

NEGOTIABLE INSTRUMENTS, 1881

Lesson - 24

1 Introduction :-

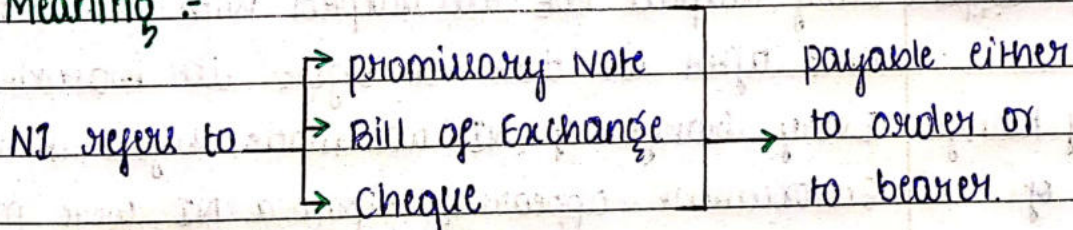
The main objective of this Act is to legalise the system by which instruments approved by it could pass from one hand to another by negotiating / transferring like any other goods.

Negotiable means something which can be exchanged (transferable) but, exchange must take place for money only.

Instrument means piece of paper which can be exchanged for money.

So NI means any piece of paper which can be converted for money.
NI can be transferred infinitely.

Meaning :-



NI means an Instrument :-

- The property (ownership) in which is acq^d by anyone who takes it bonafide
- For value
- Notwithstanding any defect in the title of any prior party

→ In other words, NI means an instrument which confers upon a HBC a valid title.

Note: This Act does not recognize any other instruments as NI except PN, BOE, Cheque

→ Essentials or characteristic of NI

- a] Freely Transferable from one person to another.
- b] Transferable Infinitum → until it is paid.
- c] H&C gets a good title to NI even though the title of transferor is defective.
- d] A NI may name more than one payee jointly or alternatively.
- e] A NI is a written doc & is effective only when duly signed.

→ Presumption of NI : unless contrary is proved, the following presumptions shall be made regarding :-

Presum made on	Presumption drawn
i. consideration	Every NI was drawn for consideration
ii. Date	Every NI bearing a date was drawn on such date
iii. Time of Acceptance	Every accepted BOE was accepted within reasonable time after its date & before its maturity
iv. Time of transfer	Every transfer of NI was made before its maturity.
v. Order of Endorsement.	Endorsement appearing upon a NI were made in the order in which they appear there on.
vi. Stamps	Lost PN or BOE was duly stamped
vii. Holder	Holder of a NI is H&C

provided where the NI obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud or for unlawful consideration, the burden of proving that the holder is H&C lies upon him.

2. Classification of Negotiable Instruments

- | | | | |
|-----------|-------------|-----------|----------------|
| i. Bearer | iii. Inland | v. Demand | vii. Ambiguous |
| ii. order | iv. Foreign | vi. Time | viii. Inchoate |

i. Bearer Instrument.

- a] A NI which is payable to bearer
 b] A NI on which last endorsement is blank.] → It is called Bearer.

c] As per RBI Act, 1934.

- A PN can't be made payable to bearer [because of RBI's ↑ Monopoly]
- A BOE can't be made payable to bearer on demand.

ii. Order Instrument.

A NI payable to a particular person; or his order; or the order of a particular person

iii. Inland Instrument.

A NI is an inland if:-

- It is drawn or made in India [and]
- It is payable in India or is drawn on a person resident in India

iv. Foreign Instrument.

A NI which is not an inland instrument.

v. Demand Instrument:

- a] A NI on which maturity date is not specified.
 b] A NI which is expressed to be payable on demand.

Note:-

- A cheque is always payable on demand.
- A demand instrument may be presented for payment at any time.
- A demand instrument is not entitled to any grace days.

VI. Time Instrument.

- a] An instrument in which time for payment (i.e. maturity date) is specified.
- b] It may be payable
 - on a specific day (or)
 - after a specified period (or)
 - on certain period after sight (or)
 - on certain period after happening of certain event

VII. Inchoate Instrument.

- It refers to a wholly blank or partially blank paper which is signed by a person & is stamped.
- The person signing such paper delivers it to another person.
- On delivery of such paper by the person signing such paper, the holder gets a prima facie authority to make or complete upon it a NI.

Rights of parties:-

- a] person other than HDC can't recover anything in excess of the amount intended to be paid there under by the person delivering the said paper.
- b] HDC can recover the whole amt specified in instrument, but not exceeding the amt covered by the stamp.

Example:-

'A' signs his name on a blank but stamped instrument which he gives to 'B' with an authority to fill up as a note for a sum of ₹ 3000 only. But B fills it for ₹ 5000. 'B' then transfers it to 'C' for consideration of ₹ 5000 who takes in good faith. Here in this case, 'C' is entitled to recover the full amt of the instrument because he is a HDC. Whereas B, being a holder can't recover the amt because he filled in the amt in excess of his authority.

Viii. Ambiguous Instrument

It is the instrument which can be construed either as P-NOTE or BOE. but once the holder treated it as any one among two, then he shall treat thereafter accordingly.

Example:-

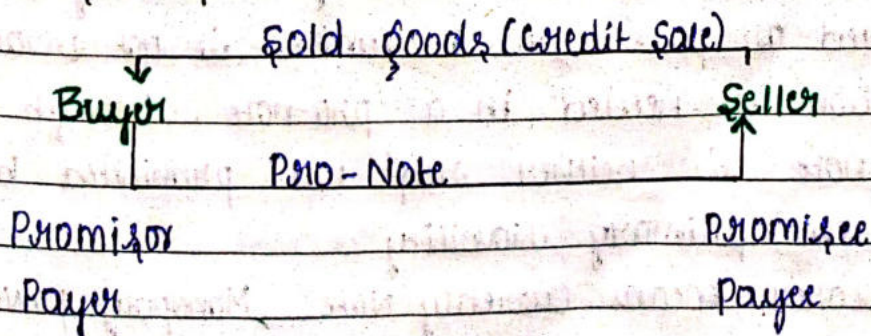
- A Bill drawn upon a Fictitious person
 - A Bill drawn by a person upon himself.
 - A BOE drawn by agent on his principal
 - A BOE drawn by one branch of bank on another.
 - I promise to pay Mr. Mohan ₹ 5000 on 16-12-21 [pro-note]
 - You'll pay to me ₹ 5000 on 16-Dec-21 [BOE]
 - Mohan s/o M/O will pay ₹ 5,000
 - TO AJAY s/o M/O on 16-Dec-21 [Ambiguous]
- It's not clear whether it's BOE or PN.

3. Promissory Note :-

It is an instrument in :-

- writing (not being a bank-note or currency note) containing an unconditional undertaking
- signed by maker
- to pay a certain sum of money only to :-
 - a certain person
 - the order of a certain person
 - the bearer of the instrument

Parties to pro-note:



Essentials or characteristics of prom-note :-

- i. It must be in writing. (oral ⊗)
- ii. There must be Express promise to pay. Mere acknowledgement of indebtedness is not sufficient.
- iii. promise to pay must be definite & unconditional [If a promise to pay is dependent upon an event which is certain to happen, although the time of it's happening is uncertain, the promise to pay is unconditional.]
- iv. A prom-note must be signed by the Maker. The signature may be made on any part of Instrument.
- v. promise to pay Certain sum.
- vi. It shall contain a promise to pay money only.
- vii. payee must be certain.
- viii. It must be stamped

NOTE:-

- The word 'promise' need not be used, but it must clearly show that the maker is un-conditionally bound to pay the sum.
- PN can't be made payable to the maker himself.
- No particular form of words is necessary to constitute a PN.
- Not necessary to insert in prom-note a statement that it is "for value received" because law itself presumes that every NI is made for consideration.
- place of payment and date of making it, need not to mention.
- An undated instrument is valid & it will be treated as having been made on the date of it's delivery (and) an ante-dated or post dated instrument is not invalid.
- No attestation is needed in a prom-note. though attestation of a prom-note is neither req^d nor prohibited by law.
- Maker has the primary liability
- Payable to bearer means currency Note → Monopoly power of RBI

4. Bill of Exchange

Definition: BOE is an instrument in writing

- > containing an unconditional order
- > signed by maker
- > directed a certain person, to pay a certain sum of money.
- > [only to (or) to the order of], a certain person or to bearer of instrument.

Essentials:-

- | | |
|-------------------------------|-------------------------------|
| i. In writing | v. Money should be certain |
| ii. Express order to pay | vi. signed by drawer. |
| iii. Definite & unconditional | vii. Stamped |
| iv. Only sum of money | viii. parties must be certain |
| | ix. Delivered to payee |

NOTE: As per RBI Act, 1934 → BOE can't be made payable to bearer on Demand.

Parties to a BOE:-

i. Drawer:-

- The person who draws the bill
- His liability is Secondary & Conditional [After acceptance]
- His liability is primary & Conditional until the bill is accepted.

ii. Drawee:-

- The person on whom the bill is drawn
- on acceptance of Bill
 - He is called as acceptor
 - He becomes liable for the payment of the bill
 - His liability is primary & unconditional

iii. Payee:- Person to whom money is to be paid is named in the bill.

5. Cheques

It is a BOE drawn on specified Banker. It is always payable on demand & it includes

- > E-Image of truncated cheque
- > E-Form cheque

→ Essential

All Essential of BOE Except:-

- NO Stamp
- Always payable on demand
- Always drawn on specified Banker
- NO Acceptance

→ parties to a cheque :-

i. Drawer :- The person who draws the cheque
His liability is primary & conditional

ii. Drawee :- The bank on whom cheque is drawn.
It makes the payment of cheque

iii. payee :- The person to whom money is to be paid [the person in whose favour cheque is issued]

→ Types of cheque :- i. Open cheque ii. Crossed cheque

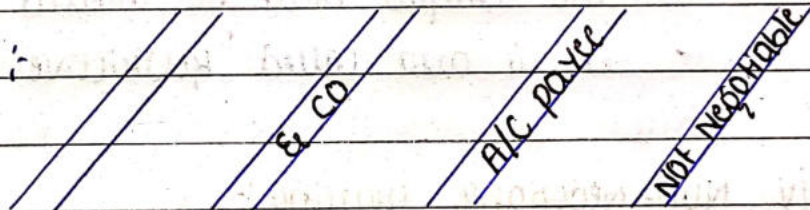
open cheque :- • Bearer } → payable over the counter.
• order }

In this kind of cheque, if any fraud is happened, then tracing the cheque is difficult.

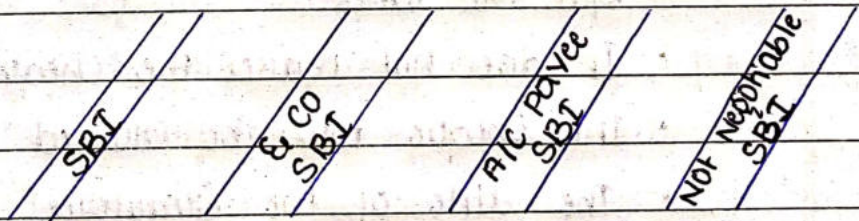
Crossing of Cheque :-

- Meaning :- Instruction to the Bank, not to pay the cheque at the counter of the bank, but to pay it to person who presents it through a banker.
- purpose :- To Transfer the person who has received the amt on cheque.
- Way :- Drawing two parallel lines on any part of the cheque.
- Types of crossing :-
 - i. General
 - ii. A/c payee
 - iii. Special
 - iv. Non-Negotiable.
- Specimen of :-

i. General Crossing :-



ii. Special crossing :-



Explanation :-

i. General :-

- Here two parallel lines can be drawn simply or with the words "and company"
- payment will be from Banker to Banker
- Banker will be liable if he makes cash payment

ii. Special crossing:-

- In this, the name of the collecting Banker is specified.
- Multiple Banks can't be mentioned except where the another Bank is agent of the former Bank.
- Drawing two parallel lines is not necessary.
- Banker will be liable if he transfers the amt to another bank (other than specified).

iii. A/c payee crossing:-

- In this, the words "A/c payee" must be mentioned.
- The Funds will only be credited to the a/c of payee.
- It means the cheque becomes non-transferable [Non-negotiable].
- Banker will be liable, if he transfers the amt in the a/c of any another person.
- The cheque must be crossed generally or specially.
- It is also called 'Restrictive crossing'.

iv. Non-Negotiable crossing:-

- In this, the words "Not Negotiable" must be mentioned b/w the lines.
- It does not make the cheque non-transferable.
- The cheque must be crossed generally or specially.
- The title of the transferee shall not be better than the title of the transferor.
- A/c payee & N/N crossing is the safest crossing.

→ Protection to paying Banker.

Nature of cheque	Conditions subject to which protection is available
i. Cheque payable to order	<ul style="list-style-type: none"> • payment is made in due course • The protection shall be available notwithstanding that any endorsement subsequently turns out to be forged.
ii. Cheque originally payable to bearer.	<ul style="list-style-type: none"> • payment is made in due course to bearer of cheque • The protection shall be available notwithstanding that any endorsement appears on the cheque.
iii. Cheques crossed generally	<ul style="list-style-type: none"> • payment is made in due course to any banker.
iv. Cheques crossed specially	<ul style="list-style-type: none"> • payment is made in due course to the banker to whom the cheque is crossed.
v. No protection in case of forged signature of drawer	<ul style="list-style-type: none"> • The paying Banker shall be liable if it makes the payment of the cheque on which drawer's signature are forged. Accordingly, paying banker should carefully verify the genuineness of drawer's signature.

→ Protection to collecting Banker.

If a banker has received payment

- For a customer of a cheque crossed generally or specially to himself in good faith
- It shall not be liable to original owner of the cheque
- In case the title of the cheque proves defective
- By reason only of having received such payment.

→ Grounds for Dishonour of a Cheque Despite having sufficient Balance.

Banker must refuse to honour in following cases.

- i. Stop payment
- ii. Garnishee order
- iii. Death of customer
- iv. Insolvency of customer
- v. Insanity of customer
- vi. Assignment of Funds.
- vii. Appⁿ for closure of a/c
- viii. Holder's defective Title

Banker may refuse to honour in following cases

- i. post-dated cheque
- ii. undated cheque
- iii. In sufficient funds
- iv. presentment at different branch/ after banking hrs
- v. doubtful legality
- vi. Materially altered cheque, mutilated cheque, Incomplete cheque
- vii. Stale cheque (outdated cheque)
- viii. No signatures of all joint a/c holders.

6. Bouncing or Dishonour of Cheque.

If a cheque issued by the drawer is dishonoured due to insufficiency of funds, the drawer is punishable with

- Imprisonment upto 2 years (Maximum); or
- Fine upto 2 times the amt of cheque (Maximum); or
- Both

Conditions for attracting Liability u/s 138

i. Cheque issued to discharge a liability.

a) The liability u/s 138 arises only if the drawer had issued the cheque to discharge a legally enforceable debt or

Other liability

- b] Thus, Where the drawer issues a cheque as a gift or charity, he is not liable under section 138. Even if dishonoured.
- c] It shall be presumed that the holder of a cheque received the cheque in whole or in part, of any debt or other liability.
- ii. Dishonour due to insufficiency of funds.
 - iii. Presentment of cheque within validity period.
 - Within 3 months from the date on which it was drawn; or
 - Within the period of validity; **WEE**
 - iv. Notice to drawer :- By payee/holder, in writing within 30 days of receipt of information of dishonour
 - v. Default in payment :- The liability u/s 138 is attracted only if, within 15 days of receipt of notice from payee/holder, the drawer fails to pay the due amt of cheque [complete amt]
 - vi. The payee/holder must make a complaint with the court
 - a] The complaint must be in writing.
 - b] Within 1 month from the date when cause of action arose. [i.e. last day on which drawer was liable to pay the money to the payee/holder]
 - c] The complaint shall be made with a court not inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class.
 - d] The complaint Jurisdiction :-
 - The branch of bank → Payee / HBC has a/c → in case the cheque is delivered for collection through an a/c.
 - The branch of drawee bank → drawer has a/c → in case cheque is presented for payment by the payee or HBC, otherwise through an a/c.

7. Liability parties to a Negotiable Instrument :-

i. Agent.

- Every person capable of binding himself or of being bound, as mentioned in Sec 26, may so bind himself or be bound by a duly authorised agent acting in his name.
- A general Authority to transact business & to receive & discharge debts does not confer upon an agent the power of accepting or endorsing BOE so as to bind his principal.
- An authority to draw BOE does not imply an authority to endorse.

ii. Liability of agent signing

An Agent who signs his name on NI

- with out indicating there on that he signs as agent
- that he does not intend thereby to incur personal responsibility
- is liable personally on the instrument
- except to those who induced him to sign upon the belief that the principal only would be held liable.

iii. Liability of Legal Representative Signing.

A LR of deceased person who signs his name on NI is

- liable personally there on.
- unless he expressly limits his liability to the extent of assets received by him as such

iv. Drawer

The drawer of BOE or cheque is bound in case of dishonour by the drawee or acceptor there of, to compensate the holder, provided due notice of dishonour has been given to the drawer.

V. Drawee.

- If the drawer has sufficient funds in the a/c & such funds are properly applicable to payment of cheque; then drawee must pay the cheque.
- If default is made by drawee i.e. payee banker, then the drawee shall compensate the drawer for the loss caused to him.

Vi. Maker of Note & Acceptor of Bill

- Before maturity of BOE or PN
Unless otherwise mentioned, the maker of PN & the acceptor are bound to pay the amt there of at maturity according to the apparent tenor of the note or acceptance respectively.
- After maturity of BOE or PN.
The acceptor or maker is bound to pay the amt to the holder on demand.

Vii. Endorser.

- Every Endorser is liable to every subsequent holder, in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provide due notice of dishonour has been given to, or received by, such endorser.
- The endorser, however, can expressly exclude or make his liability conditional.
- Every endorser after dishonour is liable upon an instrument payable on demand.

Viii. Prior parties to HBC

Every prior party to NI is liable there on to a HBC until the instrument is duly satisfied.

ix. prior party as principal debtor in respect of each subsequent party.

Each prior party is liable there on as a principle debtor in respect of each subsequent party.

x. Discharge of endorser's liability

Where the holder of NI, with out the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

xi. Acceptor bound, although endorsement forged

An acceptor of a BOE, already endorsed is not relieved from liability by reason that such endorsement is forged, if he knows or had reason to believe the endorsement to be forged when he accepted the bill.

8. Holder, Holder for value, Holder in due course

Holder :-

- i. person who is entitled to the possession of NI in his own name.
- ii. He must be entitled to receive or recover the amt due on NI from the parties liable on NI.

In other words:-

Holder means the payee or endorsee of a NI who is in possession of it.

The finder of a lost instrument payable to bearer, or a person in wrongful possession of such instrument, is not holder.

Holder For Value [HFV]

It 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 [HDC]

Holder who acquires the NI in good faith for consideration before it becomes due for payment & with out any idea of a defective title of the party who transfers the instrument to him. Therefore, a holder in due course

When the instrument is payable to bearer, HDC refers to any person who becomes its possessor for value, before the amt becomes over due

on the other hand, when the instrument is payable to order, HDC may mean any person who became endorsee or payee of NI, before it matures.

Further, in both cases, the holder must acquire the instrument, with out any notice to believe that there is a defect in the title of the person who negotiated it.

Summary :-

i. possession	P	→ H	→ HFV	→ HFV-GF	→ HDC
ii. Title					
iii. Consideration					
iv. Good Faith					
v. Maturity					

p = possessor GF = Good Faith.

H = Holder

privileges to H&C.

- i. Every prior party to NI is liable to H&C.
- ii. A holder who derives title from H&C has the same rights as that of H&C. Thus once a NI passes through the hands of H&C, it gets cleaned of all its defects provided the holder himself is not a party to the fraud or illegality which affected the NI in some stage of its journey.
- iii. No prior party can set up defence that NI was drawn, made or endorsed by him without any consideration.
- iv. No prior party can set up a defence that NI was lost or was obtained from him by an offence or fraud or for an unlawful consideration. Thus, H&C gets a valid title to the NI even though the title of the transferor was defective.
- v. No prior party can allege that NI was delivered conditionally or for a special purpose only.
- vi. H&C can claim full amt of the inchoate NI (but not exceeding the amt covered by the stamp) even though such amt is in excess of the amt authorized by the person delivering an inchoate NI.
- vii. In case of Fictitious Bill:- In case, a BOE is drawn payable to drawer's order in a fictitious name & is endorsed by same hand as drawer's sign, it is not permissible for acceptor to allege as against the holder in due course that such name is fictitious.
- viii. In case original validity of the instrument is denied.
No maker of PN & no drawer of a bill or cheque & no acceptor of a bill for the honour of the drawer shall, in a suit there-on by a holder in due course be permitted to deny the validity of the instrument as originally made or drawn.

ix. In case payee's capacity to endorse is denied.

No maker of a PN & no acceptor of bill payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to endorse the same. In short, a HADC gets good title to the bill.

9. MATERIAL ALTERATIONS.

An Alteration is called material - if it alters

- Character or operation [i.e. the legal effect]
- Rights & liability of any of parties of NI

MA authorized by Act.

a] Filling blanks of an Inchoate instrument.

b] Conversion of a blank endorsement into endorsement in full

c] Conversion of Bearer NI into order NI by deleting the word "Bearer".

d] Crossing of cheques

e] Conversion of general crossing into

- Special crossing
- Non-Negotiable crossing
- A/C payee crossing.

But vice versa not possible.

Effect of MA

All the parties to the NI not consenting to the MA are discharged, unless such MA is authorized by the Act.

10. Acceptance:

Meaning:- The drawee signs the bill &

- Delivers it to the holder of bill; or
- Give notice of acceptance to the holder of bill, The drawee becomes the acceptor.

Essentials of Valid Acceptance

- Written (Whether on face or back of bill)
- Signed on the bill
- Delivery or intimation to holder that the bill has been accepted

Types of Acceptance:

General: Acceptance of bill without any qualification.

Qualified: Acceptance of bill subject to some qualification

- Eg:**
- Accepting the bill subject to condition that payment shall be made only happening of specified event.
 - Where the drawee accepts the bill only for a part of the sum ordered to be paid.
 - Where the drawee agrees to make the payment at a time / place, other than that time specified in bill / place

Effect of Qualified Acceptance:

- The holder may object to the qualified acceptance, in such case, it shall be treated that the bill is dishonoured due to non-acceptance.
- He may give his consent - In such case, all the prior parties, not consenting to it, are discharged.

Dishonour by Non-Acceptance :-

A bill is dishonoured by non-acceptance if it is duly presented for acceptance, but the bill is not accepted.

In this case, the holder gets an immediate right to sue all the prior parties.

Cases in which above happens

- Where a bill is not accepted by the drawee within 48 hrs of presentment of bill

- In case there are two or more drawee who are not partners, If the bill not accepted by all the drawee
- Where the drawee is fictitious person or not found even after a reasonable search. or is incompetent to contract
- Where the drawee gives a qualified acceptance & the holder does not give his consent to the qualified acceptance

Effect:- The holder gets an immediate title to sue all the prior parties.

Note:- A PN or cheque can't be dishonoured by non-acceptance since a PN or a cheque does not require any acceptance.

11. Discharge of a party & of NI.

Discharge of NI.

- a) payment in due course by party primarily liable.
- b) Where the holder cancels the name of party primarily liable, with intent to discharge him.
- c) Where the holder renounces his right against primarily liable party.
- d) Where the principal debtor becomes holder [Negotiation back]
- e) operation law.

Discharges of parties: * = other than party primarily liable

- a) Where payment is made by any party liable on NI (*), Such a party & all parties subsequent to him are discharged.
- b) Where the holder cancels the name of any party liable on NI (*), Such a party & all parties subsequent to him are discharged.

- c] Where a party already liable on NI (*) becomes holder of NI, such a party & all intermediate parties are discharged [i.e. Negotiation back]
- d] If the holder allows more than 48 hours, exclusive of public holidays, to the drawee to accept bill, all the prior parties not consenting to the same are discharged from liability to such holder.
- e] Every prior parties not consenting, qualified acceptance consented by holder. - is discharged.
- f] Every party not consenting to a material alteration of operation of law. Eg: party declared as insolvent.

12. Notice of Dishonour.

Notice by whom, and to whom?

In case of dishonour of a NI by non-acceptance or non-payment, the holder, or some party who remains liable on instrument, must give notice to all other parties to whom holder seeks to make severally liable there on.

Notice must contain the fact of dishonour of NI

Effect of Default: party to whom notice is not given is discharged from liability.

When notice of dishonour is unnecessary / excused.

- a] When the party dispensed / waived off
- b] When drawer of the cheque has countermanded payment
- c] where party entitled to notice can't be found even after due search.
- d] Where party bound to give notice is unable to give notice with out any fault of his own.

13. Endorsement.

- It means
- Signing on the face or back of NI
 - or on a slip of paper annexed to NI
 - BY holder of NI
 - for the purpose of negotiating such NI.

Essentials :- Writing + Signed by holder

Effect :- It gives the endorsee right of property

Types :-

i. **General/Blank** :- Name of endorsee on instrument is kept blank. [order instrument is converted into bearer instrument]

ii. **Special Endorsement/Full** :- Where NI specify a person & to his/her order it is payable.

iii. **Restrictive** :- NI is restricted to be further negotiated or transferred to person.

iv. **Conditional** :- When endorsement made subject to a condition then it will be effective once condition is fulfilled.

v. **Sans Frais** :- The endorser decline further expenses of instrument then it is sans frais

vi. **Sans Recourse** :- The endorser decline the further liability of any other endorsement.

vii. **Facultative** :- Endorser waives any of his rights

Viii. **partial** :- An endorsement which purports to transfer only a part of the amount of instrument. partial endorsement is not valid at law.

14. **Noting & protesting.**

Noting refers to recording the fact of dishonour of NI by non-acceptance or non-payment on NI. Noting is optional & not mandatory.

It shall be done in reasonable time. It must specify the date & reason for dishonour, or if instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured.

Procedure & Contents of noting :-

- The dishonoured bill is handed over to a Notary public.
- Notary public presents it again for acceptance/payment.
- If drawee/acceptor refuses to accept or pay the bill, the Notary public records the fact of dishonour on bill.

Protest :- A certificate issued by Notary public stating the fact of dishonour of PN or BOE by non-acceptance or non-payment.

15. **Truncated cheque & Cheque in E-Form.**

Truncated cheque :- It means cheque which has been converted from a physical form into an E-Form during the course of a clearing cycle; either by clearing house/bank whether paying or receiving payment; for transmission or substituting the further physical movement of cheque in writing.

Cheque in E-Form :- It means a cheque drawn in electronic form, by using any computer resource & signed in a secure system with digital signature.

16. Other points :-

i. Effect of 'stop payment' :- Where the drawer makes 'stop payment' order to the banker (i.e. he countermands payment) resulting in dishonour of the cheque.

It has same effect as if the cheque had been dishonoured due to insufficiency of funds.

Thus the proceedings u/s 138 may be initiated against the drawer.

ii. Negotiation back :- If an endorser after negotiating a NI, again becomes its holder, it is called negotiation back.

Effect :-

- The holder can't enforce payment against an intermediary 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 intermediary parties), if he had made sans recourse endorsement.

iii. Accommodation bill :- NI drawn, accepted, endorsed by one person for another without consideration to enable that other to raise money or obtain credit there by.

Such bill is drawn & accepted without any sale & purchase of goods.

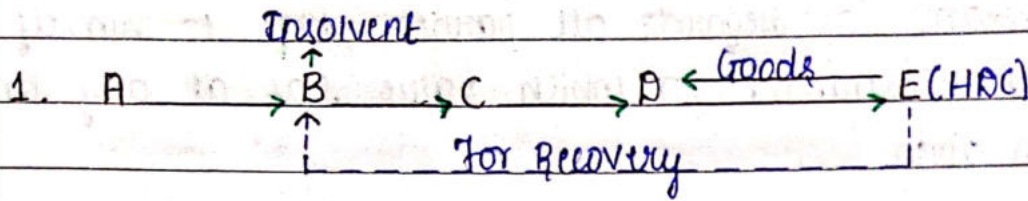
- party drawn the bill :- Accommodating / Accommodation party.

- party for whom bill drawn :- Accommodated party.

- Aⁿ party is not liable on instrument to A^d party because there was no consideration b/w them. but he is liable to H&V, who takes the Aⁿ bill for value, though such holder may not be H&C.

"→" means endorsement

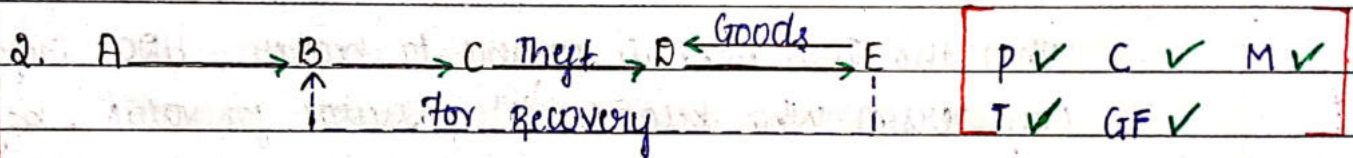
Cases for understanding. → Watch CA Shaikhon Khan lecture



Here P ✓ T ✓ C ✓ GF ✓ M ✓ (Assumed)

So E is HRC, If B became insolvent then his liability got discharged.

then A is liable (primary) → Because he is drawer
C & D both are liable (secondary) →



Here E has not idea of theft, so he becomes HRC.
he can recover money from B.

2A. What if B got insolvent? From whom money can recovered?

Can claim from all endorsee.

[Because C (thief) will not write his name in endorsement]

∴ we can't say particularly that A/C/D who is liable.

So it can be claim as per names in endorsee sheet.

2B. What if C has informed that theft happened, to B?

Can E able to recover or claim amt from B.

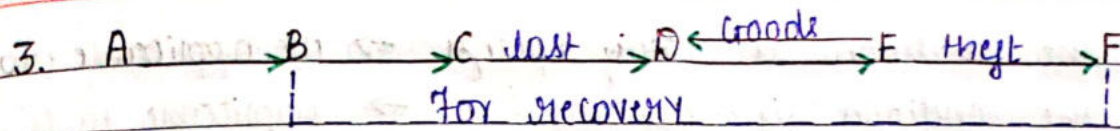
Then also E can claim amt from B. Because E is HRC

the thing is B has to pay due amt to 'E'

then he may sue 'C' for making theft, if he wish.

But those thing will cover in other Act ∴ not in this Act.

If B has already made payment to E, then he can recover the damages from thief.



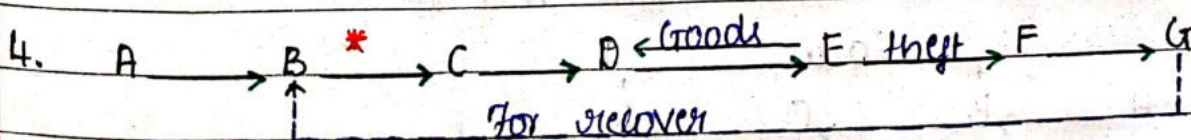
Here E = HDC, F = possessor

F can't claim from B. But C can sue D & E can sue F for making respective unlawful practices.

3A. What if further F ← Services → G? Then G goes to B for claim. then G = become HDC & he can claim from B.

3B. By inclusion of above case 3A [i.e. 3 + 3A cases both] What if B got involved? then 'G' even though HDC, can't claim from B. But he can claim as per names in endorsee sheet

3C. BY including above 3A case [i.e. 3 + 3A], what if 'G' is aware about theft made by 'F'? In this case G is not HDC, because he lacks good faith, i.e. GF X. So G can't claim from 'B', if any of the 'C' or 'E' has already informed 'B' about defect (lost/theft). But 'G' can only claim from 'B' if he is HDC or no one of 'C' or 'E' has informed 'B' about (lost/theft)



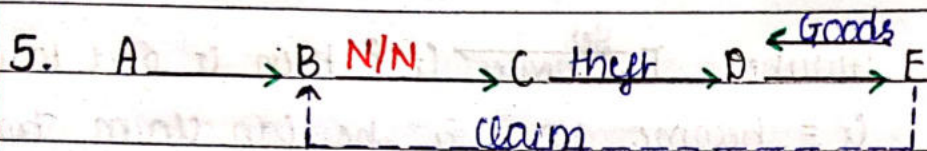
* - It refers to conditional endorsement.

Whether the conditions apply to 'G', if he goes to B for claim?

If the condition is party specific → n't applicable to 'G'
 If the condition is general → Applicable to 'G'

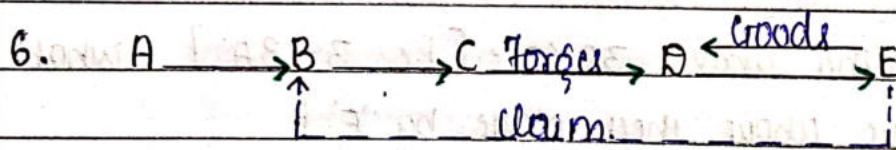
In this case, E = HDC & G = HDC.

So 'G' can claim from 'B'

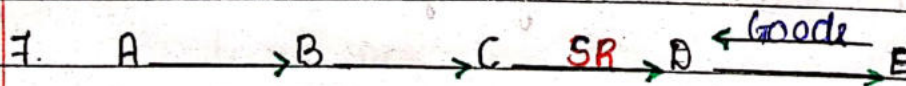


Here N/N = NOT Negotiable Endorsement.

In this case E is not HDC because he lacks proper title. Hence he can't claim from B.



In this case E, being a HDC, can't claim from B as Forgery is exception to HDC power to claim.

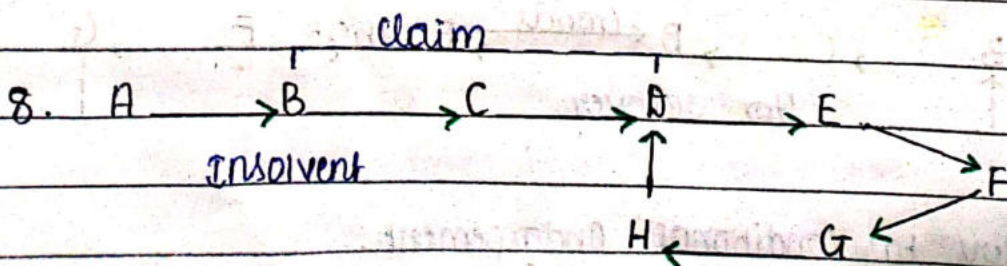


Insolvent

SR = Sans Recourse

Here, E, being HDC, can't claim from B & C, as B is insolvent & C endorsed as SR.

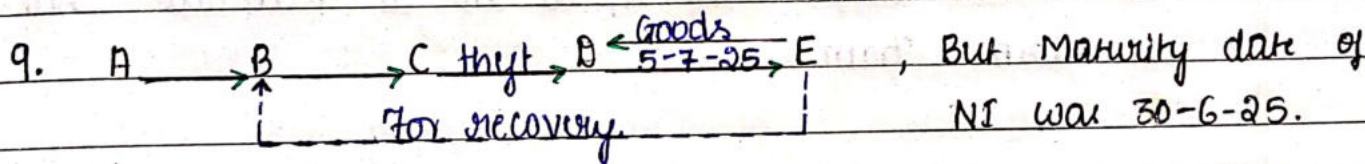
But he can claim from A & D.



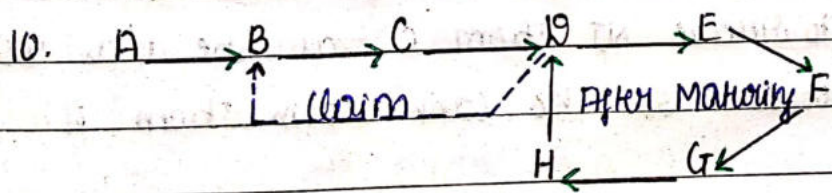
Here, D is H&C, & this case is called as Negotiation Back. So here E, F, G, H is discharged, hence D can claim only from A & C.

8A. What if in the same case, D is received it as gift from 'C' & negotiated back from H for consideration.

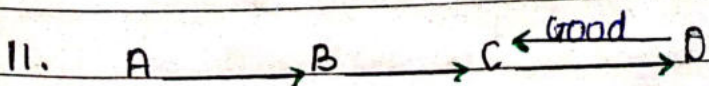
In this case, 'D' is holder when he rec'd gift from 'C' and H&C when he rec'd back from H for consideration. So as a holder he was not supposed to claim, but as a H&C he can claim.



In this case, E got the NI after his maturity date, so he is not H&C. Instead, he is HFV-GF. But whether he can claim the amt → Disputed.



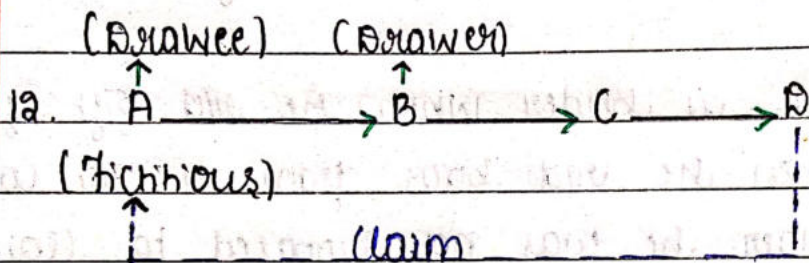
Here D was H&C during endorsing NI to E, but when got endorsed [Negotiated] back from H, he became HFV-GF because the maturity of NI was overed. In this case also - D's claim over B is disputed.



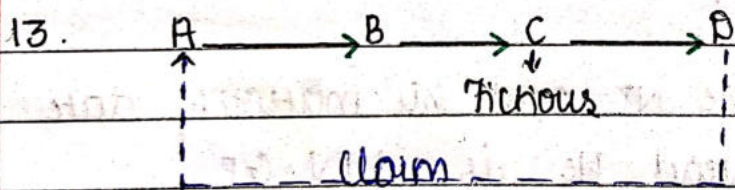
Here A told B to write any amt on NI but Max of ₹ 3000. Then B endorses to C. Later C gave it to D for the goods purchased from him of ₹ 5000.

How much can D recover from A. ₹ 3000 only or ₹ 5000?

= In this case, D is HDC. So he can recover ₹ 5000 from A. then A, if he wished, can recover ₹ 3000 from B or C.



Here D can't claim from A, as he is fictitious, but he can claim from B & C.



In this case, D is not HDC as he lacks GF. because he can't able to receive NT from C, as he was fictitious & not real person, so he can't claim from A.

Imp definitions :-

	Promissory Note	Bills of Exchange	Cheque
Intention	i. promise to pay	ii. order to pay	i. order to pay on bank
Liability of maker	ii. primary & absolute	ii. Liability of drawer is secondary. He would be liable, if the drawee fails to pay the money.	ii. Liability of maker (alc holder) is secondary when bank fails to pay the dues.
Relation b/w parties	iii. the maker stands in immediate relation with payee & is primarily liable to the payee or the holder.	iii. the maker or drawer of an accepted bill stands in immediate relation with acceptor & payee	iii. The maker is the alc holder of bank & stands in immediate relation with payee.
Payment to self.	It can't be made payable to maker himself.	The drawer may order the payment to be made to him also.	The person can draw cheque on bank which can be payable to self.
Parties	Maker (debtor) & the payee (creditor)	Drawer, drawee & payee	Drawer, drawee & payee
Drawing in sets	It can't be drawn in sets.	It can be drawn in sets	It can be drawn in sets
Conditional	X	X	X
Notice of dishonour	Not reqd to be given to it's maker.	Reqd to be given to all the parties.	Reqd to be given to all parties

Noting & protesting	Req ^d to prove that note has been dishonoured.	Req ^d to prove that bill has been dishonoured.	Bank only gives reason. No req ^t of N.E.P.
Involvement of banker	may or may not be	may or may not be	Compulsory
Grace days	3 days (If note which is not payable on demand)	3 days (If bill which is not payable on demand)	No grace is allowed (It shall payable on demand)
payable on Demand	PN can be time note or payable on demand.	Bill can be time bill or payable on demand.	Cheque is always payable on demand.
Stamping	Required	Required	Not Required.
Crossing	- X -	- X -	may be crossed

Bearer Instrument

- i. payable to whoever has possession of instrument
- ii. It is not safe
- iii. Transferred by mere delivery
- iv. It says "pay to the bearer of"

Order Instrument

- i. payable to person named on instrument.
- ii. Comparatively safer.
- iii. Transfer req^d endorsement
- iv. It says "pay to the order of"

Electronic Cheque

- i. paper is not used at any stage in creation.
- ii. It req^d digital signature
- iii. Form of original writing is Electronic.

Truncated Cheque

- i. It is a paper cheque, which has been converted to E-Form during the course of clearing.
- ii. No digital signature is used.
- iii. Form of original writing is physical.