Negotiable instrument Act: Meaning and essential elements of a Negotiable instruments

The law relating to “negotiable instruments” is contained in the Negotiable Instruments Act, 1881. The Act extends to the whole of India. The Negotiable Instruments Act, 1881, has been amended for more than a dozen times so far.
The latest in the series are: (i) the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (e"ective from 1st April, 1989), and (ii) the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (e"ective from 6th February, 2003). The provisions of all the Amendment Acts have been incorporated at relevant places in Part IV of this book.
The Negotiable Instruments Act, 1881, as amended up-to-date, deals with three kinds of negotiable instruments, i.e., Promissory Notes, Bills of Exchange and Cheques.

(a) Payable to order:
A note, bill or cheque is payable to order which is expressed to be ‘payable to a particular person or his order.’ For example, (i) Pay A, (ii) Pay A or order, (iii) Pay to the order of A, (iv) Pay A and B, and (v) Pay A or Bare various forms in which an instrument may be made payable to order.
But it should not contain any words prohibiting transfer, e.g., ‘Pay to A only’ or ‘Pay to A and none else’ is not treated as ‘payable to order’ and therefore such a document shall not be treated as negotiable instrument because its negotiability has been restricted.
It may be noted that documents containing express words prohibiting negotiability remain valid as a document (i.e., as an agreement) but they are not negotiable instruments as they cannot be negotiated further.
(b) Payable to bearer:
‘Payable to bearer’ means ‘payable to any person whosoever bears it.’ A note, bill 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.
Thus, a note, bill or cheque in the form “Pay to A or bearer,” or “Pay A, B or bearer,” or “Pay bearer” is payable to bearer. Also, where an instrument is originally ‘payable to order,’ it may become ‘payable to bearer’ if endorsed in blank by the payee.
For example, a cheque is payable to A. A endorses it merely by putting his signature on the back and delivers to B with the intention of negotiating it (without making it payable to B or S’s order). In the hands of B the cheque is a bearer instrument.

More comprehensive definition:
The definition given in Section 13 of the Negotiable Instruments Act does not set out the essential characteristics of a negotiable instrument. Possibly the most expressive and all-encompassing definition of negotiable instrument had been suggested by Thomas who is as follows:
“A negotiable instrument is one which is, by a legally recognised custom of trade or by law, transferable by delivery or by endorsement and delivery in such circumstances that (a) the

holder of it for the time being may sue on it in his own name and (b) the property in it passes, free from equities, to a bona fide transferee for value, notwithstanding any defect in the title of the transferor."

Essential Features of Negotiable Instruments are given below:
1. Writing and Signature:
Negotiable Instruments must be written and signed by the parties according to the rules relating to Promissory Notes, Bills of Exchange and Cheques. Demand Drafts are also construel as Negotiable Instruments in the limiting case as they have the same property as N.I. Instrumes.
2. Money:
Negotiable instruments are payable by legal tender money of India. The liabilities of the parties of Negotiable Instruments are fixed and determined in terms of legal tender money.
3. Negotiability:
Negotiable Instruments can be transferred from one person to another by a simple process. In the case of bearer instruments, delivery to the transferee is su#cient. In the case of order instruments two things are required for a valid transfer: endorsement (i.e., signature of the holder) and delivery. Any instrument may be made non-transferable by using suitable words, e.g., "pay to X only."
4. Title:
The transferee of a negotiable instrument, when he fulfils certain conditions, is called the holder in due course. The holder in due course gets a good title to the instrument even in cases where the title of the transferrer is defective.
5. Notice:
It is not necessary to give notice of transfer of a negotiable instrument to the party liable to pay. The transferee can sue in his own name.
6. Presumptions:
Certain presumptions apply to all negotiable instruments. Example: It is presumed that there is consideration. It is not necessary to write in a promissory note the words "for value received" or similar expressions because the payment of consideration is presumed. The words are usually included to create additional evidence of consideration.
7. Special Procedure:
A special procedure is provided for suits on promissory notes and bills of exchange (The procedure is prescribed in the Civil Procedure Code). A decree can be obtained much more quickly than it can be in ordinary suits.
8. Popularity:
Negotiable instruments are popular in commercial transactions because of their easy negotiability and quick remedies.
9. Evidence:
A document which fails to qualify as a negotiable instrument may nevertheless be used as evidence of the fact of indebtedness.

Kinds of Negotiable Instrument Holder and Holder in Due Course

In the context of negotiable instruments, there are two important concepts related to holders: "Holder" and "Holder in Due Course." Here's an explanation of each:

1. Holder of a Negotiable Instrument:
   - A holder is someone who possesses a negotiable instrument (such as a promissory note or a check) and has the right to receive payment from the party who issued the instrument (the maker or drawer).
   - The holder can become a holder in due course if they meet certain criteria.

2. Holder in Due Course (HDC):
   - A holder in due course is a special status granted to a holder of a negotiable instrument who meets specific legal requirements. When a person becomes an HDC, they gain certain legal protections and rights, making them a more secure holder.
   - To be considered an HDC, the holder must meet these conditions:
     - They must acquire the instrument for value (typically, they must have given something of value in exchange for the instrument).
     - They must acquire the instrument in good faith, without notice of any defects or legal issues (such as fraud or forgery) related to the instrument.
     - They must acquire the instrument before it reaches its maturity date and before any overdue status.
     - They must acquire the instrument without knowledge of any claims or defenses against it.

Being an HDC provides advantages such as immunity from certain claims and defenses that could be raised against a non-HDC holder. This status helps promote the free flow of negotiable instruments in commerce.

Negotiation by endorsements, crossing of a cheque and Dishonour of a cheque.

Certainly, let's explore these important concepts related to checks (cheques):

1. Negotiation by Endorsements:
   - Endorsement is the act of signing the back of a check to transfer ownership or to instruct how the check should be handled. There are different types of endorsements:
     A)Blank Endorsement:This is when the payee signs their name on the back of the check but doesn't specify a new payee. It effectively turns the check into a bearer instrument, meaning whoever possesses it can cash it.
     B) Special (or Restrictive) Endorsement:In this type of endorsement, the payee specifies the new payee on the back of the check. This restricts the check to only be payable to that specific person or entity.

C) Endorsement in Full:This involves signing the back of the check and adding "Pay to the order of [Name]" below the signature. It's similar to a special endorsement but more formal.

2. Crossing of a Cheque (Check):

- Crossing a check involves drawing two parallel lines across the face of the check, either vertically or diagonally. This indicates that the check should not be encashed at the counter but must be deposited into a bank account.
- Crossed checks enhance security and reduce the risk of theft or mishandling because they can only be credited to the account of the payee.

3. Dishonor of a Cheque:

A) When a check is presented for payment to the bank on which it is drawn, and the bank refuses to honor the check by making payment, it is said to be "dishonored."

B) Common reasons for the dishonor of a check include insufficient funds in the drawer's account, a stale-dated check, a post-dated check, a stopped payment request by the drawer, or discrepancies in the signature or other details.