

**Summary Writing**

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**NIA 1881**

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# Negotiable Instruments Act, 1881.

## 1. Meaning of Negotiable Instrument:

- Instrument means Document
- Negotiable means freely transferable ~~to~~ from one person to another in custom of trade.

Kinds of Negotiable Instruments: Promissory Note, Bill of Exchange & Cheque.

## 2. Characteristics of Negotiable Instruments:

- (a) It must be necessarily in writing
- (b) It should be signed
- (c) freely transferable

- (d) Holder's title must be free from defect
- (e) Can be transferred any number of times
- (f) Must contain unconditional promise or order to pay
- (g) Payee must be certain
- (h) Instrument should be delivered.

3. Promissory Note: U154 of Negotiable Instruments Act, Promissory Note is a instrument in writing containing unconditional undertaking signed by maker, to pay certain sum of money only or to order to a certain person or Bearer.

Parties: Maker and Payee

#### 4. Characteristics of Promissory Note :

- a) Must be written
- b) Express promise to pay
- c) Promise to pay should be definite and unconditional
- d) must be signed by maker.
- e) to pay money only
- f) to pay certain amount
- g) Maker and payee must be certain
- h) It must be stamped.

5. Bill of Exchange: An Instrument in writing containing unconditional order signed by maker, directing certain person to pay certain amount of money or on his order.

Parties: Drawer (maker), Drawee (making payment)  
Payee (received payment)

Characteristics:

a) Writing

b) Enjoins order to pay

c) Order must be definite & unconditional

d) Must be signed

- e) Drawer, Drawee & Payee must be certain
- f) Sum must be certain
- g) Order must be to pay money only.
- h) Must be stamped.

Refer Book for D/w Promissory Note  
and Bill of Exchange.

6. Cheque: Cheque is a Bill of Exchange ~~drawn~~ drawn on specified banker and not expressed to be payable other wise than on demand. It includes Electronic Image of truncated cheque.

Parties: Drawer (Maker)  
Drawee (Bank)  
Payee (in whose favour ~~the~~ cheque is read).

F. Characteristics of Cheque.

- a) All essential characteristics of Bill of Exchange.
- b) Must be drawn on specified Bank
- c) Payable on demand.

## 8. Classification of Negotiable Instrument:

**Bearer Instrument:** It is a Instrument where Name of payee is Blank or where name is written as "Bearer" or where last indorsement is blank. These Instruments are Negotiated by mere delivery.

**Order Instrument:** A Instrument is payable to a certain person or on his order to another person, where last indorsement is in full. This Instruments are Negotiated by Indorsement and delivery.

9. Inland and foreign Instrument :

a) Inland Instrument : When a BOE / PN / Cheque drawn or made in India ~~or~~ and made Payable in / drawn upon person resident in India

b) Foreign Instrument :

When a BOE / PN / Cheque is Not drawn / made in India ~~or~~ and made payable in / drawn upon person resident in India

## 10 Inchoate and Ambiguous Instrument

- (Incomplete)
- a) Inchoate Instrument: It means an Instrument that is Incomplete. Drawer/acceptor/maker/Indorser of Instrument may sign or deliver instrument to another person, who gets authority to complete same. Such Instrument is left wholly or partially Blank.

Holder cannot recover more than amount intended to recover. However, Holder in due course, can recover any amount on such Instrument provided it is covered by stamp affixed.

b) Ambiguous Instrument :

Where an Instrument may be construed either as promissory note or bill of exchange, & holder may elect to treat that Instrument as either of them and ~~the~~ the Instrument shall be henceforward treated accordingly.

## 11. Negotiation of Negotiable Instrument :

When a negotiable instrument is transferred to any person with a view to constitute the person holder to such instrument it deemed to be negotiated.

### Modes of Negotiation :

- a) If BOE/PN/ Cheque is Bearer → By Delivery <sup>Actual</sup> constructive
- b) If BOE/PN/ Cheque payable on order → Indorsement + Delivery.

## 12 Importance of Delivery in Negotiation:

- Delivery of Instrument is crucial & most essential part. merely drawing an Instrument cannot solve the problem.
- Delivery of Instrument must be Voluntary and there must be intention to transfer Instrument.
- Types of Deliveries :
  - a) Actual delivery: Physically changes hands.
  - b) Constructive delivery: Instrument is given to Agent.

- Conditional or special purpose Instrument:  
If Instrument is delivered conditionally or for specific purpose, property does not pass to transferee unless such purpose is satisfied.
- Incomplete Contract : Contract shall be incomplete and revocable until delivery.
- Delivery at Drawing : Delivery is essential not only at negotiation but also at making / Drawing Instrument.
- Delivery is also important after Indorsement.

- In case of Death of Indorser: If Indorsee dies before Indorsement is delivered to Indorsee, than legal representative cannot negotiate instrument merely by delivery.

13. When Delivery is effective between Parties:

(a) Between Parties in immediate relation - Delivery is effectual by person authorised on his behalf.

b) Party and any Holder - Transfer of property except Holder in due course - Once purpose is fulfilled.

14. Dishonour of cheque due to Insufficiency of funds etc. where any cheque is Drawn by a person on an account maintained by him with banker:

- for payment of any amount of money.
- to another person from that account
- for discharge of any debt
- & is returned by bank unpaid
- Either because of
  - insufficient funds in account or
  - it exceeds amount arranged by an agreement made with bank,

Such person shall be deemed to have committed offence and shall be punished with imprisonment and fine

Imprisonment - upto 2 yrs

Fine - twice the amount of cheque. Or both

# When this section shall not be applied:

If following conditions are not fulfilled above provision shall not apply:

- ① cheque is presented within validity.
- ② Demand for payment through Notice
- ③ failure Drawee to make Payment

## 15. Presentment of Instrument:

### a) Presentment for acceptance:

- BOE payable after sight: must be presented to drawee for acceptance.
- Reasonable search must be done to find drawee, if after reasonable search, drawee cannot be found, bill is dishonoured.
- If bill is directed to drawee at particular place, bill will be presented there.

### b) Presentment of Promissory Note for sight:

PN payable at a certain period after sight - It must be presented within reasonable time & in business hours on a

business day.

In default of such presentment - No party liable there

3. Drawee's time for Delebration: 48 hrs to acceptance  
(Must be excluding public holidays)

4. Presentment for payment:

a) Type of Instrument - BOE | PN | Cheque

b) IF default in presentment - No Party shall be liable

c) Postal Presentment - Authorised by agreement

d) Exception: If no specific place is mentioned, No need to present Promissary Note.

5 Hours of Presentment: Business hours.

6. Presentment for Payment of Instrument after Sight or after Date:

— Must be presented at maturity

7. Presentment of payment of Installment of Promissory Note:  
Third day after Installment is due.

8. Presentment of Payment at specified Place: if specified then must be presented

9. Presentment where no known place: present where maker/

drawer can be found

10. Presentment of cheque: must be presented to bank upon which it is charged with reasonable time.
11. Presentment of Instrument payable on demand: within Reasonable time.
12. Presentment by agent, Representative, assignee - It is Valid.
13. Excuse for Delay: Circumstances Beyond Control.

14 When Presentment is Unnecessary:

- If maker, Drawer or acceptor presents Presentation.
- Payable at Business Place which is closed on Business Day
- Payable at specified place & liable party is not present
- Liable party cannot be found after due search.
- Liable party ~~engage~~ engaged to pay even after Non-presentment.
- Liable party makes part payment
- Liable party waives off his right
- When Drawer could not suffer damage from want of such presentment

15. Liability of Banker for Negligence:

Banker must compensate for loss due to negligence in handling bill presented for payment.

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Rules of Compensation:

In case of Dishonour of Negotiable Instrument, holder can claim:

- a) Amount due on Negotiable Instrument
- b) Expenses incurred in ~~present~~ presenting, Noting & protesting
- c) Interest @ 18% from due date to date of realisation.
- d) In case of foreign exchange: current rate.

































