

CHAPTER NEGOTIABLE INSTRUMENTS ACT, 1881

CHAPTER AT A GLANCE

Introduction:

- Businessmen have a common practice of making use of certain documents for making payments.
- Such documents are known as negotiable instruments.
- The law relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881.
- The Act recognizes only three types of instruments:
 - (a) Promissory notes
 - (b) Bills of exchange
 - (c) Cheques
- Accepting payments through them is risky as it involves deferred payments.
- It is the law of commercial world.
- It was enacted to facilitate the activities in trade and commerce.
- Its main purpose was to present an orderly and authoritative statement of the leading rules of law relating to negotiable instrument.
- It refers to an act to define and amend the law relating to promissory notes, bills of exchange and cheques.
- Act applies to whole of India and all persons resident in India.
- Its provisions are not applicable to Hundis and other native instruments.

Negotiable Instruments:

- It is an "instrument which is transferable, by delivery, like cash, and is also capable of being sued upon by the person holding for time being.
- As per the Section 13(1) of the Act,
"A negotiable instrument means a promissory note, bills of exchange, or cheque payable either to order or to bearer."

- **Conditions of Negotiability:**

- (i) It should be freely transferable.
- (ii) Defective title of transferor does not affect the title of person taking it for value and in good faith.
- (iii) Transferee can sue upon the instrument in his own name.

- **Negotiability Involves two Elements:**

- (i) Transferability free from equities.
- (ii) Transferability by delivery or endorsement.

Relevant Case Law:

- Mookerjee J. In Tailors Priya V. Gulab Chand

Effects of Negotiability:

- General principle of law says:
"Nemo Dat Quod Non-Habet" i.e. no one can pass a better title than he himself has.
- Negotiable instrument is an exception to above rule.
- Thus, a bonafide transferee of negotiable instrument without notice of any defect of title acquires a better title than that of transferor.

Characteristics:

- Holder is presumed to be the owner of the property contained therein.
- It is a written document.

- It should be signed.
- Payable to bearer or order.
- It is unconditional.
- It may be transferred by endorsement and delivery.
- Transferee obtains a good title.

These are freely transferable but can be transferred only till maturity and in case of cheque till it becomes stale (i.e. six months from the date of issue)

Classification:

- Bearer
- Order
- Inland
- Foreign
- Demand
- Time .
- Ambiguous
- Inchoate/Incomplete.

Bearer Instruments

- An instrument is payable to bearer which is expressed to be so payable.
- Words "Pay to bearer are expressed on it."
- It is also payable to bearer when the last endorsement on it is "an endorsement in blank."

Order Instruments

- An instrument is payable to order:-
- (i) When it is payable to the order of a specified person,
- (ii) When it is payable to specified person or his order,
- (iii) When it is payable to a specified person without the addition of words "or his order,"

And does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

Inland Instruments (Sec. 11)

- An instrument which is drawn or made in India and made payable in or drawn upon any person resident in India.
- Its protest for dishonour is optional.

Foreign Instruments

- Instruments which are not inland.
- It must be protested for dishonour if the place where these are drawn prescribes for such protest.

Demand Instruments (Sec. 19)

- It means "immediately payable."
- It may be presented for payment at any time at the holder's option but it must be presented within a reasonable time.
- These instruments do not specify any time for payment.

Time Instruments

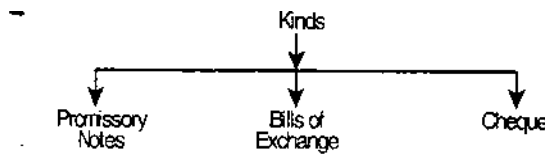
- It means, a promissory note after presentment for sight and a bill of exchange, after acceptance, noting for non-acceptance or protest for non-acceptance.

Ambiguous Instrument (Sec. 17)

- Instrument which can be construed either as a promissory note or as a bill of exchange.
- Such instrument's language is not clear.
- It may give rise to multiple interpretations.
- Once an instrument is treated as a bill or note, it cannot be treated differently thereafter.

Inchoate / Incomplete Instrument (Sec.20)

- Such instrument is signed but is incomplete in other aspects.
- Holder thus, gets a prima facie authority to make it complete for any amount specified therein, not exceeding the amount covered by stamp.
- Person signing and delivering it is liable to both holder and HDC.



Promissory Note

- As per **Sec.4** of the Act,

Promissory note is,

“an instrument in writing 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”.

Parties:

1. Maker — person making or executing it.
2. Payee — person to whom note is payable.
3. Holder — person to whom it is endorsed or the payee.
4. Endorser.
5. Endorsee.

Essentials:

1. It must be in writing.
2. The promise to pay must be unconditional.
3. The amount promised must be certain and a definite sum of money.
4. The instrument must be signed by the maker.
5. The person to whom promise is made must be a definite person.
6. It must contain an express promise or a clear undertaking to pay.
7. Payment must be in the legal money of the country.
8. It must be properly stamped as per the provisions of Indian Stamp Act.
9. Name of place, number and date on which it is made must be contained in it.
10. Should contain the sum payable which is certain and must not be capable of contingent additions or deletions.

Note:

- It cannot be made payable to bearer whether payable on demand or after certain time period.

Bill of Exchange

- As per **Sec. 5** of the Act,

Bill of exchange is,

“an instrument in writing containing an unconditional order, signed by a maker, directing a certain

person to pay a certain sum of money only to or to the order of, certain person or to the bearer of the instrument.”

• **Parties:**

1. **Drawer:** The party who draws a bill.
2. **Drawee:** The party on whom such bill is drawn.
3. **Acceptor:** The drawee of the bill who has signified his assent to the drawer's order.
4. **Payee:** The party to whom or to whose order, the amount of bill is payable.
5. **Endorser:** The party who endorses the bill.
6. **Endorsee:** The party to whom it is endorsed.
7. **Holder:** Person entitled in his own name to the possession of bill and to receive or recover the amount due thereon from the parties.
8. **Drawee in Case of need:** When in the bill, the person whose name is entered, in addition to the drawee, to be resorted to in case of need.
9. **Acceptor for Honour:** Person who offers better security for safeguarding the honour of drawer or any endorser, accepts the bill.

• **Essentials:**

1. It must be in writing.
2. There must be an order to pay.
3. The order must be unconditional.
4. The drawee must sign the instrument.
5. The drawer, drawee and payee must be specified in the instrument.
6. The sum must be certain.
7. The medium of payment must be money and money only.

Differences between Promissory Note and Bill of Exchange

	Promissory Note	Bill of Exchange
1.	It contains a promise to pay.	It contains an order to pay.
2.	Makers liability is primary and absolute.	Drawers liability is secondary and conditional.
3.	It consists of 2 parties.	It consists of 3 parties.
4.	It cannot be made payable to bearer.	It can be made payable to bearer.
5.	Position of issuer is like a debtor.	Position of issuer is like a creditor.
6.	Cannot be made payable to maker himself.	Drawer and payee or drawee and payee may be the same person.
7.	No formalities of acceptance required.	It must be formally accepted to be a valid instrument.
8.	No notice of dishonour is required to be given.	Drawer must get notice of dishonour.

Types of bills:

- (a) **Inland bills:** Bills drawn in India for any person in India.
- (b) **Foreign bills:** Bills which are not inland bills. Foreign Bill is drawn in sets of three copies.
- (c) **Trade bills:** Bills issued for trade settlements.
- (d) **Accommodation bills:** Also known as kite bills, these are used for mutual help. An accommodation bill is a bill which is drawn, accepted or endorsed without any consideration.

Cheque:

- **As per Sec. 6 of Act,**

“Cheque is a special type of bills of exchange which is always -

- (i) Drawn upon a specified bank and
- (ii) Payable on demand.

It also includes electronic image of truncated cheque or cheque in an electronic form.”

- **“A Cheque in the Electronic form”** means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signatures and asymmetric crypto system.

- **“A Truncated Cheque”** means a cheque which is truncated during the course of clearing cycle, either by clearing house or by bank, preventing the further physical movement of cheque.

- **“Clearing House”** refers to the clearing house managed or recognised by RBI.

- It is a kind of bill of exchange, thus must satisfy all requirements of a bill.

Note: No bill of exchange or hundi except cheque can be made payable - to bearer on demand.

Parties:

All are same as that of B/E, except drawee who is a banker.

- **Essentials:**

1. It is always paid on demand.
2. It is drawn on a specified banker.
3. It does not requires acceptance.
4. It may be payable to drawer himself or to bearer on demand.
5. It is usually valid for 6 months.
6. It can be drawn on a bank where drawer has an account.
7. No stamp is required.
8. Banker is only liable to drawer.

Differences between Cheque and Bill of Exchange

	Bill of Exchange	Cheque
1.	Any person can become a drawee.	Only bank can be a drawee.
2.	Three days of grace are allowed.	No days of grace are allowed.
3.	Notice of dishonour is usually required.	No notice of dishonour is required.
4.	It can never be made payable to bearer on demand.	It can be drawn to bearer and made payable on demand.
5.	It sometimes require presentment for acceptance.	It is not necessary to present it for acceptance.
6.	It must be adequately stamped.	It is never required to be stamped.
7.	It cannot be crossed.	It can be crossed.
8.	It cannot be countermanded.	It can be countermanded anytime

Note: All cheques are B/E but all bills are not cheques.

Banker:

- Person doing the banking work.
- As per **Sec.5(b)** of the Banking Regulation Act, 1949.

Banking refers to,

“Accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft or otherwise.”

Customer:

- Person who has an account with the bank or who utilises the bank services.

Rights & Obligations of Banker:

- Honour customer's cheques.
- Collect cheques and drafts on customer's behalf.
- Keep proper record of transactions with customers.
- Not to disclose customer's account status with anyone, etc.
- Give reasonable notice to the customer before closing his account.
- Right to claim incidental charges as per the rules of bank.
- Obligation to comply with the express standing instructions of the customer.
- Right of set off and right of appropriation.

Liabilities of Banker:

- Liable to the customer to the extent of amount of the account opened.
- Liable to honour customer's cheques to the extent of amount in his account.
- Liable to compensate the drawer for any loss or damage suffered if he fails to honour cheques without justification.
- Liable to maintain proper and accurate accounts of credits and debits.
- Liable to honour cheque presented in due course.

Cases when Banker must refuse Payment:

- Banker receives notice of customer's insolvency or lunacy.
- When customer countermands payment.
- If legal order from the court attaching or otherwise dealing with money in banker's hand is served on banker.
- Banker receives notice of customer's death.
- Customer gives notice to the banker to close the account.
- Customer gives notice of assignment of his credit balance.
- When the holder's title is defective and the banker comes to know of it. **Cases when the Banker may refuse Payment:**

- Cheque is post-dated.
- It is stale i.e. not presented for payment within a reasonable period. (6 months)
- It is inchoate or not free from reasonable doubt.
- It is post dated and presented before its ostensible period.
- If customer's fund in banker's hand are not properly applicable to the payment of cheque drawn by former.
- Where the cheque is presented at a branch other than the one where the customer has the account.
- It is not duly presented.
- It is mutilated.
- It is irregular or materially altered.
- Customer's signature does not agree with his specimen signatures.

Marking of Cheque:

- The cheque need not be presented for acceptance, thus the drawee of cheque i.e. banker is liable to his customer (drawer), if he wrongly refuses to honour the cheque. In such cases, action can be taken by the customer against the banker for the loss of his reputation.
- However if the cheque is marked or certified, “**Good for Payment**” by banker, it protects the person to whom it is issued against the cheque being refused for payment.
- This concept is not prevalent in India.

Crossing of Cheque:

- Cheque is either open or crossed. *

Open Cheque	Crossed Cheque
Can be presented by payee to the paying banker and is paid over the counter.	It is not paid over the counter but has to be collected through a banker.

- When two parallel lines are drawn on the upper left corner of cheque, it is known as crossing of cheque.
- It is a direction to the paying banker that the cheque should be paid only to a banker or a specified banker.
- It is done as a measure of safety.

Modes of Crossing:

- General Crossing
- Restrictive Crossing
- Special Crossing
- Not- negotiable Crossing;

General Crossing:

- When two parallel lines are drawn and nothing is specified in between them.
- Amount will be directly credited to account of payee.
- Payee cannot get money over the counter.
- It prevents the money from going in wrong hands.

Restrictive Crossing:

- When the words ‘**A/c Payee**’ are specified within the crossing.
- Cheque cannot be further negotiated.
- Collecting banker will be guilty of negligence if he credits the proceeds to account other than that of A/c payee.
- It does not affect the paying banker.

Special Crossing:

- When the name of a particular bank is specified between the crossed lines.
- Amount can be collected only by the bank whose name is specified.

Not - Negotiable Crossing

- When the words ‘not - negotiable’ is specified between the crossed lines.
- It enhances the safety as it ensures protection from any misappropriation.
- As per **Sec.130**,

“A person taking a cheque crossed generally or specially bearing in either case, with the words ‘not-negotiable’ shall not have and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.”

- It does not mean non - transferable.
- It provides protection to the drawer or holder of a cheque who wants to transfer it against dishonesty or actual miscarriage in the course of transit.

Note:

Crossing After Issue:

1. If cheque is not crossed, holder may cross it specially or generally.
2. If it is crossed generally, holder may cross it specially.
3. Holder may add the words 'not - negotiable.'
4. Banker to whom it is specially crossed may again cross it specially to another banker.

Protection of Paying Banker (Sec.85):

- When a cheque payable to order, purports to be endorsed by or on behalf of the payee, the banker is discharged by payment in due course.
- Banker is authorised to debit his customer's account with the amount so paid, even though the endorsement of payee turns out to be forged subsequently, or even if the endorsement may have been made by payee's agent without his authority.
- **Reason:** Banker is only bound to know the signature of his own customers.
- If the drawer's signature is forged, a banker remains liable to the drawer even if payment is made in due course and cannot debit the drawer's account.
- In case of crossed cheques, banker can debit the drawer's account so paid, even though the amount of cheque does not reaches the true owner.

Note: In case of both the crossed and uncrossed cheques, protection can be availed of if protection is made in due course.

Payment in due Course

- It means that payment is made:
 - (i) In accordance with the apparent tenor of the instrument.
 - (ii) In good faith.
 - (iii) Without negligence.
 - (iv) To any person in possession thereof.
 - (v) In money and money only.
- Banker making payment in due course is presumed to have made payment to the true owner of the cheque, though the amount may have not reached the true owner.

Opening of Crossing:

- A cheque once crossed need not remain forever. The drawer has a right to cancel the crossing by writing the words 'Pay Cash' and putting his full signature.

Collecting Banker:

- He is the one collecting the proceeds of a cheque for a customer.
- If banker collects the proceeds of a cheque for a customer, to which he has no title, true owner may sue the collecting banker for conversion.
- However, as per **Sec.131** of the Act,

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

- The banker's protection is lost if he becomes the holder for value.

Overdue/Stale/Out-of date cheques:

- Cheques becomes barred by statute after 3 years from its due date.
- It means that the holder cannot sue on that cheque after 3 years.
- It has to be presented within a reasonable time.
- In India, it is 6 months.

Endorser's Liability:

- It arises only if cheque is presented within a reasonable time of its delivery by that endorser.

Rights of Holder Against the Banker:

- Holder can enforce payment only in 2 cases:
 - (i) If holder does not presents the cheque within reasonable time after issue, thus the drawer suffers damage.
 - (ii) If banker makes payment of crossed cheque over the counter.

Holder (Sec.8):

- Person must be named in the instrument.
- It implies '**de jure**' i.e. holder in law and not '**de facto**' i.e. holder in fact.

Holder in Due Course (HDC) (Sec. 9):

- It means any person who obtains the instrument -
 - (i) Before maturity.
 - (ii) For some consideration.
 - (iii) In good faith.

Privileges of HDC:

- An inchoate instrument, if properly stamped, is valid, if it subsequently comes in hands of HDC.
- In case of inchoate instrument, HDC has a right to recover that much amount which is sufficiently covered by stamp.
- The acceptor of a bill of exchange cannot plead against a HDC that the bill is drawn in fictitious name.
- The person liable on an instrument cannot plead against HDC that the instrument has been lost or was obtained by means of fraud or unlawful means.
- No one can deny the original validity of the instrument.
- No one can deny against a HDC, the capacity of the payee to endorse.
- HDC can recover from all prior parties.
- No effect of conditional delivery.
- Once an instrument passes through hands of HDC, all its defects are removed.

Differences between Holder and HDC

	Holder	Holder in Due Course
1.	Acquires instrument without consideration.	Acquires instrument for consideration.
2.	Does not acquire a goods title.	Acquires a goods title.
3.	May acquire the instrument even after it has become due for payment.	Must acquire the instrument before the amount thereon becomes payable.
4.	He can enforce it against the person who has signed it and the transferor from whom he has obtained it.	He can sue all the prior parties until the instrument is duly satisfied.

Bank Draft:

- It is an order drawn by an office of a bank upon another office of same bank.
- It is different from cheque in following 3 ways:
 - (i) It cannot be easily counter mended.
 - (ii) It cannot be made payable to bearer.
 - (iii) It can be drawn only by one branch of bank upon another branch.

Material Alteration (Sec. 87):

- Any alteration made in the instrument which causes it to speak a different language from what it originally intended or which changes the legal identity of the instrument in its terms or in relation or parties there to is a material alteration.
- It alters the parties liabilities.
- It renders the instrument void.
- Persons taking the altered instrument after its alteration have no right to complain.
- However, as per **Sec.88**, an acceptor or endorser remains bound by his acceptance or endorsement.
- E.g.: Sum payable, interest rate, date of payment etc.
- Following cases do not result in material alteration:
 - (i) Alteration made with consent of parties before issue.
 - (ii) Crossing of cheque.
 - (iii) Adding words "on demand".
 - (iv) Correction of any mistake.
 - (v) Carrying out common intention of parties.

Conditions for Protection to a Person Paying an Altered Instrument:

- No apparent alteration.
- Payment must be made in due course.
- Payment must be made by a person or banker liable to pay.

Bouncing of Cheques:

- It means dishonour of cheques due to insufficiency of funds.

Capacities of Parties:

- It is co-extensive with capacity to contract.
- As per **Sec.26**,

"Every person capable of contracting according to law to which he is subject, may bind himself and be bound by making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque."

- Minors, lunatics, drunken person, idiots and other persons do not incur any liability as a party to negotiable instrument.
- However, liability of other competent parties continue.

Liability of Drawer (Sec. 30):

- Drawer's liability is conditional i.e. it arises only in the event of a dishonour by the drawee or acceptor.
- Pre-condition of the drawer's liability is that the-notice of dishonour should have been received by him.
- On dishonour by non - acceptance, followed by the notice, the drawer becomes liable immediately for the full amount of the bill. He cannot ask the holder to wait till the maturity.
- If holder chooses to wait till maturity before he sues the drawer, he does not require a fresh

cause of action by reason of its non - payment on the due date.

Liability of Drawee (Sec. 31):

- Drawee in case of cheque is always a banker.
- It is his duty to pay the cheque, provided (i) he has in his hands sufficient funds of the drawer, and (ii) funds are properly applicable to such payment.
- If he refuses payment without showing sufficient cause, he has to compensate the drawer for any loss caused by such refusal.
- Amount of compensation is measured by the loss of credit suffered by the drawer.
- **Principle is:**

“Lesser the value of cheque dishonoured, greater the damage to the credit of the drawer.”

Liability of Maker of Note and Acceptor of Bill (Sec. 32):

- His liability arises only when he accepts the bill.
- In absence of contract to contrary, he is bound to pay the amount at maturity as per the apparent tenor of this bill.
- If the bill is accepted after maturity, he is bound for the amount to the holder on demand.
- In default of such payment, he is bound to compensate any party to the bill for any loss or damage caused to him by such default.

Liability of Endorser (Sec. 35):

- By accepting and delivering it before maturity, he undertakes the responsibility that on the presentment it shall be accepted and paid.
- If it is dishonour by drawee, acceptor or maker, he will identify the holder or subsequent endorser who is compelled to pay, provided due notice of dishonour is received by him.
- However, he may make his liability conditional.

Liability of Prior Parties (Sec. 36):

- Every prior party is liable to HDC until the instrument is satisfied.
- This liability is joint and several.

Liability of Acceptor of Forged Endorsement (Sec. 41):

- Such acceptor is not relieved from his liability if he had the knowledge of such forged endorsement.

Liability inter se:

- Various parties to a negotiable instrument who are liable thereon stand on a different footing with the respect to the nature of liability of each Of them.

Acceptor's Liability on a Bill Drawn in a Fictitious Name:

- He remains liable to HDC.

Negotiation(Sec.14):

- When a negotiable instrument is transferred to a person, so as to make the person the holder of the instrument, the instrument is said to be negotiated. It may be by -

- (i) Mere Delivery,
- (ii) Endorsement and Delivery.

Assignment:

- It is a mode of transferring the instrument which requires a written document. Under this, the instrument is transferred like goods by deed that is under a contract.

Differences between Negotiation and Assignment

	Negotiation	Assignment
1.	Transferee acquires all the rights of a HDC.	Assignee does not acquire the rights of a HDC.
2.	Notice of transfer is not needed.	Notice of assignment must be served by assignee on his debtor.
3.	Consideration is presumed.	Consideration must be proved.
4.	Requires payment of stamp duty.	Does not require payment of stamp duty.
5.	Requires delivery only in case of bearer instrument or endorsement & delivery in case of order instrument.	Requires a document to be reduced into writing and signed by the transferor.

Mere Delivery:

- As per Sec. 46,

“Making acceptance or endorsement of instrument is not complete until delivery, actual or constructive, of the instrument.”

- It must be made voluntarily with the intention of passing property in the instrument to the person.
- Bill or cheque payable to bearer is negotiated by mere delivery.
- These do not require transferor's signature.

Bearer is not liable to any party if the instrument is dishonoured.

- He is only liable to his immediate transferee.
- Bearer cheque always remains bearer.

Endorsement and Delivery:

- It is required in instruments payable to a specified person or to the order of a specified person.

Transferee does not become the holder, unless the holder signs it, thus transferee does not get any right against HDC.

Endorsement (Sec. 15):

- It refers to “signing one's name on the negotiable instrument for the purpose of transferring it to another person.”
- If there is no space on the instrument, it may be made on a slip of paper attached to it known as “Allonge.”
- Endorsee is the person to whom the instrument is endorsed. Endorsement therefore means writing of something on the back of an instrument for the purpose of transferring the rights, title and interest to some other person.

Kinds of Endorsement:

- Blank/General
- Special/Full
- Restrictive
- Partial
- Conditional/Qualified.

Blank/General Endorsement:

- An endorsement without specifying the name of endorsee.
- It becomes payable to bearer.

Its holder may convert it into an endorsement in full by writing above endorser's signature, a direction to pay it to another person or his order

Special/Full Endorsement:

- An endorsement which specifies the name of the endorsee along with the endorser's signature.

Restrictive:

- It has the effect of restricting further negotiation and transfer.

Partial:

- Only a part of the amount payable on the instrument is transferable to the endorsee.

Conditional/Qualified:

- It combines an order to pay with condition.
- It limits or negatives the liability of the endorser,

. An endorser may limit his liability in any of the following ways:

1. Sans Recourse:

- It means "without liability."
- Endorser declines to accept the liability on the endorsement of any subsequent party.

2. Sans Frais:

- It means "without expense."

. It **implies that the holder** of the instrument is not liable to pay any legal cost incurred by him.

3. Facultative:

- These words are added when it is desired to waive certain rights.
- E.g: right to receive notice of dishonour.
- An instrument is said to have, negotiated back to him and he is said to have taken up or taken back the negotiable instrument when a person who has been a party to negotiable instrument takes it again.
- In such case, holder cannot recover the amount from intermediate parties i.e. parties between endorsee and holder but can recover only from immediate prior parties i.e. all parties prior to endorsee.
- This leads to circuity of action negotiation of lost instrument or the detained by unlawful means.
- Possessor or endorsee is not entitled to receive any amount due thereon from maker, acceptor or holder unless he is a HDC.

Forged Instrument:

In case of endorsement in full:

- Forgery conveys no title.
- . Endorsee acquires no title even though he is a purchaser for value and in good faith.
- Endorsement is a nullity.

In case of bearer instrument:

Holder can claim the amount from any of the parties to the instrument.

Acceptance of Bill of Exchange:

- It may be defined as the indication by the drawee of his assent to the drawer that he will pay the amount of bill on due date.
- Drawee has to write the words "**accepted**" on the face of the bill and sign his name underneath.
- Drawee becomes acceptor.
- Acceptor is primary liable on the bill.

Essentials of a Valid Acceptance:

- It must be written.
- It must be signed by the drawee.

. It must be on the bill (either face or back of the bill).

It must be completed by delivery or by notice of acceptance to holder or any person on his behalf.

It must be presented for acceptance within reasonable time, if no time is specified.

It must be presented for acceptance at the drawee's place of business if nothing is specified or at place mentioned.

- If a bill is drawn in sets, acceptance should be put on one part only.
- It may be absolute or conditional.

Kinds of Acceptance:

- General/Absolute.
- Conditional/Qualified.

General/Absolute Acceptance:

- It is given without any condition regarding payment.

Conditional/Qualified Acceptance:

- When the drawee does not accept it according to the apparent tenor of the bill but attaches some condition which have the effect of either reducing his liability or acceptance of liability subject to certain conditions.
- If holder refuses to take it, he can treat the bill as dishonoured by non- acceptance.
- Holder may also sue the drawer.

Acceptance for Honour:

- When any instrument gets dishonoured due to non - acceptance the holder normally sues the drawer for the dishonour of the instrument by non - acceptance.
- If these legal proceedings are to be avoided, then a third party would accept the instrument which had been dishonoured by non - acceptance and keep the instrument valid.
- The person who makes such acceptance is known as **acceptor for honour** and process is known as **acceptance for honour**.
- **Supra protest** means that the- bill is protested for non payment after it is duly accepted.
- In above case, any person can intervene and pay for honour of any party liable to pay.
- Thus, bill ceases to be negotiable thereafter.
- Person paying for honour get all the rights of holder for whom he pays.

Conditions for Valid Acceptance for Honour:

- Bill has been noted or protested for non - acceptance or better security.
- Such an acceptance has been made with the consent of holder.
- Acceptor for honour is not already liable on the bill.
- Acceptance is for the honour of any party already liable on the bill.
- Acceptance is by writing on the bill.

Presentment for Acceptance:

- Only following bills of exchange require presentment:
 - (i) Bill payable after sight
 - (ii) Bill in which there is express stipulation that it has to be presented for acceptance before it is presented for payment.
- Asper Sec.15,
"Presentment has to be made to drawee or his authorised agent."
- It can be presented to following persons:

- (i) Drawee or his authorised agent.
- (ii) In case of more than one drawee - to all of them.
- (iii) If drawee is dead - to his legal representatives.
- (iv) If drawee is declared insolvent - to his official receiver or assignee.
- (v) If drawee refuses to accept - to drawee in case of need.
- (vi) Acceptor for honour.

- It must be made: (i) before maturity, (ii) within a reasonable time, (iii) on a business day, (iv) during the business hours, (v) at the business place or drawee's residence.

- If it is not presented in case of compulsory presentment, drawer and endorser are discharged from their liability.

Cases where Presentment for Acceptance is Excused:

- Drawee could not be found after reasonable search.
- Drawee is a fictitious person.
- Drawee is a person incapable of contracting.
- On some other ground.

Presentment for Payment (Sec. 64):

- It means an exhibition to drawee or acceptor by holder with a request for payment in accordance with its apparent tenor.
- It must be made during normal banking hours.
- It must be made immediately on due date.
- If payment are to made in installments, three days of grace are to be added in each date of installment.
- Instruments can be presented at any of following places -
 - (a) If place is specified, it must be made at such place.
 - (b) If place is not specified, it can be made on business place.
 - (c) If there is no business place, it can made at residence.
 - (d) If residence is unknown, it can be made at any other reasonable place.
- In case of cheque, it must be presented, at any time before relation between bank and drawer alters.
- If instrument is payable on demand, it must be made within a reasonable time.
- If any agent is appointed for making payments, it can be made to such agent.

Cases Where Presentment for Payment is Excused:

- If drawee is intentionally prevented from presentment.
- If the respective place is closed.
- If person liable to pay cannot be found after reasonable search.
- If it is a fictitious instrument.
- If instrument is dishonoured by non - acceptance.
- If there is an express waiver regarding presentment for payment.
- If there is a promise to pay notwithstanding non - presentment for payment.
- Presentment for payment becomes impossible,
- No person is present to make the payment at the place specified.
- Drawer is a fictitious person or incompetent to contract.
- Drawer could not have suffered any damage by non - presentment.

- Drawer and drawee are same person.
- On some other ground.

Dishonour of Negotiable Instrument:

• When a party to an instrument, liable to accept or pay, refuses to accept or pay the instrument when duly presented, the instrument is said to be dishonoured.

- Dishonour may be by

1. Non - acceptance,
2. Non - payment.

Dishonour by Non - Acceptance (Sec. 91):

- Drawee or one of the several drawees makes default in payment.
- Presentment is excused.
- Acceptance is qualified.
- Drawee is incompetent to contract.
- Drawee could not be found after a reasonable search.

Dishonour by Non - Payment (Sec. 92):

- When maker acceptor or drawee makes default in payment.
- When presentment is excused and it is left unpaid, after maturity.

Effect of Dishonour:

- it renders the drawee and endorser liable to the holder. This liability can be invoked only if the holder gives them notice of such dishonour.

Notice of Dishonour (Sec. 91 - 98 & Sec.105 -107):

- It is a notice which informs the party liable to pay or accept about their liability which accrues as a result of dishonour of the instrument.
- Its objective is just to notify the party of its liability.
- Its omission discharges all the parties other than maker or acceptor, even in respect of original consideration.

Rules of Notice of Dishonour:

- It is to be given by the holder.
- It is given to the drawer and all other parties to whom the holder seeks to make liable.
- If a notice is not sent to any prior party who is entitled to such notice within a reasonable time, he is discharged from liability.
- Notice may be in any form but it should expressly inform the other party about the dishonour.
- It is to be given within a reasonable time:
 - (a) If both giver and receiver of the notice reside at the same place, notice should reach on the day of dishonour.
 - (b) If they reside at a different place, notice should be dispatched by next post or on the next day of dishonour.
- Party receiving the notice should communicate it to prior parties to whom he intends to hold liable within a reasonable time.

Cases where Notice of Dishonour is Not Required:

- When it is dispensed with by party entitled thereto.
- In order to charge the drawer.
- When party charged could not suffer damage for want of notice.
- Where the party entitled to notice could not be found after due search.

- To charge the drawer, when acceptor is also a drawer.
- In case of promissory note, which is not negotiable.
- Drawer has countermanded payment.
- Omission to give notice is caused by unavoidable circumstances.
- Party entitled to notice promises to pay unconditionally.

Noting (Sec. 99)

- It is a process in which Notary Public enters all the information regarding dishonour in his records.
- It specifies the following:
 - (i) Fact of dishonour
 - (ii) Date of dishonour
 - (iii) Reason of dishonour
 - (iv) Charges of Notary public

Protest

- It is the formal certificate of dishonour issued by the Notary Public to the holder of promissory note or B/E.
- It is issued after noting the fact of dishonour.
- It provides an authentic evidence of dishonour to drawer and endorsee.
- Foreign promissory notes need not be protested.
- Foreign bills must be protested if required by the law of place.
- If credit or an acceptor of bill is shaken by insolvency or otherwise before the date of maturity of bill, holder may cause such a fact to be noted and certified. It is called **protest for better security**.

Note: Neither noting or protest is compulsory in case of inland bills.

Notice of Protest:

- When a promissory note or a bill of exchange is required by law to be protested, notice of such protest in lieu of notice of dishonour must be given in the same manner as the notice of dishonour.

Discharge of Instrument:

- It is said to be discharged when it becomes completely useless and cannot be negotiated further.
- An instrument can be discharged by -
 - (i) Discharge of the instrument
 - (ii) Discharge of parties to the instrument from liability
- **Consequence:**
 - (i) Right of all parties comes to an end.
 - (ii) No party can claim the amount payable from any party.
- **It is Discharged:**
 - (i) On payment
 - (ii) On cancellation of the instrument
 - (iii) On insolvency of party liable
 - (iv) In case of bill, on negotiation to the acceptor
 - (v) When principal debtor becomes the holder
 - (vi) By renunciation.
 - (vii) By an act that would discharge simple contract.

Discharge of Party:

- A party is said to be discharged from its liabilities when their liability on the instrument comes to an end.

- **Party is Discharged:**

- (i) By cancellation
- (ii) By release
- (iii) By payment
- (iv) By allowing the drawee more than 48 hours to accept
- (v) By not giving notice of dishonour
- (vi) By taking qualified acceptance
- (vii) By non presentment for acceptance of a bill
- (viii) By delay in presenting cheque
- (ix) Discharge of secondary parties
- (x) By operation of law
- (xi) By material alteration.

Retirement of Bill Under Rebate:

- When acceptor makes the payment before maturity.
- It must be cancelled only by the acceptor when it comes into his hands.
- Acceptor makes allowance of interest for the remainder time which the bill has to run. The interest allowance is known as rebate.

Material Alteration [Section 87]:

- An alteration is material if it alters the
- operation of the instrument, or
- liabilities of parties.
- It makes the instrument void.
- Material alteration means altering the
- date of instrument
- sum payable
- time of payment
- place of payment
- tearing the instrument
- adding new parties
- other methods
- However there will be no material alteration in the following cases
- If the alteration is corrected
- Common intention of parties
- Crossing a cheque

If alteration is made before issue with the consent of the parties.

Protection of person who pays an altered bill or cheque

A person who pays an altered bill will be protected only if he satisfies the following conditions:

- The alteration should not be apparent.
- The payment must be made in due course.

- The payment is made by a person/banker liable to pay.

Hundis:

- It is an instrument drawn in an oriental language i.e. local language.
- Known as native bill of exchange.
- They were also called 'Teep'

Types of Hundis:

- Shah Jog Hundi
- Jokhmi Hundi
- Jawabee Hundi
- Nam Jog Hundi
- Darshani Hundi
- Miadi Hundi
- Dhani Jog Hundi
- Firman Jog Hundi

Shah Jog Hundi:

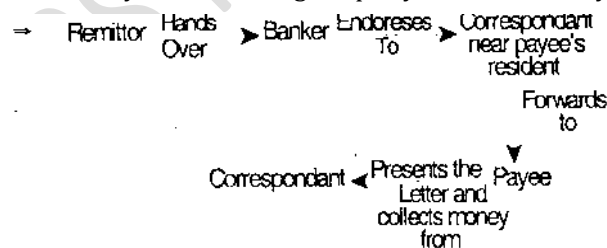
- Shah means 'a financial of repute'.
- It is only payable to Shah.
- He presents the hundi when it comes to him for payment to the drawee on behalf of the holder.

Jokhmi Hundi:

- It refers to a documentary bill drawn by consignor or consignee in respect of goods shipped by the consignor.
- Consignee is not required to pay unless the goods reach their destination.
- Consignor has to suffer the loss, if the ship is sunk.

Jawabee Hundi:

- It is an instrument for remitting money.
- It is in form of an ordinary letter advising the party to collect money from the banker.



Nam Jog Hundi:

- It is payable to the party named therein or to his order.
- It can be negotiated like bill of exchange.
- Altering it into Shah Jog hundi is a material alteration, thus making it void.

Darshani Hundi:

- It is payable at sight.
- Freely negotiable.
- Payable on demand.
- Must be presented for payment within a reasonable time.

Miadi Hundi:

- Also known as

Muddati Hundi.

- Payable after specified time period.
- Shroffs advance money against them after deducting some amount.

Dhani Jog Hundi:

- Dhani means owner.
- Payable to owner i.e. person who purchased it.

Firman Jog Hundi:

- Payable to order.
- Can be negotiated by endorsement and delivery.

Presumption of Law (Sec.118 & 119):

- Every instrument is made for some consideration.
- Every instrument is made on the date mentioned in it.
- Every instrument was accepted before maturity within a reasonable time.
- Instruments are endorsed in the order in which they appear.
- Every instrument was transferred before its maturity.
- Holder of the instrument is a holder in due course.
- Lost or destroyed instrument was duly signed and stamped.
- In case of dishonoured instrument, court presumes the fact of dishonour or proof of protest.

Payment of Interest in Case of Dishonour:

- It is 18% p.a. on the instrument in which no interest rate is specified. It is generally between 6% to 18% p.a.

Penalties in Case of Dishonour of Cheques:

- Drawer will be punishable with:
 - (i) Imprisonment for a term upto 2 years, or
 - (ii) Fine upto twice the amount of cheque, or
 - (iii) With both (i) and (ii) above, without prejudice to other provisions of the Act.

Relevant Case Law:

- Modi Cements Ltd. Vs K.K. Nandi
- Liability of government nominated directors is excluded.
- Every offence punishable is compoundable.

National Electronics Funds Transfer System (NEFT) and Real Time Gross Settlement (RTGS)

- National Electronic Funds Transfer (NEFT) is a nation-wide payment system facilitating one-to-one funds transfer. Under this Scheme, individuals, firms and corporates can electronically transfer funds from any bank branch to any individual, firm or corporate having an account with any other bank branch in the country participating in the Scheme.
- NEFT is an electronic fund transfer system that operates on a Deferred Net Settlement (DNS) basis which settles transactions in batches.
- In DNS, the settlement takes place with all transactions received till the particular cut-off time.
- These transactions are netted (payable and receivables) in NEFT whereas in RTGS the transactions are settled individually.
- The acronym 'RTGS' stands for Real Time Gross Settlement, which can be defined as the continuous (real-time) settlement of funds transfers individually on an order by order basis (without netting).

- 'Real Time' means the processing of instructions at the time they are received rather than at some later time, 'Gross Settlement' means the settlement of funds transfer instructions occurs individually (on an instruction by instruction basis).
- Considering that the funds settlement takes place in the books of the Reserve Bank of India, the payments are final and irrevocable.

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