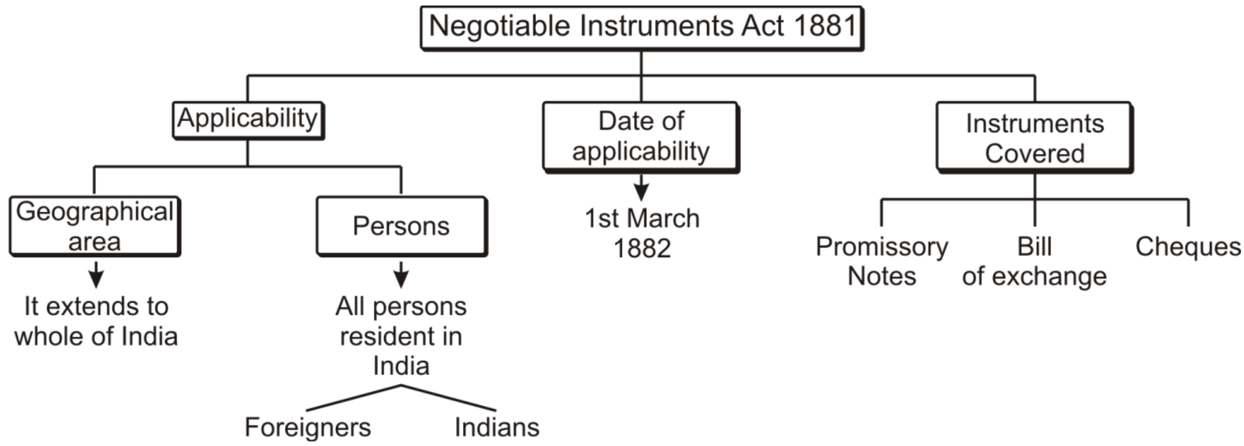
Chapter 3.1

NEGOTIABLE INSTRUMENTS – INTRODUCTION

❖ Introduction

- Negotiable Instruments Act 1881 contains the law relating to instruments of credit which are convertible into money and are easily transferable.
- This Act deals with three instruments – Promissory Notes, Bills of Exchange and Cheque.
- Negotiable instruments Act 1881 came into force on 1st March 1882.
- This Act extends to whole of India.
- This Act applies to all persons resident in India- whether foreigner or Indians.
- The provisions of this Act are also applicable to Hundis, unless there is a local usage to the contrary.



❖ Negotiable Instruments – Meaning

- It is an instrument which is transferable (with or without endorsement) by delivery to another person, by the person who currently holds them. The ownership of the instrument gets transferred to bonafide transferee.
- **Section 13(1)**

  A "negotiable instrument" means
  - *a promissory note,*
  - *bill of exchange or*
  - *cheque*

  payable either to order or to bearer.
- Apart from other three instruments, there are also other negotiable instruments like hundies, government promissory notes, railway receipts, delivery orders etc.
- The provisions of Negotiable Instruments Act are also extended to above instruments, provided there is no local usage to the contrary.
- **What is 'payable to order' or 'payable to bearer'**

Payable to order	➢ A note, bill or cheque is said to be 'payable to order', if – • it is expressed to be payable to the order of a person, or • it is expressed to be payable to a person. ➢ **Example-** Pay X, Pay X or order, Pay X and Y, Pay X or Y, Pay to the order of X ➢ The note, bill or cheque can be said to be 'payable to order', only if – • it does not contain words prohibiting transfer, or • it does not indicate an intention that it shall not be transferable.

	➢ **Example-** Pay X only, Pay none other than X – these are not negotiable instruments because their negotiability has been prohibited. These are valid instruments, but not negotiable instruments.
Payable to bearer	➢ An instrument is said to be payable to bearer if the holder of the instrument is entitled to get the payment. ➢ A note, bill or cheque is said to be payable to bearer if- • it expressly says that it is payable to bearer, or • its last endorsement is an endorsement in blank. ➢ **Example-** 'Pay X or bearer', 'Pay X, Y or bearer', 'Pay bearer', are all negotiable instruments payable to bearer. ➢ Suppose an instrument is made as 'Pay X or order'. It is an instrument 'payable to order'. Now, Mr. X endorses it in blank i.e. he signs on its back and delivers it to Mr. Y. Mr. X does not write the name of Mr. Y on the instrument. Now, this instrument becomes an instrument 'payable to bearer'.

➢ **Section 13(2)**

A negotiable instrument

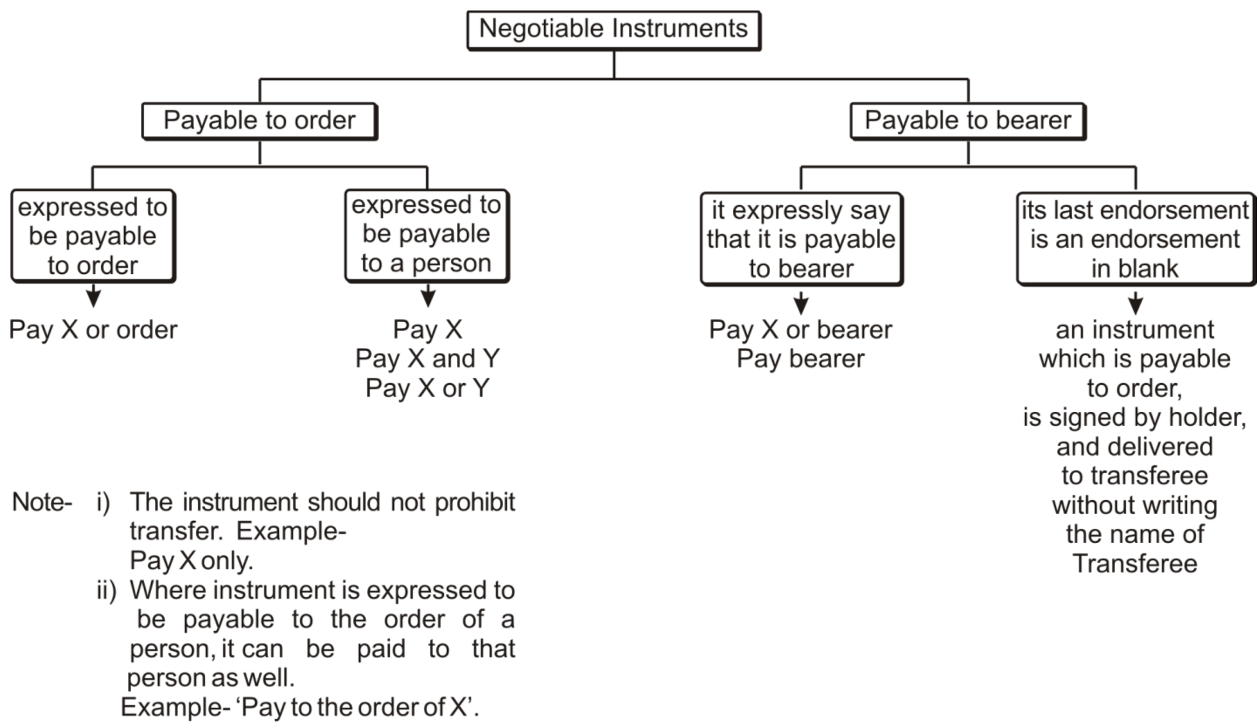
- *may be made payable to two or more payees jointly, or*
- *it may be made payable in the alternative to one of the two, or*
- *one or some of several payees.*

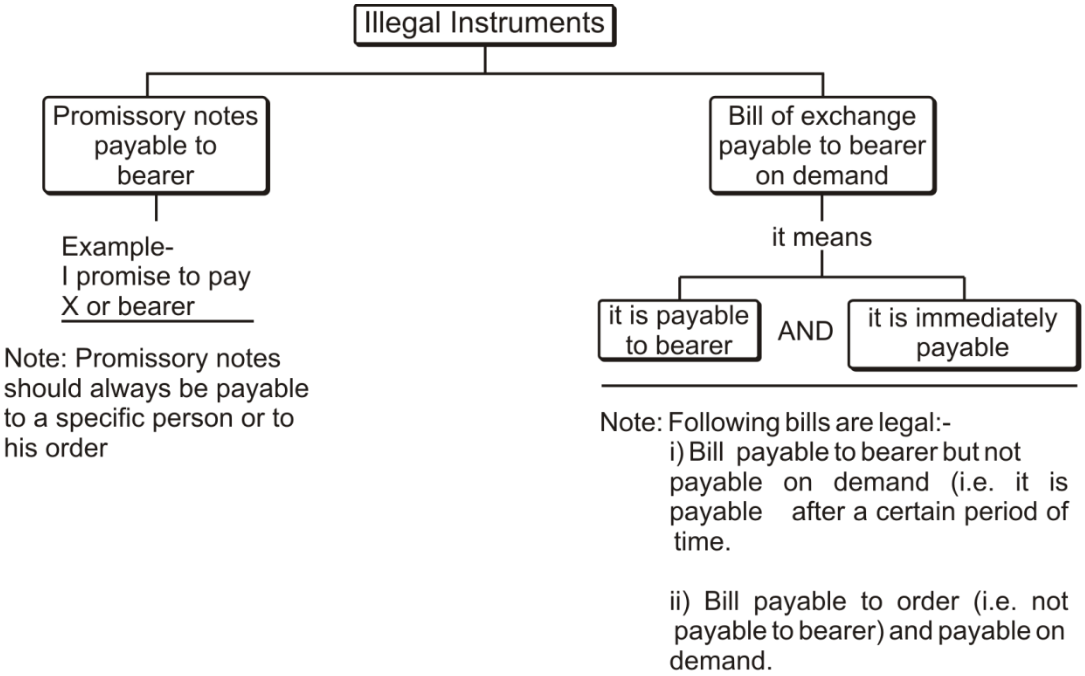
Two or more payees jointly	Pay Mr. X and Mr. Y
One of the two payees	Pay Mr. X or Mr. Y
One or some of several payees	'Pay Mr. X or Mr. Y or Mr. Z' or 'Pay any two from Mr X, Mr. Y ,Mr.Z'

➢ However, Reserve Bank of India Act prohibits following-

- issue of promissory note which is 'payable to bearer' (but RBI and Central Government can issue such notes);
- drawing of bills of exchange which is 'payable to bearer on demand' (but RBI and Central Government can issue such bills);

➢ A cheque 'payable to bearer on demand' can be drawn on a person's account with a bank.

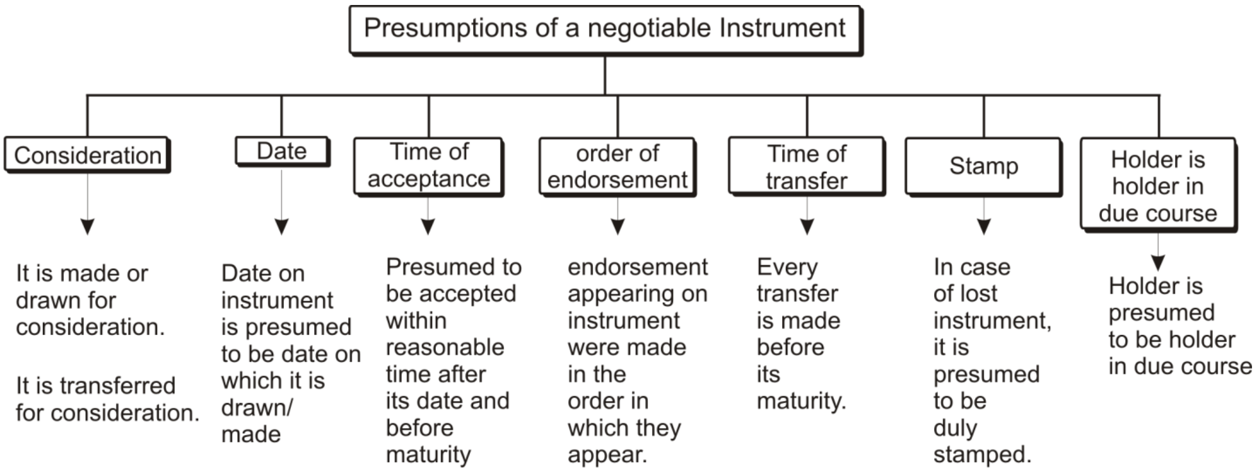




❖ Essential Characteristics of Negotiable Instruments

1	**Written instrument**	A negotiable instrument is compulsorily a written instrument. It is also duly signed.	
2	**Transfer/ negotiation by endorsement and/or delivery**	***Instruments which are payable to order***	These are transferred by one person to another by endorsement and delivery.
		Instruments which are payable to bearer	These are transferred by one person to another by simple delivery of the instrument.
3	**Negotiable instrument is made/drawn for consideration**	➢ It is presumed that every negotiable instrument is made or drawn for a consideration. ➢ The onus of proof is on the person who challenges the existence of consideration.	
4	**Transferee can sue the debtor**	➢ Transferee can sue the debtor if the instrument is dishonoured on presentation. ➢ The holder of a note, bill or cheque has the right to recover something debtor i.e. the person who wrote the note or cheque or who accepted the bill.	
5	**Good title to transferee**	➢ A person who takes the instrument for bonafide and valuable consideration, obtains a good title. This is true even when there is a defect in the title of the transferor.	
6	**Presumptions**	➢ Section 118 lays down following presumptions in relation to a negotiable instrument (until the contrary is proved) –	
		Consideration	It is presumed that every NI was made or drawn for a consideration. It is also presumed that every negotiation/ acceptance/ endorsement/ transfer is done for consideration.
		Date	It is presumed that every negotiable instrument bearing a date was made or drawn on such date.
		Time of acceptance	It is presumed that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity
		Order of	That the endorsements appearing upon a NI were made in

		endorsements	the order in which they appear thereon
		Time of transfer	It is presumed that every transfer of a negotiable instrument was made before its maturity.
		Stamp	It is presumed that a lost promissory note, bill of exchange or cheque was duly stamped.
		Holder is a holder in due course	It is presumed that a holder is a holder in due course.



❖ Promissory Note

Definition

Promissory Note	Section 4	*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.*

- ➢ A promissory note is valid even if it contains an undertaking to pay the amount only to a particular person. Hence, even though negotiability is restricted, it remains a valid promissory note. Such a promissory note will not be treated as a negotiable instrument.
- ➢ If the promissory note contains an undertaking to pay the amount to a person or his order, it is a negotiable instrument.
- ➢ A promissory note which is payable to bearer is not valid due to provisions of RBI Act.
- ➢ **Illustrations given in Section 4**

Illustration	**Whether promissory note or not**	**Reason**
"I promise to pay B or order ₹ 500."	Promissory note	It complies all the requirements of Section 4
''I acknowledge myself to be indebted to B in ₹ 1,000, to be paid on demand, for value received."	Promissory note	It complies all the requirements of Section 4
"Mr. B. I.O.U. ₹ 1,000."	Not a promissory note	No undertaking to pay
"I promise to pay B ₹ 500 and all other sums which shall be due to him."	Not a promissory note	No definite sum of money
"I promise to pay B ₹ 500 first deducting	Not a	No definite sum of money

there out any money which he may owe me."	promissory note	
"I promise to pay B ₹ 500 seven days after my marriage with C."	Not a promissory note	Promise is not unconditional
"I promise to pay B ₹ 500 on D's death, provided D leaves me enough to pay that sum."	Not a promissory note	Promise is not unconditional
"I promise to pay B ₹ 500 and to deliver to him my black horse on 1st January next."	Not a promissory note	Amount payable must be in legal tender money of India

Essentials of a Promissory Note

1	**It should be in writing**	➢ A promissory note should always be in writing. ➢ A verbal promissory note has no meaning. ➢ No particular format of words have been prescribed.
2	**Bank note or currency note is not a promissory note**	➢ Bank note/currency note also contain a promise to pay the bearer a certain sum of money. ➢ But these are not covered by Negotiable Instruments Act 1881.
3	**It should contain an unconditional undertaking to pay**	➢ The promissory note shall contain an undertaking to pay. ➢ Such undertaking should be unconditional. ➢ If any condition is attached to the undertaking, it is not a valid promissory note. ➢ **Example-** "I promise to pay B ₹ 500 after seven days". This is an unconditional undertaking. Hence, it is a promissory note. ➢ **Example-** "I promise to pay B ₹ 500 seven days after my marriage with C." This is a conditional undertaking because marriage with C is not certain. Hence, it is not a promissory note. ➢ **Example -** "I promise to pay B ₹ 500 seven days after D's death". This is an unconditional undertaking because death of D is certain. Hence, it is a promissory note. ➢ Where the note contains a promise to pay after the lapse of a certain period after the occurrence of a certain event which is certain to happen, such promise shall not be treated as conditional, even though the time of happening of such event is uncertain.
4	**Instrument must be signed by the maker**	➢ A promissory note is valid only when it is signed by the maker. ➢ Signature can be placed at any part of the instrument.
5	**Amount should be certain and definite**	➢ The amount should be certain and predefined. ➢ **Example-**"I promise to pay B ₹ 500 and all other sums which shall be due to him." This is not a valid promissory note as the amount mentioned is not definite. ➢ In the following cases, the sum shall be treated as certain – • where the sum includes future interest; • where the sum is payable at an indicated rate of exchange; • sum payable is according to course of exchange.
6	**The person to whom promise is made must be a definite person.**	➢ Promissory note shall be payable to a specific person. It is irrelevant if the person is misnamed or designated by description only. ➢ If the promissory note is made payable to maker himself, it is invalid. However, if such note is endorsed to some other person,

		it becomes valid.
7	**Miscellaneous features**	• No specific form of word is prescribed. • Place of payment and date of making is not necessary. Undated promissory note is presumed to be made on the date of delivery. • Ante dated and post dated note is also valid. • The words "for value received" may not be mentioned as it is presumed that promissory note is made for value. • The words 'or order' may not be written as it is presumed that the person in whose favour it is made, can transfer it.

Promissory Note

Date: 01/01/2019

I promise to pay Mr X or order, a sum of Rs. 5000 only on demand, for value received.

-sd-
Ramesh Singh

❖ Bill of Exchange

Definition

Bill of Exchange	Section 5	*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.*

- Lets us first understand the procedure by which a bill of exchange comes into existence –
  - X sell goods to Y for ₹ 5000/- and allows Y a credit period of 6 months.
  - Now, X makes a bill of exchange with following words 'Six months after date, pay to my order ₹ 5000/- for value received'. X sends this bill of exchange to Y for acceptance.
  - Y accepts the bill by writing 'Accepted' thereon along with his signature.
  - Now, Y becomes liable to pay X or to his order, a sum of ₹ 5000/- after a period of six months.
  - X is drawer of the bill. Y is the drawee of the bill. After acceptance, Y is called acceptor of the bill.
- A bill of exchange can be made payable to a particular person only. Even though, such bills of exchange are valid, but they are not treated as negotiable instrument.
- As per provisions of Section 31 of RBI Act, a bill of exchange cannot be made payable to bearer on demand.
  - If it is payable to bearer, then it shall be payable after a certain period of time.
  - If it is payable on demand, then it shall be payable to order of someone.
- Thus, a bill of exchange is an order by the drawer to pay a specified amount to a specified person or to his order or to the bearer.

Essential of a valid bill of exchange

1	**Written instrument**	A bill of exchange is always in writing. There is no specific format for such instruments. However, it should be drawn in a form that complies with the requirements of Section 5.

2	**Order to pay**	Bill of Exchange must contain an order to pay i.e. a direction to pay. The order is from the drawer to drawee.
3	**Unconditional order**	➢ The order to pay must be unconditional. Thus, a Bill of exchange must be paid under all circumstances and not be based on a contingent event. A bill containing a conditional order to pay is invalid. For Example – a bill worded as under is invalid – 'Three months after date, Pay to X ₹ 5000/- if you have sufficient fund' ➢ Where the note contains a promise to pay after the lapse of a certain period after the occurrence of a certain event which is certain to happen, such promise shall not be treated as conditional, even though the time of happening of such event is uncertain.
4	**Signature of drawer**	The bill of exchange should be signed by the drawer. An unsigned bill of exchange is not valid and is ineffective. However, such signature can be put even after issuance of the bill.
5	**Necessary parties**	The parties to a bill of exchange are – the drawer, the drawee/acceptor and the payee.
6	**Sum must be certain**	The bill of exchange must mention a definite and certain sum of money to paid. In the following cases, the sum shall be treated as certain – • where the sum includes future interest; • where the sum is payable at an indicated rate of exchange; • sum payable is according to course of exchange.
7	**Payment must be in terms of money**	Bill of exchange cannot contain an order to pay anything in kind. It should contain an order to pay in terms of money only.
8	**Delivery to payee**	Bill of exchange must be delivered to the payee, otherwise it becomes inchoate and ineffective.
9	**All formalities must be fulfilled**	All the formalities regarding a bill of exchange must be fulfilled. Such formalities can be – stamp, date, etc.

Parties to a bill of exchange

- ➢ There are three parties to a bill of exchange – drawer, drawee and payee.
- ➢ It doesn't mean that there should be three distinct persons. One person can play the role of two parties. For Example-
    - When a bill is drawn as 'Pay to me or my order', drawer and payee are same person.
    - When the bill is subsequently endorsed in favour of drawee, the drawee and payee are same person.
    - When one draws a bill of exchange on himself, the drawer and drawee are the same person.
- ➢ But, the names of the three parties should be clearly mentioned in the bill of exchange.
- ➢ Now, we discuss the three parties in detail--

1	**Drawer**	➢ **Section 7** *"The maker of a bill of exchange or cheque is called the drawer......."* ➢ The person who draws or makes the bill of exchange or cheque is termed as a drawer. The drawer is the person who directs the drawee to pay the amount. ➢ Drawer needs to essentially put his signature on the bill of exchange.
2	**Drawee**	➢ **Section 7** *"......the person thereby directed to pay is called the drawee......."* ➢ Drawer directs a person to pay. The person to whom such direction is given, is known as drawee.
3	**Payee**	➢ **Section 7** *"........The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the payee........."* ➢ When the drawer directs the payee to pay the amount to the order of a third

		person, such third person becomes the payee. ➢ When the drawer directs the payee to pay the amount on his own order, then the drawer becomes payee as well.

➢ **Difference between a Promissory Note and Bill of Exchange**

SN	Basis of difference	Promissory Note	Bill of Exchange
1	**Promise/order**	It contains a promise to pay	It contains an order to pay
2	**Relationship**	There is an immediate relationship between maker of note and the payee	There is immediate relationship between • the drawer of bill and acceptor; • the drawer of bill and payee
3	**Liability of maker**	The liability of maker of the note is primary. He himself have to pay the amount after the stipulated time.	Liability of drawer is secondary. Drawer is liable to pay the amount only if the drawee fails to pay.
4	**Presentment for payment**	There is no need to get the bill accepted by maker, before it is presented for payment.	A bill is required to be accepted by drawee, before it is presented for payment.
5	**Number of parties**	There are only two parties – maker and payee	There are three parties – drawer, drawee and payee. However, one single person can take the role of any of the two parties mentioned above.
6	**One person as make and payee**	Maker of a note cannot be make himself as payee.	Drawer and drawee can be the same person. Drawer and payee can be the same person.
7	**Drawing in sets**	A promissory note cannot be drawn in sets.	A bill of exchange can be drawn in sets.
8	**Notice of dishonour**	No notice is required to be given in case of dishonour of a promissory note.	Notice of dishonour is required to be given to all the parties.

➢ **Accommodation Bill**

→ Accommodation Bill is similar to any other ordinary trade bill of exchange.
→ The only difference is that an accommodation bill is not supported by any consideration or a trading transaction.
→ The drawee does not get any consideration for accepting the bill. As no trading transaction took place between the drawer and drawee, they are not debtors and creditors as well.
→ The purpose of accommodation bill is to provide financial help to—
- the drawer, OR
- the drawer and drawee both.

→ Accommodation bill is a sort of mercantile credit, where one person lends his name to other, so that the other person can obtain funds by either discounting the bill with a bank, or negotiating the bill with his creditor.
→ **Example-** X is in need of funds. He goes to his friend Y for help. Y, too, does not have funds. But, Y had good credit in market. Now, X draws a bill on Y for ₹ 10000/-, which is payable after 3 months. This bill is accepted by Y. Now, X goes to his bank and gets this bill discounted. Before the maturity of the bill, X will provide funds to Y, who will in turn, pay the bill. Thus, X managed to obtain ₹ 10000/- for 3 months, through accommodation bill.
→ **Parties to an accommodation bill**

The party that accommodated (Y)	**Accommodation party**
The party that was accommodated (X)	**Accommodated party**

→ **Following important points must be noted in case of accommodation bill**

No obligation between drawer and drawee	- As the contract between the drawer and drawee/acceptor is not based on consideration, the drawee is not required to pay to the drawer. - The drawer may get possession of the bill in the following cases— • When the bill is subsequently endorsed in his favour; • When the drawer pays for the bill due to drawee's refusal to pay. - Even though the drawer is in possession of the bill, he cannot demand payment from the drawee/acceptor. **[Section 43]**
Drawee is responsible to subsequent holder	- Drawee is responsible to pay the bill, if the payment is claimed by any subsequent holder (who acquired the bill for value). - If the drawee pays the bill as above, he gets entitled to recover the amount from the drawer.
Non presentment of bill to acceptor does not relieve drawer	- If the bill is not presented to the acceptor for payment by the holder, the drawer does not get relieved of his liability in respect of the bill. - This is so, because the drawer did not suffer any damage due to presentment. [**Section 76(d)]**
In case of overdue bills, transferee acquires a better title than transferor	- An Accommodation Bill can be negotiated after maturity (i.e when it becomes overdue), with all benefits of a holder in due course to the transfree**.[Section 59]** - In such a case, the transfree shall acquire a better title than the transferor.
Failure to give notice of dishonour	- In case of an accommodation bill, failure to give notice of dishonour does not discharge the liability of prior parties. In case of an ordinary bill, failure to give notice of dishonour discharges all the prior parties.

➢ **Fictitious Bill**

→ **Section 42**

An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an endorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

→ Let us first understand the difference between a fictitious bill and a forged bill

Fictitious Bill	- A fictitious bill is one in which the name of both the drawer and payee is fictitious. It means that the persons whose names are mentioned in the bill as drawer and payee, are non existent.
Forged Bill	- In a forged bill, names of real persons is forged as drawer and payee. Such bill is a nullity and it confers no title even to the holder in due course.

→ A genuine person who accepts a fictitious bill, shall become liable to the 'holder in due course' for payment of the bill. However, the holder in due course will have to prove that the handwriting of first endorsement on the bill and the signature of the supposed drawer, is same.

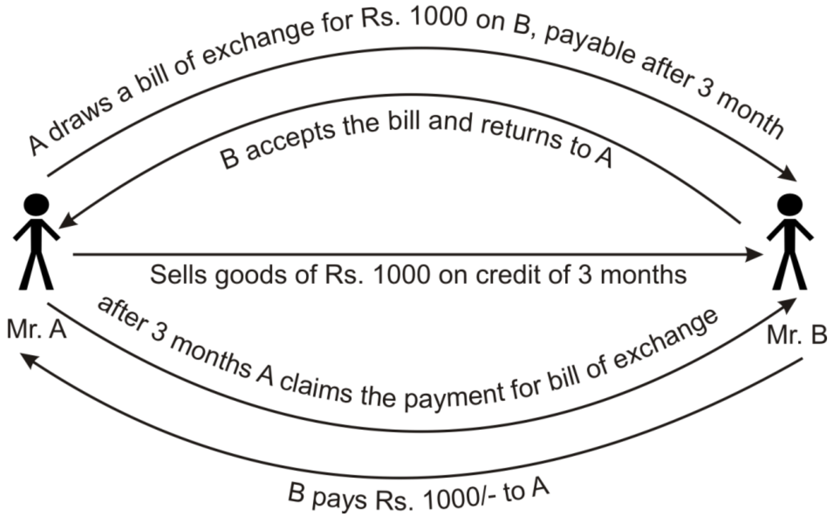
➢ **Documentary Bill**

→ A documentary bill is a bill in which the documents which represent the goods are attached. Such documents may be invoice, bill of lading, railway receipt, marine insurance policy etc.

→ These documents are delivered to the buyer when he either accepts or pays the bill.

→ Generally, these bills are used in foreign trade.

Process of drawing, accepting & paying Bill of Exchange



Specimen Bill of exchange

Rs. 1000/-

Delhi
01/01/2019

Three months after date, pay to the order of C Rs. 1000, for value received.

To,
Mr. B
Lucknow

ACCEPTED
-sd-
Mr. B

-sd-
Mr. A

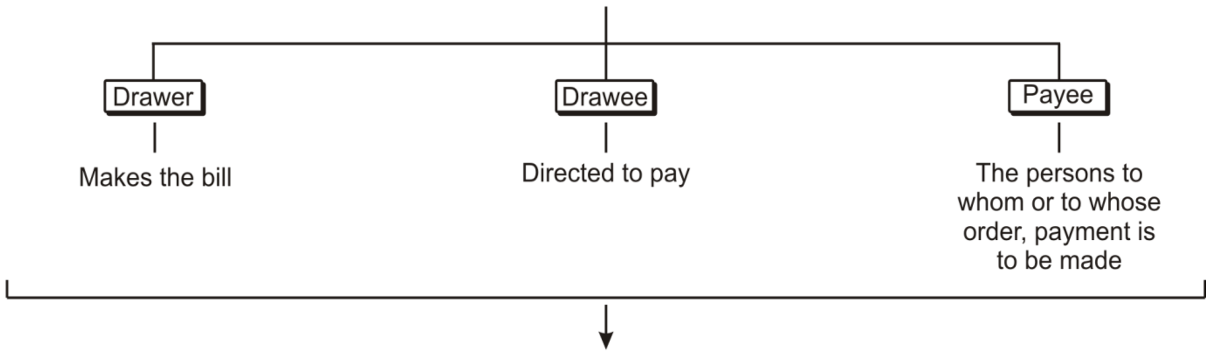
Drawer → Mr.A

Drawee → Mr.B

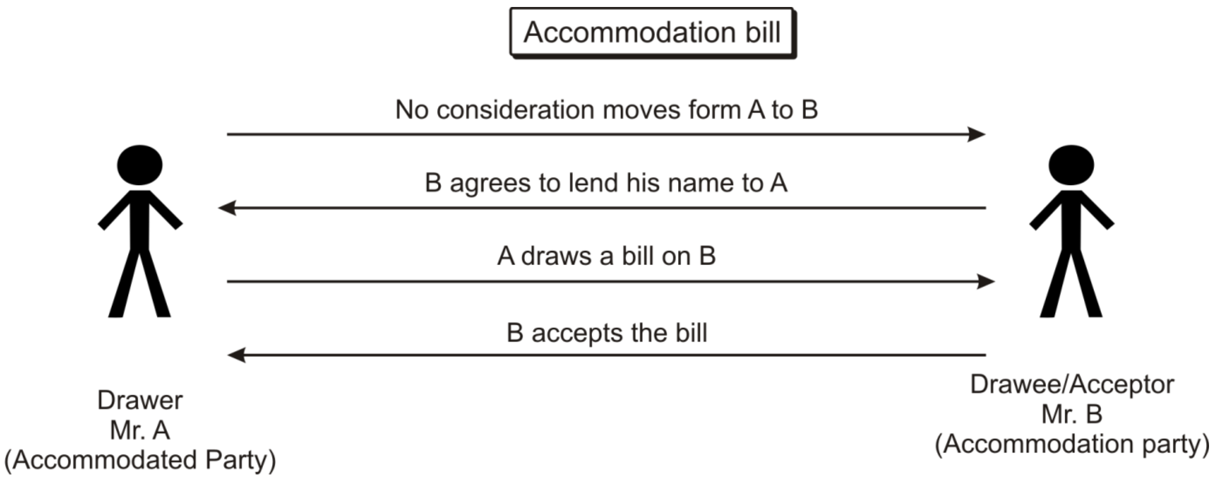
Payee → Mr. C

Acceptor → Mr. B

Parties to a Bill of Exchange



One person can play the role two parties



❖ Cheque

Definition

Cheque	Section 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.* *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;* *(b) "a truncated cheque" 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.]*

➢ A cheque is a bill of exchange which is
- drawn on a bank and
- is payable on demand.

➢ The essential of a cheque are as under --
- it must be in writing;
- it must contain an unconditional order to a specified banker to pay a specified amount to a specified person or to the order of the specified person or to the bearer;
- it must be signed by the maker;
- it is always payable on demand.

➢ Even though a cheque is a type of bill of exchange, it does not require any acceptance from drawee i.e. the banker.

- **Difference between an electronic cheque and a truncated cheque**

Basis of Difference	*Electronic cheque*	*Truncated Cheque*
Use of paper	Paper is never used. Created in electronic form.	It is conversion of a normal paper cheque into truncated for during clearing cycle.
Digital signatures	Use of digital signature is a must in an electronic cheque.	No digital signature is used. It contains image of ink signatures.
Original writing	Original writing of an electronic cheque is in electronic form	Original writing on a truncated cheque is on paper and duly signed in ink.

- **Similarities between Cheque and other forms of Bill of Exchange-**

Basis of similarity	*Cheque*	*Other forms of Bill of Exchange*
Whether bill of exchange	Cheque is a form of bill of exchange	It is also bill of exchange
Number of parties	Three –Drawer, drawee and payee (drawer and payee may be same person)	Three- Drawer, drawee and payee (drawer and payee may be same person)
Written and signed	Cheque must be written and signed	It must be written and signed
Endorsement	Cheque can be endorsed	It can be endorsed.
Unconditional order	Order to pay must be unconditional	Order to pay must be unconditional

- **Difference between a cheque and other forms of Bill of Exchange**

Basis of Difference	*Cheque*	*Other forms of Bill of Exchange*
Acceptance	Acceptance by drawee is not required	Acceptance by drawee is compulsory
Who is drawee	Drawee is always a banker	Drawee can be any person
Payment	Always payable on demand	It may a time bill or may be payable on demand
Grace period	No grace period is allowed	In case of bills other than demand bill, three days grace period is allowed
Dishonour	No system of noting or protest	There can be noting or protest.
Crossing	Cheque can be crossed	It can never be crossed
Stamping	No stamping is required	Stamping is compulsory

- **Marked Cheques**

→ A cheque need not be presented for acceptance.
→ However, a cheque may be got marked or certified by the banker on whom it is drawn, as "good for payment". But this marking is not equivalent to acceptance.
→ This marking does not make the banker liable as an acceptor. In case of a post dated cheque, the banker can still refuse to pay the cheque, if there is no sufficient balance in the account of the drawer on the date when the cheque is presented for payment.

- **Bank Draft**

→ A bank draft is a bill of exchange drawn by a bank, either –

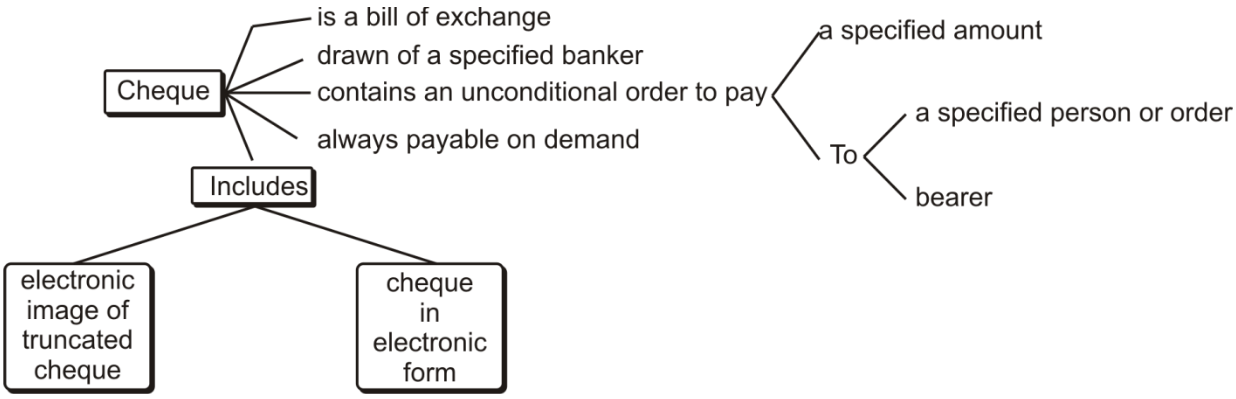
- upon itself, or
- another bank

for a sum of money payable to order on demand.

→ A bank draft is very much similar to a cheque. But it has following difference—

- it is drawn only by a bank (either on its own branch or on another bank) and not by an individual;
- it cannot be made payable to bearer.

→ For drawing a bank draft, the bank either collects cash from its customers or debits the bank account of the customer maintained with it. The bank, generally, charges a commission for drawing a bank draft. The buyer of the bank draft gives the particulars of the person to whom it is to be paid.



❖ Classification of Instruments

<table>
<tr><td rowspan="1">Bearer and order instrument</td><td colspan="2">→ These instruments have already been explained under the heading ‘Negotiable instruments-Meaning’.
→ An instrument which is payable to bearer, is transferable merely by delivery. No endorsement is required on such instruments. Section 49 provides that a holder of negotiable instrument in blank (i.e. bearer) may, without signing his own name, by writing above the endorser’s signatures, direct that the payment of the instrument be made to another person. In this way, an endorsee can convert an endorsement in blank into an endorsement in full.</td></tr>
<tr><td rowspan="2">Inland and foreign instrument</td><td>Inland Instrument</td><td>Foreign Instrument</td></tr>
<tr><td>Section 11
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.
Thus, a promissory note will be an inland instrument if it is
- made in India AND
- also made payable in India.
A bill of exchange (and cheque) shall be an inland instrument, if it is
- drawn in India AND
- drawn upon any person resident in India (or made payable in India).
Example- 1) A promissory note made</td><td>Section 12
Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.
A promissory note shall be a foreign instrument, if it is
- either made outside India OR
- made payable outside India.
A bill of exchange (and cheque) shall be a foreign instrument if it is
- either drawn outside India, OR
- drawn on a person who is resident outside India and made payable outside India.
Example- 1) A promissory note made in Delhi, but payable in London.
2) A bill drawn in New York and payable in Hyderabad.</td></tr>
</table>

<table>
<tr>
<td rowspan="3"></td>
<td rowspan="3">in Delhi and made payable in Amritsar, is a inland instrument.
2) A bill drawn in Mumbai and drawn upon a person resident in Chandigarh, shall be an inland instrument, even if it is payable in Washington.</td>
<td colspan="2">3) A bill drawn in Delhi, but drawn on a person resident in Moscow(and not payable in India).
4)A bill drawn in Banglore, but made payable in NewYork (and drawn on a person resident in India).
In case of a foreign instrument, the liability of various parties shall be regulated as under-</td>
</tr>
<tr>
<td>Liability of maker or drawer</td>
<td>Regulated by the law of the place where he made the instrument.</td>
</tr>
<tr>
<td>Liability of acceptor or endorser</td>
<td>Regulated by the law of the place where instrument is made payable.</td>
</tr>
<tr>
<td rowspan="2">Ambiguous and inchoate instruments</td>
<td>Ambiguous Instruments</td>
<td colspan="2">Inchoate Instruments</td>
</tr>
<tr>
<td>Section 17
- Where an instrument may be construed either as a promissory note or bill of exchange,
- the holder may at his option treat it as either, and
- the instrument shall be hence forward treated accordingly.
In the following cases, an instrument can be treated as either as a bill of exchange or a promissory note, at the option of the holder—
• where the drawer and drawee of a bill are the same person;
• where the drawee is a person incompetent to contract;
• where the drawee is a fictitious person;
• where the terms or form of the instrument are so ambiguous that it is doubtful that it is a bill of exchange or a promissory note.</td>
<td colspan="2">Section 20
If following conditions are fulfilled, a person shall be liable as a party to a negotiable instrument—
• a person signs and delivers a stamped paper to another person;
• such paper is either wholly blank or an incomplete negotiable instrument;
This is so because he has given prima facie authority to the other person -
• to make a negotiable instrument on the blank paper; or
• to complete a negotiable instrument on the incomplete paper.
Such authority is given—
• for an amount specified therein; or
• for an amount covered by the stamp,
whichever is lower.
The signer of the instrument shall be liable in the capacity in which he signed (maker, drawer, endorser, acceptor) to any holder in due course. Such liability shall be for abovementioned amount.
However, a holder in due course is entitled to recover from the person who delivered the instrument to him, an amount which is not more than the amount intended by him to be paid thereunder.
The person to whom the blank or incomplete papers are given, acts as an agent of the person giving such paper. By such signature, he gives the authority to fill up/complete the instrument.
After the instrument is so completed, the person who so signed the instrument, is bound in the capacity in which he signed.
In following cases, the person who signed the paper is not bound by its content—
• when it is not delivered by him (for example – it is stolen);</td>
</tr>
</table>

<table>
<tr><td></td><td></td><td>when it is not filled in or completed;
when it is not stamped.</td></tr>
<tr><td>Time and demand instruments</td><td colspan="2">

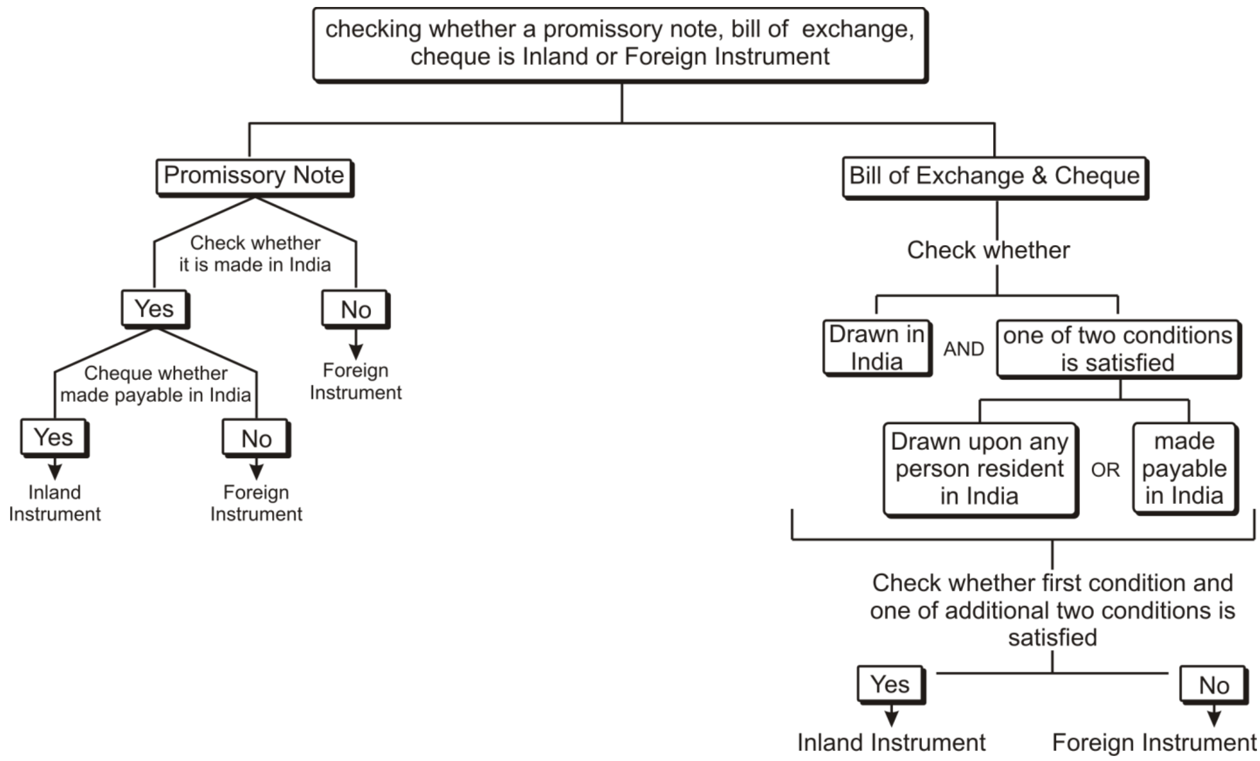
➢ Meaning given in Section 21

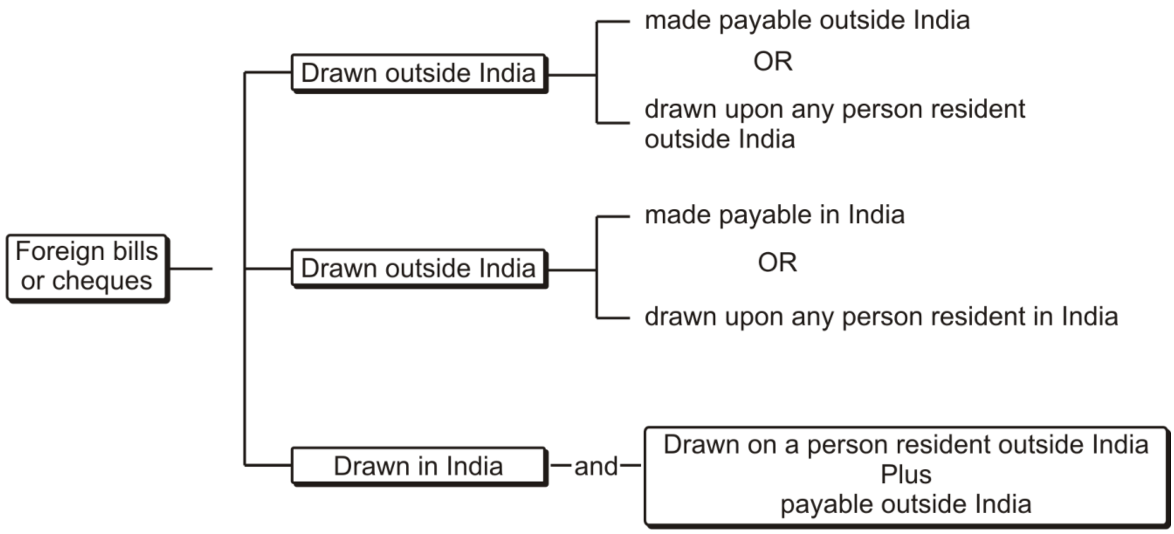
<table>
<tr><td rowspan="2">“after sight”</td><td>In case of promissory note</td><td>‘after sight’ means after presentment for sight.</td></tr>
<tr><td>In case of bill of exchange</td><td>‘after sight’ means after
acceptance, or
noting of non acceptance, or
protest of non acceptance.</td></tr>
<tr><td>“At sight” or “on presentment”</td><td colspan="2">In case of promissory note or bill of exchange, this expression means ‘on demand’.</td></tr>
</table>

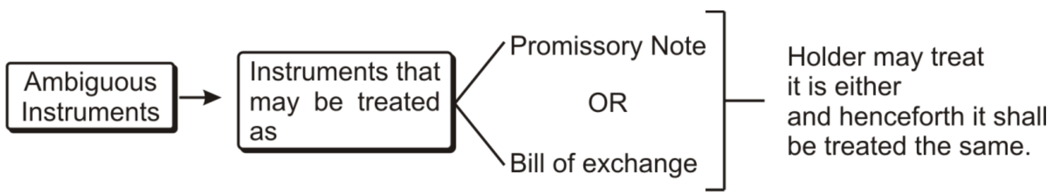
➢ Now, let us study the terms ‘time instrument’ and ‘demand instrument’

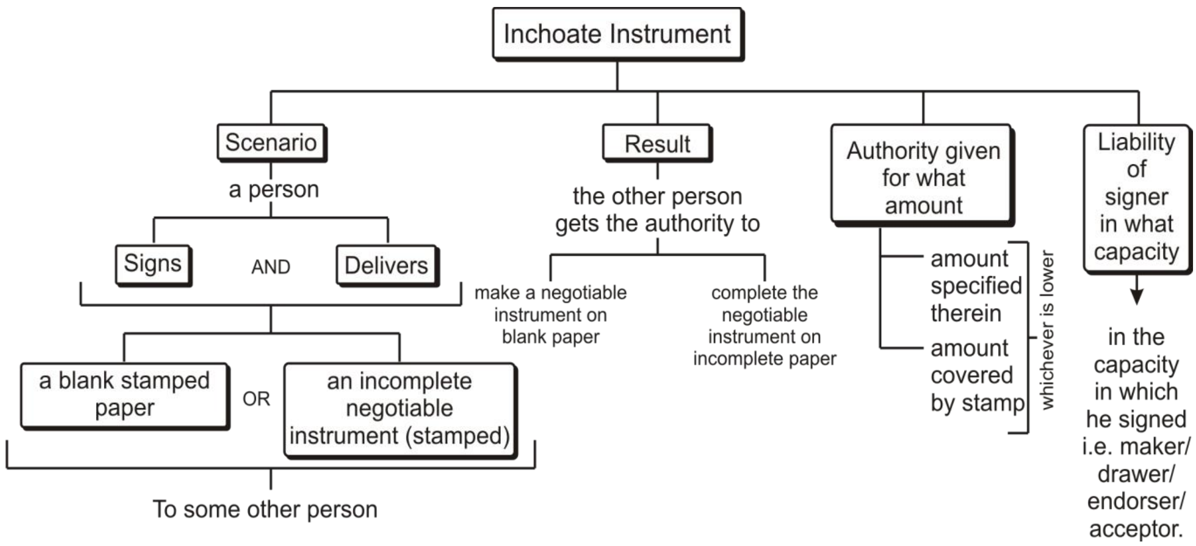
<table>
<tr><th>Time Instrument (after sight)</th><th>Demand Instrument (at sight)</th></tr>
<tr><td>A time instrument is an instrument which is payable—
after a fixed time (say 3 months); or
on a specified date (say 21st August 2016); or
on the happening of an event which is certain to happen (say death of a person).
Time instrument can be in form of a promissory note or a bill of exchange, but not a cheque. A cheque is always payable on demand.
Payment of a promissory note can be demanded only after note has been exhibited to maker.
In this case, the period of limitation starts from the date of maturity.</td><td>As per section 19, a demand instrument is one in which –
no time for payment is mentioned, or
it is expressly given that it is payable on demand.
Demand instrument can be in form of promissory note, bill of exchange, or cheque.
“On demand” means that the instrument is ‘immediately payable’.
Such instruments can be presented for payment at anytime at the option of holder.
The period of limitation shall as under-
<table>
<tr><td>If the instrument is payable ‘at sight’</td><td>From the date of its presentment</td></tr>
<tr><td>In any other case</td><td>From the date of its execution.</td></tr>
</table>
Time limit for making the drawer or endorser liable is as under—
<table>
<tr><td>Liability of drawer</td><td>Only if it is presented within a reasonable time after its issue</td></tr>
<tr><td>Liability of endorser</td><td>Only if it is presented within a reasonable time after endorsement</td></tr>
</table>
</td></tr>
</table>

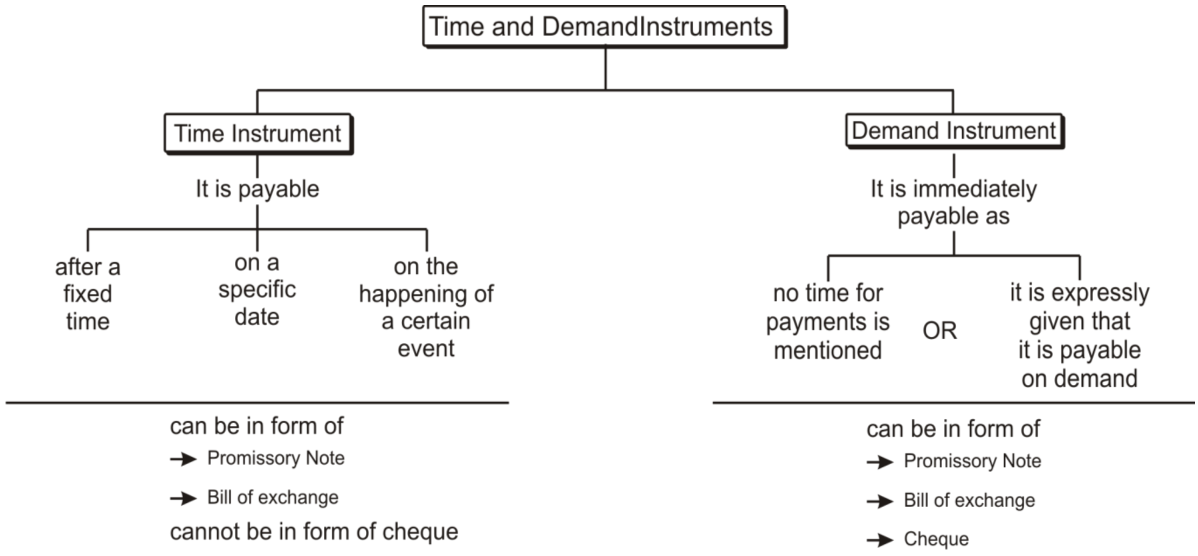
</td></tr>
</table>


checking whether a promissory note, bill of exchange, cheque is Inland or Foreign Instrument
Promissory Note
Check whether it is made in India
Yes
No
Foreign Instrument
Cheque whether made payable in India
Yes
Inland Instrument
No
Foreign Instrument
Bill of Exchange & Cheque
Check whether
Drawn in India
AND
one of two conditions is satisfied
Drawn upon any person resident in India
OR
made payable in India
Check whether first condition and one of additional two conditions is satisfied
Yes
Inland Instrument
No
Foreign Instrument


Foreign bills or cheques
Drawn outside India
made payable outside India
OR
drawn upon any person resident outside India
Drawn outside India
made payable in India
OR
drawn upon any person resident in India
Drawn in India
and
Drawn on a person resident outside India
Plus
payable outside India


Ambiguous Instruments
Instruments that may be treated as
Promissory Note
OR
Bill of exchange
Holder may treat it is either and henceforth it shall be treated the same.





❖ Acceptor

- **Section 7**
  - *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*.
- If the drawee of the bill gives his acceptance to the bill, he is known as the acceptor. After giving such acceptance, he becomes liable to the holder.
- Acceptance refers to conveying the assent to the order of the drawer by delivering or notifying the assent. Acceptance is generally made by writing the word 'accepted' and signing across the bill.
- **Section 33**

  No person except
  - *the drawee of a bill of exchange, or*
  - *all or some of several drawees, or*
  - *a person named therein as a drawee in case of need, or*
  - *an acceptor for honour,*

  can bind himself by an acceptance.

- **Section 34**
  Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.
- Apart from the four persons mentioned in Section 33 above, following persons may also accept a bill of exchange –
  - an agent of any of the abovementioned four persons;
  - in case where no drawee has been mentioned in the bill of exchange and a person accepts it, such person cannot deny his liability to the bill.
- **Drawee in case of need**
  - **Section 7**
    - *When in the bill or any endorsement thereon*
    - *the name of any person is given*
    - *in addition to the drawee, to be resorted to in case of need,*
    - *such person is called a "drawee in case of need"*
  - Sometimes, in addition to the name of the drawee, the name of one more person is mentioned in the bill. Such person is to be approached if the drawee fails to accept or pay the bill. As such person is approached only in case of need, he is known as 'drawee in case of need'. A bill is considered as dishonoured only when it been presented to 'drawee in case of need'.
  - A drawee in case of need may accept and pay the bill of exchange without previous protest **[Section 116]**

- **Acceptor for honour**
  - **Section 7**
    When a bill of exchange has been noted or protested for non acceptance or for better security, and any person accepts it supra protest for honour of the drawer or of anyone of the endorsers, such person is called an "acceptor for honour".
  - An 'acceptor for honour' voluntarily becomes party to a bill of exchange.

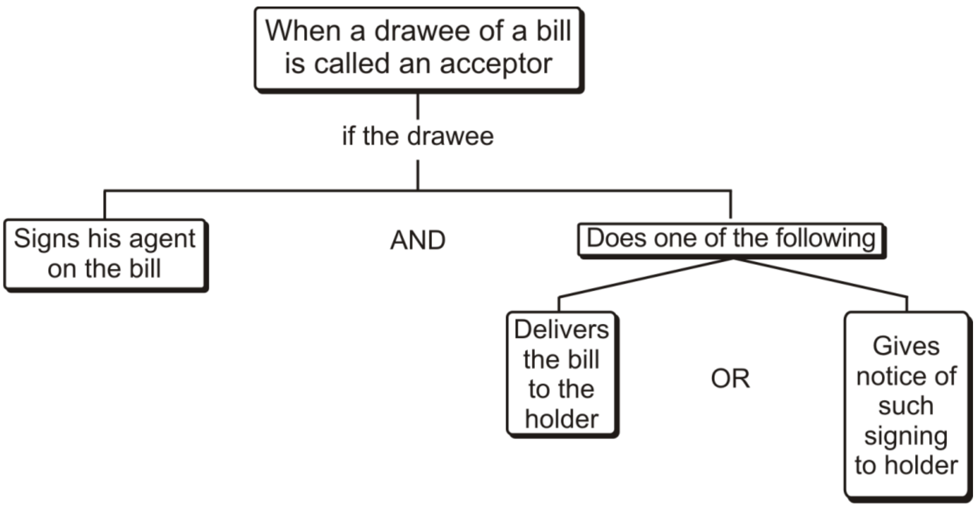
- **The essentials of a valid acceptance are as under –**

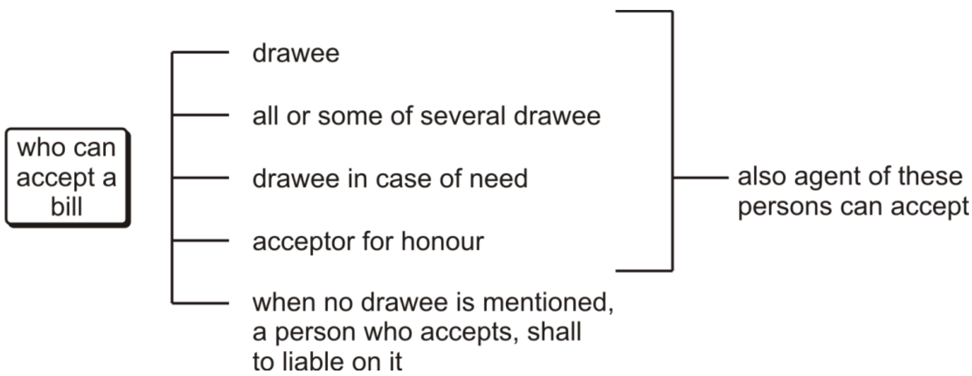
<table>
<tr><td>1</td><td>Acceptance must be in writing</td><td colspan="2">A verbal acceptance has no meaning. It must be in writing. However, no fixed format of words have been prescribed.</td></tr>
<tr><td>2</td><td>Acceptance must be signed</td><td colspan="2">The person accepting the bill must put his signatures on the bill.</td></tr>
<tr><td>3</td><td>Acceptance must be on the bill</td><td colspan="2">Acceptance must be given on the bill itself. It can be either on the face of the bill or on the backside. Acceptance given on a separate paper is not valid.</td></tr>
<tr><td>4</td><td>Acceptance must be completed by delivery</td><td colspan="2">➢ Acceptance is complete only when the acceptor either –
• delivers the accepted bill to the holder, or
• tenders notice of such acceptance to the holder of bill or to some person on his behalf.</td></tr>
<tr><td rowspan="3">5</td><td rowspan="3">Acceptance can be general or qualified</td><td colspan="2">➢ Acceptances are of two types-</td></tr>
<tr><td>General acceptance</td><td>When the bill is accepted without putting any qualifications to the order of the drawer, it is known as general acceptance. Here, the order of drawer is accepted as it is.</td></tr>
<tr><td>Qualified acceptance</td><td>In case of qualified acceptance, the order of the drawer is not accepted as it is, but some conditions and qualifications are added to it before giving acceptance. Through qualified acceptance, the acceptor either reduces his liability or accepts the liability but with certain conditions. The holder of the bill is entitled to refuse such qualified acceptance and treat the bill as dishonoured. If the holder</td></tr>
</table>

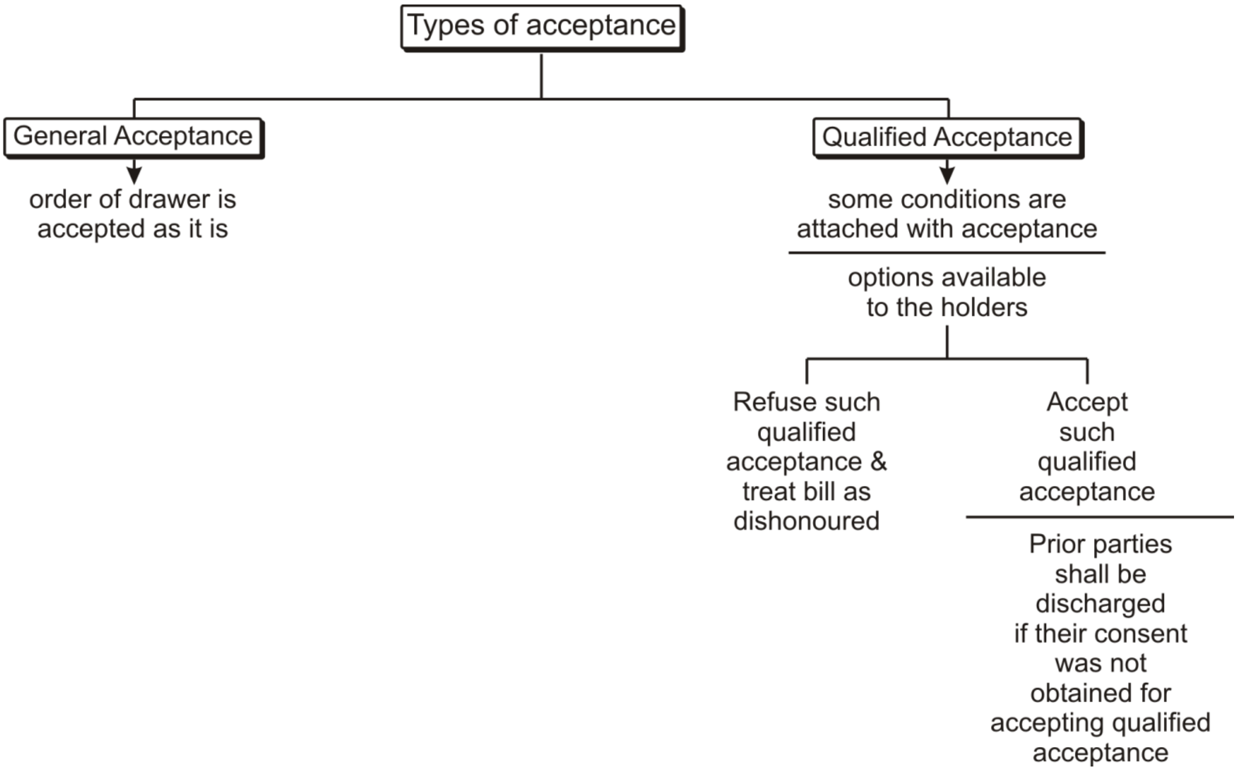
			accepts such qualified acceptance, without the consent of the prior parties, the latter are discharged from their liability.

- As per Explanation to Section 86, an acceptance is considered to be qualified–

<table>
<tr><td>Where a condition is attached to the acceptance</td><td colspan="2">Where the acceptance states that payment of the bill will be dependant on the happening of an event, it is a qualified acceptance.</td></tr>
<tr><td>Where only a part of the sum ordered to be paid, is accepted</td><td colspan="2">If acceptance is given for payment of only a part of the sum that was originally ordered to be paid, it is a qualifies acceptance.</td></tr>
<tr><td rowspan="2">Where it is qualified on the basis of location</td><td>Where no place of payment has been specified in the order</td><td>If acceptor undertakes to pay at a specified place, and not otherwise or elsewhere, it is a qualified acceptance</td></tr>
<tr><td>Where a place of payment has been specified in the order</td><td>If the acceptor undertakes to pay at some other place, and not otherwise or elsewhere, it is a qualified acceptance.</td></tr>
<tr><td>Where it is qualified on the basis of time</td><td colspan="2">Where it undertakes the payment at a time other than that at which under the order it would be legally due.</td></tr>
</table>







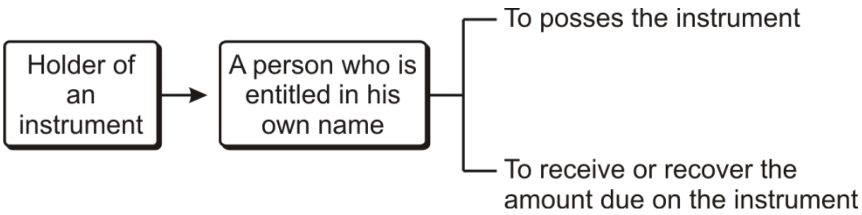
❖ Holder

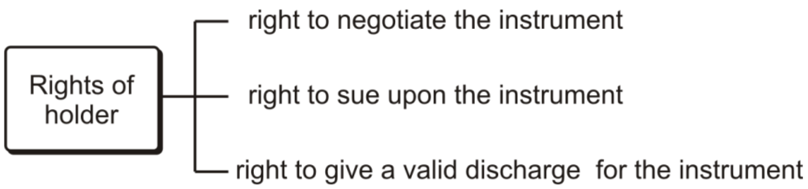
- **Section 8**
  The holder of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.
  Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.
- Thus, the term 'holder' refers to a person who is in possession of the instrument and is a payee or endorsee of such negotiable instrument.
- "Holder for value" means, as regards all parties prior to himself, a holder of an instrument for which value has at anytime been given.
- The holder of a negotiable instrument enjoys following rights-
  - he can negotiate the instrument (subject to certain exceptions);
  - only he can sue upon the negotiable instrument;
  - he can give a valid discharge for the instrument.

- Following conditions must be satisfied by a person for being termed as 'holder'-

Entitlement to possess the instrument in his own name	→ The holder may or may not possess the instrument. But, he should have the right to possess the instrument under some legal or valid title. → Following persons are treated as holder of instrument- • a person who is named as a payee; • a person who is named as an endorsee; • a person who is a bearer of the instrument (only in case of bearer instrument). → In addition to above, following persons are also treated as holder (even though they are not named as payee/endorsee and are not bearer as above)- • heir of deceased holder; • any person who becomes entitled to instrument by operation of law. → The emphasis is on the point that the person should be legally entitled to possess the instrument. He may or may not be physically possessing it.

	→ Thus, a person will not be called 'holder' if he is not legally entitled to possess the instrument in his own name. Even if such person is in possession of the instrument, he shall not be a 'holder'. **Example-** a thief, an endorsee under a forged endorsement, a finder of the instrument.
Entitlement to receive or recover the amount due on the instrument from the parties liable thereto.	→ In order to be termed as 'holder', the person must have— • the right to receive or recover the amount of the instrument; and • the authority to give a valid discharge to the payer. → Thus, if a person is entitled to possession of the instrument, but has been prohibited by court from receiving the amount due on the instrument, he shall still not be called 'holder'. → **Example-** an agent of the 'holder' does not become 'holder' himself, because he has no right to sue for the payment of the instrument.





❖ Holder in due course

➢ **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.

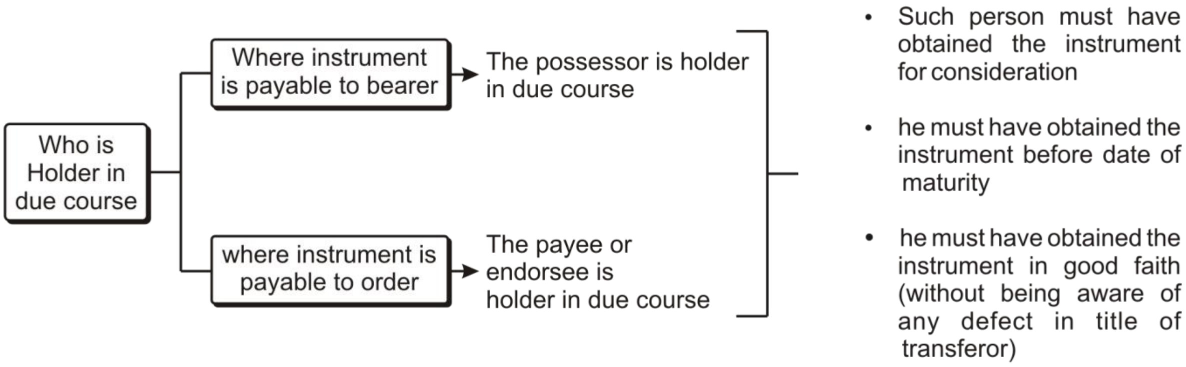
➢ The meaning of holder in due course is as under—

When the instrument is payable to bearer	"Holder in due Course" is a person who obtained the possession of the instrument for consideration, before the amount mentioned in the instrument became payable.
When the instrument is payable to order	"Holder in due course" is the person who becomes the payee or endorsee of the instrument, for consideration, before the amount mentioned in the instrument became payable.

➢ In both the above cases, such person must have received the instrument without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

➢ Thus, following are the essentials for a "Holder in due course"—

- He must have obtained the possession (or became payee/endorsee) for consideration;
- He should have obtained possession before the amount mentioned in the instrument became payable;
- He should not have any knowledge of the defect existing in the title of the person from whom he derived his title;
- He must have become holder in good faith;
- He must have taken the negotiable instrument complete and regular on the face of it.



❖ Privileges of Holder in due course

In case of inchoate stamped instrument (Section 20)	➢ In case of an inchoate instrument, if the holder fills an amount higher than the authorised amount, he cannot claim the unauthorised amount. He can only claim the authorised amount. ➢ However, in case such an instrument is transferred to a holder in due course, he can claim the entire amount written in the instrument (provided the stamp is sufficient to cover the amount). ➢ Thus, the defence that the instrument has not been filled in accordance with the authority, cannot be taken against the holder in due course. ➢ **Example-** X signs a blank stamped instrument and hands it over to Y with the authority to fill ₹ 10000/-. But, Y fills in ₹ 15000/-. Now, as Y is a holder, he cannot claim any amount in excess of ₹ 10000/-. Suppose, Y transfers the instrument to Z for a consideration of ₹ 15000/-. Z takes it in good faith. As Z is a holder in due course, he has every authority to recover ₹ 15000/- from X.
In case of fictitious bill (Section 42)	➢ Fictitious bill is one in which the name of the drawer and payee is of persons who are non existent. ➢ If the 'holder in due course' is able to prove that the handwriting of first endorsement on the bill and the signature of the drawer, is the same, then the acceptor cannot refuse to pay such 'holder in due course' on the pretext that the name of the drawer is fictitious.
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.**[Section 46 & 47]**
In case the original validity of the instrument is denied	➢ In a suit filed by the 'holder in due course', validity of the instrument as originally made or drawn, cannot be denied by any of the following persons- • maker of promissory note; • drawer of a bill or cheque; • acceptor of a bill for the honour of drawer. **[Section 120]**
In case where instrument is obtained by unlawful means or for unlawful consideration	➢ The 'holder in due course' can obtain payment from the person who is liable in a negotiable instrument was – • lost by the party liable on the instrument; or • obtained from such party by means of an offence or fraud or for an unlawful consideration. **[Section 58]**
In case payee's capacity to endorse is denied	➢ No maker of a promissory note and no acceptor of a bill of exchange 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. ➢ Thus, the holder in due course gets a good title to the instrument.

❖ Holder deriving title from holder in due course

➢ **Section 53**

A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

❖ Distinction between holder and 'holder in due course'

SN	Basis of difference	Holder	Holder in due course
1	**Consideration**	May possess the instrument even without consideration	Acquires the instrument only for consideration
2	**Time of possession**	Holder may get the possession of the instrument even after the date when amount becomes payable	Must become the possessor of instrument before the amount becomes payable
3	**Title**	Gets the same title as that of the transferor	Gets better title than the transferor
4	**Acquiring the instrument in good faith**	Not Applicable	Becomes the payee of the instrument on good faith, i.e. without having sufficient cause to believe that any defect existed in the transferor's title.

❖ Maturity

➢ **Section 22**

The maturity of a promissory note or bill of exchange is the date at which it falls due.

Days of grace.—Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Maturity in case of cheques	A cheque is always payable on demand. Therefore, it becomes immediately payable on the date of its execution. So, there is no question of maturity.	
Maturity in case of promissory notes and bill of exchange	***When it is payable on demand***	There is no question of maturity because the instrument is payable immediately.
	When it is payable otherwise than on demand	There is a maturity date in case of only these instruments. The detailed provisions in relation to its maturity has been given underneath.

➢ A promissory note or bill of exchange is at maturity three days after the date on which it is expressed to be payable (but only in cases where it is not expressed to be payable on demand, at sight or on presentment). Three days are allowed as grace. Such instruments cannot be presented on the date on which it is expressed to be payable, but only after another three days of grace.

➢ **In case of bills payable after sight, from which date the period shall be counted –**
Where a bill is payable after a fixed period after sight, the time is to be calculated from—

- the date of acceptance (where the bill is accepted); OR
- the date of noting or protest (where the bill is noted or protested for non acceptance).

➢ In case of a promissory note, the expression 'after sight' means after exhibition thereof to maker for founding a claim for payment.

➢ In the case of a bill payable after a stipulated number of months after sight which has been accepted for honour, the date of its maturity is calculated from the date of acceptance for honour. 'Acceptance for honour' has been explained in a later chapter under Section 108.

➢ **Calculating maturity of a bill or promissory note (Section 23)**

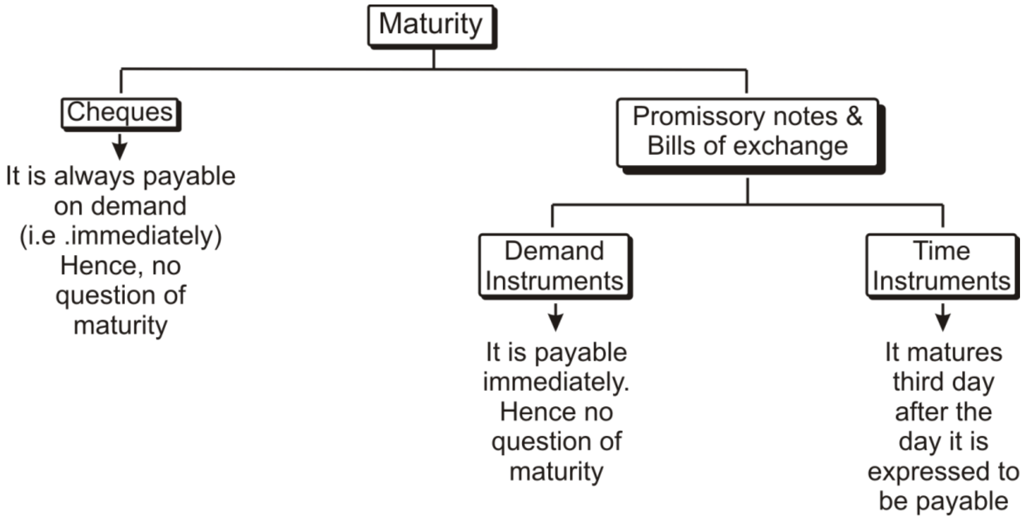
When the instrument is payable	→ The period of the instrument shall terminate as under--	
	When it is made	The stated period terminates on the day of the month which corresponds with the day on which the instrument is dated.

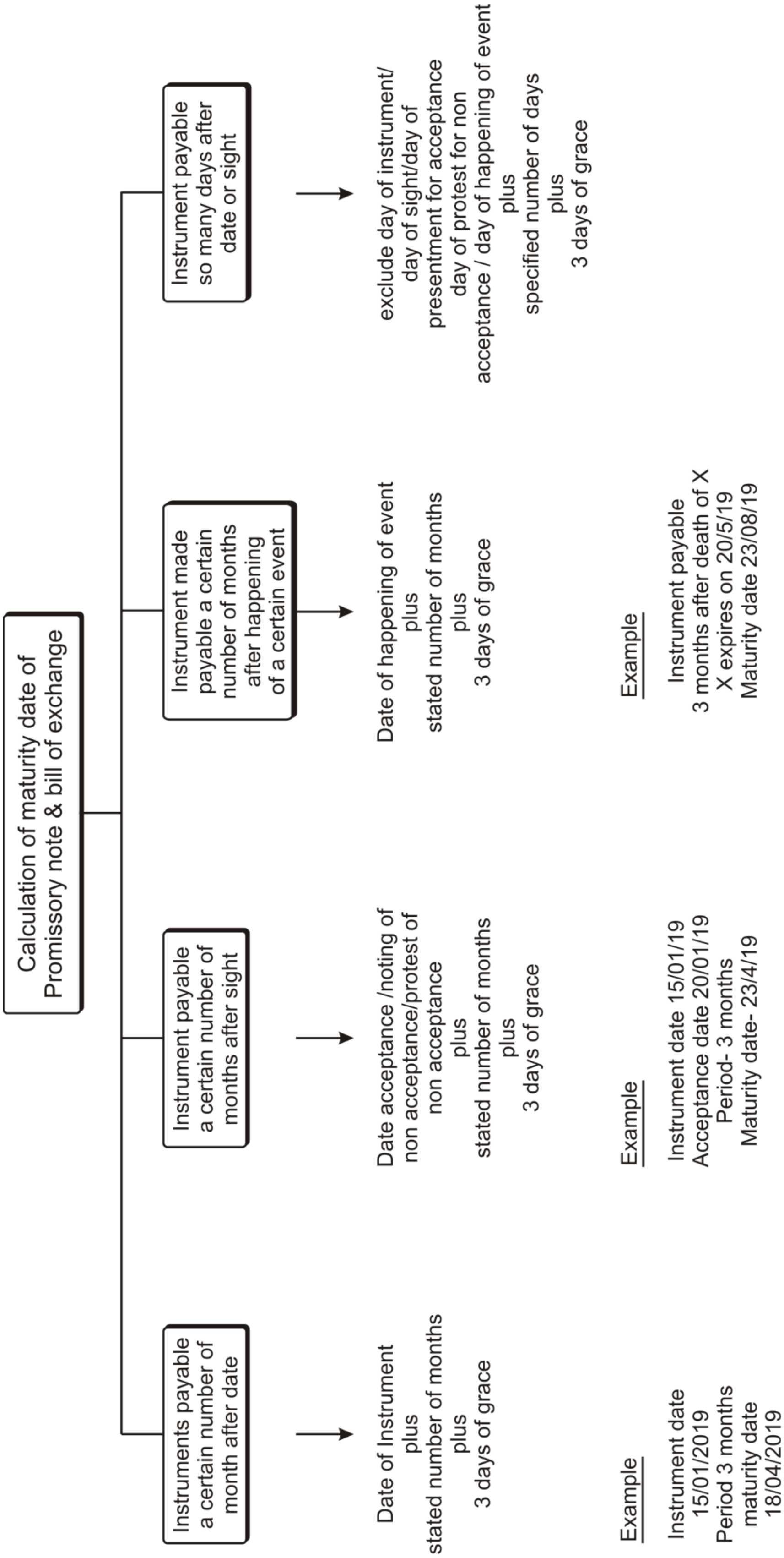
a certain number of months after date or sight	***payable after a stated number of months after date***	Example- A bill is drawn on 15^{th} January 2015 and accepted on 20^{th} January 2015. It is for ₹ 5000/- payable after three months. The stated period shall expire on 15^{th} April 2015 (i.e. the corresponding day after 3 months from the day on which it is drawn). The instrument matures three days thereafter, i.e. on 18^{th} April.
	When it is made payable after a stated number of months after sight	The stated period terminates on the day of the month which corresponds with – • the day on which it is presented for acceptance or sight; OR • the day on which it is noted for non-acceptance; OR • the day on which it is protested for non acceptance. **Example-** In the above case, if the bill is accepted by drawee, the period of the bill shall terminate on 20^{th} April 2015 (i.e. the corresponding day after 3 months from the date on which it is presented for acceptance). The bill matures on 23rd April 2015. However, if the bill is not accepted and the drawer gets it noted for non acceptance on 22^{nd} January 2015, the period terminates on 22^{nd} April 2015 and bill maturity date shall be 25^{th} April 2015.
	When it is made payable a stated number of months after a certain event	The stated period terminates on the day of the month which corresponds with the day on which event happens. **Example-** A bill is payable 3 months after death of Mr. X. Mr. X dies on 20 May 2015. The period of bill terminates on 20^{th} August 2015. Bill matures on 23^{rd} August 2015.
	→ If the month in which the above period terminates, has no corresponding day, the period terminates on last day of such month. **Illustration given in Section 23** (a) A negotiable instrument dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878. (b) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.	
When the instrument is payable so many days after date or sight	→ As per Section 24, in cases where the bill or note is made payable at certain number of days after date or after sight or after a certain event, below mentioned day shall be excluded— • day of date; or • day of presentment for acceptance; or • day of sight; or • day of protest for non acceptance; or • day on which the certain event happens.	

- **What if the date of maturity is a public holiday**

  If the date of maturity of promissory note or bill of exchange is a public holiday, the instrument will mature on the next preceding business day. **Example-** If a bill matures on 15^{th} August 2015, which is a public holiday, the maturity date shall be deemed to be 14^{th} August 2015. If 14^{th} August 2015 also happens to be a public holiday, then 13^{th} August 2015 will be the date of maturity.
- "Public holiday" includes –
  - Sunday; and
  - any other day declared by the Central Government, by notification in the Official Gazette,

to be a public holiday.





❖ Payment in due course [Section 10]

➢ **Section 10**

"Payment in due course" means

- *payment in accordance with the apparent tenor of the instrument*

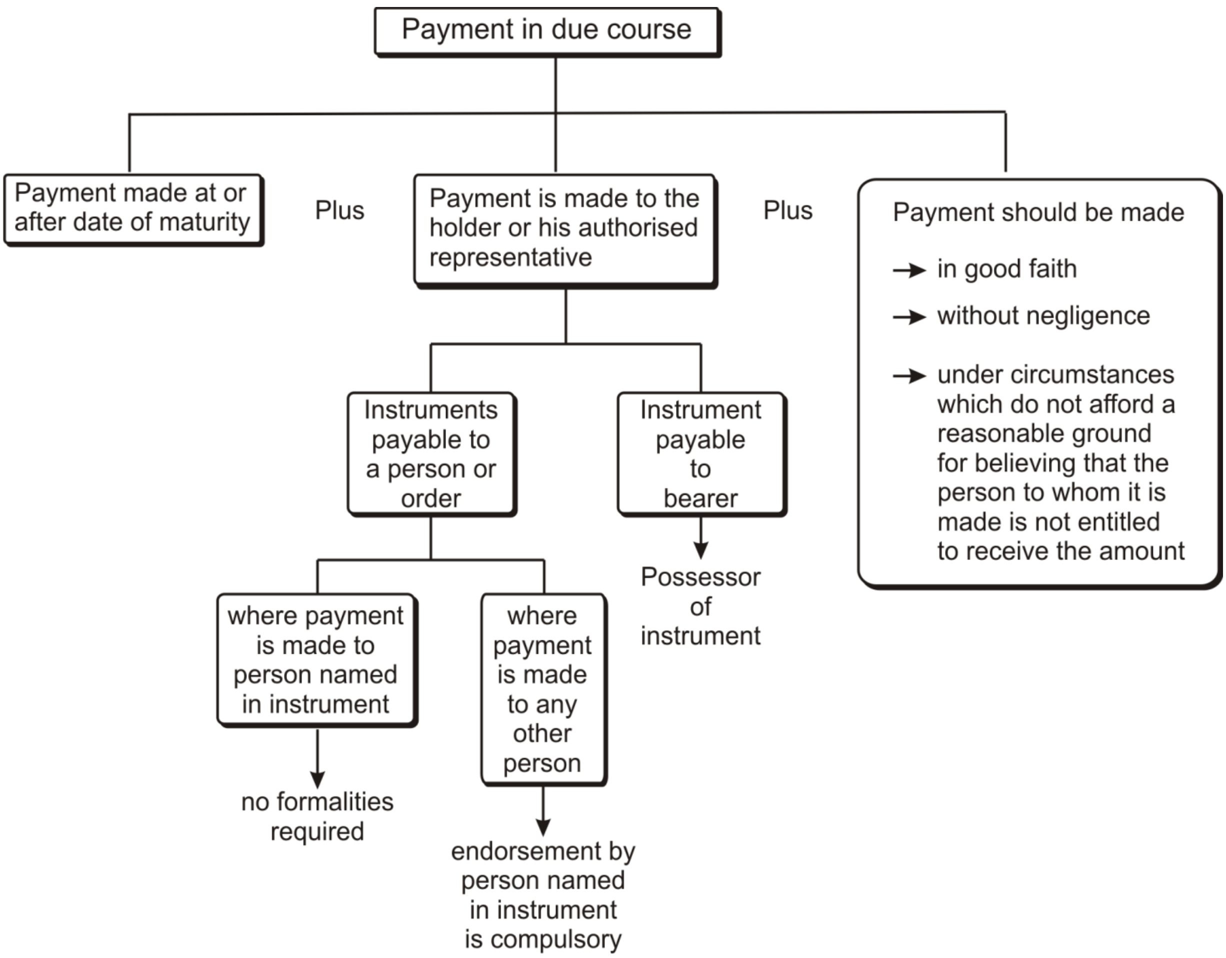
- *in good faith and without negligence to any person in possession thereof*
- *under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.*

➢ In order to operate as a valid discharge of the instrument, following conditions must be fulfilled-

<table>
<tr><td>Payment should be made in accordance with the apparent tenor of the instrument</td><td colspan="2">→ ‘Apparent tenor’ refers to the tenure mentioned on the instrument, with the consent of the parties.
→ Therefore, the payment should be made at or after maturity.
→ If the payment is made before maturity, it shall not be a ‘payment in due course’ because it is not made in accordance with ‘apparent tenure’.</td></tr>
<tr><td>Payment to be made in money only</td><td colspan="2">→ Payment should be made in terms of money only, unless the holder agrees to accept payment in a different form.</td></tr>
<tr><td rowspan="3">Payment should be made to the person who is in possession of the instrument</td><td colspan="2">→ Payment should be made to either-
• holder of the instrument; or
• a person authorised to receive payment on behalf of holder.
→ But if there are circumstances which afford a reasonable ground for believing that the possessor of the instrument is not entitled to receive payment, it should not be paid to him. If it is paid to him, it shall not be a payment in due course.</td></tr>
<tr><td>Instrument payable to a particular person or order</td><td>• In such case, if the instrument has not been endorsed by such person, then payment to any other person shall not constitute ‘payment in due course’.
• However, if the instrument has been endorsed in blank, the possessor of the instrument can be paid and it shall be treated as ‘payment in due course’. But, no suspicious circumstances should exist.</td></tr>
<tr><td>Instrument payable to bearer</td><td>• In such case, the possessor of the instrument can be paid if no suspicious circumstances exist. It shall be treated as ‘payment in due course’.</td></tr>
<tr><td>Payment should be made in good faith</td><td colspan="2">→ Payment should be made-
• in good faith;
• without negligence; and
• under circumstances which do not afford a reasonable ground for believing that the person to whom it is made is not entitled to receive the amount.
→ In case of suspicious circumstances, the person making the payment should immediately enquire about the details. If he makes the payment negligently, it will not be treated as ‘payment in due course’. Even his liability to real holder for value will not be discharged.</td></tr>
</table>

➢ **Who can pay a bill of exchange**

Any party to a bill can pay the bill. After payment, such party acquires the right of the holder against all the parties prior to him. Generally, a stranger cannot pay a bill, but he can pay supra protest and for honour of some party to the bill or note.



❖ Capacity of Parties

➢ **Section 26**

- *Every person capable of contracting, according to the law to which he is subject,*
- *may bind himself and be bound by*
- *the making, drawing , acceptance, endorsement, delivery and negotiation*
- *of a promissory note, bill of exchange or cheque.*

➢ Section 26 makes it clear that the person who have the capacity to contract, are also capable to incur liability on a negotiable instrument.

➢ In relation to parties which are not competent to contract (like a minor)—

- such persons cannot be liable as a party to a negotiable instrument, but
- can make other parties liable because he can be a payee or promisee.

If some of the parties to a negotiable instrument are not competent to contract	The instrument shall be void against such incompetent parties. Other parties who are competent to contract shall remain liable. Hence, the incompetent party can make the competent party liable.
When all the parties to a negotiable instrument are incompetent to contract	The instrument shall be null and void.

➢ The provisions relating to various such persons in a negotiable instrument are as under –

Minor	→ **Section 26** *A minor may draw, endorse, deliver and negotiate such instrument so as to bind all parties except himself.* → The position of a minor in relation to a negotiable instrument is as under- • A minor can be a party to a negotiable instrument. He can draw, endorse, deliver

<table>
<tr><td></td><td colspan="3">and negotiate a negotiable instrument.
• But a minor cannot incur any liability on such instrument. Adult parties remain liable thereon.
• A minor can acquire rights under a negotiable instrument (including right to sue through his guardian).
• A minor can be a promisee/payee/endorsee.</td></tr>
<tr><td rowspan="5">Body corporate</td><td colspan="3">→ Section 26
Nothing herein contained shall be deemed to empower a corporation to make, endorse or accept such instruments except in case in which, under the law for the time being in force, they are so empowered.
→ A company can draw, accept or negotiate a negotiable instrument only when it is authorised for such acts by its Memorandum of Association. In the absence of any such authority, any instrument drawn/accepted/negotiated by company shall be void.</td></tr>
<tr><td rowspan="3">When the Memorandum of Association authorises the company to draw/accept or negotiate a negotiable instrument</td><td colspan="2">The company can draw/accept/negotiate a negotiable instrument. It can also be a payee/endorsee/holder.</td></tr>
<tr><td>In case of trading company</td><td>The authority is implied</td></tr>
<tr><td>In case of other companies</td><td>The Memorandum should give express authority in this regard.</td></tr>
<tr><td>When the Memorandum of Association does not authorise the company to draw/accept/negotiate an instrument</td><td colspan="2">In such cases, the company cannot draw/accept/negotiate an instrument. But it can be a payee/endorsee/holder. It can also enforce the payment of the amount of the instrument.</td></tr>
<tr><td>Agent (Section 27)</td><td colspan="3">→ A person who has the capacity to make/draw/accept/endorse a negotiable instrument, can also do so through a duly authorised agent. Such person may bind himself or be bound by a duly authorised agent acting in his name. Thus, such person shall incur liability to the instrument through his agent.
→ Where a person appoints an agent to transact the business on his behalf (and also to receive and discharge debts), it does not mean that the agent has been authorised to accept or endorse bills of exchange on behalf of principal.
→ Where the principal authorises his agent to draw bills of exchange, it does not mean that the agent has also been authorised for endorsing the bill.
→ Thus, Principal shall give authority in clear terms to agent.
→ When an agent signs any instrument, he shall clearly mention thereon that—
• he signs as an agent, or
• he does not intend thereby to incur personal liability.
→ If the agent fails to mention as above, he shall be held personally liable on the instrument. However, if anybody induced the agent to sign on the belief that the principal only shall be liable, then the agent shall not be personally liable.[Section 28]</td></tr>
<tr><td>Legal represent ative</td><td colspan="3">→ The legal representative of a deceased person, who signs an instrument (as make/drawee/acceptor/endorser) shall be personally liable thereon.
→ However, he can limit his liability to the extent of assets inherited by him from the said deceased, by expressly mentioning therein that he is not personally liable.</td></tr>
</table>

CORPORATE AND OTHER LAWS

[For CA (Intermediate) – New Syllabus]

By

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FCA, DISA, B.Com (Hons.)

Laws Covered :--

1. The Companies Act 2013 [Section 1 to 148]
2. The Indian Contract Act 1872 [Section 123 onwards]
3. The Negotiable Instruments Act 1881
4. The General Clauses Act 1897
5. Interpretation of Statutes.

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