

# LAW OF ENDORSEMENTS UNDER NEGOTIABLE INSTRUMENTS ACT, 1881

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## INTRODUCTION

Negotiable Instruments have attained significance with time in commercial world. Owing to complexities of business administration it is quite possible that an enterprise, a going concern or a proprietor struggling due to lack of funds but that should not be a deterrent to business transactions. In such circumstances negotiable instruments acts as a boon in disguise. Law in relation to negotiable instruments in India is governed by Negotiable Instruments Act of 1881. The act does not define negotiable instruments but states kinds of the same under Section 13. A “negotiable instrument” means a promissory note, bill of exchange or cheque payable either to order or to bearer<sup>1</sup>. Bare reading of the provision states that promissory note, bills of exchange and cheque is considered to be negotiable instrument under the act. According to Justice Willis, Negotiable Instruments is “the property which is acquired by anyone who takes it bonafide or for value notwithstanding any defects in the title of the person from whom he took it.” It can also be defined as an order signed by endorser to pay without conditions<sup>2</sup>. To put it in simple terms, a negotiable instrument is a promise to pay unconditionally or an order to pay unconditionally to the holder of it on demand or after maturity of such instrument. The author aims to provide an elaborate a brief understanding of endorsements of such negotiable instruments and its various forms in the paper which according to the opinion of the author is the backbone of negotiability and captures the very essence of such instruments.

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<sup>1</sup> Section 13 of Negotiable Instrument Act 1881

<sup>2</sup> Available at <https://thelawdictionary.org/negotiable-instrument/>

## FEATURES OF NEGOTIABLE INSTRUMENTS AND ENDORSEMENTS

Negotiable instruments have eight essential features<sup>3</sup>. It should be in writing and should be signed by the parties involved. Legal tender in relation to Negotiable Instruments in India is money. Title of the negotiable instrument is of prime importance which is an intense subject of discussion when it comes to the rights of holder in due course. Notice is an important aspect but need not be given in case of endorsements; transferee can sue in his own name. Certain legal presumptions are attached to negotiable instruments which have been discussed under the act<sup>4</sup>. Special procedure has been prescribed in CPC to deal with suits in relation to Negotiable Instruments. Negotiable instruments can serve as documentary evidence in the court of law. The most important feature in relation to the subject matter of discussion at hand is “Negotiability”. Every negotiable instrument governed under Negotiable Instruments Act of 1881 should be freely transferable from one person to another and absence of this pre requisite in any instrument shall nullify its claim to be negotiable instrument under the act. Endorsements are practical application of negotiability and relevant sections in accordance of the same has been provided under the act. According to the act, Endorsement of a negotiable instrument is, “When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, 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<sup>5</sup>.” Endorsement is the process of transferring Negotiable Instruments from the endorser, the person in possession of the instrument, to the endorsee, person to whom it has been transferred, and the same can be done in various ways. The first method of endorsement under Negotiable Instruments Act of 1881 is **blank** endorsement. If the endorser signs his name on the face of the instrument without giving any directions with regards to endorsements then such endorsement is referred to as blank. In such a situation the holder of the instrument shall have the right to receive payments to that effect. According to the act, if the endorser signs his name

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<sup>3</sup> Sam Malhotra, Nine Features of Negotiable Instruments, <http://www.shareyouressays.com/knowledge/9-essential-features-of-negotiable-instruments-negotiable-instruments-act-1881/112081>

<sup>4</sup> Section 118 of Negotiable Instrument Act 1881

<sup>5</sup> Section 15 of Negotiable Instrument Act 1881

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<sup>6</sup>. **Full** endorsement is a regular endorsement in which details in relation to endorsee such as name is mentioned on the face of negotiable instrument or the back and is duly signed by the endorser<sup>7</sup>. Such endorsements are also referred to as special endorsements. **Partial** endorsement is endorsements in which a part of the amount in the negotiable instrument is transferred to the endorsee. Under the act partial endorsements are, No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance<sup>8</sup>. Such endorsement is not valid and shall not be honoured. In **Conditional** endorsement the paying bank shall be liable to pay to the endorsee, sum specified in the instrument only on satisfaction of certain conditions. Paying bank is not obligated to verify such fulfilment. Under the act, “the endorser of a negotiable instrument may, by express words in the endorsement, exclude his own liability thereon, or make such liability or the right of the endorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen. Where an endorser so excludes his liability and afterwards becomes the holder of the instrument all intermediate endorsers are liable to him”<sup>9</sup>. In **Restrictive** endorsement such words are added to the instrument which cannot make further transfers and amount is payable to endorsee only. For Example, “*Pay the Contents to Bahuballi only*”; here bahuballi cannot transfer the instrument further. Under the act,” The endorsement of a negotiable instrument followed by delivery transfers to the endorsee the property therein with the right of further negotiation; but the endorsement may, by express words, restrict or exclude such right, or may merely constitute the endorsee an agent to indorse the instrument, or to receive its contents for the endorser, or for some other specified person<sup>10</sup>.”

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<sup>6</sup> Section 16 of Negotiable Instrument Act 1881

<sup>7</sup> Endorsements, Available at <http://bankessentials.blogspot.com/2012/10/endorsement-and-crossing-of-negotiable.html>, October 6<sup>th</sup>, 2012

<sup>8</sup> Section 56 of Negotiable Instrument Act 1881

<sup>9</sup> Section 52 of Negotiable Instrument Act of 1881

<sup>10</sup> Section 50 of Negotiable Instruments Act 1881

## CONCLUSION AND AUTHORS NOTE

As already stated above Negotiable Instrument is of immense significance when it comes to business transactions. Endorsements personify transferability of negotiable instrument without which it does not hold any relevance at all. In case of urgency the endorsee can always get bills of exchange discounted at the local bank at rate which is fixed by the Reserve Bank of India. In case the bills have been discounted, it is the liability of the acceptor to pay off the bank and the bank shall receive in full the amount which was stated in the bills of exchange. The endorser should avoid blank endorsements which can easily be misused and anyone in possession of negotiable instrument shall receive the money even though he was not supposed to. Markings in relation to endorsements should be made clearly and such markings should not have any ambiguity. Under the negotiable instrument act paying bank is exempted from liability if the payment has been made in good faith where the intension of the parties is clear on the face of such instruments. Bank is not expected to take extraordinary care while making payments. Markings can be made in front of the negotiable instrument or at the bank. It should be duly signed by the maker or drawer of negotiable instrument without which endorsements can never be valid. It has already been discussed that transfer of partial amount when it comes the laws in India is not possible and the paying banker under no circumstance shall honour such claims. Cheque which is also a negotiable instrument should be drawn with utmost care and any error with respect to drawing of such cheques shall exempt the paying bank in case the payment has been made in good faith. The aim of the author was to explain the concept on endorsement under negotiable instruments act of 1881 devoid of any technicality or case laws and was to highlight the fact that endorsements happens to be the heart and soul of negotiability which is a pillar on which any negotiable instrument stands. Different types of endorsement have been discussed as simply as possible along with ready reference to relevant sections pertaining to the same under negotiable instruments act. Endorsements act as a catalyst to smoothen business transactions and without this feature doing business shall be a herculean task.