SNS COLLEGE OF ENGINEERING

Kurumbapalayam (Po), Coimbatore – 641 107
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DEPARTMENT OF MANAGEMENT STUDIES

COURSE NAME : 19BA104- LEGAL ASPECTS OF BUSINESS

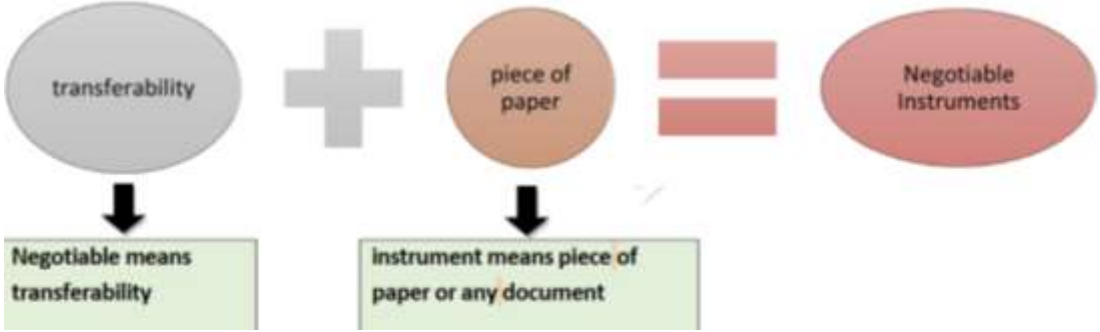
I YEAR / I SEMESTER

Unit -3 : NEGOTIABLE INSTRUMENTS ACT 1881

Introduction

This Act is enacted to define and amend laws relating to promissory note, bills of exchange and cheque.
This Act is applicable to whole of India including Jammu and Kashmir.
This act came into force on 1st March 1882.

Meaning of Negotiable instrument



 A negotiable instrument is actually a written document and is transferrable.
 This document specifies payment to a specific person or the bearer of the instrument at a specific date.
 Act does not define ‘Negotiable instruments’ however section 13 provides for 3 kind of negotiable instrument viz. promissory note, bills of exchange and cheque

Features of Negotiable Instruments

1) It should be in writing
2) Freely transferable
3) It should create a right of a person to receive money and a corresponding liability of a person to pay money.
4) Holder's title free from defects –
a) A holder in due course acquires a good title irrespective of any defect in a previous holder'stitle.
b) A holder in due course is one who receives the instrument: for consideration; without notice as to the defect in the title of the transferor; i.e. in good faith and before maturity
5) Transferability –
A negotiable instrument can be transferred infinitum, i.e., can be transferred any number of times, till its payment

Presumptions – Section 118

A negotiable instrument is subject to certain presumptions (Section 118).

a) Consideration :
It shall be presumed that every negotiable instrument was made or drawn for consideration, and that every such instrument when it was accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.

b) Date : It shall be presumed that every negotiable instrument bearing a date was made or drawn on such date.

c) Time of acceptance : It shall be presumed that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity.

d) Transfer : It shall be presumed that every transfer of the negotiable instrument was made before its maturity.

e) Order of Indorsement – It shall be presumed that the indorsements were made in the order in which they appear thereon.

f) Stamp – It shall be presumed that an instrument is duly signed and stamped.

The above presumptions are rebuttable by evidence to the contrary.

Kinds of negotiable instruments - Section 13

- Promissory note - Section 4
- Bills of exchange - Section 5
- Cheque - Section 6

Promissory Note – Section 4

Meaning :

A Promissory Note is a legal financial instrument issued by one party, promising to pay the debt owed to another party

Definition :

"A 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 the order of, a certain person, or to the bearer of the instrument".

Note : Bank note or currency note is not a promissory note

Parties to promissory note –

Maker: The person who makes the promissory note and promises to pay is called the maker.

Payee: The person to whom the payment is to be made is called the payee.

Requisites (Essentials) of a Promissory Note

- The promissory note must be in writing.
- It **must** contain an undertaking to pay
- There must be an express promise to pay.
- The promise to pay should be unconditional
- The promissory note must be signed by the maker.
- The sum payable must be certain
- The instrument must contain a promise to pay money and money only

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Other important points –

a) The maker and payee must be certain.
b) Stamping of Promissory Note is essential under The Indian Stamp Act, 1899.
c) An unstamped promissory note is not admissible in evidence and no suit can be maintained.
d) It must contain date
e) The **limitation period** for a promissory note to file a suit is **3 years** from the date of execution or from the date of acknowledgement

Bills of Exchange – Section 5

Meaning :

Bill of Exchange can be understood as a written negotiable instrument, that carries an unconditional order to pay a specified sum of money to a person or the holder of the instrument, as directed in the instrument by the maker. The bill of exchange is either payable on demand, or after a specified term.

Definition :

"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".

Parties to bills of exchange –

The drawer: The person who gives the order to pay or who makes the bill is called the drawer

The drawee: The person who is directed to pay is called the drawee. When the drawee accepts the bill, he is called the acceptor.

The Payee: The person to whom the payment is to be made is called the payee.

Requisites (Essentials) of a Bill of Exchange –

- Parties should be certain
- Every Bill of Exchange must be stamped according to the provisions of The Indian Stamp Act, 1899.
- It should specifically mention the date and place the payment or the place where it is drawn.
- Order to pay. Order in this section does not mean a command, but a request or a direction.
- The time of payment must be indicated in the bill with certainty.
- The amount payable must be certain
- The consideration of a bill of exchange should be paid only by way of money only.

Other important points –

1) A bill of Exchange must be drawn unconditionally, though the acceptor, or the indorser may make his liability conditional, direction of payment by the drawer must not be made to depend upon a contingency. Therefore, it is the essence of a bill of exchange that it should be payable at all events and it must appear so on its face
2) It is essential that a bill of exchange should point out with certainty the party who enters into the contract imported by its terms. Thus, the signature of the drawee is necessary and there cannot be a bill, even if the instrument if accepted without the signature of the drawee
3) It must indicate a drawee who should be called on to accept or pay it. The drawee must be named or otherwise indicated in the bill with reasonable certainty.

Types of Bills

1) Inland Bills :

a) Two essential conditions to make an inland instrument are:

(1) the instrument must have been drawn or made in India; and

(2) the instrument must be payable in India or the drawee must be in India.

2) Foreign Bills :

All bills which are not inland are deemed to be foreign bills. Normally foreign bills are drawn in sets of three copies.

3) Trade Bills :

A bill drawn and accepted for a genuine trade transaction is termed as a trade bill. When a trader sells goods on credit, he may make use of a bill of exchange.

4) Accommodation Bill :

a) An accommodation bill is a bill in which a person lends or gives his name to oblige a friend or some person whom he knows.

b) In other words, a bill which is drawn, accepted or endorsed without consideration is called an accommodation bill.

c) The party lending his name to oblige the other party is known as the accommodating or accommodation party, and the party so obliged is called the party accommodated.

d) An accommodation party is not liable on the instrument to the party accommodated because as between them there was no consideration and the instrument was only for help.

e) But the accommodation party is liable to a holder for value, who takes theaccommodation bill for value, though such holder may not be a holder in due course.

5) Bills in Sets :

a) Foreign bills are usually drawn in sets to avoid the danger of loss.
b) They are drawn in sets of three, each of which is called “Via” and as soon as any one of them is paid, the others become inoperative.

C) All these parts form one bill and the drawer must sign and deliver all of them to the payee.
d) The stamp is affixed only on one part and one part is required to be accepted.
e) But if the drawer mistakenly accepts all the parts of the same bill, he will be liable on each part accepted as if it were a separate bill.

Bank Draft :

When a bill of exchange drawn by one bank on another bank, or by itself on its own branch, and is a negotiable instrument then it is called as bank draft.

S No	Trade Bill	Accommodation Bill
1	Trade bills are drawn and accepted for same consideration.	These bills are drawn and accepted without any consideration.
2	These bills are legally enforceable	These bills are not legally enforceable.
3	Trade bills are the acknowledgment of the debt.	Accommodation bills are not the acknowledgment of debt.
4	The drawer can sue if bill is dishonored.	Drawer cannot sue if bill is dishonored
5	Loss by way of discounting the bill is borne by drawer only.	Loss by way of discounting the bill is shared by drawer and drawee in the ratio of their sharing in the proceeds of the bill

RECAP

QUESTIONS???

THANK YOU