Negotiable Instruments Act –1881

There are certain documents used for payment in business transactions and are transferred freely from one person to another. Such documents are called Negotiable Instruments like cheque, bank draft, bill of exchange, promissory notes etc. Thus we can say Negotiable Instruments are transferable documents where Negotiable means transferable and Instrument means document. According to section 13 of the negotiable Instruments act 1881, a Negotiable Instrument means promissory note bill of exchange or cheque payable either to order or to bearer.

**Note:** Implemented w.e.f. March 01, 1882, 147 Sections with 17 Chapters [138-142 added in 1988 w.e.f. 01.04.89 & 143 –147 added during Dec,2002]

**Negotiability:** Transfer of the instrument to any person so as to constitute him holder.

**Negotiation:** Means transfer without restriction. Transferee taking the instrument for value and in good faith gets better and absolute title despite any defect in the title of transferor [endorser]. Negotiation of Bearer Cheque is completed by delivery and that of order instrument is completed by delivery and endorsement.

**A. Negotiable Instruments:**

1. Promissory Note
2. Bill of Exchange
3. Cheque
4. Exchequer Bill
5. Circular Note
6. Dividend Warrant
7. Share Warrant
8. Bearer Debenture
9. Bank Note
10. Bank Draft
B. Non Negotiable Instruments
1. Money Order
2. Postal Order
3. Deposit Receipt
4. Share Certificate

C. Quasi Negotiable Instruments
1. Bill of Lading
2. Dock Warrant
3. Carriers Receipt
4. Letters of Credit
5. Railway Receipt

Features of a Negotiable Instrument

1. It is a written document.
2. A Negotiable Instrument payable to bearer is transferable merely by delivery whereas a Negotiable Instrument payable to order is transferable by endorsement and delivery.
3. The holder of a Negotiable Instrument can sue upon it in his own name.
4. Its works in the same manner as money and like money it may also be transferred from one person to another.
5. The Transferor does not need to give notice to any person at the time of transferring the Instrument.
6. It is the simplest and most convenient mode of assignment of a debt.
7. The title to the Instrument received by a bona fide transforee is not affected by defect in the title of the transferor.

Types of Negotiable Instruments
According to the Negotiable Instruments Act 1881, there are just three types of Negotiable Instruments example Promissory Note, Bill of Exchange and Cheque.
Though many Negotiable instruments recognized, only these three are in wide circulation.

**Promissory Note**

Sec.4 – Defines Promissory Note. PN is an instrument in writing, containing an unconditional undertaking (or promise), signed by maker, to pay a certain sum of money, to or to the order of certain person or to the bearer of the instrument.

**Parties:** Maker and Payee. PN requires to be stamped.

**Types:** There are two types of PN.

1. Demand Promissory Note
2. Usance Promissory Note (Payable at a later date)

**Features of Promissory Note**

1. A Promissory Note is unconditional
2. It is always in writing a verbal promise to pay a specified sum of money to a specified person.
3. It is made and signed by the debtor.
4. A promissory note is made as payable in the Currency of the country
5. A promissory note drawn for a specified duration should be adequately stamped According to its value.
6. A promissory note should be drawn for the payment of a specified sum.

**Bill of Exchange: (Sec 5)**

A Bill of Exchange is an instrument in writing, containing an unconditional order, signed by maker, directing a certain person to pay, a certain sum of money only, to or to the order of certain person or to the bearer of the instrument.

**Parties:** Drawer, Drawee [Acceptor] and Payee

Where no period is mentioned on PN or BOE for payment, is payable on demand

Where the BOE is lost, the drawer is under obligation [Sec 45A] to issue a duplicate bill.
An instrument can be made payable to two or more person’s jointly or payable to one of two or one or some several payees.

**Features of Bill of Exchange**
1. A bill must be in writing, duly signed by its drawer accepted by its Drawee and properly stamped as per Indian stamp act.
2. It must contain an order to pay words like please pay rs.5000 on demand and oblige are not used.
3. The order must be unconditional.
4. The order must be to pay money and money alone.
5. The sum payable mentioned must be certain or capable of being made certain.
6. The parties to bill must be certain.

**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. It is an unconditional order in writing be drawn by a customer on his bank. Requesting the specifying bank to pay on demand a certain sum of money to a person named in the cheque or to the bearer or to the order of a stated person.

**Parties to Cheque:** Drawer [account holder], Drawee [the bank where the account is maintained] an payee [person named in the cheque]

Types of Cheque

1. Open Cheque: - A cheque is called open when it is possible to get cash over the counter at the bank.

2. Crossed Cheque: - Since open cheque is subject to risk of theft it is dangerous to issue such cheques. This risk can be avoided by issuing other types of cheque called crossed cheque.
3. Bearer Cheque: - A cheque which is Payable to any person who presents it for payment at the bank counter is called bearer cheque.

4. Order Cheque: - An order cheque is one which is payable to a particular person. In such a cheque the word bearer may be cut out or cancelled and the word order may be written. The payee can transfer an order cheque to someone else by singing his or her name on the back of it.

**Electronic Cheque / Truncated Cheque**

In terms of amendments to NI Act during Dec 2002, Cheque Means - the Cheque in Electronic form and truncated cheque transacted during clearing process.

**Electronic Cheque:** Electronic cheque is a cheque which contains the exact mirror image of a paper cheque and is generated, written and signed in a secured system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature and asymmetric crypto system)

**Cheque Truncation:** In truncation, the cheque is scanned and electronic image, instead of physical cheque is transmitted in clearing cycle. The cheque is truncated either by clearing house or by the bank. Immediately on generation of an electronic image for transmission, further physical movement of the cheque in physical form is substituted with such image.

**Restrictions on Instruments being made payable to bearer**

RBI Act 1934 – Section 31, states that no person other than RBI or Central Govt. can draw, accept, make or issue any bill of exchange or promissory note payable to bearer on demand. Section 31(2) puts a restriction on making a promissory note payable to bearer by a person other than RBI/Central Govt.
Cheques in Practice:

Form of Cheque:
1. NI Act does not prescribe any specific form of a cheque.
2. Withdrawal slips used by customers are not regarded as cheques.
3. Withdrawals by customer by writing an application on a plain paper would not be unlawful but banks do not permit due to inherent risks except under exceptional circumstances.
4. Cheques drawn in different inks, scripts and hand writings: Cheques should be paid, if otherwise in order and paying bank is in a position to read and understand the instructions of drawer.

Date of Cheque:
Cheques without date: Not payable. However, holder can complete it.

Cheque bearing a date being holiday: Cheque can be paid.
Cheque bearing date in National Saka calendar [Hindu] can be paid.

Cheque bearing impossible date: e.g. cheque dated 31st Nov, 30th Feb can be paid on 30th Nov or 28/29th Feb. However cheque dated 26th Jan can’t be paid on 25th Jan.

Stale Cheque: The validity period of cheque is expired due to date mentioned on cheque i.e. 3 months from the date.

Revalidation: After cheque becomes stale it can be revalidated any number of times.

Ante Dated Cheque: Cheque bearing date prior to actual date of signing the cheque or prior to opening of account is valid and can be paid till it becomes stale.

Post dated cheque: Cheque bear a date not fallen due till presentment. Such cheque becomes effective only from the date mentioned on cheque.
Payment of such cheque is not a payment in due course and additionally poses following risks:

- Drawer can stop payment
- Death / insolvency or lunacy of customer may happen
- Garnishee Order may be served on account

**Holder: [Sec 8]**

The holder means any person who is entitled in his own name to the possession thereof. Legal right to possess is enough. A person who was entitled to receive payment of an instrument and the instrument has been lost, will continue to be treated as holder.

**Quasi Negotiable Instruments**

Quasi Negotiable Instruments are those Instruments which can be transferred by endorsement and delivery but the transferee does not get a better title that of the transferor. Therefore they cannot be classified as negotiable Instruments and hence the negotiable Instruments act is not applicable to them.

**QUESTION AND ANSWERS ON NEGOTIABLE INSTRUMENTS ACT**

01. Negotiable Instruments Act extends to?
   a. Whole of India
   b. Whole of India except in J & K
   c. Only in States/UTs
   d) None

02. Identify the Promissory Note from the following:
   a. I promise to pay B or Order Rs.500
   b. I acknowledge myself to be indebted to B in Rs.1000/- to be paid on demand for value received
c. I promise to pay B Rs.500/-, and all other sum which shall be due to him

d. a & b

03. Which among the following are the requirements of a Promissory Note?

a. It must contain an unconditional promise to pay a certain sum of money

b. It must contain a conditional order to pay a certain sum of money

c. It must be payable to the order of specified person or bearer

d. a & c

04. “I Mrs. A, daughter of Mr. X, executed and promise that a sum of Rs. 15,000/- has been obtained by me from Mr. B in cash and I agree to pay thereof that in future on demand the principal will paid in one lump sum and this pronote will be taken by me”

a. The above statement is a promissory note

b. The above statement can never be considered as promissory note

c. The statement can become a Promissory Note only after alterations

d. None of the above.

05. An Usance Promissory Note has to be presented for acceptance by the maker.

a. It is true

b. It is false

c. Promissory Note is always on demand

d. none

06. Demand Promissory Note attracts stamp duty only on the amount where as Usance Promissory Note attracts stamp duty based on the amount and the period [tenor].

a. True

b. False
c. Partially true
d. All of these.

07. Stamp duty on Promissory Note is:
   a. Same throughout India
   b. Varies from state to state
   c. both are correct
   d. none

08. Promissory Note payable to bearer:
   a. Can be drawn by anybody
   b. Cannot be drawn by everybody
   c. It all depends on advocates
   d. None of these.

09. Bill of Exchange is defined in Section ……of Negotiable Instruments Act
   a. 4
   b. 5
   c. 6
   d. None

10. Bank Notes and Currency Notes are
   a. Promissory Notes
   b. Not Promissory Notes
      c. Semi Promissory Notes
      d. None

11. Bills of Exchange should always contain:
   a. A conditional order to pay a certain sum of money
   b. Both a & b
c. Unconditional order to pay a certain sum of money

d. None of these

12. A Bills of Exchange in vernacular language is called as

a. Hundi
b. It cannot be drawn like this
c. Akshyapatra
d. none

13. Acceptance is necessary in case of:

a. Demand Bill
b. Usance Bill
c. Both a or b
d. None of these

14. At sight Bills of Exchange are also called as

a. Demand Bills
b. Usance Bill
c. Both a and b
d. None of these

15. The word ‘after sight’ in Bills of Exchange means

a. After acceptance
b. After payment
c. Either a or b
d. None

16. The liability of Drawee in an Usance Bill of Exchange starts

a. When bill is drawn    b. when the bill is accepted by him
c. Liability is always of drawer    d. None
17. An Usance bill must be presented to the Drawee:
   a. At his place of business during his business hours for his acceptance
   b. At his place of business even after his business hours for his acceptance
   c. At any place even after his business hours of the bank
   d. At the bank’s premises during business hours of the bank

18. The bill must be presented to the Drawee for acceptance / payment within:
   a. 24 hours of receipt of the bill
   b. 48 hours of receipt of the bill
   c. Any time after receipt of the bill
   d. None of these

19. What is the time allowed to the Drawee for accepting the bill?
   a. 24 hours exclusive of public holidays
   b. 48 hours exclusive of public holidays
   c. either a or b
   d. none of these

20. When rate of interest is not specified in Instrument, interest on the amount due is payable at:
   a. 18% p.a.     b. 6% p.a.
   c. At the discretion of Drawee
   d. None of these

Answers

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