Negotiable Instrument Act 1881

The word 'negotiable' means "transferable by delivery" and 'instrument means "a written document by which a right is created in favour of some person or persons" Thus; the term negotiable instrument literally means a written document which creates a right in favour of somebody and is freely transferable.

The term 'negotiable instrument' as such is not defined in the Negotiable Instrument Act, 1881 but section 13 of the Act gives its meaning.

According to section 13, a negotiable instrument means a promisory note, a bill of exchange or a cheque payable either to order or to bearer.

Thus, a negotiable instrument is a piece of paper which is entitles a person to a certain sum of money and which transferable from one to another person by a delivery or endorsement and delivery.

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Types of negotiable in Instruments

Negotiable instruments are of three type as follows:-

(a) promissory Note [section 4]

"A promissory-Note is an instrum-ent in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker; to pay a certain sum of money only to or to the order of a certain person or the bearer of the instrument".

From the following illustrations, we come to know the nature of promissory note:

A signs instruments in the following terms:

(i) "I promise to pay B or order Rs 1500".

(ii) "I acknowledge myself to be indebted to B in Rs 5000 to be paid on demand for value received".

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(iii) " Mr. D, I.O.U Rs 10,000

The instrument respectively marked (i) and (ii) are promissory-notes These instruments respectively marked (iii) are not promissory notes

Bank notes, currency notes, though are similar to promissory notes in all respectively have been expressely excluded.

Specimen of a promissory note

Rs. 5000/- Pune
20th Aug, 2003

Three months after the date. I promise to pay Mr. X. of mumbai or order a sum of Rupees fifty thousand for value received.

TO
Mr
Address
Mumbai

Stamp
sign of Mr. Y

Essential characteristics of a promissory Note:

(1) promissory is a negotiable instru-ment.

(2) It must be in writing.

(3) It is a promise to pay money only

(4) It must be definite. The promise to pay must be definite

(5) It must be unconditional. under-taking to pay must be uncondi-tional.

(6) It must be signed by the maker.

(7) It is the maker of the promissory note must be a certain person and the payee also be certain

(8) Amount of the promissory note must be certain

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(b) 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 on the order of a certain person or to the bearer of the instruments.

Suppose, Mr. X of mumbai purchases goods on credit from mr. Y of pune for Rs. 1000/- to be paid 3 months after date mr. Y buys goods from mr. S of Nagar for Rs 1000/- on the same terms of conditions. Here, mr. Y may order mr. X to pay Rs 1000/- (a certain sum) to mr. S who will be nothing but a bill of exchange

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Specimen Of Bill Of Exchange

Rs 1,000/-		Pune 15th Aug. 2003
Three months after the date pay to mr. S of Nagar or order the sum of Rs. ONE THOUSAND. for value received		
TO mr X Address Mumbai	Accepted sign of mr. X	stamp sign of mr. Y

following are some of the important essential characteristics of a bill of exchange :-

(1) It must be in writing
(2) It must contain an order to pay and not request
(3) The order must be conditional
(4) The parties to the bill of exchange i.e; drawer, drawee and payee must be certain
(5) Bill of exchange must be signed by the drawer and accepted by the drawee

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Thus, it becomes obvious from the above mentioned important characteristics of a bill of exchange that if certain requirements are not fulfilled the document is not called a bill of exchange.

for example, it is written on the piece of paper that, "please allow the bearer to receive Rs one Thousand and oblige" or "I hereby authorise you to pay on my account to the order of Mr. K.R Shimpi Rs. one thousand only." It cannot be called a bill of exchange simply because it is not an order to pay.

(C) cheque [Section 6]

By amending the act in 2002, the definition of a cheque previously given in Section 6 has been modified or revised and now the definition of a cheque with necessary explanations as given in section 6 of the Act is as follows:

"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 electric image of a truncated cheque and a cheque in the electronic form".

Cheques contained printed in the cheque books are made available by the banks demand by their customers. Such cheques are usually printed in English and Hindi or in the forms given below.

Date......

pay.......... या धारक को or bearer

Rupees .... अदा करें

RS.

खाता क्रमांक
A/C NO.

प० प०
L F

ह० Initial

BANK OF ......

NO-134567

को० सं०

code no

NO. X-125739 BANK OF ....

.... Date ....

pay .... Or BEARER

Rs .... Rs.

A/C NO.	
LF	

There is no specific format a cheque prescribed in the Act. But it is certain that there must be certain particulars written on a cheque such as name of the bank, branch, address, account number, space for the name of the payee, amount in words and in figures Specimen Signature etc.

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Distinction between a Bill of Exchange and a promissory Note

(a) In a bill of exchange, there are three parties i.e; the drawer, the drawee and the payee while in a promissory note there are two parties i.e maker or drawer and the payee.

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(b) The drawer of the bill is the creditor while the drawer of the promissory note is the debtor

(c) The bill of exchange contains an unconditional order to pay while a promissory note contains an unconditional promise to pay

(d) In a bill of exchange, the acceptance by a drawee is required while the maker of a promissory note is the promiser and is liable to pay

(e) The liabity of the drawer of a bill of exchange is secondary and conditional whereas that of a maker of a promissory note is primary and absolute

(f) In a bill of exchange, the drawer and the payee can be one and the same person but a promissory note cannot be made payable to the maker himself.

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(g) The drawer of a bill of exchange stands in relation with the acceptor and not with the payee but the maker of the promissory note stands in immediate relation with the payee.

Distinction between a cheque and a Bill of Exchange

(i) A cheque is always drawn on a specified banker and therefore a bank/banker is always the drawee. A Bill of exchange can be drawn on any person or any bank.

(ii) A cheque is always payable on demand, while a bill, other than a cheque, may be payable on demand or at the expiry of a time.

(iii) A cheque requires no acceptance whereas a bill of exchange must be accepted by the drawee before he is called upon to pay the amount of the bill

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(iv) In the case of a bill of exchange three days of grace are allowed unless it is made payable on demand while in the case of ~~are~~ a cheque, no such days of grace are allowed and it is always payable on demand.

(v) A cheque can be crossed but not a bill.

(vi) A cheque doesn't require any stamp to be affixed on it whereas a bill of exchange except in certain cases must be stamped

(vii) The payment of a cheque can be countermanded by the drawer whereas the payment of the bill of exchange cannot be countermanded.

(viii) The drawer of the cheque is not discharged from his liability of there is any delay presenting the cheque. A Bill of exchange is required to be presented according to the law to the acceptor.

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