

LECTURE ON BANKING LAW -

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NEGOTIABLE INSTRUMENTS:

Definition - Negotiable Instrument is a written and signed unconditional promise or order to pay a specified sum of money on demand or at a definite time payable to order or bearer. (Black's Law Dictionary). The Negotiable Instruments Act, 1881 does not define a negotiable instrument and merely states that "a negotiable instrument means a promissory note, bill of exchange or cheque payable either way to order or bearer. (Section 13). Section 13 of the Act doesn't indicate the characteristics of a negotiable instrument but only states that three Instruments- cheque, bill of exchange and promissory note are negotiable instruments. Thus, these are negotiable instruments by statute. Section 13 doesn't prohibit any other instrument, which bears the essential features of negotiability, to be treated as negotiable instruments.

Kinds of Negotiable Instruments - (i) Negotiable Instruments by Statute:- Section 13 of the N.I. Act states three Instruments viz., Cheque, Bill of Exchange and Promissory Note, as Negotiable Instruments. Therefore, these are called Negotiable Instruments by Statute. (ii) Negotiable Instruments by Custom or Usage:- According to Section 137 of the Transfer of Property Act, 1882, Instruments may be negotiated by custom and their negotiability will be recognised by courts. The Instruments falling under this category are Hundi, Bank Draft, Bank Notes etc. It is to note that the N.I. Act doesn't stipulate that only promissory notes, bills of exchange and cheques are the Negotiable Instruments. Thus, other instruments may also be included in this list of Negotiable Instruments provided they fulfil the following two conditions: (a) They are transferable by mere delivery

or by endorsement and delivery; and (b) Holder in due course can sue in his own name. Essential Features of a Negotiable Instrument: Negotiable Instrument is an instrument with the following characteristics- 1. Title to it passes by delivery. 2. Holder for the time being may sue in his own name. 3. Notice of assignment need not be given to person liable thereon. 4. Bonafide holder for value takes free from any defect in title of predecessors. 5. Instrument is of a type recognised by law as negotiable.

Thus, it may be concluded that an instrument is to be called 'negotiable' if it possesses the following characteristics or features: i) Transferability- It is transferable by delivery, or by endorsement and delivery. ii) Holder's title free from defects- The holder in due course acquires a good title notwithstanding any defect in a former holder's title. A holder in due course is one who receives the instrument for value and without any notice as to the defect in title of the transferor. iii) The holder can sue in his own name- The holder in due course can sue in his own name. iv) Endorsement- There is no restriction on number of endorsements of the negotiable instrument. Any number of endorsements can be made till its maturity. It can be transferred any number of times. v) Unconditional- It must be unconditional. It is wrong to say that "I will pay after 20 days from marriage of my son", on the ground that the maturity of the payment of the instrument is uncertain. vi) Payable in Money and Certain Sum of Money- The negotiable instrument must be payable in the form of money only. It is not payable in any other form. Not only this, the amount must be certain. vii) Certain Presumptions- A negotiable instrument is subject to certain presumptions. Under Section 118 of the N.I.Act, 1881, a negotiable instrument is subject to certain presumptions as given below:

- (a) **Consideration-** Every negotiable instrument shall be presumed to have been made or drawn for consideration. (A.V. Murthy v. B.S. Nagabasavanna, AIR 2002 SC 985).
- (b) **Date-** Every negotiable instrument bearing a date is presumed to have been made or drawn on such date.
- (c) **Time of Acceptance-** Every accepted bill of exchange is presumed to have been accepted within a reasonable time after its date and before its maturity.
- (d) **Time of Transfer-** The transfer of a negotiable instrument is taken to have been made before its maturity.
- (e) **Order of Endorsement-** The endorsements appearing upon a negotiable instrument are presumed to have been made in the order in which they appear thereon.
- (f) **Stamp-** It is presumed that a lost negotiable instrument was duly stamped.
- (g) **Holder in due Course-** It is presumed that a holder of a negotiable instrument is a holder in due course. However, where the instrument has been received from its lawful owner or from any person in lawful custody thereof, by means of an offence or fraud, or has been received from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him. According to Section 119 of the Negotiable Instruments Act, 1881
- (h) **Dishonour-** In a suit upon an instrument which has been dishonoured, the court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.