B.A.LL.B. VIII SEMESTER
SUBJECT: DRAFTING OF PLEADING & CONVEYANCING
CODE: BL-805

TOPIC: PROMISSORY NOTE & RECEIPT

A Promissory Note is a document that is signed by an individual that details the amount of money borrowed from another individual or organization (Lender). A promissory note is also referred to as a "Promise to Pay" note or a "Note payable". The promissory note is a legal document and includes all the details of the amount that is owed by the Borrower to the Lender, as well as the Repayment structure. In simple terms, with a Promissory Note, a Borrower "promises to pay" a Lender, in writing a predetermined sum of money, according to a predetermined set of rules and terms. As a legal document, the promissory note holds the Borrower fully accountable for repayment. A promissory note templates is similar to a Loan Agreement template, with the latter being much more sophisticated and complex. Typically, a LoAn Agreement form, which must be signed by both the borrower and lender while the promissory note has obligations on the Borrower alone. For these reasons, a promissory note is almost always used for low-value transitions, while high-value transactions are dealt with the use of a legal loan agreement form.

Promissory note is an important negotiable instrument and has been considered as a Manga Carta in the realm of debtors and creditors. The transactions between the two are usually put down in writing which may take different forms. For example, it may take the form of a promissory note, an ordinary receipt, a deposit receipt, a memorandum, an acknowledgment of a debt or a bond. Though the main purpose of all these instruments are one and the same, yet a sharp distinction has been held to exist between a promissory note and an ordinary receipt, between a promissory note and a deposit receipt, between a promissory note and a memorandum, between a promissory note and a bond and similarly amongst the other instruments taken together in couples as above.

Promissory note – Promissory note is defined in Section 4 in these words "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."

Illustrations

A signs instruments in the following term-

(a) "I promise to pay B or order Rs. 500."
(b) "I acknowledge myself to be indebted to B in Rs. 1,000, to the be paid on demand, for value received."

Parties of Promissory Note –

All promissory notes constitute three primary parties. These include the drawee, drawer and payee.

- Drawer: A drawer is a borrower or debtor who promises to pay the debt to the money lender.
- Drawee: She/He is an individual, in whose favour the note is prepared. She/He is the creditor and provides goods or services on credit or lends capital.
- Payee: A payee is someone to whom the payment is made.

Most of the times, the payee and drawee are the same people to whom the cash is paid. The party who has loaned the money keeps the promissory note, and when the due is cleared, the payee or drawee cancels the note and gives it to the drawer/payee.

Essential ingredients of a promissory note – The definition given in section 4 brings out the following essential elements to constitute an instrument a promissory note –

1- The instrument must be in writing
2- The instrument must contain a promise to pay
3- The promise to pay must be an unqualified one
4- The instrument must be signed by the maker
5- The maker of the promissory note must be a certain person
6- Promised payable sum must be certain
7- Promised payable sum must be money only
8- The person to receive money must be certain
9- The instrument must be made payable to, or to the order of certain person, or to the bearer of the instrument itself. The instrument must given the specification in anyone of the above forms.
10- The instrument must not be a bank note or a currency note.

As the above elements are 'must' so, it is necessary for a valid promissory note that all these conditions must be fulfilled. If any one of them is not fulfilled it cannot be taken as a valid promissory note instead it might be some other form of transaction such as a receipt, memorandum or an acknowledgment of a debt.

Kinds of Promissory notes – The section classifies the promissory notes in three kinds:

(i) A promissory note payable to a certain person.
(ii) A promissory note payable to the order of a certain person.
(iii) A promissory note payable to the bearer.

Test – Whether an instrument is a promissory note or not – In deciding whether certain instrument is a promissory note or not, it is to be seen that what is the dominant and the substantial effect of the instrument. In determining the effect two things are to be seen-

(a) was it the intention of the parties that the instrument should be a promissory note?
(b) is the document a promissory note in the common acceptance of the term businessmen?

Thus a mere promise to pay is not sufficient to make the instrument a promissory note, if it appears from the context that the document was not intended to operate as a promissory note.

Where the document was containing a promise to pay certain amount to certain person and fulfils all the requirements of a promissory note as contemplated by Section 4 but did not contain the expression “or his order” even then the document would be a promissory note.

It has been laid down in various judicial decisions that the controlling element in determining the question whether an instrument is a promissory note or not is the intention of the parties in drawing of that instrument as promissory note. For instance, a mere receipt even if coupled with a promise to pay is never intended to be a promissory note.

Promissory note and a Bond-Distinction – The important difference between a promissory note and a bond is twofold : - (i) a promissory note contains a promise to pay a certain sum of money to another, whereas a bond contains a promise to pay simple money. In the case of a bond the promised sum need not be a certain sum.

Where an instrument contains a promise to pay a certain sum of money on demand and is not payable to order to order or bearer and the instrument is attested by witnesses, it will be a bond as defined under Section 2(5) of the Stamp Act (II of 1899). But where it is payable to order or bearer it will be a promissory note.

Promissory Note Format

Amount ---------------------------- Date ----------------------- Place ----------------------------
I Mr. POR make commitment to pay ABC Company, the sum of Rs. ----------------------------. Repayment is to be made in the form of 200 equal payments at the interest rate of 7.2% of Rs. -------------------------- payable on the 07th of each month, beginning 07/01/2018 until the total amount of debt is paid.

IN WITNESS WHEREOF, I set my hand under seal this ------- (the day) of --------- (month), 20 -------- and I acknowledge receipt of completed copy of this instrument.

Sign. (Signature of Borrower)

Notary Public-SEAL

--- My

Commission Empire

Name & Address (Party Name) ------/------/------

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