

LL.B. VI Term

Paper : LB – 6042 - Negotiable Instruments, Banking and Insurance

PART – A : NEGOTIABLE INSTRUMENTS

Prescribed Legislations:

1. The Negotiable Instruments Act, 1881 (N.I. Act)
2. The Information Technology Act, 2000 (I.T. Act)

Prescribed Books:

1. O. P. 'Faizi' & Ashish Aggarwal, **Khergamvala on *The Negotiable Instruments Act*** (20th ed., 2008)
2. Ranganath Misra, **Bhashyam & Adiga's *The Negotiable Instruments Act*** (18th ed., 2008)
3. Avtar Singh, ***Negotiable Instruments*** (4th ed., 2005)
4. S. Krishnamurti Aiyar, ***Law Relating to the Negotiable Instruments Act*** (10th ed., 2009)

Recommended Readings:

1. Law Commission of India, ***Eleventh Report on the Negotiable Instruments Act, 1881*** (1958)
2. Law Commission of India, ***One hundred and twenty fifth Report relating to establishment of Evening Courts*** (1988)
3. Law Commission of India, ***Two hundred thirteenth Report on Fast Track***
4. ***Magisterial Courts for Dishonoured Cheque Case*** (2008)

Topic 1 : General Introduction

History and Nature of Negotiable Instruments

Topic 2 : Kinds of Negotiable Instruments

Promissory Note, Bill of Exchange, Cheque – Definition and Nature
(N.I. Act, sections 4-7, 13)

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| 1. <i>Mohammad Akbar Khan v. Attar Singh</i> , AIR 1936 PC 171 | 1 |
| 2. <i>Ponnuswami Chettiar v. P. Vellaimuthu Chettiar</i> ,
AIR 1957 Mad. 355 | 7 |
| 3. <i>Nanga v. Dhannalal</i> , AIR 1962 Raj. 68 | 9 |
| 4. <i>Ashok Yeshwant Badeve v. Surendra Madhavrao Nighojakar</i> ,
AIR 2001 SC 1315 : (2001) 3 SCC 726 | 20 |

Topic 3 : ‘Holder’ and ‘Holder in Due Course’

Definition of Holder and Holder in Due Course; Comparison between Indian and English Law; Rights of holder in due course; Law Commission of India, Eleventh Report, 1958 (N.I. Act, section 8 read with 78; 9, 19-25, 53, 58, 59 and 118; and the English Bills of Exchange Act, 1882, sections 2, 29 and 90)

5	<i>Lachmi Chand v. Madanlal Khemka</i> , AIR 1947 All. 52	23
6	<i>Singheshwar Mandal v. Gita Devi</i> , AIR 1975 Pat. 81	28
7	<i>Nunna Gopalan v. Vuppuluri Lakshminarasamma</i> , AIR 1940 Mad. 631	30
8	<i>S.D. Asirvatham v. G. Palniraju Mudaliar</i> , AIR 1973 Mad. 439	33
9	<i>U. Ponnappa Moothan Sons v. Catholic Syrian Bank Ltd.</i> (1991) 1 SCC 113	37

Topic 4 : Transfer of Negotiable Instruments

Modes - Negotiation (N.I. Act, sections 14, 46, 47, 48, 57); Assignment (The Transfer of Property Act, 1882, sections 130-132); Meaning of Indorsement - Who can indorse (N.I. Act, sections 15 and 51); Kinds of Indorsement – Indorsement in Blank and Full (N.I. Act, sections 16 and 54), Conditional Indorsement (N.I. Act, section 52), Restrictive Indorsement (N.I. Act, section 50), Sans Recourse Indorsement (N.I. Act, section 52); Partial Indorsement (N.I. Act, section 56)

Topic 5 : Liability of Parties

Liability of Maker, Drawer, Drawee and Indorser (N.I. Act, sections 30, 31, 32, 35 and 36)

10.	<i>Canara Bank Ltd. v. I.V. Rajagopal</i> (1975) 1 M.L.J. 420	47
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Topic 6 : Discharge of Parties from Liability on Promissory Note, Bill of Exchange and Cheque

Modes – Cancellation [N.I. Act, section 82 (a)]; Release [N.I. Act, section 82 (b)]; Payment [N.I. Act, section 82(c)]; Material alteration (N.I. Act, sections 87-89)

11	<i>London Joint Stock Bank, Ltd. v. Macmillan</i> (1918-19) All ER Rep. 30	56
12	<i>Allampati Subba Reddy v. Neelapareddi Ramanareddi</i> , AIR 1966 A.P. 267	60
13	<i>Shivalingappa v. P.B. Puttappa</i> , AIR 1971 Mys. 273	63

Topic 7 : Crossing of Cheques

Object of crossing; Kinds of crossing – general, special, not-negotiable & account payee crossing; Who may cross; Rights and duties of paying banker; Protection of collecting banker (N.I. Act, sections 123-131-A)

14.	<i>L. Pirbhu Dayal v. The Jwala Bank</i> , AIR 1938 All. 374	65
15.	<i>M/s. Tailors Priya v. M/s. Gulabchand Danraj</i> , IR 1963 Cal. 36	67
16.	<i>Great Western Rail Co. v. London & County Banking Co. Ltd.</i> (1900-3) All ER Rep. 1004 (HL)	73
17.	<i>Bapulal Premchand v. Nath Bank Ltd.</i> , AIR 1946 Bom. 482	76
18.	<i>Indian Overseas Bank v. Industrial Chain Concern</i> 1990) 1 SCC 484	84
19.	<i>State Bank of India v. United Commercial Bank Ltd.</i> , AIR 2003 Del. 284	

Topic 8 : Liabilities for Dishonour of Cheques

Dishonour of cheque for insufficiency etc. of funds; cognizance of offences (N.I. Act, sections 138-147)

20.	<i>Modi Cements Ltd. v. Kuchil Kumar Nandi</i> (1998) 3 SCC 249	94
21.	<i>Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.</i> (2000) 2 SCC 745 : AIR 2000 SC 954	99
22.	<i>Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd.</i> (2001) 6 SCC 463 : AIR 2001 SC 676	103
23.	<i>Suganthi Suresh Kumar v. Jagdeeshan</i> , AIR 2002 SC 681	108
24.	<i>MMTC Ltd. v. Medchl Chemicals & Pharma (P) Ltd.</i> , AIR 2002 SC 182	111
25.	<i>Goaplast Pvt. Ltd. v. Chico Ursula D' Souza</i> , AIR 2003 SC 2035 : (2003) 9 SCALE 791	115
26.	<i>C.C. Alavi Haji v. Palapetty Muhammed</i> , 2007 (7) SCALE 380	120
27.	<i>Smt. Shamshad Begum v. B. Mohammed</i> , 2008 (13) SCALE 669	127
28.	<i>S.L. Construction v. Alapati Srinivasa Rao</i> (2009) 1 SCC 500	129

PART – B : BANKING

Prescribed Legislation:

The Banking Regulation Act, 1949 (B.R. Act)

Prescribed Books:

1. C.R. Datta & P.M. Bakshi, **M.L. Tannan's Banking - Law and Practice in India** (21th ed., 2008)
2. R.K. Gupta, **Banking - Law and Practice** (2nd ed. 2008)
3. Mark Hapgood, **Paget's Law of Banking** (13th ed., 2007)

Topic 9 : Banking System in India and Control by Reserve Bank of India

Definition of 'bank', 'banker', 'banking', 'banking companies'; Development of banking business and companies; Regulations and restrictions; Powers and control exercised by the Reserve Bank of India (B.R. Act, sections 5-36AD)

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| 29. | <i>Sajjan Bank (Pvt.) Ltd. v. Reserve Bank of India</i> , AIR 1961 Mad. 8 | 133 |
| 30. | <i>Canara Bank v. P.R.N. Upadhyaya</i> (1998) 6 SCC 526 | |

PART C : INSURANCE

Prescribed Legislations:

1. The Insurance Act, 1938
2. The Marine Insurance Act, 1963
3. The Life Insurance Corporation Act, 1956
4. The General Insurance Business (Nationalisation) Act, 1972
5. The Insurance Regulatory and Development Authority Act, 1999

Prescribed Books:

1. K.S.N. Murthy & K.V.S. Sarma, *Modern Law of Insurance in India* (4th ed., 2002)
2. S.V.Joga Rao, M.N. Srinivasan's *Principles of Insurance Law* (9th ed., 2009)

Topic 10 : Law of Insurance

Nature and Scope of Insurance; Classification; General Principles – Proximate Cause

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| 31. | <i>Pink v. Fleming</i> (1890) 25 QBD 396 | 139 |
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Topic 11 : Doctrine of Utmost Good Faith

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| 32. | <i>Mithoolal Nayak v. Life Insurance Corporation of India</i> ,
AIR 1962 SC 814 | 140 |
| 33. | <i>Kasim Ali Bulbul v. New India Assurance Co.</i> , AIR 1968 J & K 39 | 148 |
| 34. | <i>Smt. Krishna Wanti Puri v. Life Insurance Corporation of India</i> ,
AIR 1975 Del. 19 | 157 |
| 35. | <i>Smt. Dipashri v. Life Insurance Corporation of India</i> ,
AIR 1985 Bom 192 | 166 |
| 36. | <i>Life Insurance Corporation of India v. Smt. G.M. Channabasamma</i>
(1991) 1 SCC 357 | 174 |
| 37. | <i>Life Insurance Corporation of India v. Asha Goel</i> , AIR 2001 SC 549 | 178 |

Topic 12 : Rules of Construction of Insurance Policy

38.	<i>New India Assurance Co. Ltd. v. M/s Zuari Industries Ltd.</i> (2009) 9 SCC 70	182
39.	<i>Simmonds v. Cockell</i> (1920) All ER Rep. 162	188
40.	<i>Harris v. Poland</i> (1941) All ER 204 : 1 K.B.D. 204	190

IMPORTANT NOTE:

1. The students are advised to read only the books prescribed above along with legislations and cases.
2. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
3. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.
4. The Question Paper shall include one compulsory question consisting of five parts out of which four parts will be required to be attempted. The question papers set for the academic years 2008 and 2010 are printed below for guidance.

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LL.B. VI Term Examinations, April-May, 2008

Note: Answer any *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
 - (i) Endorsement in Blank and Endorsement in full;
 - (ii) Liability of the drawee of a cheque;
 - (iii) Effect of Not Negotiable crossing;
 - (iv) Effect of material alteration of a negotiable instrument;
 - (v) Doctrine of *causa proxima*.
2. (a) What are the salient features of a valid Bill of Exchange.
 (b) Discuss the nature of the following Negotiable Instruments; Support your answer with reasons.
 - (i) "I promise to pay M's son of Rs. 5000/- for value received." (M has three sons).
 - (ii) "I promise to pay X Rs. 5000/- on the death of Y".
 - (iii) "I promise to pay the bearer the sum of Rs. 5000/-".
 - (iv) A writes to B "Please pay X or order Rs. 5000/- sixty days after sight.
3. (a) State briefly the anomalies in the definition of the term 'Holder' in the Negotiable Instruments Act, Suggest necessary modifications.

- (b) B borrowed Rs. 5000 from C and executed a promissory note in C's favour. C renounced the world and disappeared. Can C's son S enforce payment against B on the maturity of the said promissory note? Decide.
4. Critically examine the concept 'Holder in due course' and bring out the difference, if any, between the Indian Law and the English Law referring to the statutory provisions and the case law on the subject.
 5. "Section 131 of the Negotiable Instruments Act, 1881 confers protection to a collecting banker receiving payment of a crossed cheque in case the title of the customer to it is proved defective." State the essential requirements for claiming such protection. Discuss with the help of decided cases the standard of care expected of a collecting banker to enable it to claim this protection.
 6. (a) When is dishonour of a cheque an offence?
(b) A issued a cheque for Rs. 5000/- in favour of B towards the payment of monthly rent. The cheque was presented for encashment by B through his banker, however the same was returned unpaid by the banker of 'A' due to the reason "Payment stopped by drawer". B approaches you for advice. What action 'B' can take? Will B succeed in case a complaint under section 138 of the Negotiable Instruments Act is filed?
 7. Kini has an insurance policy against theft and house breaking, with a condition that her house shall always remain occupied. The house was left unattended on one Sunday, between 2 pm and 6 pm, when she had gone to see her ailing mother. On her return, she found the locks of her safe broken and her jewellery worth Rs. 20,000 missing. Kini claims the loss under the policy from the insurer. Decide, stating the principles of interpretation of insurance policy with reference to decided cases, if any.
 8. "Insurance is a contract based on utmost good faith and if it is not observed, the other party may avoid the contract." Explain with the help of decided cases the scope of this duty.

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LL.B. VI Term (Supplementary) Examinations, Aug.-Sept., 2008

Note: Answer *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
 - (i) Characteristics of Negotiable Instruments;
 - (ii) Difference between Negotiation and Assignment;
 - (iii) Effect of A/c payee crossing;
 - (iv) Insurable Interest;
 - (v) Liability of the drawee of a cheque.
2. (a) Distinguish between a bill of exchange and a promissory note.
(b) Are the following instruments, signed by A, valid negotiable instruments? Also state the nature of instruments respectively:

- (i) "Three months after date pay to C or order Rs. 5,000/- only with interest thereupon at 6% per annum."
 - (ii) "Mr. X, I owe you Rs. 5,000 for value received."
 - (iii) "I have received Rs. 5,000/- which I have borrowed from you and I have to be accountable to you for the same with interest."
 - (iv) "I promise to pay Y's son only Rs. 5,000/- for value received."
3. What do you mean by the term 'Holder' of a negotiable instrument? Is the definition given in the Negotiable Instruments Act, 1881 free from anomalies? How are the recommendations of Law Commission of India and the English Law on the point helpful in this regard?
 4. (a) A 'holder in due course' enjoys certain rights and privileges. Explain.
(b) The test of good faith in Indian Law on 'holder in due course' is stricter than the English Law. Elucidate.
 5. With the help of decided cases, describe the standard of care expected of a collecting banker to enable it to claim the protection of section 131 of the Negotiable Instruments Act, 1881. What are the other requirements of that section?
 6. "The object of bringing section 138 of the Negotiable Instruments Act, 1881 on statute is to include faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments." Elucidate.
 7. "Contracts of Insurance are *uber rimae fides*." Elucidate with the help of judicial decisions and statutory provisions on the subject.
 8. A lady X, aged 68, very nervous about the safety of her costly jewellery, insured it for Rs. 90,000 against theft and fire with the AB Insurance Company. One day, while going out, X kept the jewellery in a grate under coal which was ready for lighting up. On return, unmindful about the jewellery, she lit the grate, which resulted in total destruction of the insured jewellery. X's claim under the policy has been rejected by the AB Insurance Company on the ground that the Insurance Policy destruction of the jewellery by fire only at a place where no fire ought to be and, moreover, jewellery was destroyed due to the gross negligence of policyholder X. Discuss the principles of interpretation which should be applied in deciding the claim of X and decide whether X's claim has been rightly rejected by the company.

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LL.B. VI Term Examinations, April-May 2009

Note: Answer *five* question including Question No. 1, which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
 - (i) Liability of the drawee of a cheque.
 - (ii) Effect of not-negotiable crossing of a cheque;

- (iii) Difference between Negotiation and Assignment;
 - (iv) Difference between bills of exchange and cheque;
 - (v) Endorsement in blank and endorsement in full.
2. “The existing definition of the term ‘holder’ has given rise to various ambiguities and conflict of judicial opinions.”
Comment and suggest improvement in the definition, if possible.
 3. Critically examine the concept ‘holder in due course’ and bring out the difference, if any, between the Indian and far English law referring to the statutory provisions and the case law on the subject.
 4. Are the following instruments signed by A valid promissory notes? Give reasons and refer to decided cases:
 - (a) “Mr. Gay, I owe you Rs. 500 for value received.”
 - (b) ‘I promise to pay Z’s son Rs. 1,000 for value received.’ (Z has four sons)
 - (c) “I promise to pay Johnson Rs. 1,000 on the death of Y, provided Y leaves me sufficient to pay the said sum, or if I shall be otherwise able to pay.”
 5. “Contracts of Insurance are uberrimae fides.” Elaborate with the help of statutory provisions and judicial decisions.
 6. A took a ‘comprehensive policy’ of insurance with company B, insuring the contents of her flat, including jewellery, against loss by theft, on leaving her flat one day, she concealed the jewellery in the grate under coal and wood, which was ready for lighting. On returning, in the evening, she inadvertently lit the fire, and the jewellery was damaged.
 7. “Section 131 of the Negotiable Instruments Act, 1881 confers protection to a collecting banker receiving payment of a cross cheque in case the title of the customer to it is proved defective.’ State the essential requirements for claiming such protection. Discuss with the help of decided cases the standard of care expected of a collecting banker to enable it to claim this protection.
 8. “The object of bringing Section 138 of the Negotiable Instruments Act, 1881 is to inculcate with faith in the efficacy of banking operations and credibility in transacting business on negotiable instrument.” Elucidate.

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LL.B. VI Term (Supplementary) Examinations, July-August, 2009

Note: Attempt *five* questions including Question No. 1 which is compulsory.
All questions carry *equal* marks.

1. Attempt briefly any *four* of the following:
 - (i) Effect of a/c payee crossing of a cheque.
 - (ii) Material alteration of a Negotiable Instrument.
 - (iii) Conditional Indorsement.

- (iv) Liability of the drawee of a cheque
 - (v) Negotiability
2. (a) A bill is indorsed: 'Pay John Brown or Order.' John Brown indorses the bill in black and delivers it to B. B passes it by mere delivery to C. C forges B's indorsement and transfers it to D.
Can D recover upon the bill? Discuss referring to the statutory provisions.
 - (b) A, by fraud, induces B to make a promissory note in his favour. A negotiates the note to C who takes it as a 'holder in due course'. C consequently donates the note to D. Discuss the rights of D against C, A and B with the help of statutory provisions.
 3. How is the term 'Holder' defined in the Negotiable Instruments Act, 1881? What are the ambiguities pointed out by the Law Commission in this definition and the relevant amendments recommended by it?
 4. What is the definition of 'Holder in due course' in the Negotiable Instruments Act, 1881? Bring out the differences, if any, between the Indian law and the English Law. Refer to the statutory provisions and judicial decisions on the subject.
 5. "Section 138 of the Negotiable Instruments Act, 1881 was enacted to punish unscrupulous drawers of cheques who, though purport to discharge their liability by issuing cheque, have no intention of really doing so. Apart from civil liability, criminal liability is sought to be imposed by the said provision on such unscrupulous drawers of cheques. However with a view to avert unnecessary prosecution of an honest drawer of the cheque, the prosecution under Section 138 of the Act has been made subject to certain conditions." Enumerate and analyse the conditions for the successful applicability of Section 138 of the Act, referring to case law on the subject.
 6. State the facts of *Haris v. Polland* (1941) All ER 204 and explain the rules applied for proper construction of the phrase 'loss by fire' in a Fire Insurance Policy.
 7. What do you understand by the statement that the contracts of insurance are 'contracts of uberrimae fides'? Describe the extent of the assured's duty to disclose. What is the object and scope of S. 45 of the Insurance Act, 1938?
 8. In what circumstances is a collecting banker protected from liability for conversion by collecting a crossed cheque on behalf of a customer who turns out not to be the true owner of that cheque?
Explain with reference to the statutory provisions and case law on the subject.

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LL.B. VI Term Examinations, May-June, 2010

1. Attempt briefly any *four* of the following :-
 - (a) Characteristics of Negotiable Instruments.
 - (b) Material alteration of a Negotiable Instrument.
 - (c) Liability of the drawee of a cheque.
 - (d) Doctrine of *causa promixa*.
 - (e) Endorsement in blank and Endorsement in full.
2.
 - (a) Distinguish between a bill of exchange and a cheque.
 - (b) Discuss the nature of the following Negotiable Instruments. Support your answer with reasons :
 - (i) "I promise to pay M's son of Rs. 8,000 for value received."
(M has four sons)
 - (ii) "I promise to pay X Rs. 5,000 on the death of Y."
 - (iii) A writes to B "Please pay X or order Rs. 2,000 thirty days after sight."
 - (iv) Mr. B, I owe you Rs. 5,000 for value received.
3. 'The despotic but necessary principle' relating to negotiable instruments is that "a person taking a negotiable instrument in good faith and for value obtains a valid title to it, though he takes it from one who had no title to it or who was merely a thief."
How far is the above principle applicable in India ? Discuss with reference to the definition of 'Holder in due course' in the Negotiable Instruments Act, 1881 and the relevant case law, if any.
4.
 - (a) Give a critical analysis of the concept 'Holder' in the Negotiable Instruments Act, 1881'.
 - (b) D borrowed Rs. 5,000 from E and executed a promissory note in E's favour. E renounced the world and disappeared. Can E's son S enforce payment against D on the maturity of the said promissory note ? Decide.
5. Explain in brief 'General', 'Special', 'Account Payee' crossing of cheques. Discuss the protection available to the collecting banker under Section 131 of the Negotiable Instruments Act, with the help of decided cases.
6. "The object of bringing Section 138 on the statute book is to inculcate faith in the efficacy of banking operations and credibility in transacting business on Negotiable Instruments."
Discuss the above statement, referring to case law on the subject.
7. State the main rules of construction of an insurance policy elaborating how the judiciary applied these rules in the case of Harris Vs. Poland (1941) AIR 204.

8. A, aged 48, had heart attack in 2002 for which he had open heart surgery in Laxmi Hospital. In 2005, he insured his life with LIC for Rs. 5,00,000. In the proposal form to the question "Have you suffered any heart ailment?" A gave a negative answer. A doctor of LIC examined the health of A but he recommended A's life to be insured. After 4 years of issue of insurance policy, A died by another "Heart Attack". Can life insurance policy avoid the policy and refuse to pay the sum insured to the nominee of the policy? Can claimant plead estoppel and bar of Section 45 of Insurance Act, 1938? Decide.