Negotiable financial instrument

- Financial instrument = physical embodiment of the payment obligation, evidence of entitlement to money it represents
- Negotiable instrument – substitute for currency, a document serving the same purpose
- Negotiability has 3 essential attributes [commissioners of state savings bank v Permewan]
    - Transferred by delivery (bearer) & indorsement (order
    - Holder can sue in own name (don't need to join preceding transferor as co-plaintiff in action on instrument, exception to privity of contract laws)
    - Transferee gets better title than possessed by transferor (enforce payment free from any defences available to prior parties, free from any defects in title and person equities)
- Holders in due course can get better title than previous holders, but not protected against defects in title in immediate transaction, forged or unauthorised indorsement
- True owner has rights to bring action for conversion of instrument

Bills of Exchange

- Bills of exchange = negotiable instrument
- Bills are important source of short-term finance [KD Morris v Bank of Queensland & Coles Myer v Federal Commissioner of Taxation]
    - Commercial bills:
        - Bank bills = backed by trading banks
        - Finance bill = backed by non-trading bank
- Bills of exchange is freely transferable and nemo dat rule (protecting defective transfer of property) doesn't apply
- Market for buying and selling bills by financers generating a profit by trying to predict movements in discount rates for bills acquired & payable in the future
    - Selling bill before maturity = discounting the bill, sold for less than face value accounting for interest rate for period before bill matures
- Bills of Exchange Act 1909 (Cth)
    - S5(2) – rules of common law + merchant law continue to apply to extent that they're not inconsistent with BEA provisions
    - S8(1) – Definition of bill of exchange
    - S8(2) – if doesn't fulfil requirements in s8(1), it's not qualified as bill of exchange
- Elements of a bill under s8(1):
    - Order – demand to pay imperative (no please or authorisation to pay) [Little v Slackford & Hamilton v Spottiswoode]
    - Unconditional – no fulfilment of condition before it can be enforced [Sims v London]
    - In writing – trying to keep pace with electronic commerce
    - Signed by person giving it – drawer who instructs drawee to honour the bill when presented. Must have signature to be liable for bill but not forged
    - Addressed by one person to another – drawee must be named
    - Payment of a sum certain in money – express as single amount in words and figures, interest also satisfies this, but not 'sales proceeds' as it lacks certainity
        - If more than one sum expressed. The lesser sum is taken s14(2)
        - If interest expressed runs beyond maturity of bill, then it's not a sum certain & not a bill of exchange [Rosenhain v Commonwealth]
    - Payable to the order of specified person or bearer – bearer (s13(3)), order (s13(4))
    - Payable on demand or a fixed/determinable future date s15