

## NI ACT

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## 1

### **Negotiable Instruments Act, 1881**

**.S.42 (Acceptance of bill drawn in fictitious name):** An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

- Acceptor's liability is unqualified.
- As long as the drawer's name is real, endorsement is purportedly made by the drawer and is in his hand, the bill being drawn in fictitious name does not relieve the acceptor of his liability.
- Fictitious: When name is inserted as payee, without any intention on the part of the drawer, that the payment should be made to him, irrespective of the fact that person is existing or non-existing.

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## 2

### **Negotiable Instruments Act, 1881**

**S.34 (Acceptance by several drawees not partners):** Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

The drawee accepting for other drawees:

- Must have had previous authority from the other drawees, to bind them.

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**3**

### **Negotiable Instruments Act, 1881**

**S.108 (Acceptance for honour):** When a bill of exchange has been noted or protested for non-

acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder by writing on the bill, accept the same for the honour of any party thereto.

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**4**

### **Negotiable Instruments Act, 1881**

**S.109 (How acceptance for honour must be made):** A person desiring to accept for honour must, by writing on the bill under his hand, declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour.

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**5**

### **Negotiable Instruments Act, 1881**

**S.110. (Acceptance not specifying for whose honour it is made):** Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

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**6**

### **Negotiable Instruments Act, 1881**

**S.86 (Parties not consenting discharged by qualified or limited acceptance):** If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

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**Explanation:** An acceptance is qualified-

where it is conditional, declaring the payment to be dependent on the happening of an event therein stated;

where it undertakes the payment of part only of the sum ordered to be paid;

where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere;

where it undertakes the payment at a time other than that at which under the order it would be legally due.

- Not applicable to instruments “payable on demand”.
- Conditional/qualified acceptance, without consent, discharges the liability of all other parties.

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### **Negotiable Instruments Act, 1881**

**S.116 (Acceptance and payment without protest):** A drawee in case of need may accept and pay the bill of exchange without previous protest.

- Protesting is not compulsory.

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### **Negotiable Instruments Act, 1881**

**S.7 (“Drawer”, “Drawee”):** 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”:** 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 non-acceptance or for better security, and any person accepts it *supra* protest for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour”.

**“Payee”:** 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”.

- Generally:  
Maker: Promissory Notes, Negotiable Instruments, Cheques.  
Drawer: Bill of Exchange.
- Sometimes, one person often takes upon, two of the three essential roles (drawer, drawee, payee). The drawer may also be the payee (“self” Cheques). The drawee may be the payee (“Pay yourself or Order”).
- A bill is not dishonoured until it has been dishonoured by the “Drawee in case of need.”

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## 9

### **Negotiable Instruments Act, 1881**

**S.88 (Acceptor or indorser bound notwithstanding previous alteration):** An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

- Care to be exercised while accepting or endorsing an instrument.

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## 10

### **Negotiable Instruments Act, 1881**

**S.134 (Law governing liability of maker, acceptor or indorser of foreign instrument):** In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

### **Illustration**

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in India, and is dishonoured. An action on the bill is brought against B in India. He is liable to pay interest at the rate of 6 per cent only; but, if A is charged as drawer, A is liable to pay at the rate of 25 per cent.

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## 11

### **Negotiable Instruments Act, 1881**

**S.33 (Only drawee can be acceptor except in need or for honour):** No person except the

drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

An “Acceptor” can be:

- A single drawee, who accepted the Bill, or
- Multiple (more than one), who accepted the Bill, or
- A “drawee in case of need” (named in the Bill), who accepted the Bill, or
- A person (not named) who accepted the “Bill for honour”.

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### **Negotiable Instruments Act, 1881**

**S.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, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

- The drawer of a Bill of Exchange is the Principal Debtor, till its acceptance.
- After acceptance, the acceptor becomes the Principal Debtor and the drawer recedes to the position of a surety.

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### **Negotiable Instruments Act, 1881**

**S.41 (Acceptor bound, although indorsement forged):** An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

- Forgery like any other offence conveys a “defective title”. Accepting a bill knowing an endorsement on it to be forged, the acceptor cannot deny and be relieved of his liability. (Negligence and carelessness may also lead to such a situation)

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### **Negotiable Instruments Act, 1881**

**S.7 (“Drawer”, “Drawee”):** 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”:** 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 non-acceptance or for better security, and any person accepts it *supra* protest for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour”.

**“Payee”:** 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”.

- Generally:  
Maker: Promissory Notes, Negotiable Instruments, Cheques.  
Drawer: Bill of Exchange.
- Sometimes, one person often takes upon, two of the three essential roles (drawer, drawee, payee). The drawer may also be the payee (“self” Cheques). The drawee may be the payee (“Pay yourself or Order”).
- A bill is not dishonoured until it has been dishonoured by the “Drawee in case of need.”

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### **Negotiable Instruments Act, 1881**

**S.111 (Liability of acceptor for honour):** An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not; and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented, or (in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable) forwarded for presentment, not later than the day next after the day of its maturity.

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## 16

### **Negotiable Instruments Act, 1881**

**S.112 (When acceptor for honour may be charged):** An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

- Presentment for payment, Noting or protest are a must.

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### **Negotiable Instruments Act, 1881**

**S.32 (Liability of maker of note and acceptor of bill):** In the absence of a contract to the contrary, 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, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

- The maker of a Promissory Note and the acceptor of a Bill of Exchange are treated as “principal Debtors”.
- In respect of Bill of Exchange the drawer (and earlier endorsers, if any) takes the role of a Surety.
- Drawee has no liability unless and until he accepts the Bill.
- Every contract on a Negotiable Instrument, is incomplete, until delivery of the Instrument, for the purpose of giving effect thereto.

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### **Negotiable Instruments Act, 1881**

**S.59 (Instrument acquired after dishonour or when overdue):** The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his

transferor:

**Accommodation note or bill:** Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

### **Illustration**

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

- When a dishonoured Instrument is taken, the holder cannot get a better title than the transferor. He is not a "holder in due course" but only a holder.
- Promissory Notes, though payable on demand, are held, unlike Cheques, generally, as a continuing security. Cheques, on the other hand, are speedily presented for payment.
- The holder (for consideration) of an accommodation bill (without earlier consideration), is almost has equal rights of a "holder in due course".

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## **22**

### **Negotiable Instruments Act, 1881**

**S.21 ("At sight", "On presentment", "After sight"):** In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean 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.

- Unlike the Instruments expressed "payable on demand", "at sight" and "on presentation" Instruments ('after sight') are to be presented, before payment is demanded.
- The "limitation" period runs from the day relevant.

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## **23**

### **Negotiable Instruments Act, 1881**

**S.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.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

- Agent is not a servant nor an independent contracting person.
- A Principal “who has the capacity to act” may get such act performed by his Agent.
- The hand that holds the pen is immaterial when the Agent is vested with the authority to act on behalf of the Principal.
- An Agent is a person authorised to perform an act for another (Principal) or represent the Principal in dealings with a third person.
- Consideration is not necessary for an Agent.
- While affixing his signature the Agent should, in clear terms, indicate his representative capacity.
- An Agent has a limited authority, which should be strictly followed.
- Each act of the Agent should be compared with the “words of the power” authority (the relative Power of Attorney). Only the apparent (that is seen) is the real authority.
- A minor can be an Agent for a person who is competent to contract.

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### **Negotiable Instruments Act, 1881**

**S.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, except to those who induced him to sign upon the belief that the principal only would be held liable.

- An Agent is liable personally, unless:  
indicates on the Instrument his position (Agent), or he affirms on the Instrument that he does not intend incurring personal liability.

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**33**

### **Negotiable Instruments Act, 1881**

**S.21 (“At sight”, “On presentment”, “After sight”):** In a promissory note or bill of exchange the expressions “at sight” and “on presentment” mean 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.

- Unlike the Instruments expressed “payable on demand”, “at sight” and “on presentation” Instruments (‘after sight’) are to be presented, before payment is demanded.
- The “limitation” period runs from the day relevant.

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**46**

### **Negotiable Instruments Act, 1881**

**S.3 (Interpretation clause):** In this Act, :-

**India:** Omitted by Act LXII of 1956, Section 2 and Schedule.

**Banker:** “banker” includes any person acting as a banker and any post office savings bank.

**Notary Public:** Omitted by the Notaries Act LIII of 1956, S.16.

- “Banking” need not be business run with profit motive.
- “Government Treasury”, which accepts Cheques, is a banker.

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**47**

### **Negotiable Instruments Act, 1881**

**S.77 (Liability of banker for negligently dealing with bill presented for payment):** When a bill of exchange, accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

- The Banker has to act prudently, without negligence, when a Bill is left with him for payment/acceptance.
- The Banks take the role of “bailee” for the Bill (for the holder).
- If a Banker by mistake cancels a bill, if a note is made of that fact, on the bill, the bill becomes alive and the Banker is not liable.

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**53**

**Negotiable Instruments Act, 1881**

**S.90 (Extinguishment of rights of action on bill in acceptor’s hands):** If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

- Acceptor, if becomes holder, at or after maturity, means he has paid (as a holder), at or after maturity what he is liable for (as acceptor) and is, therefore, discharged.

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**54**

**Negotiable Instruments Act, 1881**

**S.5 (“Bill of exchange”):** 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.

A promise or order to pay is not “conditional”, within the meaning of this section and Section 4, 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.

The sum payable may be “certain”, within the meaning of this section and Section 4, 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.

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 this section and Section 4, although he is mis-named or designated by description only.

• <u>Essentials:</u>	
<b>Promissory Note</b>	<b>Bill of Exchange</b>
The executant promises himself to pay.	He directs another to pay.
Promise to pay.	Order to pay.
Two parties.	Three parties.
Liability of the maker unconditional and absolute.	Obligation of the drawer is conditional, he is surety for payment of the drawee.
Consideration presumed.	Consideration presumed.

• Parties to a Bill of Exchange

One giving the order, who must sign it: Drawer.

One to whom the order is given: Drawee.

• When accepting the terms and signing: Acceptor.

One to whom the money is to be paid: Payee.

• Or if payable to bearer: Bearer.

• If a bill (payable at a fixed period after date) or the acceptance (of a bill payable at a fixed period after sight) is undated, the holder may insert the date of issue or acceptance and the bill will be payable accordingly.

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**55**

**Negotiable Instruments Act, 1881**

**S.133 (Holder of first acquired part entitled to all):** As between holders in due course of different parts of the same set, he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

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**56**

**Negotiable Instruments Act, 1881**

**S.132 (Set of bills):** Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

**Exception:** When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

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**60**

**Negotiable Instruments Act, 1881**

**S.6 (“Cheque”):** 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.

**Explanation I:** For the purposes of this section, the expressions-

(a) “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 ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system.

(b) “a truncated cheque” means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

**Explanation II:** For the purposes of this section, the expression “clearing house” means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.

• **Essentials:**

Drawn on a specified banker.

Not expressed to be payable otherwise than on demand.

• Cheques are Bills of Exchange, but all Bills of Exchange are not Cheques.

Cheques include:

Electronic image of truncated cheques.

Cheques in the electronic form.

[[**Truncated Cheque:** The conversion of data on a cheque (by scanning) into electronic impulses, after a cheque enters the processing system. (Cutting short the physical movement/process).]]

• Cheques, normally, are:

never “accepted” for payment.

not intended for circulation.

issued for immediate payment.

• Post dated Cheque: becomes a Cheque only on the date mentioned on the Cheque.

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**61**

**Negotiable Instruments Act, 1881**

**S.138 (Dishonour of cheque for insufficiency, etc. of funds in the account):** Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of 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 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, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, 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 cheque 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.

**Explanation:** For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

## Essentials

- The Cheque must not be stale, at the time of its presentation.
  - The Cheque should be in discharge of a debt/liability.
  - The Cheque should be returned by the drawer's bank for insufficient funds to meet the Cheque.
  - Notice, in writing, making demand for payment (by Registered Post with Acknowledgement Due) should be given to the drawee, by the payee (or holder in due course), within thirty days of the receipt of information of the return of Cheque from the bank. This is an essential ingredient.
  - Post dated Cheques are not covered. A Post dated Cheque becomes a Cheque only on the date mentioned on the Cheque.
  - Drawer to fail to make payment within fifteen days of receipt of the notice.
  - It is held that the objections like "Payment stopped", "account closed", etc., also lead to the similar consequences. The point is whether at the material point of time the drawer had funds.
  - Cheque was returned due to dishonesty of the drawer.
  - The drawer is given one more chance to act otherwise.
  - If still no payment comes from him, the dishonest intention is fortified.
- Terms of imprisonment extended to two years (increased from one).

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## **62**

### **Negotiable Instruments Act, 1881**

**S.85 (Cheque payable to order):** (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.

- A protection to both the drawer (Account holder) and drawee (Bank).
- As an "Agent" of the customer the Bank is, however, to act in good faith and without negligence.
- The onus of proving good faith and absence of negligence, is on the Bank.
- In both cases (order or bearer) payment should be "in due course", i.e.,: according to the apparent tenor of the instrument in good faith and without negligence made to a person in possession of the cheque. absence of circumstances affording a reasonable ground to believe that the holder is not entitled to receive payment.
- Given these a "bearer" instrument is always a "bearer" Instrument.

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## **63**

### **Negotiable Instruments Act, 1881**

**S.84 (When cheque not duly presented and drawer damaged thereby):** [1] Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

### **Illustrations**

A draws a cheque for Rs.1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

• Protecting the interest of the drawer, “when a Cheque is not duly presented,” “within a reasonable time of its issue”, only if he suffers actual damage, through the delay. And he should have had sufficient money in the account to meet the Cheque.

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## **64**

### **Negotiable Instruments Act, 1881**

**S.146 (Bank’s slip *prima facie* evidence of certain facts):** The Court shall, in respect of every proceeding under this Chapter, on production of bank’s slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

• Dishonour of cheque is evidenced by bank’s slip or (objection) memo.

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## **65**

### **Negotiable Instruments Act, 1881**

**S.142 (Cognizance of offences):** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138;

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he has sufficient cause for not making a complaint within such period.

c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

• Period of one month (for complaint to court), can be extended by court for taking cognizance of the compliant.

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## **66**

## **Negotiable Instruments Act, 1881**

**S.145 (Evidence on affidavit):** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), the evidence of the compliant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trail or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

• Complainant can give evidence on affidavit.

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## **67**

### **Negotiable Instruments Act, 1881**

**S.144 (Mode of service of summons):** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

(2) Where an acknowledgement purporting to be signed by the accused or the witness of an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

• Provision for sending summons by speed post or court approved courier.

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## **68**

### **Negotiable Instruments Act, 1881**

**S.141 (Offences by companies):** (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanations:** For the purposes of this section,

(a) “**company**” means any body corporate and includes a firm or other association of individuals;

and

(b) “**director**”, in relation to a firm, means a partner in the firm.

- A person, other than the company, can be proceeded against, if he was in charge of and was responsible to the company for the conduct of the business.
- It protects a persons (vicarious liability) if he proves:  
he had no knowledge of the offence  
he exercised all care, caution and due diligence to prevent such offence.
- Ex-officio (nominated by Governments by virtue of office) directors, not liable for prosecution.

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**69**

### **Negotiable Instruments Act, 1881**

**S.147 (Offences to be compoundable):** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), every offence punishable under this Act shall be compoundable.

- Offences are compoundable.

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**70**

### **Negotiable Instruments Act, 1881**

**S.143 (Power of Court to try cases summarily):** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of Section 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials.

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees.

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Court.

(2) Trial of a case under this section shall, so far as practicable, consistently with the interest of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

- Summary trial provision.
- Trial to be concluded within maximum six months.

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### **Negotiable Instruments Act, 1881**

**S.131 (Non-liability of banker receiving payment of cheque):** A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true

owner of the cheque by reason only of having received such payment.

**Explanation I:** A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

**Explanation II:** It shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the *prima facie* genuineness of the cheque to be truncated and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care.

Essentials:

- The proof of good faith and absence of negligence lies on the collecting bank.
  - There should not be any circumstances, out of ordinary, which ought to have caused doubts in the collecting banker's mind so as to cause him enquiries.
  - Account opened in due course:
    - customer 'has habit of doing business with the Bank
    - account is not opened with the Cheque or not tendered so shortly after opening this account, leading to doubts.
    - customer, his address are known and genuine
  - Protection to a collecting banker, receiving payment "in good faith and without negligence".
  - Otherwise, the collecting bank is liable to the true owner, if it turns out that the cheque is forged, the customer has no title or has a defective title.
- The banker receiving payment based on the image (truncated cheque) of the cheque held with him, is responsible for verification of the genuineness, *prima facie* and satisfaction.

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## 109

### **Negotiable Instruments Act, 1881**

**S.125 (Crossing after issue):** 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.

- The holder has the freedom/option to cross the Cheque generally or specially.
- The banker to whom it is crossed, can further cross it to his agent – banker, for collection.

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## 110

### **Negotiable Instruments Act, 1881**

**S.130 (Cheque bearing "not negotiable"):** 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.

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## 111

### **Negotiable Instruments Act, 1881**

**S.123 (Cheque crossed generally):** 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.

- The negotiability of a Cheque is not effected by a simple crossing (without the words “not negotiable”).
- Effect of crossing=The (drawee) Bank must pay it only to a banker.
- If the Cheque is marked “not negotiable”, an important feature of its negotiability is removed (destroyed).

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## 112

### **Negotiable Instruments Act, 1881**

**S.124 (Cheque crossed specially):** 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.

- The (drawee) paying banker shall pay only to the named banker.
- It can also be paid to the named banker’s agent for collection.
- It is, therefore, the practice of the banks to get crossed specially to themselves all the Inward Instruments, as a precaution and to confine its payment to themselves.
- If the Cheque is crossed adding names of two banker’s its payment is refused.
- Though there is no provision for crossing Cheques with the words “Account Payee”/”Account Payee only”, the practice of its usage is wide spread. Such crossing cannot be ignored. It does not invalidate the Cheque.
- When a cheque is crossed “Account Payee”/”Account Payee Only” the collecting bank should place the money collected only to the account of that payee.

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## 113

### **Negotiable Instruments Act, 1881**

**S.128 (Payment in due course of crossed cheque):** Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

- The Bank complying with the apparent mandate of the Instrument, by paying in due course is absolved.

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## 114, 115

### **Negotiable Instruments Act, 1881**

**S.126 (Payment of cheque crossed generally):** 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.

• The paying banker's specific responsibility.

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**116**

**Negotiable Instruments Act, 1881**

**S.127 (Payment of cheque crossed specially more than once):** Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

• The paying banker's specific responsibility.

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**117**

**Negotiable Instruments Act, 1881**

**S.129 (Payment of crossed cheque out of due course):** Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

• Penal provision for going against the apparent mandate.

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**119**

**Negotiable Instruments Act, 1881**

**S.57 (Legal representative cannot by delivery only negotiate instrument indorsed by deceased):** The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

• As the testator (deceased) has not delivered, which is a vital part of the negotiation, besides endorsement, a legal representative (e.g. Executor) cannot do so for the deceased, as the legal representative is not/cannot be an Agent of the deceased.

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**120**

**Negotiable Instruments Act, 1881**

**S.46 (Delivery):** The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument, or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

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 indorsement and delivery thereof.

- Delivery can be physical (actual) or constructive.
- Constructive delivery is a notional delivery. (e.g. A Cheque is delivered by the drawer to his banker, to credit it to the account of the payee, who also maintains an account with that Banker and the Banker carries out the instruction as an agent of the Payee).
- Unless an Instrument is delivered to give effect thereto, the drawing/acceptance is incomplete and can be revoked. Mere signature is not delivery.
- Where a bill is no longer in the possession of the drawer, acceptor or endorser, unless and until contrary is proved, a valid and unconditional delivery is presumed.

Sending an Instrument by ordinary post, is not a delivery until it reached the party concerned.

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## 121

### **Negotiable Instruments Act, 1881**

**S.57 (Legal representative cannot by delivery only negotiate instrument indorsed by deceased):** The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

- As the testator (deceased) has not delivered, which is a vital part of the negotiation, besides endorsement, a legal representative (e.g. Executor) cannot do so for the deceased, as the legal representative is not/cannot be an Agent of the deceased.

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## 135

### **Negotiable Instruments Act, 1881**

**S.93 (By and to whom notice should be given):** When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Nothing in this section renders it 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.

- The objective of notice: to indicate that the contract under the Instrument is broken by the "Principal Debtor" and the party, being served the notice, as a surety is now liable for payment.
- The Postman's endorsement regarding the addressee's refusal to receive the registered notice for payment is evidence enough, for non-payment.

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## 136

### **Negotiable Instruments Act, 1881**

**S.91 (Dishonour by non-acceptance):** A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

- A Bill of Exchange payable at sight need not be presented for acceptance. When it is presented for payment the dual purpose (presentment for acceptance/payment), is served.
- A Bill of Exchange payable after sight must be presented for acceptance.
- Requirement of acceptance and the fact of dishonour by non-acceptance need to be proved, for further action.

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**137**

**Negotiable Instruments Act, 1881**

**S.92 (Dishonour by non-payment):** 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.

- A bank paying a Cheque despite insufficient funds, permitting excess drawings is entitled to interest thereon, “as the person getting benefit should compensate for the benefit rendered to him”.

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**138**

**Negotiable Instruments Act, 1881**

**S.94 (Mode in which notice may be given):** Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way, and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

It the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

- Giving a notice of dishonour is a part of the “cause of action” and is a condition precedent for making the person concerned liable. In the absence of a notice the liability will get extinguished.
- The “tender” of notice by post (by the postman), at the address, is to be proven, even if it could not be “served” actually due to default/evasion.

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**139**

**Negotiable Instruments Act, 1881**

**S.95 (Party receiving must transmit notice of dishonour):** Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by Section 93.

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**140**

**Negotiable Instruments Act, 1881**

**S.117 (Rules as to compensation):** The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall be determined by the following rules: -

a) The holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it;

- b) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places;
- c) An indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at eighteen per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment;
- d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places;
- e) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

<ul style="list-style-type: none"> <li>• The endorser is a surety. being interested in the payment of the Instrument, if he pays it, he can recover it.</li> </ul>
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## 141

### **Negotiable Instruments Act, 1881**

**S.98 (When notice of dishonor is unnecessary):** No notice of dishonour is necessary-

- a) when it is dispensed with by the party entitled thereto;
- b) in order to charge the drawer, when he has countermanded payment;
- c) when the party charged could not suffer damage for want of notice;
- d) when the party entitled to notice cannot after due search be found; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it;
- e) to charge the drawers, when the acceptor is also a drawer;
- f) in the case of a promissory note which is not negotiable;
- g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

<ul style="list-style-type: none"> <li>• To rely on the exemptions, it has to be proved and established that the conditions leading to the exemptions, in fact did exist.</li> </ul>
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## 142

### **Negotiable Instruments Act, 1881**

**S.97 (When party to whom notice given is dead):** When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

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## 143

### **Negotiable Instruments Act, 1881**

**S.138 (Dishonour of cheque for insufficiency, etc. of funds in the account):** Where any

cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of 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 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, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, 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 cheque 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.

**Explanation:** For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

#### Essentials

- The Cheque must not be stale, at the time of its presentation.
  - The Cheque should be in discharge of a debt/liability.
  - The Cheque should be returned by the drawer’s bank for insufficient funds to meet the Cheque.
  - Notice, in writing, making demand for payment (by Registered Post with Acknowledgement Due) should be given to the drawee, by the payee (or holder in due course), within thirty days of the receipt of information of the return of Cheque from the bank. This is an essential ingredient.
  - Post dated Cheques are not covered. A Post dated Cheque becomes a Cheque only on the date mentioned on the Cheque.
  - Drawer to fail to make payment within fifteen days of receipt of the notice.
  - It is held that the objections like “Payment stopped”, “account closed”, etc., also lead to the similar consequences. The point is whether at the material point of time the drawer had funds.
  - Cheque was returned due to dishonesty of the drawer.
  - The drawer is given one more chance to act otherwise.
  - If still no payment comes from him, the dishonest intention is fortified.
- Terms of imprisonment extended to two years (increased from one).

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**149**

#### **Negotiable Instruments Act, 1881**

**S.131-A (Application of Chapter to drafts):** The provisions of this Chapter shall apply to any draft, as defined in Section 85-A, as if the draft were a cheque.

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**150**

#### **Negotiable Instruments Act, 1881**

**S.85-A (Drafts drawn by one branch of a bank on another payable to order):** Where any draft, that is, an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.

- A draft is a Bill of Exchange and is a Negotiable Instrument (despite the drawer (the issuing bank) and the drawee (the paying bank) being one legal entity, which is characteristic of Promissory Note).
- Once a draft is delivered to the payee or his Agent, the purchaser is not entitled to stopping payment.
- The draft issuing bank can pay back to the purchaser (applicant) only with the consent of the payee.
- The purchaser is a trustor, who entrusts the money to the bank for a specific purpose viz., remitting and paying at the other end, as per the terms of entrustment (application).
- As regards crossed draft, Sections 123 to 131 apply *mutatis mutandis* to drafts vide Section 131-A.

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**151, 152**

**Negotiable Instruments Act, 1881**

**S.7 (“Drawer”, “Drawee”):** 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”:** 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 non-acceptance or for better security, and any person accepts it *supra* protest for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour”.

**“Payee”:** 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”.

- Generally:  
Maker: Promissory Notes, Negotiable Instruments, Cheques.  
Drawer: Bill of Exchange.
- Sometimes, one person often takes upon, two of the three essential roles (drawer, drawee, payee). The drawer may also be the payee (“self” Cheques). The drawee may be the payee (“Pay yourself or Order”).
- A bill is not dishonoured until it has been dishonoured by the “Drawee in case of need.”

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**153**

**Negotiable Instruments Act, 1881**

**S.115 (Drawee in case of need):** Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

• Dishonour may be either by “non-acceptance” or “non-payment”.

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**154**

**Negotiable Instruments Act, 1881**

**S.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.

• Essentials:

- Bank is liable to pay against a written order (Cheques) of the customer.
- Will not pay until he demands payment (like by Cheques); from the Bank, at the Branch at which his account is kept, during Banking Hours.
- Bank may refuse payment of a Cheque if:  
funds insufficient,  
funds insufficient, after adjustment of the Bank’s claim,  
it is not properly drawn (e.g. mutilated, signature differs, endorsement irregular),  
it is post dated,  
it is stale (after expiry of 6 months),  
the customer’s account is closed,  
presented on another branch,  
notice of customer’s death/insanity is received,  
its payment is stopped,  
the title of the presenter is suspected,  
the drawing is ambiguous in form/content and liable for misinterpretation.  
Customer should not mislead the Bank or facilitate forgery. He should exercise reasonable care in writing, and delivering a Cheque, as also in safe keeping the Cheque book.

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**155**

**Negotiable Instruments Act, 1881**

**S.7 (“Drawer”, “Drawee”):** 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”:** 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 non-acceptance or for better security, and any person accepts it *supra* protest for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour”.

**“Payee”:** 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”.

- Generally:  
Maker: Promissory Notes, Negotiable Instruments, Cheques.  
Drawer: Bill of Exchange.
- Sometimes, one person often takes upon, two of the three essential roles (drawer, drawee, payee). The drawer may also be the payee (“self” Cheques). The drawee may be the payee (“Pay yourself or Order”).
- A bill is not dishonoured until it has been dishonoured by the “Drawee in case of need.”

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**156**

**Negotiable Instruments Act, 1881**

**S.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, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

- Drawer’s liability arises only if:  
the drawee or acceptor dishonoured the Instrument;  
a notice of dishonour is given and the notice of dishonour is received.

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**157**

**Negotiable Instruments Act, 1881**

**S.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, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

- The drawer of a Bill of Exchange is the Principal Debtor, till its acceptance.
- After acceptance, the acceptor becomes the Principal Debtor and the drawer recedes to the position of a surety.

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**158**

**Negotiable Instruments Act, 1881**

**S.140 (Defence which may not be allowed in any prosecution under section 138):** It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

- The failure to pay the money of the dishonoured Cheque, on service of a statutory notice is a requisite, further proof of dishonesty.

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**163**

**Negotiable Instruments Act, 1881**

**S.12 (“Foreign Instrument”):** Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

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**164**

**Negotiable Instruments Act, 1881**

**S.136 (Instrument made, etc., out of India, but in accordance with the law of India):** If a negotiable instrument is made, drawn, accepted or indorsed outside India, but in accordance with the law of India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon within India.

**165****Negotiable Instruments Act, 1881**

**S.134 (Law governing liability of maker, acceptor or indorser of foreign instrument):** In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

**Illustration**

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in India, and is dishonoured. An action on the bill is brought against B in India. He is liable to pay interest at the rate of 6 per cent only; but, if A is charged as drawer, A is liable to pay at the rate of 25 per cent.

**166****Negotiable Instruments Act, 1881**

**S.135 (Law of place of payment governs dishonour):** Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed, the law of the place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

**Illustration**

A bill of exchange drawn and indorsed in India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

**167****Negotiable Instruments Act, 1881**

**S.137 (Presumption as to foreign law):** The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of India, unless and until the contrary is proved.

- Negotiable Instruments are treated as “tangible movable security”.
- Their negotiability is determined by the law of the country where the transfer (by negotiation) takes place i.e., the country in which the Instrument is delivered.

**190****Negotiable Instruments Act, 1881**

**S.8 (“Holder”):** 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.

- Essentials:
- Should be entitled to the possession.
- Should be entitled to receive or recover the amount due thereon from the parties thereto (i.e., rightful possession, coupled with a right to recover the amount due).
- Holder: the vital person in determining the rights arising out of any Negotiable Instrument.
- Endorser: Must endorse the Instrument for the purpose of negotiation.
- Endorsee's right does not cease with the death of the endorser.

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## 191

### **Negotiable Instruments Act, 1881**

**S.53 (Holder deriving title from holder in due course):-** A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

Holder in due course:

- Essentials:
- becomes possessor of a bearer Instrument for consideration
- becomes payee or endorsee of the Instrument, payable to order, before it becomes due, for consideration
- has no cause to believe that title of his immediate prior party, is defective.
- Rights:
- to the possession of the Instrument in his own name
- to receive or recover the amount thereunder.
- Holder who derived his title from a "holder in due course" will, in fact, become, in turn, the "holder in due course".

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## 192

### **Negotiable Instruments Act, 1881**

**S.45-A (Holder's right to duplicate of lost bill):** Where a bill of exchange has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

- Even if a bill is lost or stolen, the holder does not lose his title to it.
- He should give notice (of the loss) to all the parties thereto and seek payment.

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## 193

### **Negotiable Instruments Act, 1881**

**S.9 ("Holder in due course"):** "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.

- A “bona fide holder for value” is the “holder in due course”.
- Essentials:
- Must be holder for consideration.
- The Negotiable Instrument transferred to him before it becomes payable (overdue).
- Must be transferred in good faith.
- Should have no reason to believe that there existed any defect on the title of the person transferring it to him (transferor).
- An executor of a will cannot be a “holder in due course”.

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**194**

**Negotiable Instruments Act, 1881**

**S.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.

- Each prior party is liable as a principal debtor, in respect of each subsequent party.
- A holder for “consideration” is a “holder in due course” (despite any contention that a prior transaction relating to the instrument was bad for want of “consideration”).

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**195**

**Negotiable Instruments Act, 1881**

**S.139 (Presumption in favour of holder):** It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

- It is for the drawer to rebut the presumption.

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**198**

**Negotiable Instruments Act, 1881**

**S.16 (Indorsement “in blank” and “in full”-“Indorsee”):** (1) If the indorser signs his name only, the indorsement 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 indorsement is said to be “in full”; and the person so specified is called the “Indorsee” of the instrument.

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

- Endorsement “in full” or “special” endorsement.
- Essentials:
- Name of the person in whose favour the endorsement is made (endorsee).
- Signature of the endorser (Person making the endorsement).
- E.g. “Pay X or order”, “Pay X” (no specific form/wording is prescribed).
- Endorsement “in blank”
- Mere signature of the endorser.
- The title of the Instrument can be passed by mere “delivery” (as if it is payable to “bearer”).

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**199**

**Negotiable Instruments Act, 1881**

**S.87 (Effect of material alteration):** Any material alternation of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

**Alteration by indorsee:** and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of Sections 20, 49, 86 and 125.

- **Material alteration which:**
  - varies the rights, liabilities or legal position of the parties
  - attempts to change the liability
  - changes the legal effect of the Instrument
  - changes the legal identity or character of the Instrument
  - reduces, some provisions to a certainty from uncertainty (or vice versa)
- alters the (business) effect of the Instrument
- Even a change in Ink (between date and body) is construed material alteration in Promissory Note.
- Correction of clerical error is not considered a material alteration.
- Exemptions:
  - to carry out common intention
  - accidental omissions, which are not material in nature.

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## 200

### **Negotiable Instruments Act, 1881**

**S.15 (Indorsement):** 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 indorse the same, and is called the “indorser”.

- Essentials:
- Only by the maker or holder.
- Must sign the instrument, otherwise than as a maker (for the purposes of negotiation and not for any other purpose. (e.g. acknowledgement of the money).
- A person who is the possessor of the Instrument by theft, accident or other illegal/irregular process cannot indorse.
- Proper endorsement transfers the rights under the instrument.

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## 201

### **Negotiable Instruments Act, 1881**

**S.50 (Effect of indorsement):** The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person

### **Illustrations**

B signs the following indorsement on different negotiable instruments payable to bearer:

- a) “Pay the contents to C only.”
- b) “Pay C for my use.”
- c) “Pay C or order for the account of B.”
- d) “The within must be credited to C.”

These indorsements exclude the right of further negotiation by C.

- e) "Pay C."
- f) "Pay C value in account with the Oriental Bank."
- g) "Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

- Effect of endorsement:  
transfer of the property therein to the endorsee  
gives him right to further negotiation  
right to recover the amount from the acceptor, on dishonour  
right to recover from the endorser (who endorsed it to him) and those (endorsers) above him, on dishonour.
- Generally, no endorsee likes to surrender his right of further negotiation.
- Effect of restrictive endorsement:  
further negotiation prohibited  
freezes the title in endorsee  
endorsee is reduced to an "agent" for a specific purpose.

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**202**

### **Negotiable Instruments Act, 1881**

**S.121 (Estoppel against denying capacity of payee to indorse):** No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same.

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**203**

### **Negotiable Instruments Act, 1881**

**S.56 (Indorsement for part of sum due):** No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

• Illustrative example: Ram a "holder" of an Instrument for Rs.10,000/-endorses "Pay Rs.7,000/- to Shyam or Order, and pay Rs.3,000/- to Mohan or Order."

This is invalid. The endorsees, i.e., Shyam or Mohan, neither can sue nor can further endorse.

- A partial endorsement "splitting the right of action", though invalid as negotiation may still operate as an authority to receive payment of the specified amount.
- As a corollary endorsement to two or more persons, severally, is also not valid.
- "Purport to transfer": the limitation on transfer should appear on the face of the Instrument.

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**204, 205**

### **Negotiable Instruments Act, 1881**

**S.16 (Indorsement "in blank" and "in full"- "Indorsee"):** (1) If the indorser signs his name only, the indorsement 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 indorsement is said to be "in full"; and the person so specified is called the "Indorsee" of the instrument.

(2) The provisions of this Act relating to a payee shall apply with the necessary modifications to an indorsee.

- Endorsement “in full” or “special” endorsement.
- Essentials:  
Name of the person in whose favour the endorsement is made (endorsee).  
Signature of the endorser (Person making the endorsement).  
E.g. “Pay X or order”, “Pay X” (no specific form/wording is prescribed).
- Endorsement “in blank”  
Mere signature of the endorser.  
The title of the Instrument can be passed by mere “delivery” (as if it is payable to “bearer”).

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## 206

### **Negotiable Instruments Act, 1881**

**S.54 (Instrument indorsed in blank):** Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

- endorsed in blank= endorser signs his name only.
- The last endorsement is a guide, i.e., even if originally the Instrument was “Payable to order”, if the last endorser, endorsed it in blank, the Instrument becomes payable to bearer.
- An Instrument endorsed in blank and the one payable to bearer, both go by delivery, and possession proves property (gives right).

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## 207

### **Negotiable Instruments Act, 1881**

**S.55 (Conversion of indorsement in blank into indorsement in full):** If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

- A “blank endorsement” or a “payable to bearer” bill can be endorsed afterwards in full by another endorsee. The Bill remains transferable by delivery vis a vis all parties prior to such endorsement (in full). But the prior endorsers cannot use the advantage of the endorser in full. This right is confined only to the subsequent endorser.

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## 208

### **Negotiable Instruments Act, 1881**

**S.49 (Conversion of indorsement in blank into indorsement in full):** The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser’s signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

- Any holder may convert a “blank” endorsement to a “special” endorsement by writing above the endorser’s, signature (e.g. pay to/pay to the order of himself or another). He will not be treated as an endorser.

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## 209

### **Negotiable Instruments Act, 1881**

**S.88 (Acceptor or indorser bound notwithstanding previous alteration):** An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

• Care to be exercised while accepting or endorsing an instrument.

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**210**

**Negotiable Instruments Act, 1881**

**S.134 (Law governing liability of maker, acceptor or indorser of foreign instrument):** In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

**Illustration**

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in India, and is dishonoured. An action on the bill is brought against B in India. He is liable to pay interest at the rate of 6 per cent only; but, if A is charged as drawer, A is liable to pay at the rate of 25 per cent.

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**211**

**Negotiable Instruments Act, 1881**

**S.35 (Liability of indorser):** In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, 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, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Every indorser after dishonour is liable as upon an instrument payable on demand.

• An endorser, who endorsed and delivered the Instrument, before maturity, in case of its dishonour, should compensate the subsequent holder unless:  
there is a contract to the contrary  
expressly excluding (or making conditional) his liability (e.g. “without recourse”).

• Notice of dishonour giving and its receiving are preconditions.  
(Dishonour= wrongful refusal of proper demand)

• Unless an Instrument is presented, dishonoured and notice of dishonour is given to the parties concerned (prior parties), they are discharged.

• The effect of an endorsement is like drawing of a new bill, by the endorser in favour of the endorsee.

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**212**

**Negotiable Instruments Act, 1881**

**S.52 (Indorser who excludes his own liability or makes it conditional):** The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all the intermediate indorsers are liable to him.

### **Illustration**

The indorser of a negotiable instrument signs his name adding the words “without recourse”. Upon this indorsement he incurs no liability.

A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement “without recourse”, he transferred the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

- Generally, banks use such exclusive by endorsing bills “without recourse”.
- Similarly, in confirmed Letters of Credit, the beneficiary thereof draws bills “without recourse”.

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## **213**

### **Negotiable Instruments Act, 1881**

**S.40 (Discharge of indorser’s liability):** Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser’s remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

### **Illustration**

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank:

- First indorsement, “B”.
- Second indorsement, “Peter Williams”.
- Third indorsement, “Wright & Co.”.
- Fourth indorsement, “John Rozario”.

This bill A puts in suit against John Razario and strikes out, without John Rozario’s consent, the indorsement by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

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## **215**

### **Negotiable Instruments Act, 1881**

**S.11 (“Inland instrument”):** A promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in India, shall be deemed to be an inland instrument.

- Both drawn and payable (or drawn upon a person resident) in India.
- Place of payment may be in a foreign country, but drawn on a resident.

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## **217**

### **Negotiable Instruments Act, 1881**

**S.59 (Instrument acquired after dishonour or when overdue):** The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor:

**Accommodation note or bill:** Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or

accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

### **Illustration**

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds, but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

- When a dishonoured Instrument is taken, the holder cannot get a better title than the transferor. He is not a “holder in due course” but only a holder.
- Promissory Notes, though payable on demand, are held, unlike Cheques, generally, as a continuing security. Cheques, on the other hand, are speedily presented for payment.
- The holder (for consideration) of an accommodation bill (without earlier consideration), is almost has equal rights of a “holder in due course”.

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## **218**

### **Negotiable Instruments Act, 1881**

**S.81 (Delivery of instrument on payment, or indemnity in case of loss):** (1) Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

(2) Where the cheque is an electronic image of a truncated cheque, even after the payment the banker who received the payment shall be entitled to retain the truncated cheque.

(3) A certificate issued on the foot of the printout of the electronic image of a truncated cheque by the banker who paid the instrument, shall be *prima facie* proof of such payment.

- As possession of the Instrument by the “holder in due course”, will be a prima facie evidence of existence of undischarged liability.

- It is the general practice, in the banks to deliver/return, duly discharged Demand Promissory Note executed by the borrower on closure of the respective loan account.

Even after payment, the payment receiving banker shall retain the truncated cheque. Proof of payment, will be a footnote, as certificate, by the paying banker, on the printout of the image of the truncated cheque.

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## **219**

### **Negotiable Instruments Act, 1881**

**S.120 (Estoppel against denying original validity of instrument):** No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.

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## **220**

### **Negotiable Instruments Act, 1881**

**S.60 (Instrument negotiable till payment or satisfaction):** A negotiable instrument may be

negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after payment or satisfaction.

- Unless its transfer or transferability is prohibited, the negotiability of a Bill of Exchange (Negotiable Instrument) is ad infinitum (to infinity) till payment/satisfaction.
- The maker/drawee/acceptor has the right of negotiation only till maturity of the Instrument.

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**221**

**Negotiable Instruments Act, 1881**

**S.58 (Instrument obtained by unlawful means or for unlawful consideration):** When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

- If an Instrument is obtained by means of an offence, under influence/coercion, there is no free consent to the contract, no lawful right can be acquired.
- Agreements/contracts made which are prohibited, unlawful, defeat the law, are not valid.
- Instruments obtained by forgery never confer a title. In a forgery a mandate is absent.

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**222**

**Negotiable Instruments Act, 1881**

**S.69 (Instrument payable at specified place):** A promissory note or bill of exchange made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

- If the place specified is the residence, a presentment: to any inmate; or at the door- if the house is shut up.
- Presentment and dishonour are essentials for a "cause of action".

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**223**

**Negotiable Instruments Act, 1881**

**S.17 (Ambiguous instruments):** Where an instrument may be construed either as a promissory note or bill or exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

- Holder has the option to treat an "ambiguous Instrument" as either Promissory Note or a Bill of Exchange.
- Once the option is exercised, he cannot switch over to the option he rejected earlier.

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**224**

**Negotiable Instruments Act, 1881**

**S.18 (Where amount is stated differently in figures and words):** 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.

- “Written word” should control the Instrument.
- If such discrepancy is noticed in a Cheque, banks, usually, return them with the objection “words and figures differ”. (Some pay the smaller amount of the two).

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**225**

**Negotiable Instruments Act, 1881**

**S.19 (Instruments payable on demand):** A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

- On demand = “debt is due and payable immediately”.
- Where an instrument is made payable after lapse of certain period, from its date it is not an Instrument payable “on demand”.
- Post dated Cheque is not payable on demand.

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**226**

**Negotiable Instruments Act, 1881**

**S.20 (Inchoate stamped instruments):** Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in (India), and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount:

Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

- Generally, a bill:  
should first be filled up,  
then signed by the drawer,  
then accepted,  
endorsed by the holder.
- The section covers rare cases. In such cases, the amount, if stated and the amount covered by stamp are the limitations. Till the blanks in an inchoate Instrument are filled, no liability arises.
- As regards “ambiguous” Instruments, a construction most favourable to the validity of the Instrument is adopted (by courts).

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**228**

**Negotiable Instruments Act, 1881**

**S.80 (Interest when no rate specified):** When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of eighteen per centum per annum, from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

**Explanation:** When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

- Increased from six percent.
- If there is no contract rate appearing on the Instrument.
- A Promissory Note payable on demand, is due on the date of the Note itself (as “limitation” starts from that date).
- Leaving interest column in an Instrument blank, will not render the Instrument incomplete. The interest as per this Section is applicable to such cases.

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**229**

**Negotiable Instruments Act, 1881**

**S.79 (Interest when rate specified):** When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

- Interest shall be at the contract rate.

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**232**

**Negotiable Instruments Act, 1881**

**S.57 (Legal representative cannot by delivery only negotiate instrument indorsed by deceased):** The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

- As the testator (deceased) has not delivered, which is a vital part of the negotiation, besides endorsement, a legal representative (e.g. Executor) cannot do so for the deceased, as the legal representative is not/cannot be an Agent of the deceased.

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**233**

**Negotiable Instruments Act, 1881**

**S.29 (Liability of legal representative signing):** A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

- Legal representative:  
Who has right to represent the estate of the deceased person. Includes besides legal hires, Executors and Administrators.
- Should expressly limit his liability to the extent of the assets in his hands, to avoid personal liability.
- A legal representative can do such acts what the deceased could do if alive.

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**236**

**Negotiable Instruments Act, 1881**

**S.83 (Discharge by allowing drawee more than forty eight hours to accept):** If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

- Not applicable to Instruments “payable on demand”.

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**237, 238, 239**

## **Negotiable Instruments Act, 1881**

**S.82 (Discharge from liability):** The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon-

- a) **by cancellation:** to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;
- b) **by release:** to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge;
- c) **by payment:** to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon.

- Granting (further) time, on request of the acceptor does not tantamount to cancellation or discharge of the liability.
- In respect of a delayed claim by a customer, on a Bank, for paying forged cheque (from his account), inaction (on the part of the customer) for a long period, cannot, by itself, be a ground for the Bank to escape/avoid liability. The Bank has to prove and establish the knowledge of the customer of the forgery. A forged cheque is no mandate.

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**244**

## **Negotiable Instruments Act, 1881**

**S.134 (Law governing liability of maker, acceptor or indorser of foreign instrument):** In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

### **Illustration**

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent, and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in India, and is dishonoured. An action on the bill is brought against B in India. He is liable to pay interest at the rate of 6 per cent only; but, if A is charged as drawer, A is liable to pay at the rate of 25 per cent.

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**245**

## **Negotiable Instruments Act, 1881**

**S.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, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

- The drawer of a Bill of Exchange is the Principal Debtor, till its acceptance.
- After acceptance, the acceptor becomes the Principal Debtor and the drawer recedes to the position of a surety.

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**246**

## **Negotiable Instruments Act, 1881**

**S.32 (Liability of maker of note and acceptor of bill):** In the absence of a contract to the

contrary, 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, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

- The maker of a Promissory Note and the acceptor of a Bill of Exchange are treated as “principal Debtors”.
- In respect of Bill of Exchange the drawer (and earlier endorsers, if any) takes the role of a Surety.
- Drawee has no liability unless and until he accepts the Bill.
- Every contract on a Negotiable Instrument, is incomplete, until delivery of the Instrument, for the purpose of giving effect thereto.

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## 248

### **Negotiable Instruments Act, 1881**

**S.87 (Effect of material alteration):** Any material alternation of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

**Alternation by indorsee:** and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of Sections 20, 49, 86 and 125.

- Material alteration which:
  - varies the rights, liabilities or legal position of the parties
  - attempts to change the liability
  - changes the legal effect of the Instrument
  - changes the legal identity or character of the Instrument
  - reduces, some provisions to a certainty from uncertainty (or vice versa)
- alters the (business) effect of the Instrument
- Even a change in Ink (between date and body) is construed material alteration in Promissory Note.
- Correction of clerical error is not considered a material alteration.
- Exemptions:
  - to carry out common intention
  - accidental omissions, which are not material in nature.

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## 249

### **Negotiable Instruments Act, 1881**

**S.22 (“Maturity”):** 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.

- The parties to an Instrument even if make a “contract to the contrary”, to do away with the “days of grace”, it may not stand. “Limitation” computed after the “grace period”.
- A holder can be a “holder in due course”, only if he “possess” the Instrument, before it becomes payable (Overdue).

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## 250

### **Negotiable Instruments Act, 1881**

**S.24 (Calculating maturity of bill or note payable so many days after date or sight):** In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance or on which the event happens, shall be excluded.

- If note payable on a certain day, also contains an acceleration clause, promising earlier payment (if some thing happens), such conditional promise, will not affect the main (absolute) promise. Such clauses do not destroy the negotiability.

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## 251

### **Negotiable Instruments Act, 1881**

**S.23 (Calculating maturity of bill or note payable so many months after date or sight):** In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated or presented for acceptance or sight, or noted for non-acceptance or protested for non-acceptance, or the event happens, or where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

### **Illustrations**

A negotiable instrument, dated 29<sup>th</sup> January, 1879, is made payable at one month after date. The instrument is at maturity on the third day after the 28<sup>th</sup> February, 1878.

A negotiable instrument, dated 30<sup>th</sup> August, 1878, is made payable three months after date. The instrument is at maturity on the 3<sup>rd</sup> December, 1878.

A promissory note or bill of exchange, dated 31<sup>st</sup> August, 1878, is made payable three months after date. The instrument is at maturity on the 3<sup>rd</sup> December, 1878.

- Grace period is extra.

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### **Negotiable Instruments Act, 1881**

**S.25 (When day of maturity is a holiday):** 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.

- The period of maturity is curtailed, if the day on which it matures is a Public Holiday. The recession of maturity operates even if there are more than one holiday in the last.

**272****Negotiable Instruments Act, 1881**

**S.13 (“Negotiable instrument”):-** (1) A “negotiable instrument” means a promissory note, bill of exchange or cheque payable either to order or to bearer.

**Explanation I:** 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.

**Explanation II:** 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 indorsement is an indorsement in blank.

**Explanation III:** Where a promissory note, bill of exchange or cheque either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

(2) 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.

- Both “order” and “bearer” instruments are negotiable.
- A Promissory Note does not require an attestation and, generally, it is a Negotiable Instrument (unlike abroad).
- When the only or the last endorsement is a “blank endorsement” (signing only name), the Instrument is payable to “bearer”.

**273****Negotiable Instruments Act, 1881**

**S.43 (Negotiable instrument made, etc., without consideration):** A negotiable instrument made, drawn, accepted, indorsed, 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 indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

**Exception I:** No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he has paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

**Exception II:** No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full, shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

- Every Negotiable Instrument is a (special type of) Contract and is covered by the doctrine (principle of belief) of consideration.
- If a maker of a Promissory Note does not receive any consideration, the Promissory Note (Negotiable Instrument) does not create any obligation.
- Such a plea (of “no consideration”) is not acceptable vis a vis the rights of the bona fide (genuine/good faith) transferees involved, as between the transferor (for consideration) and subsequent holders (deriving title from him).
- The liability of the parties, under a Negotiable Instrument be determined/enforced, as per its “apparent tenor”, not taking into consideration the motives/reasons; in determining the validity of the Instrument (unless there is an allegation and proof)

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**274**

### **Negotiable Instruments Act, 1881**

**S.44 (Partial absence or failure of money consideration):** When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.

**Explanation:** The drawer of a bill of exchange stand in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stand in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

### **Illustration**

A draws a bill on B for Rs.500 payable to the order of A. B accepts the bill, but subsequently dishonoured it by non-payment. A sues B on the bill, B proves that it was accepted for value as to Rs.400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs.400.

- Parties in immediate relation:  
drawer/acceptor (Bill)  
drawer/payee (Bill)  
maker/payee (Promissory Note)  
drawer/payee (Cheque)  
endorser/endorsee (Bill/Note/Cheque)

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**275**

### **Negotiable Instruments Act, 1881**

**S.45 (Partial failure of consideration not consisting of money):** Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionately reduced.

- Without Collateral enquiry: being easily and patently (openly/obviously) quantifiable or calculated, in terms of money. I.e., without any elaborate or delaying procedure.

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**276, 277, 278, 279, 280, 281, 282**

### **Negotiable Instruments Act, 1881**

**S.118 (Presumptions as to negotiable instruments):** Until the contrary is proved, the following presumptions shall be made: -

- a) **of consideration:** that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
- b) **as to date:** that every negotiable instrument bearing a date was made or drawn on such date;
- c) **as to time of acceptance:** that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
- d) **as to time of transfer:** that every transfer of a negotiable instrument was made before its maturity;
- e) **as to order of indorsement:** that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- f) **as to stamp:** that a lost promissory note, bill of exchange or cheque was duly stamped;
- g) **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 providing that the holder is a holder in due course lies upon him.

- These rules of presumption hold good until contrary is proved.
- Consideration is the essence of negotiation.
- Party denying consideration has to prove its absence.
- Onus of proving that a “holder” is not the “holder in due course” is on the person challenging the holder’s right.
- These presumptions if rebutted, the burden of proof rests on the person rebutting.

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## 283

### **Negotiable Instruments Act, 1881**

**S.14 (Negotiation):** 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.

- Transfer of right, title and interest.
- Transfer can be:  
Instrument payable to bearer: by delivery.  
Instrument payable to order: by endorsement and delivery.
- A holder in due course, generally, can claim a right which is better than that of the earlier holders.
- Cheques without endorsement “not negotiable” are Negotiable Instruments.

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## 284

### **Negotiable Instruments Act, 1881**

**S.47 (Negotiation by delivery):** Subject to the provisions of Section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

**Exception:** A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

## Illustration

A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

- Illustration (a) is "Actual delivery".
- Illustration (b) is "Constructive delivery".
- A bearer Instrument when negotiated by mere delivery to a transferee by the transferor (without endorsing), there is no contract between the transferor and the transferee and the transferor is not liable for a dishonour, (as his name is not on the Instrument), i.e., valid delivery (negotiation) without endorsement.

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## 285

### Negotiable Instruments Act, 1881

**S.48 (Negotiation by indorsement):** Subject to the provisions of Section 58, a promissory note, bill of exchange or cheque (payable to order), is negotiable by the holder by indorsement and delivery thereof.

- Negotiation of a "payable to order" Instrument by delivery, without endorsement is not valid. The title does not pass on to the transferee.

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## 286

### Negotiable Instruments Act, 1881

**S.57 (Legal representative cannot by delivery only negotiate instrument indorsed by deceased):** The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

- As the testator (deceased) has not delivered, which is a vital part of the negotiation, besides endorsement, a legal representative (e.g. Executor) cannot do so for the deceased, as the legal representative is not/cannot be an Agent of the deceased.

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## 287

### Negotiable Instruments Act, 1881

**S.51 (Who may negotiate):** Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in Section 50, indorse and negotiate the same.

**Explanation:** Nothing in this Section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof; or enables a payee or indorsee to indorse or negotiate an instrument, unless he is holder thereof.

## Illustration

A bill is drawn payable to A or order. A indorses it to B, the indorsement not contained the words "or order" or any equivalent words. B may negotiate the instrument.

### Essentials:

- Must be in lawful possession of the instrument;
- or is a holder;
- payee or endorsee if he is a holder (S.8: entitled in his own name to the possession thereof or recover the amount due thereon).
- Negotiability of the Instrument not restricted or excluded (vide S.50).

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**292**

### **Negotiable Instruments Act, 1881**

**S.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, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

- Noting is a proof of dishonour.
- Reasonable time is determined in the context of fact and circumstances of each case.

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**293**

### **Negotiable Instruments Act, 1881**

**S.104-A (When noting equivalent to protest):** For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

- If noting is made within the time specified, formal protest may be made later.

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**294**

### **Negotiable Instruments Act, 1881**

**S.21 ("At sight", "On presentment", "After sight"):** In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean 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.

- Unlike the Instruments expressed "payable on demand", "at sight" and "on presentation" Instruments ('after sight') are to be presented, before payment is demanded.
- The "limitation" period runs from the day relevant.

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**315**

### **Negotiable Instruments Act, 1881**

**S.7 ("Drawer", "Drawee"):** 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”**: 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 non-acceptance or for better security, and any person accepts it *supra* protest for honour of the drawer or of any one of the indorsers, such person is called an “acceptor for honour”.

**“Payee”**: 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”.

- Generally:  
    Maker: Promissory Notes, Negotiable Instruments, Cheques.  
    Drawer: Bill of Exchange.
- Sometimes, one person often takes upon, two of the three essential roles (drawer, drawee, payee). The drawer may also be the payee (“self” Cheques). The drawee may be the payee (“Pay yourself or Order”).
- A bill is not dishonoured until it has been dishonoured by the “Drawee in case of need.”

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**316**

### **Negotiable Instruments Act, 1881**

**S.121 (Estoppel against denying capacity of payee to indorse)**: No maker of a promissory note and no acceptor of a bill of exchange payable to order shall, in a suit thereon by a holder in due course, be permitted to deny the payee’s capacity, at the date of the note or bill, to indorse the same.

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**317**

### **Negotiable Instruments Act, 1881**

**S.114 (Right of payer for honour)**: Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

- The person paying for honour, at the time of such payment, steps in to the shoes of the “holder”.

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**319**

### **Negotiable Instruments Act, 1881**

**S.89 (Payment of instrument on which alteration is not apparent)**: (1) Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon; and such payment shall not be questioned by reason of the instrument having been altered, or the cheque crossed.

(2) Where the cheque is an electronic image of a truncated cheque, any difference in apparent tenor of such electronic image and the truncated cheque shall be a material alteration and it shall be the duty of the bank or the clearing house, as the case may be, to ensure the exactness of the apparent tenor of the electronic image of the truncated cheque while truncating and transmitting the image.

(3) Any bank or a clearing house which receives a transmitted electronic image of a truncated cheque, shall verify from the party who transmitted the image to it, that the image so transmitted to it and received by it, is exactly the same.

- A Cheque should not, on the face of it, disclose any traces of alterations.
- When a signature on a Cheque is genuine, if the body of the Cheque is in the handwriting of another, may not be suspected.
- All alterations on a Cheque should bear authentication by the drawer.
- The alterations should not be apparent, with no visual signs of tampering.
- The bank/clearing house truncating a cheque and transmitting the image, shall ensure the exactness of the apparent tenor of the image with the cheque (any difference will be a material alteration).
- The image receiving bank/clearing house, shall verify from transmitting party, that the image is exactly as the cheque.

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### **320**

#### **Negotiable Instruments Act, 1881**

**S.78 (To whom payment should be made):** Subject to the provisions of Section 82, clause (c) payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

- The payment is to be made to the “holder”, to get the maker or acceptor discharged.
- Holder is the rightful owner (who can sue) of the Instrument.
- Cheques apparently tampered with and converted to “bearer cheque”, if paid to such bearer, instead of to the payee, bank is responsible and liable (for negligence).

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### **321**

#### **Negotiable Instruments Act, 1881**

**S.116 (Acceptance and payment without protest):** A drawee in case of need may accept and pay the bill of exchange without previous protest.

- Protesting is not compulsory.

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### **322**

#### **Negotiable Instruments Act, 1881**

**S.113 (Payment for honour):** When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same; Provided that the person so paying or his agent in that behalf has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

- Not applicable to “drawee in case of need” (which is vide S.115).

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### **323**

#### **Negotiable Instruments Act, 1881**

**S.10 (“Payment in due course”):** “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.

• Essentials:

- In accordance with the apparent tenor.
- In good faith, without negligence.
- No reasonable ground to believe that he is not entitled to the payment.

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**335**

**Negotiable Instruments Act, 1881**

**S.96 (Agent for presentment):** When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

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**336**

**Negotiable Instruments Act, 1881**

**S.75 (Presentment by or to agent, representative of deceased, or assignee of insolvent):** Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or, where he has been declared an insolvent, to his assignee.

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**337**

**Negotiable Instruments Act, 1881**

**S.63 (Drawee’s time for deliberation):** The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee forty-eight hours (exclusive of public holidays) to consider whether he will accept it.

- The time for “deliberation” is for the drawee to check his “books and accounts” pertaining to the drawer and decide whether or not to “accept” the “Bill of Exchange”.

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**338**

**Negotiable Instruments Act, 1881**

**S.75-A (Excuse for delay in presentment for acceptance or payment):** Delay in presentment for acceptance or payment is excused if the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made within a reasonable time.

- Delays beyond the control of the holder are excused.

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**339**

**Negotiable Instruments Act, 1881**

**S.61 (Presentment for acceptance):** 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 he can, after reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

(Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.)

- This pertains to presentment for “acceptance”.
- A bill payable after sight, before presentment for payment must be presented for “acceptance”. (Unlike, in respect of an Instrument payable “on demand”, when a single presentation for both will suffice).
- Delayed presentment, in turn, delays payment, prolonging the liability of the parties thereto.

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### 340

#### **Negotiable Instruments Act, 1881**

**S.64 (Presentment for payment):** (1) Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

(Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.)

**Exception:** Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

(2) Notwithstanding anything contained in Section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly.

- This pertains to presentment for “payment”.
  - No “dishonour” can occur unless an Instrument is presented for payment.
  - Default in presentation relieves all other parties of their liability to the “holder”.
- Drawee bank can demand either further information on or presentment of the truncated cheque, where in doubt. (In such an event Drawee bank retains the physical cheque).

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### 341

#### **Negotiable Instruments Act, 1881**

**S.66 (Presentment for payment of instrument payable after date or sight):** A promissory note or bill of exchange, made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

- Want of presentment absolves endorser.
- Presentation before maturity is not valid.

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### 342

#### **Negotiable Instruments Act, 1881**

**S.68 (Presentment for payment of instrument payable at a specified place and not elsewhere):** A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

• If no place is stated, it is, generally, presented: at the known place of business. at the usual residing place. wherever he can be found.

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### 343

#### **Negotiable Instruments Act, 1881**

**S.67 (Presentment for payment of promissory note payable by instalments):** A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment on such presentment has the same effect as non-payment of a note at maturity.

• Two days of grace allowed for each instalment.

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### 344

#### **Negotiable Instruments Act, 1881**

**S.65 (Hours for presentment):** Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

• If the presentment is to be made at a residence, it must be made within a reasonable hour (say up to 7 to 8 p.m.)

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### 345

#### **Negotiable Instruments Act, 1881**

**S.73 (Presentment of cheque to charge any other person):** A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

• Within a reasonable time after receiving delivery from the endorser, by the "holder".

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### 346

#### **Negotiable Instruments Act, 1881**

**S.72 (Presentment of cheque to charge drawer):** Subject to the provisions of Section 84), a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the relation between the drawer and his banker has been altered to the prejudice of the drawer.

• Should be presented within a reasonable time. Otherwise, the "criminal" liability will get extinguished. But the "civil" liability remains.  
• "Presentment" is to be made to that specific branch of the Bank concerned. Not to any Bank (i.e., entrustment) or any Branch (i.e., tender) of that Bank.

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### 347

#### **Negotiable Instruments Act, 1881**

**S.74 (Presentment of instrument payable on demand):** Subject to the provisions of Section 31, a negotiable instrument payable on demand must be presented for payment within a

reasonable time after it is received by the holder.

• In practice, especially in non-commercial transactions, Promissory Notes are held as “continuing security”, and may not be presented within a reasonable time.

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### 348

#### **Negotiable Instruments Act, 1881**

**S.62 (Presentment of promissory note for sight):** A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can after reasonable search be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

• After sight = the payment cannot be demanded until the Promissory Note is again “exhibited” to its “maker”. The “period” counts only after the Promissory Note is sighted.

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### 349

#### **Negotiable Instruments Act, 1881**

**S.71 (Presentment when maker, etc., has no known place of business or residence):** If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

• This does not absolve the holder from making proper (due and diligent) enquiries, as to the address. Failing this the provision in the section is resorted to.

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### 350

#### **Negotiable Instruments Act, 1881**

**S.76 (When presentment unnecessary):** No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases:

a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or

if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found;

b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment;

c) as against any party if, after maturity, with knowledge that the instrument has not been presented:

he makes a part payment on account of the amount due on the Instrument, or promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in presentment for payment;

d) as against the drawer, if the drawer could not suffer damage from the want of such

presentment.

- If after due diligence neither could the place of business/residence be found nor the maker/drawer/acceptor, the presentment is excused and they are liable without presentation to them.
- Banks, generally, get the Instruments made payable at their own place of business.

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### 351

#### **Negotiable Instruments Act, 1881**

**S.70 (Presentment where no exclusive place specified):** A promissory note or bill of exchange, not made payable as mentioned in Sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

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### 353

#### **Negotiable Instruments Act, 1881**

**S.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, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

- The drawer of a Bill of Exchange is the Principal Debtor, till its acceptance.
- After acceptance, the acceptor becomes the Principal Debtor and the drawer recedes to the position of a surety.

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### 354

#### **Negotiable Instruments Act, 1881**

**S.38 (Prior party a principal in respect of each subsequent party):** As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

- A prior party (earlier party) is a Principal Debtor for the subsequent party.
- When bill is accepted and endorsed for "value", the acceptor is the principal debtor and all other parties are sureties for him (liable only on his default).
- But they are not between themselves, merely co-sureties. Each prior party is a principal debtor in respect of each subsequent party.

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### 356

#### **Negotiable Instruments Act, 1881**

**S.122 (Estoppel against denying signature or capacity of prior party):** No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

- The holder to prove only, that:
  - the endorsement made in his favour is true and valid,
  - for which he gave valid consideration.
  - he believed that there is no defect existed in the title of the assignor (his endorser).

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### 357

#### **Negotiable Instruments Act, 1881**

**S.4 ("Promissory note"):** 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.

### Illustrations:

A signs instruments in the following terms:

- (a) "I promise to pay B or order Rs.500."
- (b) "I acknowledge myself to be indebted to B in Rs.1,000, to be paid on demand, for value received."
- (c) "Mr.B, I.O.U Rs.1,000."
- (d) "I promise to pay B of Rs.500, and all other sums which shall be due to him."
- (e) "I promise to pay B Rs.500, first deducting thereout any money which he may owe me."
- (f) "I promise to pay B Rs.500 seven days after my marriage with C."
- (g) "I promise to pay B Rs.500 on D's death, provided D leaves me enough to pay that sum."
- (h) "I promise to pay B Rs.500 and to deliver to him my black horse on 1<sup>st</sup> January next."

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

- Essentials:
- Unconditional undertaking to pay.
- Sum of money certain.
- The person to be paid or to whose order is to be paid certain.
- The maker should be certain.
- Should not be a Bank/currency note.
- No particular form of words essential.
- An agent can sign on behalf of the principal.
- On demand= the debt is due and payable immediately.

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## 358

### Negotiable Instruments Act, 1881

**S.26 (Capacity to make, etc., promissory notes, etc.):** Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

**Minor:** A minor may draw, indorse, deliver and negotiate such instruments so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

- a minor
- a Lunatic
- a person of unsound mind (incapable of understanding the true nature of a transaction, and of forming a rational judgement as to its effect upon his interest).
- a bankrupt
- a drunkard
- a person who is disqualified to contract, by law are examples of persons incompetent to contract.

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### 362

#### **Negotiable Instruments Act, 1881**

**S.101 (Contents of protest):** A protest under Section 100 must contain,

- a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;
- b) the name of the person for whom and against whom the instrument has been protested;
- c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;
- d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;
- e) the subscription of the notary public making the protest;
- f) in the event of an acceptance for honour or of a payment for honour, the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

(A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorised by agreement or usage, by registered letter.)

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### 363

#### **Negotiable Instruments Act, 1881**

**S.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.

**Protest for better security:** When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

- “Protest” is a certificate issued by a Notary Public recording the fact of dishonour.
- A certificate of evidence of dishonour, the required contents of which are elaborated in the next Section (S.101).

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### 364

#### **Negotiable Instruments Act, 1881**

**S.103 (Protest for non-payment after dishonour by non-acceptance):** All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment, in the place specified for payment, unless paid before or at maturity.

- Such Bills dishonoured by non-acceptance may be protested for non-payment, without further presentment.

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### 365

### **Negotiable Instruments Act, 1881**

**S.102 (Notice of protest):** When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

• The notice of Protest to be given by the Notary Public, making the Protest.

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**366**

### **Negotiable Instruments Act, 1881**

**S.104 (Protest of foreign bills):** Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

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**367**

### **Negotiable Instruments Act, 1881**

**S.119 (Presumption on proof of protest):** In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

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**368**

### **Negotiable Instruments Act, 1881**

**S.104-A (When noting equivalent to protest):** For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

• If noting is made within the time specified, formal protest may be made later.

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**369**

### **Negotiable Instruments Act, 1881**

**S.105 (Reasonable time):** In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

• Reasonable time is mixture of law, fact and practice.  
• Nature of Instrument, distance, trade/normal practices, commercial/non-commercial nature of the transaction and all other attendant circumstances are considered; in determining the reasonable time for action.

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**370**

### **Negotiable Instruments Act, 1881**

**S.107 (Reasonable time for transmitting such notice):** A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

• The time frame is as laid down in the previous Section (S.106).

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**371**

### **Negotiable Instruments Act, 1881**

**S.106 (Reasonable time of giving notice of dishonour):** If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

- The rule is made based on principle, not technicality and “in accord with Justice, equity and good conscience”.
- More of common sense went into framing.

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**393**

### **Negotiable Instruments Act, 1881**

**S.122 (Estoppel against denying signature or capacity of prior party):** No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument.

- The holder to prove only, that:
  - The endorsement made in his favour is true and valid,
  - For which he gave valid consideration.
  - He believed that there is no defect existed in the title of the assignor (his endorser).

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**414**

### **Negotiable Instruments Act, 1881**

**S.39 (Suretyship):** When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872 (IX of 1872) would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged.

- The “holder” to expressly reserve his right against the other parties (not releasing them as sureties) if he enters in to a contract with the acceptor.

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