

# NEGOTIABLE INSTRUMENT ACT 1881

## NEGOTIATION

ACCORDING TO SECTION 14 OF THE ACT WHEN A PROMISSORY NOTE, BILL OF EXCHANGE OR CHEQUE IS TRANSFERRED TO ANY PERSON SO AS TO CONSTITUTE THAT PERSON THE HOLDER THERE OF, THE INSTRUMENT IS SAID TO BE NEGOTIATED. THE MAIN PURPOSE AND ESSENCE OF NEGOTIATION IS TO MAKE THE TRANSFEREE OF A PROMISSORY NOTE, A BILL OF EXCHANGE OR A CHEQUE THE HOLDER THERE OF .

### TWO CONDITIONS TO BE FULFILLED

1. THERE MUST BE A TRANSFER OF THE INSTRUMENT TO ANOTHER PERSON.
2. THE TRANSFER MUST BE MADE IN SUCH A MANNER AS TO CONSTITUTE THE TRANSFEREE THE HOLDER OF THE INSTRUMENT.

# MEANING OF NEGOTIABLE INSTRUMENT



- The word negotiable means “transfer by delivery” and word instrument means ‘a written document by which a right is created in favour of some person .thus the term “negotiable instrument” means a written document transferable by delivery.
- As per sec 13(1) of the Act **NEGOTIABLE INSTRUMENT** means **PROMISSORY NOTE, BILL OF EXCHANGE OR CHEQUE** payable either to order or to bearer. as per sec 13(2) the instrument may be made payable to two or more payees jointly.

# History



- The history of the present Act is a long one. The Act was originally drafted in 1866 by the 3rd India Law Commission and introduced in December, 1867 in the Council and it was referred to a Select Committee. Objections were raised by the mercantile community to the numerous deviations from the English Law which it contained. The Bill had to be redrafted in 1877. After the lapse of a sufficient period for criticism by the Local



- Governments, the High Courts and the chambers of commerce, the Bill was revised by a Select Committee. In spite of this Bill could not reach the final stage. In 1880 by the Order of the Secretary of State, the Bill had to be referred to a new Law Commission. On the recommendation of the new Law Commission the Bill was re-drafted and again it was sent to a Select Committee which adopted most of the additions recommended by the new Law Commission. The draft thus prepared for the fourth time was introduced in the Council and was passed into law in 1881 being the Negotiable Instruments Act, 1881 (Act No.26 of 1881) it came into force on the first day of March, 1882

# Types of negotiable instrument



- According to Section of the Negotiable Instruments Act means "A *negotiable instrument* means a promissory note, bill of exchange or cheque payable either to order or to bearer.
- But in Section 1, it is also described that **Local extent, Saving of usage relating to hundis, etc., Commencement.**
- It extends to the whole of India but nothing herein contained affects the Indian Paper Currency Act, 1871, Section 2, or affects any local usage relating to any instrument in an oriental language.

# Cheque



- We prefer to carry a small piece of paper known as Cheque rather than carrying the currency worth the value of the Cheque.
- Parliament enacted the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (55 of 2002), which is intended to plug the loopholes. This amendment Act inserts five new sections from 143 to 147 touching various limbs of the parent Act and Cheque truncation through digitally were also included and the amendment Act has been recently brought into force on Feb. 6, 2003

## Section 4 - Promissory note<sup>1</sup>



- 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.

# Section 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.



# Section 5 - Bill of exchange



- 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

# Section 6 - Cheque



- A cheque is 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;

# *A truncated cheque*



- b) 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.

# Section 13 - Negotiable Instruments



- (1) ***Negotiable instrument.*** 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 endorsement is an endorsement in blank



- *Explanation* (iii).-Where a promissory note, bill of exchange or cheque, either originally or by endorsement, 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.

## Section 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

# Section 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.

# Section 126 Cheque crossed specially



- 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.



## Dishonour of certain cheques for insufficiency of funds



- (a) The cheque has been presented to the bank within a period of three 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 15 days of the receipt of the said notice

# 1 Section 118 - Presumptions as to Negotiable Instruments



- 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 indorsements. - 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 holder is a holder in due course. - that the holder of a negotiable instrument is a holder in due course;

# Five ingredients of the offence under Section 138



- 1. A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account
- 2. The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;
- 3. That cheque has been presented to bank within a period of three months from the date on which it is drawn or within the period of its validity whichever is earlier;
- 4. That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;



- 5. The payee or the holder in due course of the cheque 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 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
- 6. The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;