

# 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.

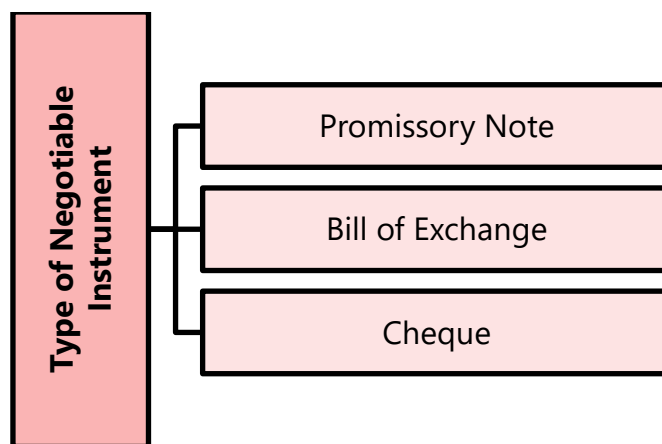


## 1. MEANING OF NEGOTIABLE INSTRUMENTS

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

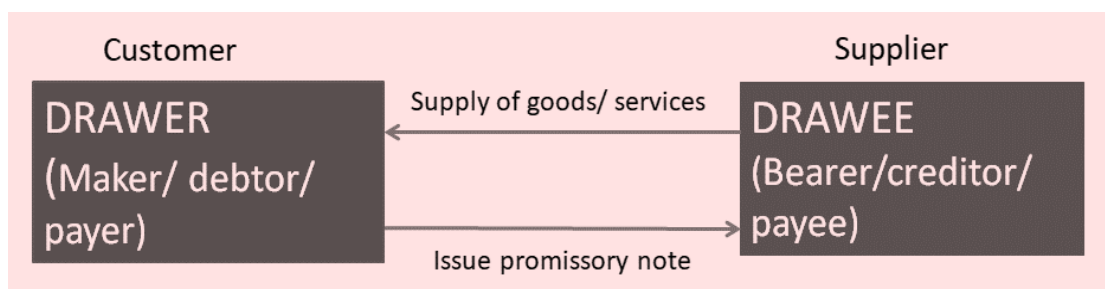
According to section 4 of the NI Act, 1881, "A 'promissory note' is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument."

**Specimen of Promissory note**

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

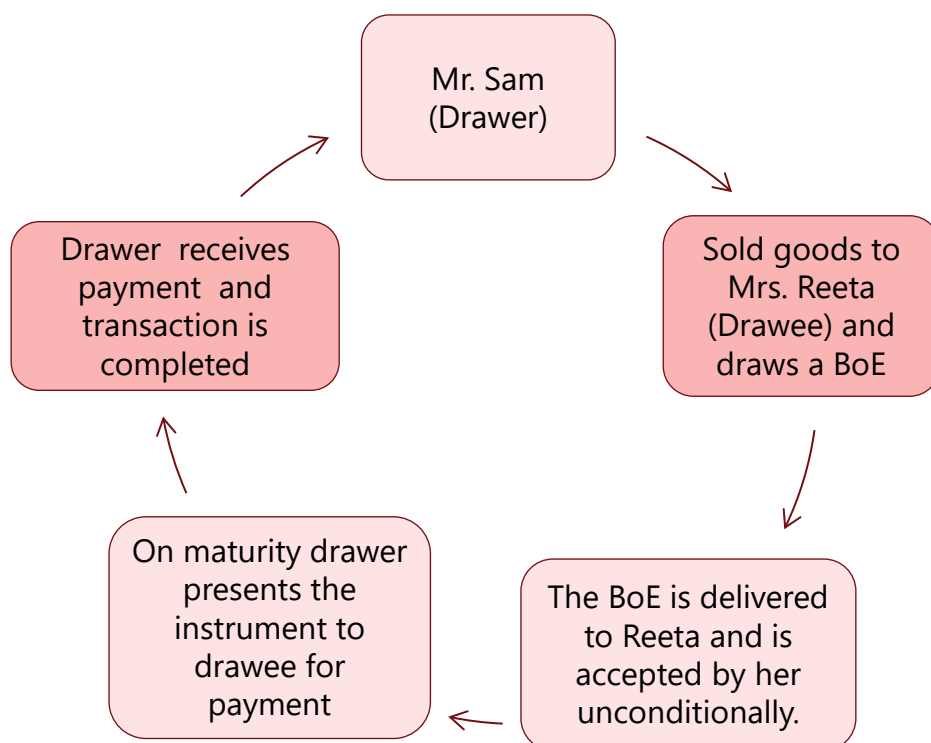
**Example 9:** "On demand pay to the bearer the sum of rupees five hundred, for value received." It is invalid BOE.

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.)

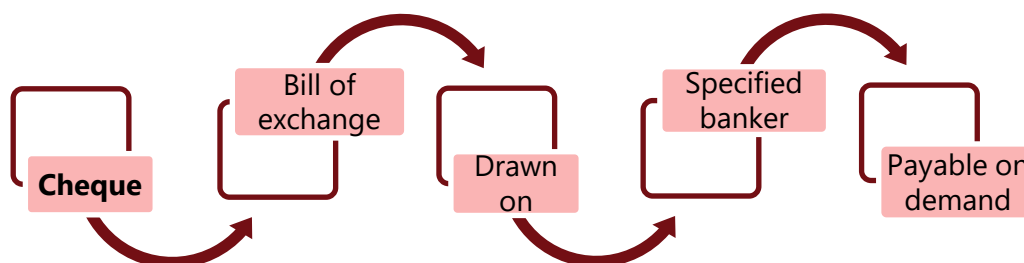
### Difference between promissory note and bill of exchange

S.no	Basis	Promissory Note	Bill of Exchange
1.	<b>Definition</b>	"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.	<b>Nature of Instrument</b>	In a promissory note, there is a promise to pay money.	In a bill of exchange, there is an order for making payment.
3.	<b>Parties</b>	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.	<b>Acceptance</b>	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.	<b>Payable to bearer</b>	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

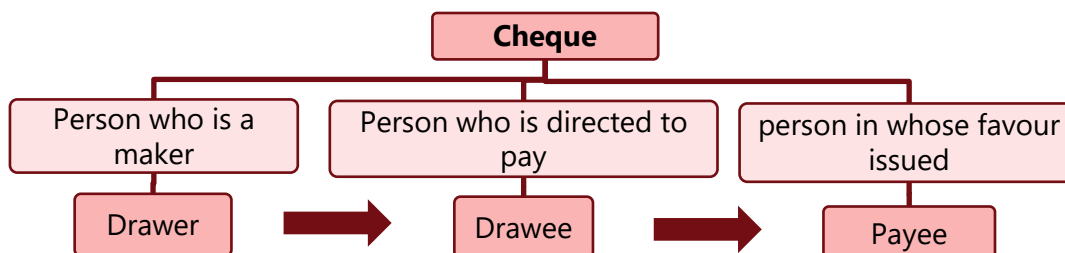
Pay ..... a sum of Rupees..... ₹ A/C No. 12345678910  ABC Bank 622, Vijay Nagar, Indore (M. P.)	Date:.....       Signature
01212 1125864 000053 38	

### 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.



#### Bearer Instrument

- name of the payee is blank or
- name of payee is specified with the words “or bearer” or
- the last indorsement is blank
- negotiated by mere delivery



#### Order Instrument

- payable to a person, or
- Payable to a person / his order, or
- Payable to order of a person, or
- the last indorsement is in full,
- 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.

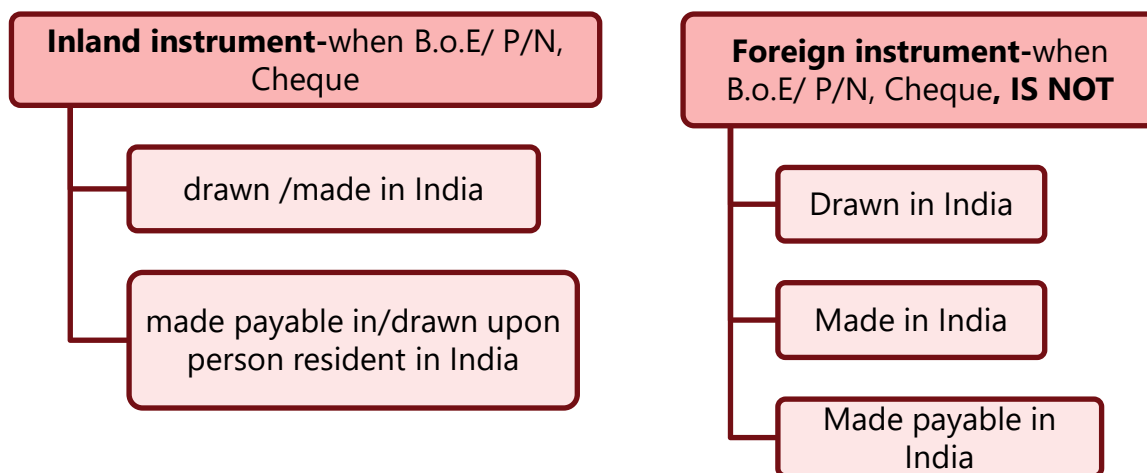
In other words, can be understood as follows:

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.

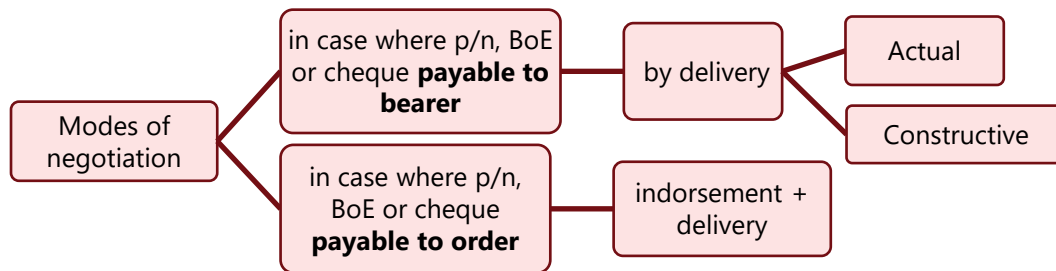


## 6. NEGOTIATION (TRANSFER) OF NEGOTIABLE INSTRUMENTS

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)<sup>1</sup>

**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.

<sup>1</sup> 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;

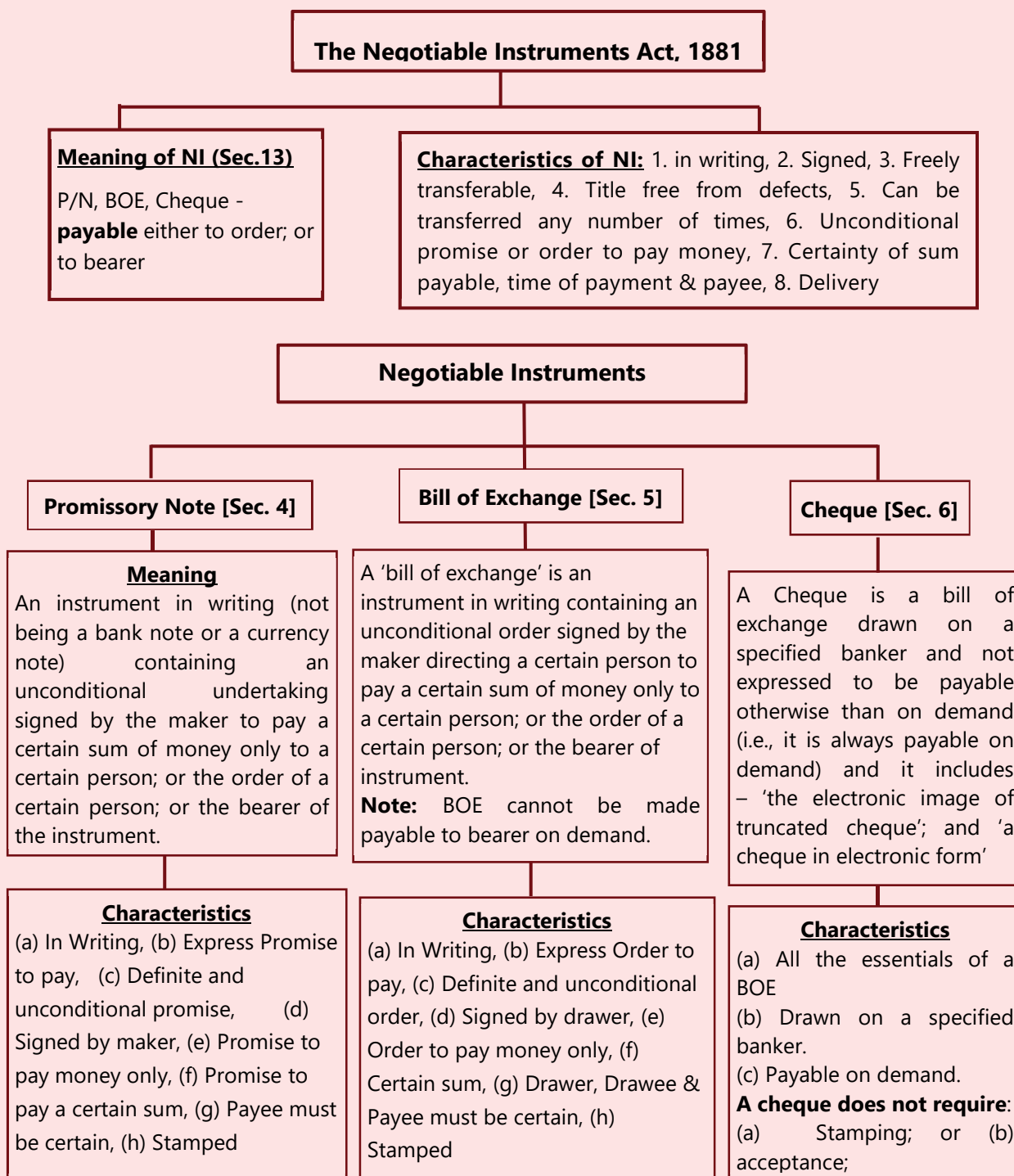
- (d) when the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, 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.

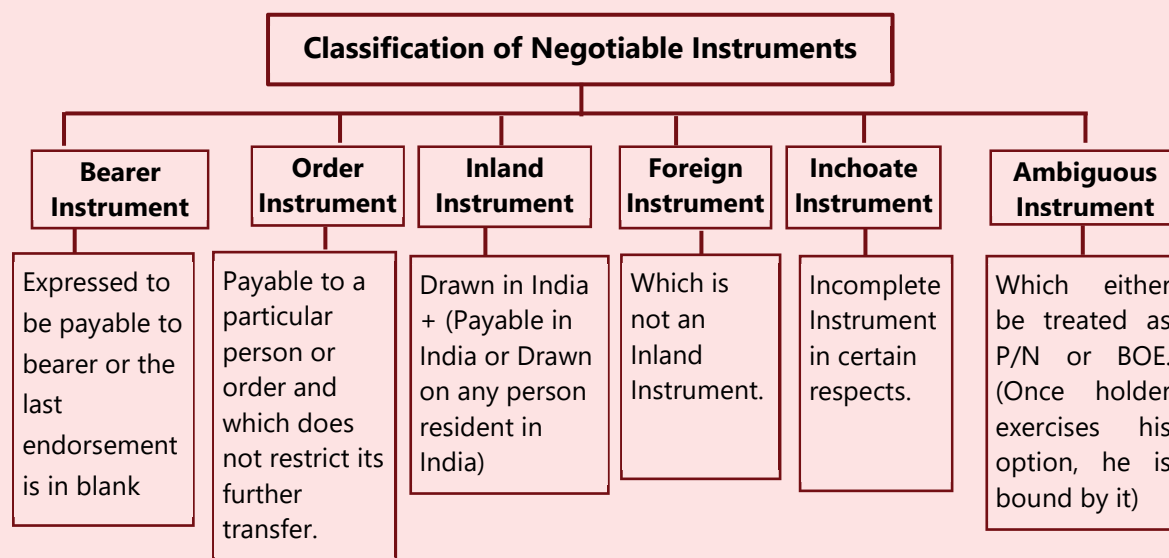
## SUMMARY

- ◆ 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)**

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

**Presentment of Promissory Note for sight**

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

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

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

## 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.

# NOTES

[illegible]



