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VIRTUAL COACHING CLASSES
ORGANISED BY BOS, ICAI

INTERMEDIATE LEVEL
PAPER 2: CORPORATE AND OTHER LAWS

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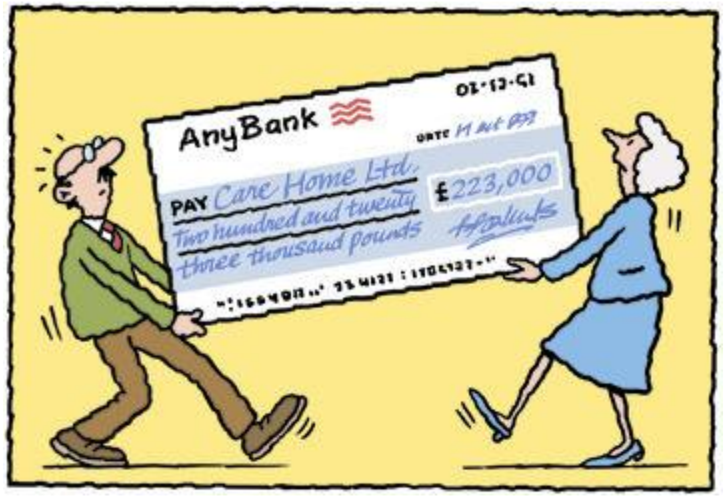


PART II: OTHER LAWS

NEGOTIABLE INSTRUMENTS ACT, 1881

INTRODUCTION

- The Law in India relating to negotiable instruments is contained in the Negotiable Instruments Act, 1881.
- The **main objective** of the Act is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods.
- The Act applies to the whole of India, and to all persons resident in India, whether foreigners or Indians.

RECENT DEVELOPMENTS

Three Recent amendments:

- Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002
- Negotiable Instruments (Amendment) Act, 2015
- Negotiable Instruments (Amendment) Act, 2018.
  - The Negotiable Instruments (Amendment) Act, 2018 received the assent of the President and was notified in the official gazette on **2nd August, 2018** and came into effect from **September 1, 2018**
  - The Amendment Act 2018 contains two significant changes – the introduction of Section 143A and Section 148. These sections provide interim compensation during the pendency of the criminal complaint and the criminal appeal.

NEGOTIABLE INSTRUMENTS

According to Section 13 (1) of the Negotiable Instruments Act,

“A negotiable instrument means

- **a promissory note,**
- **bill of exchange, or**
- **cheque payable**
- **either to order or to bearer**”.
- “A negotiable instrument may be made **payable to two or more payees jointly**, or
- it may be made **payable in the alternative to one of two, or one or some of several payees**” [Section 13(2)].

ESSENTIAL CHARACTERISTICS

Title- Negotiability confers absolute and good title on the transferee.

Must be in writing

Unconditional Order- In every negotiable instrument there must be an unconditional order or promise for payment.

Payment- The instrument must involve payment of a certain sum of money only and nothing else.

The time of payment must be certain

The payee must be a certain person- It means that the person in whose favour the instrument is made must be named or described with reasonable certainty.

ESSENTIAL CHARACTERISTICS

Signature- A negotiable instrument must bear the signature of its maker. Without the signature of the drawer or the maker, the instrument shall not be a valid one

Delivery- Delivery of the instrument is essential. Any negotiable instrument like a cheque or a promissory note is not complete till it is delivered to its payee.

Right to file suit- The transferee of a negotiable instrument is entitled to file a suit in his own name for enforcing any right or claim on the basis of the instrument.

Notice of transfer- It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay.

Number of transfer- These instruments can be transferred indefinitely till they are at maturity

Presumptions to Negotiable Instruments

Presumptions made in relation of	Presumptions Drawn
Until the contrary is proved, the following presumption shall be made:	
of consideration	every negotiable instrument was made or drawn for consideration
As to date	every negotiable instrument bearing a date was made or drawn on such date
As to time of acceptance	every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity
As to time of transfer	every transfer of a negotiable instrument was made before its maturity;
As to order of endorsements	endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon
As to stamps	lost promissory note, bill of exchange or cheque was duly stamped
As to holder	the holder of a negotiable instrument is a holder in due course

Types of Negotiable Instruments

- 1. By Statue
  - 1.1 Promissory Note
  - 1.2 Bill of Exchange
  - 1.3 Cheque
- 2. By Custom or Usage
  - 2.1. Hundies
  - 2.2 Treasury Bill
  - 2.3 Share Warrants
  - 2.4 Dividend Warrant and others

PROMISSORY NOTE

According to section 4 of the NI Act, 1881, 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**.

Note: No other person except RBI or central government can make a promissory note payable to the bearer.

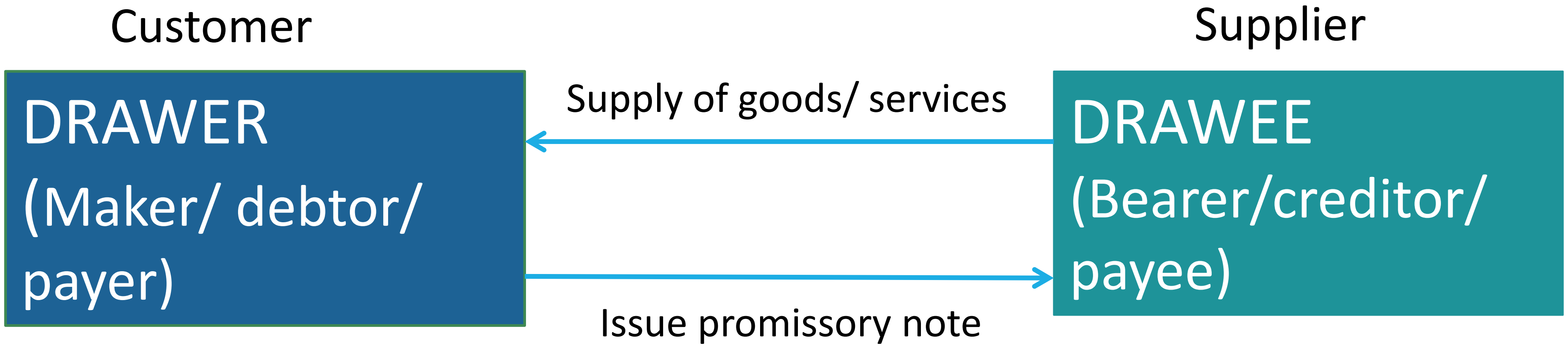
Example: I acknowledge myself to be indebted to B in Rs.` 1,000, to be paid on demand, for value received. (Valid promissory note as the promise to pay is definite)

Example: "Mr B I.O.U ` 1,000." – Invalid promissory note as there is no promise to pay. It is just an acknowledgement of debt.

PARTIES TO PROMISSIORY 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.



SPECIMEN

PROMISSORY NOTE

Amount: ₹ 1,50,000 Date: January 15, 2019
Place: Mumbai, India

I Mrs. Q, make commitment to pay Mr. P, the sum of ₹ 1,50,000. Repayment is to be made in the form of 50 equal payments at 10% interest, or ₹ 3300 payable on 1st of each month, beginning February 1, 2019 until the total debt is paid.

IN WITNESS WHEREOF, I set my hand under seal this 15th of January, 2019 and I acknowledge receipt of a completed copy of this instrument.

Sd/-
Mrs. Q
Pune, India

Sd/-
Notary Public

BILL OF EXCHANGE [Section 5]

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 o**f, a certain person or to the **bearer of the instrument**.

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.

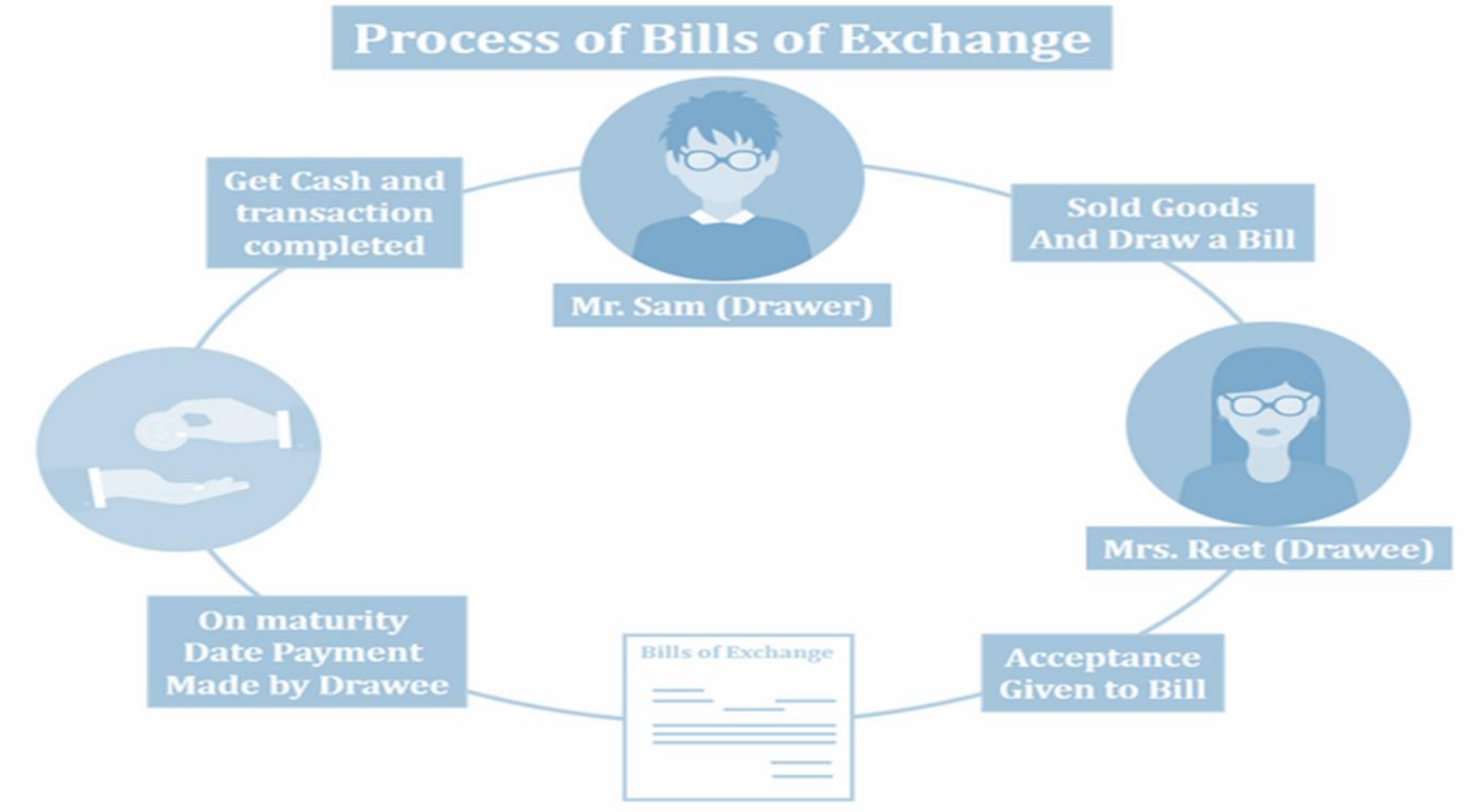
PARTIES TO BoE

Drawer: the maker of the bill of exchange.

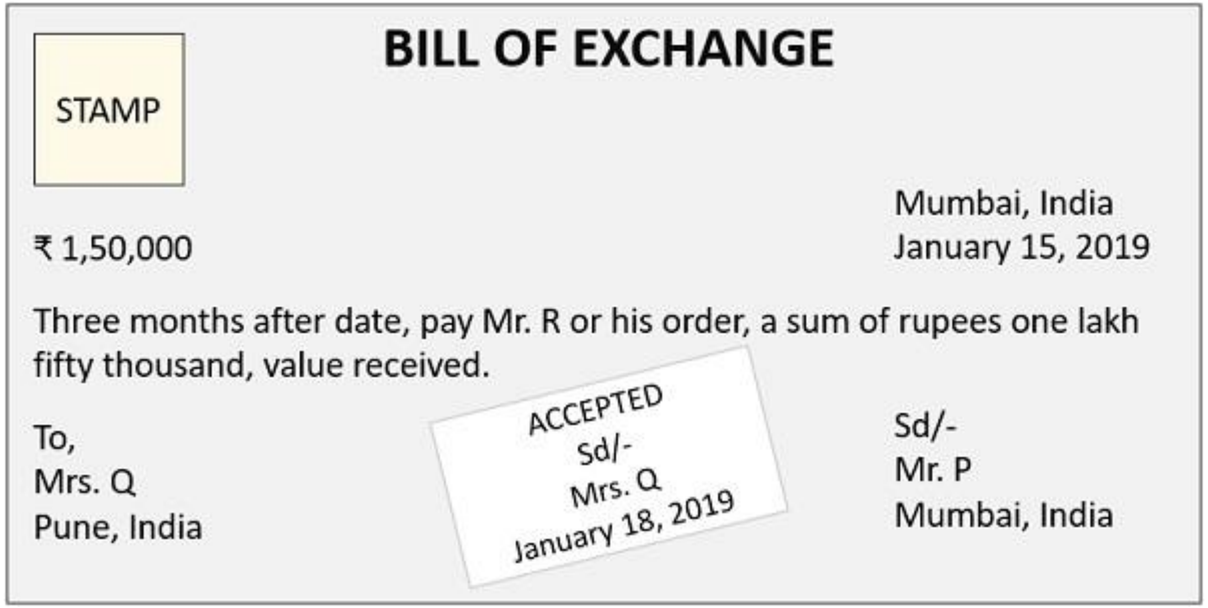
Drawee: the person directed to pay the money to drawer.

Payee: the person named in instrument to whom the amount of the bill is to be paid.

PROCESS OF BoE



SPECIMEN



BILL OF EXCHANGE

STAMP

Mumbai, India
January 15, 2019

₹ 1,50,000

Three months after date, pay Mr. R or his order, a sum of rupees one lakh fifty thousand, value received.

To,
Mrs. Q
Pune, India

ACCEPTED
Sd/-
Mrs. Q
January 18, 2019

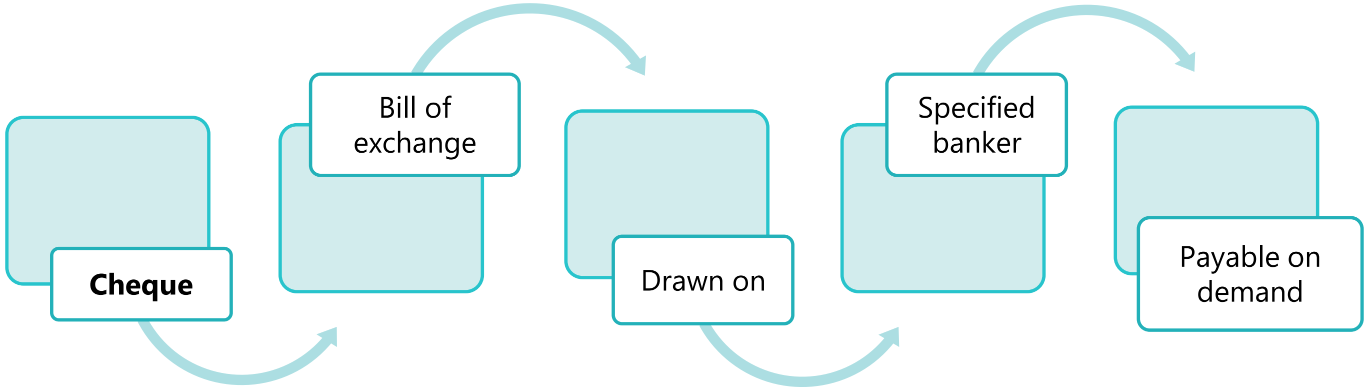
Sd/-
Mr. P
Mumbai, India

DIFFERENCE BETWEEN PN & BoE

S. no	Basis	Promissory Note	Bill of Exchange
1.	Definition	"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.	"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
2.	Nature of Instrument	In a promissory note there is a promise to pay money.	In a bill of exchange there is an order for making payment.
3.	Parties	In a promissory note there are only 2 parties namely: a. the maker and b. the payee	In a bill of exchange, there are 3 parties which are follows a. the drawer b. the drawee c. the payee
4.	Acceptance	A promissory note does not require any acceptance, as it is signed by the person who is liable to pay.	The Bills of Exchange needs an acceptance from the drawee.
5.	Payable to bearer	A promissory note cannot be made payable to bearer.	On the other hand a bill of exchange can be drawn payable to bearer. However, it cannot be payable to bearer on demand

CHEQUE [SEC. 6]

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



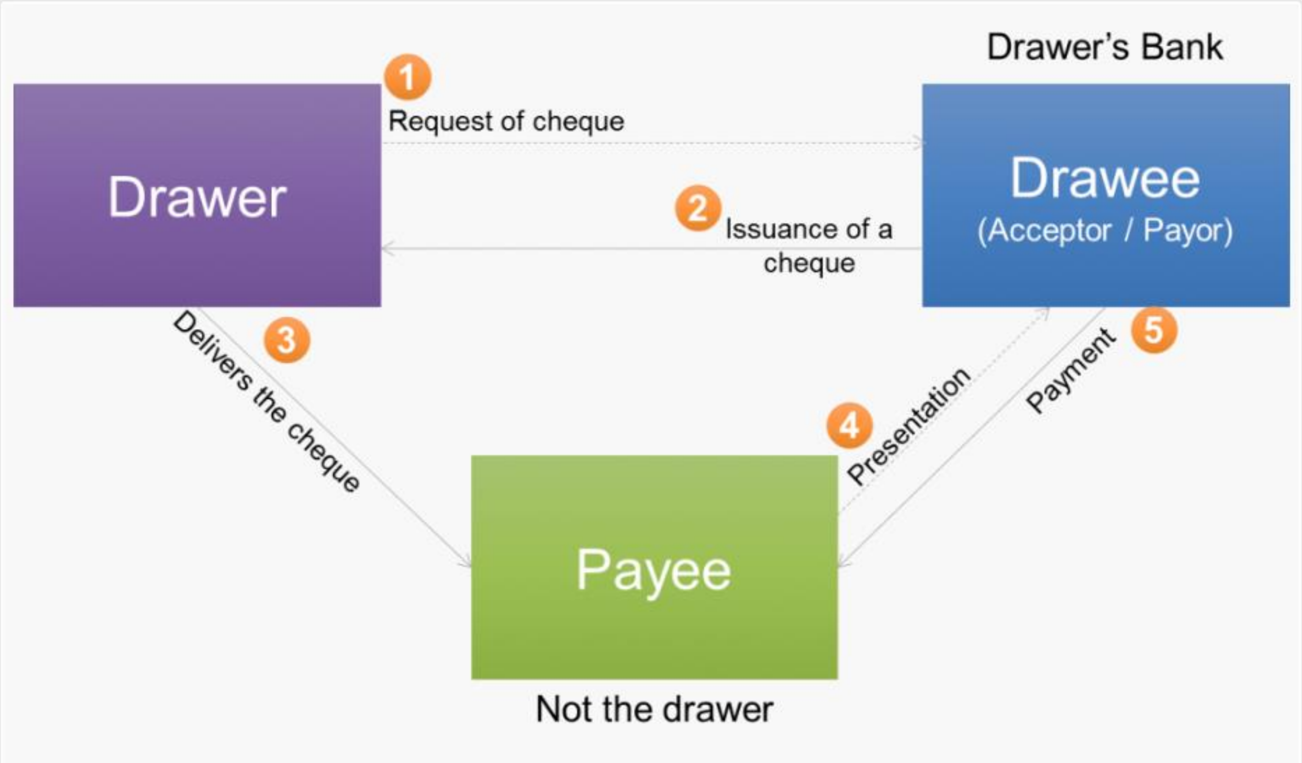
- The expression "Banker" includes any person acting as a banker and any post office saving bank **[Section 3]**

PARTIES TO CHEQUE

Drawer: Drawer is the person who draws the cheque.

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

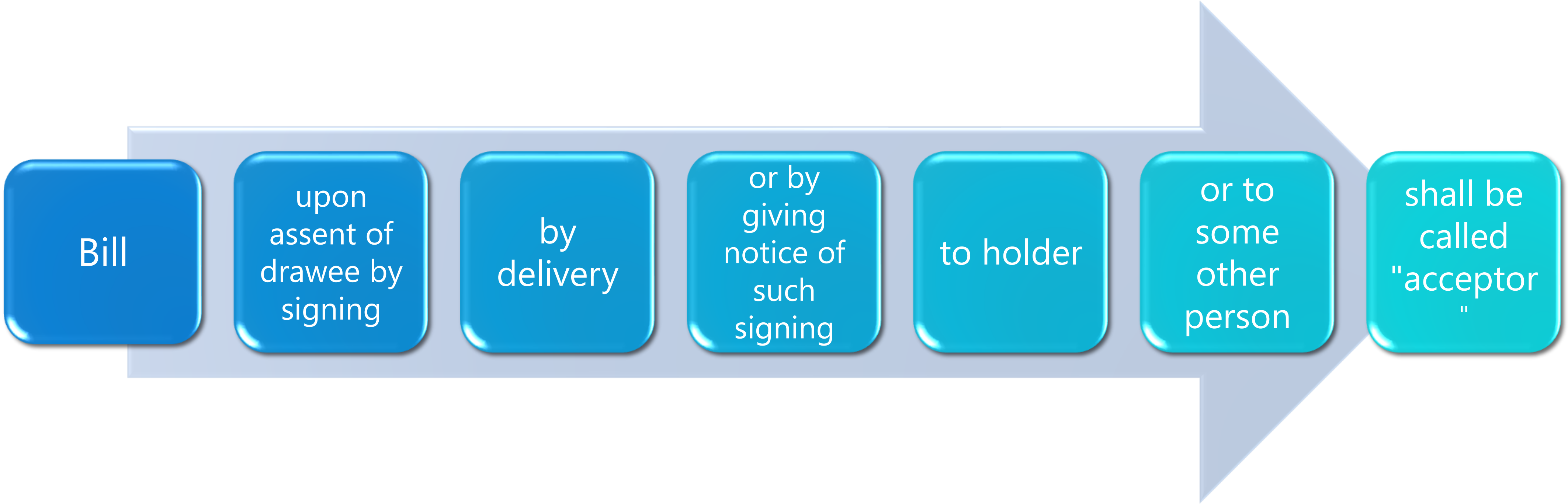
Payee: Payee is the person who is entitled to receive the payment of a cheque



Parties involved in a cheque

ACCEPTANCE

The acceptance of a bill is the indication by the drawee of his assent to the order of the drawer. Section 7 states that an acceptance is the signature of the drawee of a bill who has signed his assent upon the bill and delivered it.



ACCEPTOR

"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". **Thus, an acceptor is the drawee who has signed his assent upon the bill and delivered it to the holder.**

Types of acceptance:

1. **General Acceptance**
2. **Qualified acceptance-** eg: acceptance of bill for a part of sum ordered to be paid

Effect of qualified Acceptance: The holder may

a. Accept- prior parties who not consenting to discharged
b. Reject- bill treated as dishonoured

HOLDER [Section 8]

“Holder” [Section 8]— The “holder” of a promissory note, bill of exchange or cheque means—

- any person
- entitled in his own name to the possession thereof, and
- to receive or recover the amount due thereon from the parties thereto.

Q. A **person who finds or steals a bearer instrument. Holder or not?**

Q. An agent holding an instrument for his principal. Holder or not?

HOLDER IN DUE COURSE” HDC” [SECTION 9]

”Holder in due course” means—

- any person
- who for consideration
- became the possessor of a promissory note, bill of exchange or cheque (if payable to bearer), or the payee or endorsee 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.

EXAMPLE

Example 1: A draws a cheque for ` 5,000 and hands it over to B by way of gift. B is a holder but not a holder in due course as he does not get the cheque for value and consideration. His title is good and bonafide. As a holder he is entitled to receive ` 5000 from the bank on whom the cheque is drawn.

Example 2: On a Bill of Exchange for ` 1 lakh, X's acceptance to the Bill is forged. 'A' takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether 'A' can be considered as a 'Holder in due course' and whether he (A) can receive the amount of the Bill from 'X'.

ESSENTIALS TO BECOME HDC

a) The holder must have paid **valuable consideration**

- i) To become a holder in due course, a person must obtain a negotiable instrument by paying valuable and lawful consideration for it.
- ii) When given as a gift or has been inherited, the transferee cannot be a holder in due course.

b) A holder must **acquire the instrument before its maturity** in order to attain the status of holder in due course.

c) The holder must have **obtained the in good faith**

d) The instrument must be **complete and regular** on the face of it.

e) He must have received the instrument as a holder- ie. A HDC may be either payee, or the possessor (if the instrument is payable to bearer), or the endorsee (if the instrument is payable to order).

PRIVILEGES OF BEING A HDC

(i) In case of Inchoate Instrument: A person signing and delivering to another a stamped but otherwise inchoate instrument (When you execute an unfilled up but duly signed negotiable instrument such as a cheque or a promissory note, it is an inchoate negotiable instrument) is debarred from asserting, as against a holder in due course, that the instrument has not been filled in accordance with the authority given by him, the stamp being sufficient to cover the amount (Section 20).

Example: A signs his name on a blank but stamped instrument which he gives to B with an authority to fill up as a note for a sum of Rs.3 000 only. But B fills it for Rs.5,000. B than transfers it to C for a consideration of 5000 who takes it in good faith. Here in the case, C is entitled to recover the full amount of the instrument because he is a holder in due course whereas B, being a holder cannot recover the amount because he filed in the amount in excess of his authority.

PRIVILEGES OF BEING A HDC

(ii) **In case of fictitious bill:** In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for acceptor to allege as against the holder in due course that such name is fictitious (Section 42).

(iii) In case of conditional instrument or 'escrow': In case a bill or note is negotiated to a holder in due course, the other parties to the bill or note cannot avoid liability on the ground that the delivery of the instrument was conditional or for a special purpose only (Sections 46 and 47).

PRIVILEGES OF BEING A HDC

(iv)In case of instrument obtained by unlawful means or for unlawful consideration; The person liable in a negotiable instrument cannot set up against the holder in due course the defences that the instrument had been lost or obtained from the former by means of an offence or fraud or for an unlawful consideration (Section 58). Thus, a holder in due course acquires a title free from all defects

(v)In case original validity of the instrument is denied; No maker of a promissory note, and no drawer of a bill or cheque and no acceptor of a bill 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 (Section 120). In short, a holder in due course gets a good title to the bill

Privileges of Being a HDC

(vi)In case Payee's capacity to indorse is denied: No maker of a promissory note and no acceptor of a bill 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 endorse the same (Section 121). In short, a holder in due course gets a good title to the bill.

"Payment in due course" [Section 10]—"Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

CLASSIFICATION OF NEGOTIABLE INSTRUMENT

“Bearer instrument” and “ order instrument” [Section 13]

Bearer Instrument: It is an instrument where

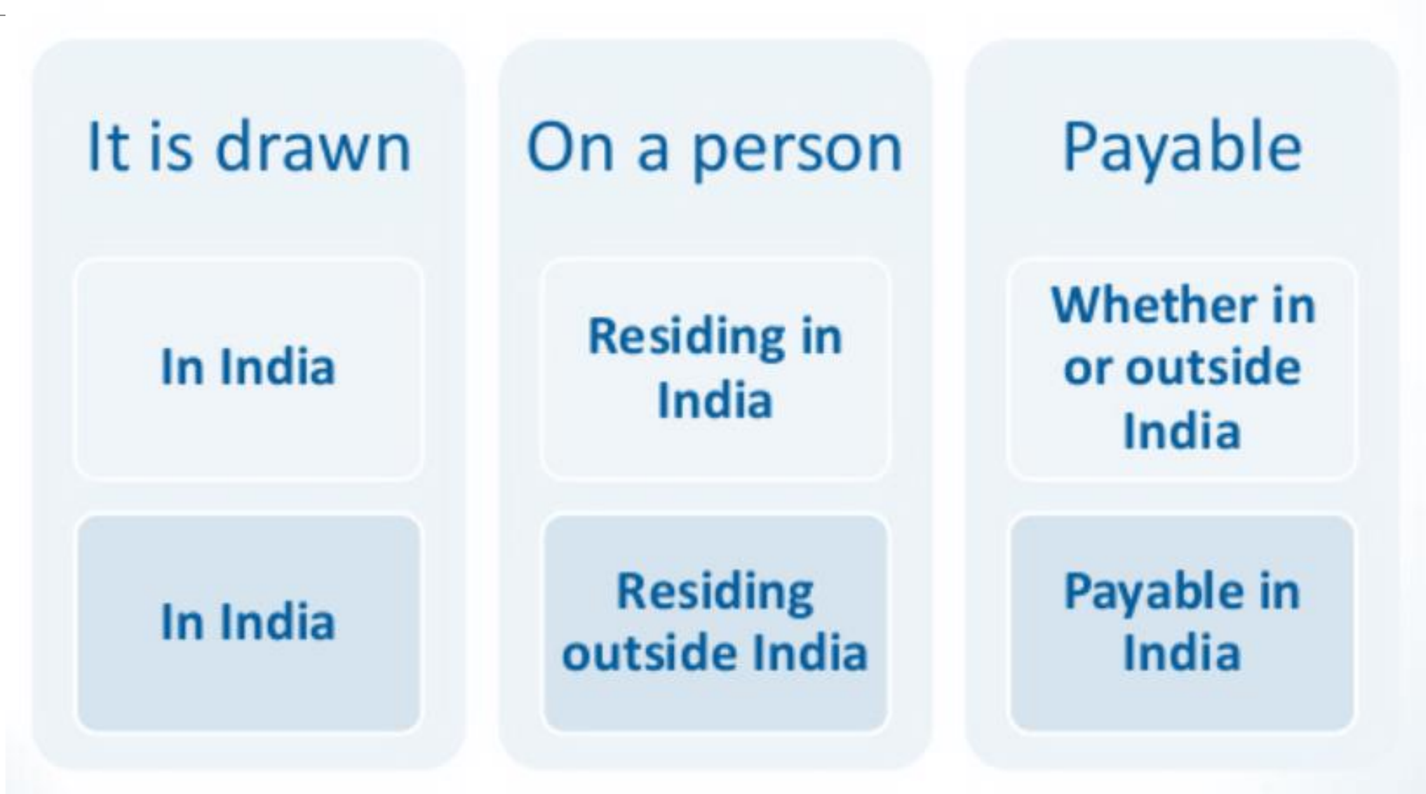
- the name of the payee is blank or
- Where the name of payee is specified with the words “or bearer” or
- Where the last endorsement is blank. Such instrument can be negotiated by mere delivery.

Order Instrument: It is an instrument which is

- payable to a person or
- Payable to a person or his order or
- Payable to order of a person or
- Where the last endorsement is full. Such instrument can be negotiated by endorsement and delivery.

CLASSIFICATION OF NEGOTIABLE INSTRUMENT

“Inland instrument” [Sections 11] reads as 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.



EXAMPLES OF INLAND BILL

The bill drawn in India and paid in India.

The bill drawn in India and drawn upon a person resident in India, whether payable in India or outside India.

The bill drawn in India on a person residing outside India but payable in India.

CLASSIFICATION OF NEGOTIABLE INSTRUMENT

“Foreign instrument” [Section 12] states : Any such instrument not so drawn, made or made payable shall be deemed to be foreign instrument.

It is drawn	On a person	Payable
Outside India	Resident in or outside India	In India
Outside India	Residing outside India	payable either in India or outside India
Outside India	Residing in India	payable either in India or outside India
Outside India	Resident in or outside India	Outside India

CLASSIFICATION OF NEGOTIABLE INSTRUMENT

In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note or 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 endorser by the law of the place where the instrument is made payable (Section 134).

For example, a bill of exchange is drawn by A in Berkley where the rate of interest is 15% and accepted by B payable in Washington where the rate of interest is 6%. The bill is endorsed 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% only. But if A is charged as drawer, he is liable to pay interest at 15%.

CLASSIFICATION OF NEGOTIABLE INSTRUMENT

Inchoate and Ambiguous Instruments

Inchoate Instrument: It means an Instrument that is incomplete in certain respects.

- (i) The person gives a blank instrument with authority to the holder to complete it with appropriate amount up to the stamp value of the instrument.
- (ii) Delivery of such a paper is essential.
- (iii) The person signing and delivering the inchoate instrument is liable both to a holder and holder in due course. However, there is a difference in their respective rights. The holder of such an instrument cannot recover the amount in excess of the amount intended to be paid by the signor. The holder in due course can, however, recover any amount on such instrument provided it is covered by the stamp affixed on the instrument.

CLASSIFICATION OF NEGOTIABLE INSTRUMENT

Ambiguous Instrument: An instrument which is vague and cannot be clearly identified either as a bill of exchange, or as a promissory note, is an Ambiguous instrument.

In other words, such an instrument may be construed either as promissory note, or as a bill of exchange.

Section 17 provides that the holder may, at his discretion, treat it as either and the instrument shall thereafter be treated accordingly. Thus, after exercising his option, the holder cannot change that it is the other kind of instrument.

Where amount is stated differently in figures and words [Section 18]: If the amount undertaken or ordered to be paid is stated differently in figures and in words, **the amount stated in words shall be the amount undertaken or ordered to be paid**

CLASSIFICATION OF NEGOTIABLE INSTRUMENT

Demand Instruments (Section 19): A **promissory note** or **bill of exchange** in **which no time for payment** is mentioned **is payable on demand**. Bills and notes are payable either on demand or at a fixed future time. Cheques are always payable on demand. A bill or promissory note is also payable on demand when it is expressed to be payable on demand, or "at sight" or "presentment" (Section 21).

Time instrument (Section 22). : A bill or note which is payable:

- a) After a fixed period or
- b) After sight or
- c) On a specified day or
- d) On the happening of an event which is certain to happen is known as time instrument

“AT SIGHT ” “ON PRESENTMENT ” “AFTER SIGHT”- SECTION 21

In a promissory note or bill of exchange the expressions “**at sight” and “on presentment”** means on demand.

The expression “**after sight”** means, in a promissory note, after presentment for sight, and, in a bill of exchange after acceptance, or noting for non-acceptance, or protest for non-acceptance.

MATURITY OF NEGOTIABLE INSTRUMENT

The maturity of a note or bill is the date on which it falls due for payment.

Days of grace: A note or bill, which is payable otherwise than on demand**; is at maturity on the third day after the day on which it is expressed to be payable**. **Three days are allowed as days of grace (Section 22).**

Instruments not entitled to grace:

A. A Cheque

B. A bill or note payable “at sight”, or “presentment” or “on demand”

C. A bill or note on which no time is mentioned

CALCULATION OF MATURITY [SEC. 23]

In calculating the **date at which a promissory note or bill of exchange, made payable at 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 at stated number of months after sight and has been accepted for honor, 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.**

Examples

(a) A negotiable instrument dated 29th January, 2017, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 2017.

(b) A negotiable instrument, dated 30th August, 2016, is made payable three months after date. The instrument is at maturity on the 3rd December, 2016.

(c) A promissory note or bill of exchange, dated 31st August, 2016, is made payable three months after date. The instrument is at maturity on the 3rd December, 2016.

CALCULATING MATURITY OF BILL OR NOTE PAYABLE SO MANY DAYS AFTER DATE OR SIGHT [SECTION 24]

In calculating **the date** at which a promissory note or bill of exchange made payable at 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**.

WHEN DAY OF MATURITY IS A HOLIDAY?

S.25 states that "***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".***

Explanation: The expression "Public Holiday" includes Sundays and any other day declared by the Central Government, by notification in the Official Gazette, to be a public holiday.

Sl. No.	Time at which instrument is payable	Maturity period
1.	Negotiable Instrument payable on a specified day	Specified day + 3rd day
2.	Negotiable Instrument payable on a stated number of days after date	Date on which negotiable instrument is drawn + stated number of days + 3rd day
3.	Negotiable Instrument payable on a stated number of days after sight	Date on which negotiable instrument is presented for sight+ stated number of days + 3rd day
4.	Negotiable Instrument payable on a stated number of days after happening of a certain event .	Date on which event happens+ Stated number of days+ 3rd day

Sl. No.	Time at which instrument is payable	Maturity period
5.	Negotiable Instrument payable on a stated number of month after date	Corresponding day of relevant month (Day on which negotiable instrument is drawn+ stated number of months) + 3rd day
6.	Negotiable Instrument payable on a stated number of months after sight	Corresponding day of relevant month (Day on which negotiable instrument is presented for sight + stated number of months) + 3rd day
7.	Negotiable Instrument payable on a stated number of months after happening of certain event	Corresponding day of relevant month (Day on which such event happens+ stated number of months) + 3rd day
8.	If the day of maturity is a public holiday	Immediately preceding business day
9.	If the day of maturity is an emergency or unforeseen public holiday	Immediately succeeding business day

Question

1. Ascertain the date of maturity of a bill payable 120 days after date. The BoE was drawn on 01.06.2020.

Solution

Nature of bill- Time bill

Date to be excluded- date on which bill is drawn

120 days from 1st June- September 29,2020

Days of grace- September 29+ 3 = 2nd October

Date of maturity – 1st October

Question

2. Calculate the date of maturity of BoE dated 31st Aug, 2020 payable 3 months after date.

Solution

Date of bill- 31.08.2020

Nature of Bill- Time bill

Corresponding day after 3 months- 30.11.2020

Days of grace- 3

Date of maturity- 3.12.2020

Question

A BoE drawn on 15 November,2020 is payable 20 days after sight and the bill is presented for acceptance on 30th November,2020. calculate the date of maturity

Solution

Date of bill- 15.11.2020

Nature of Bill- Time bill

Date of presentment of bill for acceptance-30.11.2020

20 days- 20.12.2020

Days of grace- 3

Date of maturity- 23.12.2020

THANK YOU