



**Negotiable Instruments ACT,
1881 (Part - 1)**

[FREQUENTLY ASKED QUESTIONS]

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FREQUENTLY ASKED QUESTIONS

Q-1. What is Promissory Note? What are its essential elements?

A-1. Promissory note is an instrument in writing containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to order of, a certain person or to the bearer of the instrument. Its essential elements are mentioned below:

- It must be in writing
- Promise to Pay
- Definite and unconditional
- Signed by the maker
- Certain parties
- Amount must be certain

Q-2. Mention the types of crossing in cheque.

A-2. Generally two types of crossing are seen on the cheques namely

(i) General crossing (ii) Special Crossing

Q-3. What are essentials required for Holder in due course?

A-3.

- He must be a holder in due course
- He must be a holder of valuable consideration
- He must become a holder of the negotiable instrument before the date of maturity
- He must be of good faith

Q-4. Which two conditions are required for Negotiation?

A-4. There must be a transfer of the instrument to another person; and

The transfer must be made in such a manner as to constitute the transferee the holder of the instrument.

Q-5. What are negotiable instruments?

A-5. negotiable instrument may be defined as "an instrument, the. property in which is acquired by anyone who takes it *bona fide*, and for value, notwithstanding any defect of title in the person from whom he took it, from which it follows that an instrument cannot be negotiable unless it is such and

in such a state that the true owner could transfer the contract or engagement contained therein by simple delivery of instrument" (Willis- *The Law of Negotiable Securities*, Page 6).

A-6. What are the modes of transfer of negotiation?

A-6. There are basically two modes of transfer of Negotiation, namely,

1. Negotiation by delivery (Sec. 47): Where a promissory note or a bill of exchange or a cheque is payable to a bearer, it may be negotiated by delivery thereof.

Example: A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep it for B. The instrument has been negotiated.

2. Negotiation by endorsement and delivery (Sec. 48):

A promissory note, a cheque or a bill of exchange payable to order can be negotiated only by endorsement and delivery. Unless the holder signs his endorsement on the instrument and delivers it, the transferee does not become a holder. If there are more payees than one, all must endorse it.

Q-7. What are the classification of Negotiable Instruments?

A-7. The negotiable instruments may be classified as under:

(1) Bearer Instruments

A promissory note, bill of exchange or cheque is payable to bearer when (i) it is expressed to be so payable, or (ii) the only or last endorsement on the instrument is an endorsement in blank, A person who is a holder of a bearer instrument can obtain the payment of the instrument.

(2) Order Instruments

A promissory note, bill of exchange or cheque is payable to order (i) which is expressed to be so payable; or (ii) which is expressed to be payable to a particular person, and does not contain any words prohibiting transfer or indicating an intention that it shall not be transferable.

(3) Inland Instruments (Section 11)

A promissory note, bill of exchange or cheque drawn or made in India, and made payable, or drawn upon any person, resident in India shall be deemed to be an inland instrument. Since a promissory note is not drawn on any

person, an inland promissory note is one which is made payable in India. Subject to this exception, an inland instrument is one which is either:

- (i) drawn and made payable in India, or
- (ii) drawn in India upon some persons resident therein, even though it is made payable in a foreign country.

(4) Foreign Instruments

An instrument which is not an inland instrument, is deemed to be a foreign instrument. The essentials of a foreign instrument include that:

- (i) it must be drawn outside India and made payable outside or inside India; or
- (ii) it must be drawn in India and made payable outside India and drawn on a person resident outside India.

(5) Demand Instruments (Section 19)

A promissory note or a bill of exchange in which no time for payment is specified is an instrument payable on demand.

(6) Time Instruments

Time instruments are those which are payable at sometime in the future. Therefore, a promissory note or a bill of exchange payable after a fixed period, or after sight, or on specified day, or on the happening of an event which is certain to happen, is known as a time instrument. The

expression "after sight" in a promissory note means that the payment cannot be demanded on it unless it has been shown to the maker. In the case of bill of exchange, the expression "after sight" means after acceptance, or after noting for non-acceptance or after protest for non-acceptance.

(7) Ambiguous Instruments (Section 17)

An instrument, which in form is such that it may either be treated by the holder as a bill or as a note, is an ambiguous instrument. Section 5(2) of the English Bills of Exchange Act provides that where in a bill, the drawer and the drawee are the same person or where the drawee is a fictitious person or a person incompetent to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Bill drawn to or to the order of the drawee or by an agent on his principal, or by one branch of a bank on another or by the direction of a company or their cashier are also ambiguous instruments. A promissory note addressed to a third person may be treated as a bill by such person by accepting it, while a bill not addressed to anyone may be treated as a note. But where the drawer and payee are the *same e.g.*, where A draws a bill payable to A's order, it is not an ambiguous instrument and cannot be treated as a promissory note. Once an instrument has been treated

either as a bill or as a note, it cannot be treated differently afterwards.

(8) Inchoate or Incomplete Instrument (Section 20)

When one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein, and not exceeding the amount, covered by the stamp. Such an instrument is called an inchoate instrument.