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BUSINESS LAW

UNIT-V

**Law of Negotiable Instruments. (Instrument
Amendment Act, 2015 – Definition – characteristics –
classification- notes, bills, cheques and promissory
note.**

Negotiable instrument in Business Law

A negotiable instrument is a document guaranteeing the payment of a specific amount of money, either on demand, or at a set time, with the payer named on the document.

Negotiable instrument

Document of title or evidence of indebtedness that is freely (unconditionally) transferable in trading as a substitute for money. Negotiable instruments are unconditional orders or promise to pay, and include checks, drafts, bearer bonds, some certificates of deposit, promissory notes, and bank notes (currency).

EXAMPLES OF NEGOTIABLE INSTRUMENTS

- **a) Negotiable instruments recognized by statute :**
 - **i) Bills of exchange**
 - **ii) Promissory notes.**
 - **iii) Cheques.**

Essential Features of Negotiable Instruments (Negotiable Instruments Act, 1881)

- **1. Writing and Signature:**
- **2. Money:**
- **3. Negotiability**
- **4. Title**
- **5. Notice**
- **6. Presumption**
- **7. Special Procedure**
- **8. Popularity**
- **9. Evidence**

1. Writing and Signature:

- **Negotiable Instruments must be written and signed by the parties according to the rules relating to Promissory Notes, Bills of Exchange and Cheques. Demand Drafts are also construed as Negotiable Instruments in the limiting case as they have the same property as Negotiable Instruments.**

2. Money:

- **Negotiable instruments are payable by legal tender money of India. The liabilities of the parties of Negotiable Instruments are fixed and determined in terms of legal tender money.**

3. NEGOTIABILITY:

- **Negotiable Instruments can be transferred from one person to another by a simple process. In the case of bearer instruments, delivery to the transferee is sufficient. In the case of order instruments two things are required for a valid transfer: endorsement (i.e., signature of the holder) and delivery. Any instrument may be made non-transferable by using suitable words, e.g., “pay to X only.”**

4. Title:

- **The transferee of a negotiable instrument, when he fulfils certain conditions, is called the holder in due course. The holder in due course gets a good title to the instrument even in cases where the title of the transferrer is defective.**

5. Notice:

- **It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay. The transferee can sue in his own name.**

6. Presumptions:

- **Certain presumptions apply to all negotiable instruments. Example: It is presumed that there is consideration. It is not necessary to write in a promissory note the words “for value received” or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.**

7. Special Procedure:

- **A special procedure is provided for suits on promissory notes and bills of exchange (The procedure is prescribed in the Civil Procedure Code). A decree can be obtained much more quickly than it can be in ordinary suits.**

8. Popularity:

- **Negotiable instruments are popular in commercial transactions because of their easy negotiability and quick remedies.**

9. Evidence:

- **A document which fails to qualify as a negotiable instrument may nevertheless be used as evidence of the fact of indebtedness.**

TYPES OF NEGOTIABLE INSTRUMENTS

- **The basic types of negotiable instruments are as follows:**
- **Bearer Instrument**
- **Order Instrument**
- **Inland Instrument**
- **Foreign Instrument**
- **Demand Instrument**
- **Time Instruments**

1. Bearer Instruments:

- **A promissory note, a bill of exchange or a cheque is payable to bearer when it is expressed to be so payable, or the last endorsement on the instrument is an endorsement in blank. A person who is a holder of a bearer instrument can obtain the payment of the instrument.**

2. Order Instruments:

- **A promissory note, a bill of exchange or a cheque is payable to order in which it is expressed to be so payable; or which is expressed to be payable to a particular person and it does not contain any words prohibiting transfer or indicating any intention that it shall not be transferable.**

3. Inland Instruments:

- **A promissory note, a bill of exchange or a cheque drawn or made in India, and made payable for any person who is resident in India shall be deemed to be an inland instrument. Subject to this exception, an inland instrument is one which is either:**
 - **drawn and made payable in India, or**
 - **Drawn in India upon some persons resident therein, even though it is made payable in a foreign country.**

4. Foreign Instruments:

- **An instrument which is not an inland instrument is defined as a foreign instrument. The essentials of a foreign instrument include the following:**
- **(i) it must be drawn outside India and should be made payable outside or inside India; or**
- **(ii) it must be drawn in India and should be made payable outside India and drawn on a person resident outside India.**

5. Demand Instruments:

- **A promissory note or a bill of exchange in which no time for payment is specified is an instrument payable on demand.**

6. Time Instruments:

- **Time instruments are those instruments which are payable at sometime in the near future. Therefore, a promissory note or a bill of exchange payable after a fixed period, or after sight, or on a specified day, or on the happening of an event which is certain to happen, is known as a time instrument.**

Essentials of a bill of exchange

- 1. It must be in writing and may be in any language.
- 2. It must be an order to pay by the drawer to the drawee.
- 3. The order to pay must be unconditional. If the order to pay is conditional, the bill of exchange becomes invalid.
- 4. There are three parties in a bill of exchange. (a) Drawer: The person who makes the bill.
(b) Drawee: The person who is ordered to pay or on whom the bill is drawn.
(c) Payee: The person who is to receive the payment.
- 5. The bill must be signed by the drawer otherwise it will become an inchoate instrument.
- 6. The order to pay must be of a certain sum and it must be in money only.
- 7. The payee and drawee must be certain.
- 8. It must be properly stamped under the Indian Stamp Act.

Distinction between Bills and Cheques

- 1. A cheque is always drawn on a banker, while a bill may be drawn on anyone, including a banker.**
- 2. A cheque's payment is made when it has been demanded whereas in case of a bill its nature may be such that payment has to be made on demand or after the expiry of a certain period after date or sight.**
- 3. In case of a cheque a bearer can get payment on demand but a bill's payment can not be demanded by the bearer.**
- 4. Acceptance of bill is necessary for the demand of its payment, in case of cheque acceptance is not required and is aimed for quick payment.**
- 5. In case of bills ordinarily a provision for grace days is made (which is generally of 3 days) whereas in case of cheques no such grace is allowed.**

6. In the absence of presentment of a bill for payment the liability of bill's drawer ceases, whereas liability of cheque's drawer ceases when the delay caused in presentment for payment results in damages.

7. Notice must be served when the bill is dishonored, but when a cheque is not honored, no such notice is necessary.

8. A cheque being a revocable order the authority may be revoked by countermanding payment, and is determined by notice of the customer's death or insolvency. In case of a bill the position is different, it can not be revoked.

LIABILITY OF BANKER

- **1. When customer countermands payment. When a customer after issuing a cheque, issues instructions not to honour a cheque, the banker must not pay it. If the bank pays it, he will be liable to make good the customer's loss.**
- **2. When banker receives notice of customer's death. Notice of customer's death terminates banker's authority to honour cheques.**
- **3. When customer becomes insolvent. When a customer has been adjudged an insolvent, all his assets vest in the Official Assignee or the Court, and the banker must thereafter refuse to pay his cheques.**
- **4. When banker receives notice of customer's insanity, he must not honour his cheques.**
- **5. When the banker receives a garnishee order from the court relating to the customer's money, the banker should not honour cheques drawn against the customer's account.**

LIABILITY OF BANKER

- **6. The banker should not honour his customer's cheques after the customer has given notice of assignment of the credit balance of his account.**
- **7. When the holder's title is defective and banker comes to know of the defect.**
- **8. When the banker comes to know that the customer is drawing cheques for unlawful purposes.**
- **9. When the banker has received a notice from the customer for closing the account.**

DIFFERENCE BETWEEN PROMISSORY NOTE AND BILL OF EXCHANGE

MODES	PROMISSORY NOTE	BILL OF EXCHANGE
No: of parties	Only two parties (maker of the note & payee)	There are 3 parties (Drawer, drawee, payee)
Maker & payee	Maker cannot be the payee.	Drawer and the payee may be one.
Promise & order	Promise to make payment.	Order for making the payment.
Acceptance	Requires no acceptance as it is signed by person who liable to pay.	Drawer is creditor so it must be accepted by the drawee before presenting to payment.
Nature of liability	The liability of maker is primary and absolute.	The liability of drawer is secondary and conditional.
Notice of dishonor	No notice is necessary to maker.	Notice of dishonor must be given by the 'holder'.

DIFFERENCE BETWEEN CHEQUE AND BILL OF EXCHANGE

MODES	CHEQUE	BILL OF EXCHANGE
Drawee	Only a Banker can be a drawee.	Any one can drawee including banker.
Acceptance	A Cheque is requires no acceptance.	Drawee is liable only after the acceptance.
Payment	3 months from the date of issue.	Three days of grace after maturity, unless payable on demand.
Notice	In case of dishonour no notice of dishonour necessary.	Notice of dishonour is to be given to all the parties liable to pay.
Crossing	A cheque may be crossed.	Bill of exchange can never be crossed.
Stamp	Cheque requires no stamp.	Bill must be properly stamped.

Thank you