Negotiable instruments act 1881 assignment

Food & Diet

Table of Contents EVOLUTION OF TRADE AND COMMERCE LEADING TO THE INTRODUCTION OF NEGOTIABLE INSTRUMENTS. The world as a whole has been the “ cradle of commerce” because this exchange is not only between individuals but also between peoples and nations. This naturally implies the existence of: CERTAIN SURPLUS OF WEALTH CERTAIN PROVISION FOR COMMUNICATION Both of which are essential for growth of commerce. Unless there is a surplus of wealth and provision for communication, commerce cannot grow.

EXAMPLE- In the primitive economic society when each tribe or family produced all that is needed and consumed all that it produced, need of commerce did not and could not arise. Only after the division of labour and consequent development of exchange, commerce began to grow. Once it started growing, it spread its invisible thread throughout the length and breadth of the world leading to its present day complex mechanism.

These stages may be summarized as follows: TRADE IN THE FORM OF BARTER- In the second stage, wants of the family became more numerous and many families found themselves with certain goods and surplus and deficient in certain other goods. These families wanted to exchange their surplus goods for those goods which they did not possess. This gave rise to “ exchange of goods for goods, i. e. , Barter system. Thus this is the place from where commerce may be said to have begun.

MONEY AS A MEDIUM OF TRADE AND TOWN AS THE CENTRE OF TRADE- Commerce reached into its third stage of growth when money was evolved as medium of exchange to remove the limitations of barter. Introduction of money began led to the extension of division of labour and specialization. People began to produce goods for certain local markets. Thus, division of labour was extended to a locality. Gradually a separate class of artisans and traders came into existence. They settled down at fixed places which came to be known as towns. Growth of these towns gave great stimulus to commerce.

The size of the market and the number of commodities exchanged in the market, both increased. Traders from other countries brought luxury articles, metals and ornaments for sale. {text: list-item} {text: list-item} {text: list-item} WORLD ECONOMY AND THE WORLD MARKET- Commerce entered into another stage of its growth when nations of the world were brought into commercial relationships through the invisible thread of trade. As a result of the geographical discoveries of the late 15th, 16th and 17th centuries new trade routes were opened up and commerce grew between nations.

Now, in addition to the local market and the trade extending over the whole area of a single country, commodities came to be sold and purchased between traders from different countries in the world. This gave rise to an international world market and to the international trade. Thus the nations of the world were linked together through the medium of the world market. Evolution of commerce is a never ending process. Almost every day new experiments in its mechanism are made. New forms and methods are being evolved in both socialist and capitalist countries, in both developed and developing nations.

WHY WAS IT NECESARRY TO INTRODUCE NEGOTIABLE INSTRUMENTS? Historically business developed by stages. Pastoral stage Agricultural stage Handicrafts stage Guild stage Domestic stage Factory stage. Agricultural stage: In course of time, the nomadic tribes settled permanently at fixed places, built up the huts and shelters for their residences and began cultivating the land in common. Growing corns, grasses etc. became the main occupation. Agriculture emerged as the basic feature of economic living of man. He gradually produced more and then started to exchange it with other commodities.

This was known as barter system. Guild stage: A guild is an association of persons following a similar occupation and it is formed to protect and promote the interest of its members through cooperative endeavors. Domestic stage: A new class entrepreneur emerged as a link between producer and consumer. Now entrepreneur purchased the raw materials for the purpose of manufacture and sale nut did not do the processing himself. He took the risk of productions and sale. Out of the proceeds of his undertaking, he paid for the materials and labor.

The amount left was his profit These were the different stages of evolution of business. However it was noted that the growth was very slow and the system was very complex. There were different instruments used to purchase different commodities in different stages. The system of exchange was such that it led to confusion and various complexities. To avoid such confusion and to operate the business activities smoothly negotiable instruments were introduced. WHAT ARE NEGOTIABLE INSTRUMENTS? Exchange of goods and services is the basis of every business activity.

Goods are bought and sold for cash as well as on credit. All these transactions require flow of cash either immediately or after a certain time. In modern business, large number of transactions involving huge sums of money takes place every day. It is quite inconvenient as well as risky for either party to make and receive payments in cash. Therefore, it is a common practice for businessmen to make use of certain documents as means of making payment. Some of these documents are called negotiable instruments. MEANING OF NEGOTIABLE INSTRUMENTS

The concept of negotiability is one of the most important features of commercial paper. A negotiable instrument is a written document, signed by the maker or drawer, and containing an unconditional promise to pay (or order to pay) a certain sum of money on delivery, or at a definite time, to the bearer (or to the order). To understand the meaning of negotiable instruments let us take a few examples of day-to-day business transactions. EXAMPLE Suppose Pitamber, a book publisher has sold books to Prashant for Rs 10, 000/- on three months credit.

To be sure that Prashant will pay the money after three months, Pitamber may write an order addressed to Prashant that he is to pay after three months, for value of goods received by him, Rs. 10, 000/- to Pitamber or anyone holding the order and presenting it before him (Prashant) for payment. This written document has to be signed by Prashant to show his acceptance of the order. Now, Pitamber can hold the document with him for three months and on the due date can collect the money from Prashant. He can also use it for meeting different business transactions.

For instance, after a month, if required, he can borrow money from Sunil for a period of two months and pass on this document to Sunil. He has to write on the back of the document an instruction to Prashant to pay money to Sunil, and sign it. Now Sunil becomes the owner of this document and he can claim money from Prashant on the due date. Sunil, if required, can further pass on the document to Amit after instructing and signing on the back of the document. This passing on process may continue further till the final payment is made.

In the above example, Prashant who has bought books worth Rs. 10, 000/- can also give an undertaking stating that after three month he will pay the amount to Pitamber. Now Pitamber can retain that document with himself till the end of three months or pass it on to others for meeting certain business obligation (like with Sunil, as discussed above) before the expiry of that three months time period. Thus, we can say negotiable instrument is a transferable document, where negotiable means transferable and instrument means document.

To elaborate it further, an instrument, as mentioned here, is a document used as a means for making some payment and it is negotiable i. e. , its ownership can be easily transferred. Thus, negotiable instruments are documents meant for making payments, the ownership of which can be transferred from one person to another many times before the final payment is made. DEFINITION OF NEGOTIABLE INSTRUMENT According to section 13 of the Negotiable Instruments Act, 1881, a negotiable instrument means " 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. (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. (iii). -Where a promissory note, bill of exchange or cheque, either originally or by endorsement, is expressed to be payable to he order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option. A negotiable instrument may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or -some of several payees. TYPES OF NEGOTIABLE INSTRUMENTS According to the Negotiable Instruments Act, 1881 there are just three types of negotiable instruments i. e. , promissory note, bill of exchange and cheque. However many other documents are also recognized as negotiable instruments on the basis of custom and usage, like hundis, treasury bills, share warrants, etc. provided they possess the features of negotiability. In the following sections, we shall study about Promissory Notes (popularly called pronotes), Bills of Exchange (popularly called bills), Cheques and Hundis (a popular indigenous document prevalent in India), in detail. PROMISSORY NOTE Suppose you take a loan of Rupees Five Thousand from your friend Ramesh. You can make a document stating that you will pay the money to Ramesh or the bearer on demand. Or you can mention in the document that you would like to pay the amount after three months.

This document, once signed by you, duly stamped and handed over to Ramesh, becomes a negotiable instrument. Now Ramesh can personally present it before you for payment or give this document to some other person to collect money on his behalf. He can endorse it in somebody else's name who in turn can endorse it further till the final payment is made by you to whosoever presents it before you. This type of a document is called a Promissory Note. ILLUSTRATIONS A signs instrument 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, 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. SPECIMEN OF A PROMISSORY NOTE {draw: frame} PARTIES TO A PROMISSORY NOTE There are primarily two parties involved in a promissory note. They are FEATURES OF A PROMISSORY NOTE Let us know the features of a promissory note. i. A promissory note must be in writing, duly signed by its maker and properly stamped as per Indian Stamp Act. ii. It must contain an undertaking or promise to pay.

Mere acknowledgement of indebtedness is not enough. For example, if someone writes ' I owe Rs. 5000/- to Satya Prakash', it is not a promissory note. iii. The promise to pay must not be conditional. For example, if it is written ‘ I promise to pay Suresh Rs 5, 000/- after my sister’s marriage’, is not a promissory note. iv. It must contain a promise to pay money only. For example, if someone writes ‘ I promise to give Suresh a Maruti car’ it is not a promissory note. v. The parties to a promissory note, i. e. the maker and the payee must be certain. vi.

A promissory note may be payable on demand or after a certain date. For example, if it is written ‘ three months after date I promise to pay Satinder or order a sum of rupees Five Thousand only’ it is a promissory note. vii. The sum payable mentioned must be certain or capable of being made certain. It means that the sum payable may be in figures or may be such that it can be calculated. (See specimen below). BILL OF EXCHANGE Suppose Rajiv has given a loan of Rupees Ten Thousand to Sameer, which Sameer has to return. Now, Rajiv also has to give some money to Tarun.

In this case, Rajiv can make a document directing Sameer to make payment up to Rupees Ten Thousand to Tarun on demand or after expiry of a specified period. This document is called a Bill of Exchange, which can be transferred to some other person’s name by Tarun. SPECIMEN OF A BILL OF EXCHANGE {draw: frame} PARTIES TO A BILL OF EXCHANGE There are three parties involved in a bill of exchange. They are The drawer can also draw a bill in his own name thereby he himself becomes the payee. Here the words in the bill would be Pay to us or order.

In a bill where a time period is mentioned, just like the above specimen, is called a Time Bill. But a bill may be made payable on demand also. This is called a Demand Bill. FEATURES OF A BILL OF EXCHANGE Let us know the various features of a bill of exchange. i. A bill must be in writing, duly signed by its drawer, accepted by its drawee and properly stamped as per Indian Stamp Act. ii. It must contain an order to pay. Words like ‘ please pay Rs 5, 000/- on demand and oblige’ are not used. iii. The order must be unconditional. iv. The order must be to pay money and money alone. . The sum payable mentioned must be certain or capable of being made certain. vi. The parties to a bill must be certain. CHEQUES Cheque is a very common form of negotiable instrument. If you have a savings bank account or current account in a bank, you can issue a cheque in your own name or in favour of others, thereby directing the bank to pay the specified amount to the person named in the cheque. Therefore, a cheque may be regarded as a bill of exchange; the only difference is that the bank is always the drawee in case of a cheque. SPECIMEN OF A CHEQUE {draw: frame}

FEATURES OF A CHEQUE Let us look into some important features of a cheque. i. A cheque must be in writing and duly signed by the drawer. ii. It contains an unconditional order. iii. It is issued on a specified banker only. iv. The amount specified is always certain and must be clearly mentioned both in figures and words. v. The payee is always certain. vi. It is always payable on demand. vii. The cheque must bear a date otherwise it is invalid and shall not be honoured by the bank. Types of Cheque Broadly speaking, cheques are of four types. a) Open cheque, and b) Crossed cheque.) Bearer cheque d) Order cheque Let us know details about these cheques. OPEN CHEQUE: A cheque is called ‘ Open’ when it is possible to get cash over the counter at the bank. The holder of an open cheque can do the following: Receive its payment over the counter at the bank, Deposit the cheque in his own account Pass it to someone else by signing on the back of a cheque. CROSSED CHEQUE: Since open cheque is subject to risk of theft, it is dangerous to issue such cheques. This risk can be avoided by issuing other types of cheque called ‘ Crossed cheque’.

The payment of such cheque is not made over the counter at the bank. It is only credited to the bank account of the payee. A cheque can be crossed by drawing two transverse parallel lines across the cheque, with or without the writing ‘ Account payee’ or ‘ Not Negotiable’. {draw: frame} BEARER CHEQUE: A cheque which is payable to any person who presents it for payment at the bank counter is called ‘ Bearer cheque’. A bearer cheque can be transferred by mere delivery and requires no endorsement. {draw: frame} ORDER CHEQUE: An order cheque is one which is payable to a particular person.

In such a cheque the word ‘ bearer’ may be cut out or cancelled and the word ‘ order’ may be written. The payee can transfer an order cheque to someone else by signing his or her name on the back of it. There is another categorization of cheques which is discussed below: Ante-dated cheques:- Cheque in which the drawer mentions the date earlier to the date of presenting if for payment. For example, a cheque issued on 20th May 2003 may bear a date 5th May 2003. Stale Cheque:- A cheque which is issued today must be presented before at bank for payment within a stipulated period.

After expiry of that period, no payment will be made and it is then called ‘ stale cheque’. Find out from your nearest bank about the validity period of a cheque. Mutilated Cheque:- In case a cheque is torn into two or more pieces and presented for payment, such a cheque is called a mutilated cheque. The bank will not make payment against such a cheque without getting confirmation of the drawer. But if a cheque is torn at the corners and no material fact is erased or cancelled, the bank may make payment against such a cheque.

Post-dated Cheque:- Cheque on which drawer mentions a date which is subsequent to the date on which it is presented, is called post-dated cheque. For example, if a cheque presented on 8th May 2003 bears a date of 25th May 2003, it is a post-dated cheque. The bank will make payment only on or after 25th May A Hundi is a negotiable instrument by usage. It is often in the form of a bill of exchange drawn in any local language in accordance with the custom of the place. Sometimes it can also be in the form of a promissory note.

A hundi is the oldest known instrument used for the purpose of transfer of money without its actual physical movement. The provisions of the Negotiable Instruments Act shall apply to hundis only when there is no customary rule known to the people. {draw: frame} Types of Hundis There are a variety of hundis used in our country. Let us discuss some of the most common ones. There are few other varieties like Nam-jog hundi, Dhani-jog hundi, Jawabee hundi, Jokhami hundi, Firman-jog hundi, etc. DIFFERENCES BETWEEN BILL OF EXCHANGE & PROMISSORY NOTES DISTINCTION BETWEEN

A CHEQUE AND A BILL OF EXCHANGE FEATURES OF NEGOTIABLE INSTRUMENTS

After discussing the various types of negotiable instruments let us sum up their features as under A NEGOTIABLE INSTRUMENT MUST BE IN WRITING. This includes handwriting, typing, computer printout and engraving, etc. In every negotiable instrument there must be an UNCONDITIONAL ORDER OR PROMISE FOR PAYMENT. 10. NEGOTIATION OF COMMERCIAL PAPER Assignment Negotiation Endorsements {text: list-item} EXCEPTIONS Under the Code, the following are not negotiable instruments, although the law governing obligations with respect to such items may be similar to or derived from the law applicable to negotiable instruments.

Letters of Credit, which are governed by Article 5 of the Code. Bills of Lading and other documents of title, which are governed by Article 7 of the Code. Securities, such as Stocks & Bonds, which are governed by Article 8 of the Code. Deeds & other documents conveying interests in real estate, although a mortgage may secure a promissory note which is governed by Article 3. E-TRANSFERS ELECTRONIC FUNDS TRANSFER ACT In 1995, the Reserve Bank had set up the Committee for Proposing Legislation on Electronic Funds Transfer and other Electronic Payments (Chairperson : Smt. K. S. Shere).

The Shere Committee had recommended a set of EFT Regulations by the Reserve Bank under the Reserve Bank of India Act, 1934 and amendment to the Bankers' Books Evidence Act, 1881 as short term measures and promotion of a few Acts like the Electronic Funds Transfer Act, the Computer Misuse and Data Protection Act etc. as long term measures. The Reserve

Bank has already initiated steps for framing of EFT Regulations. The Government of India have also initiated steps for promoting Information and Technology Act, 1999 and consequential amendments to the Reserve Bank of India Act, 1934, the Bankers' Books Evidence Act, 1881 etc.

The proposed Information Technology Bill, 1999 and Electronic Commerce Bill, 1999 are intended to be general purpose legislation covering mainly issues like secure electronic records and signatures, acceptance of digital signatures, duties of certification authority, liability of network service providers, computer crime and data protection. Both the bills deal with electronic contracts and they are being promoted by the Government of India primarily to facilitate introduction of Electronic Data Interchange in the commercial sector.

However, they are equally applicable for electronic funds transfer already launched by the Reserve Bank and is going to be increasingly resorted to by the user banks of the VSAT based network, the INFINET. However, there is still a need for a separate Act for Electronic Funds Transfer because certain transactional issues like payments finality, rights and obligations of the parties involved in electronic funds transfer etc. cannot be covered in general purpose bills like the proposed Information Technology Bill or the proposed Electronic Commerce Bill.

The EFT Regulations being framed by the Reserve Bank would address only the specific type of EFT system that the Reserve Bank would be involved with as a service provider as also a regulator. The EFT Regulations would, moreover, cover only credit transfer related transactions and not Debit

Clearing transactions. A separate legislation on the lines of Electronic Funds Transfer Act of USA is, therefore, required which would be consumer protection oriented and would at the same time address transactional issues like execution of payment order, settlement finality, etc.

The Reserve Bank has taken the help of a consultant in drafting a new legislation on Electronic Funds Transfer System and proposing amendment to the Reserve Bank of India Act 1934. The Committee, after a careful examination of the issue, has endorsed the view that the proposed Electronic Funds Transfer Act should cover all forms of electronic payments. The Committee supports the view that the Reserve Bank, at an appropriate time, considers operating the inter-bank payment systems through an agency or subsidiary so that its regulatory role is rendered distinct from its supervisory role.

Retail payment systems such as the ECS and the EFT Remittance Processing Scheme presently operational may be managed by a group of large banks with country wide branch network and technical capability, with settlement assistance from the Reserve Bank. This would help the RBI to focus its efforts only on large value time critical funds transfers to be settled on an RTGS basis. In the ongoing debate on the role of central bank in payment systems, the trend is towards distinguishing the central bank role as a regulator from that of service providers which could be commercial banks themselves or the entities under the control of commercial banks.

The Committee has considered it necessary that the legal framework for payment system takes into account this international trend. The Shere

Committee had discussed the issues of admitting electronic files as evidence and of preserving electronic records and recommended the need to amend the Bankers' Books Evidence Act, 1881 on the lines of the Customs and Central Excise Laws (Amendment) Act, 1988 and Central Excise and Salt Act, 1944 for the purpose.

It is learnt that Government of India is processing the draft Bill amending the Bankers' Books Evidence Act, 1881. This is a welcome development and would meet the legal requirement of acceptance of contracts, documents etc. in electronic form as evidence. The Committee considered certain provisions of the proposed Electronic Commerce Bill for admitting electronic records / signatures as evidence. Clauses 9, 10, 11, 12 and 14 of this proposed Bill which are relevant in this connection are given in Annexure 16 .

It is worth mentioning that while clauses 9, 10 and 11 of this Bill are based on the UNCITRAL Model Law, clauses 12 and 14 are based on Singapore Electronic Transactions Act. As and when the Electronic Commerce Bill is passed, these provisions will be made applicable, ipso facto, to electronic funds transfer transactions as well. The Shere Committee had recommended that the Central Board of Direct Taxes (CBDT) may be requested to take up the question of clarifying and, if required, amending the relative provisions of the Direct Tax Laws like Section 40A of the Income-Tax Act, 1961.

The Committee however felt that, for according the funds transfer under the EFT system the same status of payment as one made by an A/c payee cheque, suitable technology may have to be developed for treating such transfers as A/c payee transfers. A mere recognition to that effect by the CBDT may not be adequate to treat such transfer as A/c payee cheques. Legal provisions need to be made if such recognition has to be given. The first test would arise when paper instruments like cheques are used along with the use of EFT system.

So long as both the systems are in existence at the same time, it would require either amendments to the Negotiable Instruments Act or a separate legislation to deal with the matter. SECTION 134 TO 137 IS OF AN INTERNATIONAL LAW AND THE SAID 4 SECTIONS In the absence of a contract to the contrary, the liability of the maker of drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and endorser by the law of the place where the instrument is made payable.

ILLUSTRATION A bill of exchange was drawn by A California where the rate of interest is 25 per cent and accepted by B, payable in Washington where the rate of interest is 6 per cent. The bill is endorsed in [India], and is dishonoured. An action on the bill is brought against B in [India]. He is liable to pay interest at the rate of 6 per cent, only; but if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or endorsed, the law of the place, where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient. ILLUSTRATION A bill of exchange drawn and endorsed in [India], but accepted payable in France, is dishonoured. The endorsee causes it to be protested for such dishonour and gives notice thereof in accordance with the law of France through not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient. 36. INSTRUMENT MADE, ETC. OUT OF INDIA, BUT IN ACCORDANCE WITH THE LAW OF INDIA If a negotiable instrument is made, drawn accepted or endorsed [outside India], but in accordance with the [law of India], the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or endorsement made thereon [within India]. The law of any foreign country [*] regarding promissory note, bills of exchange and cheques shall be presumed to be the same as that of [India], unless and until the contrary is proved.

DISHONOR OF NEGOTIABLE INSTRUMENTS COMPLAINTS OF CHEQUE : To answer in nutshell, a person desirous to initiate action under section 138 of Negotiable Instruments Act (“ Complainant”), should ensure following: -The instrument is a cheque (and not any other instrument likebill of exchange or promissory note) -Complainant is a payee or holder in due course of a returned cheque -The cheque should have been in discharge of debt or liability (and not gift etc) -The cheque should have returned for reasons “ want of funds”, “ a/c closed” or “ stopped payment” -Complainant should make out a prima facie case.

Thereafter, the accused has to prove absence of consideration -Complainant should issue a demand notice within 30 days from the Complainant’s receiving information of return. the notice need not be received by the accused (i. e. drawer of the cheque) within 30 days -It is advisable to give demand notice only once by a single mode, say registered ad letter -Demand notice may cover more than one returned cheque -Demand notice should demand the drawer to pay within 15 days from its receipt by the drawer of the cheque -Advisable to gather the date and evidence of receipt of demand notice by the drawer of the cheque Cause of action arises on 16th day when the drawer of the cheque doesn’t pay within 15 days from the Drawer’s receiving or refusing demand notice -Cause of action arises only once, though there can be several returns. Hence advisable to give notice only when it is decided to file a complaint -Complaint should be filed within 30 days from 16th day from the date of receipt by Drawer of the Demand Notice -If the last day of limitation for filing a complaint is a holiday, may file it on the next working day. Courts not allowed to condone delay in filing a complaint and hence timing should be adhered to Complaint is maintainable against all the partners for a cheque return of their firm -In case of a company, managing director/ deputy managing director’s liability is assumed while as regards other directors etc it is necessary that such person was in charge of and responsible for the conduct of business of the company and this is specifically averred in the complaint -It is not necessary to make the company or the firm a party to the complaint -Complaint runs independent of any other proceeding -Complaint is not maintainable against legal heirs of the Drawer.

NEGOTIABLE INSTRUMENTS CONNECTS GLOBAL PEACE A global world means different people, different culture, different opinions, different understanding and different laws in every country. When trade of goods and services started, problems also started taking up their roles. The cases of payment problems were observed among the exporting parties. Since the laws of different differ from each other, these matters could not be solved legally and the distance between each country made it even more uncomfortable. The ups and downs in the foreign exchange of every country were making them go through stagnancy.

A certain kind of negotiation was required at an international level to make the road of trade go smooth. There was indeed a need for a negotiable instrument which is accepted by every law internationally. Taking these factors into consideration The Negotiable Instrument Act was passed. Negotiable instrument include promissory notes, Bills of exchange and Cheque. These instruments had conditional and unconditional undertakings signed by the maker. These instruments are internationally accepted. It helped many countries who were going through foreign exchange deficit.

Negotiable instrument helped exporters and importers of goods and services to drag their defaulters to court. A smooth flow of trade was observed after the introduction of negotiable instruments. Exporters of goods and services felt a sigh of relief when they export their goods and services on credit basis as they had the negotiable instrument with them dually signed by both the parties i. e. drawer and the drawee which was a strong proof document. Negotiable instruments play a vital role in the economic development of every country with its significant features.

One of the main features includes that Negotiable instruments are freely transferable and while transferring it is also not required to give a notice to the previous holder. Negotiable instrument is always in writing so there is no fear of the drawee backing off the instrument. Whereas stamping of bills of exchange and promissory notes are mandatory. The peace and harmony which we see today in regards to the wholesome trade which goes on a very big scale and which is rising every single day is because of the existing negotiable instruments which are accepted internationally by every individual.

The complaints regarding negotiable instruments should be filed as early as possible in there nearby allocated court. So it helps the complainant to get its judgment at the earliest. The grievances regarding the negotiable instruments are taken at the top priority as it directly affects the economy of the country. Each country is trying hard to do the necessary amendments for making these negotiable instruments run more smoother and efficiently so that the growing economy grows with more pace and peace. CASE STUDIES THE JVG SCANDAL

JVG's troubles started in June 1997, after the Securities and Exchange Board of India (SEBI) asked JVG Finance to refund the Rs 45 crore it had raised from a public issue in March 1997. A day after the issue had opened, RBI issued a show-cause notice asking why JVG Finance should not be barred from accepting deposits as the group companies had already exceeded their deposit limits. By the time RBI conditionally cleared the issue after assurances from Sharma, the 70-day stipulated period for listing the shares had passed.

Because of the time-lapse, SEBI intervened and ordered the refund of the public's money according to the allotment rules. Sharma refused to refund the money to the investors and appealed against the order to the Finance ministry. He admitted that JVG had exceeded its limits while accepting deposits but claimed that since December 1996 (much before the RBI ban) it had stopped accepting deposits on its own and had even given RBI an undertaking. RBI did not accept the argument and barred the group from accepting any more public deposits. In September 1997, post-dated cheques issued for principal as well as interest on JVG's deposits bounced.

Investors then complained to the civil courts, consumer courts, Company Law Board and criminal courts under the Negotiable Instruments Act upon which legal proceedings were initiated against the group. The government received a large number of complaints on non-repayment of deposits on maturity by the JVG group. On a complaint filed by the RBI, the Delhi High Court ordered the winding up of the company. The court also appointed an official liquidator and said that the RBI did not consider the revival scheme filed by the company viable.

The RBI also filed criminal prosecution petitions in the Metropolitan Magistrates' Courts in New Delhi. RBI alleged that the company had accepted deposits worth Rs 88. 82 crore which was 756. 68% of its net owned fund. This was much higher than the permissible limit of 25% [1]. Similarly, JVG Leasing had received deposits worth Rs 19. 28 crore which was 147. 58% of its net owned fund. The RBI complaint also said that the deposit forms issued by the JVG Group did not contain any information regarding premature withdrawals, which was necessary as per RBI provisions.

The companies had not provided any information about the rate of interest to the investors on the receipts issued to them. Further, the companies failed to submit their audited balance sheets for the period ending March 31, 1994 and 1995 15 days after their annual general meeting (AGM) and did not inform the RBI about the changes in the composition of the board of directors. RBI's petition also stated that the company had not maintained liquid assets as required by section 45IB of the RBI Act, 1934.

RBI further contended that JVG Securities accepted public deposits through JVG Leasing Ltd. and had illegally credited it to the account of JVG Finance Ltd. Thus, JVG Securities facilitated collection of further deposits by JVG Finance Ltd. , a company which had already accepted public deposits beyond the permissible limit in spite of the warning from RBI not to accept any further deposits. Ludhiana, April 28 The local police and the lawyers are heading for a showdown over the issue of arrest of an advocate by the Division No 8 police in an alleged credit card fraud case.

A verbal spat took place between a group of local lawyers and city policemen at the Division No 8 police station when the policemen were giving details about a credit card fraud allegedly committed by a city-based advocate, a pickpocket and a former employee of a private telephone company. The police was claiming that it had arrested advocate Amarjit Singh of Fauji Mohalla here on the basis of evidence along with Vikas, former employee of a telephone company, for doing shopping worth over Rs 4 lakh from a stolen credit card of an NRI. The third accused was Sonu, an alleged pickpocket, who had stolen the credit card.

He was missing. The credit card was stolen six months ago in November 2004 from GRD Academy here where the Miss World Punjaban contest was being held. The alleged victim, NRI Jaswinder Singh, was watching the show when his pocket was picked. However, a group of lawyers led by a former president of the District Bar Association, Mr. Harish Rai Dhanda, openly charged the police with falsely implicating the accused advocate. They also alleged that some policemen had demanded money from the advocate but when he refused to pay, he was booked in a false case. The police have denied the allegations.

DSP Simratpal Singh Dhindsa stated at a press conference that the accused had indulged in shopping using the stolen credit card from showrooms of Adidas, Nike, Weekender, Tanishq, Titan and Sant Ram Mangat Ram. The police narrowed down on the accused after the complainant learnt that the credit card was being misused. However, Mr. Dhanda alleged that the lawyer was innocent and had been falsely implicated in the case. He said the lawyer was tortured in police custody. A group of lawyers later filed a complaint before a local Judge against police torture and harassment.

Meanwhile, taking a tough stand against the arrest and the alleged custodial torture of the advocate, the District Bar Association (DBA) has demanded immediate suspension of the guilty policemen. Mr. Rana Harjasdeep Singh, Secretary, DBA, said in a statement that they had got the medical examination of the accused advocate conducted from the Civil Hospital. A delegation of the DBA would meet the SSP tomorrow and demand action against the SHO and other policemen of the Division No 8 police station. Former DBA president K. R.

Sikri condemned the incident and termed it as breach of trust and of an understanding reached between the lawyers and a former DGP, Dr A A Siddiqui, last year that the police would take the DBA into confidence before arresting an advocate in any case, except a rape or a murder case. FRAUD Inspite of all the inventions made to stop fraudulent practices, the fraud keeps taking place . Every day we read in the news paper how a credit card is stolen and easily used for making purchases by the thief without the knowledge of the real owner.

Then when making payments online by credit card so many times the credit card number gets hacked and then used by the hacker for making online purchases . By the time the owner realizes the thief gets away by making big purchases. New laws and ways are being adopted for stopping fraudulent practices but the best and the only way it can be kept under control is by the owner of these negotiable instruments himself. He should be careful and take all necessary precautions while using these negotiable instruments .

When making online payments one should make sure later by calling his bank customer care and confirming that only the transaction made by him is showing . In the event of misuse/theft, one should immediately report to the concerned authorities for stopping payment from that account Keep an eye on your credit card every time you use it, and make sure you get it back as quickly as possible. Try not to let your credit card out of your sight whenever possible. Be very careful to whom you give your credit card. Don’t give out your account number over the phone unless you initiate the call and you know the company is reputable.

Never give your credit card info out when you receive a phone call. (For example, if you're told there has been a ' computer problem' and the caller needs you to verify information.) Legitimate companies don't call you to ask for a credit card number over the phone. Never respond to emails that request you provide your credit card info via email — and don't ever respond to emails that ask you to go to a website to verify personal (and credit card) information. These are called ' phishing' scams. Never provide your credit card information on a website that is not a secure site.

Sign your credit cards as soon as you receive them. Shred all credit card applications you receive. Don't write your PIN number on your credit card — or have it anywhere near your credit card (in the event that your wallet gets stolen). Never leave your credit cards or receipts lying around. Shield your credit card number so that others around you can't copy it or capture it on a cell phone or other camera. Keep a list in a secure place with all of your account numbers and expiration dates, as well as the phone number and address of each bank that has issued you a credit card.

Keep this list updated each time you get a new credit card. Only carry around credit cards that you absolutely need. Don't carry around extra credit cards that you rarely use. Open credit card bills promptly and make sure there are no bogus charges. Treat your credit card bill like your checking account — reconcile it monthly. Save your receipts so you can compare them with your monthly bills. If you find any charges that you don't have a receipt for — or that you don't recognize — report these charges promptly (and in writing) to the credit card issuer. Always void and destroy incorrect receipts.

Shred anything with your credit card number written on it. Never sign a blank credit card receipt. Carefully draw a line through blank portions of the receipt where additional charges could be fraudulently added. Carbon paper is rarely used these days, but if there is a carbon that is used in a credit card transaction, destroy it immediately. Never write your credit card account number in a public place (such as on a postcard or so that it shows through the envelope payment window). Ideally, it’s a good idea to carry your credit cards separately from your wallet — perhaps in a zippered compartment or a small pouch.

Never lend a credit card to anyone else. If you move, notify your credit card issuers in advance of your change of address. PRESENT SCENARIO OF NEGOTIABLE INSTRUMENTS Legal issues relating to electronic transaction processing at banks are very many and the need to address them by amending some of the existing Acts and by promoting legislation in a few hitherto unexpected areas has assumed critical urgency. Necessary legislative support is essential to protect the interests as much of the customers as of the banks / branches in several areas relating to electronic banking and payment systems.

This is specially required to establish the credibility of ECS and EFT schemes based on the electronic message transfer. Since the Reserve Bank is embarking on large electronic schemes such as the nationwide RTGS, it is time that efforts are made to bring about necessary legislative framework that synchronizes and synthesizes with the initiatives taken by the Government of India, Department of Electronics for promotion of the

Information Technology Bill, 1999 and / or the Electronic Commerce Bill, 1999. NEED FOR REGULATION / LEGISLATION ON NETTING

There is a growing debate on the legality of netting in inter-bank funds transfer transactions. This is more so in the case of large value transactions. The position gets all the more complicated in the case of cross border netting arrangements. In fact, the issue gained critical significance while examining the proposal for setting up of a foreign exchange clearing and settlement system in India. The basic issue in netting systems is that of the settlement risk and the systemic risks borne by the participants if one or some of the participants fail to meet the clearing liability.

In case of funds transfers settled on a gross basis, the parties involved are only two and principal risk if any, is only for the specific transaction. But in multilateral netting systems where claims and obligations accumulate over a period of time (called the clearing cycle), incoming and outgoing payments are set off against each other. In case of failure of a party in meeting the clearing liability, the methodology of identifying the counter-parties / counterparts and determining the exposure level becomes difficult.

Although netting system is in vogue in India for all inter-bank clearings by way of procedural details embodied in the Uniform Rules and Regulations for Clearing Houses, it is necessary that the provisions are made statutory. There is a need to amend Section 58 of the Reserve Bank of India Act, 1934 with a view to enabling RBI to frame specific regulations SUMMARY The project on negotiable instruments starts with the evolution of trade and commerce which in turn leads to the discovery of negotiable instruments.

We as a group working on this topic had curiosity on the need of negotiable instruments in the market. Our research gave us an idea and an overview of the evolution of trade and commerce as a whole which kept on developing and growing bigger. We came across the different stages through which trade and commerce went: PASTORAL STAGE where business was limited and survival by breeding of animals was the main motto. The first stage had to do nothing with money, people lived a nomadic life.

However man learned quickly to grow food for their own need which can be termed as the AGRICULTURAL STAGE. The demand increased for other commodities as well and thus BARTER SYSTEM was introduced. This can be termed as the turning point of trade and commerce. After this man never looked back. They started producing specialized products which led to the introduction of HANDICRAFT STAGE. Then came the era in which people started to think about development and thus formed groups to protect their rights, this was known as the GUILD STAGE.

Then came the stage where technology was introduced and business forms became complex, this is where the necessity of introducing negotiable instruments were felt. This was known as the FACTORY STAGE However it was noted that the growth was very slow and the system was very complex. There were different instruments used to purchase different commodities in different stages. The system of exchange was such that it led to confusion and various complexities. To avoid such confusion and to operate the business activities smoothly negotiable instruments were introduced.

Now as we have come across the term negotiable instruments and why it was evolved, lets now have a brief knowledge about negotiable instrument. Negotiable instruments are particular type of documents used for making payment in business transactions, the ownership of which can be freely transferred from one person to another. Types of Negotiable Instruments Promissory note Bill of exchange Cheque Hundi 1. Promissory note – An instrument in writing containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument. . Bill of exchange – An instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of a certain person or to the bearer of the instrument. 3. Cheque – It is an order by the account holder of the bank directing his banker to pay on demand the specified amount, to or to the order of the person named therein or to the bearer. 4. Hundi – It is form of a bill of exchange drawn in any local language in accordance with the custom of the place. Features of negotiable instruments are-

Free transferability Absolute & good title Always in written form Unconditional order or promise for payment Certainty of payment Payee Signature of the maker Delivery of the instrument Stamping of BOE & Promissory notes mandatory Negotiation of Commercial paper Assignment Negotiation Endorsements Exceptions Letters of Credit – Article5 Bills of Lading and other documents of title –Article7 Securities –Article8 Deeds & other documents conveying interests in real estate –Article3 IOUs

BIBLOGRAPHY damodaran. com knowlegeworld. com indialaw. com

casestudy. com google. com