

THE NEGOTIABLE INSTRUMENT ACT 1881 (MARKS 10)

PREPARED FOR SEM. 1
BY PROF AO & JD

Concept of Negotiable Instrument

Negotiable means 'transferable by delivery,' and the word **instrument** means 'a written document by which a right is created in favour of some person.'

The term “**negotiable instrument**” literally means ‘a written document which creates a right in favour of somebody and is freely transferable by delivery.’

A negotiable instrument is a piece of paper which entitles a person to a certain sum of money and which is transferable from one to another person by a delivery or by endorsement and delivery.

FEATURES OF NEGOTIABLE INSTRUMENTS

EASY TRANSFERABILITY: freely transferable. The ownership is changed by mere delivery (when payable to the bearer) or valid endorsement and delivery (when payable to order). Further, while transferring, it is also not required to give a notice to the previous holder.

TITLE: Absolute and good title on the transferee. The title of the receiver will be absolute, only if he got the instrument in good faith and for a consideration. Also the receiver should have no knowledge of the previous holder having any defect in his title(holder in due course)

MUST BE IN WRITING: this includes handwriting, typing, computer print out and engraving (design).

UNCONDITIONAL ORDER or Promise for payment.

PAYMENT: involve payment of a certain sum of money only and nothing else. [cannot make on assets, securities or goods.

TIME OF PAYMENT: certain to arrive. “When convenient” or linked to the death of a person is nevertheless negotiable instrument.

THE PAYEE MUST BE A PERSON: the person must be named or described with reasonable certainty. The payee can also be more than one person.

SIGNATURE: must bear the signature of its maker.

DELIVERY: not completed till it is delivered to its payee.

STAMPING: for Bill 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 promissory note or bill and the time of their payment.

RULE OF EVIDENCE: used as evidence of the fact of indebtedness because they have special rules of evidence.

RIGHT TO 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.

NOTICE OF TRANSFER: not necessary to give to the party liable to pay.

PRESUMPTIONS: Sec 118 and 119 of NI act lay down certain presumptions which court presumes in regards of NI. Like Consideration, date, time of acceptance etc.

PROCEDURE FOR SUITS: special procedure for bills of exchange and promissory notes.

NUMBER OF TRANSFER: transferred indefinitely till they are at maturity.

POPULARITY: very much popular in commercial transactions because of their easy negotiability and quick remedies.

EXCHANGE: these instrument related to payment of certain money in legal tender. They are considered as substitutes for money and are accepted in exchange off goods.

Kinds of Negotiable Instrument

There are many kinds of negotiable instrument but act has taken a specific account of only 3 of these. They are-

1. Promissory note- it is a negotiable instrument which contains an unconditional promise by one person to pay a certain sum of money to another person.
2. Bill of exchange- it is a negotiable instrument which contains an order directing a certain person to pay a certain sum of money to the bearer of the instrument or to a specified person.
3. Cheque- it is a negotiable instrument which contains an unconditional order to a specified banker to pay a certain sum of money to the bearer of instrument or to a specified person.

By: Akanksha Bansal

TYPES OF NEGOTIABLE INSTRUMENTS

NEGOTIABLE BY STATUTE (LAW)

→ Promissory Notes

→ Bills of exchange

→ Cheques

INSTRUMENT NOT CONSIDERED AS NEGOTIABLE INSTRUMENTS

❑ ***Money order***

❑ ***Postal order***

❑ ***Share certificate***

❑ ***Bill of lading***

❑ ***Dock warrant ect***

NEGOTIABLE BY CUSTOM OR USAGE

→ Treasury bill

→ Bank notes

→ Draft

→ Railways receipts for goods

→ Order of delivery

→ Dividend warrant

MUST BE IN WRITING

**MUST CERTAINLY AN
EXPRESS PROMISE**

MUST BE UNCONDITIONAL

SIGNED BY THE MAKER

MUST BE CERTAIN SUM

PAYEE MUST BE CERTAIN

**PROMISE SHOULD BE TO
PAY MONEY & MONEY ONLY**

AMOUNT SHOULD BE CERTAIN

CHARACTERIS- TICS OF A PROMISSORY NOTE



**CHARACTERISTICS OF A
BILL OF
EXCHANGE**



In writing

Express order to pay

Unconditional order

Pay certain sum

Pay money only

Certain three parties

Signed by the drawer

CHARACTERIS- TICS OF A CHEQUE



IN WRITING

EXPRESS ORDER TO PAY

DEFINITE AND UNCONDITIONAL

SIGNED BY THE DRAWER

ORDER MUST BE CERTAIN SUM

PAY MONEY ONLY

CERTAIN THREE PARTIES

DRAWN UPON A SPECIFIED
BANKER

PAYABLE ON DEMAND

TYPE OF CHEQUES

Bearer cheque	Crossed cheque
<p>PAY <u>Daniel Traders</u> Date <u>24.04.15</u> OR BEARER</p> <p>RUPEES <u>One Thousand Dollars only</u> \$ 1000</p> <p>A/C No. <u>18523000000000</u> SB A/C RDB BANK LTD 007 FL Road, 9th Street, Windsor - 50212, New York RTGS/NEFT/PSC : RDBL00007823</p> <p>Eric</p>	<p>PAY <u>Daniel Traders</u> Date <u>26.04.15</u> OR BEARER</p> <p>RUPEES <u>Two Hundred Fifty Dollars only</u> \$ 250</p> <p>A/C No. <u>15881000000000</u> SB A/C ABC BANK LTD 100 FL Road, 7th Street, Manhattan - 60212, New York RTGS/NEFT/PSC : ABC100001588</p> <p>Crystal</p>
Order cheque	A/C payee cheque
<p>PAY <u>Daniel Traders</u> Date <u>1.05.15</u> OR BEARER</p> <p>RUPEES <u>Two Thousand Dollars only</u> \$ 2000</p> <p>A/C No. <u>18523000000000</u> SB A/C RDB BANK LTD 007 FL Road, 9th Street, Windsor - 50212, New York RTGS/NEFT/PSC : RDBL00007823</p> <p>Eric</p>	<p>PAY <u>Daniel Traders</u> Date <u>10.04.15</u> OR BEARER</p> <p>RUPEES <u>Five Hundred Dollars only</u> \$ 500</p> <p>A/C No. <u>25157000000000</u> SB A/C XYZ BANK LTD 100 FL Road, 7th Street, Johannesburg - 50212, New York RTGS/NEFT/PSC : XYZ100007834</p> <p>Harry Traders</p>

POINTS OF DIFFERENCE BETWEEN

CHEQUE

BILL OF EXCHANGE

CHEQUE	BILL OF EXCHANGE
<ol style="list-style-type: none"> 1. The drawee of a cheque is always a bank. 2. Cheque is payable on demand, without any days of grace. 3. Cheque requires no acceptance. 4. Drawer of cheque is not discharged by failure of the holder to present it in due time. 5. Notice of dishonour is not necessary in the case of V cheques. 6. Cheques need not be protested for dishonour. 7. Cheques can be crossed. 8. In certain circumstances statutory protection is available to the draweebanker in connection with payment of cheques. 9. Under certain circumstances, statutory protection is available to the collecting banker against liability for conversion of crossed cheques. 	<ol style="list-style-type: none"> 1. Anyone can be a drawee in the case of a bill of exchange. 2. Bill of exchange is entitled to three days of grace. 3. Bill of exchange requires acceptance. 4. If bill of exchange is not presented for payment in due time, drawer is discharged. 5. Notice of dishonour is necessary in the case of bills of exchange. 6. It is advisable that bills of exchange be protested for dishonour. 7. Bills of exchange cannot be crossed. 8. No such protection is available to the drawee or acceptor of a bill of exchange. 9. No such protection is available in the case of bills of exchange.

Meaning of Endorsement

- When a maker or holder writes the person's name on the face or back of the instrument & puts his signatures thereto for the purpose of negotiation, it is called 'endorsement'.
- Person who signs – endorser
- To whom it is endorsed – endorsee.
- A legal term that refers to the signing of a document which allows for the legal transfer of a negotiable from one party to another.
- When an employer signs a check, they are endorsing the transfer of money from the business accounts to the account of the employee.

BLANK OR GENERAL

SPECIAL OR FULL

PARTIAL

RESTRICTIVE

**CONDITIONAL OR
QUALIFIED**

TYPES OF ENDORSEMENT

Difference between Holder and HDC

BASIS FOR COMPARISON	HOLDER	HOLDER IN DUE COURSE (HDC)
Meaning	A holder is a person who legally obtains the negotiable instrument, with his name entitled on it, to receive the payment from the parties liable.	A holder in due course (HDC) is a person who acquires the negotiable instrument bonafide for some consideration, whose payment is still due.
Consideration	Not necessary	Necessary
Right to sue	A holder cannot sue all prior parties.	A holder in due course can sue all prior parties.
Good faith	The instrument may or may not be obtained in good faith.	The instrument must be obtained in good faith.
Privileges	Comparatively less	More
Maturity	A person can become holder, before or after the maturity of the negotiable instrument.	A person can become holder in due course, only before the maturity of negotiable instrument.

Privileges of a holder in due course

1. Inchoate stamped instrument.

a person who has signed and delivered to another a stamped but otherwise inchoate instrument, is precluded from asserting, as against a holder in due course, that the instrument has not been filled in accordance with the authority given by him, the stamp being sufficient to cover the amount.

2. Liability of prior parties

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

DISHONOUR OF NEGOTIABLE INSTRUMENTS

- Dishonour means failure to honour a negotiable instrument.
- Mode of Dishonor
 - (i) By Non-Acceptance [Section 91] (only in case of a bill of exchange) or
 - (ii) Non-payment [Section 92]

Dishonour by non-acceptance [Section 91]: A bill is said to be dishonoured by non-acceptance in the following ways:

- (1) When it is presented to the drawee for acceptance and he does not accept it within 48 hours from the time of presentment for acceptance.
- (2) When the drawee is incompetent to contract
- (3) When presentment for acceptance is excused and the bill is not accepted
- (4) When drawee is a fictitious person or after reasonable search cannot be found.
- (5) When the acceptance is a qualified acceptance
- (6) When one of several drawer not being partner makes default in acceptance on being duly required to do so.

Dishonour by non payment (Section 92)

If the acceptor fails to make payment when it is due, the bill is dishonoured by non-payment. In the case of promissory note if the maker fails to make payment on the due date the note is dishonoured by non-payment. A cheque is dishonoured by non-payment as soon as a banker refuses to pay.

Effect of dishonour. When a negotiable instrument is dishonoured either by non acceptance or by non-payment, the other parties thereto can be charged with liability.

NOTICE OF DISHONOUR

Meaning: Notice of dishonor means formal communication of the fact of dishonor. It is given to the party sought to be made liable and therefore it serves as a warning to the person to whom the notice is given that he could now be made liable.

Notice of dishonor has got following points:

- Notice of dishonor means formal communication of the fact of dishonor.
- Such a notice also serve the purpose of enabling the person so notified to protect himself against the prior parties.

Notice by Whom: notice of dishonor to all the prior party whom he wants to make liable on the instrument.

Mode of notice: The notice of dishonor may be oral or written or partly oral and partly written. It may be sent by post.

Duties of the holder upon dishonor

1. **Notice of dishonor:** notice of dishonor to all the parties to the instrument whom he seeks to make liable thereon. [section 93]
2. **Noting and protesting :** when a promissory note or bill of exchange has been dishonour by non-acceptance or non-payment , the holder may cause such dishonor to be noted by a notary public upon the instrument or upon a paper attached thereto or partly upon each [section 99].
The holder may also within a reasonable time of the dishonor of the notice or bill, get the instrument protested by notary public [section 100]
3. **Suit for money :** after the formality of noting and protesting is done, the holder may bring a suit against the parties liable for the recovery of the amount due on the instrument.

Noting [section 99]

Noting should be made by the notary within a reasonable time after dishonor. Noting and protesting are not compulsory but foreign bills must be protested for dishonor when such protest is required by the law of the place where they are drawn.

Noting should specify in the instrument----

- (a) The fact of dishonor
- (b) The date of dishonor
- (c) The reason for such dishonor. If any
- (d) The notary's charges
- (e) A reference to the notary's register and
- (f) The notary's initials

Protesting [section 100]

Protest is a formal certificate of the notary public attesting the dishonor of the bill by non-acceptance or by non-payment.

The protest must contain the following particulars:

1. The instrument itself or a literal transcripts of the instrument and of everything written or printed thereupon
2. The name of the person for whom and against whom the instrument has been protested.
3. The fact and reason for dishonor, i.e., a statement that payment or acceptance, or better security, as the case may be , was demanded by the notary public from the person concerned and he refused to give it or did not answer, or that he could not be found.
4. The place and time of dishonor
5. The signature of the Notary Public.
6. In the case of acceptance for honour or payment for honour, the name of the persons by whom and for whom it is accepted or paid.

DISCHARGE OF NEGOTIABLE INSTRUMENTS

Definition: A negotiable instrument is said to be discharged when it becomes completely useless, i.e., no action on that lie, and it cannot be negotiated further. After a negotiable instrument is discharged the rights against all the parties thereto comes to an end and no party, even a holder in due course, can claim the amount of the instrument from any party thereto. Discharge of the party primarily and ultimately liable on the instrument results in the discharge of the instrument itself.

MODE OF DISCHARGE

- ➔ BY PAYMENT IN DUE COURSE
- ➔ BY PARTY PRIMARILY LIABLE BY BECOMING HOLDER [SECTION 90]
- ➔ BY EXPRESS WAIVER
- ➔ BY CANCELLATION
- ➔ BY DISCHARGE AS A SIMPLE CONTRACT

Thank you