

4.3 The Negotiable Instruments, Act, 1881

1. INTRODUCTION TO NEGOTIABLE INSTRUMENTS

➤ Definition of Negotiable instrument (Sec.13)

Negotiable instrument means

- a promissory note; or
- bill of exchange; or
- cheque

Payable

- either to order; or
- to the bearer.

➤ Meaning of Negotiable instrument

- Negotiable instrument means an instrument
- The property in which is acquired by anyone who takes it –
 - Bonafide; and
 - For value
- notwithstanding any defect in the title of any prior party.
- In other words negotiable instrument means an instrument
- Notwithstanding any defect in the title of any prior party.

2. ESSENTIALS OR CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT (Sec.13)

- Freely transferable from one person to another
- Transferable infinitum (i.e. indefinitely).
- HDC gets a good title to negotiable instrument even though the title of transferor is defective.
- A negotiable instrument may more than one payee jointly or alternatively.

3. PRESUMPTIONS AS TO NEGOTIABLE INSTRUMENTS (Sec.118)

Unless the contrary is proved, the following presumptions shall be made –

➤ As to consideration

That every negotiable instrument was made or drawn for consideration and that every such instrument when it has been accepted, endorsed or negotiated has been for consideration.

➤ As to date

That every negotiable instrument bearing a date was made or drawn on such date.

➤ As to time of acceptance

That every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity.

➤ As to time of transfer

That every transfer of a negotiable instrument was made before its maturity.

➤ As to order of endorsements

That the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon.

- **As to stamp**
That a lost promissory note or bill of exchange was duly stamped.
- **That holder is a holder;**
That the holder of a negotiable instrument is a holder in due course.
- **As to dishonour**
If a suit is filed upon an instrument which has been dishonored, the court shall, on proof of the protest, presume the fact of dishonour.

The above presumptions are rebuttable (debatable) by producing evidence to the contrary. It is the responsibility of the person alleging the non existence of presumptions to prove the same.

The above presumptions are not applicable where an instrument has been obtained by an offence, fraud or for unlawful consideration.

4. MEANING OF PROMISSORY NOTE (Sec.4)

A ‘Promissory note’ is an instrument in writing (not being a bank – note or a currency – note) containing an unconditional undertaking
Signed by the maker
to pay a certain sum of money only to –
(a) a certain person; or
(b) the order of a certain person.

Rs.....	Place.....
	Date.....
<p>.....month/days after date. I promise to payor Bearer/Order the sum of Rs.....for value received with interest @.....p.a. withrests</p>	
<p>..... (Maker)</p>	

5. ESSENTIALS CHARACTERISTICS OF A PROMISSORY NOTE (Sec.4)

- **In writing**
An oral promise to pay is not sufficient
Example
A promises to pay Rs.1,000 to ‘B’, over telephone.
- **Express promise to pay**
There must be express promise to pay.
Mere acknowledgement of indebtedness is not sufficient.
 - “I acknowledge myself to be indebted to B in Rs.5,000, to be paid on demand, for value received”. The promise to pay is definite and therefore this is a valid promissory note.

- “Mr. B.I.O.U Rs.1,000.” There is no promise to pay and therefore this is not a valid promissory note.
- **Definite and unconditional promise**
If a promise to pay is dependent upon an event which is certain to happen, although the time of its happening is uncertain, the promise to pay is unconditional.
 - “I promise to pay B Rs.500 seven days after my marriage with C.” The promise is conditional since the promise is dependent upon marriage of the promisor with C, which may or not happen.
 - “I promise to pay B Rs.500 on D’s death, provided D leaves me enough to pay that sum.” The promise is conditional since the promise is dependent upon the estate inherited by the promisor.
 - “I promise to pay B Rs.500 on D’s death.” The promise is not conditional, but definite since death of D is certain. Therefore, the promissory note is valid.
- **Signed by maker**
A promissory note must be signed by the maker.
The signatures may be made on any part of the instrument.
- **Promise to pay a certain sum**
 - “I promise to pay B Rs.500 and all other sums which shall be due to him.” Since the amount payable is not certain, it is not a valid promissory note.
 - “I promise to pay B Rs.500 first deducting there from any money which he owes me.” Since the amount payable is not certain, it is not a valid promissory note.
- **Promise to pay money only**
“I promise to pay B Rs.500 and to deliver to him my black horse on 1st January next.” It is not a valid promissory note since the promisor is required to deliver his black horse also, which is not ‘money’.
- **Payee must be certain**
The name of payee must be specified in the promissory note, otherwise it will be invalid.
- **Stamped**
A promissory note must be stamped.

Parties to a promissory note

Maker : The person who makes the promissory note is called as maker. His liability is primary and unconditional.

Payee : The person to whom money is to be paid is named in the promissory note. He is called as payee.

The words “ **or to the bearer of the instrument**” is inoperative in view of section 31 of the Reserve Bank of India Act, 1934, which provides that no person in India other than Reserve Bank of India or Central Government can make or issue promissory note payable to bearer of the instrument.

6. BILL OF EXCHANGE**(Sec. 5)**

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 –

- (a) a certain person ; or
- (b) the order of a certain person; or
- (c) the bearer of the instrument.

Amount: Rs.....	Place.....
	Date.....
<p>.....month/days after date, pay toor Bearer/Order the sum of Rupees.....only for value received.</p>	
<p>..... (Drawer)</p>	<p style="text-align: right;">To</p> <p>..... (Drawee)</p>

➤ **Essentials characteristics of a bill of exchange**

- (a) It must be in writing
- (b) It must contain an express order to pay
- (c) The order to pay must be definite and unconditional
- (d) It must be signed by the drawer
- (e) The sum contained in the order must be certain
- (f) The order must be to pay money only
- (g) Drawer, drawee and payee must be certain (usually, same person is the drawer and payee)
- (h) It must be stamped.

➤ **Parties to a bill of exchange**

Drawer

- The person who draws the bill (i.e.the person who makes the bill) is called as drawer.
- His liability is secondary and conditional
- His liability is primary and conditional until the bill is accepted.

Drawee

- The person on whom the bill is drawn is called as drawee.
- On acceptance of the bill
 - (a) he is called as acceptor;
 - (b) he becomes liable for the payment of the bill;
 - (c) his liability is primary and unconditional.

Payee.

- The person to whom money is to be paid is named in the bill.
- He is called as payee.

The words “or the bearer of the instrument” is inoperative in view of section 31 of the Reserve Bank of India Act, 1934, which provides that no person in India other than Reserve Bank of India or Central Government can make or issue promissory note payable to bearer of the instrument.

Difference between promissory note and bill of exchange.

7. CHEQUE**(Sec.6)**

A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand (i.e. it is always payable on demand) and it includes –
 - the electronic image of truncated cheque; and
 - a cheque in electronic form.

➤ **Essentials characteristics of a cheque**

- (a) It must be in writing
- (b) It must contain an express order to pay
- (c) The order to pay must be definite and unconditional
- (d) It must be signed by the drawer
- (e) The sum contained in the order must be certain
- (f) The order must be to pay money only
- (g) Drawer, drawee and payee must be certain
- (h) It is always drawn upon a specified banker
- (i) It is always payable on demand
 - A cheque must contain all the characteristics of a bill of exchange
 - A cheque does not require
 - (a) stamping ; or
 - (b) acceptance.

➤ **Parties to a cheque****Drawer**

- The person who draws the cheque, i.e., the person who makes the cheque is called as drawer.
- His liability is primary and conditional

Drawee

- The bank on whom the cheque is drawn is called as drawee.
- He makes the payment of the cheque.

Payee

- The person to whom money is to be paid (i.e., the person in whose favour cheque is issued) is named in the cheque. He is called as payee.
- The payee may be the drawer himself or a third party.

Meaning of electronic cheque and truncated cheque

➤ **Meaning of truncated cheque**

- A truncated cheque means a cheque
- Which is truncated during the course of a clearing cycle
- Either by the clearing house or bank whether paying or receiving payment.
- Immediately on generation of an electronic image.
- For transmission substituting the further physical movement of cheque in writing

➤ **Meaning of ‘a cheque in electronic form’**

- A cheque in 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 signature (with or without biometric signature) and asymmetric crypto system.

➤ **Duties of collecting banker**

The collecting banker shall verify with due diligence and ordinary care –

- The prima facie genuineness of the cheque to be truncated;
- As to whether any fraud, forgery or tampering is apparent on the face of the instrument.

➤ **Presentment of truncated cheque**

In case of any reasonable suspicion about the genuineness of the electronic image of a truncated cheque (e.g. suspicion as to fraud, forgery, tampering or destruction of the instrument), the paying banker is entitled to –

- Demand any further information regarding the truncated cheque;
- Demand the presentment of truncated cheque itself for verification.

Difference between electronic cheque and truncated cheque

Electronic cheque	Truncated cheque
Paper is not used at any stage in creation of an electronic cheque.	A truncated cheque is nothing but a paper cheque, which is truncated during the clearing cycle.
Digital signatures must be used to create an electronic image of cheque. Thus, an electronic cheque contains digital signature.	The paper cheque, which is afterwards truncated, contains no digital signature. The signatures in ink appear on the truncated cheque.
The original writing of an electronic cheque is in electronic form.	The – original writing of a truncated cheque is on paper duly – signed in ink. After the paper cheque is converted into electronic form, it is truncated and thus, it becomes a truncated cheque.

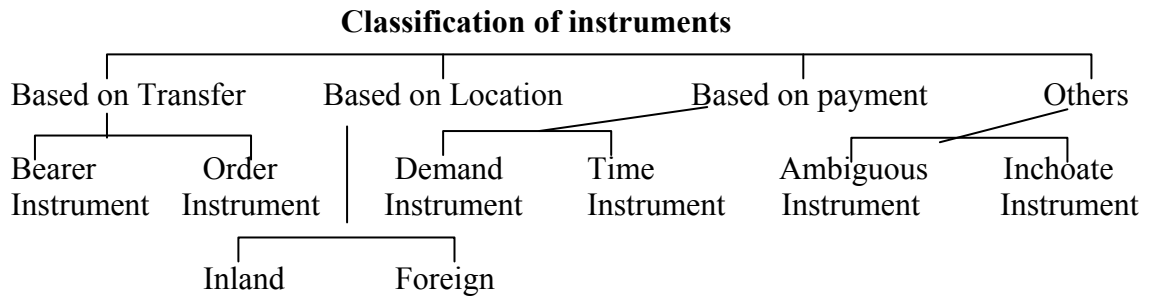
8. CAPACITY OF A PERSON TO BE A PARTY TO A NEGOTIABLE INSTRUMENT (Sec. 26)

➤ **Person must be capable of contracting**

A person shall be liable on a negotiable instrument (by reason of making, drawing, accepting endorsing, delivering or negotiating a negotiable instrument) only if he is capable of contracting according to the law to which he is subject.

➤ **Liability in case of a minor**

- A minor may draw, endorse, deliver and negotiate any negotiable instrument.
- All the parties shall be bound on such negotiable instrument.
- However, the minor shall not be bound on such negotiable instrument.

9. CLASSIFICATION OF NEGOTIABLE INSTRUMENT (Sec. 13, 19 and 21)➤ **Order Instrument :**

An instrument -

- Payable to a particular person or expressed to be payable to a particular person, and
- Does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.

➤ **Bearer Instrument :**

An instrument is payable to bearer of –

- (a) it is expressed to be so payable, or
- (b) on which the only or last endorsement is an endorsement in blank.
 - Promissory note – can not be made payable to bearer
 - Bill of exchange can not be made payable to bearer on demand

➤ **Demand Instrument:**

An instrument which satisfies the following conditions –

- (a) Time for payment is not specified.
- (b) Expressed to be payable on demand.
- (c) Can be presented for payment at any time.

Note: A P/N or B/E, in which no time for payment is specified, and a cheque, are payable on demand. [Sec.19]

➤ **Time Instrument :**

An instrument in which time for payments is specified and may be payable –

- (a) After a specified period, or
- (b) On a specified day, or
- (c) Certain period after, sight, or
- (d) On the happening of a certain event.

➤ **Inland Instrument [Sec.11]:**

A P/N, B/E or cheque is said to be an inland instrument, if any one of the following conditions is satisfied –

- (a) Drawn or made in India and made payable in India, or
- (b) Drawn or made in India and drawn upon a person resident in India.

Note: Even if an Inland Bill is endorsed to a foreign country, it continues to be an Inland Instrument.

➤ **Foreign Instrument [Sec.12]:**

An instrument which is not an Inland Instrument, is deemed to be a Foreign Instrument.

➤ **Ambiguous Instruments [Sec.17]:**

- (a) Where an instrument may be constructed either as a P/N or as a B/E, the holder may at his option treat it as either, and the instrument shall henceforth be treated accordingly, e.g. a B/E drawn in favour of a fictitious person.
- (b) An Ambiguous Instrument treated as a P/N or as a B/E cannot be treated differently afterwards.

➤ **Conditions for an inchoate instrument**

- (a) A person signs a negotiable instrument.
- (b) The negotiable instrument is stamped.
- (c) The negotiable instrument is either wholly blank or is partially blank.
- (d) The person signing such negotiable instrument delivers it to another person.

➤ **Legal effect**

The holder gets a prima facie authority to make or complete the negotiable instrument.

➤ **Liability on an inchoate instrument**

Rights of a person to whom an inchoate instrument is delivered
He can recover only such amount as he was authorised to fill.

Rights of HDC

He can recover the whole amount stated in the instrument, but not exceeding the amount covered by the stamps.

10. MATURITY OF A NEGOTIABLE INSTRUMENT

(Sec.22)

➤ **Maturity of a negotiable instrument Days of grace**

- It means the date on which the negotiable instrument falls due for payment.
- A negotiable instrument which is payable otherwise than on demand is entitled to 3 days of grace.

11. CALCULATION OF DAYS OF MATURITY

(Sec.23 to 25)

Case	Date of maturity
Negotiable instrument payable on a specified day	Specified day + 3 rd day
Negotiable instrument payable on a stated number of days after date	Date on which negotiable instrument is drawn + stated number of days + 3 rd day
Negotiable instrument payable on stated number of days after sight	Date on which negotiable instrument is presented for sight + stated number of days + 3 rd day
Negotiable instrument payable on stated number of days after happening of a certain event	Date on which such event happens + stated number of days + 3 rd day
Negotiable instrument payable on stated number of months after date	Corresponding day of the relevant month (i.e., date on which negotiable instrument is drawn + stated number of months) + 3 rd day
Negotiable instrument payable on stated number of months after sight	Corresponding day of the relevant month* (i.e., Date on which negotiable instrument is presented for sight + stated number of months) + 3 rd day
Negotiable instrument payable on stated number of months	Corresponding day of the relevant month* (i.e., Date on which such event happens + stated number of

after happening of a certain event	months)+ 3 rd day
If the day of maturity of negotiable instrument is a public holiday	Immediately preceding business day
If the day of maturity of negotiable instrument is an emergency or unforeseen public holiday	Immediately succeeding business day

12. NEGOTIATION – MEANING AND METHODS (Sec.14)

➤ **Meaning of negotiation**

Negotiation means transfer of a negotiable instrument to any other person so as to constitute that person the holder of such negotiable instrument.

➤ **Methods of negotiation**

Negotiation by delivery

- A bearer instrument may be negotiated by delivery.
- The delivery must be voluntary

Negotiation by endorsement and delivery

An order instrument can be negotiated only by way of -

- (i) endorsement; and
- (ii) delivery.

13. MEANING OF ENDORSEMENT (Sec. 15)

Endorsement means

Signing

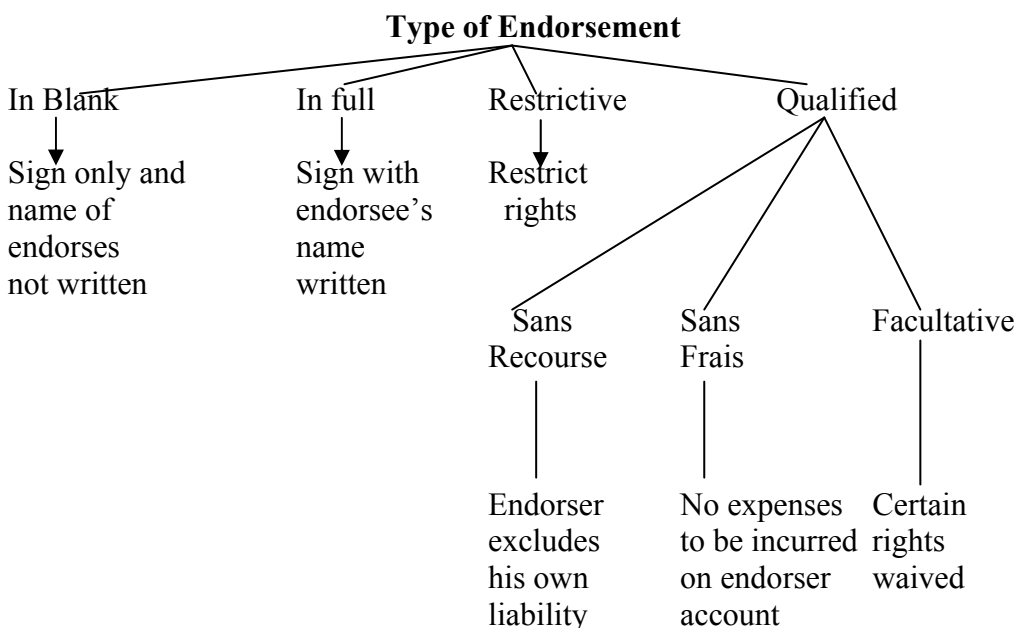
- on the face or back of negotiable instrument; or
- on a slip of paper annexed to the negotiable instrument

By

- the holder of negotiable instrument

For the purpose of

- negotiating such negotiable instrument .



14. ESSENTIAL REQUIREMENTS OF A VALID ENDORSEMENT (Sec.15 and 16)**Writing**

The endorsement must be in writing

Signed

The endorsement shall not be valid unless it is signed.

By holder

The endorsement shall be valid only if the negotiable instrument is signed by the holder.

15. KINDS OF ENDORSEMENTS (Sec.16, 50, 52, 56)➤ **General endorsement i.e. endorsement in blank****Meaning**

- General endorsement means, an endorsement made by the endorser without writing the name of the endorsee.

Effect

- Order instrument is converted into bearer instrument.

➤ **Special endorsement i.e., endorsement in full**

Special endorsement means an endorsement made by a holder by –

- (a) signing his name, and
- (b) adding a direction to pay the amount to a specified person

➤ **Restrictive endorsement**

An endorsement which restricts the right of further negotiation is called as restrictive endorsement.

➤ **Partial endorsement**

An endorsement which purports to transfer only a part of the amount of the instrument is called as partial endorsement. Partial endorsement is not valid at law.

➤ **Conditional endorsement**

(a) **Sans Recourse** – Endorser relieves himself from the liability to all subsequent endorseees.

(b) **Facultative** – Endorser waives any of his rights.

(c) **Contingent** - Endorser makes his liability dependent upon the happening of an event.

16. NEGOTIATION BACK (Sec.90)➤ **Meaning****If –**

- a negotiable instrument is negotiated by the holder, but
- the endorser again becomes the holder of such negotiable instrument

Then –

- it is called as negotiation back.

➤ **Effect**

- The holder cannot enforce payment against an intermediate party to whom he was previously liable.
- The holder can enforce payment against all the parties to whom he was not previously liable.
- However, the holder can sue all the prior parties (including all intermediate parties to whom he was previously liable), if he had made sans recourse endorsement.

17. DISTINCTION BETWEEN NEGOTIATION AND ASSIGNMENT

Basis	Negotiation	Assignment
1. Applicable Act	If a negotiable instrument is transferred by way of negotiation, Negotiable Instrument Act, 1881, applies.	Where any right is transferred by way of assignment, the Transfer of Property Act applies.
2. Meaning	Negotiation means transfer of a negotiable instrument to any other person so as to constitute that person the holder of such negotiable instrument.	Transfer of a right to receive the payment of a debt by one person (viz, assignor) to another document is called as assignment.
3. Scope	Negotiation can be made for transferring negotiable instruments only.	Assignment can be made of any right.
4. Method or manner	A bearer instrument can be negotiated merely by delivery, and an order instrument can be negotiated by endorsement and delivery.	Assignment is valid only if it is made in writing and is signed by the assignor.
5. Notice	Notice of negotiation is not required to be given to any party.	Notice of assignment must be given by the assignee to the debtor.
6. consideration	It is presumed that every negotiable instrument was negotiated for consideration.	There is no such presumption in case of assignment.
7. Burden of proof	The other party has to prove that negotiation was without any consideration.	The assignee has to prove that there was some consideration.
8. Better title	The transferee of a negotiable instrument acquires a title better than that of the transfer, i.e., he becomes a holder in due course.	The assignee does not acquire a title better than that of the assignor.
9. Stamp duty	Negotiation does not require payment of stamp duty.	Assignment requires payment of stamp duty.

18. MEANING AND PURPOSE OF CROSSING

➤ **Meaning of crossing**

Crossing means a direction given by the drawer of the cheque to the drawee bank, not to pay the cheque at the counter of the bank, but to pay it to a person who presents it through a banker.

➤ **Purpose of crossing**

Crossing makes it possible to trace the person to whom the payment has been made. Thus, it makes the cheque safe.

19. TYPES OF CROSSING (Sec. 123 to 131A)

➤ **General Crossing ; Sec.123**

Where a cheque bears across its face an addition of –

- The words ‘and company’ or any abbreviations thereof between two parallel transverse lines, or
- Two parallel transverse lines simply.

Pay..... Rupees..... XYZ Bank XXXXor bearer [] XXXX
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Either with or without the words ‘not negotiable’, the addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

➤ **Special Crossing : Sec.124.**

Where a cheque bears across its face an addition of the name of a banker, either with or without the words ‘not negotiable’, that addition shall be deemed a crossing and the cheque shall be deemed to be crossed specially.

Pay..... Rupees..... XYZ Bank XXXXor bearer XXXX
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Two parallel transverse lines are not a must. Where a cheque is crossed specially, the banker on whom it is crossed shall not pay it, otherwise than to the banker to whom it is crossed or his agent for collection.

Difference:

In general crossing the Name of the Bank is not mentioned whereas in special crossing the Name of the Bank is mentioned.

'Not Negotiable' Crossing : Sec.130.

The object of "Not negotiable" crossing is to protect the rights of holder of a cheque.

A person taking a cheque crossed generally or specially, bearing in either cases the words 'not negotiable', shall not have, and shall not be capable of giving a better title to the cheque other than that which the person from whom he took it had.

Ordinarily a person acquiring a cheque in good faith becomes its holder in due course just as in the case of an open document. Such a cheque can be negotiated further.

However, where a cheque is crossed as 'Not Negotiable', either generally or specially, the Holder in due course will not get a better title than the person from whom the received. It maybe noted that though it is mentioned 'Not Negotiable', the cheque can be transferred. The only restriction is with regard to the title passed.

In other words, the principle of *nemo dat quod non habet* (nobody can pass on a title better than what he himself has) will be applicable to a cheque with a 'not negotiable' crossing, even though the cheque is in the hands of a holder in due course.

➤ **'Account Payee' Crossing / Restrictive Crossing**

The purpose of this crossing bearing the words "A/c Payee" is to obviate the risk of a wrong person obtaining payment on a cheque.

It is a direction to banker to credit the proceeds only to the account of the payee.

The cheque remains legally negotiable but "A/c payee" crossing hinders the negotiability of the cheque in practice.

20. BOUNCING OR DISHONOUR OF CHEQUES (Sec.31 and 138)

➤ **Liability of drawee on dishonour Conditions (Sec.31)**

If –

- the drawer has sufficient funds in the account; and
- such funds are properly applicable to payment of the cheque

Then –

- the drawee is duly required to pay the cheque.
- In case of default by drawee (i.e. Banker), the drawee shall compensate the drawer for loss caused to him.

➤ **Liability of drawer on dishonour (Sec.138)**

Nature of liability

- Imprisonment – 2 years (Maximum); or
- Fine – 2 times the amount of cheque (Maximum); or
- Both

Conditions

- Debt – Cheque was issued to discharge a legally enforceable debt.
- Reason for dishonour – insufficiency of funds
- Presentment of cheque – within 6 months or validity period of the cheque

- Demand made from drawer – within 30 days of dishonour
- Default by drawer to pay - within 15 days of demand made.
- Complaint by holder – within 1 month, with the Court.

21. HOLDER (Sec.8 and 9)

➤ Meaning of 'holder' (Sec.8)

- He must be entitled to the possession of negotiable instrument in his own name.
- He must be entitled to receive or recover the amount due on negotiable instrument from the parties liable on negotiable instrument.

➤ Holder for value

'Holder for value' means, as regards all parties prior to himself, holder of an instrument for which value has, at any time, been given.

➤ Meaning of 'holder in due course' (Sec.9)

- He must be a holder.
- He must have become the holder for consideration.
- He must have obtained the possession of negotiable instrument before maturity
- He must have obtained the negotiable instrument in good faith, i.e. without sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

Example:-

	Situation	Holder	Holder for Value	Holder in due Course
a.	X steals a cheque	√	×	×
b.	X gets a cheque for consideration but after maturity	√	√	×
c.	X gets a cheque for consideration before maturity.	√	√	√

22. PRIVILEGES OF A HOLDER IN DUE COURSE (Sec.20, 36, 43, 46, 53 and 58)

- ❖ Every prior party to a negotiable instrument is liable to a HDC (Sec.36)
- ❖ A holder who derives title from HDC has the same rights as that of a HDC (Sec.53)
- ❖ No prior party can set up a defense that the negotiable instrument was drawn, made or endorsed by him without any consideration (Sec.43)
- ❖ No prior party can set up a defence that the negotiable instrument was lost or was obtained from him by an offence or fraud or for an unlawful consideration. Thus, HDC gets a valid title to the negotiable instrument even though the title of the transferor was defective (Sec.58)
- ❖ No Prior party can allege that negotiable instrument was delivered conditionally or for a special purpose only (Sec.46).
- ❖ HDC can claim full amount of the negotiable instrument (but not exceeding the amount covered by the stamp) even though such amount is in excess of the amount authorised by the person delivering an inchoate negotiable instrument (Sec.20).

23. DIFFERENCE BETWEEN HOLDER AND HDC

Basis	Holder	HDC
1. consideration	A person becomes a holder even if he obtains the negotiable instrument without any consideration.	A person becomes a HDC only if he obtains the negotiable instrument for consideration.
2. Before Maturity	A person becomes a holder even if he obtains the negotiable instrument after the maturity of the negotiable instrument.	A person becomes a HDC only if he obtains the negotiable instrument before its maturity.
3. Good Faith, i.e., bonafide	A person becomes a holder, even if he does not obtain the negotiable instrument in good faith.	For being a HDC, a person must obtain the negotiable instrument in good faith.
4. Privileges	A holder is not entitled to the privileges, which are available for HDC.	A HDC is entitled to various privileges as specified under the Negotiable Instruments Act, 1881.
5. Right to sue	A holder cannot sue all the prior parties.	A HDC can sue all the prior parties.

24. PAYMENT IN DUE COURSE. (Sec.10)

- ❖ Payment is made as per apparent tenor.
- ❖ Payment is made in good faith-
- ❖ Payment is made without negligence
- ❖ Payment is made to holder of negotiable instrument
- ❖ Payment is made in money only

25. PROTECTION TO PAYING BANKER (Sec.85)

- **Cheque payable to order**
 - Payment is made in due course.
 - The protection shall be available notwithstanding that any endorsement subsequently turns out to be a forgery.
- **Cheque originally payable to bearer**
 - Payment is made in due course
 - Payment is made to the bearer of the cheque
 - The protection shall be available notwithstanding that any endorsement appears on the cheque
- **Cheques crossed generally**
 - Payment is made in due course.
 - Payment is made to any banker.
- **Cheques crossed specially**
 - Payment is made in due course
 - Payment is made to the banker to whom the cheque is crossed.

26. LIABILITY OF THE PAYING BANKER (Sec.129)

The paying banker shall be liable to the owner of the cheque for any loss sustained by him in the following 2 cases.

- (a) Where the paying banker pays a cheque crossed generally otherwise than to a banker.
- (b) Where the paying banker pays a cheque crossed specially otherwise than to the specified banker.

27. BANKER MUST REFUSE TO HONOUR A CUSTOMER'S CHEQUE

- ❖ Stop payment
- ❖ Garnishee order
- ❖ Death of customer
- ❖ Insolvency of customer
- ❖ Insanity of customer
- ❖ Assignment of funds by customer
- ❖ Defect in title of holder
- ❖ Loss of cheque
- ❖ Materially altered cheque, mutilated cheque, cheque of doubtful validity, incomplete cheque
- ❖ Different signatures
- ❖ Receipt of application for closure of account
- ❖ Irregular endorsement
- ❖ Stale cheque, i.e., outdated cheque
- ❖ Post dated cheque
- ❖ Undated cheque

28. BANKER MAY REFUSE TO HONOUR A CUSTOMER'S CHEQUE

- ❖ Insufficient funds
- ❖ Funds not applicable
- ❖ Presentment at different branch
- ❖ Presentment after banking hours

29. EFFECT OF NON – PRESENTMENT OF CHEQUE WITHIN REASONABLE TIME (Sec.84)

- **No liability of drawer if bank fails Conditions**
 - (a) The drawer has sufficient balance when he issue the cheque, and when the cheque ought to be presented for payment.
 - (b) The holder fails to present the cheque within a reasonable time of issue of the cheque.
 - (c) Meanwhile (i.e. after issue of the cheque but before presentation of the cheque by the holder) the bank fails, and consequently the drawer suffers actual damages.

30. MATERIAL ALTERATION (Sec.20, 49, 87 and 125)

- **Meaning**
An alteration is called as material alteration if it alters –
 - the character or operation (i.e. the legal effect) of a negotiable instrument; or
 - the rights and liabilities of any of the parties to a negotiable instrument.

- **Material alterations authorised by Act**
 - (a) Filling blanks of an inchoate instrument (Sec.20)
 - (b) Conversion of a blank endorsement into an endorsement in full (Sec.49)
 - (c) Crossing of cheques (Sec.125)
 - (d) Conversion of general crossing into special crossing or not negotiable crossing or A/c Payee Crossing (but not vice – versa)
 - (e) Conversion of a bearer instrument into an order instrument by deleting the word ‘Bearer’.
- **Effects of material alteration (87)**
All the parties to negotiable not consenting to the material alteration are discharged.

31. ACCEPTANCE (Sec.7 and 86)

- **Meaning of acceptance (Sec.7)**
 - (a) The drawee signs the bill; and
 - (b) The drawee delivers it to the holder of the bill; or
- **Effect (Sec.7)**
The drawee becomes the acceptor.
- **Essentials of a valid acceptance (Sec.7)**
 - (a) Writing (whether on the face or back of the bill)
 - (b) Signed (Signature without the word ‘accepted’ is also valid)
 - (c) Signing on the bill
 - (d) Delivery or intimation to the holder that the bill has been accepted.
- **Types of acceptance (Sec.86)**
 - (a) **General** – Acceptance of bill without any qualification.
 - (b) **Qualified** – Acceptance of bill subject to some qualification (e.g. accepting the bill subject to the condition that the payment of bill shall be made only on happening of an event specified therein).
- **Effect of qualified acceptance (Sec. 86)**
 - (a) The holder may object to the qualified acceptance. In such a case, it shall be treated that the bill is dishonoured due to non – acceptance.
 - (b) He may give his consent to the qualified acceptance. In such a case, all the previous parties, not consenting to it, are discharged.

32. DISHONOUR BY NON – ACCEPTANCE (Sec.91)

- **Meaning**
A bill is dishonoured by non – acceptance if it is duly presented for acceptance, but the drawee refuses to accept the bill.
- **Cases in which a bill is dishonoured by non – acceptance**
 - (a) Where a bill is not accepted by the drawee within 48 hours of presentment of bill. If the holder allows to the drawee more than 48 hours for acceptance, all the prior parties not consenting to the same are discharged from liability to such holder.
 - (b) In case there are two or more drawees who are not partners, if the bill is not accepted by all the drawees.
 - (c) Where the drawee is a fictitious person
 - (d) When the drawee cannot be found even after a reasonable search.

- (e) When the drawee is incompetent to contract.
- (f) Where the drawee gives a conditional acceptance, and the holder does not give his consent to the conditional acceptance.

➤ **Effects**

- The holder gets an immediate right to sue all the prior parties.
- He need not wait till the maturity of the bill for it to be dishonoured on presentment for payment.

➤ **Non – applicability**

A promissory note or a cheque cannot be dishonoured by non – acceptance since a promissory note or a cheque does not require any acceptance.

33. ACCEPTANCE FOR HONOUR (Sec.108 to 112)

➤ **Meaning**

The person who accepts the bill for the honour of any other person is called as an acceptor for honour;

➤ **Conditions for ‘acceptance for honour’**

- The bill must have been noted for non – acceptance
- The acceptance is given –
 - for the honour of any party already liable under the bill.
 - By any person who is already not liable under the bill.
 - With the consent of the holder of the bill.
- The acceptance must be made in writing on the bill.

➤ **Liability of acceptor for honour**

- He is liable to pay the amount of the bill, if the drawee does not pay.
- He is liable only to the parties subsequent to the party for whose honour the bill is accepted.

➤ **Rights of acceptor for honour**

He is entitled to recover the amount paid by him from the party for whose honour the bill was accepted, and from all the parties prior to such party.

34. PAYMENT FOR HONOUR (Sec.113 and 114)

➤ **Meaning of ‘payer for honour’**

A person who pays a bill for honour of any other person is called as ‘payer for honour’

➤ **Conditions for ‘payment for honour’**

- The bill must have been noted for non – payment.
- Payment for honour is made –
 - for the honour of any party already liable under the bill.
 - By any person (whether or not he is already liable under the bill).
 - With the consent of the holder of the public.
- The payment must be recorded by Notary Public.

➤ **Rights of payer for honour**

- The payer for honour is entitled to all the rights of a holder.

- He can recover all the sums paid by him form –
 - (a) the party for whose honour he pays; and
 - (b) all the parties prior to such party.

35. DISHONOUR BY NON – PAYMENT (Sec.92)

Kinds of negotiable instrument	A negotiable instrument shall be dishonoured by non – payment if default in payment is made by the following parties
Promissory note	Maker
Bill	Acceptor (Drawee, in case the bill does not require acceptance
Cheque	Drawee

36. NOTICE OF DISHONOUR (Sec.93 to 98)

- **Notice by whom?**
Notice may be given by the holder or any party liable on the negotiable instrument.
- **Notice to whom?**
Notice must be given to all the parties to whom the holder seeks to make liable
- **Contents of notice**
Notice must disclose the fact of dishonour of negotiable instrument
- **Effects of default**
A party (other than the party primarily liable on the negotiable instrument) to whom notice of dishonour is not given is discharged from liability on the negotiable instrument.
- **When notice of dishonour is unnecessary or excused (Sec.98)**
 - (a) When notice of dishonour is dispensed with by a party.
 - (b) Where the drawer of the cheque has countermanded payment, notice to drawer is not required to be given.
 - (c) When the party entitled cannot be found even after due search.
 - (d) Where the party bound to give notice is unable to give notice without any fault of his own.

37. NOTING AND PROTESTING (Sec.99 to 103)

- **Meaning of noting**
Recording the fact of dishonour of a negotiable instrument on the negotiable instrument.
- **Procedure and contents of noting**
 - The dishonoured bill is handed over to a Notary Public.
 - Notary Public presents it again for acceptance/payment.
 - If the drawee/acceptor refuses to accept or pay the bill, the Notary Public records the fact of dishonour on the bill.
- **Noting is optional**
It is net mandatory to get the fact of dishonour noted.
- **Meaning of protest**
A certificate issued by Notary Public stating the fact of dishonour.

38. DRAWEE IN CASE OF NEED (Sec.7 and 115)

- ❖ The name of any person may be given in a bill as 'drawee in case of need'.
- ❖ His liability arises on the bill only when the bill is not accepted by the drawee named in the bill.
- ❖ The bill is not dishonoured until it has been dishonoured by drawee in case of need.

39. DISCHARGE OF A NEGOTIABLE INSTRUMENT

The Negotiable Instrument is deemed to be discharged in the following cases –

➤ **Payment [Sec.78]:**

- When the party primarily liable on the instrument i.e. Maker of P/N, Acceptor of B/E or Drawee Bank, makes the payment in due course to the Holder at or after maturity.
- Payment by a party who is secondarily liable does not discharge the instrument because the payer holds it to enforce it against prior indorsers and the principle Debtor.

➤ **Cancellation of N/I [Sec.82]:**

When the holder cancels an instrument with intention to release the party primarily liable thereon from liability, the instrument is discharged and ceases to be negotiable.

➤ **Express Waiver of Rights by Holder:**

The N/I is discharged when the Holder, at or after its maturity absolutely and unconditionally renounces in writing, his rights against all the parties to the instrument.

➤ **Lapse of time :**

An instrument becomes discharged by lapse of time making the debt time barred under the limitation Act.

➤ **Insolvency of party primarily liable:**

When the party primarily liable becomes insolvent, the instrument is discharged and the holder cannot make any other prior party liable thereon.

➤ **Material Alteration to Instrument ;**

The instrument stands discharged when it is rendered void by a material alteration to the Instrument.

➤ **Negotiation to Acceptor [Sec. 90];**

When a B/E which has been negotiated is, at or after maturity, held by the Acceptor in his own right, all rights of action thereon are extinguished, i.e. the B/E is discharged.

40. DISCHARGE OF A PARTY

(Sec.82 to 90)

Discharge by	Causal Factor	Discharge of
Cancellation	Holder deliberately cancels the name of Acceptor / Indorser (by striking off the name) with an intent to discharge him from liability.	Maker, Acceptor or Indorser of N/I is discharged from liability to such Holder and to all parties claiming under such Holder.
	Note: Cancellation done under a mistake or without authority of the Holder would be inoperative and will not discharge any party.	
Release	Holder discharges the	Maker, Acceptor or Indorser

	Maker/Acceptor / Indorser by any method other than cancellation of names, e.g. separate agreement of waiver, release, or remission etc.	of N/I is discharged from liability to such Holder and to all parties claiming under such Holder.
Payment	Party primarily liable on the N/I makes payment in due course to the Holder at or after maturity.	All the parties to the instrument stand discharged, as the instrument is also discharged by such payment.
Allowing Drawee more than 48 hours to accept	Holder of a B/E allows the Drawee more than 48 hours, exclusive of public holidays, to consider whether he will accept the same .	All previous parties not consenting to such allowance are thereby discharged from liability to such holder.
Cheque not duly presented	Cheque is not presented for payment within a reasonable time, and Drawer suffers actual damage as a result of the delay by the bankers.	Drawer is discharged as against the Holder to the extent of the actual damage suffered by him.
	Note: Holder of the cheque as to which such Drawer is discharged shall be a Creditors to the Banker to the extent of such damage and entitled to recover the amount from him.	
Payment of Cheque payable to order	Cheque payable to order purpose to be endorsed by or on behalf of the payee is paid in due course.	The Drawee i.e. the Paying Banker is discharged from liability.
Cheque originally expressed payable to Bearer	Bank makes a payment in due course to a Bearer.	The Drawee, i.e. the paying Banker is discharged from liability notwithstanding any indorsement (full or blank or restrictive) thereon.
Payment of Drafts	A Draft drawn by one Bank upon another office of the same Bank for a sum of money payable to order on demand is paid in due course.	The Bank is discharged from liability.
Taking Qualified or Limited Acceptance	Holder of B/E agrees to acceptance – <ul style="list-style-type: none"> • Which is qualified, or • Limited to part of money due, or • Which substitutes a different time or place for payment or • Not signed by all Drawees who are not partners. 	All prior parties whose consent is not obtained to such an acceptance are discharged from liability to the Holder and those claiming under such Holder.
Material alteration	Any material alteration without the consent of any party thereto.	N/I is void as against anyone who is a party at the time of making such alteration.
Material alteration	Any material alteration made by the indorsee.	Indorser is discharged from all liability to the Indorsee in

		respect of consideration thereof.
Payment of altered instrument	Payment in due course is made in respect of – <ul style="list-style-type: none"> • A P/N, B/E or cheque has been materially altered but does not appear to be so altered, and • A cheque presented for payment which at the time of presentment does not appear to have an obliterated crossing 	The person or Banker making such payment in due course is discharged from all liability thereon.
Non – presentment of a bill for acceptance	Where B/E payable after a certain period after sight, is not presented for acceptance by the Holder within a reasonable time.	Drawer and all Indorsers who were liable towards such a Holder are discharged from their liability.
No notice of dishonour	When the Holder does not send any notice of dishonour.	Any party to a N/I (other than party primarily liable) to whom notice of dishonour is not sent is discharged from liability as against the holder.

Note : The parties to a N/I are also discharged by operation of law, in the following cases

- Upon Order of Insolvency Court, the Insolvent is discharged.
- When a judgment is obtained against the Acceptor, Maker or Indorser, debt under the bill is merged into Judgment Debt.
- By lapse of time, when the remedy becomes time – barred.

41. MEANING OF HUNDI

A. TYPE OF HUNDIS

➤ **Shah jog hundi**

- Three parties – Drawer, Drawee and financier (Shah)
- Payable to shah
- Shah presents the hundi when it falls due for payment to drawee on behalf of holder

➤ **Jokhmi hundi**

- Documentary bill drawn by consignor on consignee in respect of goods shipped by consignor.
- Name of the vessel by which goods are shipped is mentioned in the hundi.
- Consignee is required to pay only on goods reaching destination.

➤ **Nam Jog Hundi**

- Hundi payable to party named or to his order.
- Party has right to endorse as in the case of Bill of Exchange.

➤ **Jawabee Hundi**

- Instrument for remitting money

- Form – Ordinary letter advising parties that he may collect money from banker.
- Remitter hands over hundi to banker
- Banker endorses hundi to a correspondent residing in the town in which payee is resident
- Correspondent forwards hundi to payee.
- Payee on presenting letter collects amount from correspondent.

➤ **Dhani Jog Hundi**

- Hundi payable to owner, i.e., person who owns it

➤ **Firman Hundi**

- Hundi payable at sight

➤ **Dharshani Hundi**

- Hundi payable at sight
- Transferable by endorsement
- Similar to bill of exchange payable on demand.

➤ **Maidi Hundi**

- Known in Bengal as MUDDATI HUNDI
- Hundi payment after a time
- Usually, the interest for the period upto the due date is deducted in advance.

B. OTHER TERMS

➤ **Zikri Chit**

- Issued by some party liable thereon to the holder of hundi
- Letter of protection addressed to a merchant in town where hundi is payable requesting acceptance of the hundi in case of dishonour.
- Intended to be used by holder if hundi is dishonoured by non – acceptance.

➤ **Peth**

- Duplicate copy of hundi issued on loss of original hundi.
- The holder at the time when bill is lost before it is overdue may apply to the drawer to give him another bill of the same tenor (Sec.45). The holder may give security, if required to indemnify him against all persons in case the bill alleged to have been lost is found again. If the drawer refuses to give a duplicate bill on request, he may be compelled to do so.

➤ **Perpeth**

- Triplicate copy of hundi given on loss of duplicate hundi

➤ **Khoka**

- A hundi paid and cancelled.