




Negotiable Instrument Act



Capacity of the Parties

Every person capable of contracting may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery, and negotiation of a promissory note, bill of exchange or cheque.

But such incompetent persons may have rights under a negotiable instrument, but can incur no liability under it.



Parties incompetent to incur a liability

- ▶ Minor: The Act allows a minor to draw, make, accept or endorse a negotiable instrument so as to bind all parties except himself.
- ▶ Persons of unsound mind: Their position is same as that of minor.
- ▶ Insolvent: an insolvent can not draw, make, accept or endorse a negotiable instrument so as to bind his estate which now stands vested in the Official Receiver. But if he indorses an instrument of which he is the payee then the holder in due course can recover from all parties except the insolvent.



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- ▶ Corporation: A company cannot draw, accept, make or indorse a bill of exchange, cheque or promissory note unless the company is so empowered by its Memorandum or Articles of Association. A trading company has implied power to bind itself by a negotiable instrument provided that it is not prohibited by its

Memorandum or Articles of Association.

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Agent: An agent may draw, accept, negotiate an instrument on behalf of the Principal so as to bind the latter subject to the following conditions:

1. The agent has been authorized by principal to that effect.
2. The authority has been expressed in clear terms.
3. The principal is a competent person.
4. The agent acts in the name of the principal.
5. The agent has not exceeded his authority.

The agent will be personally liable in the following cases:

- If he does not disclose the name of his principal.
- If he does not indicate that he is an agent.
- If he executes an instrument without or in excess of his authority.



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- ▶ Partners and firm: A partner signing an instrument on behalf of the firm should do so in the name of the firm.
- ▶ Joint Hindu Family: The Karta has implied authority on behalf of the family to transact its business thus also to draw, accept or negotiate an instrument.
- ▶ Legal Representative: A legal representative of a deceased person is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.



Presentment and Negotiation of Instrument

Presentment : The process of presenting or placing the instrument before the maker, acceptor or drawee is known as a 'present ment of Negotiable Instrument'. The purpose of presentment of negotiable instrument may either for acceptance or payment. There are 3 kinds of presenement.

- 1. Presentment of a bill for acceptance** : It is necessary only in case of bills of exchange. The term 'acceptance' may be defined as the indication by drawee of his assent to the drawer that he will pay amount of bill on due date. After the drawee accepted the bill, he is known as the acceptor.



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- 2. Presentment for Sight** : It is necessary only in case of a promissory note which is made payable at a certain period after sight so that the maturity of the note may be ascertained. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight by a person entitled to demand payment, within a reasonable time after it is made and in business hours. In default, no party thereto is liable thereon to the person making such default.

3. **Presentment for Payment** : Any instrument must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as provided. In default of such presentment, the other parties thereto are not liable. Where authorised by agreement or usage, a presentment through the post office by means of regd letter is sufficient.



Negotiation

The transfer of a negotiable instrument by one person to another so as to constitute the transferee, the holder of the instrument, is known as negotiation. A negotiable instrument can be transferred in two ways.

1. By negotiation under the negotiable instrument act
2. By assignment under the transfer of property act



1. Negotiation

Where a negotiable instrument is transferred to any person so as to constitute that person the holder thereof, the instrument is said to be negotiated. There are 2 essentials of negotiations.

- a) The instrument should be transferred from one person to another.
- b) The transfer should be in such a manner so as to constitute the transferee of its holder.



Modes of Negotiation

1. Negotiation by delivery : A negotiable instrument payable to the bearer can be transferred by mere delivery and the transferee becomes the holder of the instrument. The transferor need not sign his name on such instrument. E.g. A, a holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.
2. Negotiation by endorsement and delivery : An instrument payable to order is negotiable by the holder by endorsement and delivery thereof



Endorsement

Where the maker or holder of an 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 endorse the same and is called the endorser.

Effect of Endorsement : The endorsement followed by delivery transfers to the endorsee the property therein with the right of further negotiation. But the endorsement may by express words, restrict or exclude such right.



Kinds of Endorsement

1. Blank or general endorsement
2. Full or special endorsement
3. Partial endorsement
4. Restrictive endorsement
5. Conditional or qualified endorsement



2. Assignment

The term assignment may be defined as the transfer of one's right to recover payment of a debt. The effect of assignment of an instrument as an actionable claim under the transfer of property act also amounts to its transfer from one person to another. In such a case the assignee gets the rights of a holder but not of a holder in due course.



Dishonour of Negotiable Instrument

When an instrument on its maturity remains unsatisfied, the instrument is said to be dishonoured. It may be either by (i) non-acceptance or (ii) non payment.

1. Dishonour by non acceptance : A bill of exchange is said to be dishonoured by acceptance when the drawee, or one of the several drawees not being partners, makes default in acceptance to accept the bill.
2. Dishonour by non payment : An instrument is said to be dishonoured where 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.



Consequences of Dishonour

In case of dishonour the holder takes the following steps

1. He becomes entitled to file a suit for the recovery.
2. He must, subject to the certain exceptions, give notice of dishonour to parties against whom he intends to proceed.
3. He may also have the instrument noted and protested before a notary public.



Determination of Compensation

1. Compensation to holder :
 - (i) The amount due upon the instrument
 - (ii) Interest on the principal amount @ 18%
 - (iii) Expenses on presentment, noting, protesting
 - (iv) The holder is entitled to receive the sum at the current exchange rate
2. Compensation to endorser
 - (i) Amount he has actually paid
 - (ii) Interest @18% p.a.
 - (iii) All expenses incurred by him
 - (iv) Any loss caused by difference in exchange rate
- 3 Redraft : Any party entitled to compensation may draw a bill at sight or on demand on any party liable to compensate him.



Discharge from Liability

1. Discharge of the instrument :
 1. By payment
 2. By acceptor becoming the holder
 3. By renunciation
 4. By cancellation
 5. By discharge as a simple contract
2. Discharge of one or more parties for their liability :
 1. By cancellation,
 2. By release
 3. By allowing drawee more than 48 hours
 4. By taking qualified acceptance
 5. By not giving notice of the dishonour
 6. By non present-ment
 7. By operation of law
 8. By material alteration



Hundis

There are many other negotiable instruments. Hundi is one of the most commonly used indigenous instrument written in local language of the people. There are 2 types of Hundis.

1. Darshani Hundi
2. Muddati Hundi
 - (i) Shah Jog Hundi
 - (ii) Nam Jog Hundi
 - (iii) Dhani Jog Hundi
 - (iv) Firman Jog Hundi
 - (v) Jawabee Hundi
 - (vi) Jokhami Hundi