

Negotiable Instruments Act 1881

Introduction

- The Negotiable Instruments Act was passed in 1881. Some provisions of the Act have become redundant due to passage of time, change in methods of doing business and technology changes. However, the basic principles of the Act are still valid and the Act has stood test of time.
- Act regulates commercial transactions
- Law relating to, **promissory notes, bills of exchange and cheques**
- The instrument is mainly an instrument of credit readily convertible into money and easily passable from one hand to another.

Local usage prevails unless excluded

Section 1

- The Act does not affect any local usage relating to any instrument in an oriental language. However, the local usage can be excluded by any words in the body of the instrument, which indicate an intention that the legal relations of the parties will be governed by provisions of Negotiable Instruments Act and not by local usage
 - Thus, unless specifically excluded, local usage prevails, if the instrument is in regional language

Chapter II: OF NOTES, BILLS AND CHEQUES

"Promissory note"

Section 4

- 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**, to pay a **certain sum** of money only to, or to the order of, a **certain person**, or **to the bearer of the instrument**.

"Bill of exchange"

Section 5

- A "bill of exchange" is an instrument in **writing**, containing an **unconditional order, signed by the maker**, directing a **certain person** to pay a **certain sum** of money only to, or to the order of, a **certain person** or to the **bearer of the instrument**.

"Conditional"

- A promise or order to pay is not "conditional" within the meaning of sections 4 and 5, by reason of the time for payment of the amount or any instalment thereof being expressed to be on ,the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

"Certain Sum"

- The sum payable may be "certain", within the meaning of sections 4 and 5, although it includes future interest or is payable at an indicated rate of exchange, or is

according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

“Certain Person”

- The person to whom it is clear that the direction is given or that payment is to be made may be a "certain person", within the meaning of sections 4 and 5, although he is mis-named or designated by description only.

"Cheque"

Section 6: A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

- "A cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system with the use of digital signature.
- "A truncated cheque" means a cheque which is truncated during the course of a clearing cycle, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Drawer, Drawee

Section 7

- The maker of a bill of exchange or cheque is called the “drawer” the person thereby directed to pay is called the “drawee” .
- **Drawee in case of need.** When in the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a " drawee in case of need " .

Acceptor

Section 7

- After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same, or given notice of such signing to the holder or to some person on his behalf, he is called the “ acceptor ” .
- **Acceptor for honour.** When a bill of exchange has been noted or protested for nonacceptance or for better security, and any person accepts it supra protest for honour of the drawer or of any one of the endorsers , such person is called an " acceptor for honour " .

Payee

Section 7

- The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee".

"Holder"

Section 8

- The "holder" of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.
- Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

"Holder in due course"

Section 9

- " Holder in due course " means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

"Payment in due course"

Section 10

- "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

Negotiable instrument

Section 13

- A "**negotiable instrument**" means a **promissory note, bill of exchange or cheque payable** either **to order** or **to bearer**.
- A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or -some of several payees
- A promissory note, bill of exchange or cheque is **payable to order** which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable.
- A promissory note, bill of exchange or cheque is **payable to bearer** which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank.

Negotiation

Section 14

- When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated

Endorsement**Section 15**

- When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to endorse the same, and is called the "endorser".

Endorsement "in blank" and "in full"**Section 16**

- If the endorser signs his name only, the endorsement is said to be "in blank", and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the endorsement is said to be "in full", and the person so specified is called the "endorsee" of the instrument.
- The provisions of this Act relating to a payee shall apply with the necessary modifications to an endorsee.

Ambiguous instruments**Section 17**

- Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words**Section 18**

- If the amount undertaken or ordered to be paid is stated differently in figures and in words, **the amount stated in words** shall be the amount undertaken or ordered to be paid.

Instruments payable on demand**Section 19**

- A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are **payable on demand**.

"At sight", "On presentment", "After sight"

- **Section 21**
- In a promissory note or bill of exchange the expressions "**at sight**" and "**on presentment**" means on demand.
- The expression "**after sight**" means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"Maturity"**Section 22**

- The maturity of a promissory note or bill of exchange is the date at which it falls due.

- *Days of grace:* Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

When day of maturity is a holiday

Section 25

- When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

CHAPTER III : PARTIES TO NOTES, BILLS AND CHEQUES

- **Section 26- Capacity to make promissory notes:** Every person capable of contracting, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.
- **Section 27- Agency-** Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a **duly authorised agent** acting in his name.
- **Section 28- Liability of agent signing-** An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument.
- **Section 30. Liability of drawer-** The drawer of a bill of exchange or cheque is bound in case of dishonour by the drawee or acceptor thereof, to compensate the holder.
- **Section 31- Liability of drawee of cheque-** The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.
- **Section 32- Liability of maker of note and acceptor of bill-** the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively.
- **Section 35- Liability of endorser-** whoever endorses and delivers a negotiable instrument before maturity, without, in such endorsement, expressly excluding or making conditional his own liability, is bound thereby 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
- **Section 36- Liability of prior parties to holder in due course-** Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.
- **Section 37- Maker, drawer and acceptor principals-** The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are respectively liable thereon as principal debtors.
- **Section 38- Prior party a principal in respect of each subsequent party-** Each prior party is liable thereon as a principal debtor in respect of each subsequent party.

- **Section 43- Negotiable instrument made, etc. without consideration-** A negotiable instrument made, drawn, accepted, endorsed, or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction.
 - But if any such party has transferred the instrument with or without endorsement to a holder for a consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor.

CHAPTER IV : OF NEGOTIATION

Delivery

Section 46

- A promissory note, bill of exchange or cheque payable to bearer is negotiable by the **delivery** thereof.
- A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by **endorsement** and **delivery** thereof.

Effect of endorsement

- **Section 50**
- The endorsement of a negotiable instrument followed by delivery transfers to the endorsee the property therein with the right of further negotiation,
 - but the endorsement may by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to endorse the instrument, or to receive its contents for the endorser, or for some other specified person.

Instrument endorsed in blank

Section 54

- Subject to the provisions contained as to crossed cheques, a negotiable instrument endorsed in blank is payable to the bearer thereof even although originally payable to order.

CHAPTER V: OF PRESENTMENT

Presentment for acceptance

Section 61

- A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance.
 - If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

Presentment of promissory note for sight

- **Section 61-** A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight.

Presentment for payment

- **Section 64**

- Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder.

CHAPTER VIII : OF NOTICE OF DISHONOUR

Dishonour by non-acceptance

- **Section 91-** A bill of exchange is said to be **dishonoured by non-acceptance** when the drawee, makes default in acceptance upon being duly required to accept the bill.

Dishonour by non-payment

- **Section 92-** A promissory note, bill of exchange or cheque is said to be **dishonoured by non-payment** when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

By and to whom notice should be given

Section 93.

- When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make liable.

CHAPTER IX : OF NOTING AND PROTEST

- **Section 99-Noting-** When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto.
- **Section 100- Protest** -When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

CHAPTER XIII : SPECIAL RULES OF EVIDENCE

Presumptions as to negotiable instruments

Section 118- Until the contrary is proved, the following presumption shall be made:-

- **of consideration-** that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;
- **as to date-** that every negotiable instrument bearing a date was made or drawn on such date;
- **as to time of acceptance-** that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
- **as to time of transfer-** that every transfer of a negotiable instrument was made before its maturity;

- **as to order of endorsements-** that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- **as to stamps-** that a lost promissory note, bill of exchange or cheque was duly stamped;
- **that holder is a holder in due course-** that the holder of a negotiable instrument is a holder in due course;
 - provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

CHAPTER XIV : OF CROSSED CHEQUES

Cheque crossed generally

Section 123

- Where a cheque bears across its face an addition of the words “and company” or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words “not negotiable”, that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Section 124.

- Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition shall be deemed a crossing and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after issue

Section 125.

- Where a cheque is uncrossed, the holder may cross it generally or specially.
- Where a cheque is crossed generally, the holder may cross it specially.
- Where a cheque is crossed generally or specially, the holder may add the words "not negotiable".
- Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of crossed cheque

Section 126

- Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.
- *Payment of cheque crossed specially: Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.*

Cheque bearing "not negotiable"**Section 130**

- A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable", shall not have and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

CHAPTER XVII : OF PENALTIES IN CASE OF DISHONOUR OF CERTAIN CHEQUES FOR INSUFFICIENCY OF FUNDS IN THE ACCOUNTS**Dishonour of cheque for insufficiency, of funds in the accounts****Section 138**

- Where any cheque drawn by a person 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 standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and
- shall be punished with imprisonment for a term which may extend to two year, or with fine which may extend to twice the amount of the cheque, or with both

Provided that nothing contained in this section shall apply unless-

- (a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- (b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheques as unpaid, and
- (c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Based on Presentation by Prof Pushkal Pandey to RBI Officers during September October 2012.