

Department of Commerce (CA)

ALLIED PAPER-II BANKING THEORY LAW AD PRACTICES.

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UNIT 3:

**Banker and Customer – Definition – Relationship – Special Relationship,
Different Types of Bank Accounts – Opening of New Account – Precautions to
be taken – Special types of Customers – Closure of Accounts.**

REFERENCE BOOK:

- BANKING LAW AND PRACTICE- P. N. VARSHNEY
- A TEXT BOOK OF BANKING – RADHASWAMY AND VASUDEVAN
- BANKING THEORY LAW AND PRACTICES- GORDON AND NATARAJAN
- INDIAN BANKING – PARAMESHWARAN AND NATARAJAN
- BANKING THEORY LAW AND PRACTICES- SANTHANAM.

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Banking activities are started in different periods and in different countries regarding the origin of the word “Bank”.

Bank is derived from the French word “Banco” or “Bancus” Or “ Bank” means “Branch”.

The lombard early news in business is failed, the word “bankrupt came to vogue.

Theory and practice of banking are expressed by “maddock”.

In the middle age money charges were never called as “Benchieri”.

Bank is originated from German word “ Back” means joint stock fund.

Banker :

The person doing banking business is called the banker.

The banker performs multipurpose functions.

The perspective of banker are :

Banker deals money with his mental faculties.

He is repository of finance.

The bank activities are accelerated to sophisticate the needs of corporate clients and industries.

The banking terminology plays a very important role.

Earlier views :

The bill of exchange act of 1852 defines “ the banker includes a body of person whether incorporated or not who carry on the business of banking “.

Definition :

Sec 3 of Negotiable instrument act states that “The term banker includes a person or a or a cooperator or a company acting as a banker”.

Expert view :

According to Mackod, “The essential business of a banker is to buy money & debts by creating other debts. A banker is essentially a dealer in debts or credits.

Indian view :

Sec 5(B) of above mentioned act defines the term ‘Banking Company’ as “ A company which transacts the business of banking in India “.

Banking and other business :

In this connection, an interesting question may arise as to whether to call a money lender a banker or not.

They don't receive deposit from the public. They depend upon their own resources.

Some financial institutions like IFC, SFC, IDBI, Co-operatives land development banks etc. Providing loans to agriculture.

They cannot be strictly called banks because they do not lend and issue any cheque.

It is difficult to define the terms of customer. Different views can be expressed at different times.

Even under law, the term customer is not defined.

Who is then a customer?

To have a proper understanding of this subject, a study of the term ‘customer’ as they obtained at different stages can be made.

Early stage :

Some sort of an account

Lord Brampton says "It is not necessary to say that the keeping of an ordinary banking account is essential to constitute a person customer of a bank.

Second stage :

Frequency of transaction

According to sir John Paget " To constitute a customer there must be some recognizable course or habit of dealing in the nature of regular banking business.

The modern view :

It was conformed by Lord dunclin that " The word customer signifies a relationship in which duration is not the essence ".

To sum up the following are the perspective table to constitute a person as customer.

He must have some sort of an account

Even a single transaction may constitute him as customer

Frequency of transaction is anticipated but not insisted upon

The dealings must be of banking nature.

Relationship between a banker and a customer:

There are two types of relationship:

General relationship

Special relationship

General relationship:

A banker as a bailee:

A banker becomes a bailee only when he receives articles for safety custody.

He cannot use them to his best advantage because he is bound to return the identical articles.

A banker as a trustee:

A banker acts as a trustee when he holds the property on behalf of a customer.

When a money is deposited for a specific purpose, till that purpose is fulfilled banker is regarded as a trustee.

A banker as an agent:

Agent is a person who is employed to do, any act for another in dealing with third person.

Bank collected cheque, bills and make payments to various authorities like rent, insurance etc.

Debtor creditor relationship:

When a person opens an account with a banker, there arises a contractual relationship by implication.

A banker is not bound to return the same coins and currency. He is required to give the same amount.

Special relationship:

Apart from these general features of relationship, there exist some special features of relationship:

Statutory obligation to honour cheque:

When the banker undertakes an obligation to honour his customer's cheque and this is a statutory obligation.

Limited obligation:

Even though law compels to honour all the cheque he cannot blindly honour all the cheque. Statutory obligation to honour the cheque is limited in following ways:

Availability of money in customer's account:

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The correctness of the cheque:

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Proper drawing of the cheque:

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Existence of legal bar:

A banker should not honour a cheque if there is any legal bar like garnishee order attached the customer's account.

Overriding the obligation:

When a banker overrides his statutory obligation and dishonours a cheque on reasonable grounds, the banker is justified in doing so.

If a banker dishonours a cheque by mistake, it amounts to a wrongful decision.

Liable to the customer only:

When a cheque is wrongly dishonoured, a banker is liable only to his customer and not liable to any other parties.

Assessment of damages:

If a banker wrongly dishonours a cheque, he has to compensate for any loss or damage suffered by the customer.

Obligation to pay bills:

Even though there is no statutory obligation to honour the bill of the customer, modern bankers undertake a duty on behalf of their customers.

Prior arrangement:

A customer should have made prior arrangement with his banker to honour such domiciled bills.

Banker's lien:

Right to retain the goods:

Lien is the right of creditor to retain the goods and securities owned by the debtor until the debt due from him is paid.

Kinds of lien:

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Particular lien

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Example: Watch repairer.

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This right of sale is normally available only in the case of pledge.

No lien on safe custody deposits:

Bankers cannot exercise his lien in respect of securities deposited for safe custody.

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No lien on documents entrusted for a specific purpose:

If a bill of exchange or other document or money is entrusted for a special purpose, a banker's lien cannot be extended to them.

Negative lien:

It is also called non-possessory lien.

Under this, borrower gives a declaration to the banker that his assets mentioned there in are free from any charge.

The borrower cannot dispose of assets or create any charge there on without the consent of the banker.

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There may be certain reasonable grounds under which the banker can justifiably disclose his customer's accounts.

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The charges which came into effect from Jan 1, 2014 onwards in public sector banks are listed as,

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The same practice of crediting the customer's account with the interest at the end of every half year is followed.

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Opening of New account :

Application form :

Fill the account opening form.

The vital points are name, address, occupation and etc.

Provide declaration of accepting the rules and regulation of bank.

Specimen signature :

The applicant has to put his/her specimen signature at the blank space provided on the application form for that purpose.

Letter of introduction :

It is always advisable or part of banker to allow the prospective customers to open an account only with a proper introduction.

The usual practice for the banker is to demand a letter of instruction from the responsible person who known to both the parties

Failure to get letter of introduction may lend him in trouble affect his credit

Interview :

At the time of opening of new account, it is always advisable to have an interview invariably with the prospective customer so as to obviate the chances of perpetration of fraud at a later stage

Amount deposit :

A minimum deposit of initial deposit is the minimum amount of money required to opening an account with bank

Document verification :

While opening savings account in a bank, a customer needs to submit his/her know your customer documents – proof of identity for the verification. Once the bank verified the details and documents, customer can avail the benefits of the account.

Know your customer (kyc) norms :

Kyc means “know your customer “, it is a process by which banks obtain information

about the identity and address
of the customer

This process help to ensure that
Banker services are not
misused

The kyc procedure is to be
completed by the banks while
opening account and also
periodically update the same

To open a bank account one
needs to submit a Aadhaar and
pan card as a “proof of identity
together with recent
photograph.

The special type of customer in bank are :

Minor

Married women

Lunatics

Illiterate person

Joint account

Partnership firm

Trust

Joint stock company

1.Minor

Minor are considered one type of special customer

A person who is not 18 years age is considered a minor

A minor has to have a parent or guardian to help them open a account

A minor can borrow money often needs a co signer such as a parent or guardian.

2. Married women :

A married is competent to enter a valid contract therefore bankers open an account in the name of married women

The husband will not be liable with regard to debts taken unless the loan taken with his consent authority or it is for the necessary life.

3. Lunatics :

A person of unsound mind
can't make valid contract
The bankers should not open
an account in the name of a
person of unsound mind.

4. Illiterate person :

At the discretion of the bank,
illiterate person are allowed
jointly with persons who are
literate or illiterate and closely
related to them to be operated
upon jointly

No cheque book facility will be extended for the illiterate depositors.

5. Joint account :

A joint account is a bank or brokerage account shared by two or more individuals

Joint account holders have equal access to funds but also share equal responsibilities for any fees or charges incurred.

6. Partnership firm :

A firm's account should always be opened in the name of the firm and in the name of the individual partner

Any partner can stop cheque issued by another partner

It is used mainly for business partnership.

7. Joint stock companies :

Joint stock company is an artificial person and it is non separate legal entity

Bank account may be opened by its own name

A joint stock company may either be a private limited company or public limited company.

7.Trustees :

A banker must be cautious in opening/operating a trust account as the trustees are responsible for the public money.

General precautions :

The banker should not be negligent in giving information.

Information should be given only after getting the express content of his customer.

On no account should be disclose to the holder of a cheque the exact balance in a customer's account.

To a third party who incures loss relying upon the information which is untrue misleading.

Disclosure under the compulsion of law :

Under sec 45B of the reserve Bank of India act, The Reserve Bank is empowered to collect credit information from banking companies relating to their customer.

Under sec 26 of the banking regulation act 1949, every bank is compelled to submit an annual return of deposits which remain unclaimed for 10 years.

When a garnishee order is received the banker must disclose the nature of the account of a customer to the court.

Disclosure in the interest of the public :

A banker is justified in disclosing the state of his customer's account in the interest of the public.

Disclosure where money is kept for extreme political purposes.

Disclosure of the account of an unlawful association.

Disclosure of the account of a revolutionary body to avert danger to the state.

Disclosure of the account of an enemy in the times of war.

Disclosure in the interest of the bank :

Disclosure of the account of the customer who has failed to repay the loan.

Disclosure to a fellow banker association of partners

As a defence of post action disclosure can be made.

Disclosure under the express or implied consent of customer :

If a customer has given the name of his banker for trade reference, then the banker would be justified in answering the same.

When a proposed guarantor asks a question to the banker regarding the account of the customer, the banker is expected to reveal the exact position. However it would be advisable to get the consent of the customer in writing, before providing any such information

