

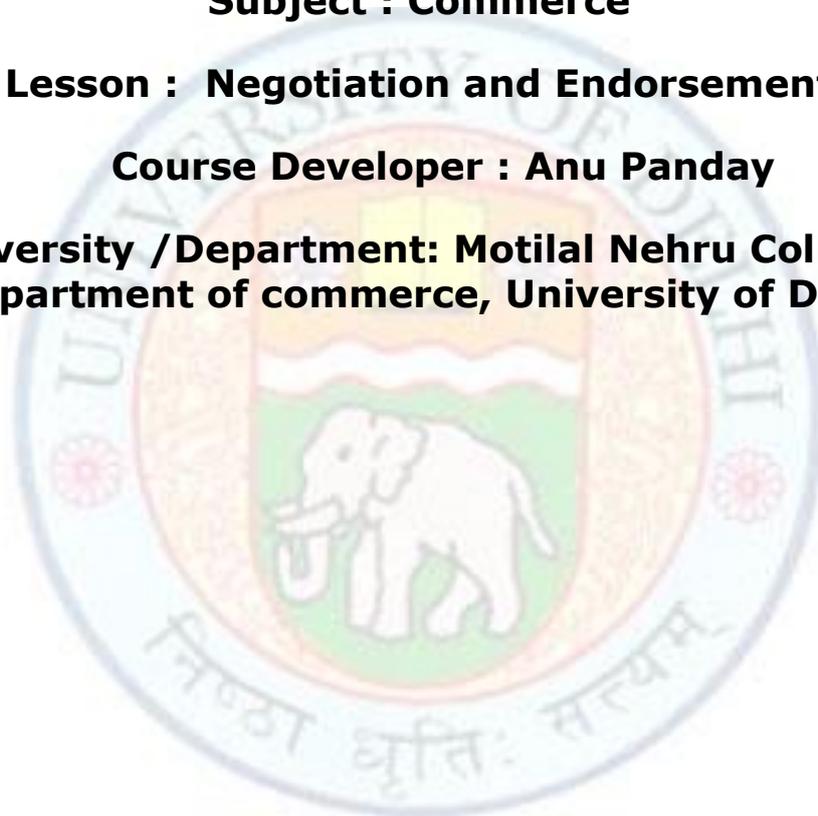
3 (C) Negotiation and Endorsement

Subject : Commerce

Lesson : Negotiation and Endorsement

Course Developer : Anu Panday

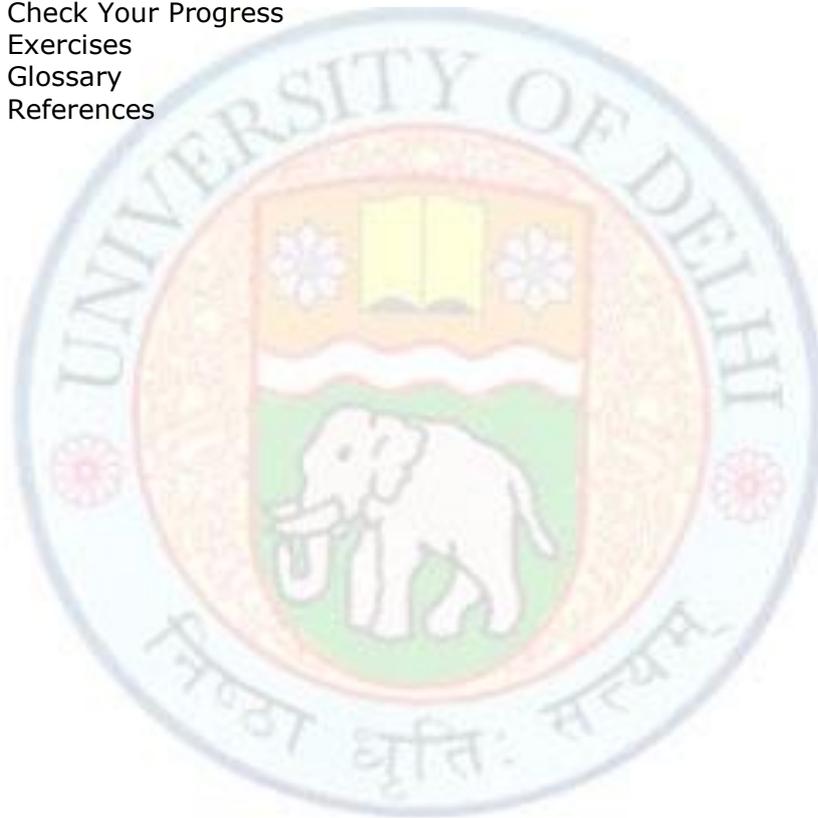
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3 (C) Negotiation and Endorsement

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3 (C) Negotiation and Endorsement

Chapter 3 (C) Negotiation and Endorsement

The scope of the Unit is given below:

- 22.1 Definition of Negotiation
- 22.2 Difference between Negotiation and Assignment
- 22.3 Definition of Endorsement
- 22.4 Kinds of Endorsements
- 22.5 Negotiation by Unauthorized Parties

One of the essential features of a Negotiable Instrument is transferability. The ownership of the negotiable instrument continues to be transferred from one to another. The holder may not retain the instrument till its maturity. He/she may, for payment of his / her debt, transfer it to his / her creditor, who in turn may again transfer it to his/ her creditor. This process of transferring the title or ownership of negotiable instrument is called 'negotiation.'



3 (C) Negotiation and Endorsement

22.1 Definition

According to section 14 of the Negotiable Instrument Act “when a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.”



Figure22.1 Negotiation

I Characteristics of Negotiation

The various features of negotiable instruments are as follows:

1 Intention to Pass the Title: Mere delivery of negotiable instrument does not lead to negotiation. The delivery should be made with the intention to transfer the ownership rights, so that the holder can sue in his own name on the instrument and recover the amount due thereon.

Illustration

Ramdin had received a cheque for rupees twenty thousand from Somnath. He gave it to his wife to keep it in safe custody. This is bailment and not negotiation. Ramdin’s wife is a bailee and not a holder.

Illustration

Ramdin had received a cheque for rupees twenty thousand from Somnath. He gave the cheque to his creditor Dyal Singh for payment of his debt of rupees twenty thousand, which he owed to Dyal Singh. In this case Ramdin is the creditor and Somnath is the debtor. Hence, Ramdin is the holder of the cheque.

2 Transferability: The Holder is a person who has possession of the instrument. He /she has a right to negotiate the instrument, provided the negotiability of such instrument has not been restricted or excluded by any express words used in the instrument.

Illustration

Sonia, a boutique owner, received a bearer cheque of rupees five thousand from her customer Krishna as the payment for the dress she purchased. Sonia owed rupees five thousand to Sangita. She handed over the cheque to Sangita as the payment for her debt. Hence Sangita became the holder of the cheque.

Illustration

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Sonia, a boutique owner, received a crossed cheque of rupees five thousand from her customer Krishna, as payment for the dress she purchased. Sonia owed rupees five thousand to Sangita. She handed over the cheque to Sangita for the payment of her debt. As the cheque was crossed, so it could not be transferred from Sonia to Sangita. Hence negotiation was not possible.

There are two methods of negotiation of a negotiable instrument which are as follows:

1 Negotiation by delivery: According to section 47 an instrument payable to bearer is negotiable by delivery. Only a bearer instrument may be negotiated by delivery. It does not require the signature of the transferor, therefore the transferee becomes the holder of the instrument, just by possession.

Illustration

Rachna received a bearer cheque of rupees two thousand from Ranbir for the purchase of jewelry worth rupees two lakh. Rachna gave the same cheque by hand to Swami as payment for the debt she owed to Swami.

2 Negotiation by endorsement and delivery: According to section 48 of the Negotiable Instrument Act, "a negotiable instrument payable to order is negotiable by the holder by endorsement and delivery". Hence the transferor, in order to transfer the instrument, has to firstly endorse the instrument, and then deliver it. The holder endorses the instrument by signing on the face or back of the negotiable instrument.

Illustration

Sundresh drew a cheque for rupees thousand payable to Kavita on 1st December 2007, and gave it to her. The date of maturity of the instrument was 1st March 2008. Kavita took some raw material for rupees thousand from Kalpana on credit. She wrote on the back of the bill, "Pay to Kalpana", and signed it. In this case, Kavita is the endorser and Kalpana is the endorsee.

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22.2 Difference between Negotiation and Assignment

Negotiable Instrument can be transferred from one person to another by either negotiation or by assignment. The Negotiable Instrument Act does not deal with transfer of negotiable instruments by assignment. The Negotiable Instrument Act does not deal with the general law that regulates the transmission of negotiable instruments by operation of law or devolution. The transfer of a negotiable instrument by assignment is dealt with in accordance with the Transfer of Property Act.

The differences between Negotiation and Assignment are given as follows:

Basis of Distinction	Negotiation	Assignment
Formalities	Negotiation can take place by delivery or by endorsement and delivery.	Assignment takes place by writing a document signed by the assignor.
Consideration	Consideration is presumed.	The assignee must prove that he/she has obtained the instrument for a consideration.
Notice	No notice of transfer is to be given to the debtor.	Notice of transfer is to be given to the debtor by the assignee and the debtor should expressly or impliedly give his assent to it.
Defective title	The title of the transferee is free from any defects in the title of the previous transferors.	The title of the assignee is subject to the defects in the title of the assignor.
Right to sue	The transferee can sue the third party in his/her own name.	The assignee cannot sue the third party in his/her own name.

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Check your Progress

Definition

Arun had received a cheque for rupees fifty thousand from Navneet. He gave it to his wife to keep it in safe custody. This is the case of

- Bailment
- Negotiation
- Holding
- None of the above

2. Answer the question by clicking the appropriate check boxes.

Arun had received a cheque for rupees fifty thousand from Navneet. He gave the cheque to his creditor Naresh for payment of his debt of rupees fifty thousand, which he owed to Naresh. Here Arun is theof cheque.

- Bailee
- Holder

Attempt the questions and scroll down to click the Submit button for results.

Check your Progress

Difference between Negotiation and Assignment



Start

Click Start to categorize flying text in appropriate bucket categories.

3 (C) Negotiation and Endorsement

22.3 Definition of Endorsement

According to Section 15 of the Negotiable Instrument Act, "Endorsement is the signing by the holder of his /her name on a negotiable instrument for the purpose of its negotiation to another person." The holder signs on the back of the instrument, or may choose to sign on the face of the instrument, or signs on a slip of paper called "allonge"⁶¹, which is then attached to the negotiable instrument.

There are two parties to an endorsement:



Figure 22.2 Endorsement

- 1 Endorser
- 2 Endorsee

The Endorser is the person who signs the instrument and the endorsee is the person to whom the instrument is transferred. The endorsement is complete only after the instrument is delivered to the endorsee.

Illustration

Pompa purchases lots of dairy products from Ruksana, who is a supplier of dairy products. She draws a bill for rupees thousand payable to Ruksana on 19th August 2008, and gives it to her. The date of maturity of the instrument is 19th November 2008. Ruksana buys milk for preparation of her dairy products from Jaggu. She takes milk worth rupees thousand from Jaggu on credit. She writes on the back of the bill "Pay to Jaggu" and signs it. In this case, Ruksana is the endorser and Jaggu is the endorsee.

Only the payee and endorsee have the right to endorse the instrument. A stranger or a thief cannot endorse the instrument. The drawer / maker of a bill cannot endorse it; however if he / she has become the holder of the instrument in his / her own right, then he/she can endorse it.

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22.4 Kinds of Endorsements

There are five kinds of Endorsements, which are as follows:

1 Blank or General Endorsement: In this case the endorser only signs his/her name. He /she does not mention the name of the endorsee. In such a case, the endorser makes an order instrument payable to the bearer, and the property thereby is transferred by mere delivery.



Figure22.3 Kinds of Endorsements

Illustration

A bill of exchange is payable to Ravi. Ravi (endorser) signs only his name at the back of the bill and delivers it to Krishna (endorsee), his creditor.

2 Special / Full endorsement: In this case, the endorser not only signs his/her name, but also adds the name of the endorsee (the name of the person to whom the instrument is being transferred).

Illustration

A bill of exchange is payable to Ravi. Ravi (endorser) signs his name and also the name of his creditor, Krishna (endorsee), at the back of the bill, and delivers it to him.

3 Restrictive Endorsement: In this case, the endorser prohibits the endorsee from negotiating the instrument any further. It merely entitles the endorsee to receive the amount on the instrument for a specific purpose.

Illustration

A bill of exchange is payable to Ravi. Ravi signs his name and also writes on the bill 'Pay Krishna only', while delivering the bill to Krishna (endorsee). Krishna is prohibited from negotiating the instrument any further.

4 Partial Endorsement: In this case the endorsement transfers to the endorsee only a part of the amount of the instrument. However such instruments are not valid because they lead to plurality of action and interfere in its free circulation.

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Illustration

A bill of exchange of rupees one thousand is payable to Ravi. Ravi signs his name and also writes on the bill 'Pay to Krishna Rs. 500'. As this is a partial endorsement it is invalid.

5 Conditional Endorsement: In this case the endorser makes his/her liability on the instrument conditional on the happening of a particular event. This limits or negates the liability of the endorser. It may take any of the following forms:

a) Sans Recourse Endorsement: when an endorser does not want to incur any liability to the endorsee or to any subsequent holder in the event of dishonour of a negotiable instrument, he/she may exclude his/her liability by using the words 'sans recourse', which means 'without recourse.'

Illustration

A bill of exchange is payable to Ravi. Ravi signs his name and also writes on the bill 'Pay Krishna at his own risk' while delivering the bill to Krishna (endorsee). Hence Ravi is free from any liability, which may arise due to the dishonoring of the bill.

b) Facultative Endorsement: In this case an endorser by express words increases his/her liability, or gives up some of his/her rights under the negotiable instruments act.

Illustration

A bill of exchange is payable to Ravi. Ravi signs his name and also writes on the bill 'Pay Krishna, notice of dishonour waived' while delivering the bill to Krishna (endorsee). Hence Ravi makes himself liable, in case the bill is dishonoured.

c) Sans Frais Endorsement: In this case, the endorsee does not incur any expenses on his/her account on the instrument drawn by the endorser.

Illustration

A bill of exchange is payable to Ravi. Ravi signs his name and also writes on the bill 'Pay Krishna, sans frais' while delivering the bill to Krishna (endorsee). Hence Krishna will not incur any expenses on Ravi's account on the instrument.

d) Contingent Endorsement: In this case the liability is dependent upon a contingency, which may or may not happen.

Illustration

A bill of exchange is payable to Ravi. Ravi signs his name and also writes on the bill 'Pay Krishna on his marriage with Radha' while delivering the bill to Krishna (endorsee). Hence Krishna cannot get the payment until he marries Radha.

An unconditional endorsement completed by delivery of the instrument shall have the following effects:

3 (C) Negotiation and Endorsement

1 The ownership of the instrument is transferred from the endorser to the endorsee.

Illustration

A bill of exchange is payable to Ravi. Ravi (endorser) signs his name and also the name of his creditor Krishna (endorsee), at the back of the bill, and delivers it to him. Hence Krishna gets the ownership of the instrument.

2 The endorsee gets the right of further negotiation.

Illustration

A bill of exchange is payable to Ravi. Ravi (endorser) signs his name and also the name of his creditor, Krishna (endorsee), at the back of the bill and delivers it to him. Hence Krishna gets the ownership of the instrument as well as the right to further negotiate the instrument to any other party.

3 The endorsee can bring an action for recovery against all the parties whose names appear on the instrument.

Illustration

A bill of exchange is payable to Ravi. Ravi (endorser) signs his name and also the name of his creditor, Krishna (endorsee), at the back of the bill, and delivers it to him. Krishna places the bill at the bank, and the bill gets dishonored. Hence, Krishna can take action against Ravi as well as against all the other people who had endorsed the bill and had their name written on it, and make them liable for the dishonoring of the bill.

Negotiation Back

Sometimes in the course of negotiation, if a negotiable instrument is again endorsed by the last endorsee to the original holder or a previous endorser, it is called 'Negotiation Back'. The person who becomes the holder by reason of negotiation back cannot make any of the intermediate endorsers liable on the instrument because, being a prior party, he/she is liable to all of them, and so he/she will have to sue himself.

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Check Your Progress

1. Match the pairs by clicking on an item in the left column and then clicking on an item in the right column.

Match the following

Negotiation	Notice to be given
Endorsement	Delivery
Assignment	Signing on the bill
Negotiation back	Instrument endorsed to the original holder

Attempt the questions and scroll down to click the Submit button for results.

Endorsement

Welcome to the Slot Machine game. The game is easy to play. All you have to do is answer the question you see on screen, click Submit, and if correct you get to try your luck on the slot machine. If you're lucky on the machine you could win the jackpot and earn a bonus five points! You miss out on a turn at the slot machine if you answer incorrectly. Click Start to begin - and Good Luck!

Start

3 (C) Negotiation and Endorsement

22.5 Negotiation by Unauthorized Parties

In case the instrument is lost or is obtained by unlawful means or has been obtained for unlawful consideration then the following situation arises:

1 Lost Instrument:

If before the due date the bill of exchange gets lost then the person who is its holder can apply to the drawer to issue him/her another bill. However the drawer may ask the holder to give security to indemnify him/her against any further claim thereon.



Figure 22.4 Unauthorized Parties

Illustration

Sita gives a bearer cheque to Sangita and Sangita loses it while going back home. Sangita asks Sita to again draw another cheque in her name. Meanwhile Rahim, a passerby picks up the cheque, and encashes it. Sangita cannot get another cheque from Sita because Rahim has already encashed the cheque. Therefore Sita is not liable to pay again.

A suit may be filed against the drawer if he refuses to give a duplicate bill. The right to obtain a duplicate of lost instrument is also given to the holder of a promissory note and a cheque.

Illustration

Sita gave a bearer cheque to Sangita and Sangita lost it while going back home. Sangita asked Sita to again draw a cheque in her name but Sita refused to give another cheque. Sangita sued Sita for not giving the cheque.

The holder of the lost instrument should inform all parties liable on it and should also give public notice by advertisement in local newspaper.

Illustration

Sita gave a bearer cheque to Sangita, and Sangita lost it while going back home. She informed Sita and gave a notice about the loss of cheque in a local newspaper.

The finder of the lost instrument gets no title to it, and cannot sue the party liable thereon for its payment.

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Illustration

Sita gave a bearer cheque to Sangita, and Sangita lost it while going back home. A passerby Rahim found the cheque lying on the road. He picked up the cheque, and went to the bank for getting it encashed. However, the cheque bounced. Rahim had no right to sue Sita for bouncing of the cheque as Sita was not liable to pay Rahim.

The rightful holder is entitled to get back the instrument from him/her. If the finder obtains payment of the instrument in his/her possession (for a bearer document) then the payer will be discharged from his/her liability. The true owner however will be entitled to recover the amount from the finder (Section 58 and 82).

Illustration

Sita gave a bearer cheque to Sangita, and Sangita lost it on the road while going back home. Rahim a passerby had picked up the cheque from the road, and got the cheque encashed. Hence Sita is no longer liable to pay Sangita. However, Sita is entitled to get the money back from Rahim.

If the finder negotiates the instrument to a holder in due course, such holder gets a good title to it, and can obtain payment from the party concerned. The true owner cannot take possession of the same from such a holder in due course, of course he/she can claim damages from the finder, if traceable.

Illustration

Sita gave a bearer cheque to Sangita, and Sangita lost it on the road while going back home. Rahim a passerby had picked up the cheque from the road, and gave the cheque to Mohan as payment for the money he owed to him. Mohan gets a good title therefore Sangita (the true holder) cannot get back the possession of the cheque from him, and Mohan also has a right to sue Sita for non-payment. However Sangita (the holder) has a right to sue Rahim (finder) for the damages.

2 Stolen Instrument:

The position in case of stolen instrument is the same as in the case of a lost instrument; with the difference that on being traced the thief is open to criminal prosecution while a finder is not.

Illustration

Sita gave a bearer cheque to Sangita, and Sangita lost it on the road while going back home. Rahim a passerby had picked up the cheque from the road, and gave the cheque to Mohan as payment for the money he owed to him. Mohan gets a good title therefore Sangita (the true holder) cannot get back the possession of the cheque from him, and Mohan also has a right to sue Sita for non-payment. However Sangita (the holder) has a right to sue Rahim (finder) for the damages.

3 Instrument Obtained by Fraud:

If a person obtains a negotiable instrument by fraud, undue influence or coercion⁶², he/she is not entitled to enforce its payment, as his/her title is defective. If such an

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instrument is transferred to a holder in due course, such a holder will acquire good title to it and the plea of fraud will not be used against him/her (Section 58).

Illustration

Sita gave a bearer cheque to Sangita at gun point. Sangita took the cheque to the bank for payment and the cheque got bounced. Hence Sangita could not sue Sita for the bouncing of the cheque as the cheque was obtained by coercion

Illustration

Sita gave a bearer cheque to Sangita at gun point. Sangita gave the cheque to Mohan as payment for the money she owed to him. Mohan gets a good title to the cheque, therefore he has the right to get the money through the cheque.

4 Forged Instrument:

When the signature of the endorser is forged⁶³ on a negotiable instrument, it is called a forged instrument. A forged endorsement is regarded in law as no endorsement. If the party liable to pay on the instrument makes the payment to the endorsee, who holds it under a forged endorsement, he/she shall be liable to the true owner. In case of a bearer instrument or the one, which has been endorsed in blank, a forged endorsement is immaterial, and does not affect the title of the endorsee.

Illustration

A bill of exchange is payable to Ravi. Ravi's brother Rakesh owes money to Krishna. Rakesh forges his brother Ravi's signature at the back of the bill and delivers it to Krishna. This is not endorsement, hence, Krishna is to return the bill to Ravi.

5 Instrument obtained for an Unlawful Consideration:

A negotiable instrument given for a consideration, which is illegal, or opposed to public policy, or immoral, or specially prohibited by statute, is void and creates no obligation between the parties thereto.

Illustration

Rukmani asked Bhupendra to kill Manoj, and for that she gave him a cheque of rupees one lakh. Bhupendra killed Manoj and deposited the cheque in the bank for payment. The cheque bounced. Hence Bhupendra could not sue Rukmani for the bouncing of the cheque.

6 Instrument without Consideration:

If a negotiable Instrument is made, drawn, accepted, endorsed or transferred without consideration then it creates no obligation of payment between the parties to the transaction.

Illustration

Ram Narayan went to a jewelry shop and gave to the jeweler an advance payment of rupees ten lakh through a cheque for the purchase, which his wife would make in days to come. His wife did not make any purchase, hence, the jeweler was not entitled for payment.

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Check Your Progress

Practical Problem

Sulekha loses a bearer cheque of which she was the payee. Manik a stranger finds the cheque and delivers the cheque to his creditor Puneet. Puneet takes the cheque in good faith and for a

Is Puneet a holder in due course?

Yes

No

Read the question carefully, then answer the questions by clicking the appropriate option.

Practical Problem

Rani is a payee of an order cheque, which is stolen by Ranjeet. Ranjeet forges Rani's signature, and endorses the cheque in his favour. Later Ranjeet endorses the cheque in Zulfi's name that is

Can Zulfi claim to be holder in due course?

Yes

No

Read the question carefully, then answer the questions by clicking the appropriate option.

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Practical Problem

Sandhya by using criminal force against Rupneet obtains a bearer cheque and then hands it over to Pia. Pia takes the cheque in good faith and for valuable consideration.

Is Pia's a holder in Due course?

Yes

No

Read the question carefully, then answer the questions by clicking the appropriate option.



Practical Problem

Manu is the payee of a bill, and he endorses it in blank to Bonney. Bonney endorses and delivers it to Chandan. Chandan endorses it in full to Devendra. What is the position of Devendra?

Are Manu and Bonney libale to pay Devendra?

No

Yes

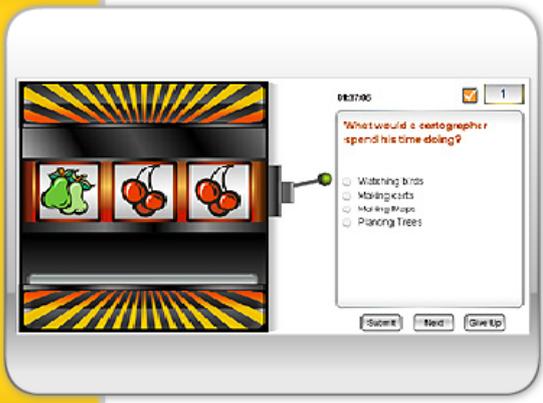
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3 (C) Negotiation and Endorsement

Exercises

Endorsement

Welcome to the Slot Machine game. The game is easy to play. All you have to do is answer the question you see on screen, click Submit, and if correct you get to try your luck on the slot machine. If you're lucky on the machine you could win the jackpot and earn a bonus five points! You miss out on a turn at the slot machine if you answer incorrectly. Click Start to begin - and Good Luck!



Start



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Glossary

The screenshot shows a web-based glossary interface. At the top, there is a search bar containing the text "Balance Sheet" and a "Search For" label. Below the search bar is a horizontal menu of letters from A to Z. A list of terms is displayed below the menu, with "Balance Sheet" and "Co-efficient" highlighted in light green. The definition for "Balance Sheet" is provided in a text box below the list: "A statement of assets and liabilities, plus owners equity and reserves at a specific date." At the bottom of the interface, there is a instruction: "Click each term to know its definition."

Glossary

Balance Sheet Search For

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Balance Sheet
Bed and Breakfast
Book Value
Broker
Cartel
Chargeable Event
Co-efficient
Credit Reference Agency
Demography

A statement of assets and liabilities, plus owners equity and reserves at a specific date.

Click each term to know its definition.

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