

## **R.M.M. Law College, Saharsa**

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**L.L.B Part- 1<sup>st</sup>**

**Subject- Negotiable Instrument Act**

**Paper- 8<sup>th</sup>**

**Date- 04/02/2021**

**Topic- Define Promissory notes and discuss its essentials.**

### **Promissory Notes**

The Negotiable Instruments Act, 1881 recognizes three kinds of negotiable instruments. Promissory notes are one of them. Under these notes, one person basically promises to pay a sum of money to another. They are one of the most common negotiable instruments in use these days.

Section 4 of the Negotiable Instruments Act defines promissory notes. The definition says promissory notes are basically instruments in writing. They are, however, neither bank notes nor currency notes which also contain this feature.

The next important aspect of promissory notes meaning is that they are unconditional undertakings. The maker of these notes agrees to pay a certain sum either to a particular person or their bearers. This maker undertakes his responsibility to pay by affixing his signature on the notes.

### **Essentials of Valid Promissory Note :**

A Promissory note to be valid and enforceable, the following essentials are to be satisfied :

1. The Promissory note must be in writing :
2. It must contain a promise/undertaking to pay certain sum of money :
3. The promise must be unconditional and certain :
4. It must be duly signed and delivered by the maker :
5. The parties must be certain :

6. It must be stamped according to the provisions of the stamp Act, 1940.

### **1. The Promissory note must be in writing :**

Object of this requirement is to exclude oral engagements to pay from the purview of the Act. But it is immaterial whether the writing is in ink or in pencil. The term "writing" includes printing, engraving, lithographing, typewriting etc. There is no prescribed form for validity of Promissory note provided the requirements of the definition are complied with. Further the writing may be on any material - paper, parchment, account book, etc.

### **2. It must contain a promise/undertaking to pay certain sum of money :-**

It must not be a mere acknowledgement of debt without an express promise to pay. An instrument to be valid Promissory note must have an undertaking to pay a sum. Thus the writing "I owe you Rs. 500", "I am liable to pay" or "I am bound to pay", constitutes only acknowledgements of liability to pay and cannot be treated or dealt with as Promissory note.

I promise to pay Rs. 5000/- three months from this day to Mr. Modi or bearer or order for value received. This is the correct form of Promissory note as it clearly expresses the Promise to pay.

### **3. The promise must be unconditional and certain :-**

A Promissory note must contain an unconditional undertaking to or promise to repay. The payment of money should not be made to depend upon contingency, certainly is absolutely necessary in the commercial world. A conditional instrument will not be negotiable even after the fulfillment of the condition.

An instrument which contains, "I promise to pay C Rs. 100 on the 31st December, 1940, provided the war ends towards the end of November 1940", cannot constitute a Promissory note, as it does not contain an unconditional undertaking to pay the sum mentioned therein. But a promise to pay B Rs. 500 one month after the death of C is a valid promise because death is a certainty. So unconditional promise.

### **4. It must be duly signed and delivered by the maker :-**

The Promissory note is incomplete without the signature of its maker. The object of the signature is to authenticate and give effect to the contract contained in the document. This signature can be made in any part of the document. This may be done even with a pencil. If the maker cannot write his name he may sign by thumb mark.

### **5. The parties must be certain :-**

It is of utmost importance that the Promissory note should point out with certainty the person who enters the contract and engages or undertakes to pay. Several persons may make a Promissory note jointly and severally. Where a Promissory note is drawn in the form "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

But Promissory note cannot be made in alternative form. Thus a Promissory note running as "I.A.B. promise to pay" and signed by "A.B. or else C.D." is not a good note as regards C.D. but is good note as against A.B.

6. It must be stamped according to the provisions of the stamp Act 1940.

**The End**