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Author:
Pranay Patil
New Law College, Mumbai.
LL.B. (3 Years), 3rd Year.

NEGOTIABLE INSTRUMENT- ANALYSIS

In simple language, a negotiable instrument is a signed document that promises a certain amount of money to be paid to a specified person or the owner of the instrument either on-demand or at a set time.
A very important aspect of any business is a transaction. Each day a business has to perform thousands of transactions. Most of these transactions are credit in nature which means that the payment would be made in the future while the goods/services are obtained immediately. Negotiable instruments are the tools that made these credit transactions smooth and easy for the corporate world.

As per the definition of the Cambridge dictionary, a negotiable instrument is "a written order or promise to pay a fixed amount of money on demand or at a particular time". A Negotiable Instrument Is a Document that includes a 'Promise to Pay' a certain amount of money to the bearer of the documents. It's a mode of transferring a debt from one person to another. Negotiable Instruments are always in written form.

According to Section 13(i) of Negotiable instrument Act, 1881 a negotiable instrument includes and means Promissory Note, [1] bill of exchange, or Cheque.
Negotiable instruments are transferable in nature which means the ownership of these instruments can be transferred easily. The instrument only provides for a specific amount of money and no other condition can be imposed on the bearer of the instrument to receive money. In India, the law that governs the use of negotiable instruments was introduced in the year 1881 by the British and was called "The Negotiable Instruments Act, 1881". This act has been governing the use of negotiable instruments since 1881 with only a few amendments throughout this time. [2]

CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS-

Free Transferability- The property in a negotiable instrument gets transferred by a simple process of mere delivery if it is payable to the bearer, endorsement, and delivery or payable to order.

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[1] A "promissory note" is an instrument in writing that contains a written promise to pay a stated sum to a specified person or the bearer at a specified date or on-demand.

[2] The Negotiable Instruments Act, 1881

Title of the Holder is free from all defects- The holder one who acquires the instrument in good faith and for consideration in due courses gets title free from all defects.
Payable to order to bearer- It must be payable either to order or bearer.
Recovery- Transferee can sue in his own name without giving notice to the debtor.
Presumptions for consideration, date, time, transfer stamps, and dishonour.
Easy Negotiability

Negotiable Instruments Includes-

Section 13 of the Negotiable Instruments Act defines negotiable instruments. As per the Negotiable Instrument Act, there are three negotiable instruments.

A) PROMISSORY NOTE B) BILL OF EXCHANGE C) CHEQUE.

Promissory Note-

A promissory note is "a signed document containing a written promise to pay a stated sum to a specified person or the bearer at a specified date or on-demand." A promissory note is a document containing a written promise of one party (the maker of the instrument) to pay another party a specific sum of money on demand or at a future date. In simple words, a promissory note is a "promise to pay in future".
A promissory note is essentially a written promise to pay someone. This type of document is common in financial services and is something you've likely signed in the past if you've taken out any kind of loan. If you decide to lend money to someone, you may want to create a promissory note to formalize the loan.

What to include in a Promissory Note?

The promissory note form should include:

- The names and addresses of the lender and borrower
- The amount of money being borrowed and what, if any, collateral is being used
- How often payments will be made in and in what amount
- Signatures of both parties, for the note to be enforceable

Use of Promissory Note-

A promissory note is used for mortgages, student loans, car loans, business loans, and personal loans between family and friends. If you are lending a large amount of money to someone (or to a business), then you may want to create a promissory note from a promissory note template. This note will be a legal record of the loan and will protect you and help make sure you are repaid.

Bill of exchange

A bill of exchange is a written order for one party to pay another party a specific amount of money on a predetermined date. In bill of exchange, a drawer is a person who draws or issues the bill. Drawee is the person who pays the amount. And payee is the person who receives the amount. Generally, the Drawer and payee are the same.

How a bill of exchange Works-

A bill of exchange transaction can involve up to three parties. The drawee is the party that pays the sum specified by the bill of exchange. The payee is the one who receives that sum. The drawer is the party that obliges the drawee to pay the payee. The drawer and the payee are the same entity unless the drawer transfers the bill of exchange to a third-party payee.

Unlike a check, however, a bill of exchange is a written document outlining a debtor's indebtedness to a creditor. It's frequently used in international trade to pay for goods or services. While a bill of exchange is not a contract itself, the involved parties can use it to fulfill the terms of a contract. It can specify that payment is due on demand or at a specified future date. It's often extended with credit terms, such as 90 days. As well, a bill of exchange must be accepted by the drawee to be valid.

Bills of exchange generally do not pay interest, making them in essence post-dated cheques. They may accrue interest if not paid by a certain date, however, in which case the rate must be specified on the instrument. They can, conversely, be transferred at a discount before the date specified for payment. A bill of exchange must clearly detail the amount of money, the date, and the parties involved including the drawer and drawee.

Bills of Exchange v/s Promissory Notes-

The following are some points of differences between promissory notes and bills of exchange:

a) A promissory note generally involves two parties, i.e. a maker (the debtor) and a payer (the creditor). On the other hand, bills of exchange include a drawer, a drawee, and a payee.

b) As the bills of exchange introduction above shows, a bill orders the drawee to pay as per the drawer's directions. A promissory note, however, is not an order but a promise to pay.

c) The liability of the maker of a promissory note is absolute, while that of the drawer of a bill is conditional.

d) Notes cannot be payable to their makers, while the drawer and the payee in bills can be the same person.

Cheque-

A cheque is the negotiable instrument that orders a bank to pay a specific amount from the drawer`s account to the bearer of the cheque or to the person to whom it is issued.

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.

Dishonored cheque-

Section 138 of the Negotiable Instruments Act, 1881 talks about punishment for dishonoring cheques. Section 138 was introduced as a criminal offence in 1989 by way of an amendment to the Negotiable Instruments Act, 1881. The main objective of the introduction of this section was to encourage the use of cheques and increasing the credibility of transactions through cheques by making the dishonoring of the cheques an offence.

Section 138 of the Negotiable Instruments Act, 1881 talks about punishment for dishonoring cheques. Section 138 was introduced as a criminal offence in 1989 by way of an amendment to the Negotiable Instruments Act, 1881. The main objective of the introduction of this section was to encourage the use of cheques and increasing the credibility of transactions through cheques by making the dishonoring of the cheques an offence.
Section 138 provides that when the cheque is dishonored for insufficiency of funds or any of the prescribed reasons, the one who is at defaulter can be punished with imprisonment for a term which may extend to two years, or with a fine which may extend to twice the amount of the cheque, or both. This is also a non-cognizable offence.

Essential Ingredients

1. Cheque to be drawn by a person,
2. To banker,
3. For payment of any amount of money to another person,
4. To discharge in part any debt or other liability,
5. Cheque returned by the bank unpaid,
6. Amount of the money in the bank a/c is insufficient to dishonour the cheque,
7. Or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank,

Punishment:

1. Imprisonment for two years,
2. Fine which may extend to twice the amount of the cheque,
3. Imprisonment and fine both.[3]

Dalmia Cements v. Galaxy Trading Agencies

The case of M/s. Dalmia Cement (Bharat0 Ltd. V. M/s. Galaxy Traders & Agencies Ltd. & Ors. is one of the cases whose judgment became a landmark for the Supreme Court, in this case, reasoning behind the enactment of Section 138 of the Negotiable and Instruments Act, 1881 was given. The facts of the case revolve around dishonouring of the cheque because of which notice was issued to inform the accused. When the same was received by the complainant by that time the period of filing the complaint was given to expire. The same thing happened for the second time as well with the accused failing to provide the amount.
The court basing its judgment on the existing facts said that Section 138 of the Act has been made keeping in concern any kind of infringement of legal right of the person whose payment has not been issued and therefore if any such situation arises which will make it impossible for the person to get the payment then in such case, the section should function the way it has been laid down to keep the objective of the Act. Thus, in this case, the court ordered actions to be carried out against the respondent as laid down in the Act.[4]

Conclusion

[3] Negotiable Instruments Act, 1881
[4] Indian Kanoon - http://indiankanoon.org/doc/60864/

The negotiable instrument is the documents that are related to business transactions. Negotiable instruments play a major role in the trading world. We can use negotiable instruments for international trades. These instruments either be negotiable or non-negotiable. But they come under one of the two categories. An instrument can become negotiable either by statute or by mercantile usage. The instruments are in written form so in case of non-payment the person to whom the payment to be made can sue the other person by whom the payment shall be made. Bill of exchange, Cheque, and Promissory note s are three important negotiable instruments with different features.