LAW OF NEGOTIABLE INSTRUMENTS
Definition

The word **negotiable** means ‘transferable by delivery’, and the word **instrument** means ‘a written document by which a right is created in favor of some person.’ Thus the term “negotiable instrument” literally means ‘a document transferable by delivery.’
A promissory note is an instrument in writing (not being a bank note or a currency note) 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.
Essentials of a Promissory Note

- **It must be in writing** – A promissory note has to be in writing. An oral promise to pay does not become a promissory note.

Example: A signs the 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.”
It must contain a promise or undertaking to pay – There must be a promise or an undertaking to pay. The undertaking to pay may be gathered either from express words or by necessary implication.

Examples: A signs the instruments in the following terms...

a) “Mr. B, I.O.U. (I owe you) Rs. 1,000.”

b) “I am liable to pay to B Rs. 500.”

c) “I have taken from B Rs. 2,000 and I am accountable to him for the same with interest.”
The promise to pay must be unconditional – Certainty is very necessary in the commercial world. As such a promissory note must not contain an unconditional promise to pay. Example: A signs the instruments in the following terms...

a) “I promise to pay B Rs. 500 seven days after my marriage with C.”

b) “I promise to pay B Rs. 500 on D’s death, provided D leaves me enough to pay that sum.”

c) “I promise to pay B Rs. 500 as soon as I can.”
It must be signed by the maker – It is imperative that the promissory note should be duly authenticated by the ‘signature’ of the maker. ‘Signature’ means the writing or otherwise affixing a person’s name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document.
The sum payable must be certain – For a valid promissory note it is essential that the sum of money promised to be payable must be certain and definite.

Example: A signs instruments in the following terms...

  a) “I promise to pay B Rs. 500 and all other sums which shall be due to him.”

  b) “I promise to pay B Rs. 500, first deducting there out any money which he may owe me.”

  c) “I promise to pay B Rs. 500 and all fines according to rules.”
The maker must be a certain person – The instrument itself must indicate with certainty who is the person or the persons engaging himself or themselves to pay. In case a person signs in an assumed name, he is liable as a maker because a maker is taken as certain if from his description sufficient indication follows about his identity.
The payee must be certain – Like the maker, the payee of a promissory note must also be certain on the face of the instrument. A note is valid even if the payee is misnamed or indicated by is official designation only, provided he can be ascertained by evidence.
Bill of Exchange

A bill of exchange is 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.
Essential of a bill of exchange

1. It must be in writing.
2. It must contain an order to pay.
3. The order to pay must be unconditional.
4. It must be signed by the drawer.
5. The drawer, drawee and payee must be certain.
6. The sum payable must be certain.
7. The bill must contain an order to pay money only.
8. It must comply with the formalities as regards date, consideration, stamps, etc.
The special benefits of using bills of exchange in the world of commerce are as follows:

1. A bill of exchange is a double secured instrument. If the bill is dishonored by the acceptor, the holder or the payee may look to the drawer of the bill for the payment.

2. In case of immediate need of money a bill can be discounted with a bank by the payee.
3. Two separate trade debts can be discharged by a bill of exchange. Hence, where A buys goods on credit B for Rs. 1,000 to be paid three months after date and B buys goods on credit from C on similar terms for similar amount, an order by B to A to pay the sum of Rs. 1,000 to C will discharge two separate trade debts.
Distinction between a pro-note and a Bill

1. Number of parties
2. The maker of a note cannot be the payee
3. Promise and order
4. Acceptance
5. Nature of liability
6. Maker’s position
7. Payable to bearer
8. Notice of dishonor
**Difference between Promissory Note and Bill of Exchange**

- **Promissory Note**
  - It contains an unconditional promise to pay.
  - It cannot be made ‘payable to bearer’, the limitation being imposed by the Reserve Bank of India Act.
  - It is not required to be accepted by anybody because the person signing as a maker is himself liable to pay upon it.

- **Bill of Exchange**
  - It contains an unconditional order to pay.
  - It cannot be made ‘payable to bearer on demand’. However, it can be made payable to bearer at a certain time.
  - It may be required to be accepted by a drawee.
Promissory Note
A maker of the note cannot make it conditional
The maker of a promissory note stands in an immediate relation with payee
Liability of the maker of the notes is primary and absolute.

Bill of Exchange
An acceptor of the bill of exchange can accept it conditionally making his liability to pay conditional
The maker or drawer of an accepted bills stands in an immediate relationship with drawee, and drawee stands in immediate relationship with payee.
Liability of the drawer (maker) of the bill is secondary and conditional. Primary liability is that of the acceptor.
Promissory Note
In case of dishonor of a note, there is no need to give a notice of dishonor to the maker. He is liable to pay the amount due to the note in any case.

In the case of note, it is not required to be protested.

Bill of Exchange
In case of dishonor of a bill of exchange, the notice of dishonor must be given by the holder to all the prior parties who are liable to pay the money. If such notice is not given, these parties shall not be liable to pay the amount due on the bill.

Foreign bills of exchange must be protested for dishonor when such protest is required by the law of the place where the bill are drawn.
THANK YOU