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NEGOTIABLE INSTRUMENTS

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- ▶ **11. Endorsement** – Refers to their signature on a cheque (normally on the reverse side) with the intention to transfer the right to receive payment.
 - ▶ **12. Crossing** – A crossing refers to two transverse parallel lines on the face of the cheque.
 - ▶ Effect: The drawee banker must pay the cheque to another banker. i.e The holder must pay it into his banking account.
 - ▶ **13. Holder** – anyone in possession of instrument, who is entitled to payment. Hence the holder may be the person in possession of a bearer instrument, or the payee or endorsee in the case of an order instrument.
 - ▶ **14. Indorser** is the person who signs an order cheque – for the purpose of transferring the right to receive payment
 - ▶ **15. Indorsee** is the person to whom the indorser hands the instrument to. This person will receive payment.

- ▶ **16. Delivery** – instrument must be delivered to payee / bearer to be valid
- ▶ **17. Bearer** is the person in possession of an instrument payable to bearer – a bearer instrument
- ▶ **18. Holder** is defined as a payee or indorsee or bearer of an instrument who is in possession thereof.
- ▶ **19. Holder in due course** is a holder who becomes the true owner of a negotiable instrument, with an indisputable title to payment. This means that a holder has taken the instrument in good faith and for value.
- ▶ An **indorser** is a holder who negotiates an instrument by putting indorsement (signature) on the reverse side thereof and delivering it to another person, the indorsee

Case Study

- ▶ Van Tonder en Andere v. Vooster, a man authorized his son to sign a cheque on his behalf. The son had the same name as the father. The son signed the cheque and also wrote his name at the back of the cheque.

The court held that the son has signed on behalf of his father.

TYPES OF NEGOTIABLE INSTRUMENTS

▶ (A) Bill of Exchange

▶ Definition:

- ▶ A Bill is : – An unconditional order/instruction
- ▶ – in writing
 - ▶ – addressed by one person to another
 - ▶ – signed by the person giving the instruction
 - ▶ – requiring payment to be made either on demand/ at a fixed, determinable date
 - ▶ – a set sum of money to be paid
 - ▶ – to a specified person or to his order or to the bearer of the bill

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I promise to pay S. Valjee
Two thousand Rand only 09/09/2009

D. Chetty

- ▶ Questions :
- ▶ 1. How is a bill (ie. Bill of Exchange and cheque) different from a promissory note?
- ▶ Answer: A bill contains an order to pay and a promissory note contains a promise to pay.
- ▶ 2. When is a promissory note used?
- ▶ Answer: To act as proof when a loan is taken

- ▶ Example : Diya borrows R1000 from Shreeya. Diya can give Shreeya a promissory note to acknowledge her indebtedness. Shreeya must agree to this agreement. Who are the essential parties?
- ▶ Diya = the maker or promissory (she makes the promise via a promissory note to acknowledge her (indebtedness/debt)
- ▶ Shreeya = the payee → (the amount is due to her) she is to receive payment

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- ▶ Define a Cheque : A Cheque is clearly a bill, drawn on a banker eg. ACE National Bank and payable on demand.
 - ▶ How is a Cheque different from a Bill of Exchange
 - ▶ 1. A Cheque is always payable on demand. A Bill is payable on demand or at a future determined date.
 - ▶ 2. With a Cheque, the drawee is always the bank ie. The instruction to pay is given to
 - ▶ a bank. With a Bill, the instruction to pay is given to an individual or the bank.

- ▶ Indorsements
- ▶ What is an indorsement?
- ▶ • Refers to the signature of the holder on the reverse side of the instrument in order for the instrument to be negotiated.
- ▶ • Indorser delivers the instrument to indorsee who becomes entitled to payment
- ▶ • Indorsee now becomes 'the holder'
- ▶ • If the indorsee takes the instrument 'in Goodfaith' and 'for value', he can become a 'holder in due course'

QUESTION: Can the holder convert a blank indorsement into a special one?

ANSWER: Yes, by inserting the name of the indorsee above the signature of the indorser

- ▶ **Special Indorsement** The name of the indorsee is specified (Person to receive payment after negotiation)
- ▶ **Effect :** When the name of the indorsee is stated the instrument is then an order instrument.
- ▶ **Exceptions:** When the indorsee is a non – existing person or a person with no contractual capacity then it is treated as a **‘bearer instrument’**.

Special Crossing on Cheques

- ▶ Following are some specimen of special crossing—
- ▶ Dhaka bank Ltd
- ▶ Not negotiable Dhaka bank Ltd.
- ▶ Dhaka bank Ltd A/c Arif.
- ▶ Dhaka bank Ltd A/c payee.
- ▶ Dhaka bank Ltd payee's A/c