



Study Notes

Negotiable Instruments Act, 1881

NEGOTIABLE INSTRUMENTS ACT, 1881 (Brief Overview)

Chapter	Sections
Chapter I Preliminary	Section 1- Section 3
Chapter II Of Notes, Bills and Cheques	Section 4 – Section 25
Chapter III Parties to Notes, Bills and Cheques	Section 25- Section 45A
Chapter IV Of Negotiation	Section 46-Section 60
Chapter V Of Presentment	Section 61- Section 77
Chapter VI Of Payment and Interest	Section 78- Section 81
Chapter VII Of Discharge from Liability On Notes, Bills and Cheques	Section 82-Section 90
Chapter VIII Of Notice of Dishonour	Section 91- Section 98
Chapter IX Of Noting and Protest	Section 99- Section 104A
Chapter X Of Reasonable Time	Section 105- Section 107
Chapter XI Of Acceptance and Payment for Honour and Reference in case of Need	Section 108-Section 116
Chapter XII Of Compensation	Section 117
Chapter XIII Special Rules of Evidence	Section 118-Section 122
Chapter XIV Of Crossed Cheques	Section 123-Section 131A
Chapter XV Of Bills in Sets	Section 132-Section 133
Chapter XVI Of International Law	Section 134-Section 137
Chapter XVII Of Penalties in case of Dishonour of Certain Cheques for Insufficiency of Funds In the Accounts	Section 138- Section 147

Negotiable Instruments Act, 1881 came into force on 1st March, 1882.

INTRODUCTION

- ✓ For commercial transaction, it is always not possible for a business man to carry huge amount of cash. Businessman, therefore adopt a new method of exchanging documents- Bills of Exchange, Cheques etc, in place of money.
- ✓ These documents which are used as a substitution for money and are known as negotiable instrument. The Law relating to negotiable instrument is contained in the Negotiable Instrument Act, 1881.

NEGOTIABLE INSTRUMENT

- ✓ A Negotiable Instrument is that document that includes a 'promise to pay' a certain amount of money to the bearer of the document. It is a mode of transferring a debt from one person to another.
- ✓ Documents of a certain type which are used in commercial transactions and monetary dealings, are known Negotiable instruments.

- ✓ 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.”

Characteristics of Negotiable Instrument

1. Written instrument with signature: A negotiable instrument is a written document and is considered as complete and effective only when it is duly signed.
2. Freely transferrable- the property in a negotiable instrument gets transferred by a simple process of mere delivery if it is payable to bearer, endorsement and delivery or payable to order.
3. Recovery: One can sue upon the instrument in his own name.
4. Payable to order or bearer: It must be payable either to order or bearer.
5. Holder’s title free from all defects: The holder (one who acquires the instrument in good faith and for consideration) in due course gets title free from all defects.
6. Presumption as to considerations: These instruments are presumed to have been made, drawn, accepted, endorsed, negotiated or transferred for consideration.
7. Presumption as to holder-Every holder of negotiable instrument is presumed to be holder in due course.

Types of Negotiable Instrument

There are two types of Negotiable Instruments:

1. Instruments Negotiable by Statute: The Negotiable Instruments Act mentions only three kinds of negotiable instruments(Section13). These are: Promissory Notes , Bills of Exchange, Cheque
2. Instruments Negotiable by Custom or Usage: There are certain other instruments which have occupied the character of negotiability as a result of usage or custom of trade. For example: Exchequer bills, Bank notes, Share warrants, Circular notes, Bearer debentures, Dividend warrants, Share certificates with blank transfer deeds, etc.

CLASSIFICATION OF NEGOTIABLE INSTRUMENTS

- ✓ **Bearer and Order instruments:**
 - Bearer Instrument- An instrument may be made payable: (1) to bearer; (2) to a specified person or to his order.(Section 13)
 - Order Instrument- An instrument is payable to order, (1) when it is payable to the order of a specified person or (2) when it is payable to a specified person or his order or,(3) when it is payable to a specified person without the addition of the words —or his orderll and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.
- ✓ **Inland 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. Examples: (i) A promissory note made in Chennai and payable in Delhi.
- Foreign Instrument : Any such instrument, not so drawn, made or payable shall be deemed to be a foreign instrument. Examples : (i) A promissory note made in India but made payable in England .
- ✓ **Ambiguous and inchoate bills:**
 - Ambiguous Bills : According to section 17, an ambiguous bill means an instrument which can be construed either as a promissory note or as bill of exchange (e.g., a bill drawn by a person on himself in favour of a third person or where the drawee is a fictitious person), at the selection of the holder and the instrument shall be thenceforward be treated accordingly.
 - Inchoate Instrument : An incomplete instrument is called an inchoate instrument. Section 20 of the Negotiable Instruments Act provides that when 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 give prima facie authority to the holder thereof to make to complete, as the case may be, upon it a negotiable instrument for an 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.
- **PROMISSORY NOTE:**
 - ✓ According to section 4 of the Act, A promissory note is an instrument (not being a bank note or a currency-note) 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.
 - ✓ The person, who makes the promissory note, promises to pay and is called the maker. The person to whom the payment is to be made is called the payee.
 - ✓ The following are the essential features of a Promissory note, :
 - a) The promise must be in writing.
 - b) The promise must be signed by the maker or payer.
 - c) The promise must be unconditional.
 - d) The amount to be paid must be definite in terms of money.
 - e) It must be payable on demand or at a fixed or determinable future date.
 - f) It must be payable to a definite person.
 - g) The Payee must be certain.
 - h) Promissory note must bear stamp at the rate prescribed by law of a country.
 - ✓ Illustrations: "A" signs instrument in the following term:-
(1): "I promise to pay "B" or order ` 500"

Parties to this promissory note are: (i) "A", the maker, who promises to pay, and (ii) "B", the Payee, to whom a promise to pay is made by the maker,

(2): "I acknowledge myself to be indebted to "B" in `1,000, to be paid on demand, for the value received."

(3): "I promise to pay "B" ` 500 seven days after my marriage with "C" – is not a promissory note.

(4): "I promise to pay "B" ` 500 and to deliver him my black horse on 1st January next - is not a promissory note.

• **BILL OF EXCHANGE:**

- ✓ Section 5 of the Act defines, "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".
- ✓ A bill of exchange, therefore, is a written acknowledgement of the debt, written by the creditor and accepted by the debtor. There are usually three parties to a bill of exchange drawer, acceptor or drawee and payee. Drawer himself may be the payee.
- ✓ Essentials elements of bill of exchange are:
 - a) It must be in writing
 - b) It must be signed by the drawer
 - c) It should be properly stamped
 - d) The drawer, drawee and payee must be certain
 - e) The amount payable must be certain.
 - f) It must contain an express order to pay made in money and money only.
 - g) The order must be unconditional
 - h) The bill Payable may be either on demand or after a specified period.
- ✓ Illustrations:
 - 1) Please pay Rs. 500 to the order of 'A' – Bill of exchange (order to pay)
 - 2) Mr. A will oblige Mr. C, by paying to the order of P – Bill of exchange (order to pay)
 - 3) I shall be highly obliged if you make it convenient to pay Rs 1000 to Suresh – Not a bill of exchange (request to pay)
 - 4) Mr. Ramesh, please let the bearer have one thousand rupees, and place it to my account and oblige - Not a bill of exchange (request to pay)

• **CHEQUE :**

- ✓ Section 6 of the Act defines "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 electronic form."

- ✓ A cheque is bill of exchange with two more qualifications, namely, (i) it is always drawn on a specified banker, and (ii) it is always payable on demand. Consequently, all cheque are bill of exchange, but all bills are not cheque.
- ✓ Types of Cheque
 1. Bearer Cheque : The words —or bearerll printed on the cheque, & it is not cancelled, then the cheque is called a bearer cheque. A bearer cheque is made payable to the bearer i.e. it is payable to the person who presents it to the bank for encashment.
 2. Order Cheque : The word "or order" is written on the face of the cheque, the cheque is called an order cheque. Such a cheque is payable to the person specified therein as the payee, or to any one else to whom it is endorsed (transferred).
 3. Open Cheque : When a cheque is not crossed, it is known as an —Open Cheque or an Uncrossed Cheque. These cheques may be cashed at any bank and the payment of these cheques can be obtained at the counter of the bank or transferred to the bank account of the bearer. An open cheque may be a bearer cheque or an order cheque.
 4. Crossed Cheque : Crossed cheque means drawing two parallel lines on the left corner of the cheque with or without additional words like —Account Payee Onlyll or —Not Negotiable. A crossed cheque cannot be en-cashed at the cash counter of a bank but it can only be credited to the payee's account. This is a safer way of transferring money than an Uncrossed or open cheque.
 5. Anti-Dated Cheque : Cheque in which the drawer mentions the date earlier than the date on which it is presented to the bank, it is called as —anti-dated cheque.
 6. Post-Dated Cheque : Cheque on which drawer mentions a date which is yet to come (future date) to the date on which it is presented, is called post-dated cheque.
 7. Mutilated Cheque : When a cheque is torn into two or more pieces and presented for payment, such a cheque is called a mutilated cheque. The bank will not make payment against such a cheque without getting confirmation of the drawer.

- **HUNDIS:**

- ✓ A "Hundi" is a negotiable instrument written in an oriental language. The term hundi includes all indigenous negotiable instrument whether they be in the form of notes or bills.
- ✓ The word 'hundi' is said to be derived from the Sanskrit word 'hundi', which means "to collect".
- ✓ Hundis are governed by the custom and usage of the locality in which they are intended to be used and not by the provision of the Negotiable Instruments Act. In case there is no customary rule known as to a certain point, the court may apply the provisions of the Negotiable Instruments Act.

- **BANK DRAFT:**

- ✓ A bank draft is a bill of exchange drawn by one bank upon itself or another bank for a sum of money payable to order on demand.
- ✓ Section 85A is added to protect the bankers against forged or unauthorized endorsements on demand drafts, drawn by one branch of a bank upon another branch of the same bank.

OTHER IMPORTANT TERMS:

- ✓ **Drawer:** The maker of a bill of exchange.
- ✓ **Drawee:** The person directed to pay the money by the drawer.
- ✓ **Payee:** The person named in the instrument to whom or to whose order the money is directed to be paid by the instruments.
- ✓ **Acceptor:** The drawee of a bill of exchange who has signified his assent to the order of the drawer is called the acceptor. The acceptor becomes liable to the holder after he has signified his assent but not before.
- ✓ **Acceptor for honour:** In case the original drawee refuses to accept the bill or to furnish better security when demanded by the notary, any person who is not liable on the bill, may accept it with the consent of the holder, for the honour of any party liable on the bill. Such an acceptor is called 'acceptor for honour'.
- ✓ **Holder** of a negotiable instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto. In other words, holder means the payee or endorsee of a bill of exchange, cheque, or promissory note, who is in possession of it.
- ✓ **Holder for value** means, as regards all parties prior to himself, a holder of an instrument for which value has at any time been given.
- ✓ **Holder in due course**, in the case of an instrument payable to bearer means any person who, for consideration became its possessor before the amount mentioned in it became payable. In the case of an instrument payable to order, "holder in due course" means any person who became the payee or endorsee of the instrument before the amount mentioned in it became payable to order.
- ✓ **Indorser:** When the holder transfers or indorses the instrument to anyone else, the holder becomes the 'indorser'.
- ✓ **Indorsee:** The person to whom the bill is indorsed is called an 'indorsee'.

PARTIES TO NOTES, BILLS AND CHEQUES

Sections	Description	Brief Explanation
Section 26	Capacity to make, etc., promissory notes, etc	Every person capable of <u>contracting</u> may bind himself or be bound by the making, drawing, acceptance, indorsement, delivery and negotiation Minor- may draw, indorse, deliver and negotiate so as to bind all

Sections	Description	Brief Explanation
		parties <u>except himself</u>
Section 27	Agency	Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.
Section 28	Liability of agent signing	An agent who signs without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument except on being induced that principal only would be liable
Section 29	Liability of legal representative signing	A legal representative who signs his name is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such
Section 30	Liability of drawer	The drawer of a bill of exchange or cheque is bound, in case of dishonor by the drawee or acceptor thereof, to compensate the holder provided due notice
Section 31	Liability of drawee of cheque	The drawee having sufficient funds must pay the cheque, in default of which he must compensate the drawer
Section 32	Liability of maker of note and acceptor of bills	The maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand
Section 33	Only drawee can be acceptor except in need or for honour	No person except the drawee of a bill exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.
Section 34	Acceptance by several drawees not partners	Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.
Section 35	Liability of indorser	whoever indorses and delivers a negotiable instrument before maturity without, in such it indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder, in case of dishonour by the drawee, acceptor or maker, to compensate such holder
Section 36	Liability of prior parties to holder in due course	Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied
Section 37	Maker, drawer and acceptor principals	The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties
Section 38	Prior party a principal in respect of each subsequent party	As between the parties so liable as sureties, each prior party is liable thereon as a principal debtor in respect of each subsequent party.
Section 39	Suretyship	When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872 (9 of 1872), would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.
Section 40	Discharge of indorser's liability	Where the holder of a negotiable instrument, without the consent of

Sections	Description	Brief Explanation
		the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent
Section 41	Acceptor bound, although, indorsement forged	An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.
Section 42	Acceptance of bill drawn in fictitious name	An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course
Section 43	Negotiable instrument made, etc., without consideration	A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction
Section 44	Partial absence or failure of money-consideration	When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced
Section 45	Partial failure of consideration not consisting of money	Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced
Section 45A	Holder's right to duplicate of lost bill	Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again

NEGOTIATION

- ✓ According to section 14 of the Act, 'when a promissory note, bill of exchange or cheque is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be negotiated.
- ✓ Negotiation thus requires two conditions to be fulfilled, namely:
 1. There must be a transfer of the instrument to another person; and
 2. The transfer must be made in such a manner as to constitute the transferee the holder of the instrument.
- ✓ Handing over a negotiable instrument to a servant for safe custody is not negotiation; there must be a transfer with an intention to pass title.
- ✓ Every sole maker, drawer, payee or indorsee or all of several makers, drawers, payees or indorsees, of a negotiable instrument, if negotiability has not been restricted, indorse and negotiate the same.

- ✓ A negotiable instrument can be negotiated until payment or satisfaction by the maker, drawee or acceptor but not after such payment or satisfaction.

MODES OF NEGOTIATION

- ✓ Negotiation may be effected in the following two ways:
 1. **Negotiation by delivery** (Sec. 47): Where a promissory note or a bill of exchange or a cheque is payable to a bearer, it may be negotiated by delivery thereof.
Example: A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep it for B. The instrument has been negotiated.
 2. **Negotiation by endorsement and delivery** (Sec. 48): A promissory note, a cheque or a bill of exchange payable to order can be negotiated only by endorsement and delivery. Unless the holder signs his endorsement on the instrument and delivers it, the transferee does not become a holder. If there are more payees than one, all must endorse it

INDORSEMENT

- ✓ The word 'indorsement' in its literal sense means, writing on the back of an instrument. But under the Negotiable Instruments Act it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein.
- ✓ The person who effects an indorsement is called an indorser and the person to whom negotiable instrument is transferred by indorsement is called the indorsee.
- ✓ Essentials of a valid indorsement are:
 1. It must be on the instrument
 2. It must be made by maker or holder of instrument
 3. It must be signed by indorser
 4. It may be made either by the indorser merely signing his name on the instrument (it is blank indorsement) or by any words showing an intention to indorse or transfer the instrument to a specified person (it is an indorsement in full). No specific form of words is prescribed for an indorsement
 5. It must be completed by the delivery of the instrument.
 6. It must be an indorsement of the entire bill.
- ✓ Indorsement sans Recourse - Indorser who excludes his own liability or makes it conditional

RIGHTS AND OBLIGATIONS OF PARTIES TO INSTRUMENT OBTAINED ILLEGALLY

1. Rights and obligations of the finder of a lost instrument: When a negotiable instrument has been lost, before it is overdue the finder or the endorsee from the finder is not entitled to receive the amount of it from maker, acceptor or holder, or from any party prior to such holder. He is bound to return the instrument to the real owner. But if the instrument lost by one and if it passes by delivery, e.g., a bill payable to bearer or

endorsed in blank, the third acquiring it bona fide and for valuable consideration and before maturity, is entitled both to retain the instrument against the real owner and to compel payment from the prior parties thereon.

2. Rights and obligations of a person who had obtained an instrument by unlawful means(Section 58) : If an instrument is obtained from any maker, acceptor or holder by means of an offence or fraud, the possessor is not, ordinarily, entitled to receive the amount under it from such maker, acceptor or holder, or from any party prior to such holder. Example: if X steals a bill from the acceptor, X does not acquire any title to the instrument, and the proceeds of the bill, if collected, could be recovered from X by acceptor.
3. Rights and obligations of a person who has obtained an instrument for unlawful consideration(Section 58) : When an instrument has been obtained from any maker, acceptor or holder for an unlawful consideration no possessor is, ordinarily, entitled to receive the amount due thereon from such maker, acceptor or holder or from any party prior to such holder. The consideration may be unlawful either because it is immoral and contrary to public policy or because it is specially interdicted or prohibited by the statute.
4. Instrument acquired after dishonour (Section 59): It has already been pointed out that the holder in due course is not affected by the defect in the title of his transferor; but it is not so in the case of a holder who acquires the instrument after dishonour, or after maturity. The holder of instrument, who has acquired it after dishonour, has as against the other parties, only the rights thereon of his transferor.
5. Instrument acquired after maturity (Section 59): The holder of an overdue instrument too is affected by the defect in title of his transferor.
6. Liabilities on an accommodation note or bill (Proviso to Section 59): In the case of accommodation bills or notes, a defect in the title of the transferor does not affect the title of the holder acquiring after maturity.
7. Duration of negotiation (Section 60): An instrument may be negotiated until payment thereof by the maker, drawee or acceptor at or after maturity, but not after such payment. But the maker, drawee or acceptor cannot negotiate the instrument after maturity, even if it remains unpaid.

PRESENTMENT OF INSTRUMENTS

1. **Presentment of bills for acceptance** (Section 61): A bill of exchange is not necessarily required to be presented for acceptance, before its being presented for payment.
 - For example, a bill payable on demand, payable certain number of days after date, payable on a certain day, etc., need not be presented for acceptance. Although it is a matter of common practice to obtain acceptance of the bill by the drawee at the earliest

opportunity after it is drawn, such an acceptance is not absolutely essential to the bill being a negotiable instrument.

- It should, however, be noted that in two cases presentment for acceptance would be necessary, namely :
 - i. where a bill is payable after sight - presentment for acceptance is with a view to fixing the maturity of the instruments.
 - ii. where a bill expressly stipulates that it shall be presented for acceptance.
- 2. **How, when and by whom bill is to be presented** : A bill payable after sight is to be presented to the drawee by a person entitled to demand acceptance, and it is generally the holder of the bill who is entitled to demand acceptance.
 - The bill must be presented by the holder within a reasonable time after it is drawn, and in business hours on a business day either at the residence or at the place of business of the drawee. But if the bill itself indicates a place of presentment, it must be presented at the place. If the drawee cannot, after reasonable search, be found, the bill is to be regarded as dishonoured for non-acceptance.
 - Presentment is to be made either by the holder or by somebody on behalf of the holder. Promissory notes are to be presented to the maker; bills of exchange are to be presented to the acceptor; and cheque are to be presented to the drawee.
 - Drawee's time for deliberation: Under Section 63, the drawee is entitled to a respite of forty eight hours (exclusive of public holidays) to consider whether he should accept a bill presented to him for acceptance.
- 3. **When presentment is excused**: Presentment for acceptance is excused if the drawee is a fictitious person (Section 91) or even after a reasonable search, the drawee can not be found (Section 61).
 - Again even if presentment is made irregularly, such an irregularity is excused if the bill has been dishonoured by non-acceptance on some other ground.
- 4. **Presentment of promissory note for sight** (Section 62): Like a bill of exchange payable after sight, a promissory note payable at a certain period after sight must be presented to the maker for sight. The presentment is to be made by a person entitled to demand payment who is usually the holder. Again, the note must be presented within a reasonable time after it is made and in business hours on a business day. In default of such presentment, the maker is not liable to pay anything to the holder.
 - The necessity for presentment, in the case of such a note, viz., a note payable at a certain period after sight, is obvious; without such presentment the maturity of the note cannot be fixed.
- 5. **Presentment of instrument for payment**: Presentment of a bill of exchange means its exhibition to drawee or acceptor by holder with a request for payment in accordance with its apparent tenor (Section 64).
 - Presentment may be made through post by means of a registered letter if such a mode of presentment is authorised by agreement or usage. If the bill is paid, the holder would

have to hand it over to the payer. In default of presentment, the drawer and the endorser would be discharged from their liability to the holder.

DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES

1. **Distinction between discharge from liability of a party and discharge of the instrument**: An instrument is said to be discharged only when the party who is ultimately liable thereon is discharged from liability. The rights in respect of such an instrument can still be enforced against those parties who are still liable thereon. Therefore, discharge of a party to an instrument does not discharge the instrument itself. Consequently, the holder in due course may proceed against the other parties liable for the instrument.

For example, the endorser of a bill may be discharged from his liability, but even then acceptor may be proceeded against. On the other hand, when a bill has been discharged by payment, all rights there under are extinguished, even a holder in due course cannot claim any amount under the bill.

2. **Different modes of discharge from liability**: Parties to negotiable instrument are discharged from liabilities when the right of action on the instrument is extinguished. The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon:
 - i. **By payment in due course** : to all parties thereto if the instrument is payable to bearer, or has been endorsed in blank and such maker, acceptor or endorser makes payment in due course of the amount due thereon i.e., when the payment has been made to the holder of the instrument at or after maturity in good faith and without notice of any defect in the title to the instrument (Section 82).
 - ii. **By cancellations of acceptor's or endorser's name**: to a holder thereof who has cancelled such acceptor's or endorser's name with the intent to discharge him and to all parties claiming under such holder. [Clause (a) Section 82.]
 - iii. **By release**: to a holder thereof who has renounced his right in respect of the instrument. The waiver of the right may be expressed or implied [Clause (b) of Section 82].
 - iv. **By default of the holder**: If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holiday, to decide whether he will accept the bill, all prior parties not consenting to such an allowance are discharged from liability to such holder. It is because if the drawee fails to signify his acceptance within forty-eight hours, the holder must treat the instrument as dishonoured and he must at once give notice to the drawer and to all prior

parties, and must not allow time unless they give their consent that more time should be allowed (Section 83).

- v. **Dissenting parties discharged by qualified or a limited acceptance:** If the holder of a bill who is entitled to an absolute and unqualified acceptance elects to take a qualified acceptance, he does so at his own peril and discharges all parties prior to himself unless he obtains their consent to such an acceptance.

Thus, the previous parties are discharged when acceptance of a bill is qualified in the following cases (1) when acceptance is conditional (2) when acceptance is for a part of the sum, (3) when acceptance substitutes a different place or time of payment, (4) when acceptance is not signed by the drawees not being partners. (Section 86).

- vi. **By material alteration of the instrument without assent of all parties liable :** Any material alteration of a negotiable instrument renders the same void as against anyone who is party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties and any such alteration, if made by an endorsee, discharges his endorser from all liability to him in respect of the consideration thereof (Section 87).

Note: The alteration must be so material that it alters the character of the instrument to a great extent. Alteration of the date, alteration of the amount payable, or alteration of the time and the alteration on the place of payment of the instrument are regarded as material alterations of the instrument. In Hongkong and Shanghai Bank vs. Lee Shi (1928) A.C. 181, it has been held that an accidental alteration will not, however, render the instrument void. It is necessary to show that the alteration has been made improperly and intentionally.

- vii. **By payment, alteration not being apparent:** If, however, a person pays an altered note, bill or cheque, provided the alteration is not apparent and payment is made in due course by person or a banker who is liable to pay the amount he is protected (Section 89).
- viii. **By acceptor becoming holder of a bill at or after maturity in his own right:** If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished (Section 90).
- ix. **By default in presenting the cheque within a reasonable time:** In the case of a cheque, if it is not presented for payment within a reasonable time of its issue and the drawer or person on whose account, it is drawn had the right at the time

when presentment ought to have been made as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is creditor of the banker to a larger amount than he would have been if such cheque had been paid [Section 84(1)].

- x. **By operation of law:** It should be noted that a negotiable instrument is also discharged by operation of law which may occur in any one of the following circumstances.
 - a) By lapse of time i.e., when the claim under the instrument becomes barred by the Limitation Act on the expiry of the period prescribed for the recovery of the amount due on the instrument;
 - b) By merger, i.e., when the debt, under the instrument is merged in the judgement debt obtained against the acceptor, maker or endorser;
 - c) Under the law of insolvency, i.e., when the acceptor, maker, or endorser, who has been adjudicated an insolvent, is discharged by an order of the Court made in the insolvency proceedings.
- xi. By payment by the drawee of a cheque payable to order or to bearer: Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee who always is a banker is discharged by payment in due course. (Section 85).

DISHONOUR OF NEGOTIABLE INSTRUMENT

- ✓ When a negotiable instrument is dishonoured, the holder must give a notice of dishonour to all the previous parties in order to make them liable.
- 1. **Dishonour by non-acceptance** (Section 91): A bill may be dishonoured either by nonacceptance or by non-payment. A dishonour by non-acceptance may take place in any one of the following circumstances:
 - i. when the drawee either does not accept the bill within forty eight hours (exclusive of public holidays) of presentment or refuse to accept it;
 - ii. when one of several drawees, not being partners, makes default in acceptance;
 - iii. when the drawee makes a qualified acceptance;
 - iv. When presentment for acceptance is excused and the bill remains unaccepted;
 - v. when the drawee is incompetent to contract.
- ✓ When a bill has been dishonoured by non-acceptance, it gives the holder an immediate right to have recourse against the drawer or the endorser.
- 2. **Dishonour by non-payment** (Section 92): An instrument is dishonoured by nonpayment when the party primarily liable e.g., the acceptor of a bill, the maker of a

note or the drawee of a cheque, makes default in payment. An instrument is also dishonoured for nonpayment when presentment for payment is excused and the instrument, when overdue, remains unpaid, under Section 76 of the Act.

- ✓ Distinction between dishonour by non-acceptance and by non-payment: If a bill is dishonoured by non-acceptance, there is no right of action against the drawee as he is not a party to the bill: the holder of the bill can proceed only against the drawer or endorser, if any. On dishonour by non-payment the drawee can be sued.

3. **Notice of dishonour** (Sections 93 and 94):

- By whom notice to be given: When an instrument is dishonoured either by non-acceptance or by non-payment, the holder thereof or some party thereto who remains liable thereon must give notice of dishonour.

Note: Ram Ravji Jambekar vs. Prahladdas - Notice of dishonour to the drawer is absolutely necessary and unless and until it is given, the holder has no cause of action against him.

- To whom notice is to be given: Notice must be given to such parties whom the holder proposes to charge with liability severally or jointly, e.g., the drawer and the endorsers. Notice may be given either to the party himself or to his agent, or to his legal representative on his death, or to the official assignee on his insolvency. It is not necessary to give notice to the maker of a note or the drawee or acceptor of a bill or cheque.
- Effect of non-service of notice: If a notice of dishonour is not sent to any prior party who is entitled to such notice within a reasonable time, he is discharged from liability.
- Requirements of valid notice: The holder must inform the party to whom the notice has been given that the instrument has been dishonoured, and that he will be held liable thereon. It must give an exact description of the instrument dishonoured, for wrong description which misleads the addressee, vitiates the notice.
- Mode of service of notice : The notice, if written, may be given by post at the place of business or at the residence of party for whom it is intended, and even if it is miscarried, the notice is not rendered invalid by such miscarriage.
- Transmission of notice of dishonour by party receiving it (Section 95): Any party receiving notice of dishonour should communicate the same within a reasonable time to any prior party whom he intends to hold liable in respect of the instrument; but if the prior party receives otherwise, no such communication is necessary.

- When notice of dishonour is unnecessary (Section 98): In a suit against the drawer or endorser on an instrument being dishonoured, notice of dishonour is a material part of the cause of action. However, in the following cases the notice of dishonour is not necessary:
 - i. When the necessity of the notice has been dispensed with by an express waiver by the party entitled to it. For example, when the drawer of a bill informs the holder that the bill will be dishonoured on presentment, the notice of dishonour is said to have been dispensed with [Brett vs. Levett].
 - ii. When the drawer has countermanded payment, he, having put an impediment in the way of the holder obtaining payment is not entitled to the notice of dishonour.
 - iii. When the party charged could not suffer damage for want of a notice.
 - iv. When the party entitled to notice after due search, cannot be found.
 - v. Where there has been accidental omission to give the notice, provided the omission has been caused by an unavoidable circumstances, e.g., death or serious illness of the holder or his agent, or other inevitable accident, or overwhelming catastrophe not attributable to the default, misconduct or negligence of the party tendering notice.
 - vi. When one of the drawers is acceptor. From this, it is also possible to deduce a further rule that notice of dishonour is not necessary for charging the drawer where the drawer and the acceptor are the same person.
 - vii. In the case of promissory note which is not negotiable,
 - viii. When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

NOTING AND PROTESTING

- ✓ When a negotiable instrument is dishonoured the holder may sue his prior parties i.e the drawer and the indorsers after he has given a notice of dishonour to them.
 - ✓ The holder may need an authentic evidence of the fact that a negotiable instrument has been dishonoured.
 - ✓ When a cheque is dishonoured generally the bank who refuses payment returns back the cheque giving reasons in writing for the dishonour of the cheque.
 - ✓ Sections 99 and 100 provide convenient methods of authenticating the fact of dishonour of a bill of exchange and a promissory note by means of 'noting' and 'protest'.
1. **Noting:** It is a convenient mode of authenticating the fact that a bill or note has been dishonoured. When a note or a bill has been dishonoured by non-acceptance or non-payment, the holder causes such dishonour to be noted by a Notary Public. Noting is a minute recorded by a notary public on the dishonoured instrument.
 - When an instrument, say a bill of exchange, is to be noted for dishonour, is taken to Notary Public who presents it once again for acceptance or payment, as the case may be; and if the drawee or acceptor still refuses to accept or pay the bill, it is noted

- Noting should specify in the instrument, (a) the fact of dishonour, (b) the date of dishonour, (c) the reason for such dishonour, if any (d) the notary's charges, (e) a reference to the notary's register and (f) the notary's initials.
2. **Protest:-** When an instrument is dishonoured, the holder may cause the fact not only to be noted, but also to be certified by a Notary Public that the bill has been dishonoured. Such a certificate is referred to as a protest.
- If the creditor or an acceptor of a bill is shaken by insolvency or otherwise before the date of maturity of the bill, the holder may cause such a fact also to be noted and certified. Such a certificate is called a protest for better security. The contents of a protest are given in Section 101 of the Act.
- ✓ Neither noting nor protesting is compulsory in the case of inland bills. But under Section 104 every foreign bill of exchange must be protested for dishonour when such a protest is required by the law of the country where the bill was drawn.
 - ✓ The advantage of both noting and protesting is that this constitutes prima facie good evidence in the Court of the fact that instrument has been dishonoured.
 - ✓ It is necessary to note that under Section 119, the Court is bound to recognise a protest. But it may or may not recognise noting. To make good this lacuna, Section 104A was introduced. It clarifies the position that any bill or document which has been noted can be protested any time thereafter for taking legal action against the parties. Thus, where a document has been noted within the time required by law, legal proceeding cannot be vitiated on account of protest not having been made.
3. **Notary Public:** A Notary public is appointed by the Central or State Government. His functions are to attest deeds, contracts and other instruments that are to be used abroad and to give a certificate of due execution of such documents. He enjoys the confidence of the business world, and any certificate given by him is presumed to be true by a court of law. The profession of notaries is regulated by the Notaries Act, 1952.
4. **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 notice of dishonour (Section 102). Notice of protest may be given either by the holder or by the notary who makes the protest.
- ✓ In determining **Reasonable time** for presentment, for acceptance or payment, for giving notice of dishonor and for noting
 - Public Holidays shall be excluded (Section 105)
 - In notice of dishonor, if the holder and the party to whom notice of dishonor is to be given reside or carry on business :
 - ❖ In different places : Reasonable time is if notice is dispatched by the next post or on the day next after the day of dishonor.
 - ❖ In same place : Reasonable time is if notice is dispatched in time to reach its destination on the day next after the day of dishonor.

ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED

1. **Acceptance for honour**(Section 108) :- If a bill has been dishonoured by non-acceptance and has been duly noted or protested for such dishonour, any person, before it is overdue, who is not a party already liable under the bill may, with the consent of the holder of the bill, by writing on the bill, accept the bill for the honour of any of the parties liable on it.
 - The object of such an acceptance for honour is to protect the credit of the party liable on the bill, and to prevent legal proceedings being taken against him.
 - Conditions for valid acceptance for honour are:
 - i. that the bill has been noted or protested for non-acceptance or better security
 - ii. that such an acceptance has been made with the consent of the holder
 - iii. that the acceptor for honour is not a party already liable on the bill
 - iv. that the acceptance is for the honour of any party already liable on the bill
 - v. that the acceptance is by writing on the bill.
 - Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer(Section 110)
2. **Rights and Liabilities of such acceptor:** Section 111 of the Act states that an acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate.
 - But an acceptor for honour is not liable to the holder of the bill unless it is presented or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment not later than the day next after the day of its maturity.
 - Moreover, an acceptor for honour cannot be charged unless the bill has been presented at its maturity to the drawee for payment and has been dishonoured by him and noted or protested for such dishonor (Section 112).
3. **Payment for honour:** It is a payment which is made by any person for the honour of any party liable on the bill after it has been protested for non-payment. The condition essential for such payment are,
 - i. that the bill must have been noted or protested for non-payment
 - ii. that the person paying or his agent declares before Notary Public the party for whose honour he pays;
 - iii. that such declaration has been recorded by such Notary Public;
 - iv. that the payment must be made for the honour of any party liable to pay the bill and
 - v. (v) that the payment may be made by any person whether he is already liable on the bill or not.

- The effects of such a payment are:
 - i. All parties subsequent to the party for whose honour it is paid are discharged.
 - ii. The payer for honour acquires the rights in respect of the bill at the time of such payment of a holder whom he pays and becomes entitled to all the remedies of the holder on the instrument,
 - iii. The payer can recover all sums paid by him together with the interest and expenses properly incurred in making such payment (Section 114).

- 4. **Drawee in case of need** : According to Section 115 where a “drawee in case of need” is named in a bill or in any endorsement thereon, it is obligatory for the holder to present the instrument to him i.e, the drawee in case of need, and it will not be considered to have been dishonoured, unless it has been dishonoured by such drawee.

Note : The failure to present the bill to the drawee in case of need absolves the drawer from liability (Bahadur Chand v. Gulab Rai). Again according to the Bombay High Court if a bill of exchange has been duly accepted but dishonoured when presented to drawee in the first instance for payment, it cannot be validly presented for payment to the drawee in case of need if it was not first presented to him for acceptance [Dore vs. Kanchiwalla & Co.]

SPECIAL RULES OF EVIDENCE

1. **Presumption as to negotiable instrument (Section 118)**: For deciding cases in respect of rights of parties on the basis of a bill of exchange, the Court is entitled to make certain presumptions until the contrary is proved. These are briefly stated as follow:
 - i. That the negotiable instrument was made or drawn for consideration and every party who made itself bound in respect thereof did so for consideration;
 - ii. That the negotiable instrument was drawn on the date shown on the face of it;
 - iii. That the bill of exchange was accepted before its maturity, i.e., before it became overdue;
 - iv. That the negotiable instrument was transferred before its maturity;
 - v. That the Indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.
 - vi. That an instrument which has been lost was properly stamped;
 - vii. That the holder of a negotiable instrument is the holder in due course, except when the instrument has been obtained from its lawful owner or its lawful custodian.

2. **Certain rules of estoppel applicable to instruments**:
 - When one person causes another person to believe a thing to be true and to act upon such belief he is not allowed in a suit between him and such person, to deny the truth of

that thing. That is, he is not allowed to give evidence in support of his denial. This rule is called the rule of estoppel, by which evidence is excluded.

- There are certain rules of estoppel applicable to negotiable instruments. These are contained in Sections 120 to 122 of the Act.
- The objective of these provisions are:
 - i. that the original parties to the instrument shall not deny the validity of the instrument;
 - ii. that the maker of a promissory note or an acceptor of a bill shall not deny the right of the payee to receive the payment therefore;
 - iii. that an indorser of a negotiable instrument shall not deny the signature or capacity to contract of any prior party to the instrument.

CROSSING OF CHEQUES

- ✓ Crossing of a cheque means "Drawing Two Parallel Lines" across the face of the cheque. Crossed cheques must be presented through the bank only because they are not paid at the counter.
- ✓ Crossing is a popular device for protecting the drawer and payee of a cheque.
- ✓ Types of crossing :-
 - i. General Crossing : There are two transverse parallel lines, marked across its face, or The cheque bears an abbreviation "& Co." between the two parallel lines, or The cheque bears the words "Not Negotiable" between the two parallel lines, or The cheque bears the words "A/c. Payee" between the two parallel lines.
 - ii. Special or Restrictive Crossing : Crossing is that the bank makes payment only to the banker whose name is written in the crossing. Specially crossed cheques are safer than generally crossed cheques.
- ✓ A banker who has in good faith and without negligence received payment for a customer of a cheque crossed 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 only of having received such payment.

INTERBATIONAL LAW REGARDING NEGOTIABLE INSTRUMENT

- ✓ In the absence of a contract to the contrary (i.e., unless the parties otherwise agree), the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is governed in all essential matters by the law of the place where he made the instrument.
- ✓ The respective liability of the acceptor and endorser, in such cases, will be governed by the law of the place where the instrument is made payable (Section 134).
- ✓ For example, if a bill of exchange was drawn by A in New York where the rate of interest was 25% it was accepted by B, payable in Canada, where the rate of interest was 6% and the bill was indorsed in India and was dishonoured. On an action on the bill being brought against B in India, B would be liable to pay interest @ 6% only; but if A was charged as drawer, A would be liable to pay interest @ 25%.

- ✓ When the foreign instrument made is payable in a place different from that at which it is made or indorsed, the law of the place where the instrument is made payable would determine what constitutes dishonour and what notice of dishonour is sufficient (Section 135).
- ✓ If the instrument is made, drawn, accepted or endorsed abroad, but it is in accordance with the law of India, any subsequent acceptance or endorsement thereon India will not be regarded as invalid, because the agreement as evidenced by such an instrument is invalid according to the law of such foreign country (Section 136)
- ✓ Courts in India do not take judicial notice of foreign law. Any person relying on such law relating to negotiable instruments must prove it by evidence and in the absence of such evidence, the courts shall presume the law of any foreign country to be the same as that of our country. (Section 137)

OF PENALTIES IN CASE OF DISHONOUR OF CHEQUES

Section 138	Dishonour of cheque for insufficiency, etc., of funds in the account	Penalty- imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque, or with both; Provided <ul style="list-style-type: none"> • Cheque has been presented within 6 months or its validity • On return of cheque, within 30 days the holder/payee demands money by giving a notice • The drawer fails to make payment within 15 days of receipt of notice
Section 139	Presumption in favour of holder	It shall be presumed that the holder of a cheque received the cheque in whole or in part, of any debt or other liability.
Section 140	Defence which may not be allowed in any prosecution under section 138	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
Section 141	Offences by companies.	every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly except due diligence
Section 142	Cognizance of offences	-no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque and within one month of the date on which cause of action arises - no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138
Section 142A	Validation for transfer of pending cases	all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of 2015), shall be deemed to have been transferred under this Act
Section 143	Power of Court to try cases summarily	the provisions of sections 262 to 265 (both inclusive) of the Criminal Procedure Code shall, as far as may be, apply to such trials

Section 143A	Power to direct Interim Compensation
Section 144	Mode of service of summons
Section 145	Evidence on affidavit
Section 146	Bank's slip prima facie evidence of certain facts
Section 147	Offences to be compoundable
Section 148	Power of Appellate Court to order payment pending appeal against conviction.

POWER TO DIRECT INTERIM COMPENSATION

- ✓ The Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation which shall not increase twenty percent of the amount of cheque.
- ✓ The interim compensation shall be paid within sixty days from the date of the order or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
- ✓ The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

POWER OF APPELLATE COURT TO ORDER PAYMENT PENDING APPEAL AGAINST CONVICTION

- ✓ In an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court and shall be in addition to any interim compensation paid by the appellant under section 143A.
- ✓ The amount referred above shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant