The Negotiable Instruments Act, 1881

Enactment Date 9 Dec, 1881

Commence Date / Force 1 march 1882

Objective → To legalise the system of passing of Negotiable Instrument

→ Act Applies to whole India but doesn't affect & apply on the RBI Act, 1934.

Applicable to Hundis

Treasury Bills, Bearer Debentures Railway Receipts, Delivery orders Bills of Lading are also considered as NIA

Amendments → 2002, 2015, 2018

Meaning of Negotiable Instrument

Negotiable → Transferable by Delivery.

Instrument → Instrument means written document by which a right is created in favour of person

→ May have more than one payee, jointly or alternatively

→ written document transferable by delivery.

Legal Definition, Section 13 (1)

Promissory Note, Bills of Exchange (Drawee person or A), Cheque (→ Drawee - Bank)

→ Which is payable

(a) to a certain person or

(b) as per his order or

(c) to the bearer of such instrument

Cheque → Payable either to bearer or order

Payable to order. Name mentioned	Payable to Bearer
→ When it is expressed to be payable to a specified person.	→ When last indorsement on the instrument is blank. Person who possess can demand payment. Bearer (PN, BOE, Cheque) → without Name. Jis insaan ke paas hoga wo owner

Instrument should be delivered.

Essentials of NI

- Must be in writing
- Must be signed
- Freely transferable from one person to another
- Holders title is free from defects
- Can be transferred any number of times till it is (paid) satisfaction
- Must consist of money only & not any other thing. The sum payable must be certain.
- Unconditional → In NI, Promise shall not be based upon any condition Except condition of Death

Promissory Note

India Stamp Act 1899

₹ 10,000	10.9.22	Stamp
I promise to pay a sum of ₹ 10,000 only after expiry of 3 months to Aman or as per his order		
To - Aman		Sd- Abhinav

Meaning (Sec 4)

→ It is an Instrument in writting containing
- → unconditional undertaking (Promise)
- → Signed by maker
- → To pay certain sum of money
- → Certain person / Order / Bearer

Certain person → Aditya —Endrose & Transfer→ Order → Aman

Abhinav (To pay Bearer) → Bearer → Bear - Receive

India stamp
- Adhesive → Revenue stamp
- Impressed → Stamp paper

2 Parties of P/N :

- Maker → The person who makes P/N to pay.
  - Is a debtor, must sign
- Payee → To whom the amount on the note is payable

Characteristics of P/N

→ In written

(Eg) Aman says Abhinav "I promise to pay you a sum of ₹ 3000 after 3 months"

→ There must be express in promise. Mere acknowledgement of debt is invalid

(Eg) I acknowledge to pay B ₹ 1000.

→ Promise should be definite & unconditional

→ Promise to pay money only.

→ Promise to pay a certain sum

→ Must be signed by Maker, (BOE Maker (Drawer) must signed)

→ Maker and payee must be certain, definite and different persons

→ Must be properly stamped

Note → Essentials of BOE = Essential of Promissory Note

(BOE)

As per Section 31 of RBI Act, 1934 a bill of exchange cannot be made payable to Bearer on Demand

Bills of Exchange

Date - Revenue Stamp
A orders B to pay ₹ 500 after 3 months
Drawer Drawee

Meaning Sec (5)

1) Instrument writting
2) Unconditional order
3) Signed by maker (drawer)
4) Directing a certain person
5) To pay a certain Sum of Money.

Certain person, Order, Bearer

Three Parties of BOE

- **Drawer** → The maker of the BOE
  - Before Acceptance: Secondary, Conditional
  - After Acceptance: Primary, unconditional
- **Drawee** → Upon whom the bill is drawn → When accepted he becomes acceptor. Liability is primary & Unconditional
- **Payee** → To whom payment is made.

Difference between Promissory Note & Bills of Exchange

Basis	P/N	BOE
Nature of Instrument	Promise to pay money	Order for making payment
Parties	Maker, Payee	Drawer, Drawee, Payee
Acceptance	Not require acceptance	Needs Acceptance from Drawee
Payable to Bearer	Cannot be made payable to Bearer	Bearer on Demand - Can't Bearer on Time - Can
Sections	Sec 4	Sec 5
Define →	Unconditional Undertaking	Unconditional order
Maker	Maker is Payer	Maker is Payee
Liability	Liability of Maker is primary & absolute	Liability of maker is secondary & unconditional
Sets	Cannot be done in sets	Can be Drawn in sets
Notice	No Notice of Dishonour is required	Required Notice

Cheques

Meaning (sec 6)
→ Bills of Exchange
→ Drawn upon a specified Banker &
→ Payable only on Demand i.e at sign
→ It includes truncated cheque & Cheque in Electronic form

Characteristics
→ Same feature as BOE
Except (New) features
- Drawn only on specified bank
- Payable on Demand
- No need to pay stamp duty
- No need to get ~~stamp~~ cheque accepted by Drawee

2 Types of Cheque

(a) Truncated Cheque
→ It is a physical cheque, which is scanned by the Collecting Banker or clearing house, to avoid further physical movement.

(b) Cheque in e-form
→ It is a cheque drawn in eform by using resources and
→ signed in a secure system with digital signature and asymetric crypto system ~~or~~ with electronic signature, as the case may be

Basis	Truncated Cheque	Cheque E-forms
Use of Paper	Used at first stage	Not - Applicable
Mode of signing	Ink & Hard signature	• Digital Signature cheque • Electronic - Signature
Complex	Comparatively less complex	More Complex

Parties of Cheque

Drawer → Person who draws the cheque, i.e makes the cheque (Debtor). His liability is primary & Unconditional.

Drawee → Specific Bank on which cheque is drawn. He makes payment of cheque. In case of Cheque Drawee is always Banker.

Drawee in case of Need
→ When in any bill / endorsement the name of any person is given in addition to drawee to be reached in case of need!

Payee
→ The person named in the instrument to whom money is directed to be paid

Bills of Exchange	Cheque
1) Section 5	Section 6
2) Can be drawn on any body	Can be drawn only on specified banker
3) Payable on Maturity	Payable on Demand
4) 3 days of Grace is allowed	No Grace Days
5) Require stamp	No Revenue Stamp
6) No concept of stop payment	Cheque payment can be stopped
7) No Concept of Crossing of Bill	Cheque can be cross (a) General Crossings (b) Special Crossing / Specific crossing
8) No concept of Truncated Cheque	Truncated Cheque
9) Bill can be drawn in set	Cannot
10) Acceptance Required	Not Required

Classification of Negotiable Instruments

Bearer Instrument [Sec (3)

→ where name of Payee is Blank or where name of payee is specified with the words "or Bearer" or where the last Indorsement is blank.

→ Negotiation By mere delivery.

Order Instrument (Sec 13)

→ Payable to a person or payable to a person or his order or payable to order of a person or where the last indorsement is full.

→ Negotiated by Endorsement and delivery.

Inland Instrument (Sec 11)

→ Drawn / Made In India

→ Made payable in India / Drawn upon person resident in India

Foreign Instrument (Sec 12)

Which is NOT

→ Drawn in India

→ Made in India

→ made payable in India.

Liability of Maker / Drawer of Foreign Bill (Section 134)

In absence of a contract to the country

- Liability of maker / Drawer of a foreign instrument is regulated by law of place where he made the instrument
- Respective Liabilities of acceptor / Indorser by law of place where instrument is made payable.

Inchoate Instrument

- Instrument that is incomplete in certain respects
- Maker / Drawer / Acceptor or indorser of NI may signs & Delivers it to another person leaving the instrument wholly blank or having written the word incomplete.

Principle of Estoppel

- Such Instruments give power to its holder to make it complete by writing any amount
  - → Either within limits specified therein or
  - → within limits specified by the stamps affixed on it

Liability on Drawing inchoate Instrument

→ The person signing is liable to both Holder and HDC.

Holder

→ Cannot Recover amount in excess of the amount intended to be paid to signor.

Holder in Due course

→ Can recover any amount on such NI provided it is covered by the stamp affixed thereon.

Ambiguous Instrument (Section 17)

→ When an Instrument may be construed either as a PN or BOE

→ The Holder may at his election treat it as either, and

→ The Instrument shall be thenceforward treated accordingly

→ After excercising his option, the Holder cannot change that it is the other kind of Instrument

Negotiation (Transfer) of Negotiable Instruments

Section 14 ⇒ When a NI is transferred to any person with a view to constitute the person holder thereof, the Instrument is deemed to have been negotiated.

(a) Payable to Bearer $\xrightarrow{\text{Negotiate}}$ by Delivery

(b) Payable to Order $\xrightarrow{\text{Negotiate}}$ by Indorsement & Delivery

Negotiation by Delivery (Sec 47)

Subject to Sec 58 (instrument obtained by unlawful means or for unlawful consideration) a NI payable to Bearer is Negotiable by Delivery Thereof

Exception – A NI delivered on condition that it is not to take effect except in a certain event is not negotiable (except in hands of a holder for value without notice of the condition) unless such event happens.

Negotiation by Indorsement (Sec 48)

→ Subject to Sec 58, NI payable to order, is negotiable by Holder by Indorsement and delivery thereof.

Importance of Delivery in Negotiations (Sec 46)

1) Can be actual, symbolic or constructive
2) Delivery must be voluntary
3) Contract of NI remains incomplete & revocable until delivery
4) Delivery is essential at the time of:
   (a) Negotiation
   (b) Making or drawing NI
(5) Delivery is important whether instrument is payable to bearer or payable to order
(6) Object of Delivery should be to pass property of NI to person to whom it is delivered.

Death

(7) If a person endorses a NI but dies before it is delivered to endorsee, then the legal representatives CANNOT negotiate the same NI by mere delivery thereof.

Delivery when Effective between the Parties

Negotiation of Instrument	How delivery is to be made
As between parties standing in immediate relation	Delivery to be effectual must be made by maker, acceptor or endorser, or by person authorized by them
As between such parties and any holder other than HDC	It may be shown that instrument was delivered conditionally or for a special purpose only, and not for purpose of transferring absolutely property therein

Dishonour of Cheques for Insufficiency of Funds in the Accounts (Section 138 to 142)

Section 138

→ Dishonour of cheque for Insufficiency of Funds in Accounts

- Cheque drawn by a person on an A/c i.e on such Bank, where drawer maintains by his Bank

→ for payment of any amount of money

- to another person from that account
- for the discharge, in whole or in part, of any debt or other liability
- is returned by the bank unpaid

→ Either because of the

- amount of money to credit of account is insufficient to honour cheque.
- that it exceeds amount arranged to be paid from that account by an agreement made with Bank

→ Such person deemed to have committed an offence and shall be punished

Penalty

- Imprisonment for a term which may extend to 2 Year
- With fine which may extend to 2x amount of the cheque.

This Section will not apply unless (Mandatory)

(a) Cheque presented within validity period → Cheque presented to the bank within the period of three months from the date of ~~[illegible]~~ drawn

(b) Demand for the payment through the notice
→ Makes a demand for the payment of the said amount of money by giving a notice, in writing to the drawer within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

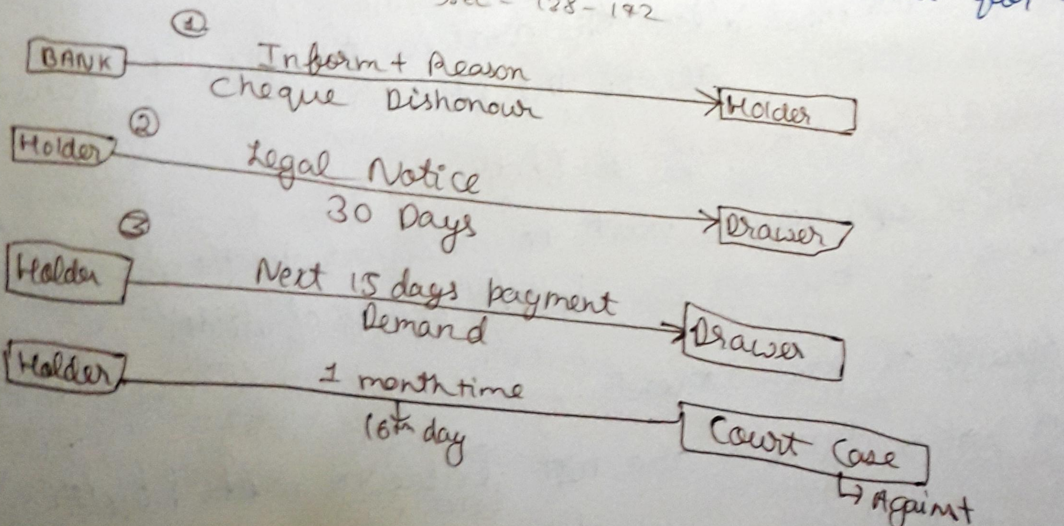
(c) Failure of Drawer to make payment
→ The drawer of cheque fails to make payment of amount of money to payee or HDC of the cheque, within 15 days of the receipt of the said notice

Debt or other liability ⇒ Legally enforceable debt or other liability

Presumption in favour of Holder (Section 139) → "Rebuttable presumption"
→ Unless the contrary is proved, when a cheque is dishonoured, it shall be presumed that the holder thereof received the cheque for discharge, in whole or in part, or any debt or other liability.

Defence which may not be allowed in any prosecution under Section 138
→ Drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons

Sec - 138 - 142



Presentment of Instruments

(61) Presentment for acceptance Section 61

~~→ BOE payable after sight has no specified~~
~~specified therein for prese~~
~~acceptance a reasonable~~
~~to be drawn in business~~

~~→ No party is liable the~~
~~default.~~

~~→ If bill directed to dra~~
~~place and if due date~~
~~bill is dishonoured.~~

BOE payable after sight must be presented.
- → In case where time & place is specified → Presented at particular place
- → In case where no time & place is specified → Presented to drawee within reasonable time in business hours on a business day

~~→ Where~~ authorised by agreement, through post office → registered letter is sufficient.

Presentment of Promissory Note for Sight (Sec 62)

→ P/N payable at a certain period after sight
- presented to the maker for sight
- by a person entitled for payment
- in reasonable time
- in business hours on business day.

→ If Default → No party is liable to the person.

Drawee's time for deliberation (Section 63)

→ Holder of a bill must allow the drawee 48 hours to consider whether he will not accept the bill.

Presentment for Payment (Section 64)

→ P/N, BOE & Cheques must be presented to the maker, acceptor or drawee, by or on ~~behalf~~ behalf of Holder

→ In default of presentment
- Other parties thereto are not liable to such holder.

→ presentment can be done by post office by means of a registered letter.

Exception ⇒ If P/N is payable on Demand and not payable a specified place, no presentment is necessary to charge the maker.

Hours of Presentment (Section 65)

→ Presentment of Payment made during usual hours of business for the maker of acceptor.

→ Banker presentment must be made within banking hours, if made in unusal hours of business it is not valid.

Presentment for payment of instrument payable after date or sight. (Sec-66)

→ Must be presented for payment at maturity.

Presentment for payment of P/N payable by Installments (Sec 67)

→ Must be presented for payment on the third day after the date fixed for payment of each installment.

→ Non payment on such presentment $\xrightarrow[\text{Effect}]{\text{Same}}$ Non payment of a note of maturity

Presentment for payment of instrument payable at specified place and not elsewhere (Sec 68)

→ Specified place implies precise address and not elsewhere. In order to charge any party be presented for payment at that place

Instrument payable at specified place. (Sec 69)

→ Presentment of Bill or Note made payable at a specified place in order to charge the drawer or the maker.

Presentment where no exclusive place specified (Sec 70)

1) if no place is specified Note or bill present for payment at the place of business
2) OR at usual place of residence of maker

Presentment when maker has no known place of business or residence (Sec 71)

→ presentment for acceptance for payment may be made to him in person wherever he can be found.

Presentment of cheque to charge drawer (Section 72)
↳ subject to the provision of section 84

→ Presented at Bank on which it is drawn before the relation between drawer and his banker.

Presentment of cheque to charge any other persons (Sec 73)
→ Presented within a reasonable time after delivery

Presentment of Instrument payable on Demand (Sec 74)
→ Must be present for payment within a reasonable time after it is received by the holder.

Presentment by or to agent, representative of deceased, or assignee of insolvent (Section 75) → Payment made duly authorised agent of the drawee.
→ Where the drawee has died, to his legal representative
→ Where he has been declared an insolvent

Excuse for delay in presentment for acceptance or payment (Section 75 A)
→ If circumstances beyond the control of Holder & not imputable misconduct or neligence.
→ Delay cause when end, must be present within reasonable time.

When Presentment unnecessary (Section 76)
(a) • Intentionally prevent the presentment by maker
• Place of Business present => He closes such place on a business day during the business hours
• Specified place => Neither he nor any authorized person to pay it attends at such place during the usual business hours.
• Not able to pay in Specified place => He can't after due search be found.
(b) Party has engaged to pay notwithstanding non-presentment
(c) Instrument has not been presented.
• Makes a part payment
• Promises to pay the amount
• Waives his right to take advantage of any default
(d) Drawer could not suffer damage from the want to such presentment.

Liability of Banker for Negligently dealing with Bill presented for payment (Section 77)

→ When a BOE, accepted payable at a specified Bank. presented there for payment and dishonoured

→ Banker so negligently improperly keeps, deals with or delivers.

→ Only Banker must compensate the Holder for such loss.

Rules of Compensation (section 117)

(a) Holder is entitled to the amount due upon the instrument and expenses properly incurred Presenting, Noting and protesting it. (ये सारा expense recover karna hoga)

(b) If the person charged lives at a place different from that at which the instrument was payable, Holder receive such sum at the current rate of exchange b/w two places.

(c) An Indorser who being liable, after paying the amount is entitled to the amount so paid with 18% interest p.a. from the date of payment until tender or realisation thereof together with all expenses caused by the dishonour and non payment

(d) If the person charged and such indorser reside at different places, the indorser is entitled to receive sum at the current rate of exchange between the two places.

(e) If Bill is Dishonoured, it is a usual practice to re-draw a bill for the amount due together with expenses properly incurred on noting and protesting etc.

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