OF NOTES, BILLS AND CHEQUES

4. "Promissory note." A "promissory note" is in an instrument in writing (not

being a bank-note or a currency note) containing an unconditional

undertaking signed by the maker, to pay on demand or at a fixed or

determinable future time] a certain sum of money only to, or to the order

of a certain person, or to the bearer of the instrument.

Illustrations

A signs instruments in the following terms:

(a) "I promise to pay B or order Rs. 500."

(b) "I acknowledge myself to be indebted to B in Rs. 1,000 to be paid on

demand, for value received.

(c) "Mr B, I O U Rs. 1,000."

(d) "I promise to pay B Rs. 500 and all other sums which shall be due to

him"

(e) "I promise to pay B Rs. 500, first deducting there out any money

which he may owe me."

(f) "I promise to pay B Rs. 500 seven days after my marriage with C."

(g) "I promise to pay B Rs. 500 on D's death, provided D leaves me

enough to pay that sum."

(h) "I promise to pay B. Rs. 500 and to deliver to him my black horse on

1st January next.

The instruments respectively marked (a) and (b) are promissory notes. The

instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory

notes.

5. A "bill of exchange" is an instrument in writing containing an

unconditional order, signed by the maker, directing a certain person to

pay on demand or at a fixed or determinable future time] a certain sum of

money only to, or to the order of, a certain person or to the bearer of the

instrument.

A promise or order to pay is not "conditional," within the meaning of this

section and section 4, by reason of the time for payment of the amount or

any installment thereof being expressed to be on the lapse of a certain

period after the occurrence of a specified event according to the ordinary

expectation of mankind, is certain to happen although the time of its

happening may be uncertain.

The sum payable may be "certain" within the meaning of this section and

section 4, although it includes further interest or is payable at an indicated

rate of exchange, or is 5 at the current rate of exchange, and although it is

to be paid in stated installments and contains a provision that on default

of payment of one or more installments or interest, the whole or the

unpaid balance shall become due.

Where the person intended can reasonably be ascertained from the

promissory note or the bill of exchange, he is a "certain person" within the

meaning of this section and section 4, although he is misnamed or

designated by description only.

An order to pay out of a particular fund is not unconditional within the

meaning of this section; but an unqualified order, to pay, coupled with:-

(a) an indication of a particular fund out of which the drawee is to

reimburse himself or a particular account to be debited to the

amount, or

(b) a statement of the transaction which gives rise to the note or bill, is

unconditional.

Where the payee is a fictitious or non-existing person the bill of exchange may be

treated as payable to bearer.

6. "Cheque". A "cheque" is a bill of exchange drawn on a specified banker

and not expressed payable otherwise than on demand.

(\*) By one of his many customers.

7. "Drawer" "Drawee" The marker of a bill of exchange or cheque is called

the "drawer;" the person thereby directed to pay is called the "drawee."

"Drawee in case of need," When in the bill or in any endorsement thereon

the name of any person is given in addition to the drawee to be resorted to

in case of need such person is called a "drawee in case of need".

"Acceptor" After the drawee of a bill has signed his assent upon the bill,

or, if there are more parts thereof than one, upon one of such parts, and

delivered the same, or given notice of such signing to the holder or to

some person on his behalf he is called the "acceptor."

"Acceptor for honour."--- When a bill of exchange has been noted or

protested for non-acceptance or for better security, and any person accepts

is supra protest for honour of the drawer or of any one of the endorsers,

such person is called an "acceptor for honour."

"Payee."---The person named in the instrument, to whom or to whose

order the money is by the instrument directed to be paid is called the

"payee."

8. "Holder"--- The "holder" of a promissory note, bill of exchange or cheque

means the payee or endorsee who is in possession of it or the bearer

thereof but does not include a beneficial owner darning through a

benamidar.

Explanation. Where the note, bill or cheque is lost and not found again, or

is destroyed, the person in possession of it or the bearer thereof. at the

time of such loss or destruction shall be deemed to continue to be its

holder.

9. "Holder in due course."--- "Holder in due course" means any person who

for consideration becomes the possessor of a promissory note, bill of

exchange or cheque if payable to bearer, or the payee or endorsee thereof,

if payable to order, before it became overdue, without notice that the title

of the person from whom he derived his own title was defective.

Explanation. ---For the purposes of this section the title of a person to a

promissory note, bill of exchange or cheque is defective when he is not

entitled to receive the amount due thereon by reason of the provisions of

section 58.

10. "Payment in due course."--- "Payment in due course" 'means payment in

accordance with the apparent tenor of the instrument in good faith and

without negligence to any person in possession thereof under

circumstances which do not afford a reasonable ground for believing that

he is not entitled to receive payment of the amount therein mentioned.

11. Inland instrument-- A promissory note, bill of exchange or cheque drawn

or made in Pakistan and made payable in, or drawn upon any person

resident in, Pakistan shall be deemed to be an inland instrument.

12. Foreign Instrument--- Any such instrument not so drawn, made or made

payable shall be deemed to be foreign instrument.

13. "Negotiable instrument".(l) A negotiable instrument means a promissory

note, bill of exchange or cheque payable either, to order or to bearer.

Explanation (I). --- A promissory note, bill of exchange or cheque is

payable to order which is expressed to be so payable or which is

expressed to be payable to a particular person, and does not contain

words prohibiting, transfer or indicating an intention that it shall not be

transferable.

Explanation (II). A promissory note, bill of exchange or cheque is payable

to bearer which, is expressed to be so payable or on which the only or last

endorsement is an endorsement in blank.

Explanation (III), A promissory note, bill of exchange or cheque, either

originally or by endorsement, is expressed, to be payable to the order of a

specified person, and not to him or his order it is nevertheless payable to

him or his order at his option.

(2) A negotiable instrument may be made payable to two more payees jointly,

or it may be made payable in the alternative to one of two, or one or some

of several payees

14. Negotiation.--- When a promissory note, bill of exchange or cheque is

transferred to any person, so as to constitute that person the holder

thereof, the instrument is said to be negotiable.

15. Endorsement.--- When the maker or holder of a negotiable instrument

signs the same, otherwise than as such maker, for the purpose of

negotiable, on the back or face thereof or on a slip of paper annexed

thereto, or so signs for the same purpose a stamped paper intended to be

completed as a negotiable instrument, he is said to endorse the same, and

is called the "endorser".

16. Endorsement "in blank" and "in full".---(l) If the endorser signs his name

only, the endorsement is said to be "in blank", and if he adds a direction to

pay the amount mentioned in the instrument to, or to the order of, a

specified person, the endorsement is said to be 'in full", and the person so

specified is called the "endorsee" of the instrument.

"Endorsee".

(2) The provisions of this Act relating to a payee shall apply with the

necessary modifications to an endorsee.

17. Ambiguous instruments----- Where an instrument may be construed

either as a promissory note or bill of exchange, the holder may at his

election treat it as either and the instrument shall be then certificate

reforward treated accordingly.

18. Where amount is stated differently in figures and words.---If the amount

undertaken or ordered to be paid is stated differently in figures and in

words, the amount stated in words shall be the amount undertaken or

ordered to be paid.

Provided that if the words, are ambiguous or uncertain, the amount may

be ascertained by referring to the figures.

19. Instruments payable on demand.--- A promissory note or bill of exchange

is payable on demand,---

(a) where it is expressed to be so, or to be payable at sight or on

presentment; or

(b) where no time for payment is specified in it; or

(c) where the note or bill accepted or endorsed after it is overdue, as

regards the person accepting or indorsing it

20. Inchoate stamped instruments.---(1) Where one person signs and delivers

to another a paper stamped in accordance with the law relating to stamp

duty chargeable on negotiable instruments, either wholly blank or having

written thereon an incomplete negotiable instrument, in order that it may

be made, or completed in to a negotiable instrument he thereby gives

prima facie authority to the person whoo receives that paper to make or

complete it, as the case may be, into a negotiable instrument for the

amount, if any, specified therein, or, where no amount is specified, for any

amount, not exceeding, in either case, the amount covered by the stamp.

(2) The person so signing shall, subject to the provisions of sub-section (3), be

liable upon such instrument, in the capacity in which he signed the same,

to any holder in due course, for the amount specified in the instrument or

filled upon therein:

Provided that no person other than a holder in due course shall receive

from the person so signing the paper anything in excess of the amount

intended by him to be paid thereunder

(3) In order that any such instrument may on corn be enforceable against any

person who became a party thereto before such completion, it must be

filled up within a reasonable time and strictly in accordance with the

authority given:

Provided that if any such instrument after completion is negotiable to a holder in

due course, it Shall be valid and effectual for all purposes in his hands, and he

may enforce it as if it had been filled up within a reachable time and strictly in

accordance with the authority given.

21. "At sight," "On presentment". "After sight".--- The expressions "at sight"

and "on presentment" means on demand. The expression "after sight"

means, in a promissory note, after presentment for sight, and, in a bill of

exchange, after acceptance, or noting for non- acceptance, or protest for

non acceptance.

21A. When note or bill payable on demand is overdue.-A promissory note or

bill of exchange payable on demand shall be, deemed to be overdue when

it appears on the face of it to have in circulation for an unreasonable

length of time.

21B. A note or bill payable at a determinable future time:- A promissory note

or bill of exchange is payable at a determinable future time within the

meaning of this Act if it is expressed to be payable---

(a) at a fixed time after date or sight ; or

(b) on or at a fixed time after the occurrence of a specified event which

is certain to happen, though the time of its happening may be

uncertain.

21C. Anti-dating and post-dating.-- A promissory note, bill of exchange or

cheque is not invalid by reason only that i; is anti-dated or post-dated;

Provided that the anti-dating or post-dating does not involve any illegal or

fraudulent purpose or transaction.

22. "Maturity".---- The maturity of a promissory note or bill of exchange is the

date at which it falls due.

Days of grace--- Every promissory note or bill of exchange which is not

expressed to be payable on demand, at sight or on presentment is at maturity on

the third day after the day on which it is expressed to be payable.

23. Calculating maturity of bill of note payable so many months after date or

sight.--In calculating the date at which a promissory note or bill of

exchange, made payable a stated number of months after date or after

sight, or after a certain event, is at maturity, the period stated shall be held

to terminate on the day of the month which corresponds with the day on

which the instrument is dated, or presented for acceptance or sight, or

noted for non-acceptance, or protested for non-acceptance or the event

happens, or, where the instrument is a bill of exchange made payable a

stated number of months after sight and has been accepted for honour,

with the day on which it was so accepted. If the month in which the

period would terminate has no corresponding day, the period shall be

held to terminate on the last day of such month.

Illustrations

(a) A negotiable instrument, dated 29th January, 1878, is made payable

at one month after date. The instrument is at maturity on the third

day after the 28th February, 1878.

(b) A negotiable instrument, dated 30th August 1878, is made payable

three months after date. That instrument is at maturity on the 3rd

December, 1878.

(c) A promissory note or bill of exchange, dated 31st August 1878, is

made payable three months after date The instrument is at maturity

on the 3rd December, 1878.

24. Calculating maturity of bill of note payable so many days after date or

sight ---In calculating the date at which a promissory note or bill of

exchange made payable a certain number of days after date or after sight

or after certain event is at maturity, the day of the date, or of presentment

for acceptance of sight, or of protest for non-acceptance, or on which the

event happens, shall be excluded.

25. When day of maturity is a holiday.---When the day on which a

promissory note or bill of exchange is at maturity is a public holiday, the

instrument shall be deemed to be due on the next preceding business day.

Explanation:- The expression "public holiday" shall mean the day or days

declared by the Federal Government, by notification in the official Gazette

to be public holidays.

 **PARTIES TO INSTRUMENTS NEGOTIATION**

 **PARTIES TO NOTES BILLS AND CHEQUES**

**26. Capacity to make, etc. promissory notes, etc.-- Every person capable of**

**contracting, according to the law to which he is subject, may bind himself**

**and be bound by the making, drawing, acceptance, endorsement, delivery**

**and negotiation of a promissory note, bill of exchange or cheque.**

**Minor. Where such an instrument is made, drawn or negotiated by a**

**minor, the making, drawing or negotiating entitles the holder to receive**

**payment of such instrument and to enforce it against any party thereto**

**other than the minor.**

**27. Agency every person capable of binding himself or of being bound, [by**

**the making, drawing, acceptance or negotiation of a negotiable**

**instrument, may so bind himself or be bound by a duly authorized agent**

**acting in his name.**

**A general authority to transact business and to receive and discharge**

**debts does not confer upon an agent the power of accepting or indorsing**

**bills of exchange so as to bind his principal.**

**An authority to draw bills of exchange does not of itself import an**

**authority to endorse.**

**27A. Authority of partners.--- A partner acting in the firm name may bind the**

**firm by the making, drawing, acceptance or :negotiation of a negotiable**

**instrument to the extent authorized by law relating to partnership for the**

**time being in force.**

**28. Liability of agent signing.---(l) Where a person signs a promissory note, of**

**exchange or cheque without adding to his signature words indicating that**

**he signs it as an agent for and on behalf of a principal or in a**

**representative character, he is personally liable thereon but the mere**

**addition to his signature of words describing him as an agent or as filling**

**a representative character does not exempt him from personal liability.**

**(2) Notwithstanding anything contained in sub-section (1), any person**

**signing a promissory note, bill of exchange or cheque for and on behalf of**

**the principal is not liable to a person who induces him to sign upon the**

**belief that the principal alone would be held liable.**

**28A. Transferor by delivery and transferee. (1) Where the holder of a negotiable**

**instrument payable to bearer negotiates it by delivery without indorsing**

**it, he is called a "transferor by delivery".**

**(2) A transferor by delivery is not liable on the instrument.**

**(3) A transferor by delivery who negotiates a negotiable instrument thereby**

**warrants to is immediate transferee, being a holder for consideration, that**

**the instrument is what it purports to be, that, he has a right to transfer it,**

**and that at the time of transfer he is not aware of any defect which renders**

**it valueless.**

**29. Liability of legal representative signing---A legal representative of a**

**deceased person who signs his name to a promissory note, bill of**

**exchange or cheque is liable personally thereon Unless he expressly limits**

**his liability to the extent of the assets received by him as such.**

**29A. Signature essential to liability.---No person is liable as maker, drawer,**

**endorser or acceptor of a promissory note, bill of exchange or cheque who**

**has not signed it as such:**

**Provided that where a person signs any such instrument in a trade or**

**assumed name he is liable thereon as if he had signed it in his own name.**

**29B. Forged or unauthorized signature.--- Subject to the provisions of this Act,**

**where a signature on a promissory note, bill of exchange or cheque is**

**forged or placed thereon without the authority of the person whose**

**signature it purports to be, the forged, or unauthorized signature is**

**wholly inoperative, and no right to retain the instrument or to give a**

**discharge therefor or to enforce payment thereof against any party thereto**

**can be acquired through or under that signature, unless the party against**

**whom it is sought to retain or enforce payment of' the instrument is**

**precluded from setting up the forgery or want of authority:**

**Provided that nothing in this section shall effect the ratification of an**

**unauthorized signature not mounting to a forgery.**

**129C. Stranger signing instrument presumed to be endorser.---A person placing**

**his signature upon a negotiable instrument otherwise than as maker,**

**drawer or acceptor is presumed to be an endorser unless he clearly**

**indicates by appropriate words his intention to be bound in some other**

**capacity.**

**30. Liability of drawer. --- (1) (a) The drawer of a bill of exchange by drawing**

**it, engages that on due presentment it shall be accepted and paid**

**according to its tenor, and that it be dishonoured, he will compensate the**

**holder or any endorser who is compelled to pay it, and**

**(b) the drawer of a cheque by drawing it, engages that in the case of**

**dishonour by the drawee he will compensate the holder;**

**Provided that due notice of dishonour of the bill or cheque has been given**

**to or received by the drawer as hereinafter provided.**

**(2) The drawee of a bill of exchange is not liable thereon until acceptance in**

**the manner provided by this Act.**

**31. Liability of drawee of cheque.---The drawer of a cheque having sufficient**

**funds of the drawer in his hands properly applicable to the payment of**

**such cheque must pay the cheque when duly required so to do, and, in**

**default of such payment, must compensate the drawer for any toss or**

**damage caused by such default.**

**32. Liability of maker of note and acceptor of bill.---(1) In the absence of a**

**contract to the contrary, the maker of a promissory note, by making it, the**

**acceptor before maturity of a. of exchange by accepting it, engages that he**

**will pay it according to the tenor of the note or his acceptance**

**respectively, and in default of such payment, such maker or acceptor is**

**bound to compensate any party to the :note or bill or any loss or damage**

**sustained by him and caused by such default.**

**(2) The acceptor of a bill of exchange at or after maturity, by accepting it,**

**engages to pay the amount thereof to the holder on demand.**

**33. Only drawee can be acceptor except in need or for honour.---No person**

**except the drawee of a bill of exchange, or all or some of several drawees,**

**or a person named therein as a drawee in case of need, or an acceptor for**

**honour, can bind himself by an acceptance.**

**34. Honour Acceptance by several drawees not partners.---Where there are**

**several drawees of a bill of exchange who are not partners, each of them**

**can accept it for himself, but none of them can accept it for another**

**without his authority.**

**35. Liability of endorser.---In the absence of a contract to the contrary, the**

**endorser of a negotiable instrument, by indorsing it, engages that on due**

**presentment it shall be accepted and paid according to its tenor and that if**

**it be dishonoured he will compensate the holder or subsequent endorser**

**who is compelled to pay it for any loss or damage caused to him by such**

**dishonour.**

**Every endorser after dishonour is liable as upon an instrument payable on**

**demand.**

**36. Liability of prior parties to holder .in due course.--. Every prior party to a**

**negotiable instrument is liable thereon to a holder in due course until the**

**instrument is duly satisfied.**

**37. Maker, drawer and acceptor principals.---- The maker of a promissory**

**note or cheque, the drawer of a bill of exchange until acceptance, and the**

**acceptor are, in the absence or a contract to the contrary, respectively**

**liable thereon as principal debtors, and the other parties thereto re liable**

**thereon as sureties for the maker, drawer or acceptor, as the case may be.**

**38. Prior party a principal in respect of each subsequent party.---As between**

**the parties so liable as sureties, such prior party is, in the absence of a**

**contract to the contrary, also liable thereon as a principal debtor in respect**

**of each subsequent arty.**

**Illustration**

**A draws a bill payable to his own order of B who accepts, A afterwards endorses**

**the bill to C, C to D and D to E. As between E and, B, B is the principal debtor,**

**and A, C and D are his sureties. As between E and A, A is the principal debtor,**

**and C and D are his sureties. As between E and C, C is the principal debtor and**

**D is his surety.**

**38A. Liability of accommodation and position of accommodation party.---(1)**

**An accommodation party is liable on a negotiable instrument to a holder**

**in due course, notwithstanding that when such holder took the instrument**

**he knew such party to be an accommodation party.**

**(2) An accommodation party to a negotiable instrument, if he has paid the**

**amount thereof, is entitled to recover such amount from the party**

**accommodated.**

**39. Suretyship.---When the holder of an accepted bill of exchange enters into**

**any contract with the acceptor which, under Section 134 or 135 of the**

**Indian Contract Act, 1872, would discharge, the other parties, the holder**

**may expressly reserve his right to charge in other parties, and in such case**

**they are not discharged.**

**40. Discharge of endorser's liability.---Where the holder of a negotiable**

**instrument, without the consent of the endorser, destroys or impairs the**

**endorser's remedy against a prior party, the endorser is discharged from**

**liability to the holder to the safe extent as if the instrument had been paid**

**at maturity.**

**Illustration**

**A is the holder of a bill of exchange made payable to the order of B, which**

**contains the following endorsements in blank--**

**First endorsement, "B"**

**Second endorsement, "Peter Williams."**

**Third endorsement, "Wright & Co."**

**Fourth endorsement, "John Rozario."**

**This bill A puts in suit against John Rozario and strikes out, without John**

**Rozario's consent, the endorsements by Peter Williams and Wright & Co. A is not**

**entitled to recover anything from John Razario.**

**41. Acceptor bound, although, endorsement forged.---An acceptor of a bill of**

**exchange already endorsed is not relieved from liability by reason that**

**such endorsement is forged, if he knew or had reason to believe the**

**endorsement to be forged when he accepted the bill.**

**42. Acceptance of bill drawn in fictitious name. An acceptor of a bill of**

**exchange drawn in a fictitious name and payable to the drawer's order is**

**not, by reason that such name is fictitious, relieved from liability to an**

**holder in due course darning under an endorsement by the same hand as**

**the, drawer's signature, and purporting to be made by the drawer.**

**43. Negotiable instrument made etc., without consideration.---- A negotiable**

**instrument made, drawn, accepted, endorsed or transferred without**

**consideration, or for a consideration which fails, creates no obligation of**

**payment between the parties to the transaction. But if any such party has**

**transferred the instrument with or without endorsement to a holder for**

**consideration, such holder, and every subsequent holder deriving title**

**from him, may recover the amount due on such instrument from the**

**transferor for consideration or any prior party thereto.**

**Exception I. --- No party for whose accommodation negotiable instrument has**

**been made, drawn accepted or endorsed can, if he has paid the amount thereof,**

**recover thereon such amount from any person who became a party to such**

**instrument for his accommodation.**

**Exception II.---No party to the instrument who has induced any other party to**

**make, accept, endorse or transfer the same to him for a consideration which he**

**has failed to pay or perform in full shall recover thereon an amount exceeding**

**the value of the consideration (if any) which he has actually paid or performed.**

**44. Partial absence or failure of money consideration.-- When the**

**consideration for which. a person signed a promissory note, bill of**

**exchange or cheque consisted of money and was originally absent in part**

**or has subsequently failed in part, the sum which a holder standing in**

**immediate relation with such signer is entitled to receive from him to**

**proportionally reduced.**

**Explanation. ---The drawer of a bill of exchange stands in immediate relation**

**with the acceptor. The maker of a promissory note, bill of exchange or cheque**

**stands in immediate relation with the, payee, and the endorser with his endorsee.**

**Other signers may. by agreement stand in immediate relation with a holder.**

**Illustration**

**A draws a bill on B for Rs. 500 payable to the order of A. B accepts the Bill, but**

**subsequently dishonors it by non-payment. A Sues B on the bill. B proves that it**

**was acc for value as to Rs. 400, and. as an accommodation to the plaintiff as to**

**the residue. A can only recover Rs. 400.**

**45. Partial failure of consideration not consisting of money. --- Where a part of**

**the consideration for which a person, signed a promissory note, bill of**

**exchange or cheque, though not consisting of money, is ascertainable in**

**money without collateral enquiry, and there has been a failure of that part,**

**the sum which a holder standing in immediate relation with such signer is**

**entitled to receive from him is proportionally reduced:**

**45A. Holder's right to duplicate of lost bill.---Where a bill of exchange has been**

**lost before it is over-due, the person who was the holder of it may apply to**

**the drawer to give him another bill of the same tenor, giving security to**

**the drawer, if required, to indemnify him against all persons whatever in**

**case the bill alleged to have been lost shall be found again.**

**If the drawer on request as aforesaid refuses to give such duplicate bill, he may**

**be compelled to do so.**