

# Negotiable Instruments Act, 1881

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# Negotiable Instrument - Meaning

In simple words:

Negotiable: transferable

Instrument: a written document by which a right is created in favour of some person

Negotiable Instrument:

A written document creating monetary rights which is transferable from one person to another.

# Negotiable Instrument – Section 13

## **Section 13:**

A Negotiable Instrument means

~a promissory note

~bill of exchange

~or cheque

~payable either to order or to bearer

Only the above instruments are governed by NI Act.

Other NI like railway receipt, hundis etc. are governed by local usages, unless specifically opted to be governed by the Act.

# Negotiable Instrument – Essentials

- In writing
- Freely transferable (by delivery, or by endorsement and delivery)
- Payable in money +certain
- Unconditional promise or order
- Holder / Property
- Holder in due course
- Presumptions
- Essentials of contract

# Promissory Note (Section 4)

An instrument in writing

~signed by the maker

~containing an unconditional undertaking to pay

~a certain sum of money

~only to OR to or to the order of a certain person

I promise to pay 'B' or order a sum of Rs. 10,000 on demand for value received.

To,  
Mr. B  
<address>

Stamp  
Sd/- 'A'

# Promissory Note (Essentials)

- In writing
- Signed
- Two parties (maker and payee)
- Unconditional (death, specific date etc.)
- Undertaking to pay (not mere acknowledgment)
- Certain
- Money only
- Payee certain and identifiable
- Must bear stamp
- Requisites of contract
- Intention and delivery

# Bill of Exchange (Section 5)

An instrument in writing

~signed by the maker

~containing an unconditional order directing a certain person to pay

~a certain sum of money

~only to OR to or to the order of a certain person OR  
to the bearer of the instrument

Ten weeks after date, pay 'B' or order a sum of Rs. 10,000 for value received.

To,  
Mr. X (drawee)  
<address>

Stamp  
Sd/- 'A'

# Bills of Exchange (Essentials)

- In writing
- Signed
- Three parties (drawer, drawee and payee)
- Unconditional (death, specific date etc.)
- Order to pay (not undertaking or acknowledgment)
- Certain
- Money only
- Payee certain and identifiable
- Bearer or Order
- Must bear stamp
- Requisites of contract
- Intention and delivery

# Cheque (Section 6)

A bill of exchange

~drawn on a specified banker

~not expressed to be payable otherwise than on demand

~and includes

: the electronic image of a truncated cheque

: a cheque in electronic form

Cheque in electronic form: cheque generated and signed in a secure system using digital signatures

Truncated cheque: shortened during the course of clearing cycle, substituting further physical movement

# Cheque(Essentials)

- All essentials of Bill of Exchange
- Drawn on a specified banker
- Payable on demand
- No stamp
- No acceptance

# Crossings on Cheque (Sec 123-131A)

- General : Where a cheque bears across its face two parallel transverse lines on top left hand corner, either with or without the words “and Co” and with or without the words “not negotiable” or both

[Not Negotiable : person taking shall not have and shall not be capable of giving a better title to the cheque than the person from whom he took it had]

- Special : Where a cheque bears across its face an addition of the name of a banker

# Crossings on Cheque (Sec 123-131A)

- Restrictive: Where a cheque bears across its face an addition of the words “account payee” or “account payee only”

In this case, bank is under an obligation to credit to the account of the payee only.

# Penalties on dishonour of cheque (Sec 138-147)

- Inserted by the NI Amendment Act, 1988
- Object: to maintain cheque as an acceptable means of exchange by imposing criminal liability against persons whose cheque is dishonoured
- Punishment: imprisonment upto 2 years OR fine upto twice the amount of cheque OR both

## Features

- Cheque issued to discharge a legally enforceable debt or liability
- Cheque presented to the bank within its period of validity

# Penalties on dishonour of cheque (Sec 138-147)

## Features

- Cheque dishonoured due to amount standing to the credit being insufficient OR exceeding the overdraft limit agreed for that account
- Demand for payment made by giving a notice in writing to drawer within 30 days of receipt of information about dishonour
- Drawer fails to pay within 15 days of receipt of notice
- Complaint made within 1 month of the cause of action arising
- Tried by a Metropolitan Magistrate or Judicial Magistrate of first class, disposed expeditiously and if possible within 6 months
- Offence by company: all persons in charge of and responsible for the conduct of business of company + the company

# Statutory Protection to Paying Bankers

- Section 128:

When the banker on whom a crossed cheque is drawn

~has paid the same in due course (in good faith + in accordance with the apparent tenor of the instrument + without negligence)

~ drawer and banker entitled to the same rights & position, as if the cheque has been paid to the true owner.

- Section 129: When crossed cheque paid out of due course, bank liable to the true owner for any loss he may sustain owing to the cheque having been so paid.

# Statutory Protection to Collecting Bankers

- Section 131:

When a banker has in good faith & without negligence

~received payment for a customer

~of a cheque crossed generally or specially to himself

~shall not incur any liability to the true owner by reason only of having received the payment

in case the title to the cheque proves defective

# Negotiable Instrument – some concepts

- Holder (Section 8): Any person

~entitled in his own name

~to the possession thereof and to receive/recover amount due thereon

When the note, bill or cheque is lost or destroyed, holder is the person so entitled at the time of loss or destruction

# Negotiable Instrument – some concepts

- Holder in due course (Section 9): Any person
  - ~who for consideration
  - ~became possessor/payee/endorsee of a NI
  - ~before the amount mentioned in it became payable
  - ~without having sufficient cause to believe that any defect existed in the title of the person from whom he derived title

[for consideration + before maturity + in good faith]

# Negotiable Instrument – some concepts

- Payment in due course (Section 10):

- ~payment in accordance with the apparent tenor of the instrument

- ~in good faith; and

- ~without negligence

- ~to any person in possession thereof

- ~under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned

# Negotiable Instrument – some concepts

- Maturity (Section 22):

- ~date on which payment falls due

- ~relevant only for time instruments

- ~At maturity on the third day after the day on which it is expressed to be payable (days of grace)

- ~In case of public holiday, falls due on preceding business day.

# Negotiable Instrument – some concepts

- Notice of dishonour (Section 91-98):

- ~can be by non-acceptance (including qualified) OR non-payment

- ~holder must give notice of such fact to all parties whom he seeks to make liable

- ~can be given in oral or writing (including post)

- ~within reasonable time

- ~ Party (other than the party primarily liable) to whom notice not given is discharged from liability

- ~No notice necessary in some circumstances like dispensed with, cannot be found etc.

# Negotiable Instrument – some concepts

- Noting (Section 99):

- ~When PN or BOE dishonoured by non-acceptance or non-payment

- ~holder may cause such dishonour to be noted

- ~by Notary Public

- ~upon the instrument or upon a paper attached thereto

- ~within reasonable time after dishonour

- ~must contain date of dishonour, reasons if any assigned for dishonour and noting charges

# Negotiable Instrument – some concepts

- Protest (Section 100-102):

~When PN or BOE dishonoured by non-acceptance or non-payment

~holder may

~within reasonable time

~cause such dishonour to be noted **and certified**

~by Notary Public

Such certificate is called a PROTEST

# Negotiable Instrument – some concepts

~ Protest for better security: When the acceptor of BoE has become insolvent or his credit publicly impeached, holder may cause Notary Public to demand better security and if refused, cause such facts to be noted and certified.

~Protest must contain the details of instrument, name of parties, place and time of dishonour, statement by Notary Public of refusal to pay/accept/security etc.

~If law requires protest, notice of protest must be given instead of notice of dishonour, before the Courts.