

NEGOTIABLE INSTRUMENTS

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Meaning

Negotiable instrument are money or cash equivalents. These can be converted into liquid cash subject to certain conditions.

According to sec 13 Negotiable instruments act of 1881. Negotiable instruments means promissory note bills of exchange or cheque payable either to order or to bearer.

Features/Characteristics of NI

- **Free transfer:** the negotiable instruments are easily and freely transferable from one person to another.
- **Transfer free from defects :** this is the most important characteristic of negotiable instruments. That is it confers a good title on the transferee, who has taken it in good faith, for value and without notice of the fact that the transferor had defective title .
- **Rights to sue:** the holder has the right to sue in his own name when needed.
- No notice to transfer
- **Credit of the party:** these instrument will never be dishonoured as credit of the party who signs the instruments is pledged to the instruments.

Presumptions as to NI

- **Consideration**

It shall be presumed that every NI was made drawn, accepted or endorsed for consideration.

- **Date :**

where a negotiable instrument is dated.

- **Time of acceptance:**

every accepted bill of exchange is presumed to have been accepted within a reasonable time after its issue and before its maturity

Presumptions as to NI...

- **Time to transfer:** It shall be presumed that every transfer of a negotiable instrument was made before its maturity.
- **Stamp:** the instrument was duly signed and stamped.
- **Holder in due course:** every holder of the negotiable instrument is a holder in due course.
- **Order of endorsement:** The endorsement is made in the same order in which they appear.

Types of Negotiable Instruments

1. PROMISSORY NOTES
2. BILL OF EXCHANGE
3. CHEQUE

PROMISSORY NOTES

Section 4 of the Act defines, “A promissory note is an instrument in writing (note being a bank-note or a currency note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money to or to the order of a certain person, or to the bearer of the instruments.”

The person who makes the promissory note and promises to pay is called the maker. The person to whom the payment is to be made is called the payee

CHARACTERISTICS OF A PROMISSORY NOTE

- It is an Instrument in Writing
- It is a Promise to Pay
- Signed by the Maker
- Other Formalities
- Definite and Unconditional Promise
- Promise to Pay Money Only
- Maker must be a Certain Person
- Payee must be Certain
- Sum Payable must be Certain
- It may be Payable on Demand or After a Definite Period of Time
- It cannot be Made Payable to Bearer on Demand

PARTIES TO A PROMISSORY NOTE

- **Maker:**

Maker is the person who promises to pay the amount stated in the note.

- **Payee:**

Payee is the person to whom the amount of the note is payable.

- **Holder:**

He is either the payee or the person to whom the note may have been endorsed.

SPECIMEN OF PROMISSORY NOTE

- Rs. 10,000

- Lucknow
- April 10, 2013

- Three months after date, I promise to pay Shri Ramesh (**Payee**) or to his order the sum of Rupees Ten Thousand, for value received.

- To,
- Shri Ramesh,
- B-20, Green Park,
- Mumbai.
- (**Maker**)

<ul style="list-style-type: none">Sta mp
<ul style="list-style-type: none">Sd/-Ram

BILL OF EXCHANGE

According to Section 5 of the act, 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”. It is also called a Draft.

Special Benefits of Bill of Exchange:

- A bill of exchange is a double secured instrument.
- In case of immediate requirement, a Bill may be discounted with a bank.

ESSENTIAL ELEMENTS OF BILL OF EXCHANGE

- It must be in Writing.
- Order to pay
- Drawee
- Signature of the Drawer
- Unconditional Order
- Parties
- Certainty of Amount
- Stamping
- Cannot be made Payable to Bearer on Demand

PARTIES TO A BILL OF EXCHANGE

- **Drawer:**

The maker of a bill of exchange is called the drawer.

- **Drawee:**

The person directed to pay the money by the drawer is called the drawee.

- **Payee:**

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

CLASSIFICATION OF BILL OF EXCHANGE

- **Inland and Foreign Bills [Section 11 and 12]**
 - **Inland Bill:**
 - It is drawn in India on a person residing in India whether payable in or outside India; or
 - It is drawn in India on a person residing outside India but payable in India.
 - **Foreign Bill:**
 - A bill drawn in India on a person residing outside India and made payable outside India.
 - Drawn upon a person who is the resident of a foreign country.

CLASSIFICATION OF BILL OF EXCHANGE (Cont....)

● **Time and Demand Bills:**

- **Time Bill:** A bill payable after a fixed time is termed as a time bill. A bill payable “after date” is a time bill.
- **Demand Bill:** A bill payable at sight or on demand is termed as a demand bill.

● **Trade and Accommodation Bills:**

- **Trade Bill:** A bill drawn and accepted for a genuine trade transaction is termed as “trade bill”.
- **Accommodation Bill:** A bill drawn and accepted not for a genuine trade transaction but only to provide financial help to some party is termed as an “accommodation bill”.

CHEQUE

According to Section 6 of the act, A cheque is “a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand”. A cheque is also, therefore, a bill of exchange with two additional qualification:

- It is always drawn on a specified banker.
- It is always payable on demand.

ESSENTIAL ELEMENTS OF A CHEQUE

- In writing/ use of printed form
- Definite and Unconditional Order
- Signed by the Drawer
- Order to Pay Certain Sum
- Order to Pay Money Only
- Payees name
- Drawn upon a Specified Banker
- Payable on Demand
- Date of the cheque

PARTIES TO A CHEQUE

- **Drawer:**

Drawer is the person who draws the cheque.

- **Drawee:**

Drawee is the drawer's banker on whom the cheque has been drawn.

- **Payee:**

Payee is the person who is entitled to receive the payment of a cheque.

TYPES OF A CHEQUE

1. Open cheque

- Bearer cheque
- Order cheque

2. Crossed cheque

- General crossing
- Special crossing
- Double crossing

Advantages of cheque

- Safe method of payment
- Funds are easily transferable
- Safety of fund
- Credit
- Serves as a source of evidence

Endorsement

Endorsement means signing one's name on the back of the negotiable instrument say, a bill of exchange, a promissory note or a cheque with the view to transfer the right, property or the title in the instrument to another person.

Endorsement has been defined in sec 15 of Negotiable Instrument Act 1881 as follows “where 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.. He is said to endorse the same and is called the endorser”

KINDS OF ENDORSEMENT

- a. Blank Endorsement:** if the endorser signs his name only, the endorsement is said to be “Blank” An endorsement in blank, as it is generally called as General endorsement, specifies no endorsee, and as such, the instrument becomes payable to the bearer.
- b. Full endorsement Special endorsement:** It is a endorsement in which the endorser writes not only his name but also the name of the person to whom the instrument is endorsed. It can be further negotiated only by the endorsee named in the instrument

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c. Restrictive Endorsement: A restrictive endorsement is one which limits the further negotiation of an instrument. The endorsee in such cases cannot further endorse it. Generally, the word 'only' is added after the endorsee's name. He cannot further endorse it to anybody.

d. Conditional Endorsement: the endorsement may be given with certain condition, which should have been fulfilled by the endorsee, for obtaining payment. The endorsee's right to receive money is subject to the fulfilment of a particular event.

Eg. Pay to A on completion of the house building----RAM

Pay to Y, if he marries X within a month-----RAM

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- e. Sans Frais Endorsement:** Sans Frais means without expenses. Here the endorser does not want any expense to be incurred on his account on the instrument. He does not want any additional expenditures.
- f. Facultative Endorsement:** in a facultative endorsement, the endorser waives or surrenders his right to receive the notice of dishonour by writing the words “Notice of dishonour waived” after writing the name of the endorsee
- g. Partial Endorsement:** If only a part of the amount of the instrument is endorsed, it is a case of partial endorsement.

General Rules Regarding Endorsement

- **Signature of the Endorser**
- **Spelling:** the endorser should spell his name in the same way as his name appears on the cheque or the bill as its payee or endorsee, he should sign the instrument in the same manner as given in the instrument.
- **No addition or omission of initial of name**
- **Prefixes and suffixes to be excluded:** the prefixes and suffixes to the names of the payee or endorsee need not be included in endorsement. Ex Mr., Mrs., Miss.,

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- **Endorsement by Firms:** endorsement in the case of firms can be either in the name of the firm itself or, it may be by an authorised agent.
- **Endorsement by public Authorities:** A cheque payable to a public authority may be endorsed by officer in charge for and on behalf of the respective body.

Essentials of a valid endorsement

- On the backside of the instrument
- Written in ink
- Signed by the endorser
- Endorsement of entire instrument
- Two or more payees
- Name of the endorser
- In case of married woman