



**PERIYAR INSTITUTE OF DISTANCE EDUCATION
(PRIDE)**

**PERIYAR UNIVERSITY
SALEM - 636 011.**

**B.B.A. BANKING
SECOND YEAR
PAPER - VI : BANKING LAW**

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PAPER – VI
BANKING LAW

Unit – I

Definition of banking – relationship between banker and customer – general relationship – obligation of a banker: obligation to honour cheques and to maintain secrecy of the accounts – Banker’s rights: rights of general lien, set-off, appropriation and to charge interest and incidental charges.

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Unit I

The Origin of Banking

The origin of banking in India is as old as hills. It flourished even in ancient Vedic times. During the mughal period, the indigenous bankers played a very important role in lending money and financing of foreign trade and commerce. Every town, big or small, had a 'sheth' also known as 'shah' or 'chettiar' who performed a number of banking functions. These chettiars, besides doing money lending business, were instrumental in transferring from place to place and doing collection business mainly through hundies. They call themselves a banker but is essentially a moneylender. They hardly accept the deposits. The rate of interest charged by them is very high as the advances are unsecured and risky, and are repaid over a long period of time.

After the nationalization of major Indian commercial banks, the money lenders loss their importance. The origin of the word 'bank'. It is said to have derived from the French word 'banco' or 'bankus' or 'banc' or 'banque' which means a 'bench'.

Definition of Bank

According to Section 5(b) of Banking Companies Act 1949 defines banking as "accepting for the purpose of lending or investment of deposits of money received from the public repayable on demand and withdraw able by cheque, draft, and order or otherwise".

From the above definition, it is clear that a bank after accepting deposits from the public lends or invests in various assets which bring revenue of the bank.

Relationship between Bankers and the Customers.

Banker according to Dr. Herbert L. Herat "a banker is one who in the ordinary course of his business honors cheque drawn upon him by persons from and for whom he receives money on current accounts".

According to Sir John Paget "no persons or body corporate or otherwise can be a banker who does not

1. Accept the deposit account;
2. Accept the current accounts;
3. Issue and pay the cheques; and
4. Collect the cheques crossed or uncrossed for his customers".

Customer:

After defining the word bank we now to go into the definition of the customer. According to sir john paget "to constitute a customer, there must be some recognisable course or habit of dealing in the nature of the regular banking business". The relationship between the bankers and the customers can be in the form of

1. Debtor - creditor
2. Trustee - beneficiary
3. Agent - principal
4. Bailor - bailee
5. Assignor - assignee.

Debtor-Creditor:

According to Sir John Paget, " the relationship between the banker and the customer is primarily that of a debtor - creditor'.

'If the account shows the credit balance, the banker will be the debtor and the customer a creditor but in the case of the debit balance or overdraft, the banker will be the creditor and the customer the debtor'.

When the customer deposits money in the bank by opening an account, it amounts to lending money to the bankers. The bank can make use of this money as it is absolutely at the disposal of the bank. The bank undertakes to repay the amount of the demand.

It has been rightly said that a banker is normally a debtor of his customer and is bound to discharge his indebtedness by honoring his customer's cheques. One important point to understand in this connection is that the banker is not bound to pay the customer unless demand is made.

The banker only undertakes to repay a sum equivalent to the amount deposited with him and the customer has no rights whatsoever to claim the identical coins or notes deposited with him.

The usual debtor - creditor relationship between a banker and a customer is governed by the following conditions

1. Demand for payment:

A bank is not an ordinary debtor in the sense that it is under no obligation to refund the customers deposits unless demand is made. Even in case of fixed deposit, the bank is not required to return the money of its own accord.

2. Proper Place and Time:

The obligation to repay the amount deposited is limited to the branches where the account is kept. The customer can issued cheques only on the branch of the bank where the account is kept.

3. Demand in Proper manner:

The demand for the payment should be made in a proper manner as allowed by the law of customs. The demand should not be made verbally or through telephonic messages. The proper manner by the cheques, draft or anything which may be the prove the genuineness of demand by the customer

whose identity must be disclosed and authenticated to the satisfaction of the bank.

4. No time bar:

The deposits with a bank do not become time barred on the expiry of three years as in the case of the commercial debts (Trustee - beneficiary the second type of the relationship)

1. Customers deposit securities and the valuables for safe custody with the bankers. The banker in such a case is a trustee and so, whenever the customer demands the securities, the banker has a return them to the customer who is beneficiary.

2. The banker is also a trustee whenever he undertakes to collect the cheques given for collection. Once the cheques are realized, the banker is a trustee and the customer is a beneficiary

3. When the cheques are given for collection, the banker is a trustee and after the realization he has to credit the account of the customer. But before the transfer of the amount to the customer account, if the bank fails, the customer will be responsible.

4. In the case of the certain companies, when they receive debenture amount from the public, the banker acts as one of the trustees of the company.

3. Agent - principal a banker acts as the agent of the customer when he performs certain functions as per the instructions of the customer. We can state some of the functions performed by the bankers as an agent of the customer.

(i) Purchasing and selling securities on behalf of the customers.

(ii). collecting dividend warrants and interest warrants.

(iii). paying club subscription, insurance premium, rented, as per the instructions of the customer.

However in case of the banker - customer relationship, though the banker is dealing with the money belonging to the customer, he need not render accounts to the customer or inform the customer as how the money is lent are invested. Though the money invested or lent, belong to the customer the banker need not tell them to extend of profit or return he made from such investment or loan.

4. Bailor - Bailee

Another relationship between the banker and the customer is that of the bailee and bailor. The bank functions as a bailee when it keeps valuable articles, diamond, gold, securities. And the other documents of the customers. The bank works as the custodian of the things and it is implied responsibility of the bank to return these things safely. Thus the bank is a bailee and the customer is a bailor. When demanded, the bank returns all the things to its customers. The bank keeps one key of the customer's locker with it and another kept by the customer. The locker cannot be opened without using both keys. The customer has to pay the rent of the locker.

Obligation of the Banker.

1) Obligation to honor the cheques.-section 31 of negotiable instruments act 1881, imposes upon the bank the obligation to honor the cheques.

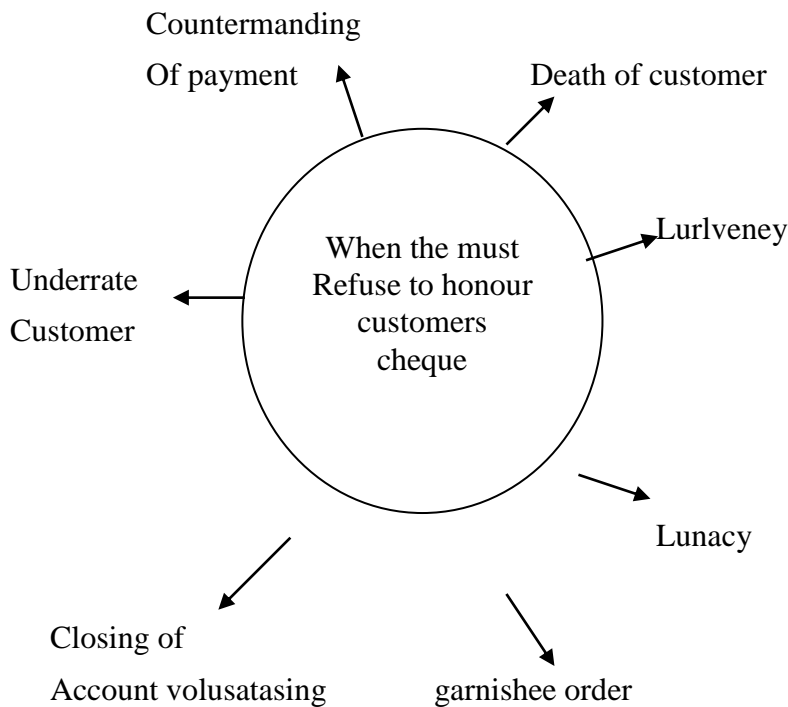
"the draw of the cheques having sufficient funds of the drawer hands properly applicable to the payment of such cheques must pay the cheques when duly required so to do, and , in default of such payment must compensate the drawer for any loss or damage. Caused by such default".

2. Place and time of the payment. The demand of the payment by the creditor must be made to the debtor at the proper place and in the proper time. Transactions in the banks are carried out up to 2 p.m on the working hours and up to 12 noon on every Saturday. A commercial bank, having a number of branches is considered to be one entity, but the depositor enters into the relationship with only one branch where an account is opened in his name

3. Demand made in proper order the statutory definition of the banking system explains that deposits are withdraw able by cheques, drafts , order or otherwise . This is to be done as per the common usage among the bankers. The demand should not be made through a telephone Message.

4. Cases in which the banker refuses customer's cheques. Duties of bankers

1. Duty to honor customer cheques
2. Duty to maintain secrecy of the customer's account
3. Duty to render proper accounts of the deposits made and withdrawn by the customers.



1. Duty to honour customer cheques every bank has a prime duty to honour customer's cheques which are drawn properly and presented during the working hours of the bank.

2. Duty to maintain secrecy of the customer's account the banker has an obligation towards the customer to maintain secrecy about the status of the accounts. Under any circumstances, the banker should not reveal the secrecy of the customer's account. However in the following conditions the secrecy of the customers account will be disclosed

- (i) Express or implied conditions
- (ii) Under compulsion of law.
- (iii) In the course of banking issues.
- (iv). Disclosure in the public interest.
- (v). Bankers among themselves.

(i) Express or implied conditions. When the customer has given in writing to the banker to reveal the secrecy of the customer's account, the banker may do so. This is expressed condition. at the same time , when a customer acts as a guarantor for the principal debtor, the banker has to reveal the secrecy of the customer ' s account to the guarantor or else the guarantor will revoke the contract. Thus the introduction of the guarantor by the customer implies him to reveal the secrecy of the customer's account to the guarantor.

(ii) Under compulsion of law a banker, under compulsion of the law will have to reveal the secrecy of the customers account.

- (a) Under the income tax act, 1961 when the income tax authorities demand for the details of the customer's account, the banker has to reveal.
- (b) Under foreign exchange regulation act.
- (c) Under Indian penal code when any police official makes an enquiry
- (d) Under R .B.I act
- (e) Under gift tax act
- (f) Enquiries by the government, both state and central.
- (g) under the banking companies act, the
Central government and reserve bank of India can ask the banker about the status of any account.
- (h) Under Indian companies act section 235, 237, and 251.
- (i) Under section 4 of banker's book evidence act.
- (j) A banker can produce for any investigation, book and the documents belonging to the customers.

(iii) In the course of banking issues .a bank, in order to protect its own interest may have to reveal the secrecy of the customer's account.

(iv) Disclosure in the public interest. when a customer is amassing wealth by cheating the public and increasing the deposit account with the bank, it is the duty of the bankers to reveal the same to the public. Otherwise, the banker will be held liable for abetting the crime.

(v) Bankers among themselves .between the bankers as per the trade custom, information can be shared in their own business interests. This is as per the custom of the trade. Liability of a banker in case of disclosure of the secrecy of the customer's account.

A banker cannot be held liable when the disclosure the customer's account with the consent of the customer. While disclosing the account the banker should do in the discrete manner without causing any prejudice to the credit worthiness of the customer.

when the banker discloses the third party , the secrecy of the customer's account, as a result of which if the third party incurs any loss, he cannot make the banker liable if the banker

(i). has disclosed bare facts without any intension.

(ii). that the banker has disclosed the secrecy of the customer's account , as a result of which if the third party in such situation , the banker cannot be held liable. A banker can held liable criminally when he intentionally discloses-

(a) Wrong facts about the customer

(b) To cause damage to the third party

Rights and Duties of a Banker

Rights of a Banker

1. Rights of set off.
2. Rights of lien.
3. Rights of appropriation.
4. Rights to charge interest,commission and brokerage
5. Right to close the account of undesirable customer

1. Rights of set off.

When a bank accepts deposits from the customer, the bank is a debtor and the customer is the creditor. At the same time, when the bank lends money to the customer the bank is the creditor and the customer is the debtor. When the customer approaches the bank for closing the account, the bank will allow the customer to close the account only after recovering the loan taken by the customer from his deposit of money. Thus in the right off, the banker combines the two accounts of the customer, one in which the customer is the creditor i.e.,

the deposit account and the other loan account in which the bank is the creditor and the customer debtor. The banker recovers the money from the deposit account and settles the loan account and then repays the balance amount to the customer. But for undertaking the right of set off three conditions have to be fulfilled by the bank.

(i) The same customer should have the deposit account and loan account.

(ii) The loan must be outstanding and overdue. Where a loan amount is not overdue, right of set off cannot be exercised.

(iii) There should not be any agreement between the banker and the customer by which the banker is prevented from exercising the right of set off. A right of set off can be exercised when the customer who is the partner in a partnership firm has a credit balance in his individual account but the firm's account is having a debit balance due to a loan taken from the bank.

2. Rights of lien.

Lien is a right of the banker by which he can retain any security coming to his possession for the purpose of any loan due to the customer. Lien is a right to retain any security belonging to the customer. The right to retain any security by the bank is called lien and the banker's lien is not only a general lien but it is also an implied pledge. For the purpose of exercising lien the bank must fulfill the following conditions:

1. The amount must be overdue from the customer and it must be a specific amount.
2. The banker must have obtained from the customer the security in his capacity as a banker.
3. The customer must have left security with the bank with his full knowledge and the lien created by the bank must be with the full knowledge of the customer.
4. There should not be any agreement which does not prevent the banker from exercising the right of lien.
5. The property must belong to the customer and the customer must be the legal owner of the property.

A banker cannot exercise a lien under the following conditions.

1. When the goods have been given by the customer for a specific purpose.
2. Where the customer might have left the goods negligently with the banker.
3. Lien cannot be exercised by the banker on a bill of exchange, promissory note or deposit of money.

3. Rights of appropriation.

Right of appropriation is a right exercised by the creditor upon the debtor for the purpose of settling a loan account. Sections 59 to 61 of the Indian Contract Act deal with the provisions of the right of appropriation of payment. In right of appropriation, we find how the debtor who has three or four debit accounts settles by making payment to the creditor. According to the right of appropriation:

(i). when payment are made by the debtor to the creditor, the debtor has a right to inform the creditor as towards, which the loan he is making the payment. If the debtor is interested in settling a particular debt, he can specifically inform the creditor.

(ii). when the debtor has not exercise this right, the creditor has the right to appropriate the payment made by the debtor towards any loan according to the discretion of the creditor.

(iii). when neither debtor nor the creditor exercise their right of appropriation, then it is chronological order in which the debit entries have arisen, in the same sequence, the credit entries will go to discharge the debit entries.

(iv). in the case of the debit due with interest, any payment made by the debtor in the first instant is to be applied towards satisfaction of interest and there after towards the principal unless there is an agreement to the contrary.

(v). in case of the customer, as a single account in which he deposits and withdraws money, the order in which the credit entry will set off the debit entry is the chronological order.

The relevance of appropriation arises in the case of death, insolvency, or retirement of a partner of a firm. Here, the banker will close the old account and open a new account in the name of surviving partners. This enables the banker to decide the liability of the deceased, retired or insolvent partner. The loan can be recovered even from the estates of the deceased partner.

4. Rights to charge interest, commission and brokerage.

A banker grants loan and the advance to customer and charges interest on the same . Bankers usually debit the customer's account when a customer fails to pay the interest amount every month. After the period of three months, the interest will be added on the principal amount and the principal amount inflated. Interest will now be charged on the new principal amount. This kind of interest added with the principal interest is called compound interest and the bankers have every right to do. Similarly for collecting cheques dividend and interest warrants, the banker can claim commission and the brokerage charges.

5. Right to close the account of undesirable customer

A banker has the right to close the account of the customer who is found undesirable as he has been frequently issuing cheques which is bouncing or which are getting dishonored . Due to this, the reputation of the banker is affected. In such situation, the banker, after giving due to notice to the customer will close the account. In the case of the account holders, the happening of certain events like death, insolvency, lunacy of the customer, dissolution of firms or winding up the companies will also lead to closing the accounts.

Duties of the banker

1. Duty to honor customer cheque
2. Duty to maintain secrecy of customer's account.
3. Duty to render proper accounts of deposits made and withdrawn by the customers.

UNIT-II

Negotiable Instruments

A negotiable instrument is used in all business transactions as a medium of payment. It is a transferable instrument from one person to another. A bearer instrument is one which can be transferred by mere delivery while an order instrument can be transferred by endorsement and delivery. According to Section 13 of the Negotiable Instrument Act 1881, “negotiable instrument means promissory notes, bills of instrument is transferee,

We can explain the character of negotiability by an example. A is a master and B is a servant working under him. A Buys goods from Spencer & Co. and for the purchases he makes payment through a cheque which will be handed over by the servant B to shopkeeper Spencer & Co. This transaction was going on for number of months. One fine morning, the servant finds a cheque on the table with the signature of the master. The servant B steals the cheque and purchases goods worth Rs.50, 000 from Spencer & Co. for which B delivers the stolen cheque. B absconds i.e., his whereabouts are not known. When Spencer & Co. presents the stolen cheque for Rs. 50,000 to the bank,

(i) should the bank make payment or not ? Or

(ii) if the master A has given instruction to the bank to stop payment on the stolen cheque, what is the remedy open to Spencer & Co?

It is here that we find the negotiable instrument quite different from any transferable instrument. B the servant has handed over a stolen cheque to Spencer & Co. i.e., B has a defective title and when he transferred the cheque to Spencer & Co., the latter gets , absolute title, free from defects. i.e., Spencer & Co. become an absolute owner of the cheque as he is a holder in due courses. Spencer & Co. fulfils the three conditions of holder in due course .

- (1) He has received the cheque from the servant without knowing it to be a stolen cheque. i.e., in good faith.
- (2) When the cheque was handed over to Spencer & Co. it was complete in all respects and the cheque had no defect on the face Spencer & Co. has received the cheque without negligence.
- (3) For a valid consideration i.e., Spencer & Co. has received the cheque from the servant toward the value of goods that has been soled or delivered to the servant.

Spencer & Co., according to section 9 of the Negotiable Instrument Act is a holder in due course and has fulfilled the three conditions of good faith, without negligence and valid consideration.

Features of a Negotiable Instrument

1. Negotiability:

A negotiability instrument is one which can be transferred from one person to another. The person who transfers the negotiable instrument is the

transferor and the person to whom it is transferred is the transferee. Normally, if there is a defective title with the transferor, the same defect will be passed on to the transferee. But in a negotiable instrument, even if the transferor has a defective title, the transferee will receive an absolute title free from defects and so the transferee becomes an absolute owner, provided he is a holder in due course. A holder in due course is one who has a negotiable instrument by fulfilling three conditions.

- (i) Good faith
- (ii) Without negligence
- (iii) Valid consideration

2. Transferability:

Transfer of a negotiable instrument is the transfer of ownership from transferor to transferee. The transfer of a negotiable instrument can be done in two ways:

- (i) A bearer instrument can be transferred by mere delivery .i.e., a check may contain the words pay to X or bearer. Here when the check is given to X, he can transfer to Y or Z by mere delivery.
- (ii) At the same time, when the check is written as pay to X or order, X can transfer the check to Y or Z only by writing on the reverse side of the check as pay to Y or Z followed by his signature and it has to be handed over to Y or Z. This is called endorsement and delivery. Thus, an order cheque can be transferred only by endorsement and delivery.

3. Chose in action and Chose in possession:

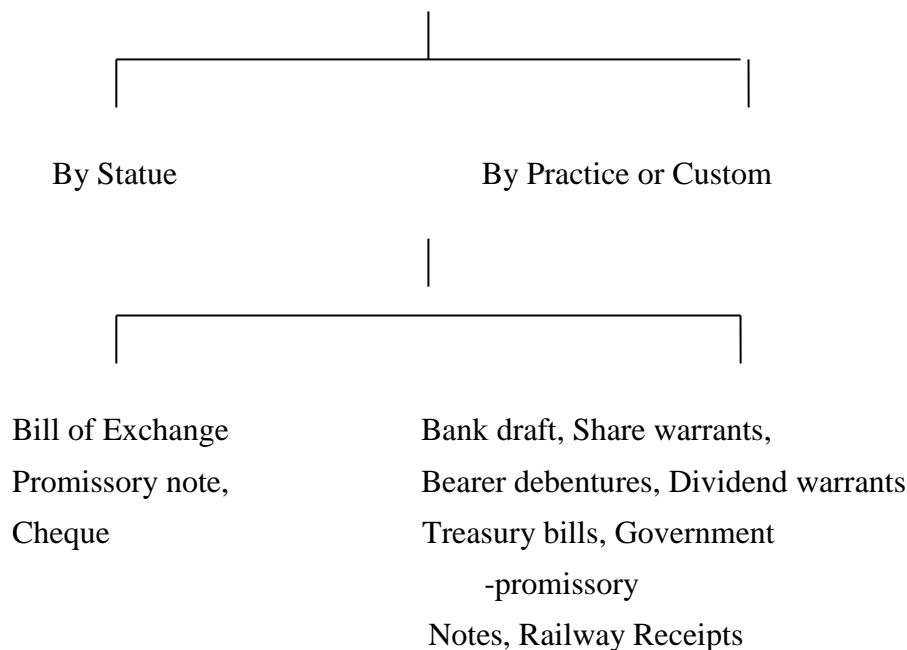
A negotiable instrument provides both the rights against the whole world and rights against specific person under a contract. Rights against the whole world is rights in rem i.e., chose in action. Right against particular person is right in personal or chose in possession.

Example. When a cheque is drawn by X on Y, making him as owner, Y has the right to receive payment from the bank. The right of Y is right in rem. So if the bank fails to pay to Y he can file a case against the bank even though there is no contractual relationship between Y and bank. At the same time, when the cheque is dishonored negligently by the bank, X as the drawer of the cheque will file a case against the bank as there is a contractual relationship between X and the bank. This is chose in position or right in personal. In this way the negotiable instrument gives right to true owner to sue any 1 for receiving payment on the instrument against claim.

4. Payment of cash only

A negotiable instrument can be issued only for payment of cash it cannot represent any other thing. A cheque, bill of exchange promissory note is issued only for payment of cash and not for any other purpose.

Negotiable Instrument



By Statute: When a negotiable instrument is defined by law, i.e., by the Negotiable Instruments Act, it is called negotiable instrument by statute. Thus bill of exchange, promissory note and cheque are defined by the Negotiable Instruments Act.

By custom or practice: When we have accepted certain documents as negotiable instruments, they are called negotiable instrument by custom or practice. They are not defined by the Act and hence are not legally recognized. The courts have accepted them as negotiable instrument by practice.

Definition of Holder and Holder in due course

According to Section 8, "holder of a promissory note, bill of exchange or cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto".

According to Section 9, "holder in due course means any person who for consideration, became the possessor of a promissory note, bill of exchange or cheque, if payable to bearer, or the payee or endorsee thereof payable to order, before the amount mentioned in it becomes payable, and without having sufficient cause to believe that defect existed in the title of the person from whom he derived his title."

For example, when a father gives a cheque to the son for his pocket expenses, the son is the legal owner of the cheque. But when the son enters the book shop and purchases a book for which he hands over the cheque to the shop keeper, holder in due course comes in. The shop keeper is a holder in due course as he has received the cheque from the son in good faith, without negligence and for a

valid consideration. The shopkeeper will receive payment from the bank when he deposits the cheque in his account.

The rights of a holder

The holder has the following rights:

- (1) He has the rights to receive payment on the instrument.
- (2) He can sue any party to the instrument for enchasing the instrument.
- (3) He can cross the cheque generally or specially.
- (4) He can endorse the cheque and convert a blank endorsement into full endorsement.
- (5) In case the instrument given to him is lost or destroyed ,the holder can obtain a duplicate instrument from the drawer.

Difference between Holder and Holder in due course

Holder	Holder in due course
<p>1. For a holder, possession is not a must.</p> <p>2. There is no need for any consideration. For example. Father giving a cheque to the son.</p> <p>3. No condition is attached for a holder for receiving payment.</p> <p>4. In case of loss of instrument, the holder can obtain a duplicate instrument.</p>	<p>1. Possession of the instrument before it becomes due for payment is compulsory.</p> <p>2. Valid consideration is a must and without consideration a holder in due course cannot obtain the instrument.</p> <p>3. The three conditions must be fulfilled i.e., good faith, without negligence, and valid consideration.</p> <p>4. He cannot obtain a duplicate instrument in case of loss.</p>

Rights or Privileges of a holder in due course

- (1) He gets a better title on the instrument free from defects.
- (2) When a negotiable instrument was originally issued in an incomplete manner, but when it comes to the possession of the holder in due course, if it is complete in all respects, the holder in due course has a complete right on the instrument.
- (3) Holder in due course can make all the parties to the instrument liable jointly or severally under Section 36, when there is a default in payment.
- (4) Even if a bill is drawn on behalf of a fictitious person and when it comes to the possession of the holder in due course, the acceptor is liable to make payment on the bill.
- (5) The drawee of a negotiable instrument cannot escape from the liability of making payment to holder in due course on the ground that the instrument has been obtained by unlawful means or for unlawful consideration.
- (6) The rights of a holder in due course cannot be prevented by imposing restrictions such as no transfer or no endorsement and when these conditions are violated, the holder in due course cannot be held liable.
- (7) When a cheque or bill is endorsed by different parties and finally comes to the possession of holder in due course.

Dishonor: It refers to default in accepting a bill or default in payment when duly presented.

Dishonour by non-payment: When the maker/drawer of the promissory note or the acceptor of the bill or the drawee of the cheque makes a default in payment when duly presented, it is called dishonor by non-payment.

Dishonour by non-acceptance: This is possible only in case of a bill of exchange as acceptance is compulsory. In following cases, a bill is said to be dishonored by non-acceptance.

Payment in due course: The liability of the person liable to make payment under a negotiable instrument gets extinguished only if the payment made is a payment in due course. Only if it is a proper payment, he obtains a complete and valid discharge against the holder.

According to Section 10, payment in due course means payment, in accordance with the apparent tenor of the instrument, in good faith and without negligence, to any person in possession thereof; under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount mentioned therein.

The main features of payment in due course are:

- (1) Payment must be in accordance with the apparent tenor of the instrument. For example, if a payment is made before the date mentioned in case of a post-dated cheque, then it is not payment in due course.
- (2) The payment should be made to the person who is in possession of the instrument. Not only should the possession, the authority to possess also exist.
- (3) Payment should be made in good faith and not with the knowledge of any defect in the title of the person demanding the payment.
- (4) The drawee must not be guilty of any negligence in making the payment
- (5) Payment should not be made under circumstances which give rise to reasonable ground for believing that the payee was not entitled to receive the amount mentioned in the instrument.

Bill of Exchange:

Section 5 of the Negotiable Instruments Acts defines a bill as” an instrument in writing containing an unconditional order, signed by the maker directing the certain person to pay certain some of money only to or to order of, a certain person or the bearer of the instrument”.

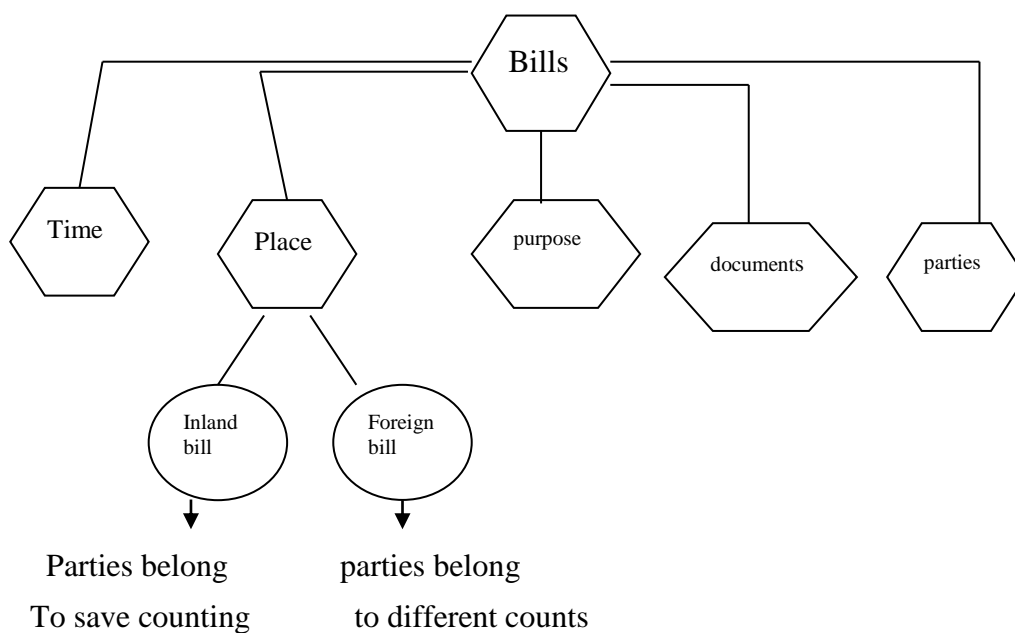
SPECIMEN OF A BILL OF EXCHANGE

Rs.25,000	Chennai-600021
	Sept. 12, 1999
There months after date pay to _____ or order the Sum of Rupees Twently five thousand only for value Received.	
To X Address _____ _____	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin-left: auto;">Stamp</div>

Main Features of a Bill of Exchange:

- (1) Instrument must be in writing.
- (2) It must contain an order to pay a certain sum of money.
- (3) The order must be unconditional.
- (4) Amount payable must be certain, beyond any doubt or ambiguity.
- (5) It may be drawn payable to bearer.
- (6) No bill of exchange can be made payable to bearer on demand.
- (7) It cannot be crossed/ endorsed for a partial amount.
- (8) It becomes an enforceable document only when it is accepted by the drawee within a reasonable time.
- (9) It can be dishonored by non-acceptance or non-payment.
- (10) It must be stamped unless made payable on demand.
- (11) It may be made payable by installment.
- (12) It may be renewed for a further period/extended.
- (13) Advance payment/settlement may be accepted at a rebate

Types of Bill



Promissory note

Section 4 of the Negotiable Instruments Act defines a promissory note as “an instrument in writing containing an unconditional promise or 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”.

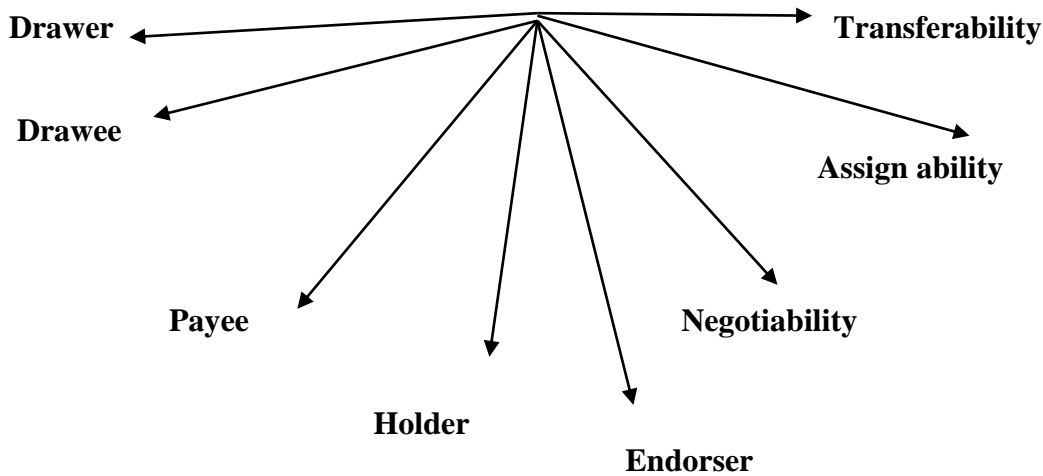
Specimen of a Promissory Note

Rs.30,000	Chennai-600026	
	Aug. 12, 1999	
Four months after date pay I promise to pay X or order the Sum of Rupees Thirty thousand only for value Received.		
To X Address _____ _____	<table border="1"><tr><td>Stamp</td></tr></table> Signature	Stamp
Stamp		

Main Features of a Promissory note

1. It is an instrument in writing drawn by the debtor.
2. It must contain a promise or an undertaking to pay.
3. The undertaking or the promise should be an unconditional one.
4. The undertaking or the promise must be to pay a certain sum of money.
5. It may be payable on demand or after a particular date.
6. It cannot be made payable on demand to bearer.
7. It cannot be crossed.
8. Number, place, date etc., are not essential for a promissory note.
9. If no date is mentioned in the instrument, it is deemed to have been made when it was delivered.
10. The amount on it may be made payable by installments.
11. It must be stamped.
12. It does not require acceptance as it is made by the debtor himself.

Parties to a bill of exchange



Drawer: The drawer is the person who draws the bill. It must be signed by the drawer. The bill can be accepted even before the bill is signed by drawer, but it will remain incomplete and cannot be issued and cannot be endorsed further as it is an incomplete instrument.

Drawee: A drawee is person on whom the bill is drawn. In case of bill of exchange, the drawee takes the position of the acceptor also, as it is essential, without which a bill not be a complete one. The drawee becomes the payer on the due date as the payment has to be made by him.

Payee: The payee is the person to whom the money is directed to be paid in the instrument by the holder.

Holder: Any person entitled in his own name to the possession of the instrument and to receive the amount on the instrument from the debtor.

Holder in due course is a person who holds a negotiable instrument in his own right for value and who acquired it before the due date in good faith and without negligence.

Endorser: One who endorses the instrument and negotiates the same with the intention of transferring the title therein to another person.

Negotiability: It refers to the transferability of all the rights and titles on an instrument by delivery or by the transferee gets a title which is better than that of the transferor's, provided he takes it good faith and without negligence.

Assign ability: It refers to the transferability of personal properties and rights from one person to another either as gift or sale or as security.

Transferability: The endorsee's title is affected by the endorser' title. If the endorser possesses a defective title, the same shall get transferred to the endorsee also.

Differences between a Bill of exchange and a promissory note

Bill of exchange	Promissory note
<ol style="list-style-type: none"> 1. It is an unconditional order. 2. There are parties in a bill of exchange- drawer, drawee and payee. 3. It is drawn by the drawer who is a creditor. 4. A bill requires acceptance by the drawee. 5. The drawee is primarily liable on a bill. 6. A bill can be payable either to bearer or order 7. Foreign bills are drawn in sets of three. 8. Acceptor may impose conditions while accepting a bill. 9. Notice of dishonor has to be given by the holder to the drawer. 10. In the case of a dishonor of a Foreign bill noting and protesting is compulsory. 	<ol style="list-style-type: none"> 1. It is an unconditional undertaking or promise 2. There are two parties, the promisor and promisee. 3. It is drawn by the promisor who is a debtor. 4. As a promissory note is drawn by the promisor, there is no need for acceptance. 5. The promisor is primarily liable. 6. A promissory note is payable to order as in India, bearer promissory note is the exclusive right of RBI (Currency note). 7. Promissory note is a single document. 8. A promisor cannot impose conditions while making a promissory note 9. No need for such notice 10. Protest is not compulsory.

Differences between a Cheque and a Bill of Exchange

Cheque	Bill of Exchange
<ol style="list-style-type: none"> 1. Drawn on a specified banker only 2. payable on demand only 3. No need for acceptance. 4. When a cheque is not paid, it is said to be dishonor. 5. A cheque can be crossed generally or specially. 6. There are no grace days for a cheque as it is payable on demand 7. A Cheque is presented only once for payment 8. No stamp is required for cheque. 9. Payment on a cheque can be stopped by countermanding by the drawer. 10. No documents will accompany a cheque 11. Nothing and protesting is not necessary of the drawer. 12. Cheques are issued as a mode of payment. 13. Generally, cheques are not discounted. 14. A banker will not pay before the due date on a cheque. 15. A banker is primarily liable on a cheque. 	<ol style="list-style-type: none"> 1. Can be drawn on party. 2. Payable either on demand or after a fixed period. 3. Acceptance is a must. 4. A bill can be dishonored even for non- acceptance. 5. No crossing is allowed. 6. Time bill has three days of grace. 7. A bill is presented for acceptance and later, on the due date for payment. 8. Stamp duty has to be paid for a bill according to its value. 9. No countermanding of payment is allowed. 10. Trade bills will be accompanied by trade documents. 11. A dishonoured bill requires noting and protesting. 12. Accommodation bills are issued for raising funds in the money market. 13. Bills are discounted 14. The drawee of a bill can make an advance payment. 15. the drawee is primarily liable.

Differences between Cheque and Promissory Note

Cheque	Promissory Note
<ol style="list-style-type: none"> 1. It is an unconditional order. 2. A cheque is drawn by the drawer who is a creditor. 3. The bank is primarily liable on a cheque. 4. A cheque can be crossed generally or specially. 5. No need for a stamp for a cheque. 6. The valid period for a cheque is six months. 7. No interest is mentioned on a cheque 	<ol style="list-style-type: none"> 1. It is an unconditional promise or undertaking. 2. A promissory note is made by the promisor who is a debtor. 3. The promisor is primarily liable. 4. There is no crossing for a promissory note. 5. Stamp is must for a promissory note. 6. The valid period of a promissory note is three years. 7. Promissory note will contain the interest rate payable.

Cheques

Definition:

According to Section 6 of the Negotiable Instruments Act, a cheque is "a Bill of Exchange drawn on a specified banker and not expressed to be payable otherwise than on demand".

(1) A cheque is always drawn upon a banker.

(2) It is always payable on demand.

A cheque is a negotiable instrument which is supplied by a banker to the customer who opens a savings or current account in a bank.

MICR Cheque

In the modern days in all the metropolitan cities the cheques supplied by the bank to the customer are called MICR Cheques i.e., Magnetic Ink Character Recognition. This means that cheque contains white patch at the bottom in which numbers are given in magnetic form which represents not only the number of the cheque but also the code number of branch and bank.

To facilitate mechanical sorting the code line contains the following numbers:

The first 6 numbers signify the cheque number.

The second 3 numbers signify the city code.

The Third 3 numbers signify bank code.

The fourth 3 numbers signify the branch code of the bank.

Features of a Cheque

All the cheques are in a proper format and they are stipulated by Negotiable Instruments Act. Following are the features:

1. It is an instrument in writing
2. A cheque is to be drawn only on the branch in which the customer is maintaining an account.
3. Before drawing a cheque, the customer must have sufficient funds in his account or else, the cheque will get dishonored.
4. A cheque is an order by the customer on the bank and so the cheque should be very clear in the instructions given to the banker.
5. As the cheque is meant for payment of money, the amount mentioned in the cheque should be specific and it should be written both in words and figures.
6. A cheque is payable either to order or bearer. An order cheque is one which is payable only to a specific person or to whom so ever he orders. An order cheque is one which is drawn in the following manner.

Specimen of a Cheque

X Bank of India Chennai	
Pay to Y.....	or Bearer
Rupees.....	Rs.
S.B.A/c No.	
“20 2460”	6000530 17’ : 10

In the above cheque format the word or bearer will be struck in the case of an order cheque. For example, ‘pay to Y’ or bearer, when the word or bearer is struck, it becomes an order cheque payable only to Y.

Whether a cheque is a bearer cheque or order cheque, it depends on the intention of the drawer of a cheque. If it is a bearer cheque, it will remain a bearer cheque once for all. That is, once a bearer always a bearer.

7. Signature is an important aspect in a cheque. A cheque should be signed by the customer and the signature in the cheque should be as per the specimen signature given by the account holder at the time of opening the account.
8. Date appearing on the cheque is date on which the cheque is said to have been issued. A banker will make payment on a cheque either on the date of the cheque or subsequently but not before the date.
9. The number appearing on the cheque number and the code number of the bank.

Endorsements are done when an order cheque is transferred and the endorsements appearing on the cheque mention clearly the manner in which the cheque is transferred from one person to another.

Crossing of a Cheque:

1. Definition of crossing
2. introduction of crossing
3. who can cross a cheque
4. what constitutes crossing of a cheque
5. type of crossing
6. liabilities of a paying banker on a crossed cheque
7. obliterating of crossing
8. lifting of crossing

Definition of Crossing:

Section 123 to 131 (a) of the negotiable instruction act deal about crossing of a cheque. There are two types of crossing .they are

- (1) General crossing
- (2) Special crossing.

Section 123 defines general crossing of cheque while section 124 defines special crossing.

General Crossing:

According to section 123 where a cheque bears across its face an addition of the words, and company or any abbreviation thereof between two parallel transverse lines or two parallel transverse lines simply either with or without the words not negotiable that addition shall be deemed a crossing and the cheque shall be deemed to be crossed generally.

Special Crossing:

According to section 124 where a cheque bears across its face an addition of the name of the banker either with or without the words not negotiable that addition

shall be deemed a crossing and the cheque shall be deemed to be crossed specially and to be crossed to that banker”.

Introduction of crossing:

Crossing of cheques is introduced in the beginning of 20th Century as banks in England were experiencing pilferage of cheques when they were being taken in coaches to the Central bank for clearance. To prevent such pilferage, cheques were crossed after which the missing cheques could be easily traced as the crossed cheques could be encashed only through an account.

Who can cross a cheque?,

A cheque can be crossed by four persons:

1. Drawer
2. Holder
3. Holder in due course
4. Banker

What constitutes crossing of a cheque?

When a cheque is crossed across the face with two transverse parallel lines, it is said to be crossed.

When a cheque is crossed it implies two things:

- 1) Payment will not be made across the counter by a bank when a crossed cheque is presented.
- 2) The crossed cheque will have to be presented in an account through pay-in-slip.

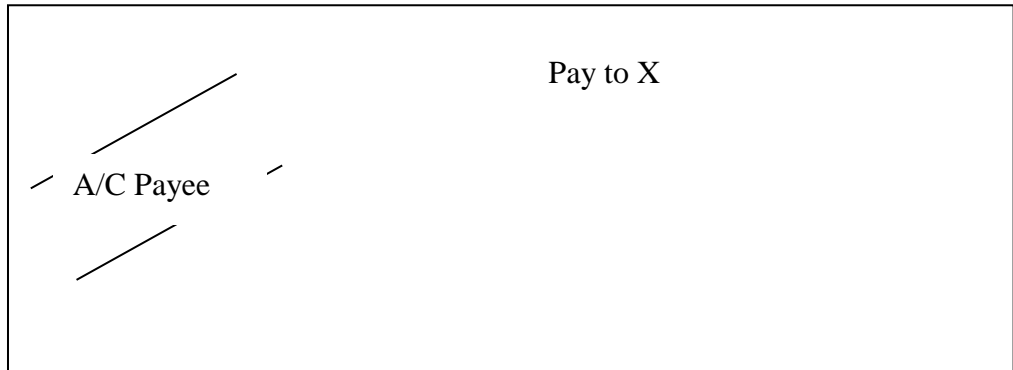
In General crossing, the cheque will bear across the two parallel transverse lines, 2 types of words. These are, (1) Not negotiable, (2) Account payee.

1) Not negotiable crossing:

When a cheque bears across its face two transverse parallel lines with the words not negotiable, it is a clear indication to the banker that the bank has to be very careful while making payment on the cheque. Thus, not negotiable crossing is a forewarning given to all the transferees of the cheque that they should be careful while receiving the cheques even if they happened to be a holder in due course.

2) Account Payee crossing:

This means that account payee crossing is not legally permitted under the Negotiable Instruments Act. The reason is that when a cheque is crossed account payee only, payment should be credited by the bank only to the account of the payee. An example is given below:



This means that the bank has to credit the account of X only and the cheque is not transferable to any other person.

General Crossing

Special Crossing

Special Crossing: Section 124 defines special crossing where in the cheque will contain the name of another bank in the crossing. Special crossing does not require two parallel transverse lines. It may or may not exist.

Indian Bank	State Bank of India Chennai
Pay to Y.....or Bearer	
Rupees.....	Rs.
S.B.A/c No.	
“20 2460”	6000530 17’ : 10

This cheque is said to be crossed specially. In this cheque, State Bank of India is the paying banker and Indian Bank is a collecting banker. When the cheque is presented in the clearing house, State Bank of India should pay on this cheque only to Indian Bank which presents it.

Double Special Crossing or Double Crossing:

Normally in a special crossing, the paying banker will pay only to that bank whose name is appearing in the crossing. But sometimes, the bank whose name is appearing in the crossing may not find a branch in the place where the payee is to present the cheque. For example, a cheque belonging to Indian Bank with a crossing of Bank of Tamil Nadu is sent to a person in Punjab. Since, the Bank of Tamil Nadu does not have a branch in Punjab; Indian Bank

at Punjab will find it difficult to pay on the cheque. Hence, Bank of Tamil Nadu will appoint Punjab National Bank as its agent for collection. Now the crossing will appear as below:

Bank of Tamil Nadu
To
Punjab National Bank
As agent for collection

Obliterating of Crossing

When the crossing in the cheque is erased deliberately by persons other than the drawer to defraud the drawer or drawee, and the banker without looking at such erasing of crossing makes payment on the cheque, the banker is said to have committed the mistake of violating Section 10,

UNIT-III

I Endorsement

- (i) Definition
- (ii) Kinds

II Paying Banker

- (i) Meaning
- (ii) Definition
- (iii) Precaution to be taken before passing a cheque for payment
- (iv) Conditions for dishonor of a cheque by a paying banker

III Statutory Protection

- (i) Protection in case of order cheque
- (ii) Protection in case of Bearer cheque
- (iii) Crossed cheque
- (iv) Protection in case of material cheque

IV Collecting Banker

- (i) Meaning
- (ii) Duties
- (iii) Statutory protection of collecting banker, condition under section 131

I Endorsement:

(i) Definition:

When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to have endorsed the same and is called the endorser.

(ii) Kinds of Endorsement:

- (1) Blank endorsement
- (2) Full endorsement
- (3) Conditional endorsement
- (4) Restrictive endorsement
- (5) Sans-recourse endorsement
- (6) Sans-frais endorsement
- (7) Facultative endorsement

(1) Blank endorsement:

When an endorsement is made on the reverse side of the instrument with a mere signature of the endorser without any name or any other remark, it is called *blank endorsement*.

(2) Full endorsement:

When the endorser writes the name of the endorsee on the reverse side of the instrument such as: Pay to Raman or order

*(Sd) Krishnan *(Sd) means Signed

Here the endorser is Krishnan and the endorsee is Raman. Thus, the full endorsement is complete in all respects.

(3) Conditional endorsement:

Where an endorsement is made with a specific condition to be fulfilled by the endorsee for acquiring the ownership right on the instrument, it is *conditional endorsement*.

Example: Pay to Raman on delivery of bill of lading

(Sd) Krishnan

Raman will be given the instrument or the amount on the instrument only when he delivers bill of lading.

(4) Restrictive endorsement:

Here, the endorser takes away the right of the endorsee for further endorsement of the instrument.

Example: Pay to Raman only

(Sd) Krishnan

Now this type of endorsement restricts further transfer of the instrument. This takes away the fundamental character of negotiable instrument, which is one of transferability.

(5) Sans-recourse endorsement:

When the endorser informs the endorsee that in case of the dishonour of the instrument, the endorsee cannot make the endorser liable. The endorsee can only catch hold of any other party on the instrument but not the endorser.

Example: Pay to Raman Sans-recourse

(Sd) Krishnan

Here, in case of dishonour of the instrument, Krishnan cannot be held liable as he has endorsed the instrument Sans-recourse. The meaning of sans-recourse is stop taking action.

(6) Sans-frais endorsement:

When the endorser informs the endorsee that any expenses incurred in receiving payment on the instrument should not be debited to the account of the endorser.

(7) Facultative endorsement:

When the endorser excuses the endorsee from performing any duty in the case of dishonour.

Example: Pay to Raman. Notice of dishonour waived.

(Sd) Krishnan

From this endorsement, the endorser does not escape his liability in case of dishonour of the instrument.

II Paying Banker

(i). Meaning:

A paying banker is one who is a drawee of a cheque. He takes the responsibility of making payment on a cheque to the true owner. The paying banker has to be very careful in making payment in the cheques drawn upon him.

(ii). Definition:

Payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

(iii). Precaution To Be Taken Before Passing A Cheque For Payment:

a) Payment in accordance with apparent tenor:

When a paying banker receives cheques, he has to carefully go through the instructions given by the drawer. For example, if the drawer has issued a cheque dated 10th June 2005, payment cannot be made before the date. If the cheque is crossed, then the banker cannot make payment across the counter.

(b) In good faith:

The paying banker will make payment to a person whose ownership is certain. In other words, the person presenting the cheque creates absolute good faith in the minds of the banker regarding the ownership.

(c) Without negligence:

The paying banker has to go through the contents of cheque before making payment. If the cheque contains any alteration, overwriting or cancellation, payment cannot be made. Sometimes, the cheque may also contain 'material alteration'. A material alteration is one which is done deliberately on a

cheque without the knowledge of the drawer (account holder) or drawee (banker) with an intention to defraud them and thereby alter their liabilities.

(d) To the person in possession:

Paying banker can make payment to a holder in due course only when he is in possession of the instrument. Possession is a must for a holder in due course. For a holder it is not a must.

(e) Circumstances:

Even though the person presenting the cheque may fulfill all the conditions, but still creates a doubt in the minds of the paying banker at the time of making payment, the paying banker must get clarified before making payment. There are instances where the amount of the cheque and the status of the person presenting the cheque are inconsistent. For example, a peon in office may have an account in a bank for more than 25 years. If he presents a cheque which has an amount more than Rs.25 lakhs, the banker must clarify it with the employer of the peon.

(iv). Condition For Dishonour Of A Cheque By A Paying Banker:

The banker before honoring the cheques presented to him/her for payment should look into the following points in order to safeguard himself/herself against the risk of losing the customer's money. They are:

- a) *Open or crossed cheques*: When a cheque is presented for payment, the banker should verify as to whether it is an open cheque or a crossed one and whether the cheque is in printed form. There is no provision in the Banking Regulation Act preventing a customer from drawing his own cheque.
- b) *Drawn on the specific branch*: Cheques should be drawn on the particular branch at which they are presented. If they are presented at a different branch where an account is not maintained by a customer, the banker should refuse payment.
- c) *Mutilated cheque*: The banker should also verify whether a cheque is mutilated, torn or cancelled. If it is torn in such a way as to give an impression that the customer had desired its cancellation, the banker should return the cheque with the remark, "mutilated cheque".
- d) *Date of the cheque*: A cheque must always bear a date because the mandate of the customers to the banker given in the form of cheque becomes legally valid on the date mentioned therein. Of no date is written and still presented for payment, the banker must refuse payment.
- e) *Words and figures differ*: When the amount stated in words and figures differs in a cheque, the banker follows the practice of returning the cheque with a remark to that effect.

- f) *Material alteration*: Changing the date, amount, name of the payee, removal of crossing, etc., affect the credibility of the instrument. The banker should refuse payment of a materially altered cheque unless it is confirmed by the drawer.
- g) *Specimen signature*: The signature of the customer should be verified by the banker. The cheque should bear the genuine signature of the drawer. If it differs from the specimen signatures furnished to him, the banker should return the cheque.
- h) *Proper endorsement*: It should be ensured whether the cheque presented for payment requires endorsement or not and if so, whether the endorsement made thereon is regular or not.
- i) *Insufficient Funds*: The banker is under an obligation to pay his customers' cheques if the latter's account shows sufficient credit balance. If there are no sufficient funds, the banker is not bound to honour the cheque.
- j) *Chronological order of payment*: The banker generally follows the rule of making payment of the cheques in the chronological order of their receipt.
- k) *Garnishee order*: The banker should not honour a cheque received by him after the issue of the Garnishee order by the court authorities. Section 31 of the Negotiable Instruments Act, 1881 provides that "the drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheques must pay the cheque when duly required to do so, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default".
- l) *Inchoate cheque*: At the time of presenting the negotiable instrument to the drawee for payment, the negotiable instrument should be complete in all respects. If the negotiable instrument is incomplete with regard to date, amount, payee or signature, then such an instrument is called *inchoate instrument or inchoate cheque*.

III Statutory Protection to Paying Bankers:

A banker runs many risks in the payment of cheques. While it must bear the consequences of its own negligence and lack of skill, law protects it against certain other risks which the bank cannot avoid, despite due care and diligence.

(i) Protection in case of Order Cheques:

both crossed and uncrossed" Section 85(1) provides the basis for protection in respect of these. It states:

" Where a cheque payable to order purports to be endorsed by or on behalf other payee, the drawee is discharged by payment in due course".

The bank has to fulfil the two requirements, as detailed below:

- (a) The endorsement must be regular
- (b) Payment must be made in due course i.e., in accordance with apparent tenor of the instrument in good faith and without negligence and without having reasonable ground to believe that the person receiving the payment is not entitled to it.

(ii) Protection in case of Bearer Cheques:

Both crossed and uncrossed:Section 85(2) states:

“ Where a cheque is originally expressed to be payable to the bearer, the drawee is discharged by payment in due course to the bearer thereof notwithstanding any endorsement whether in full or in blank appearing thereon and notwithstanding that any such endorsement purports to restrict or exclude further negotiation”.

The banker is thus protected in making payment of bearer of cheques to any presenter, disregarding any endorsements appearing on them, provided, or course, the payment is made in due course.

(iii)Crossed Cheques:

Crossed cheques may be either order or bearer and the bank would get the protection respectively under Section 85(1) and 85(2) as explained in (i) and (ii) above. Additionally, Section 128 provides that payment of the crossed cheques to other banker would be deemed to be made to the true owners provided the payment has been made in accordance with the crossing and in due course.

(iv)Protection in case of material alterations:

Section 89 of the N.I. Act provides that a banker paying a materially altered cheque would be discharged of all the liability if:

- (a) the alteration is not visible at the time of presentation for payment
- (b) Payment is made in due course. No protection is however, available where the drawer’s signature has been forged.

IV Collecting Banker:

(i)Meaning:

A Collecting banker is one who undertakes to collect cheques, drafts, bill, pay order, traveler cheque, letter of credit, documents such as lottery chits, dividend warrants, debenture interest, etc., on behalf of the customer. For undertaking this collection, the collecting banker will be charging commission. Thus, the collecting banker is not only acting as an agent of the customer but also as a bailee and trustee. He is a bailee when he is in possession of the document and a trustee when he collects the amount for benefit of the customer

(ii) Duties of a Collecting Banker:

A collecting banker has three major duties to perform towards customer:

1. Quick clearance of cheques or other instruments given for collection

Whenever the customer gives any instrument for collection, the collecting banker should immediately send the same for collection. Any delay on the part of the collecting banker may lead to either the drawer declaring insolvent or the winding up of the paying banker. Hence, a collecting banker while receiving a cheque for collection affixes seal on the pay-in-slip when the cheque is sent for collection on the same date.

2. Acting as bailee:

When a cheque is given for collection, the collecting banker is bailee until the cheque is realized and the proceeds are credited to the account of the customer. Sometimes, the cheque given for collection may bounce and gets dishonoured due to insufficient funds. In such a case, the collecting banker has a duty to return the cheque which has been dishonoured to the customer and by doing so he discharges his duty as a bailee.

3. To collect cheques without negligence:

Negligence of a collecting banker is of different nature. We can state the following negligence of collecting banker:

- (i) Negligence while opening account for a customer wherein the banker has failed to obtain letter of introduction and has opened the current account.
- (ii) A cheque crossed but payment made across the counter by oversight.
- (iii) A cheque crossed account payee and the payment credited to the account of a person other than the payee.
- (iv) A cheque crossed not negotiable. Here the collecting banker should take due precaution before making any payment.
- (v) Where the amount of the cheque and the status of the person are inconsistent, failure to make proper enquiry is a ground for negligence.
- (vi) Opening of accounts without proper enquiry.
- (vii) A cheque belonging to a partnership firm endorsed to the personal account of the customer and if the banker, without proper enquiries, credited the personal account of the partner it is ground for negligence.
- (viii) An official misusing his position credits the cheque received in his official capacity to his personal account by endorsing the same. For example, a cheque received in the name of a principal of a college. The cheque is endorsed by the

principal to his personal account; failure to enquire the same by the bank will be negligence on the part of the collecting banker.

- (ix) When a customer has opened accounts in two different branches of the same bank, the branch managers have to concur on the status of the account holder. Failure to do so will be a negligence of the collecting banker.

(iv) Statutory protection to collecting banker under Section 131 of the Negotiable Instrument Act

According to this Section, “a banker who has in good faith received payment for a customer of a cheque crossed generally or especially to himself shall not; in case the title to the cheque proves defective incur any liability to the true owner of the cheque by reason only of having received such payment”.

From the above definition, we can state the conditions under which the statutory protection is available to the collecting banker.

Conditions under Section 131

(i) *Collecting for a customer*: A collecting banker must collect the cheque or draft or any other instrument only for a customer. A customer is one who has an account opened with the bank which may be a savings or a current account. A savings account can be opened by any person, only when that person is introduced by another savings account holder of the same branch of the bank. But in the case of current account,, the account can be opened only when a letter of introduction is presented by the person intending to open the current account.

(ii) *The cheque presented to the bank for collection should be crossed generally or specially*: That is, the banker is collecting the cheque only on behalf of a customer. If a customer gives an open cheque which is uncrossed, the banker will cross the cheque before it is sent for collection.

(iii) *In good faith*: A collecting banker should accept the cheque for collection from the customer on good faith i.e., there should not be any ambiguity with regard to the ownership of the cheque.

(iv) *Without negligence*: Negligence pertains not only with regard to the instrument but also the manner and the circumstance under which the cheque is given for collection.

(v) *Agent for collection*: Section 131 gives statutory protection to the collecting banker only when the collecting banker act as agent for collection and not as holder for value i.e., the account of the customer should be credited only after the realization of the cheque and not before it.

UNIT-IV

I Types of customers

- (a) Minor
- (b) Joint Accounts holder
- (c) Partnership
- (d) Joint stock Company
- (e) Trustee
- (f) Clubs and Associations
- (g) Executors
- (h) Joint Hindu Family
- (i) Non-Resident Account

II Procedure and Practice of opening different types of accounts

I . Types Of Customers:

(a) Minor:

In India as per section 3 of the Indian Majority Act, a minor is one who has not completed 18 years of age and in case where a guardian is appointed, a minor is one who has not completed 21 years of age.

When a banker is to grant a loan to a minor towards his examination fee, the banker instead of giving it as a loan can pay the fees to the authorities concerned and then debit the account of the minor. When deposits are opened in the name of the minor, the name of the guardian should be included and without the knowledge of the guardian, loan should be provided to the minor.

The following precautions are taken by the banker while opening an account:

1. While opening an account for a minor, the name of the guardian could also be included.
2. No loan or overdraft can be granted to a minor as it is not only a void contract, the banker cannot recover the loan.
3. Loans should not be granted to a minor even on the guarantee of any other person as the guarantor cannot be held liable since the contract between the principal debtor and the creditor itself is void.
4. A minor can be allowed to act as an agent of a third party who is a major.
5. In the case of granting a loan to a minor for necessities, the banker must have sufficient proof for having given the loan for necessities.

(b) Joint Account Holder:

A joint account is an arrangement where an account is opened in the name of two or more persons. These persons may be a father and son, husband and wife, trustees, executors, etc. The account may be a deposit, an advance, safe custody or purchase and sale of securities. Each one is liable to pay the entire amount and the banker can recover the outstanding from either of them. On the death of either party the bank allows the survivor to draw any balance standing to the joint account.

Precautions:

- (i) The application for opening a joint account must be signed by all the parties who wish to open such an account.
- (ii) The banker should always obtain clear instructions in writing for the operation of the account.
- (iii) The mandate should also state to whom the balance dues has to be paid in the event of death of one or more of the joint parties.
- (iv) If the mandate authorizes the parties to overdraw their account at any time, it will be advisable for the banker to obtain the concurrence of all the joint parties.
- (v) In the event of bankruptcy or death of any of the parties, the banker will be safe in immediately stopping all operations on the said account.
- (vi) Where the authority to operate the joint account has been revoked by any of the parties, the banker has no option but to treat this revocation as a temporary suspension of the general authority, and stop all operations.
- (vii) Any joint account holder (including the one who is not authorized to operate the account) can stop payment of a cheque issued on a joint account.
- (viii) The joint account holder who is authorized to operate the joint account himself alone cannot appoint an agent or attorney to operate the account on his behalf.

c) Partnership Firm:

When a bank is opening an account in the name of a partnership firm, it must take the following precautions:

a) Details of the firm

- i) The bank should know clearly the names and addresses of partners.
- ii) The name of the partnership firm and its registered office
- iii) The agreement signed by the partners, a copy of which should be obtained by the bank.

b)Registration

i) The firm should be registered and if it is unregistered, the bank should insist on the registration of the firm.

a. Liability and Duty

- i. The partners should know that they act both as agent and principal of the firm and so their act will bind the firm.
- ii. The liabilities of the partners are joint and several and so the banker must know the details of the properties held by the partners.

b. Contingency

- i. On the death or insolvency of any partner, the bank must close the account of the firm and open a fresh account in the name of surviving partners. This will help the bank to know the liability of the deceased partner. The rule in Clayton's case could be applied then.

(i) Loans:

a) While granting loan to the partnership firm, the bank hold insist that all the partners to sign the promissory note.

(b) In case of death of any partner and if any cheque signed by him is received after his death, the banker should mention on the cheque 'partner deceased'.

(ii) Appropriation:

In the case of firm having debit balance and the individual partner having credit balance, the bank can exercise the right of set *off* so that the loan due by the firm can be recovered from the individual account of the partner.

At the same time, the debit balance in the individual partner account cannot be settled from the credit balance of the firm.

(iii) Negligence of Banker

a)Any cheque endorsed by any partner belonging to the firm, to his personal account, should be supported by proper resolutions. Banker must enquire as to how the firm's cheque can be endorsed to the personal account of the partner.

b) If the account of the firm is to be operated by any partner, there should be a proper resolution to that extent and the bank must obtain a copy of the same.

(iv) *Borrowing Powers*

The borrowing powers of the firm should be clearly mentioned in the agreement and the bank should grant loan in excess of this limit.

(v) *Dissolution*

In the case of voluntary dissolution of the firm by the partners, the bank must get the consent of all the partners before closing the account. The balance amount can be paid jointly to the partners by whom the banker will discharge his liabilities.

(vi) *Power of Court*

The account of the partnership firm can also be closed on the order of the court, when a creditor sues the firm.

(vii) *Power of countermand*

Any cheque issued by a firm can be countermanded by any partner in the capacity of agent of the firm.

(viii) *Retirement*

In case of retirement of a partner, he will not be liable for loans taken after his retirement from the firm. The retiring partner should give due notice of debts to the partnership firm and also to the bank.

(ix) *Admission*

In case of admission of a new partner, the liability of the new partner will commence from the date of his entry into the firm.

(x) *Minor Partner*

In the case of minor partner, he will not be liable for the loans. However, when the minor partner attains majority and continues in the firm, without giving a notice in writing of his continuance in the firm, he will be liable for the loans taken by the firm even when he was a minor. In other words, his liability will date back to his entry in the firm.

c) *Joint Stock company:*

An account can be opened in the name of the joint stock company only after its registration. The banker must obtain the following documents:

1. Copy of the certificate of incorporation
2. Memorandum of Association
3. Articles of Association
4. A copy of the Company seal

5. Resolution of the board authorizing a particular director to operate the bank account.
6. Borrowing powers of the company
7. Persons who are authorized to endorse cheques on behalf of the company.
8. Powers of the board for borrowing during emergency.
9. Details of the properties of the company
10. Network of the company.

At the time of opening the bank account by any company, the banker will ensure that the genuineness of the company by obtaining the above-mentioned documents. Banker must prefer such companies which are listed in the stock markets. While granting any loan to the company under mortgage, the charge created on the property of the company must be intimated to the Registrar of joint stock companies of that region within 30 days of creating of charge.

Banker must have sound knowledge of the Companies Act. Between public limited and private limited companies, the banker must make clear distinction while operating their accounts. While issuing dividend warrants and interest warrants to the company shareholders and debenture holders, the banker should issue cheques with “NOT-NEGOTIABLE” crossing.

At the time of winding up of the company, the instructions from the Court have to be observed, if it is winding up by the Court. In the case of creditors' winding up, official liquidator will be in charge of the bank account. In the case of voluntary winding up, the accounts of the company will be operated by the liquidator.

Lastly, the banker should note that every cheque issued or endorsed by the company must contain the official seal, of the company and also the seal of the designation of the signing authority such as director. If any cheque is passed for payment without containing the seal, it will be negligence on the part of the banker.

d)Trust Account:

A trust is an agreement created between two parties of which one is called the trustee and the other is called beneficiary. Under the Indian Trust Act 1882, a trust is created by which certain property is entrusted to the trustees who will administer the property for specific benefit to the beneficiary. The trust deed will clearly mention the purpose of the trust and the rights and duties of the trustees.

While opening an account for the trust, the bank should observe the following precautions:

1. The bank should have a copy of trust deed
2. The rights and duties of the trustees should be noted down.
3. The beneficiary and the extent of benefits due
4. Borrowing powers of the trustees.
5. Duration of the trustees and the trust
6. Identification of the trust property
7. The value of the trust property
8. The loan granted to the trust should be signed by all the trustees.
9. Insolvency of the trustee will not affect his position as a trustee.
10. The banker should not allow the endorsement of a cheque belonging to the trust to be transferred to the personal account of the trustee.
11. The letter of appointment of the trustees must be obtained by the banker before allowing the trustees to operate the trust account.
12. Cheques drawn by the trust or endorsed by the trust must contain the seal of the trust and the signature of the trustee.
13. The banker will obtain the specimen signature of the trustees before opening an account for the trust.

(e) Clubs, Societies and Charitable and Institutions:

Unregistered non-trading societies such as charitable and religious institutions, libraries, societies, schools and colleges etc are not allowed to have legal entity with the banker. The society/club must be incorporated in the Societies Registration Act, 1860. Only after that it is empowered to enter into valid contracts.

Precautions:

- (i) The society/club must be incorporated under the Societies Registration Act, 1860.
- (ii) A list of managing committee member of the club of the society and certified copies of resolutions electing them as members of managing committee may be obtained before entering into legal entity by the bank.
- (iii) The banker must ask for a copy of the resolutions of the Managing Committee authorizing the opening of an account with the former.

- (iv) The banker must get the duly attested specimen signatures of the office bearers who are authorized to operate the account.
- (v) The banker must acquaint himself with the bye-laws of the Society and should do nothing which is against the procedure laid down in them.
- (vi) The banker must examine that cheques payable to the clubs or society are not credited to the personal account of any office bearer of the club or society.
- (vii) The banker should avoid not making any advance to any registered club or society.
- (viii) The banker so must stop the operation on the account, the moment he receives the notice of the death or resignation of any of the office bearer.

EXECUTORS AND ADMINISTRATORS

An 'executor' is a person appointed by the testator (person making a will) to execute his will after his death. This is done by means of a will. Where a person dies without making any will or makes a will but does not mention the name of any person as executor or the person named as executor dies or refuses to act, the court will appoint a person for the purpose of execution of the will. Such process is known as administration'.

The duties of both the executor and the administrator are the same. The assets of the deceased are realized and the debts are wiped off out of the money so realized.

When the customer (who has made the will) of a bank dies, the latter would stop the operation of the account after the receipt of notice of death.

When the executor has been appointed by the deceased, he has to obtain a probate from the court and produce it to the bank for the operation of the account. Where no executor has been appointed, the court will appoint the administrator who can operate the account with the bank after producing before the bank the letter of administration.

When two or more executors or administrators are appointed, they will open a joint account with the bank. In such cases, the bank should obtain clear instructions regarding the operation of the account and the overdraft on behalf of the executors. The executor or administrator may pledge the property of the testator to obtain an overdraft from the banker. The executor may do so if it is permitted by the will.

On death, insolvency, insanity or resignation of any of the executors or administrators, the bank can honour the cheques issued by him before such occurrence and can continue to operate the account unless otherwise provided in the will. But if the account is overdrawn on the personal security of such

executor or administrator, the account must be closed in order to fix the responsibility of such person.

(f) Joint Hindu Family:

When a Hindu family inheriting ancestral property, conducts a firm or business from out of the property for the common benefit of all the family members, it is called *Joint Hindu Family*.

Joint Hindu Family firm is created by the operation of law. The business of Joint Hindu Family is controlled under the Hindu Law. The membership in Joint Hindu Family can be acquired only by birth or by marriage to a male person who is already a member of Joint Hindu Family.

There are two schools of Hindu Law. One is *Dayabhaga* which is prevalent in Bengal and Assam and the other is *Mitakshara* which is prevalent in the rest of the country.

The business of Joint Hindu Family is controlled and managed by one person who is called *Karta* or *Manager*.

The main features of Joint Hindu Family Business are given below:

- (i) The business of Joint Hindu Family is controlled and managed under the Hindu Law.
- (ii) The membership of Joint Hindu Family can be acquired by birth only.
- (iii) The death, lunacy or insolvency of any member of the family does not affect the existence of the business of Joint Hindu Family.
- (iv) Except the Karta, the liability of all the other members is limited to their shares in the business.
- (v) In a Joint Hindu Family Firm minor is a partner.

Precautions to be taken by the bank:

The banker should take the following precautions while dealing with Joint Hindu Family:

- (i) The banker must obtain a declaration stating the constitution names of various co-parceners and their relationship with Karta. Record should also be obtained with regard to the ages of minors by the banker.
- (ii) The affairs of Joint Hindu Family business are managed by the eldest male member called KARTA. The Karta has also an implied authority to take a loan, execute necessary documents and pledge the securities on behalf of the family.
- (iii) The bank should try to ascertain the exact purpose of the loan, as in case of any disputer, it is the banker who has

to establish that the loan was in the interests of Joint Hindu Family.

- (iv) While opening an account, the banker should examine whether it is for ancestral family business or a new business with or without any outsider as partners.
- (v) In case of minor co-parceners in a Joint Hindu Family his guardian must sign the documents on his behalf.
- (vi) The liability of co-parceners's in case of loans granted to a Joint Hindu Family is limited to the extent of their interest in the joint property.

(I). Non- Resident Accounts:

Under this scheme, the banks can open non-resident accounts in the names of Indian nationals and persons of Indian origin residing abroad in certain specified currencies namely U.S. Dollar and Pound Sterling. These currencies are convertible. These accounts enjoy all the advantages in respect of Non-Resident (External) accounts. In addition, the account holders are protected from any exchange risk resulting from a change in the external value of the rupee since these accounts are maintained in foreign currency.

The important features of foreign currency (non-resident) account are as follows:

- (i) Indian nationals or aliens residing abroad many send money to their accounts in India by way of drafts, mail transfers, telegraphic transfers etc.
- (ii) These deposits are on par with all other deposits accepted by the banks. Interest rates on FCNR accounts are laid down by the Reserve Bank of India.
- (iii) Interest earned on balance in these accounts is exempt from income tax.
- (iv) The entire amount in these deposits is repatriable without reference to the Reserve Bank of India.
- (v) Interest is payable after every six months (except in case of deposits for less than 12 months or on maturity, whichever is earlier).
- (vi) No loan or advance can be made against any deposit under this scheme without the prior permission of the Reserve Bank of India.
- (vii) Since payment of Interest in case of FCNR account is restricted to half yearly payment, the bank may accept deposits under reinvestment plans which involve compounding interest accrued on deposits on half yearly rates.

- (viii) Risk of exchange rate fluctuation is covered under FCNR scheme where as this facility is not available under NR (E) Accounts.
- (ix) Reconversion facility for Non-Residents returning for permanent settlement is available to FCNR account holders.

II Procedure and Practice of Opening Different Types of Accounts:

For opening an account in a bank, certain procedures had to be followed. For opening a saving account, the banker insists on the signature of an introducer, who should also be an account holder of the bank. The person who intends to open a savings account must obtain an *account opening form* and a *specimen signature card*.

In the account opening form, full details such as his/her name, age, permanent address, occupation etc., have to be provided. The form should be signed by the introducer who is already an account holder of the bank. The introducer must also furnish his savings account number in the form along with his signature. In the specimen signature card, the person who is intending to open the account has to give three specimen signatures. The banker identifies the customer only by his signature and so the customer should adopt the same signature in all the documents connected with the bank, especially in the cheque.

Opening of Savings Account:

In the modern days, bankers are insisting that passport size photograph of the customer to be provided in duplicate. The bankers affix one photograph in the passbook and the other in the ledger. This will prevent the opening of account in benami name.

In addition to this, a Xerox copy of the ration card or passport or voter identity card should be provided as a proof for residential address.

In the case of saving account without cheque book facility, a minimum credit balance of Rs. 500/- has to be maintained by the customer. For savings account with cheque book facility, the minimum credit balance will be Rs.1000/-

Opening of Current Account:

For opening a current account the procedure is different. The bank insists that a letter of introduction be obtained from:

- a. another current account holder of the bank or,
- b. a reputed person or,
- c. An employee of the bank not below the level of an officer.

This letter is considered to be fidelity guarantee. Here, the introducer is giving guarantee for the conduct and behavior of the person intending to open the account. The banker insists on such a letter for opening a current account as it is mandatory.

Opening of Fixed Deposit and Recurring Deposit Accounts:

For opening a fixed deposit account or recurring deposit account, the banker will adopt the same procedure that is followed while opening a savings account. The customer will have to deposit cash while opening such accounts.

As the fixed deposit account is not transferable, the banker will have to be more careful in obtaining the specimen signature of the customer. On the date of maturity, the amount will be payable to the customer after verification of his signature with that of the specimen signature already held by the bank.

UNIT - V

I Types of Accounts

- (a) Introduction
- (b) Current Account
- (c) Saving Account
- (d) Recurring Deposit Accounts
- (e) Fixed or Time Deposit Account

II Opening the Account

III Operating Bank Account

IV Closing of such Account

V Pass Book

I. Various Kinds of Bank Account

Introduction:

Getting deposits from the public is one of the most important functions of bank. Banks extends facilities to their customers to open accounts of different nature depending upon the circumstances and their particular requirements.

The relationship between a banker and his customer begins with the opening of an account by the former in the name of the latter. Initially, all the accounts are opened with a deposit of money by the customer and hence these accounts are called “deposits accounts”.

The bulk of the resources of a bank are mobilized by accepting deposits from the public. Accepting of deposits of money from the public, as already noted, is one of the essential functions of a banker.

According to the definition of banking given in the Banking Regulation Act, 1949, banks accept money from the public by accepting deposits by way of different accounts.

a) Current Accounts:

A current account is a running account which is continuously in operation. In it a customer can take deposits of cash, drafts, coupons, postal orders, dividend warrants, etc., without restrictions. He can also draw upon the current account as many times as he likes till he has funds to his credit.

- (i) Current accounts generally do not carry any interest as the amount deposited in these accounts is repayable on demand without any restriction.
- (ii) Most of the banks charge incidental charges on such accounts which depend upon the amount of balance kept by the customer.

- (iii) Temporary loans and advances against fixed deposit receipts, life insurance policies and securities are granted through current accounts only.
- (ii) Third party cheques and cheques with endorsements may be deposited in the current account for collection and credit facility.

(b) Saving Bank Account:

The saving bank deposit accounts are usually opened and operated by lower and middle class people to safeguard their future and to earn some interest on their saving. In saving bank deposit account, small savings are deposited in the bank by the customers.

A saving bank account is meant for the people of the lower and middle classes who wish to save a part of their current incomes to meet their future needs and also intend to earn an income from their savings.

Saving bank account is very popular among the general public because of the following advantages

Advantages:

- (i) A saving accounts can be opened with as little as Rs.500/- only. It helps the people of small means to save for their future.
- (ii) The balance lying in the savings bank earns some interest. The customer is benefited as his money grows with the bank.
- (iii) The money lying with the bank is quite safe. There is no fear of theft.
- (iv) The money can be withdrawn conveniently from the savings account.
- (v) The customer gets the cheque book facility if his account is duly introduced by another account-holder and he keeps a minimum balance or Rs.1000/-. It is quite easy to make payment to third parties by issuing cheques.

(c) Recurring Deposit Accounts

A recurring or cumulative time deposit account is an innovation over and a variant of the savings bank. Here the customer makes a regular deposit, say, every month, of an agreed sum of money for an agreed period.

Generally, the duration of such deposits ranges from 1 to 8 ½ years. Interest is credited on the accumulated monthly balance (inclusive of interest). That is to say, compound interest is paid on the recurring accounts. Like savings account, in recurring as well, the depositor is furnished a pass book which he is required to bring each time he pays his installment. The rate of interest on the recurring deposit account stands favorably as compared to the rate of interest on the saving bank account because the former partly resembles the fixed deposit account.

The recurring deposit account can be opened by any person, more than one person jointly or severally, by a guardian in the name of a minor and even by a minor. While opening the account, the depositor is given a Pass Book which is to be presented to the banked the time of monthly deposits and repayment of amount. Installments for each month should be paid before the last working day of that month. Accumulated amount with interest will be payable after a month of the payment of the last installment.

d) Fixed or Time Deposit Account:

In this account, the money is deposited for a fixed period and cannot be withdrawn before the expiry of that specified period. This period usually varies from 3 months to 5 years or more. The rate of interest on such deposits depends upon the length of the time of deposit. This account is also called Time Deposit.

In Time Deposit the money is repayable on the expiry of fixed period of time only. The terms and conditions of fixed deposit accounts are regulated by Reserve Bank of India.

Fixed deposits are most suitable form of accepting deposits for a commercial bank, since they are repayable after the expiry of a specified period. If a customer needs money before the expiry of specified period he can take a loan against the fixed deposit.

The fixed account can be opened with the bank by filling a prescribed form available in the bank free of cost. This form contains the following particulars:

- (i) Name of the depositors,
- (ii) Amount, to be deposited,
- (iii) The period for which the amount to be deposited,
- (iv) Specimen signatures, etc.

In this account, the pass book and cheque book are not issued; instead a fixed deposit receipt is issued to the depositor. It is signed by the bank manager. Fixed deposit receipt is not a negotiable instrument.

The depositor will be entitled to claim back his money on producing the above receipt on the due date.

Regarding the payment before due date, the banker may in cash the fixed deposit receipts if the depositor so desires before the due date.

According to RBI directive, the rate of interest allowed on such deposits should at least be 2% less than the rate applicable to the period for which the deposit was actually held by the Banker. If the banker refuses so make payment before due date, another alternative which the banker offer usually is to advance loan against the security of fixed Deposit Receipt. A Fixed Deposit Receipt is not transferable and not negotiable one. In case of loss or theft of Fixed Deposit Receipt, any other person cannot claim payment of the amount given the receipt.

II Opening an Account

When approached by a person to open a current or savings account, the bank manager should be scrupulously careful. It is not unlikely that the applicant be interested in taking possession of a cheque book for some nefarious and fraudulent purposes.

(i) Presenting of application:

The applicant should fill in the prescribed form for opening of an account form available from the concerned bank. Banks keep different forms for individuals, Joint Hindu Families, Partnership Firms, Companies, etc. The applicant should fill in the relevant form and mention his name, occupation, full address, specimen signature and other particulars required by the bank's rules for the time being in force for the conduct of the concerned account.

(a) Precautions in Accepting Introduction

Proper introduction of a new customer is a must to avoid the risks described above. The precautions which a banker may take have been presented in the form of check-list as follows:

- (i) Is the introducer of the account an account holder? If yes, are his dealings with the bank satisfactory?
- (ii) If the account is being opened on the basis of passport or partial identification, have the necessary checks, to ensure that the identification is authentic, been made.
- (iii) Has a certificate that 'I certify that I have known..... Since past.....Months/years and confirm his/her occupation and address as stated in the application' been signed by the introducer.
- (iv) Has the account holder requested for cheque book? If yes has the cheque book issued to the account holder been stamped adequately with the stamp 'New Account'?
- (v) If the introducer is manager/official of the other branch of the same bank, have the signatures been verified with the specimen signatures available on record.
- (vi) Have the implications of introduction been fully explained to the introducer?

(b) Specimen signature:

The applicant is required to give his specimen signature on a card meant for this purpose. This will help to protect the bank against forgery because whenever the cheque is presented at the counter of the bank for payment the signature will be tallied with those on card.

Minimum initial deposit.

Often, a minimum initial deposit for opening an account is insisted upon. In India, for example, the minimum amount for opening a current account has been fixed at 1000 for urban and metropolitan branches and Rs.500 for semi-urban and rural branches. For savings bank account the minimum initial deposit is usually Rs.5 or Rs.10. These amounts will also be the minimum balances to be maintained by the account holders.

Operating the account.

When an account has been actually opened in favour of a customer, he is given a (i) Pay-in-slip book, (ii) Cheque book, and (iii) Pass book with a view to operating it. Through them, he can make deposits, draw upon the bank and maintain a record of the various transactions.

III Operating the Bank Account

The word 'operate' in relation to bank account means that the customer deposit further sums of money and cheques etc., into the bank and withdraw money according to his need or convenience. A special feature of banking business is that each and every transaction of money with the customer is supported by a separate slip or document. A customer is, therefore, required to make use of

- (i) pay-in-slips for depositing money, and
- (ii) cheques for withdrawing money from the bank.

(a) Pay-in-slip book:

This book contains printed forms with perforated counterfoils which are to be filled in by the depositor or his agent while depositing cash, cheques, drafts, etc. to the credit of his account. Separate slips are to be used for cash and cheques or other instruments.

(c) Cheque Book

A book that contains blank cheques is a cheque book, and a cheque is an instrument 'through which current and savings accounts could be drawn' It is issued free of cost to each current account holder, but to a savings account holders it is issued only when he agrees to always keep a minimum balance of Rs.500 to his credit .It is advisable that the cheque book should be kept under lock and key.

(c) Pass Book

The Pass Book is a small handy book issued by a banker to his customer to record all dealings between them. In fact, it is an authenticated copy of the customer's account in the account book of the banker. The purpose of issuing a pass book to a customer is to acquaint him periodically in the state of affairs of his account with the bank. The Pass Book also contains rules and regulations governing the savings account. As it passes from the bank of the customer to the banker and vice versa it is called "Pass Book".

A Pass Book is very important to a customer because it enables him to know some of the entries made by the banker in his ledger account. E.g. the amount of interest allowed or charged the incidental or other charges made by the banker.

The following points are important in this connection:

- (ii) Entries in the Pass Book are to be recorded by the clerk of the bank and must bear the initials of the accountant.
- (iii) Whenever the banker sends a pass book to the customer, it must show up-to-date entries.
- (iv) If the pass book is lost by the customer, a duplicate pass book may be issued by the banker and marked as 'Duplicate'.
- (v) In case of a savings bank account, the pass book must accompany the withdrawal form every time when money is withdrawn through a withdrawal Form.

IV Closure of Account of a Customer

The relationship between the banker and the customer arises out of a contract between the two and it continues as long as both of them agree to it. This relationship may be brought to an end when either the customer or the banker desires it to be terminated by a written notice. These relationships may also be discontinued by the operation of law in certain cases.

Following are the circumstances under which a banker can close or stop the operation of the account of a customer:

- (i) A customer can close his account with the banker at any time he feels like without assigning any reason.
- (ii) The banker may ask the customer to close his account if the account is not operated for a long time.

The banker must give the customer a sufficient notice before closing the account. The contents of the notice must contain the intention of the banker to close the account and a request to the customer to close his account by withdrawing the balance at the credit of the customer.

When a customer does not comply with the request of the banker to close his account even after the expiry of reasonable notice given to him, the banker can close the account under intimation to the customer by returning the entire balance due to him and demand and return of unused cheques. The banker will not be liable for dishonouring a cheque subsequently presented for payment.

- (iii) The banker may stop the operation of the account without giving any notice in the following cases:

- (a) When the banker learns that the customer has turned lunatic or insane
- (b).If the customer is declared insolvent or the corporate customer goes into liquidation, the banker must stop the operation of the amount and transfer the credit balance to the official assignee or receiver of the insolvent customer.
- (c) When the banker receives a Garnishee order from a court attach in all the funds of a customer, the banker is bound to close the account of the customer automatically,
- (d) When a banker receives a notice of assignment of his customer's account to the third party, he is bound to pay the amount to the said third party and must stop the operation of the account.

V Pass Book

A pass book is one which contains a record of transactions taking place between the banker and customer. It is called a *pass book* as it quite often passes between the banker and customer.

The transactions in the pass book are a conclusive evidence of transactions between a banker and customer. The customer, relying upon the entries in the pass book, withdraws money from the bank.

According to Sir John Paget, "pass book ought to fulfill a conclusive and unquestionable record of transactions between banker and customer and it should be recognized as such.

From the above statement, it is clear that every customer has a responsibility to go through entries in the pass book. In case he finds any mistake, it should be brought to the notice of the banker within a reasonable period.

Rules pertaining to pass book

When an account is opened by a customer, the banker gives to the customer a pass book with entries. The inside wrapper of the pass book contains rules which every customer is supposed to go through.

- (i) The customer has to produce the pass book to the banker whenever he/she transacts with the bank.
- (ii) On the production of pass book, the banker must update the entries and must handover the same to the customer.
- (iii) The customer on receipt of the pass book must go through the same and if there is any discrepancy, must bring it to the notice of the bank.
- (iv) Any arithmetic error in the pass book can be corrected only by the bank and the customer should not write anything on his own in the pass book.
- (v) In the event of the pass book getting exhausted with the entries, the banker will issue a 'continuation' pass book and will mention the word 'continuation' in the pass book.

- (vi) Every entry in the pass book must be countersigned by the officer of the bank.
- (vii) In case of loss of pass book, the customer can report the same and obtain a duplicate pass book. The duplicate pass book contains the word 'duplicate' on its cover.

Entries in the pass book in favor of the customer:

Sometimes, the pass book may contain entries which are wrongly made and which are in favour of the customer. In other words, the customer may be given excess credit than what is due. If the customer based on this wrong entry issues a cheque, can the bank honour the same?

Since the pass book is handled by the banker, any entry in the pass book is evidence against the banker. The customer has every right to take advantage of the entries in the pass book even if they are to his credit. Provided

- (a) The customer has acted by relying on the entries in the pass book and did not think that there was a defect in the pass book.
- (b) The customer has not only taken advantage of the excess credit entry but has also altered his position by spending the excess credit amount.

Entries in favor of the banker

When a bank omits credit entries that are due to the customer or when the customer has been wrongly debited, these will be construed as entries in favour of the banker. The customer has the right to rectify this defect as soon as he comes to know of it. Even if a customer fails to go through the pass book, the wrong entries made by the banker cannot bind the customer. The customer can always recover the excess amount wrongly debited or entries which are to be credited or omitted by the bank. At the same time, the customer can rectify the mistake as a matter of right provided the customer applies the law of limitation. Suppose, there is a forgery in the cheque belonging to the customer, he has to inform the bank so that the bank can stop the payment on the same. But if a customer does not inform it will be a negligence on the part of the customer and the customer cannot recover the amount paid by the banker on the forged cheque. It is the bank which has to prove that there is negligence on the part of the customer. We have a case law to prove that the bank cannot throw the blame on the customer for his negligence.

