none"> <li>• noted, and</li> <li>• certified</li> </ul> by a notary public

### **Notice of protest**

When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest (Sec. 102).

### **Protest for Non-payment after dishonour by Non-acceptance**

All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity (Sec. 103).

### **Protest of Foreign Bills**

Foreign bills of exchange must be protested for dishonour when such protest is required by law of the place where they are drawn (Sec. 104)

Thus, foreign bills must be protested as the law of most countries has made protest compulsory in case of dishonour of a bill.

### **REASONABLE TIME**

In determining what is reasonable time of presentment for acceptance or payment, for giving notice of dishonour and for noting, regards shall be had to the nature of the instrument and the usual course of dealing with respect to similar instrument; and, in calculating such time, public holidays shall be excluded (Sec. 105).

### **Reasonable time of giving notice of dishonour**

If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different place, such notice is given within

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

a reasonable time if it is dispatched by the next post or on the day next after the day of dishonour

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is dispatched in time to reach its destination on the date next after the day of dishonour (Sec. 106).

### **Reasonable time for transmitting such notice**

A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder (Sec. 107).

## 13. CROSSING OF CHEQUES [SECTION 123 – 131]

There are two types of cheques, **open cheques** and **crossed cheques**. A cheque which can be presented to the banker and can be paid at the counter of the bank is called an open cheque. If the drawer loses an open cheque, the finder of it may go to the bank and get payment unless its payment has been stopped. The finder may also transfer it to a holder in due course who is entitled to the money represented by the cheque. It was to prevent the losses incurred by open cheques getting into the hands of wrong person.

*When a cheque bears across its face two parallel transverse lines, the cheque is said to be crossed. The lines are usually drawn on the left hand top corner, but may be drawn anywhere.*

**Meaning of crossing:** Crossing of a cheque means an instruction to the drawee i.e. the paying bank that the payment is not to be made at the counter but through a bank.

**Objects of Crossing:** A crossing is a warning to the bank not to make payment of the crossed cheque over the counter. Crossing operates as a caution to the paying banker.

- i) **Crossing affects the mode of payment of cheque-** An open or uncrossed cheque is payable to the payee or holder at the counter of the bank. In such a case, if a wrong person takes away the payment of cheque, it is difficult to trace him.

The payment of a cross cheque can be obtained only through a banker. Thus, crossing is a mode of assuring that only the rightful holder (i.e. the person entitled to receive money) gets payment.

- ii) **Crossing does not affect the transferability or negotiability of cheque**-a crossed cheque can be negotiated just the same way as an open cheque. A person acquiring a crossed cheque in good faith becomes its holder in due course just as in case of open cheque.
- iii) **Crossing is a material alteration** but crossing of cheque by the holder does not in any way affect his rights in respect of cheques (section 125).

### **TYPES OF CROSSING:**

- (a) **General Crossing:** Where a cheque bears across its face two parallel, transverse lines without any words or with words 'and company' or/and 'not negotiable' written in between these two parallel lines, it is called general crossing. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker (Sec. 126)
- (b) **Special Crossing:** where the lines of crossing bear the name of a banker either with or without any additional words. The effect is that its payment can be obtained only through particular banker whose name appears between the lines.

According to Sec. 127, where a cheque is crossed specially to more than one banker, the banker on whom it is drawn shall refuse payment thereof except where the banker to whom it is crossed may cross it specially to another banker, his agent for collection.

- (c) **A/c payee crossing:** When the words "A/C payee" or "A/C payee only" are added to a general or special crossing, it is called restrictive crossing. The effect of "Account payee" crossing is that the banker is supposed to collect the cheque on behalf of that payee only whose name appears on the face of the cheque. If banker collects this cheque from an endorsee (i.e. person other than named payee), he can be held responsible in case that endorsee turns out to be a wrongful holder of cheque. Thus liability of a banker enhances to a great extent. Such type of crossing is not statutorily recognised.
- (d) **Not negotiable Crossing:** This requires writing of words "not negotiable" in addition to the two parallel lines. These words may be written inside or outside these lines. According to Section 130, a person taking a cheque crossed generally or specially, bearing in either case the word "not negotiable" shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it. It is a statutory crossing. A cheque with such crossing is not negotiable, but

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

continues to be transferable as before. Ordinarily, in a negotiable instrument, if the title of the transferor is defective, the transferee, if he is a HDC, will have a good title. When the words "not negotiable" are written, even a HDC will get the same title as that of transferor. Thus, if the title of the transferor is defective, the title of transferee will also be so.

Thus, the addition of the words not negotiable does not restrict the further transferability of the cheque, but it entirely takes away the main feature of negotiability, which is that a holder with a defective title can give a good title to the subsequent holder in due course.

### Who may cross? [Section 125]

A cheque may be crossed by the following parties:

- (a) *By Drawer:* A drawer may cross it generally or specially.
- (b) *By Holder:* A holder may cross an uncrossed cheque generally or specially. If the cheque is crossed generally, the holder may cross specially. If cheque crossed generally or specially, he may add words "not negotiable".
- (c) *By Banker:* A banker may cross an uncrossed cheque, or if a cheque is crossed generally he may cross it specially to himself. Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

### PROTECTION OF LIABILITY OF THE PAYING BANKER:

The banker who makes the payment of a crossed cheque is called the paying banker.

- (a) **Cheque payable to order [Section 85(1)]:** Where a cheque payable to order **purports to be endorsed by or on behalf of the payee**, the banker is discharged by payment in due course. The banker, in other words, can debit his customers account even though the endorsement by the payee might turn out to be forgery or the endorsement might have been placed by the payee's agent without his authority.
- (b) **Cheque payable to bearer [Section 85(2)]:** As regards bearer cheque the rule is "once a bearer always a bearer". A banker gets a good discharge by payment in due course of the amount on a bearer cheque to the holder of the cheque. It does not matter whether the apparent holder is the owner of the cheque or not.

- (c) **Payment of cheque crossed generally:** Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.
- (d) **Payment of cheque crossed specially:** 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.
- (e) **Payment in due course of crossed cheque [Section 128]:** Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof
- (f) **Payment of crossed cheque out of due course [Section 129]:** Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

**EXCEPTION: Payment of a cheque on which drawer signatures were forged:** If any drawee banks made the payment on a cheque on **which drawer signatures were forged** then such bank shall be liable to the true owner. Thus, the paying banker shall be liable if it makes the payment of the cheque on **which drawers signature was forged**.

### **PROTECTION OF LIABILITY OF THE COLLECTING BANKER**

The bank which receives the payment of a crossed cheque on behalf of its customer is known as the **collecting banker**.

**Section 131- Non liability of banker receiving payment of cheque:** A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title of the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

In order to avail such a protection, the banker needs to prove the following:

- (a) That the banker had received the payment of crossed cheque
- (b) That the collection was made by the bank on behalf of the customer

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

- (c) That the collecting bank must have acted in good faith and without negligence.

### **14. DISHONOUR OF CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS [SECTION 138 TO 142]**

#### **DISHONOR OF CHEQUE FOR INSUFFICIENCY, ETC., 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 out of that account
- For the discharge, in whole or in part, of any debt or other liability, [A cheque given as gift or donation, or as a security or in discharge of a mere moral obligation, or for an illegal consideration, would be outside the purview of this section]
- is returned by the bank unpaid,
- either because of the—
  - amount of money standing to the credit of that account is insufficient to honor the cheque, or
  - that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

Such person shall be deemed to have committed an offence and 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:

**Provided** that this section shall not apply, unless—

**(a) Cheque presented within validity period:** The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.

**(b) Demand for the payment through the notice:** the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the

cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

**(c) Failure of drawer to make payment:** the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

**Explanation:** For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

**Example:** X issued a post-dated cheque to Y on the account of discharge of its liability. Further, X instructed to the bank to make the stop payment due to unavailability of the adequate amount in the account. Here, in this instance section 138 of the Act is attracted as when a cheque is dishonoured on account of stop payment instructions sent by the drawer to his banker in respect of a post-dated cheque irrespective of insufficiency of funds in the account. A post-dated cheque is deemed to have been drawn on the date it bears and the three months period for the purposes of section 138 is to be counted from that date. So, X will be liable for dishonour of cheque. Once a cheque is issued by the drawer a presumption under section 139 must follow.

**Penalty:** According to Section 138 of the Act, the dishonour of cheque is a criminal offence and is punishable with imprisonment upto 2 years or fine upto twice the amount of cheque or both.

### **PRESUMPTION IN FAVOR OF HOLDER [SECTION 139]**

When a cheque is dishonoured, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, or any debt or other liability.

Presumption prescribed here is a "rebuttable presumption" as the provisions clearly provides that the person issuing the cheque is at liberty to prove to the contrary. The effect of this presumption is to place the evidential burden on the accused.

### **DEFENCE WHICH MAY NOT BE ALLOWED IN ANY PROSECUTION UNDER SECTION 138 [SECTION 140]**

It shall not be a defence in a prosecution of an offence under section 138 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.



## THE NEGOTIABLE INSTRUMENTS ACT, 1881

### OFFENCES BY COMPANIES [SECTION 141]

- (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed—
- was in charge of, and
  - as responsible to the company for the conduct of the business of the company,

as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

**Exception:** Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

**Where a person is nominated as a director of a company** by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or State Government, as the case may be, he shall not be liable for prosecution under the chapter.

- (2) Where any offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation:** For the purpose of this section

- (a) "company" means anybody corporate and includes a firm or other association of individuals; and
- (b) "director", in relating to a firm, means a partner in the firm.

**Example:** A promoter who has borrowed a loan on behalf of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently, the cheque was dishonoured and the complaint was lodged against him. Is he liable for an offence under section 138?

**Answer:** According to Section 138 of the Negotiable Instruments Act, 1881 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/out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable. However, in this case, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, he has not committed an offence under section 138.

### **COGNIZANCE OF OFFENCES [SECTION 142]**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

(a) **Cognizance on written complaint:** Notwithstanding anything contained in Code of Criminal Procedure, 1973, a written complaint should have been made to a metropolitan or a first class judicial magistrate by the payee, or HDC of the cheque.

(b) **Limitation for filing of complaint:** such complaint is made **within one month** of the date on which the cause of action arises under clause (c) of the proviso to section 138;

Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(c) **Jurisdiction of court:** no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) **Jurisdiction of courts for the trial of offence [ Section 142 (2)]:** The offence under section 138, which deals with the dishonor of cheque, shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) **if the cheque is delivered for collection through an account**, the branch of the bank where the payee or holder in due course, as the case may be, **maintains the account**, is situated; or

(b) **if the cheque is presented for payment by the payee or holder in due course, otherwise through an account**, the branch of the drawee bank where the drawer maintains the account, is situated.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

**Explanation**— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

**Example:** Mr. A holds an account in Navrangpura Branch, Ahmedabad of “XYZ” Bank, issues a cheque payable in favor of B. B, who holds an account with the M.S University Road Branch, Vadodara of the “PQR” bank, deposits the said cheque at Surat Branch of ‘PQR bank’ and the cheque is dishonored. The complaint will have to be filed before the court having jurisdiction where the M.S University road branch is situated.

### **VALIDATION FOR TRANSFER OF PENDING CASES [SECTION 142A]**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

The above sub-section deals with respect to filing of subsequent complaints. The payee has filed a complaint against the drawer in a court with the appropriate jurisdiction, all subsequent complaints against that person regarding cheque bouncing will be filed in the same court. This will be irrespective of the mode of presentation of cheque.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the

notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.

This sub-section deals with where more than one case filed by the same payee against the same drawer before different courts. If more than one case is filed by the same payee against the same drawer before different courts, the case will be transferred to the court with the appropriate jurisdiction before which the first case was filed.

### **POWER OF COURT TO TRY CASES SUMMARILY [SECTION 143]**

(1) **Trial of Offence:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter shall be **tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate** and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials.

**In case of summary trial:** Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of **imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees.**

**In case where no summary trial can be made:** Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) **Speedy Trial:** The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) **Speedy and efficient Disposal:** Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

### POWER TO DIRECT INTERIM COMPENSATION [SECTION 143A]

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—
  - (a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
  - (b) in any other case, upon framing of charge.
- (2) The **interim compensation under sub-section (1) shall not exceed twenty per cent.** of the amount of the cheque.
- (3) The **interim compensation shall be paid within sixty days from the date of the order** under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
- (4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.
- (5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.
- (6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.

### OFFENCES TO BE COMPOUNDABLE [SECTION 147]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be compoundable.

### POWER OF APPELLATE COURT TO ORDER PAYMENT PENDING APPEAL AGAINST CONVICTION [SECTION 148]

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be

a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

- (2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.
- (3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

Explanation: Thus, Section 148 provides that in the event of the conviction of the drawer of the cheque, if the drawer proceeds to file an appeal, the appellant court has the power to order the drawer of a cheque to deposit an amount. This deposited amount has to be a minimum of 20% of the fine or compensation awarded by the Magistrate Court in the appeal preferred against his/her conviction. This amount can be ordered anytime during the pendency of the appeal. The procedure relating to payment of the above stated fine and refund of the same if the appeal succeeds, is similar to what has been laid down in Section 143A of the Act.

## SUMMARY

- ◆ A promissory note is an unconditional undertaking, written and signed by the maker to pay a certain sum of money only to or to the order of a certain person. It does not include a bank note or currency note.
- ◆ A bill of exchange is an unconditional written order signed by the drawer, directing a certain person to pay a certain sum of money to the specified person or to his order or to the bearer of the bill.

## THE NEGOTIABLE INSTRUMENTS ACT, 1881

- ◆ A cheque is a bill of exchange drawn on a specified banker and payable only on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.
- ◆ A bearer instrument is one which is expressed to be payable to its bearer or which has last endorsement in blank.
- ◆ An instrument payable to order is the one which is expressed to be payable to a particular person.
- ◆ A negotiable instrument drawn or made in India and made payable in, or drawn upon any person resident in India shall be deemed to be inland instrument.
- ◆ Any instrument which is not an inland instrument is a foreign instrument.
- ◆ When the nature of an instrument is not clear, it is termed as ambiguous instrument. There such an instrument may be treated as either promissory or as a bill of exchange.
- ◆ Inchoate instrument is an instrument that is signed and duly stamped but otherwise wholly or partially blank.
- ◆ "At sight", "on presentment", expressions in reference to promissory note or bill of exchange means on demand. Whereas expression "After sight" in a case of promissory note means after presentment for sight and in reference to bill of exchange means after acceptance/noting/protest for non-acceptance.
- ◆ Maturity is the date of any instrument at which its payment becomes due. Any instrument is at maturity on the third day after the day on which it is expressed to be payable.
- ◆ Negotiation means transfer of a negotiable instrument by one person to another in order to make the transferee the holder of the instrument.
- ◆ Negotiation may be made by delivery or by endorsement and delivery.
- ◆ Parties to an instrument- Every person capable of contracting may bind himself and be bound by the making/ drawing/ acceptance/ indorsement / delivery and negotiation of an instruments. Minor is an exception, binding all the parties except himself.
- ◆ An agent can make, accept or indorse a negotiable instrument only if express authority has been granted to him by his principal.





- ◆ A bank under certain conditions may refuse payment of cheque or is bound to dishonor cheque and when the cheque is dishonored for insufficiency of funds in the account of a customer, it is treated as offence. The guilty may be punished with imprisonment for a term which may extend to two years or with fine of twice the amount of the cheque or with both.
- ◆ Mode of discharge–The instrument is discharged when rights and obligations or claims of all the parties are extinguished.
- ◆ Material Alteration means the alteration in the material part of the instrument resulting in the alteration in the basic parts of the nature and legal effects of the instruments and the liabilities of the parties.
- ◆ An instrument is dishonored by non-acceptance and non-payment of the instrument when duly presented.
- ◆ Notice of dishonor is served by the holder formally against the parties to the effect that instrument has been dishonored by non-acceptance or non-payment.
- ◆ Noting is the process of recording the fact and reasons of dishonor of a negotiable instrument by the notary public.
- ◆ Protest is a certificate issued by a notary public attesting the fact of dishonor of a negotiable instrument recorded upon the instrument.
- ◆ Important difference between the two is that noting consists of recording the fact and reasons of dishonor of N.I upon the instrument whereas protest is the certificate as to the fact that instrument has been dishonored.
- ◆ Payment of the amount due on instruments must be made to the holder with an interest at the specified rate expressly made payable on a promissory note or a bill of exchange. When no rate of interest is specified in the instrument, interest on the amount due shall be calculated at the rate of 18% per annum from the date at which the instrument ought to have been paid until realization of such amount.
- ◆ In respect, to decide the rights of parties on the basis of negotiable instrument, the Court is entitled to make certain presumptions of consideration, as to date, as to time of acceptance, as to time of transfer, as to order of indorsements, as to stamps and that holder is a holder in due course.
- ◆ The compensation payable by any party liable to the holder or any endorser in case of dishonor of an instrument shall be determined by the rules given under Section 117 of the Act.