INTRODUCTION

The Negotiable Instruments Act was enacted, in India, in 1881. Prior to its enactment, the provision of the English Negotiable Instrument Act was applicable in India, and the present Act is also based on the English Act with certain modifications. It extends to the whole of India except the State of Jammu and Kashmir. The Act operates subject to the provisions of Sections 31 and 32 of the Reserve Bank of India Act, 1934. Section 31 of the Reserve Bank of India Act provides that no person in India other than the Bank or as expressly authorized by this Act, the Central Government shall draw, accept, make or issue any bill of exchange, hundi, promissory note or engagement for the payment of 3 money payable to bearer on demand. This Section further provides that no one except the RBI or the Central Government can make or issue a promissory note expressed to be payable or demand or after a certain time. Section 32 of the Reserve Bank of India Act makes issue of such bills or notes punishable with fine which may extend to the amount of the instrument.

The effect or the consequences of these provisions are:

1. A promissory note cannot be made payable to the bearer, no matter whether it is payable on demand or after a certain time.

2. A bill of exchange cannot be made payable to the bearer on demand though it can be made payable to the bearer after a certain time.

3. But a cheque {though a bill of exchange} payable to bearer or demand can be drawn on a person's account with a banker.

MEANING

According to Section 13 (a) of the Act, "Negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer, whether the word "order" or "bearer" appear on the instrument or not."

In the words of Justice, Willis, "A negotiable instrument is one, the property in which is acquired by anyone who takes it bonafide and for value notwithstanding any defects of the title in the person from whom he took it".

Thus, the term, negotiable instrument means a written document which creates a right in favour of some person and which is freely transferable. Although the Act mentions only these three instruments (such as a promissory note, a bill of exchange and cheque), it does not exclude the possibility of adding any other instrument which satisfies the following two conditions of negotiability:

1. The instrument should be freely transferable (by delivery or by endorsement. and delivery) by the custom of the trade; and

2. The person who obtains it in good faith and for value should get it free from all defects, and be entitled to recover the money of the instrument in his own name.

As such, documents like share warrants payable to bearer, debentures payable to bearer and dividend warrants are negotiable instruments. But the money orders and postal orders, deposit receipts, share certificates, bill of lading, dock warrant, etc. are not negotiable instruments. Although they are transferable by delivery and endorsements, yet they are not able to give better title to the bonafide transferee for value than what the transferor has.

CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT

A negotiable instrument has the following characteristics:

1. **Property**: The prossessor of the negotiable instrument is presumed to be the owner of the property contained therein. A negotiable instrument does not merely give possession of the instrument but right to property also. The property in a negotiable instrument can be transferred without any formality. In the case of bearer instrument, the property passes by mere delivery to the transferee. In the case of an order instrument, endorsement and delivery are required for the transfer of property.

2. **Title**: The transferee of a negotiable instrument is known as ‘holder in due course.’ A bona fide transferee for value is not affected by any defect of title on the part of the transferor or of any of the previous holders of the instrument.

3. **Rights**: The transferee of the negotiable instrument can sue in his own name, in case of dishonour. A negotiable instrument can be transferred any number of times till it is at maturity. The holder of the instrument need not give notice of transfer to the party liable on the instrument to pay

4. **Presumptions**: Certain presumptions apply to all negotiable instruments e.g., a presumption that consideration has been paid under it. It is not necessary to write in a promissory note the words ‘for value received’ or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.

5. **Prompt payment**: A negotiable instrument enables the holder to expect prompt payment because a dishonour means the ruin of the credit of all persons who are parties to the instrument.

6. **Easy Transferability-** A negotiable instrument is freely transferable. Usually, when we transfer any property to somebody, we are required to make a transfer deed, get it registered, pay stamp duty, etc. But, such formalities are not required while transferring a negotiable instrument. The ownership is changed by mere delivery (when payable to the bearer) or by valid endorsement and delivery (when payable to order). Further, while transferring it is also not required to give a notice to the previous holder.

7. **Must be in writing-** A negotiable instrument must be in writing. This includes handwriting, typing, computer printout and engraving, etc.

8. **Unconditional Order-** In every negotiable instrument there must be an unconditional order or promise for payment.

9. **The time of payment must be certain-** It means that the instrument must be payable at a time which is certain to arrive. If the time is mentioned as 'when convenient' it is not a negotiable instrument. However, if the time of payment is linked to the death of a person, it is nevertheless a negotiable instrument as death is certain, though the time thereof is not.

10. **The payee must be a certain person-** It means that the person in whose favor the instrument is made must be named or described with reasonable certainty. The term 'person' includes individual, body corporate, trade unions, even secretary, director or chairman of an institution. The payee can also be more than one person.

11. **Signature-** A negotiable instrument must bear the signature of its maker. Without the signature of the drawer or the maker, the instrument shall not be a valid one.

12. **Delivery-** Delivery of the instrument is essential. Any negotiable instrument like a cheque or a promissory note is not complete till it is delivered to its payee. For example, you may issue a cheque in your brother's name but it is not a negotiable instrument till it is given to your brother.

13. **Stamping-** Stamping of Bills of Exchange and Promissory Notes is mandatory. This is required as per the Indian Stamp Act, 1899. The value of stamp depends upon the value of the pronote or bill and the time of their payment.

14. **Right of file suit-** The transferee of a negotiable instrument is entitled to file a suit in his own name for enforcing any right or claim on the basis of the instrument.

15. **Notice of transfer-** It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay.

16. **Procedure for suits-** In India a special procedure is provided for suits on promissory notes and bills of exchange.

17. **Number of transfer-** These instruments can be transferred indefinitely till they are at maturity.

18. **Rule of evidence-** These instruments are in writing and signed by the parties, they are used as evidence of the fact of indebtness because they have special rules of evidence.

19. **Exchange-** These instruments relate to payment of certain money in legal tender, they are considered as substitutes for money and are accepted in exchange off goods because cash can be obtained at any moment by paying a small commission.