

THE NEGOTIABLE INSTRUMENTS ACT, 1881

INTRODUCTION

1. 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
2. Amendments in the act has come three times : Negotiable Instruments (Amendments and Miscellaneous Provisions) Act, 2002, Negotiable Instruments (Amendment) Act, 2015, Negotiable Instruments (Amendment) Act, 2018.

MEANING OF NEGOTIABLE INSTRUMENTS

- The act does not define the term 'Negotiable Instruments'.
- Section 13 of the act provides for three kind of NI namely, Bills of Exchange, Promissory Notes & Cheques payable either to bearer or order
- NI is payable to **Order** when :
 - (a) express to be so payable
 - (b) when it is expressed to be payable to a specified person and does not contain the words prohibiting its transfer.
- NI is payable to the **Bearer** when
 - (a) express to be so payable
 - (b) When the only indorsement or last indorsement is a blank indorsement

CHARACTERISTICS OF NEGOTIABLE INSTRUMENT

- Writing
- Signed
- Freely transferrable from one person to another
- Title should be defect free
- NI must contain unconditional order or promise to pay money only
- Sum payable, time payable and person to whom payment is made should be certain
- Instrument should be delivered. Only drawing of instrument does not create liability

PRESUMPTIONS AS TO NI

Unless contrary proved correct the following presumptions hold true:

- Consideration : NI is drawn for something in return
- Date : NI should bear a date on which it is drawn
- Acceptance : NI should be accepted within a reasonable period after it is drawn and before maturity
- Transfer : NI should be transferred before maturity
- Indorsements
- Stamp : NI should be duly stamped
- Holder : Holder of NI is holder in due course

PROMISSORY NOTES

- Defined in **Section 4** of the NI Act 1881.
- ' A promissory note is an instrument in writing 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'

Features

1. Writing – Oral promise is not valid
2. Express promise to pay and it is not a mere acknowledgement of debt
3. Promise to pay must be certain, definite and unconditional
4. Signed by the promisor/maker
5. Promise to pay money only
6. Certain sum
7. Certain Person
8. Stamping in accordance with the provisions of Indian Stamp Act

Parties to Promissory Notes

1. Drawer/Maker/Debtor/Payer – The person who makes the promise
2. Drawee/Bearer/Creditor/Payee – The person to whom the amount is payable

BILLS OF EXCHANGE

- Defined in **Section 5** of the NI Act 1881.
- ' 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'

Features

1. Writing – Oral promise is not valid
2. Express order to pay
3. Order must be definite and unconditional
4. Signed by the drawer
5. Order must to be pay only
6. Certain sum
7. Certain Person (drawer, drawee and payee must be certain)
8. Stamping in accordance with the provisions of Indian Stamp Act

Parties to Promissory Notes

1. Drawer – The maker of the bill of exchange
2. Drawee – Person directed by the drawer to pay
3. Payee – person named in the instrument to whom or to whose order the money/instrument is directed to pay.

CHEQUES : Section 6

- **Meaning** - A cheque is like a bill of exchange drawn on a specified banker and expressed to be payable otherwise than on demand and it includes electronic image of a truncated cheque and cheques in electronic form.
- Note 1: Cheque in electronic form means cheque drawn in electronic form using computer resource and signed in a secure system using digital signature
- Note 2 : Truncated cheque means cheque which is truncated during the course of clearing cycle either by clearing house or by banker.
- Note 3 : Cheque is payable on demand

Features and Parties to Cheque

➤ **Features Of a Cheque**

- a. Drawn on specified banker
- b. Payable on demand
- c. Other features same as bills of exchange

➤ **Parties to Bills of Exchange**

- a. Drawer - person who makes the cheque
- b. Drawee – specific banker on whom the cheque is drawn
- c. Payee – person named in the instrument on whom the cheque is drawn
- d. Drawee in case of need – name of a person in addition to name of a drawee.

CROSSING OF CHEQUES

- Crossing of cheques means giving instruction to the banker that the payment of the cheque is not to be made at the counter but payment is to be made through the bank.
- Crossing of a cheque acts as a caution to paying banker
- Effects of Crossing of Cheque
 - a. It effects the mode of payment : Cheques are no more payable at the counter of the bank, it is rather payable through the bank
 - b. It does not effect the transferability/negotiability of the cheque. It is negotiable just like an open cheque
 - c. Crossing is a material alteration

TYPES OF CROSSING

- General Crossing : Cheque bears across its face two parallel transverse lines with or without the words 'and company or/and not negotiable'
- Special Crossing : The lines crossing bear the name of a banker either with or without the additional words
- A/c Payee Crossing : Bears the words 'A/c payee' or 'A/c payee only'. It is also known as restrictive crossing.
- Not Negotiable Crossing : The words 'not negotiable' in addition to the parallel lines. The words may be written within or outside the lines.
- Cheques can be crossed by – Drawer, Holder, Banker

PROTECTION OF LIABILITY OF THE PAYING BANKER

- The liability of the paying banker is discussed under the following heads:
- a. Cheque payable to order
 - b. Cheque payable to bearer
 - c. Cheque crossed generally (payable to banker)
 - d. Cheque crossed specially
 - e. Payment in due course of crossed cheque
 - f. Payment of crossed cheque out of due course
 - g. Exception : payment of a cheque on which drawer's signature is forged.

DIFFERENCE BETWEEN B/E, P/N & CHEQUES

Basis	Promissory Notes	Bills of Exchange	Cheques
1. Definition	As defined in Sec 4	As defined in Sec 5	As defined in Sec 6
2. Nature of instrument	Promise to pay money	Order to pay money	Order to pay money
3. Parties	Promisor/maker and Promisee/payee	Drawer, drawee and payee	Drawer, drawee and payee
4. Acceptance	Does not require acceptance	Needs acceptance of drawee	Needs acceptance of drawee
5. Payable to bearer	Not payable to bearer	Payable to bearer (not payable to bearer on demand)	Payable to bearer (can be payable to bearer on demand)

TEST YOUR KNOWLEDGE

ACCEPTOR & ACCEPTOR FOR HONOUR

ACCEPTOR	ACCEPTOR FOR HONOUR
<p>Acceptor of a bill is the drawee who has signed his assent upon the bill and delivered it to the holder</p> <p>The acceptor needs to sign the bill or if the bill has more than one part then acceptor has to sign either of the parts</p> <p>The acceptor has to deliver the signed bill or parts thereof and intimate the same to the holder of the bill or to some person on behalf of the holder</p>	<p>Acceptor for honour (Acceptance supra protest) occurs when any bill has been dishonoured either for non acceptance or non payment.</p> <p>It is an undertaking by the third party to accept and pay the bill that was dishonoured due to the above mentioned reason. Such payment is known as 'payment for honour'</p> <p>The person desiring the accept of honour must write on the bill under his hand & declare acceptance for such protested bill.</p>

Essentials of Valid Acceptance for Honour

1. Holder must consent acceptance for honour. Such consent should be free consent and not under compulsion
2. Bill must be noted or protested for non acceptance or for better security
3. It must be in writing, for the whole amount mentioned in the bill and for a party who is already liable in the bill
4. It must be made before the bill becomes over due
5. It can be made by a person who is not liable on the bill. If a stranger takes acceptance for honour then he must declare before the Notary Public the party for whose honour he is making such payment and the Notary Public must record such declaration.

Rights and Liabilities of an Acceptor for Honour

1. He binds himself to all subsequent parties to make the payment on such bill dishonoured by drawee
2. The party (including all prior parties) for whom the acceptor accepts to pay the amount are liable to compensate for the loss or damage sustained by him as a result of such acceptance.
3. The acceptor's liability is conditional (Only if drawee fails to make the payment)

Holder & Holder In Due Course

HOLDER	HOLDER IN DUE COURSE
1. Defined in Section 8 of the Act	Defined in Section 9 of the Act
2. 'Holder' of a P/N, B/E & Cheque means any person entitled in his own name, the possession thereof and to receive and recover the amount due thereon from the parties thereto.	<p>'Holder in due course' means any person who for <u>consideration</u> became the possessor of a P/N, B/E or cheque or payee or indorser thereof.</p> <p>He should become the possessor before the amount mentioned in the bill becomes payable (<u>before maturity of the instrument</u>) without having sufficient cause to believe that <u>any defect existed in the title</u> of the person from whom he derived his title.</p> <p>Exceptions : NI received as gift or inheritance.</p>

PRIVILEGES OF BEING A HOLDER IN DUE COURSE

Elements	Discussion/Elaboration/Explanation
1. Inchoate Instrument	This is an incomplete instrument hence the person signing delivering such instrument is debarred from asserting against the holder in due course.
2. Fictitious Bill	An instrument drawn in a fictitious name and indorsed by the same hand does not permit the acceptor to allege the holder in due course.
3. Conditional Instrument/Escrow	Other parties cannot avoid liability on the ground that delivery was conditional.
4. Instrument obtained by unlawful mean and unlawful consideration	Parties liable in the instrument cannot allege the holder in due course that the instrument has been obtained through offence or fraud or unlawful consideration.
5. Original validity of the instrument is denied	Any drawer/maker/acceptor of the instrument cannot deny the validity of the instrument originally made or drawn
6. Payee's capacity to indorse is denied	Any drawer/maker/acceptor of the instrument cannot deny the payee's capacity on the due date. Therefore the holder gets good title

CLASSIFICATION OF NEGOTIABLE INSTRUMENT

- NOTE : DISCUSS “PAYMENT IN DUE COURSE”

NAME OF INSTRUMENT	MEANING/EXPLANATION
1. Bearer Instrument	Name of the payee is blank 'or bearer' mentioned in the instrument Last indorsement is blank indorsement
2. Order instrument	Payable to specific person 'payable to order' Last indorsement is full indorsement
3. Inland instrument	a. Instrument made in India b. Instrument made payable in India c. Drawn on a person resident in India
4. Foreign Instrument	a. Bill drawn outside India on a person resident in India/outside India but made payable in India b. Bill drawn outside India on a person residing outside India and payable in India or outside India c. Bill drawn outside India on a person residing in India or outside India & payable outside India d. Note : Liability of the instrument is governed by the place where the instrument is made e. Note :Liability of the acceptor and the endorser is governed by the place where the instrument is made payable.

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NAME OF INSTRUMENTS	MEANING/EXPLANATION
5. Inchoate Instrument	Instrument incomplete in certain aspects Drawer/maker signs and delivers the instrument which is wholly blank or has words 'incomplete' Person signing and delivering the instrument is liable to both holder and holder in due course
6. Ambiguous Instrument	Instrument may be constructed as Promissory Note or Bills of Exchange , the holder at his election treat it as either These are vague instrument which cannot be clearly defined
7. Demand instrument	No time for making the payment is mentioned They are payable at sight or on presentment Discuss : 'after sight' , grace period, calculation of maturity period
8. Time Instrument	These instruments are payable after a fixed period of time

NEGOTIATION OF NI

Negotiable instruments are freely transferrable that is from one person to another which means ownership can be transferred from one person to another.

Modes of Negotiation

1. Delivery of NI : When instrument is payable to bearer.
 - a. When instrument changes hands physically it is known as actual delivery
 - b. When instrument is handed over to clerk, agent on any person on behalf of the indorsee
2. Indorsement and Delivery : when instrument is payable to order.

Exception : when negotiation is subject to certain condition or happening of an event then such negotiation is to take effect on happening of such event or fulfillment of such condition

INDORSEMENT OF INSTRUMENT

1 Meaning : Indorsement means where the maker or holder of the instrument signs the instrument for the purpose of negotiation either on the face of the instrument or in the back of the instrument or in a paper annexed to the instrument or signs for the same purpose a stamp paper intended to be completed as a NI

2. The person who makes the indorsement is called the indorser and to whom indorsement is made is called indorsee

TYPES OF INDORSEMENT

Type of Indorsement	Meaning/Explanation/Elaboration
1. Indorsement in blank	Indorser puts his signature without specifying the indorsee
2. Indorsement in full	Indorser signs and also specifies the name of indorsee
3. Partial Indorsement	Indorsement of part of the amount mentioned in the instrument. Such indorsement is invalid.
4. Restrictive Indorsement	When the indorser while making the indorsement restricts or excludes the right of the indorsee to further transfer the amount mentioned in the instrument. When the instrument cannot be further negotiated, it is restrictive indorsement.
5. Conditional Indorsement	Indorser inserts a stipulation negating or limiting his own liability. The different kinds of conditional indorsement are : <ol style="list-style-type: none">Sans recourse – excludes the liability of holder on indorsementLiability dependent on contingency – liability depends on happening or not happening of an eventFacultative indorsement – indorser abandons some rights or increases liability under the instrumentSans Frais indorsement – indorser does not want indorsee or any subsequent holder to incur expense on his account.

Essentials of Valid Indorsement

1. Signature of indorser
2. Maker, drawer, indorsee or several maker, drawer, indorsee may indorse or negotiate unless negotiability is restricted in any manner
3. On completion of indorsement the property in the instrument is transferred to the next party.
4. Where an indorser excludes his liability in any manner and later becomes holder of the instrument all intermediaries indorsers are liable to him

Note : Any blank indorsement can be converted into full indorsement by writing above the indorser's signature direction to pay a specific person.

Miscellaneous Topics

- When NI has been lost or obtained from any maker, acceptor or holder by means of offence, fraud or unlawful consideration no possessor/indorsor who claims through the person who found or obtained the instrument is entitled to receive the amount due unless such person is a holder in due course.
- Where the holder of NI has acquired it after dishonor whether by non acceptance, non payment with notice thereof after maturity has only against the other parties the rights thereon of his transferor.
- Accomodation Bill – Bill drawn without consideration
- Instrument negotiable till payment or satisfaction – NI can be negotiated until the payment/satisfaction by maker, drawer or acceptor.
- Negotiation Back – If NI is negotiated/circulated back by an indorser to any prior party in the NI, it is termed as negotiation back. The person who is Holder in due course under negotiation back cannot make any of the intermediate indorsers liable on the instruments.

Liability of Parties to NI

Name of Parties	Explanation
1. Liability of Minor	<p>Minor is not eligible to enter into any contract. A minor's agreement is void and cannot be ratified when he attains majority.</p> <p>Minor may draw, endorse, deliver and negotiate such instruments to bind all except himself.</p> <p>Exception – If there is any change in law for the time being in force the above may change.</p>
2A. Liability of Agent	<p>Every person capable of incurring liability may bind himself or be bound by duly authorized agent acting in his name.</p>
2B Liability of agent signing	<p>An agent who sign's the NI without indicating that he is signing the instrument as an agent and doesnt intend to incur personal responsibility shall be held personally liable. An agent can be sued by the holder in an action for falsely representing that he had authority.</p> <p>Exception – Those parties who induced the agent to sign upon the belief that principal will be liable</p>

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Name of Parties	Explanation
3A Liability of Legal Representative	<p>Legal representative is personally liable (unlimited liability) unless the legal representative limits his liability to the extent of the asset received by him or in an express agreement the legal representative limits/restricts his liability.</p> <p><u>Indorsement</u> – Legal representative is not the agent of the deceased therefore he cannot complete the instrument if the deceased executed the instrument but could not deliver due to his death</p>
3B Liability of Legal Representative Signing	<p>Legal representative who signs NI shall be personally liable (unlimited liability) unless the legal representative limits his liability to the extent of the asset received by him.</p>
4 Liability of drawer of B/E or Cheque	<p>Bound to compensate the holder incase of dishonor by drawee or acceptor provided due notice of dishonor is received by drawer However the drawer can limit or restrict his liability on the bill.</p> <p>In case of P/N liability of maker is primary where as in case of cheque the liability of the drawer of the cheque is primary.</p>

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Name of Parties	Explanation
5. Liability of drawee of cheque	<p>The drawee of cheque (bank) is bound to honour the customer's cheque if he has sufficient funds required to honour the cheque. If the drawee wrongfully dishonor's the cheque he is liable for such defaults and is liable to make good suc loss.</p> <p>A bank is liable for dishonor of cheque to the drawer (customer) and not to payee or holder of cheque as there is no privity of contract between the bank and the payee.</p>
6. Liability of maker of note and acceptor of bill	<p>In absence of any contract to the contrary</p> <p>Maker of promissory note – liable to pay on the basis of apparent tenor</p> <p>Acceptor of bill – at or after maturity liable to pay to the holder</p> <p>In case of default bound to compensate any party to the bill or note for loss or damage suffered.</p>
7. Liability of indorser	<p>In absence of any contract to the contrary or where indorser has excluded or limited his liability (the instrument must be indorsed and delivered before maturity):</p> <p>The indorser is liable to compensate such holder for loss or damage caused due to dishonor by drawee, acceptor or maker.</p>

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Name of Parties	Explanation
8. Liability of prior parties to holder in due course	All parties are liable to a holder in due course unless the instrument is duly satisfied
9. Prior party is principal in respect of each subsequent party	Parties are liable as sureties, hence each party is liable as a principal debtor to the subsequent parties.

Misc. Concept To The Parties On Negotiation of Instruments

1. Discharge of Indorser's liability

When the holder of NI without the consent of the indorser destroys or impairs the indorser's remedy against the prior party, the indorser is discharged from the liability to the holder to the same extent as if the instrument has been paid on maturity

2. Acceptor of a B/E already indorsed is not relieved from liability by reason such that such indorsement is forged, if he knows or had a reason to believe that the indorsement to be forged when he accepted the bill

3. Acceptor of a bill drawn in fictitious name & payable to the drawer's order is not relieved from liability to any holder .

4. Where a bill of exchange has been lost before it is overdue – the person who is the holder may apply to the drawer to give him another bill of the same tenor, giving security to the drawer to indemnify him against all person 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.

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5. Instrument made with/without consideration

Instrument With/Without Consideration	Liabilities of Parties
Instrument made without Consideration	Creates no obligation of payment between parties to the transaction
Instrument made with consideration consisted of money, absent in part	Holder standing in immediate relation with such signer is entitled to receive from signer the proportionally sum reduced
On partial failure of consideration not consisting of money	A holder standing in immediate relation with such signer is entitled to receive from him the proportionally reduced sum.

PRESENTMENT OF NEGOTIABLE INSTRUMENT

Presentment includes:

1. Presentment of B/E for acceptance
2. Presentment of promissory notes for sight
3. Presentment of NI for payment

Particulars	Explanation
B/E payable after sight	Where time and place is specified B/E to be presented in such place and at such time
B/E payable after sight	Where time and place is not specified B/E to be presented on a business day during business hour.

ACCEPTANCE

Acceptance means giving consent to the NI Presented.

For an acceptance to be valid it must be:

- a. Written (oral acceptance is not valid)
- b. Signed by drawee/authorized agent
- c. Appear on face of B/E
- d. Presented for acceptance within reasonable time/specific place. Where no specific place in mention – in place of business or residence of drawee

Modes of acceptance:

- a. General/Absolute – drawee of B/E gives acceptance without any condition
- b. Qualified – drawee of B/E adds any condition while accepting

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The following people can give acceptance

- a. Drawee of B/E
- b. If more than one drawee the all drawee of B/E
- c. Drawee in case of need (as mentioned in bill)
- d. Acceptor for honour
- e. Authorized agent of drawee
- f. Legal representative (in case of death of drawee)
- g. Assignee (in case drawee is insolvent)

If bill is not presented:

- a. drawee's liability will not arise
- b. There will be no privity of contract
- c. The B/E will be deemed to be dishonoured
- d. No party shall be held liable

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Presentment can be excused if:

- Drawee not found on reasonable search
- Drawee is dead or insolvent (instrument can be presented to legal representative or assignee)
- Drawee is fictitious person
- Drawee is not competent to contract

Presentment of P/N For Sight

P/N at a certain period presented to the maker for sight by the person entitled for payment. Such presentment to be made in business hour on business days

Presentment for Payment

P/N, BOE & Cheques must be presented to the maker, acceptor or drawee by or on behalf of holder on due date for payment.

In default of presentment other parties thereto are not liable to such holder.

Points On Presentment

Points	Explanation
Time for presentment	Presentment must be made during business hours. In case of cheque during banking hours P/N, B/E must be presented at maturity and not before maturity P/N payable by instalment must be presented for payment on the third day after the date fixed for payment (3 days of instalment)
Place of presentment	NI payable at specific place must be presented in that place If no place is specified – to be presented at place of business or place of residence No known place of business or residence – to be presented wherever person is found
Presentment of cheque to charge drawer	Presented in the bank where cheque is drawn
Presentment of instrument payable on demand	Presented within reasonable time after received by holder
Excuse for delay in presentment	Delay in presentment can be excused if circumstances is beyond the control of the holder & not imputable to his default/misconduct/negligence
When presentment is unnecessary	Class discussion – Pg 2.49

Payment and Interest

When rate of interest is specified – interest is calculated on the ROI, on the principal amount, from the due date of payment till the date of realization or until such date after the institution of suit to recover such amount as court directs

When no rate of interest is specified – interest is calculated @ 18% p.a. on the principal amount, from the due date of payment till the date of realization or until such date after the institution of suit to recover such amount as court directs

Discharge From Liability on Notes, Bills and Cheques

Modes of Discharge from Liability on Instruments (Refer to study material for detailed discussion)

1. By Cancellation
2. By Release
3. By Payment
4. By holder allowing the drawee of a bill more than 48 hours to accept
5. By the holder agreeing to a qualified or limited acceptance of bill of exchange
6. By the drawer not duly presenting a cheque for payment
7. By the bill coming to the acceptor's hands after maturity
8. Discharge by material alteration

DISHONOUR OF NI

Non Acceptance	Non Payment
<p>B/E may be dishonoured by non acceptance due to the following reasons</p> <ul style="list-style-type: none">a. The drawee or one of the several drawee refuse to give acceptance within 48 hours of presentment of billb. Presentment is excusedc. Drawee is incompetent to contractd. Drawee is fictitiouse. Drawee could not be found after reasonable searchf. Drawee gives qualified acceptance <p>Applicable only to B/E</p>	<p>When the maker of the acceptor of any NI makes default in payment</p> <p>Where a bill is sent by registered post and the party liable refused to receive the post</p> <p>Applicable to all NI</p>

Notice of Dishonour

When NI is dishonoured by non acceptance or non payment the holder must give notice of dishonor to the drawer or previous holder to make them liable. If he fails to do so within reasonable period of time he forfeits his rights to take action against parties

The objective of 'notice of dishonor' is to inform or warn the party that he is liable on the instrument. The doctrine of 'notice of dishonor' is based on the principle of just and equity.

Notice has to be given by the holder or by the person who is liable on the instrument. Notice given by stranger has no effect.

Notice must be given to all the parties other than the maker or the acceptor or the drawee whom the holder seek to make primarily liable. It is not necessary to provide notice to the maker or the acceptor or the drawee as they are primarily liable upon the instrument.

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Notice must be served to the following parties:

- a. Authorized agent
- b. Legal representative (in case of death)
- c. Assignee (in case of insolvency)

Notice can be in written or oral, can be sent by post or any form but must be given to the party with clear expression that the instrument has been dishonoured and he is liable for the same

Any party receiving the notice must transmit or render the notice to a prior party liable to himself within a reasonable period of time unless such party otherwise receives due notice

When instrument is deposited with an agent for presentment the agent is entitled to the same time to give notice his principle

When party to whom the notice of dishonor is dispatched is dead and the party dispatching is ignorant about the death, the notice is sufficient.

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No notice of dishonor is necessary when:

1. Waiver
2. In order to charge drawer when he has countermanded payment
3. No damage could be suffered for want of notice
4. Party entitled to notice cannot be found after reasonable search
5. When the acceptor is also the drawer
6. Incase of promissory note which is not Negotiable
7. When the party entitled to notice promises to pay the amount due on instrument

NOTING & CONTENT OF NOTICE

When P/N, B/E has been dishonored by non acceptance or non payment the holder may within reasonable time cause such dishonor to be noted by notary public upon the instrument or upon the paper attached to the instrument or partly upon each.

Noting must contain the following:

- a. Fact of dishonor
- b. Date of dishonor
- c. Reason of dishonor
- d. If the instrument has not been expressly dishonoured then the reason why holder treats the same as dishonoured
- e. Notary charges

PROTEST & CONTENT OF PROTEST

When P/N, B/E has been dishonored by non acceptance or non payment the holder may within reasonable time cause such dishonor to be noted and certified by notary public. Such certificate is called protest.

Protest must contain the following:

- a. The instrument (that is everything written on the instrument)
- b. Name of the person against whom and for whom the instrument is protested
- c. Facts and reason of dishonor
- d. Place and time of dishonor
- e. Signature of notary public
- f. In case of acceptance for honor or payment for honor the name of the person accepting or paying & the name of the person for whom acceptance or payment is made.

PROTEST FOR BETTER SECURITY

When acceptor of B/E has become insolvent or his credit has been publicly impeached before the maturity of the bill, the holder may within reasonable time cause notary public to demand better security of the acceptor and on its being refused, may within reasonable time cause such facts to be noted and certified.

Such certificate is called protest for better security.

Misc Points with Noting & Protesting.

Points	Discussion
1. Notice of Protest	When P/N, B/E is required by law to be protested, notice for protest must be given instead of notice for dishonor in same manner and subject to same conditions.
2. Protest for Non Payment after Dishonour by Non Acceptance	B/E payable at a place other than place of residence of drawee & the same is dishonoured by non acceptance, the same can be protested without further presentment to drawee unless paid before or at maturity.
3. Protest of Foreign Bill	These bills are protested in the place where bills are drawn. Law of most countries have made protest compulsory in case of dishonor
4. Reasonable Time	The term 'reasonable time' depends on nature of instrument, usual course of dealing etc. In calculating reasonable time the public holidays shall be excluded.
5. Reasonable Time of giving notice of dishonor	If place of business and place of residence is different – reasonable time means dispatched by next post or on next day after day of dishonor If place of business and place of residence is same – reasonable time means dispatched to reach the next day after day of dishonor

DISHONOUR OF CHEQUE FOR INSUFFICIENCY OF FUNDS IN ACCOUNT

When cheque drawn by a person on an account maintained by him with the banker for payment of amount of money to another person from that account for discharge of whole or part of any debtor other liability is returned by bank unpaid because amount standing to the credit of the account is insufficient or the amount exceeds the amount arranged to be paid from that account by agreement made by the bank, such person is deemed to have committed an offence

Such offence is punishable with imprisonment for a term which may extend to two years or with fine which is twice the amount of the amount or both

Cheque given as gift, donation, security, discharge of moral obligation or illegal consideration would be outside the purview

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This section is not applicable unless:

- a. Cheque is presented within validity period
- b. Demand for the payment through the notice (within 30 days of receipt of information from the bank)
- c. Failure of drawer to make payment
- d. It is presumed that the cheque issued to the holder was issued at liberty (unless contrary is proved right)

Offence By Companies

If a person committing the offence under section 138 is a company then every person who at the time of the offence was in charge of or 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.

If the person liable to be punished proves that the offence is committed without his knowledge or he had exercised action to prevent the commission of such offence.

Nominated Director not punishable be liable for prosecution under this chapter

COGNIZANCE OF OFFENCE

Notwithstanding anything contained in code of civil procedure 1973-

1. Cognizance on written complaint – made to metropolitan magistrate/first class judicial magistrate
2. Limitation for filing of complaint – complaint to be made within one month from the date of the event. Complaint can be accepted by the court if sufficient cause is shown
3. Jurisdiction of Court – no court inferior to that of metropolitan magistrate/first class judicial magistrate shall try any offence punishable under Sec 138.
4. Jurisdiction of Court for the trial of offence - tried by the court within whose local jurisdiction where
 - a. the branch of the bank is situated where the payee or holder in due course maintains his account – if cheque is delivered for collection
 - b. branch where drawee maintains account – when cheque presented for payment other wise through bank account.

Other Topics

- Validation for transfer of pending cases – Class Discussion (Refer Pg 2.69 of study material)
- Power of court to try cases – Class Discussion (Refer pg 2.70 of study material)
- Power to Direct Interim Compensation - Class Discussion (Refer pg 2.71 of study material)
- Power of Appellate Court to order payment pending appeal against conviction - Class Discussion (Refer pg 2.72 of study material)