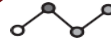


CHAPTER

7



THE NEGOTIABLE INSTRUMENTS ACT, 1881



LEARNING OUTCOMES

After studying this chapter, you would be able to understand-

- ◆ The meaning, characteristics and elements of different kinds of negotiable instruments
- ◆ Classification and various ways of negotiation, Know about provisions related to Presentment of Instruments and Rules of Compensation

CHAPTER OVERVIEW



Chapter covers following headings

Notes, Bills &
Cheques-Types,
Classification and its
characterstics

Modes of
Negotiation

Presentment of
Instruments

Rules of
Compensation



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 for 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 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 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, Railway Receipts, Delivery Orders, Bill of Lading etc. are also considered as negotiable instruments either by mercantile custom or under other enactments.

Recent developments: The Act was amended several times. Following are the significant amendments made in the Negotiable Instruments Act, 1881 (N.I. Act):

- ◆ The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002;
- ◆ The Negotiable Instruments (Amendment) Act, 2015, and
- ◆ The Negotiable Instruments (Amendment) Act, 2018.

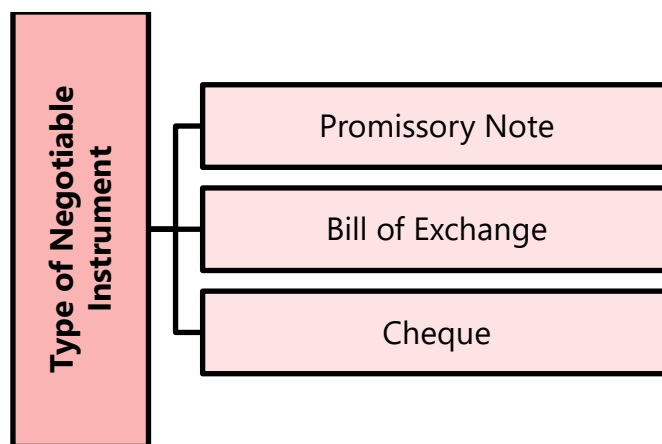


1. MEANING OF NEGOTIABLE INSTRUMENTS

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 indorsement and delivery. The property in such an instrument pass 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**.

It is to be noted that Hundies, Treasury Bills, Bearer Debentures, Railway Receipts, Delivery Orders, Bill of Lading etc. are also considered as negotiable instruments either by mercantile custom or usage.



- (1) A negotiable instrument is payable to order when:
 - a. It is expressed to be so payable
 - b. When it is expressed to be payable to a specified person and does not contain words prohibiting its transfer. (i.e. it is transferrable by indorsement and delivery)
- (2) 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 indorsement (indorsement means signing of the instrument) on the instrument is an indorsement in blank i.e., the person who possesses it can demand payment. For example,. A cheque made payable to specified person and that cheque is endorsed by signing on the back of the cheque by that specified person.

Essential Characteristics of Negotiable Instruments

1. It is necessarily in writing.
2. It should be signed.
3. It is freely transferable from one person to another.
4. Holder's title is free from defects.
5. It can be transferred any number of times till its satisfaction.
6. Every negotiable instrument must contain an unconditional promise or order to pay money. The promise or order to pay must consist of money only.
7. The sum payable, the time of payment, the payee, must be certain.
8. The instrument should be delivered. Mere drawing of instrument does not create liability.

Characterstics							
written	signed	transferable	title free from defects	can be transferrred number of times	unconditional promise/order to pay	certainty of sum payable, time of payment and the payee	delivered



2. PROMISSORY NOTE

Meaning

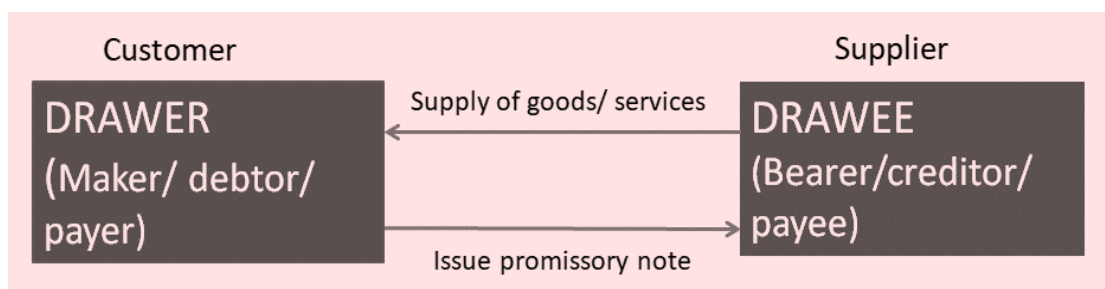
According to section 4 of the NI Act, 1881, "A 'promissory note' is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

Specimen of Promissory note

₹ 10,000	Lucknow
	April 10, 2022
Three months after date, I promise to pay Shri Ramesh (Payee) or to his order the sum of Rupees Ten Thousand, for value received.	
	Stamp
	Sd/-
	Ram
To,	
Shri Ramesh,	
B-20, Green Park,	
Mumbai.	
(Maker)	

Parties to promissory note

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

**Essential Characteristics of a Promissory Note**

- 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 1: 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 2: "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 3: 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 4: 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 5: 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's 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 6: 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 7: "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.

But sometimes, the language of a promissory note is such that the amount payable can be easily ascertained. In such cases, the promissory note will be valid.

Example 8: "I promise to pay B ₹ 500 alongwith simple interest at the rate of 12% per annum.

- g. The **maker and payee must be certain, definite and different persons**. A promissory note cannot be made payable to the bearer [Section 31 of the Bank of India Act, 1934 (RBI Act)]. 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 on such stamp or otherwise.



3. 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.

Specimen of Bill of Exchange

	Mr. A (Drawer)
	48, MP Nagar, Bhopal (M.P.)
	April 10, 2022
₹ 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

Parties to the bill of exchange

- Drawer:** The maker of a bill of exchange.
- 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.
- 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

- It must be in writing.
- Must contain an express order to pay.
- The order to pay must be definite and unconditional.
- 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.

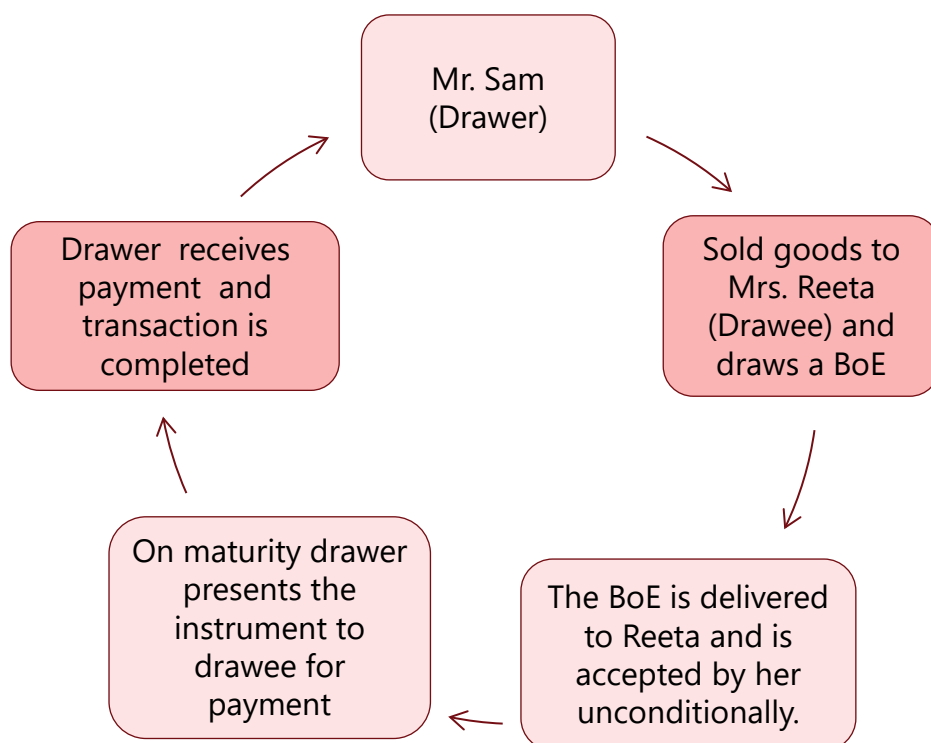
Example 9: "On demand pay to the bearer the sum of rupees five hundred, for value received." It is invalid BOE.

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

Example 10: "On demand pay to A or order the sum of rupees five hundred for value received." It is valid BOE.

- (f) The sum must be certain.
(g) The order must be to pay money only.
(h) It must be stamped.

Process of bill of exchange



In above image, firstly the seller sold goods to the buyer/customer and then draws a bill of exchange on him. The Bill of exchange is delivered by the buyer who accepts it without any condition. On maturity of bill of exchange, the buyer will pay the amount due to the payee. (The payee may be the drawer himself or a third party.)

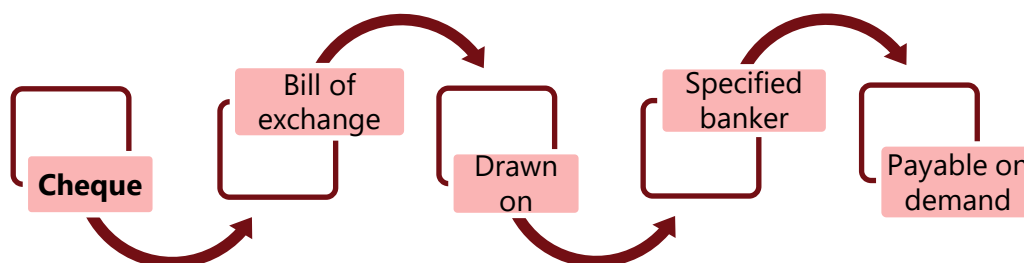
Difference between promissory note and bill of exchange

S.no	Basis	Promissory Note	Bill of Exchange
1.	Definition	"A Promissory Note" is an instrument in writing (not being a banknote 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.
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 as under: i. the drawer ii. the drawee iii. the payee
4.	Acceptance	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	A bills of exchange needs acceptance from the drawee.
5.	Payable to bearer	A promissory note cannot be made payable to bearer.	On the other hand, a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand.



4. 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 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 sections 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.

Specimen of Cheque

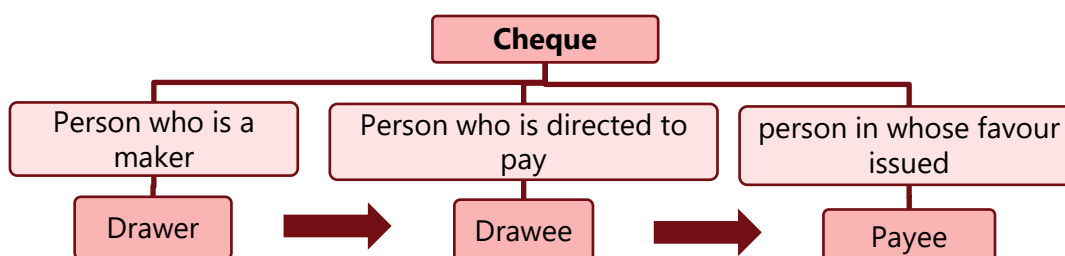
Pay a sum of Rupees..... ₹ A/C No. 12345678910 ABC Bank 622, Vijay Nagar, Indore (M. P.)	Date:..... Signature
01212 1125864 000053 38	

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 indorsement thereon, the name of any person is given in addition to the drawee to be resorted to in case of need such person is called a “drawee in case of need”.

3. **Payee:** The person named in the instrument (i.e., the person in whose favour cheque is issued), to whom or to whose order the money is, by the instrument, directed to be paid, is called the payee. The payee may be the drawer himself or a third party.



Essential Characteristics of a cheque

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

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

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

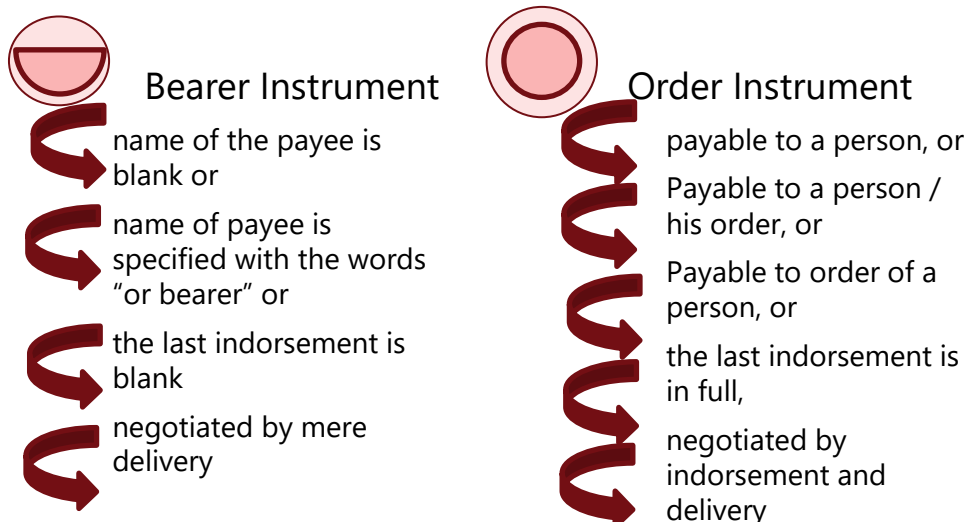


5. CLASSIFICATION OF NEGOTIABLE INSTRUMENTS

“Bearer instrument” and “order instrument” [Section 13]

Bearer Instrument: It is an instrument where the name of the payee is blank or where the name of payee is specified with the words “or bearer” or where the last indorsement is blank. Such instrument can be negotiated by mere delivery.

Order Instrument: It is an instrument which is payable to a person or Payable to a person or his order or Payable to order of a person or where the last indorsement is in full, such instrument can be negotiated by indorsement and delivery.



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

“Inland instrument”: 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 11: (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)

(iii) A, a resident of Agra, drew (i.e., made) a bill of exchange in Agra on B, a merchant in New York. And B accepted the bill of exchange as payable in Delhi. It is an inland bill of exchange. In this case, the bill of exchange was drawn in India and also payable in India.

(iv) A, resident of Mumbai, drew a bill of exchange in Mumbai on B, a merchant in Mathura. And B accepted the bill of exchange as payable in London. It is also an inland bill of exchange. In this case, the bill of exchange was drawn in India on a person resident in India. It is immaterial that the amount is payable in London.

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

(v) If the bills of exchange mentioned in above two examples, are endorsed in France, they will remain inland bills.

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

“Foreign instrument”: A foreign instrument is one which is not an inland instrument.

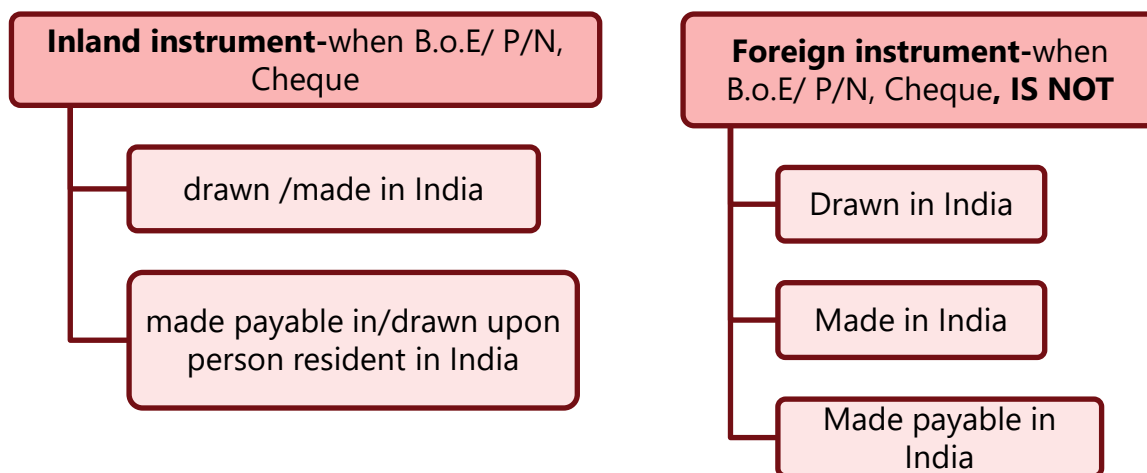
In other words, can be understood as follows:

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

Liability of maker/ drawer of foreign bill

In the absence of a contract to the contrary, 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 respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable (Section 134).

Example 12: 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 indorsed 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: It means an instrument that is incomplete in certain respects. The drawer/ maker/ acceptor/ indorser of a negotiable instrument may sign and deliver the instrument to another person in his capacity leaving the instrument, either wholly blank or having written on it the word incomplete. Such an instrument is called an inchoate instrument and this gives a power to its holder to make it complete by writing any amount either within limits specified therein or within the limits specified by the stamp's affixed on it. **The principle of this rule of an inchoate instrument is based on the principle of estoppel.**

Liability on drawing inchoate instrument: The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course. However, there is a difference in their respective rights:

The holder 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.

Section 20 of the Act reads as "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”.

Example 13: A person signed a blank acceptance on a bill of exchange and kept it in his drawer. The bill was stolen by X and he 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, indorser 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: Section 17 of the Act, reads as: “Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.”

Thus, 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.

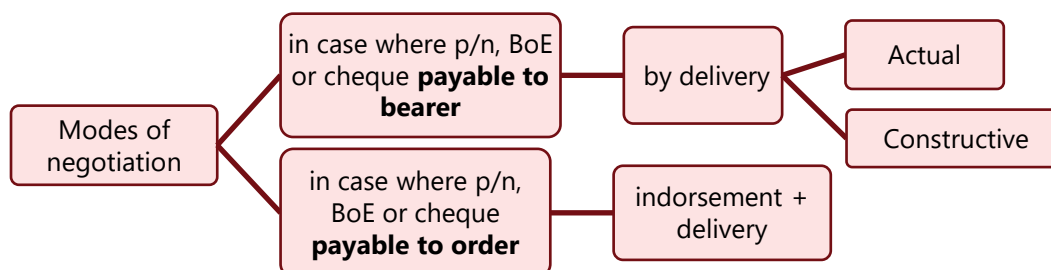


6. NEGOTIATION (TRANSFER) OF NEGOTIABLE INSTRUMENTS

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 negotiation.

According to Section 14 of the 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



- (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 indorsement and delivery thereof.

Example 14: X drew a cheque for Rs. 50,000 payable to Y and delivered it to him. Y indorsed the cheque in favour of Z but kept it in his table drawer. Subsequently, Y died, and cheque was found by Z in Y's table drawer. In this case, Z does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him.

Negotiation by delivery [Section 47]

Subject to the provisions of section 58 [Instrument obtained by unlawful means or for unlawful consideration], 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.

Example 15

- (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.

Negotiation by indorsement [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 indorsement 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 takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

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 indorsed 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 cannot negotiate the same by mere delivery thereof. (Section 57)¹

Delivery when effective between the parties

Negotiation of instruments between the parties	How delivery is to be made
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.

¹ According to section 57, the legal representative of a deceased person cannot negotiate by delivery only, a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

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.

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.



7. 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 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.

When section 138 shall be not apply: unless the below given conditions are complied with—

- (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.

Therefore we may conclude that complaint can be filed after 45 days of dishonor of the cheque i.e., 30 days of notice period + 15 days of the receipt of the said notice.

Example 16 X issued a post-dated cheque to Y on the account of discharge of its liability. Further, X instructed to the bank to stop the 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 up to 2 years or fine up to twice the amount of cheque or both.

PRESUMPTION IN FAVOR OF HOLDER [SECTION 139]

When a cheque is dishonoured, it shall be presumed, 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.



8. PRESENTMENT OF INSTRUMENTS

Presentment for acceptance [Section 61]

A bill of exchange payable after sight must [if no time or place is specified therein for presentment] be presented to the drawee thereof for acceptance [if he can, after reasonable search, be found] by a person entitled to demand acceptance, within a reasonable time after it is drawn, 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. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place, and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

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

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.

Drawee's time for deliberation [Section 63]

The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it.

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 authorised 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.

Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.

Hours for presentment (Section 65)

Presentment for payment must be made during the usual hours of business, and, if at a banker's within banking hours.

Presentment for payment of instrument payable after date or sight (Section 66)

A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment for payment of promissory note payable by instalments (Section 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; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

Presentment for payment of instrument payable at specified place and not elsewhere (Section 68)

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.

Instrument payable at specified place (Section 69)

A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment where no exclusive place specified (Section 70)

A promissory note or bill of exchange, not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any) or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment when maker, etc., has no known place of business or residence (Section 71)

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

Presentment of cheque to charge drawer (Section 72)

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

Presentment of cheque to charge any other person (Section 73)

A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of instrument payable on demand (Section 74)

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.

Presentment by or to agent, representative of deceased, or assignee of insolvent (Section 75)

Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

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

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

When presentment unnecessary (Section 76)

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

- (a) (i) If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
- (ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

- (iii) if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or
- (iv) 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 thereon in 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 dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.



9. RULES OF COMPENSATION

Rules as to compensation (Section 117)

The compensation payable in case of dishonour of promissory note, bill of exchange or cheque, by any party liable to the holder or any endorsee, shall be determined by the following rules:

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- (c) an endorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at 18% per annum from the date of payment until

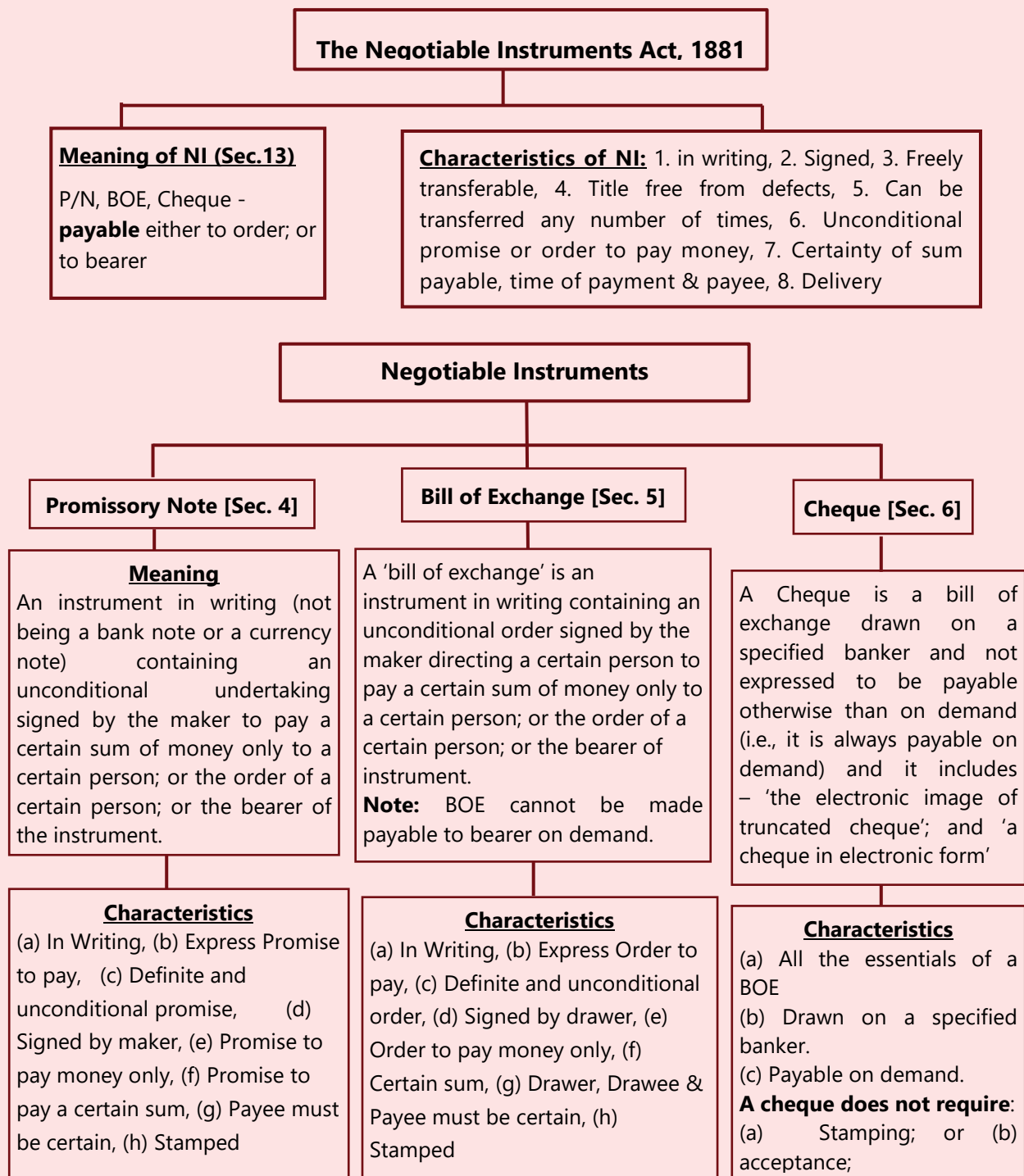
tender or realisation thereof, together with all expenses caused by the dishonour and payment;

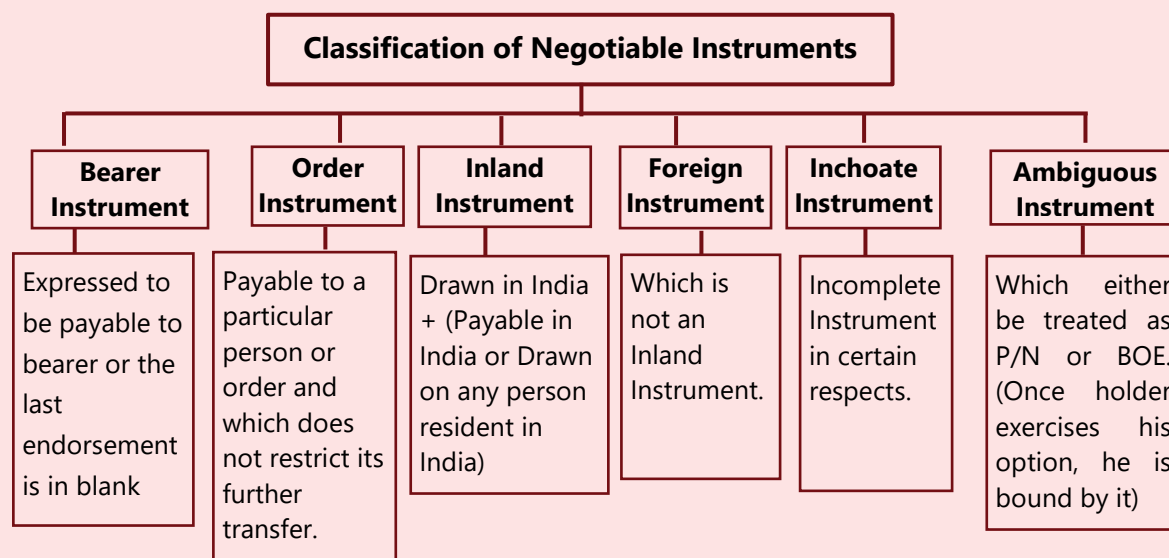
- (d) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

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.
- ◆ 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 indorsement 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.
- ◆ 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 indorsement and delivery.
- ♦ 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.





**Presentment for acceptance
(Only for BOE)**

BOE payable after sight must	Must be presented within a reasonable time & in business hours on a business day. (Note: 48 hours, excluding public holidays, are given to drawee for acceptance)	
In default of such presentment	no party liable thereto	If Drawee not found after reasonable search, BOE is dishonored.
If BOE is directed to drawee at a particular place	must be presented at that place	

Presentment of Promissory Note for sight

P/N payable at a certain period after sight	Must be presented within a reasonable time & in business hours on a business day.	
In default of such presentment	no party liable thereto	

Rules regarding presentment for payment (P/N, BOE, CH)

To whom	Maker (P/N), Acceptor (BOE), Drawee (CH)
If default in presentment	no party liable thereto
Exception	If P/N is payable on demand and is not payable at a specified place, no presentment is necessary.
Time	During usual business hours
If instrument payable after date or sight	must be presented for payment at maturity
P/N payable by instalments	must be presented for payment on 3 rd day after date fixed for payment of each instalment
instrument payable at specified place	Must be presented for payment at that place.
where no exclusive place specified	must be presented for payment at the place of business (if any) or at the usual residence
no known place of business or residence	presentment may be made to him in person wherever he can be found
Instrument payable on demand	Must be presented for payment within a reasonable time after it is received by the holder.
Note: Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder	

When Presentment Unnecessary

1. Maker, drawee or acceptor prevents the presentment,
2. Payable at business place & that's closed on business day during usual business hours,
3. Payable at specified place & liable party doesn't attend place,
4. Not payable at specified place & liable party not found after due search,
5. Liable party engaged to pay notwithstanding non-presentment,
6. Liable party makes part payment,
7. Liable party waives off his right to take advantage.
8. If drawer could not suffer damage from want of such presentment.

Rules as to Compensation (Sec.117)

In case of dishonour of NI, holder can claim:

1. Amount due on NI
2. Expenses incurred in presenting, noting & protesting.
3. Interest 18% p.a. from due date of payment to date of realisation.

Note: In case of foreign currency, current rate of exchange.

Dishonour of Cheques for Insufficiency of Funds in the Accounts [Section 138 to 142]

Debt - Cheque was issued to discharge a legally enforceable debt

Reason for dishonour - insufficiency of funds

Presentment of cheque - Within 3 months

Demand made from drawer - Within 30 days of dishonour

Default by drawer to pay - within 15 days of demand made

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. *A negotiable instrument is an instrument which is freely transferable from one person to another by:*
 - (a) *Simple delivery*
 - (b) *Indorsement and delivery*
 - (c) *Indorsement*
 - (d) *Registered post*
2. *An instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is called as:*
 - (a) *bearer instrument*
 - (b) *Ambiguous instrument*
 - (c) *Order instrument*
 - (d) *Inland instrument*
3. *As per Negotiable Instruments Act, 1881, Negotiable Instruments means:*
 - (a) *Promissory Note*
 - (b) *Bills of Exchange*
 - (c) *Cheque*
 - (d) *All the above*
4. *How many parties in Bills of exchange:*
 - (a) *2*
 - (b) *3*
 - (c) *4*
 - (d) *5*
5. *On which of the followings, even not defined in Negotiable Instruments Act 1881, provisions of Act are applicable:*
 - (a) *Hundies*
 - (b) *Treasury Bills*
 - (c) *Bearer Debentures*
 - (d) *All of the above*

6. Which is not the essential characteristic of Bill of exchange:
- (a) Must be in writing
 - (b) Must contain an express promise to pay
 - (c) Instrument must be signed
 - (d) Must be stamped
7. Which is not an Inland Instrument:
- (a) P/N made in India + payable in India + drawn upon person resident in India
 - (b) P/N made in India + payable in India + drawn upon person resident outside India
 - (c) P/N made in India + payable outside India + drawn upon person resident in India
 - (d) P/N made in India + payable outside India + drawn upon person resident outside India
8. Negotiable Instrument which can be treated either P/N or BOE, is known as:
- (a) Inland Instrument
 - (b) Inchoate Instrument
 - (c) Ambiguous Instrument
 - (d) Foreign Instrument
9. Order Instrument can be negotiated by:
- (a) By delivery only
 - (b) By endorsement only
 - (c) By endorsement & delivery
 - (d) None of above
10. Where any cheque drawn by a person is dishonoured due to insufficiency of funds, such person shall be punished with:
- (a) imprisonment for a term which may extend to two years,
 - (b) with fine which may extend to twice the amount of the cheque,
 - (c) 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,
 - (d) No punishment

Descriptive Questions

1. *M drew a cheque amounting to ₹ 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N indorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. Does this amount to Indorsement under the Negotiable Instruments Act, 1881?*
2. *M owes money to N. Therefore, he makes a promissory note for the amount in favor of N, for safety of transmission he cuts the note in half and posts one half to N. He then changes his mind and calls upon N to return the half of the note which he had sent. N requires M to send the other half of the promissory note. Decide how rights of the parties are to be adjusted.*
3. *Bholenath drew a cheque in favour of Surendar. After having issued the cheque; Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence?*
4. *Rama executes a promissory note in the following form, 'I promise to pay a sum of ₹10,000 after three months'. Decide whether the promissory note is a valid promissory note.*
5. *'Nakul' made promissory note in favour of 'Sahdev' of ₹10,000 and delivered to him. 'Sahdev' indorsed the promissory note in favour of 'Arjun' but delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note. Whether 'Arjun' can recover amount under the provisions of the Negotiable Instrument Act 1881?*

ANSWERS/HINTS

Answers to MCQs

1.	(b)	2.	(b)	3.	(d)	4.	(b)	5.	(d)	6.	(b)
7.	(d)	8.	(c)	9.	(c)	10.	(c)				

Answer to Descriptive Questions

1. No, P does not become the holder of the cheque as the negotiation was not completed by delivery of the cheque to him. (Section 48, the Negotiable Instruments Act, 1881)

2. The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to N. Under Section 46 of the N.I. Act, 1881, the making of a Promissory Note (P/N) is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of N to have the other half of the P/N sent to him is not maintainable. M is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.
3. As per the facts stated in the question, Bholenath (drawer) after having issued the cheque, informs Surendar (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surendar.

Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for 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.

Accordingly, the act of Bholenath, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

4. The promissory note is an unconditional promise in writing. In the above question the amount is certain but the date and name of payee is missing, thus making it a bearer instrument. As per Reserve Bank of India Act, 1934, a promissory note cannot be made payable to bearer - whether on demand or after certain days. Hence, the

instrument is illegal as per Reserve Bank of India Act, 1934 and cannot be legally enforced.

5. According to Section 48 of the Negotiable Instrument Act 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by indorsement and delivery thereof.

Further, 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 takes place when the instrument is delivered to the agent, clerk or servant of the indorsee on his behalf or when the indorser, after indorsement, holds the instrument as an agent of the indorsee.

In the instant case, 'Sahdev' received a promissory note from 'Nakul' and indorsed the promissory note in favour of 'Arjun' and delivered to Arjun's agent. Subsequently, Arjun's agent died, and promissory note was found by 'Arjun' in his agent's table drawer. 'Arjun' sued 'Nakul' for the recovery of promissory note.

An order negotiable instrument can be transferred by endorsement and delivery. As delivery to Arjun's agent is sufficient delivery of promissory note to Arjun. Therefore, 'Arjun' is eligible to claim the payment of promissory note.

SAMPLE SPECIMENS/AGREEMENTS¹

1. BAILMENT AGREEMENT

This Bailment Agreement ("Agreement") is made and entered into on this [date], by and between:

Bailor: [Bailor's Full Name], residing at [Bailor's Address] (hereinafter referred to as "Bailor"),

AND

Bailee: [Bailee's Full Name], residing at [Bailee's Address] (hereinafter referred to as "Bailee").

WHEREAS, the Bailor is the owner of ----- property described herein and wishes to deliver possession of the same to the Bailee for a specified purpose, and

WHEREAS, the Bailee agrees to accept possession of the property for the specified purpose and to return the property to the Bailor upon the fulfillment of such purpose.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. **Description of Property:** The property delivered under this Agreement is described as follows:
 - [Description of Property, including make, model, serial number, etc.]
2. **Purpose of Bailment:** The property is being delivered to the Bailee for the following purpose:
 - [Purpose of Bailment]
3. **Duration of Bailment:** The duration of this bailment shall be from [Start Date] to [End Date], unless extended by mutual written consent of both parties.
4. **Duties of Bailee:**
 - The Bailee shall take reasonable care of the property while it is in their possession.
 - The Bailee shall use the property only for the purpose stated in this Agreement.
 - The Bailee shall return the property to the Bailor in the same condition as it was received, subject to normal wear and tear, upon termination of this Agreement.

¹ The Sample specimens/agreements given do not form part of the syllabus. They have been provided here for the knowledge of students only.

5. **Duties of Bailor:**

- The Bailor shall provide the Bailee with the necessary instructions and information for the proper use of the property.
- The Bailor warrants that they have the legal right to deliver the property for the purpose stated in this Agreement.

6. **Termination:** This Agreement may be terminated by either party upon ----- days' written notice to the other party.

7. **Governing Law:** This Agreement shall be governed by and construed in accordance with the applicable laws of [Jurisdiction].

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Bailor:

[Name]

[Signature]

Bailee:

[Name]

[Signature]

Witness 1:

[Name]

[Signature]

Witness 2:

[Name]

[Signature]

2. **AGREEMENT FOR PLEDGE FOR TRANSFER OF SHARES**

This Pledge Agreement ("Agreement") is made and entered into on this [date], by and between:

Pledgor: [Pledgor's Full Name], residing at [Pledgor's Address] (hereinafter referred to as "Pledgor"),

AND

Pledgee: [Pledgee's Full Name], residing at [Pledgee's Address] (hereinafter referred to as "Pledgee").

WHEREAS, the Pledgor is the owner of certain shares described herein and wishes to pledge the same to the Pledgee as security for the fulfillment of certain obligations, and

WHEREAS, the Pledgee agrees to accept the shares as security under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. **Description of Shares:** The shares pledged under this Agreement are described as follows:
 - [Description of Shares, including the company name, number of shares, and share certificates numbers]
2. **Obligations Secured:** The shares are pledged as security for the following obligations:
 - [Description of the obligations secured by the pledge]
3. **Pledge and Delivery of Shares:** The Pledgor hereby pledges and delivers the above-described shares to the Pledgee as security for the performance of the obligations mentioned above.
4. **Possession of Share Certificates:** The Pledgor shall deliver the share certificates along with duly executed blank transfer deeds to the Pledgee upon execution of this Agreement.
5. **Rights of Pledgee:** The Pledgee shall have the right to retain the share certificates until the obligations secured by this pledge are fully discharged.
 - In the event of default by the Pledgor, the Pledgee shall have the right to sell or otherwise dispose of the shares, after giving [Number] days' notice to the Pledgor, and apply the proceeds towards the discharge of the obligations.
6. **Redemption:** Upon full performance of the secured obligations, the Pledgor shall have the right to redeem the shares by paying all amounts due and fulfilling all obligations to the Pledgee.
7. **Governing Law:** This Agreement shall be governed by and construed in accordance with the applicable laws of [Jurisdiction].

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Pledgor:

Pledgee:

[Name]

[Name]

[Signature]

[Signature]

Witness 1:

Witness 2:

[Name]

[Name]

[Signature]

[Signature]

3. SPECIMEN DEED OF GUARANTEE FOR THE PERFORMANCE OF A CONTRACT

THIS DEED OF GUARANTEE is made this ____ day of __, **20** , between Shri _____, son of Shri _____, residing at _____ (hereinafter referred to as "the Guarantor," which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns, etc.) of the one part, and Shri _____, son of _____, residing at _____ (hereinafter referred to as "the Principal," which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns, etc.) of the other part.

WHEREAS BY AN AGREEMENT DATED __, **20** , made between Shri _____, son of Shri _____, residing at _____, (hereinafter referred to as "the Contractor"), of the one part, and the said Shri _____, (hereinafter referred to as "the Principal"), of the other part, it was agreed inter alia by and between the parties as follows: (Here state the nature of the work to be done by the Contractor);

AND WHEREAS the said work was entrusted to the Contractor upon the Guarantor agreeing with the Principal to guarantee the performance by the Contractor and to indemnify and keep indemnified the Principal against all losses, damages, costs, charges, and expenses arising out of the performance or non-performance thereof.

NOW, THEREFORE, it is agreed and declared by and between the parties as follows:

1. The Guarantor shall ensure that the Contractor, unless relieved from the performance by operation of any clause of the contract, by statute, or by virtue of the decision of any tribunal or court of competent jurisdiction, shall carry out, execute, and perform the contract without any exception or reservation. In case of any breach thereof, the Guarantor will indemnify and keep indemnified the Principal and his estate against all losses, damages, costs, expenses, or otherwise which he may suffer or incur by reason of any act, negligence, default, or error in judgment on the part of the Contractor in performing or non-performing the contract.
2. In case of any dispute or difference as regards the quantum of such losses, damages, costs, charges, or expenses, the same shall be decided by reference to arbitration by one architect or engineer if the parties so agree, or otherwise by two architects or engineers, one to be appointed by each party, whose decision shall be final and binding on all parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set and subscribed their respective hands and seals the day, month, and year first above-written.

Signed, sealed, and delivered in the presence of:

1. Guarantor
2. Principal

Witnesses:

- 1.
- 2.

4. INDEMNITY BOND

A contract of indemnity as defined under Section 124 of the Indian Contract Act, 1872 is a contract by which one party promises to safe the other from loss cost to him by the contract of the promissory himself or by the contract of any other person. A person who gives the indemnity is called indemnifier and a person for whom protection is given is called the indemnity holder. The model form of indemnity bond is given below:

Name of the Assessee:

P.A.N. No.....Assessment Year:.....

I..... son/ wife/ daughter of Resident of do hereby agree to indemnify the Government of India for any loss that may occur on giving credit for the Certified

Photostat copies of the TDS Certificates//...../ for a sum of ` being ... % of my share in the total TDS of ` of I further declare that the credit for consolidated TDS Certificate was not claimed in the hands of the Association of persons.

Date:

Signature:

Place:

5. POWER OF ATTORNEY TO APPEAR BEFORE INCOME-TAX AUTHORITIES

The law relating to power of attorney falls within the law of agency. A power of attorney is a written instrument empowering a specified person or persons to act for and in the name of person executing it. The instruments of power of attorney are classified into the following two categories:

Specific Power of Attorney: A specific power of attorney is given for a particular specific act, for instance, for appearance before Tax authorities or before Registrar of Companies for presenting documents for incorporation of a company or before a Sub-Registrar for registration of documents etc.

General Power of Attorney

- (a) Covering all the acts relating to the execution of the deed. Presenting the same for registration, admitting execution thereof etc. can be executed and attested before a Notary Public or a First Class Magistrate
- (b) Such a General Power of Attorney can be registered also.
- (c) When an irrevocable power of attorney, having the element of agency coupled with interest covered under section 202 of the Indian Contract Act, 1872, is registered with the registration authorities, the stamp duty payable is as that of a sale/conveyance.
- (d) Such a registered General Power of Attorney as mentioned in (c) above is not entered in Book -I and there is no public notice regarding the same. The same will not be reflected in the encumbrance certificate also.

I, -----, s/o -----, r/o -----, and partner of the firm M/s -----, with its registered office at -----, do hereby appoint Mr. -----, s/o -----, r/o ----- as attorney of the firm above named and authorise him for the purpose hereinafter mentioned:

1. That the said attorney shall appoint an Advocate of his choice and hand him over the judgment of tribunal of Income-Tax and instruct him to file the appeal against the order, for the Assessment Year
2. That the said attorney shall execute Vakalatnama to the Advocate appointed by him and shall sign all the related papers under the supervision of the Advocate.
3. That specimen signature of the said attorney is given on the left side of this deed.
4. The said attorney shall generally do all other lawful acts necessary for the conduct of the said case.

I hereby declare that the acts done by the said attorney in connection with the work give to him shall be deemed to have been done by me and shall be binding on the firm and its partners.

IN WITNESS WHEREOF I have signed this power of attorney in the presence of the following witnesses :

Signature

(Holder of Power of Attorney)

WITNESSES:

1.....

2.....

6. AFFIDAVIT

An affidavit is a written statement used mainly to support certain applications and in some circumstances as evidence in court proceedings. A person who makes the affidavit is called the Deponent and must swear or affirm that the contents are true before a person who has the authority to administer oaths in respects of the particular kind of affidavit. The model form of affidavit is given below:

I son of aged years, residing at
, hereby solemnly affirm and declare on oath as under:

....."

7. AGREEMENT FOR SALE OF GOODS

THIS AGREEMENT made on this _____ day of _____, between XYZ a company incorporated under the Companies Act, 2013 and having its registered office at _____ (hereinafter referred to as the SELLER, which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the ONE PART and PQR (give name and description of the person or legal entity) (hereinafter referred to as the BUYER which expression shall, unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors and assigns) of the OTHER PART.

WHEREAS the Seller is a manufacturer of _____ (Details of business)

WHEREAS the buyer is a trader and has approached the Seller asking him to sell the goods at the rate of __ per unit/ Kilo.

THE PARTIES HERETO agree to abide as under:

1. The Seller undertakes to sell the Buyer and the Buyer undertakes to buy from Seller_____ goods (hereinafter called the 'said goods') at a price of Rs. _____.
2. The Seller will send the said goods through the designated ship the information of which ship and the date of its arrival at the port of dispatch in India shall be sent to the buyer.
3. The Seller shall make an agreement with the master of the ship for the transportation and delivery of the said goods at the Indian port.
4. It shall be the responsibility of the Buyer to have said goods insured for their value upon the current terms and make out an invoice.
5. It shall be the responsibility of the Buyer to have letter of credit through its banker which shall cover the price of the goods, freight insurance and other charges in favour of the Seller's banker.
6. After the shipment of the said goods the seller shall send all the necessary documents including the contract of a freightment, insurance policy, invoice, bills of lading, etc., to its banker at the Indian port.
7. The aforesaid document shall be delivered to the Buyer banker's against the encashment of the letter of credit which shall, in turn, deliver the same to the Buyer to enable him to get the goods cleared at the Indian port. Delivery of the documents shall constitute the delivery of goods and henceforth the goods shall be at the risk of the Buyer.
8. It shall be the responsibility the Buyer to open a letter of credit with his banker in favour of the Seller's banker. The Buyer's bankers shall credit the amount of price in the Seller's name with Seller's banker against the receipt of the document of title.
9. In case some formalities are to be completed prior to the import of the aforesaid goods at the place of destination the same shall be completed by the Buyer at his own costs.
10. If some export formalities are to be completed for the export of the aforesaid goods from the place of dispatch, the same shall be completed by the Buyer/Seller at his own costs.
11. It shall be the Buyer's right to examine the goods for his satisfaction at the point of destination. If the goods are not according to the sample or specification, the Buyer shall have the right to reject the goods at the risk and cost of the seller.
12. In the event of any dispute or difference between the parties hereto arising out of or in connection with this deed of whatsoever nature the same shall be referred to arbitration of a common arbitrator if agreed upon, failing which to two Arbitrators one to be appointed by each party to the Arbitration. The said Arbitrators shall appoint a

presiding Arbitrator and the Arbitration shall be governed by the Arbitration Act and Conciliation Act, 1996, or any statutory modification thereof.

(SIGNED, SEALED AND DELIVERED)

by Seller by the hands)

of its authorised representative/Director)

Mr. ___ in the presence of Mr. ___ and)

Mr. ___)

SIGNED, SEALED AND DELIVERED)

By Buyer by the hands of its)

authorised representative/Director Mr. ___,)

in the presence of Mr. ___ and Mr. ___)

8. PARTNERSHIP DEED

This AGREEMENT OF PARTNERSHIP is made in city ofon day of20.....betweenof(hereinafter called the FIRST PARTY) and of(hereinafter called the SECOND PARTY) of(hereinafter called the third party) on the terms and conditions set forth herein;

The parties aforementioned mutually agree:

1. That the name of the partnership shall be
2. The partnership shall commence on theday of20.....for the.....purpose of carrying on the business ofand shall continue foryears unless determined earlier by notice in writing by any party delivered to the other parties.
3. The business of the partnership shall be carried on atand at such other places as may be mutually agreed upon.
4. The capital of the partnership shall be ₹ which shall be contributed in equal shares by the parties.
5. The share of the parties in profits and losses shall be equal.
6. Proper and regular account of the affairs and transactions of the partnership shall be maintained and kept at the principal place of business of the partnership. Six monthly balance-sheet and profits and loss account shall be prepared under the supervision of

all the parties and shall be signed by each party, who shall be bound thereby except for error discovered and rectified within three months thereof.

7. No partner shall carry on any other business which may be allied or similar to the business of the partnership.
8. Death of a partner shall not operate as dissolution of the partnership. The legal representative or heir of the deceased partner shall not be entitled to interfere in the management of the affairs of the partnership but he shall be entitled to inspect the account books and the vouchers in support thereof for the purpose of ascertaining his share therein and the profits accruing due thereon. He shall not, however, be liable for any losses incurred after the demise of the partner unless he is taken as a partner in the place of the deceased partner immediately on such demise.
9. Any dispute arising out of his partnership or as to interpretation, operation or enforcement of terms of this partnership between the parties or their legal representatives shall be referred for adjudication to the arbitration of the President of the Bar Association at or his nominee whose decision shall be final and binding on all parties and their legal representatives.

In witness whereof the parties of aforementioned have signed this deed of partnership.

WITNESS

Signature

1.

First Party

2.

Second Party

3.

Third Party

9. LIMITED LIABILITY PARTNERSHIP AGREEMENT

THIS Agreement of Limited Liability Partnership made at _____ this ____th Day of _____, 2024.

BETWEEN

1. _____, son of _____, residing at _____, which expression shall, unless it be repugnant to the subject or context thereof, include his legal heirs, successors, nominees and permitted assignees and hereinafter called the FIRST PARTY, and
2. _____, son of _____, residing at _____, which expression shall, unless it be repugnant to the subject or context thereof, include his legal heirs, successors, nominees and permitted assignees and hereinafter called the SECOND PARTY,

(THE FIRST AND SECOND PARTY SHALL BE INDIVIDUALLY REFERRED TO AS A PARTNER AND COLLECTIVELY AS PARTNERS)

WHEREAS the abovementioned PARTIES have mutually agreed to carry on business of _____ and other ancillary business more particularly described in the Schedule I annexed herewith or any other business in any other manner as may be decided by the majority of Partners.

NOW The First and Second Party are interested in forming a Limited Liability Partnership under the Limited Liability Partnership Act, 2008 and that they intend to record the terms and conditions of the said formation.

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. A Limited Liability Partnership shall be carried on in the name and style of '_____ LLP.' [hereinafter referred to as '____ LLP' or 'the LLP'].

_____ LLP shall have its Registered Office at _____ and / or at such other place or places, as shall be agreed to by the majority of the Partners from time to time. In the event of the business being carried out from the premises mentioned hereto, it is agreed and understood by the Second Party that the said premises belongs to the First Party and the Second Party shall not have any right, title or claim in the said premises or create any mortgage or lien thereon and shall at no point in time be entitled to claim any tenancy or occupational rights in the said premises either on their own or through this LLP.

The First and Second Parties shall be the Partners on the incorporation of _____ LLP.

The First and Second Parties shall be the Designated Partners on the incorporation of _____ LLP.

2. The initial contribution of _____ LLP shall be Rs _____/- (Rupees _____ only) which shall be contributed by the Partners in the following proportions :

First Party: ____% i.e. Rs. ____/- (Rupees _____ only)

Second Party: ____% i.e. Rs. ____/- (Rupees _____ only)

Any further contributions, if required by the LLP shall be brought by the Partners in such ratio as may be decided with the consent of all the Partners from time to time.

OR

with the consent of majority of the Partners from time to time

OR

in the ratio of initial contribution.

OR

in the ratio of profit sharing ratio mentioned hereinafter.

OR

in the ratio of voting rights mentioned hereinafter.

3. The business of ____ LLP shall be of _____ and other ancillary business more particularly described in the Schedule I annexed herewith or any other business in any other manner as may be decided by the majority of Partners.

OR

as may be decided by the all the Partners.

OR

in the manner as may be agreed by ____ out of ____ partners.

OR

in the manner as may be agreed by the partners carrying voting rights of ____ %.

Contribution:

4. The Contribution of a Partner may be tangible, intangible, moveable or immoveable property.

Rights of Partner:

5. All the Partners hereto shall have the rights, title and interest in all the assets and properties in the LLP in the proportion of their contribution to the capital.
6. Each of the parties hereto shall be entitled to carry on their own, separate and independent business as hitherto they might be doing or they may hereafter do as they deem fit and proper and other Partners and the LLP shall have no objection thereto provided that the said Partner has intimated the said fact to the LLP before the start of the independent business and moreover he shall not use the name of the LLP to carry on the said business.
7. Every Partner has a right to have access to and to inspect and copy any books of account / documents, etc. of the LLP.

OR

On requirement of ____ number of partners, the books of accounts/ documents, etc., can be inspected.

OR

On requirement of such number of partners carrying ____% of voting rights, the books of accounts/ documents, etc., can be inspected.

8. The LLP shall have perpetual succession, and the death, retirement or insolvency of any Partner shall not dissolve the LLP.
9. Upon insolvency of a Partner his or her rights, title and interest in the LLP shall come to an end.

Duties of Partners:

10. Every Partner shall account to the Limited Liability Partnership for any benefit derived by him without the consent of the Limited Liability Partnership from any transaction concerning the Limited Liability Partnership, or from any use by him of the property, name or any business connection of the Limited Liability Partnership.
11. Every Partner shall indemnify the Limited Liability Partnership and the other existing Partners for any loss caused to it by his fraud in the conduct of the business of the Limited Liability Partnership.
12. Each Partner shall render true accounts and full information of all things affecting the Limited Liability Partnership to any Partner or his legal representatives.
13. No Partner shall without the written consent of all the other Partners of ____ LLP:
 - I. Employ any money, goods or effects of ____ LLP or pledge the credit thereof except in the ordinary course of business and upon the account or for the benefit of ____ LLP.
 - II. Lend money or give credit on behalf of ____ LLP or to have any dealings with any Persons, Company or Firm whom the other Partners previously in writing have forbidden it to trust or deal with. Any loss incurred through any breach of provisions shall be made good with ____ LLP by the Partner incurring the same.
 - III. Enter into any bond or become sureties or security with or for any person or do knowingly cause or suffer to be done anything whereby ____ LLP property or any part thereof may be seized.
 - IV. Assign, mortgage or charge his or her share in ____ LLP or any asset or property thereof or make any other person a Partner therein.
 - V. Compromise or compound or (except upon payment in full) release or discharge any debt due to ____ LLP except upon the written consent given by all the other Partners.

IN WITNESS WHEREOF the parties have put their respective hands the day and year first hereinabove written

Signed and delivered by the Partners of:

' _____ LLP.'

_____ (Partner)

_____ (Partner)

Witness :

(a) Name :

Address :

Signature :

(b) Name :

Address:

Signature :

10. MEMORANDUM OF ASSOCIATION

MEMORANDUM OF ASSOCIATION OF _____ PRIVATE LIMITED

(Incorporated under the Companies Act, 2013)

1. Name of the Company:

The name of the company shall be.....

2. Registered Office:

Registered office of the company shall remain in the(Mention the state) and at present it is at the following address:

3. Aims and Objects:

The aims and objects for which the company is established is as under:

(a)

(b)

(c)

(d) and so on.....

4. Governing Body:

The names, addresses, occupation and designation of the present members of the governing body to whom the management of the company is entrusted as required under the Companies Act, 2013 are as follows:

S.No.	Name (full in capital)	Addresses	Occupation	Designation in the Company
-------	---------------------------	-----------	------------	----------------------------

(1)

(2)

(3)

(4)

(5) and so on _____

5. Desirous person

We the undersigned are desirous of forming a company namely "....." under the Companies Act, 2013 in pursuance of this Memorandum of Association of the Company.

S. No.	Names and Addresses	Age	Occupations	Signatures of the Subscribers	No. of Shares
--------	---------------------------	-----	-------------	-------------------------------	---------------

(1)

(2)

(3)

(4)

(5) and so on _____

Dated-----This Day of ----- at-----

11. ARTICLES OF ASSOCIATION

ARTICLES OF ASSOCIATION OF.....PRIVATE LIMITED (Company Limited by Shares) (Incorporated under the Companies Act, 2013)

1. The Regulation contained in the table 'F' in the First Schedule to the Companies Act, 2013 shall apply to this company so far only as they are not inconsistent with any of the provisions contained in these regulations are made in these Regulations.
2. In these Regulations:
 - ◆ The "Act" means the Companies Act, 2013, or any statutory modification or Re-enactment thereof for the time being in force. "The Company" means "———
———" - PRIVATE LIMITED"
 - ◆ "Directors" means the Directors for the time being of the company or as the case may be, the Directors assembled at a Board.
 - ◆ "The Seal" means the Common Seal of the Company.
3. The Company is a Private Company within the meaning of Section 2(68) of the Act and accordingly:
 - (a) The right to transfer the shares of this company shall be restricted in the manner and to the extent as appearing in these Regulations.
 - (b) The number of members of the Company shall be limited to 200 not including:
 - (i) Persons who are in the employment of the Company, and
 - (ii) Persons who having been formerly in the employment of the Company, were members of the Company while in that employment and have continued to be members after the employment ceased.
 - (c) No invitation shall be issued to the public to subscribe for any shares in or debentures of this company.
4. The Business of the Company may be commenced as soon as the Directors think fit.
5.
 - (a) The Authorized Share Capital of the Company is `divided into..... Equity Shares of ₹each with power to increase, sub-divide, consolidate or reduce the Capital subject to the provisions of the Companies Act, 2013.
 - (b) The Company shall have power to issue preference share including redeemable preference shares.
 - (c) The Company shall have powers to issue shares as per the provisions of Section 53 of the Act or any statutory modification thereof.
 - (d) Subject to the provisions of these Articles, the shares shall be under the control of the Board,

6. Subject to the restrictions hereinafter provided, shares in the Company shall be transferable by written instrument.
7. The transferor shall be deemed to remain the holder of shares until the name of the transferee is entered on the register of members in respect thereof.
8. (a) The Board may refuse to register any transfer of shares
 - (i) Where the share is not fully paid up:
 - (ii) When the Company has a lien on the said share or shares:
 - (iii) Without stating any reason there for where it is not proved to their satisfaction that the proposed transferee is a responsible person:
 - (iv) Where the Board is of opinion that the proposed transferee is not a desirable person to admit to membership.(b) If the Board of Directors refuse to register the transfer of shares the Board shall within 2 months of the date on which the application of transfer was lodged with the Company, give notice of refusal to the transferor and transferee.
9. The Board of Directors may decline to register any transfer of shares until the instrument of transfer is accompanied by the share certificate.
10. No shares of the company shall except as hereinafter provided by transferred unless and until the rights of pre-emption hereinafter conferred shall have been exercised.
11. At the expiration of the said twenty one days subject to the provisions of Section 56 of the Companies Act, 2013 the Company shall allocate the said shares amongst the member or members who shall have expressed his/her or their willingness to purchase.
12. In the event of the whole or part of the shares not being sold under Articles 11 hereof, vendor may at any time within six calendar months after the expiry of the said twenty one days transfer the shares not so sold to any person at any price.
13. (a) On the death of a member in the case of joint holding the survivor or survivors shall be the only persons recognized by the Company as having any title to his/her interest in the shares.
(b) The executor or Administrators or holders of a Succession Certificate or the legal representative of a deceased member (not being one or more joint holders) shall be the only persons recognized by the Company as having any title to the shares registered in the name of such members.

14. The quorum for a General Meeting of the Company shall be two members present in person.
15. An Annual General Meeting of the Company may be convened by giving not less than 21 days notice in writing. All other General Meeting may be convened by giving not less than 7 days notice in writing.
16. The provision of Sections 98 to 109 of the Companies Act, 2013, shall not apply to this Company. The proxy shall be a member of this Company.
17. Until and otherwise determined at a general meeting the number of Directors shall be not less than two and not more than twelve including all kinds of Directors.
18. A Director of the Company shall not be required to hold any qualification share.
19. The Chairman for each meeting shall be appointed amongst the Directors to conduct the proceedings of the meeting.
20. The Board of Directors shall have power to appoint additional Directors, as per the provisions of Section 161 of the Act or by any statutory modifications thereof.
21. No Director shall be disqualified from his office by contracting with the Company nor shall such contract entered into by or on behalf of the company in which any Director is in any way interested, nor shall any Director so contracting or being so interested be liable to account to the company any profit realized by any such contract by reason only of such Directors holding such office or of that fiduciary relationship.
22. All acts done by the Directors or by a Committee of Directors or by any person acting as Director shall notwithstanding that if be afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed.
23. The power and responsibilities of the Board of Directors of the Company shall be as laid down in the Companies Act, 2013 thereof.
24. Subject to the provisions contained in Section 174 of the Act, the quorum for a meeting shall be one third of its total strength (any fraction contained in that one third being rounded off as one) or two directors whichever is higher.
25. The Board of Directors may, from time to time secure the payment of such money in such manner and upon such terms and conditions in all respects as they think fit.

26. The Company in general meeting may declare Dividends but no Dividends shall exceed the amount recommended by the Board.
27. The Board from time to time pays to members such interim dividends as appeared to it be justified by the profits of the Company.
28. The Company in general meeting may, upon the recommendations of the Board, resolve to capitalize any part of the amount for the time being standing to the credit of any of the company's reserve accounts or to the credit of the profit and loss account or otherwise available for distribution and to apply the same for paying up any amounts for the time being.
29. The Board may deduct from any dividend payable to any member of all sums of money, if any, payable by him to the company on account of calls or otherwise in relation to shares of the company.
30. The Seal of the Company shall not be affixed to any instrument except by the authority of a resolution of the Board or a Committee of the Board authorized in that behalf.
31. Every Director, Manager and other officers and Auditors of the company or their respective heirs, administrators or Executors shall be indemnified by the company against all actions, costs, losses, expenses which they or any of them or any of their heirs, Administrators or executors may incur or become liable to by reason of any contract entered into or at or thing done by him.

We, the several persons whose names, addresses and descriptions are subscribed hereunder are desirous of being formed into a company, in pursuance of this Articles of Association.

SL.No.	Names, Address and Occupations of	No. of shares Taken by each Subscriber	Signature of the Subscriber	Names, Address Description and Occupations of Witnesses

DatedThis Day ofat.....

12. CERTIFICATE OF INCORPORATION



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Registrar of Companies, Delhi
4th Floor, IFCI Tower, 61, Nehru Place

Certificate of Incorporation

[Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 of the Companies (Incorporation) Rules, 2014]

I hereby certify that _____ PRIVATE LIMITED is incorporated on this Eleventh day of December Two Thousand _____ under the Companies Act, 2013 and that the company is limited by shares.

The CIN of the company is _____

Given under my hand at Deth this Eleventh day of December Two Thousand _____

SD/

Assistant Registrar of Companies, Delhi

Mailing Address as per record available in Registrar of Companies Office:

_____ PRIVATE LIMITED

_____ NEW DELHI 1100 _____

Delhi, INDIA