B.Com VI Sem (CBCS)

Business Regulatory Framework-II

Unit –I

NEGOTIABLE INSTRUMENT ACT (AMENDMENT ACT 2012)

The law relating to Negotiable Instrument Act contained in NIA-1881. It came into force from 1882. Amendment in1988 (for penalties for dishonor of cheque)

Further amendment in 2002 by redefining term cheque & making the punishment of dishonor of cheque. There are certain documents which are freely used in commercial transaction & in monetary dealings.

Negotiable means transferable Instrument means document – by which right is created in favour of some person and which is freely transferable.

Thus, a Negotiable Instrument is a document which entitles a person to a sum of money & which is transferable from one person to another by more delivery or by endorsement & delivery.

These documents are Negotiable Instruments. Thus a Negotiable Instrument is a method of transferring a debt from one person to another.

Definition:

According to see 13 of the Negotiable Instrument Act.

"A Negotiable Instrument means promissory note bill of exchange or cheque, payable either to order or bearer, whether the words " bearer" appear on the Instrument or not".

Types of Negotiable Instruments:

Negotiable Instruments may be;

1. Negotiable by statue; or
2. Negotiable by custom or usage.

Instruments negotiable by Statue include Promissory Note: Bills of exchange & cheques. These three are negotiable by statue.

Negotiable Instrument by customs include Government Promissory notes, bankers draft & pay orders hundis share warrants, port trust debentures, railway bonds payable to bearer or railway receipts are considered equivalent to Negotiable Instruments either by mercantile system or by other enactments like companies Act.

NOT Nigotiable Instruments:

Money orders, Postal orders, Deposit Receipts, Share Certificates, Bill of lading, Dock warrant, IOU etc. are Not Negotiable Instruments. Through they are transferable by delivery and endorsements.

Payable to Bearer

An Instrument is payable to bearer if it is expressed to be so.

Examples:

1. Pay to A or bearer
2. Pay to Bearer.

A cheque is payable to A- He endorses by putting his sign on back of instrument, & delivers to C with the intention of negotiating it. The instrument becomes bearer in the hands of C.

An instrument may be made payable to two or more person jointly or it may be made payable in the alternative to one or two or one or some of several payees.

Examples:

1. Pay to A & B
2. Pay to A or B

Following Negotiable Instruments are not negotiable

1. Pay to A only
2. Pay to A & none else.

Characteristics of Negotiable Instrument:

1. **Negotiability:** i.e. transferable by endorsement & delivery, & if bearer just by delivery.
2. **Title:** A holder who has accepted a Negotiable Instrument for value in good faith before maturity is holder in due course. He is not in any way affected by the defective title of the transferor or property.
3. **Recovery:** The holder in due course is entitled to sue on the instrument in his own name. He need not give notice to transferor or the person liable for payment on the instrument.
4. **Presumptions:** A Negotiable Instrument is always subject to certain presumption. They will be applicable unless contrary is proved.

   A Negotiable Instrument will not be rendered invalid merely because of the obvious or intelligible mistakes or omission in the written words if the intensions are clear.

   TYPES OF NEGOTIABLE INSTRUMENTS:

   According to the Act Negotiable Instruments are of three types

NEGOTIABLE INSTRUMENTS

PROMISSORY NOTE | BILL OF EXCHANGE | CHEQUE

Characteristics of Negotiable Instruments:

1. Freely Transferable by one person to another by delivery.
2. Title of the holder free from all defects.

   (Holder in due course is not in any way affected by any defect of the transfer or of any prior party).
3. **Recovery:** The holder in due course can sue upon a Negotiable Instrument in his own name for the recovery of the amount.
4. **Presumptions:** As per see 118 & 119 of the Act, following presumption are applied to Negotiable Instruments.

   A. Consideration---it is made, drawn transferred accepted indorsed for consideration.

   B. Date--- presumed to be drawn on date.

   C. Time of Acceptance--- reasonable date & before maturity.

   D. Time of Transfer--- before maturity

   E. Order of Endorsements--- presumed to have been made as they appear.

   F. Stamp--- if lost; it is presumed to have been stamped.

   G. Holder presumed to be a holder in due course (Sec.118)

   H. Proof of Protest--- (fact of dishonor in the court Sec.119)

Reference Books:

1. A manual of Business Laws;

   Dr. S.N. Maheshwari, Dr. S.K. Maheshwari

   Himalaya Publishing House, 2009.
2. Elements of Mercantile Law;

   N.D. Kapoor,

   Sultan Chand & Sons, 2010

Promissory Note:

A promissory note is an instrument in writing (not a bank note or currency note) 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. (Sec.4)

Specimen of Promissory Note

1. When promise is made to pay the money on demand.

Rs 15000	Mumbai 5th January, 2020
On demand, I promise to pay shri Sudesh or order a sum of Rs fifteen thousand, value received.	
To Sudesh B-22, Green Park, Mumbai	Revenue Stamp sd Satish

2. When promise is made to pay the money after the expiry of fixed time.

Rs 15000	Mumbai 5th January, 2020
Three months after date, I promise to pay shri Sudesh or order a sum of rupees fifteen thousand , value received.	
To Sudesh B-22, Green Park, Mumbai	Revenue Stamp sd Satish

ESSENTIAL CHARACTERISTICS OF PROMISSORY NOTE:-

1. It is an instrument in writing.
2. It is a promise to pay.
3. The undertaking to pay is unconditional.
4. It should be signed by maker.
5. The maker must be certain.
6. The payee must be certain.
7. The promise should be to pay money & money only.
8. The amount should be certain.
9. Other formalities- e.g. Place, date, consideration etc.
   Through found in PNs but are not essential in law. The date is not material if the amount is made payable at a certain time after date. The “value received” are also unnecessary. But it must be stamped as per the Indian stamp Act, each stamp must also be properly cancelled.

Important Terms:

1. **Acceptor:** The person who has given his assent to bill of exchange.
2. **Drawer:** The person who draws a bill of exchange or cheque.
3. **Drawee:** The person who has been directed to pay the amount of a bill of exchange or cheque.
4. **Drawee in case of need:** The person who is to be contacted in case of the original drawee to the bill is not prepared to honor his obligation under the bill.
5. **Holder:** The person entitled to the possession of a Negotiable Instrument in his own name & recover its amount from the person liable thereon.
6. **Holder in due course:** A holder who has got a Negotiable Instrument for valuable consideration in good faith & before maturity.
7. **Maker:** The person who promises to pay money under a promissory note.
8. **Payee:** The person named in Negotiable Instrument as person entitled to receive its payment.

Reference Books:

1. A Manual of Business Laws;

   Dr. S.N. Maheshwari, Dr. S.K. Maheshwari

   Himalaya Publishing House, 2009.
2. Elements of Mercantile Law;

   N.D. Kapoor,

   Sultan Chand & Sons, 2010