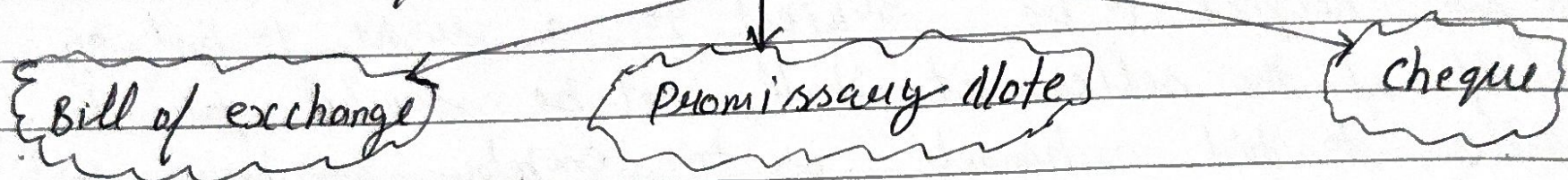


CHAPTER = 07 → The Negotiable instrument Act, 1881 [14 marks]

Introduction ⇒ → The Law relating to negotiable instrument in India ⇒ The Negotiable instrument Act, 1881

→ The act defines and amend the law relating to negotiable instrument from time to time



→ The negotiable instruments Act, 1881 applies to whole of India.

→ The negotiable instruments Act, 1881 comes into force ⇒ 1st march 1882 :-

Meaning of negotiable instruments

→ As per Negotiable instrument Act, 1881

(i) The term negotiable instrument has not been defined under this act.

(ii) Sec 13 provides for only three negotiable instruments

(A) Bill of exchange

(B) ~~But~~ Promissory

* Maker and payee must be certain, definite and different persons

→ The maker and payee must be certain definite and different persons.

Imp. Note is

It may be noted that, no one can issue or make Bearish promissory note i.e. promissory note payable to bearer except by the RBI or by the central Govt [Sec. 31 RBI Act 1934]

⇒ A promissory note must be properly stamped and Duty cancelled with the provision of Indian Stamp Act

- (a) It must be in writing.
- (b) Must contain an express order to pay.
- (c) The order to pay must be definite and unconditional.
- (d) drawer must sign the instrument.
- (e) Drawer, drawee and payee must be certain.
- (f) Sum must be certain.
- (g) order must be pay money.
- (h) It must be stamped.

31/10/2000

2 marks

CHEQUE

Means a cheque drawn in electronic form:-

- (i) by using any computer resources and
- (ii) Signed in a secure system with a digital signature and asymmetric crypto systems or electronic signature, as the case may be.

2 marks

a truncated cheque

- (i) either by the clearing house or by the bank whether paying or receiving payment.
- (ii) Immediately on generation of an electronic image for transmission
- (iii) Substituting the further physical movement of the cheque in writing.

→ similar to

Essential characteristics of a Cheque

→ a cheque is a species of bill of exchange. thus it should fulfill:

- (a) all the essential characteristics of a bill of exchange
- (b) Must be drawn on a specified banker.
(i.e. drawee is always (Bank / Banker))
- (c) It must be payable on demand.

=> Dis

~~Imp~~

=> Provision relating to Dishonour of cheque :- [Sec. 138 MP
[138 to 142]

Dishonour of cheque :- Reasons / grounds :-

When a cheque is drawn by a person -> [for
payment of amount of money to another person
-> in order to discharge, either whole or part of the
debt or liability.]

is returned by the bank as unpaid due to any of the
following reason

- [-> amount credited in an account is insufficient for holder
of cheque.
- [-> amount of cheque is in excess the amount arranged to
be paid from the account by an agreement with bank.]

Imp Note :->

It may be noted that a cheque given
as a gift or donation or as security or as charity
of for illegal consideration would be outside the purview
of sec. 138 i.e. provision of dishonour of cheque
shall not be applicable.

Dishonour of cheque : Punishment

If a person has issued the cheque for payment of debt or liability, which has been returned by the bank as unpaid then in that case such person is deemed to have committed an offence and he shall be punishable:-

- ↳ with imprisonment for a term which may extend to two years
- ↳ ; with fine which may extend to twice of the amount of cheque ; or
- ↳ with Both.

✓ Condition is to be fulfilled for applicability of
[Sec. 138] →

Cheque presented within valid period	Demand for payment through notice	Failure of drawer to make payment to the drawer of
↳ Cheque must be presented to the bank within a period of 3 months from the date when the cheque is drawn ↳ with the period of validity which ever is earlier.	The payee or holder in due course of cheque as the case may be, shall make a demand notice for payment of the amount of cheque so dishonoured within a period of 30 days. or receipt of information of dishonour of cheque from the bank.	The drawer of such cheque failed to make payment within 15 days from the date of receipt of notice of demand to the payee or holder in due course as the case may be.

Presumption in favour of holder [Sec. 139]

★ When a cheque is dishonoured, it shall always be presumed that the cheque was issued for payment of the amount in order to discharge the debt or liability either in full or in part.

★ It may however be noted that such presumption is rebuttable (i.e. it can be changed), which depends upon the person Drawer who has to give the proof / evidence before the court that cheque was not issued for payment in order to discharge the debt / liability.

⇒ Defence which may not be allowed in Any prosecution under Sec. 138 [Sec. 140]

It shall not be a defence in a prosecution of an offence under Sec. 138 that

the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

gmp.

⇒ Classification of Negotiable Instrument

Bearer Instrument

* It is an Instrument:

↳ where the name of payer is BLANK; or

↳ where the name of payee specified with the word "or Bearer" or

↳ where the last indorsement is blank

* Such Instrument can be negotiable by mere delivery

Order Instrument

* It is an instrument which is ^{specified person (not cash)}

↳ Payable to a person; or

↳ Payable to a person or his order; or

↳ Payable to the order of a person;

↳ where the last indorsement is full.

* Such instrument can be Negotiable by indorsement and delivery.

gmp

Inland Instrument

* When an instrument drawn in India (i.e. made in India) and made payable in India; or

* When instrument drawn in India and drawn upon a person resident in India then such instrument is said to be inland instrument.

Foreign Instrument

Foreign instrument is an instrument which is not an inland instrument.

~~gmp~~
Imp Note

⇒ Liability in case of foreign instrument unless the contract otherwise provides or if contract

remain silent

9th

Liability of maker or drawer

- * Liability of maker or drawer of foreign instrument shall be regulated by the law of a country where the promissory note or bill of exchange or cheque is drawn or made.

Liability of acceptor or indorser

- * Liability of acceptor or indorser of foreign instrument is regulated by the law of a country ^{where} ~~where~~ the instrument is made payable.

Imp

Inchoate Instrument

- [A] When the instrument is incomplete in certain respects like amount payable etc. then it is said to be inchoate instrument.

- [A] Where the Drawer/Maker acceptor/indorser sign the instrument's delivery it to the another person which is either BLANK or incomplete in certain respect then in that case holder of such instrument having authority to make the instrument complete.

- [A] It may however be noted that holder shall not write the amount which is in excess of limit as specified by the party or if no such limit then limit as covered by the stamp duly affixed on such instrument.

Ambiguous Instrument

- * According to section 11 of negotiable instrument Act, 1881 where an instrument may be treated as either bill of exchange or promissory note the holder of such instrument at his election / choice treat such instrument either as bill of exchange or as promissory note.

- [A] Once the holder makes the election or choice then the instrument shall be treated accordingly. It may be noted that once the holder make election he shall not change or alter thereafter.

- [A] Thus, an instrument which is value and not clearly identified as bill or note then, such instrument is said to be "Ambiguous instrument".

Negotiation of Negotiable instrument

Basic concept:-

- (i) One of the essential element of negotiable instrument is that instrument is freely transferable from one person to another.
- (ii) Rights in case of negotiable instrument can be transferred from one person to another by Negotiation
- (iii) According to Sec. 14 of NT Act, 1881

When negotiable instrument is transfer to another person with a view to constitute / create such another person as holder thereof then in that case instrument is deemed to be negotiated. Thus in this case there is a transfer of ownership / property / title of the instrument

It may be noted that instrument may be negotiated by mere delivery or by indorsement and delivery.

Mode of delivery

In case of Bearer instrument

where promissory note, bill of exchange or cheque is payable to the bearer

Is NEGOTIATED BY:
Mere Delivery

In case of order instrument

where promissory note, bill of exchange or cheque is payable to the order:

Is negotiated by indorsement and delivery

Imp Note :-

★ It may be noted that before the delivery of instrument, the indorser dies although has indorsement in favour of another person but not delivered then in that case such another person shall not be treated as holder of the instrument even if he found such instrument.

★ Thus we can say that instrument must be delivered in order to make the person as Holder.

Imp

Importance of Delivery in negotiable

[Section - 46 of NI Act 1881]

Basic concept

Delivery of instrument is ^{essential} for the purpose of negotiation which means negotiation shall not become effective without delivery of instrument

Delivery of instrument must be voluntary and the object of which to pass the property in such instrument to the person to whom it is so delivered

Forms/Mode of delivery of inst.

Actual delivery

Delivery of instrument Physically by one person to another

Constructive delivery

Delivery of the instrument to the agent, clerk, servant or his or holding of instrument by indorser on the behalf of indorsee as an agent

Imp. Note :->

Delivery of instrument is essential not only at the time of negotiation but also at the time of making or drawing the instrument

Right in instrument is not transferred to the indorsee to the unless after the indorsement the same [instrument] is delivered

Situation based

It may be noted that if instrument after indorsement not delivered due to the death of indorser then legal representative of deceased person (indorser) shall not have right to deliver the instrument

Presentment of instrument :-

Presentment for acceptance [Sec 61]

Applicable in case of bill of exchange payable after after sight

⇒ If no time and place is SPECIFIED ⇒ For presentment
be presented to the drawee thereof for acceptance
(if after reasonable search drawee is found.)

↳ By the person who is intitbled to demand payment.

↳ within reasonable time after it is drawn

↳ During Business hours on a business day

Imp. NOTE :-

If there is a default in presentment
no party to the instrument shall be liable to
the person who makes a default in presentment

If after reasonable search, drawee is not found
then in that case it is said to be dishonoured

If bill is directed to be presented at a particular place then in that case bill must be presented at that place.

⇒ Presentment of promissory note for sight [Sec. 62]

Applicable in case of promissory note payable at certain period after or at sight

Such promissory note must be presented for payment to the maker thereof instrument
(if maker, after reasonable search is found)

By the person who is entitled to demand payment

Within reasonable time after it is made / drawn

During the business hours on a business day

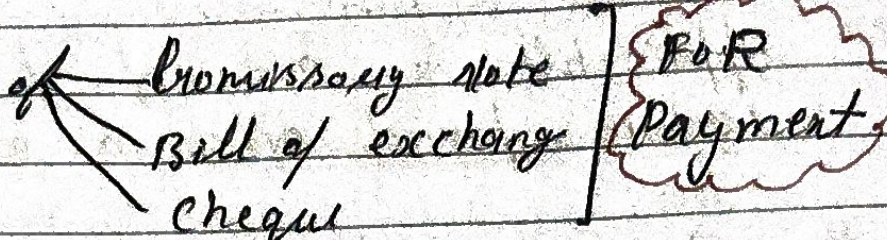
Imp Note :-

If there is a default in presentment of instrument then in that case no party there to shall be liable to the person who makes a default in presentment ~~there to~~

2 marks
Drawee's time for deliberation [Sec. 63]

The holder must, as so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee 48 hours (exclusive of public holidays) to consider whether he will accept it.

⇒ Presentment for payment [Sec. 64]

Applicability in case of  Promissory note
Bill of exchange
Cheque

PoR
Payment

Presented for payment to

- Maker → in case of promissory note
- Acceptor → in case of bill of exchange
- Cheque →
- Drawee → in case of cheque

Presented by or on behalf of holder of the instrument

Imp. Note

It may be noted that if there is a default in presentment of such instrument of such instrument, the other parties to such instrument are not liable to the holder thereof.

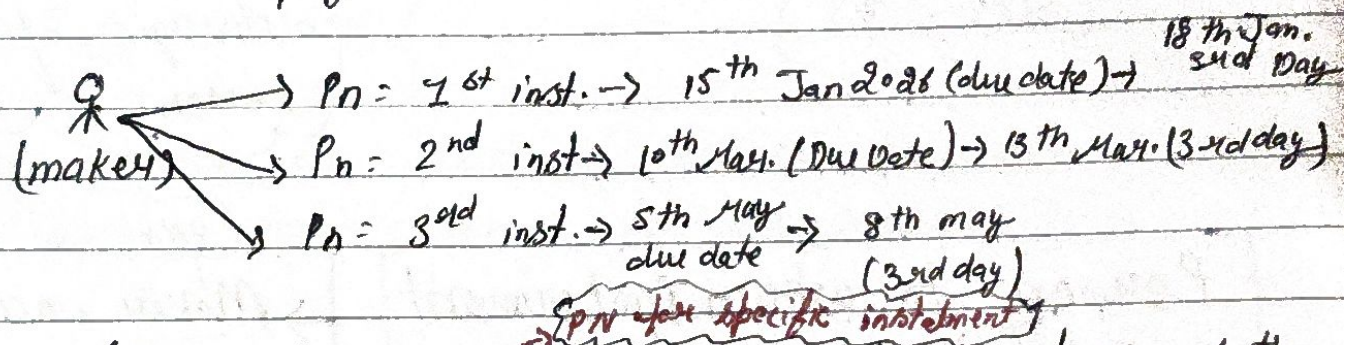
Exception ⇒

Where a promissory note is payable on demand and is not payable at a specified place no presentment is necessary in order to charge the maker thereof.

Presentment for payment of promissory NOTE payable by instalment [Sec. 67]

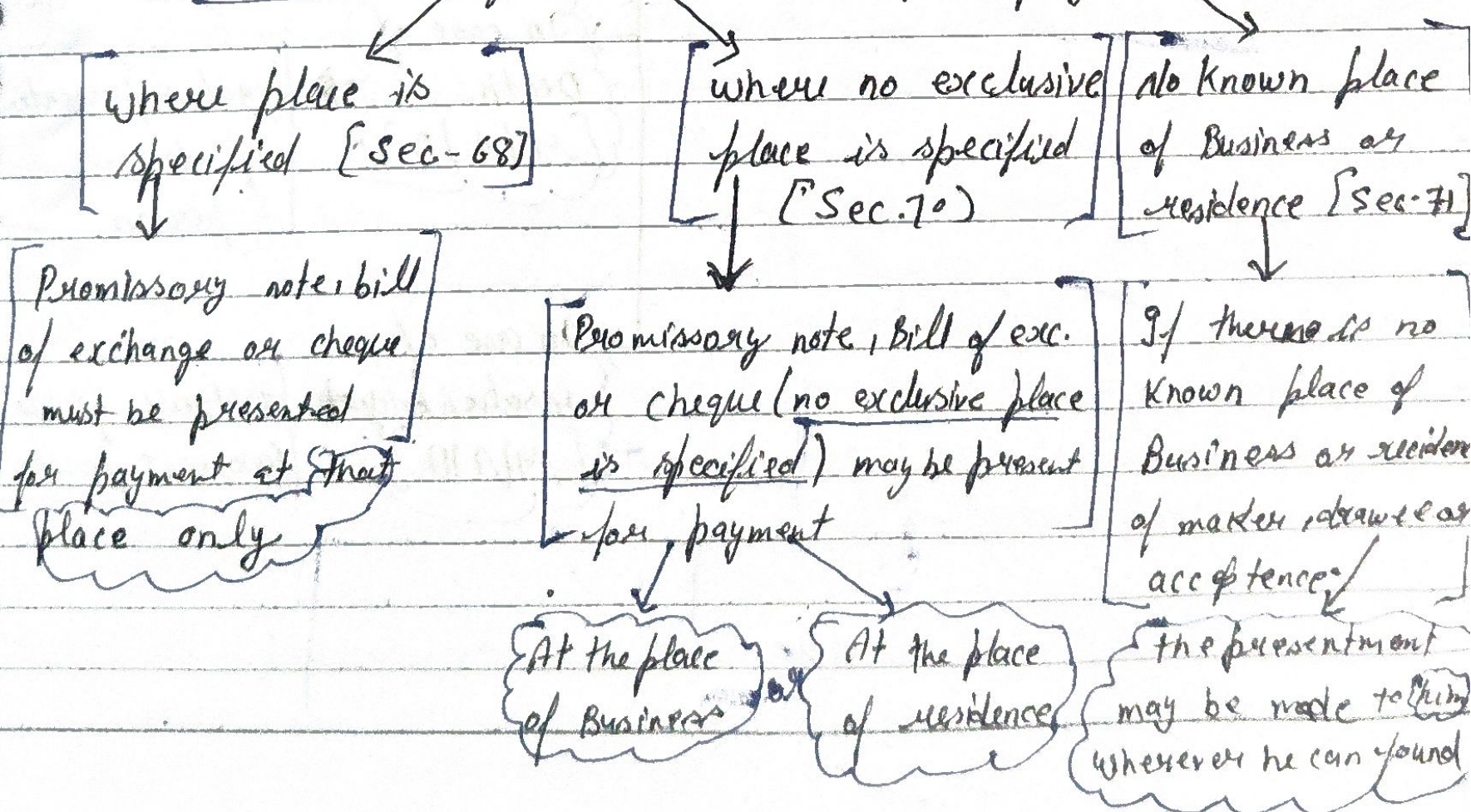
- (i) Applicable $\Rightarrow$ Promissory note payable by instalment
- (ii) Must be presented for payment on 3rd day after the date fixed for payment of inst each instalment

e.g.



- (iii) If Note (PN) become dishonoured due to non payment then it has the same effect & as non-payment made on maturity.
(PN if issued for full amount)

Presentment of Instrument for payment



Presentment of cheque [Sec. 72]

→ [In order to cheque]

Must be presented before the relation between bank and drawer of cheque is affected

→ [In order to cheque the other party (except drawer) [Sec. 73]]

Must be presented within reasonable time after delivery of cheque to such person

Person to whom instrument will be presented
↓
Acceptance Payment

^{PN} ^{BOC} ^{cheque}
→ Maker, acceptor or drawee as the case may be

→ If there is a duly authorised Agent → to such agent
↓
Maker Acceptor Drawer

→ In case of Death [MIA/D] → Legal representative of deceased person

→ In case of insolvency [MIA/D] → Assignee of the insolvent person

[Sec 76]

When presentment is not necessary/unnecessary

In the following cases presentment is not necessary and instrument is said to be dishonoured on due date for presentment

- (i) If maker, acceptor or drawer intentionally presents the presentment of instrument
- (ii) Instrument payable at place of business but such place is closed on business day during business hours.
- (iii) Instrument payable at some other specified place, but neither the party / Person (M/A/D) nor his duly authorised agent is presented at such place during used business hours.
- (iv) If no place of Presentment is specified, then the presentment is not necessary if [M/A/D] not found even after due search
- (v) Party who sought to be ~~sto~~ charged (i.e. party liable for payment) is engaged himself to make payment
- (vi) If part of the amount has been paid or promised to pay then presentment is not necessary for remaining part of the amount.
- (vii) No presentment is necessary if [M/A/D] who can take the advantage of non-presentment has waived the right to set such advantage.