

The Negotiable Instruments Act, 1881

12.1 INTRODUCTION TO NEGOTIABLE INSTRUMENTS	
Definition of Negotiable instrument (Sec.13)	<p>Negotiable Instrument means</p> <ul style="list-style-type: none"> - A promissory note; or - Bill of exchange ; or - Cheque - Either to order ; or - To the bearer.
Meaning of Negotiable instrument	<ul style="list-style-type: none"> • Negotiable instrument means an instrument • the property in which is acquired by anyone who takes it — bonafide; and - for value • Notwithstanding any defect in the title of any prior party. • In other words, negotiable instrument means an instrument which confers upon a HDC a valid title • not with standing any defect in the title of any prior party.
12.2 ESSENTIALS OR CHARACTERISTICS OF A NEGOTIABLE INSTRUMENT (Sec.13)	
<ol style="list-style-type: none"> 1. Freely transferable from one person to another. 2. Transferable infinitum (i.e. any number of times till it is paid). 3. HDC gets a good title to negotiable instrument even though the title of transferor is defective. 4. A negotiable instrument may name more than one payee jointly or alternatively. 	
12.3 PRESUMPTIONS AS TO NEGOTIABLE INSTRUMENTS	
<ol style="list-style-type: none"> 1. Every negotiable instrument was made, accepted and endorsed for consideration. 2. Every negotiable instrument bearing a date was made or drawn on such date. 3. Every accepted bill was accepted within a reasonable time after its date and before maturity. 4. Every transfer of a negotiable instrument was made before its maturity. 5. A promissory note or bill was duly stamped. 6. The holder of a negotiable instrument is a HDC. 	
12.4 MEANING OF PROMISSORY NOTE	
<p>A 'Promissory note' is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker a certain sum of money only to —</p> <p>(a) a certain person; or (b) the order of a certain person; or (c) the bearer of the instrument.</p>	
12.5 ESSENTIALS /CHARACTERISTICS OF A PROMISSORY NOTE (Sec.4)	
I. In Writing	<ul style="list-style-type: none"> • An oral promise to pay is not sufficient
II. Express promise to pay	<p>There must be an express promise to pay.</p> <p>Mere acknowledgement of indebtedness is not sufficient.</p>
III. Definite and unconditional promise	<p>If a promise to pay is dependent upon an event which is certain to happen, although the time of its happening is uncertain, the promise to pay is unconditional.</p> <p>Illustrations:</p> <p>"I promise to pay B Rs. 500 seven days after my marriage with C." The promise is conditional since the promise is dependent upon marriage of the promisor with C. which may or may not happen.</p> <ul style="list-style-type: none"> • "I promise to pay B Rs. 500 on D's death, provided D leaves me enough to pay The sum." The promise is conditional since the promise is dependent upon the estate inherited by the promisor. • "I promise to pay B Rs. 500 on D's death." The promise is not conditional, but definite since death of D is certain. Therefore, the promissory note is valid.
IV. Signed by maker	<p>A promissory note must be signed by the maker. The signatures may be made on any part of the instrument.</p>
V. Promise to pay a certain sum	<p>Illustration :</p> <ul style="list-style-type: none"> • "I promise to pay B Rs. 500 and all other sums which shall be due to him: since the amount payable is not certain, it is not a valid promissory note. • "I promise to pay B Rs. 500 first deducting there from any money which he Since, the amount payable is not certain, it is not a valid promissory note.

Specimen of a promissory note

The above promissory note shows that Mr. Promisor (Maker) has made a promissory note payable to Mr. Payee(Payee) for a sum of Rs. 50,000.

- (a) It must be in writing
- (b) It must contain an express order to pay
- (c) The order to pay must definite and unconditional
- (d) It must be signed by the drawer
- (e) The sum contained in the order must be certain
- (f) The order must be to pay money only
- (g) Drawer, drawee and payee must be certain (Usual provisions of the RBI Act, 1934 a bill of exchange)
- (h) It must be stamped.

Drawer	<ul style="list-style-type: none"> • The person who draws the bill (i.e. the person who makes the bill) is called as drawer. • His liability is secondary and conditional. • His liability is primary and conditional until the bill is accepted.
Drawee	<ul style="list-style-type: none"> • The person on whom the bill is drawn is called as drawee. • On acceptance of the bill —

	<ul style="list-style-type: none"> (a) he is called as acceptor; (b) he becomes liable for the payment of the bill; (c) his liability is primary and unconditional.
Payee	<ul style="list-style-type: none"> The person to whom money is to be paid is named in the bill. He is called as payee.
Specimen of a bill of exchange	
<p style="text-align: right;">Mr. Drawer 78, Trilok puri, Delhi -28. July 3,2004</p> <p>Rs. 50,000/ Six months after date, pay to Mr. Payee a sum of Rupees fifty thousand, for value received.</p> <p>To Mr.Drawee House No.45, D Block, Yamuna vihar, Delhi-95.</p> <p style="text-align: right;">Sd/- (Mr. Drawer)</p>	
The above bill of exchange shows that Mr. Drawer has ordered Mr. Drawee to pay a sum of Rs. 50,000 to Mr. Payee.	
12.7 CHEQUE	
A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand (i.e. it is always payable on demand)	
Essentials characteristics of a cheque <ul style="list-style-type: none"> (a) It must be in writing (b) It must contain an express order to pay (c) The order to pay must be definite and unconditional (d) It must be signed by the drawer (e) The sum contained in the order must be certain (f) The order must be to pay money only (g) Drawer, drawee and payee must be certain (h) It is always drawn upon a specified banker (i) It is always payable on demand <ul style="list-style-type: none"> A cheque must contain all the characteristics of a bill of exchange. A cheque does not require — (a) stamping; or (b) acceptance. 	
Parties to a cheque -	
Drawer	<ul style="list-style-type: none"> The person who draws the cheque, i.e. the person who makes the cheque is called as drawer. His liability is primary and conditional.
Drawee	<ul style="list-style-type: none"> The bank on whom the cheque is drawn is called as drawee. He makes the payment of the cheque.
Payee	<ul style="list-style-type: none"> The person to whom money is to be paid (i.e. the person in whose favour cheque is issued) is named in the cheque. He is called as payee. The payee may be the drawer himself or a third party.
Specimen of a cheque	
<p style="text-align: right;">Date: July 3, 2004</p> <p>Pay Mr. Payee _____</p> <p>A sum of Rupees Fifty thousand only _____ (Rs.50,000/-)</p> <div style="border: 1px solid black; padding: 5px; display: inline-block;">A/C No. 634011028</div> <p>Drawee Bank 151, New Gandhi Nagar, Gzb. Sd/-</p> <p style="text-align: right;">(Mr. Drawer)</p> <p style="text-align: center;">019861 110532046 000184 31</p>	

12.8 DIFFERENCE BETWEEN A CHEQUE AND BILL OF EXCHANGE

Basis of distinction	Bill of Exchange	Cheque
1. Drawee	Any person (including a banker) can be a drawee in case of a bill.	A cheque can be drawn only upon a banker, i.e. only a banker
2. Liability of drawer	The liability of drawer is secondary and conditional. However, until a bill is accepted, the liability of the drawer is primary.	The liability of drawer is always primary. The drawer bank is simply a custodian of moneys of the customer (i.e. drawer)
3. Payable to bearer on demand	A bill cannot be made payable to bearer on demand.	A cheque can be made payable to bearer on demand.
4. Maturity period	A bill may be payable on demand or otherwise than on demand.	A cheque is always payable on demand.
5. Validity period	There is no validity period in case of a bill	The cheque remains valid only for 3 months from the date of its issue. After validity period, a cheque becomes a stale cheque, and it cannot be paid.
6. Stamping	A bill must be stamped	A cheque does not require stamping
7. Drawn in sets	A bill can be drawn in sets	A cheque can not be drawn in sets
8. Acceptance	A bill requires acceptance if it is payable certain period after sight, or it contains an express term requiring acceptance.	In no case, acceptance of a cheque is required.
9. Discharge by qualified acceptance	If the drawee gives a qualified acceptance, then, all the parties to the bill, not consenting to qualified acceptance, are discharged	Since acceptance of a cheque is not required, there is no question of qualified acceptance, and discharge of a party in case of qualified acceptance.
10. Days of grace	Three days of grace are allowed in case of every bill payable otherwise than on demand.	Since a cheque is always payable on demand, no days of grace are allowed in case of a cheque. A cheque is to be paid immediately on presentment for payment.
11. Crossing	A bill cannot be crossed.	A cheque can be crossed
12. Discharge by non-presentment	If a bill is not presented for payment, the drawer is discharged from liability	Even if a cheque is not presented for payment, the drawer is not discharged from liability. However, if the bank fails in the meantime, the drawer is not liable.
13. Noting of protest	If a bill is dishonoured, it may be noted or protested.	A cheque cannot be noted or protested in case of dishonour.

12.10 CAPACITY OF A PERSON TO BE A PARTY OF A NEGOTIABLE INSTRUMENT

Person must be capable of contracting	A person shall be liable on a negotiable instrument (by reason of making, drawing, accepting, endorsing, delivering or negotiating a negotiable instrument) only if he is capable of contracting according to the law to which he is subject.
Liability in case of a minor	<ul style="list-style-type: none"> • A minor may draw, endorse, deliver and negotiate any negotiable instrument. • All the parties shall be bound on such negotiable instrument. • However, the minor shall not be bound on such negotiable instrument.
Capacity of	A corporation shall not be empowered to make, endorse or accept any negotiable

corporations to make, endorse etc.	instrument except in such cases as it is empowered to make, endorse or accept any negotiable instrument under the law for the time being in force.
12.11 CLASSIFICATION OF NEGOTIABLE INSTRUMENTS	
1. Order instrument	(a) A negotiable instrument payable to a particular person. (b) A negotiable instrument payable to a particular person or his order. (c) A negotiable instrument payable to the order of a particular person.
2. Bearer Instrument	(a) A negotiable instrument which is expressed to be payable to bearer. (b) A negotiable instrument on which the last endorsement is in blank.
	As per the provisions of the RBI Act, 1934
	A promissory note – Cannot be made payable to bearer. A Bill exchange – Cannot be made payable to bearer on demand.
3. Instrument payable on demand (Sec.19)	(a) A negotiable instrument on which time for payment (i.e. maturity date) is not specified (b) A negotiable instrument which is expressed to be payable on demand. <ul style="list-style-type: none"> • A cheque is always payable on demand. • A demand instrument may be presented for payment at anytime. • A demand instrument is not entitled to any days of grace.
4. Time Instrument	<ul style="list-style-type: none"> • An instrument in which time for payment (i.e. maturity date) is specified. • A time instrument may be payable – <ul style="list-style-type: none"> - on a specific day; or - after a specified period (e.g., specified number of days or specified number of day or specified of months) ; or - a certain period after sight; or - a certain period after happening of an event which is certain to happen.
• 12.13 MATURITY OF A NEGOTIABLE INSTRUMENT	
Maturity of a negotiable instrument	<ul style="list-style-type: none"> • It means the date on which the negotiable instrument falls due for payment. • A negotiable instrument which is payable otherwise than on demand is entitled to 3 days of grace.
• 12.13 CULCULATION OF DAYS OF MATURITY	
Negotiable instrument payable on a specified day	<ul style="list-style-type: none"> • Specified day + 3rd day
Negotiable instrument payable on a stated number of days after date	<ul style="list-style-type: none"> • Date on which negotiable instrument is drawn + Stated number of days + 3rd day
Negotiable instrument payable on stated number of days after sight	<ul style="list-style-type: none"> • Date on which negotiable instrument is presented for sight + stated number of days + 3rd day
Negotiable instrument payable on stated number of day after happening of a certain event	<ul style="list-style-type: none"> • Date on which such event happens + stated number of days + 3rd day
Negotiable instrument payable on stated number of months after date	<ul style="list-style-type: none"> • Corresponding day of the relevant month* (i.e. Date on which negotiable instrument is drawn + stated number of months) + 3rd day
Negotiable instrument payable on state number of months after sight	<ul style="list-style-type: none"> • Corresponding day of the relevant month* (i.e. Date on which negotiable instrument is presented for sight + stated number of months) + 3rd day
Negotiable instrument payable on stated number of months after happening of a certain event	<ul style="list-style-type: none"> • Corresponding day of the relevant month* (i.e. Date on which such event happens + stated number o months)+3rd day
If the day to maturity of negotiable instrument is a	<ul style="list-style-type: none"> • Immediately preceding business day

public holiday		
If the day of maturity of negotiable instrument is an emergency or unforeseen public holiday	<ul style="list-style-type: none">Immediately succeeding business day	
12.15 FURTHER CLASSIFICATION OF NEGOTIABLE INSTRUMENTS		
Inland instrument (Sec.12)	A negotiable instrument is an inland instrument if — (a) it is drawn or made in India; and (b) it is payable in India or is drawn on a person resident in India.	
Foreign instrument (Sec. 12)	A negotiable instrument which is not an inland instrument is called as foreign instrument	
12.23 MEANING OF ENDORSEMENT		
Endorsement means		
- Signing	<ul style="list-style-type: none">On the face or back of negotiable instrument ; orOn a slip of paper annexed to the negotiable instrument	
- by	<ul style="list-style-type: none">the holder of negotiable instrument	
- for the purpose of	<ul style="list-style-type: none">Negotiating such negotiable instrument	
The person who make the endorsement is called the endorser.		
12.24 ESSENTIAL REQUIREMENTS OF A VALID ENDORSEMENT		
(A) Writing	The endorsement must be in writing	
(B) Signed	The endorsement shall not be valid unless it is signed.	
(C) By holder	The endorsement shall be valid only if the negotiable instrument is signed by the holder.	
12.30 NEGOTIATION BACK		
Meaning	If	— an endorser, after negotiating a negotiable instrument, again becomes its holder
	Then	— it is called as negotiation back.
Effects	<ul style="list-style-type: none">The holder cannot enforce payment against an intermediary party to whom he was previously liableThe 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.	
12.32 HOLDER AND HOLDER DUE COURSE		
Meaning of ‘holder’(Sec.8)	<ul style="list-style-type: none">He must be entitled to the possession of negotiable instrument in his own name.He must be entitled to receive or recover the amount due on negotiable instrument from the parties liable on negotiable instrument.	
Meaning of ‘holder in due course ’	<ul style="list-style-type: none">In case of a negotiable instrument payable to bearer, he must be the possessor of the negotiable instrument, and in case of a negotiable instrument payable to order he must be the payee or endorsee of the negotiable instrument.He must have become the holder for consideration.He must have obtained the possession of negotiable instrument before maturity.He must have obtained the negotiable instrument in good faith and without sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.	
12.34 DIFFERECNE BETWEEN HOLDER AND HDC		
Basis	Holder	HDC
1. Consideration	A person becomes a holder even if he obtains the negotiable instrument without any consideration	A person become a HDC only if he obtains the negotiable instrument for consideration.
2. Before maturity	A person becomes a holder even if he obtains the negotiable instrument after	A person becomes a HDC only if he obtains the negotiable instrument

	the maturity of the negotiable instrument in good faith.	before its maturity
3. Good faith i.e. bonafide	A person becomes a holder, even if he does not obtain the negotiable instrument in good faith.	For being a HDC, a person must obtain the negotiable instrument in good faith.
4. Privileges	A holder is not entitled to the privileges, which are available for HDC.	A HDC is entitled to various privileges as specified under the negotiable instrument Act, 1881.
5. Right to sue	A holder cannot sue all the prior parties	A HDC can sue all the prior parties
Nature of crossing	Requirements	Effects
General crossing (Sec.123)	The cheque must contain two parallel transverse lines.	<ul style="list-style-type: none"> The cheque must be paid only to a banker.
Special crossing (Sec.124,126 and 127)	The cheque must contain the name of a banker. Special crossing may be made only once.	<ul style="list-style-type: none"> Cheque must be paid only to the banker to whom it is crossed. Special crossing cannot be converted into general crossing
Not negotiable crossing (Sec.130)	The Cheque must contain the words 'not negotiable' The cheque must be crossed generally or specially	<ul style="list-style-type: none"> The cheque nevertheless remains negotiable. The title of the transferee shall not be better than the title of the transferor.
A/c payee crossing i.e. restrictive crossing	The cheque must contain the words 'A/c'payee or 'A/c payee only' The cheque must be crossed generally or specially.	<ul style="list-style-type: none"> The cheque does not remain negotiable anymore

12.59 DISHONOR BY NON-PAYMENT

King of negotiable instrument	A negotiable instrument shall be dishonoured by non-payment if default in payment is made by the following parties
Promissory note	Maker
Bill	Acceptor (Drawee, in case the bill does not require acceptance)
Cheque	Drawee

12.60 NOTICE OF DISHONOUR

May 2014	Ram has Rs. 2,000/- in his bank account and he has no authority to overdraw. We issued a cheque for Rs. 5,000/- to gopal which was dishonored by the bank. Point out whether copal-must necessarily give notice of dishonor to Ram under the Negotiable Instruments Act, 1881?
May 2004	Describe the circumstances where under notice of dishonor is excused under the negotiable Act, 1881.
Notice by whom, and to whom ? (93)	<p>(a) When a promissory note, bill of exchange or cheque is dishonoured by non-ac to non-acceptance or payment, the holder thereof, or some party thereto who remains liable thereon, must the give notice that the instrument has been so dishonoured to all other parties whom seeks to make severally liable thereon.</p> <p>(b) It shall not be necessary to give notice to the maker of the dishonoured promissory note, or the drawee or acceptor of the dishonoured bill of exchange or cheque.</p>
Contents of notice	Notice must disclose the fact of dishonour of negotiable instrument
Effect of default	A party to whom notice of dishonour is not given is discharged from liability on the negotiable instrument
When notice of dishonour is unnecessary or excused (Sec. 98)	<p>a) When notice of dishonour is dispensed with by a party.</p> <p>b) Where the drawer of the cheque has countermanded payment, notice to drawer is not required to be given.</p> <p>c) When the party entitled to notice cannot be found even after due search.</p> <p>d) Where the party bound to give notice is unable to give notice without any fault of his own.</p> <p>e) When the party charged could not suffer damages for want of notice.</p>

	f) Where the acceptor is also a drawer, notice of dishonour is not required to be given to the drawer. g) Where the negotiable instrument is a promissory note which is not negotiable. h) When the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.
12.62 DISCHARGE OF A NEGOTIABLE INSTRUMENT	
Payment in due course	<ul style="list-style-type: none"> - A negotiable instrument is discharged if the party primarily liable on the negotiable instrument makes the payment in due course. - When the payment is made, the negotiable instrument must be cancelled or the fact of payment must be recorded on negotiable instrument.
Cancellation	Where the holder cancels the name of the party primarily liable on the negotiable instrument, with intent to discharge him, the negotiable instrument is discharged.
Release	Where the holder releases or renounces his rights against the party primarily liable on the negotiable instrument, the negotiable instrument is discharged.
Negotiation back	Where the party primarily liable on a negotiable instrument becomes the holder of the negotiable instrument, the negotiable instrument is discharged.
Operation of law	A negotiable instrument is discharged if it becomes time barred.
12.63 DISCHARGE OF A PARTY	
Payment	Where payment is made by any party liable on the negotiable instrument (other than the party primarily liable on the negotiable instrument), such a party and all parties subsequent to him are discharged.
Cancellation	Where the holder cancels the name of any party liable on the negotiable instrument (other than the party primarily liable on the negotiable instrument), such a party and all parties subsequent to him are discharged.
Release	Where the holder releases any party liable on the negotiable instrument (other than the party primarily liable on the negotiable instrument), such a party and all parties subsequent to him are discharged.
Negotiable back	Where a party already liable on the negotiable instrument (other than the party primarily liable on the negotiable instrument) becomes the holder of the negotiable instrument, such a party and all intermediate parties are discharged.
Allowing drawee more than 48 hours to accept	If the holder allows more than 48 hours to the drawee to accept the bill, all the prior parties not consenting to the same are discharged from liability to such holder.
Qualified acceptance	Where the holder consents to qualified acceptance, all the prior parties not consenting to the same are discharged.
12.64 MEANING OF HUNDI	
Hundi means a bill of exchange drawn in an oriental language, i.e. local language. Negotiable Instruments Act, 1881 applies to Hundies if there is no local usage of trade or custom prevailing in the area in which Hundi is drawn. However, if there is any custom or usage prevailing in such area, the same will apply to Hundies, and therefore Negotiable Instruments Act, 1881 shall not apply to Hundies.	
12.65 KINDS OF HUNDIES	
Nam Jog hundi	- Hundi payable to a party named in the Hundi or to his order.
Dhani Jog hundi	- Hundi payable to the Dhani or the owner, i.e. the bearer.
Darshani hundi	- Hundi payable at sight
Miadi hundi or Muddati hundi	- Hundi payable after a specified period of time
Shahjog Hundi	- Hundi payable to a shah.
Jokhmi hundi	- Hundi drawn in respect of goods shipped on the vessel, and is payable only when the goods reach their destination safely.
Peth	- Duplicate copy of a hundi
Perpeth	- Triplicate copy of a hundi
Khoka	- Hundi which has already been paid or discharged