**BANKING THEORY LAW AND PRACTISE**

1st B.COM (B.M)

**UNIT- 4**

**PAYING BANKER**

**MEANING**: A paying banker is one who is a drawee of a cheque. He takes the responsibilities of making payment on a cheque to the true owner

 Duties and responsibility of paying banker, section 31 of the negotiable act provide that drawee of a cheque having sufficient funds of the drawer in his hands , proper ly applicable through the payment of such cheque and in default of of such payment must compensate the drawer for any loss or damage caused by such default.

**OBLIGATION OF PAYIN BANKER TO HONOUR CHEQUE**

* There must be sufficient funds in the customer account
* Funds should be properly applicable to the payment of such cheque
* Cheque should be presented during the banking hours of the bank
* Cheque should be presented for payment in a reasonable time

**CONDITIONS FOR DISHONOUR OF A CHEQUE BY A PAYING BANKER**

* Open or crossed cheque
* Drawn on the specific branch
* Mutilated cheque
* Date of the cheque
* Words and figures differ
* Material alteration
* Specimen signature
* Insufficient fund
* Chronological order of payment

**PAYMENT IN DUE COURSE**

Section 10 of the negotiable instrument act of 1881 defines “payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession there of under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount there in mentioned”.

**CONDITION GIVEN UNDER PAYMENT IN DUE COURSE**

* Payment in accordance with apparent tenor: when paying banker receives cheque he has to carefully go through the instrument given by drawer
* In good faith: the paying banker will make payment o a person whose ownership is certain
* Without negligence: the paying baker has to go through the content of cheque if the cheque contains any alteration payment cannot be made
* 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
* Circumstances: even though the person presenting the cheque may fulfill the conitions , but still creates a doubt in the minds of the paying banker at the time of making payment, he mudst get clarified before making payment

 **GROUNDS FOR REFUSING PAYMENT OF A CUSTOMER CHEQUE**

* Countermanding o payment : when a customer after having issued the cheque to third party to banker to stop payment on the cheque
* Death of customer: Notice of death of customer the banker will close the account and payment will be refused.
* Insolvency of customer: When the court adjuged the customer of a bank as insolvent.
* Lunancy
* When a customer is unsound mind
* Garnishee order
* Closing of account voluntarly

**COLLECTING BANKER**

**MEANING**:

A collecting banker is one who undertake to collect cheques,drafts ,bills,payorder,letter of credit, debenture interest etc., on behalf of the customer.

Duties of colleting banker:

* Quick clearance of cheque or other instruments given for collection: when ever the customer gives any instrument for collection the collecting banker should immediately send the same for collection.
* Acting as bailee: when a cheque is given for collection, the collecting banker is bailee the cheque is realized and the proceeds are credited to the account of the customer.
* To collect cheque without negligence
* A cheque crossed but payment made across the counter by oversight.
* A cheque crossed not negotiable.
* Opening of accounts without proper enquiry.

**CAPACITY OF COLLECTING BANKER:**

* As holder of value: when the collecting banker advances money to the customer before realization of the cheque given for collection. By allowing the customer to draw the full amount of the cheque before its realization.
* As agent for collection: when a banker undertakes to collect the cheque and credits the account of the customer only on realization.

**Statutory protection to collecting banker under section 131:**

* Collecting for a customer
* The cheque presented to the bank for collection should be crossed generally or specially.
* In good faith
* Without negligence
* Agent of collection

**Unit v**

**Pass book**: pass book is one which contains a record of transaction taking place between the banker and customer. It is called a pass book as it quite often passes between the banker and customer. The transaction in the passbook is a conclusive evidence of transactions between a banker and customer.

**RULES PRETAINING TO PASS BOOK:**

* The customer has to produce the pass book to the banker whenever he transacts with the bank.
* On the production of passbook,the banker must update the entries and must handover the same to the customer.
* The customer on receipt of the passbook must go through the same and if there is any discrepancy must bring it to the notice of the bank.
* In the event of the bassbook getting exhausted with the entries the banker will issue a continuation passbook and will mention the word continuation in the passbook.
* Every entry in the passbook must be counter signed by the officer of the bank.

**CHEQUE**

 According, to section of the negotiable instrument act, a chequeis “a bill of exchange drawn on a specified banker and not expressed to the payable otherwise than on demand”.

* A cheque is always drawn upon a banker
* It is always payable on demand

**FEATURES OF CHEQUE**

* It is an instrument in writing.
* A cheque is to be drawn only on the branch in which the customer maintaining an account.
* 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.
* Before drawing a cheque the customer must have sufficient funds in his accounts.
* The amount mentioned in the cheque should be specific and it should be written both in words and figures.
* A cheque is payable either to order or bearer,
* Signature is an important aspect in a cheque.
* Date appearing on the cheque is a date on which the cheque is said to have been issued.
* The number appearing on the cheque at the bottom represents the cheque number and the code number of the bank.

**CROSSIMG OF CHEQUE**:

There are two types of crossing

* General crossing: Defenition: section 123 defines “ where a cheque bears across its face an addition of the words ‘And company’ or any abbreviation thereof between two parallel transverse lines or twoparallel transverse line simply either with or without words “Not negotiable” that addition shall be deemed to be crossed generally”.
* Special crossing :According to section 124 “ where a cheque bears across its face and 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 and it be crossing specially.

**Who can cross a cheque**:

1. Drawer
2. holder
3. holder in due course
4. banker

**LIABILITY OF A PAYING BANKER ON A CROSSED CHEQUE**

1. Liable to true owner :- when a cheque is drawn in the name of x and crossed account payee only it is the duty of the paying banker to pay or credit the account of x failing which the owner of the cheque can sue the paying banker.
2. To the drawer :- the paying banker is liable to the drawer for not complying with instruction as given in the cheque.

**LIFTING OF CROSSING**

 The baker can make payment, other than drawer no other person is authorized to lift the crossing .

**ENDORSEMENTS**

 Is a process by which an order instrument is transferred. there are two parties to an endorsement-endorser and endorsee. Endorser is the one who transfers. Endorsee is the transferee.

**RULES PRETAINING TO ENDORSEMENT**

1. Allonge
2. Signature
3. Correct initial and name
4. Endorsement by
* Married women
* Illiterate person
* Partnership firm
* Company
* Institution
* Liquidator
* Executor
* Trustee
* Power of attoney
1. Prefix and suffix to be omitted
2. Defense personal.

**KINDS OF ENORSEMENT**

1. Blank endorsement :- when an endorsement is made on the reverse side of the instrument with a mere signature of endorser without any name 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
3. Conditional endorsement:- when a endorsement made with a special condition to be fulfilled by the endorsee is conditional endorsement
4. Restrictive endorsement:- The endorse takes away the right of the endorsee for further endorsement of the instrument
5. Sans-recourse endorsement :- when the endorser informs the endorsee that is case of the dishonor of the instrument the endorsee cannot make the endorser liable
6. Facultative endorsement:- when the endorser excuses the endorser from performing any duty in the case of dishonor

**E-BANKING** refers to electronic banking where in the entire operations are done by the customer through his computer system by using a code. It maintains the secrecy of transaction.

**ANDVANTAGES O E-BANKING**

1. Inter branch transfer of fund will be made easy were the branches are connected by a net work
2. The issue of drafts, order and entries in the pass book wil be electronically done
3. The bank’s customer can use ATM for with draw of cash at any time of the day and it will also reduce the tension for both employees and customer
4. Electronic clearing system enables banks to pay on behalf of customer telephone bill, insurance premium etc.,
5. Company find it easy to distribute dividend on shares and interest on the debentures through banks through e-banking
6. E-banking helps government in framing its physical policy as It can makes its tax collection through the banking system effective.

**VARIOUS ACTIVITIES OF E-BANKING**

1. Passbook entry
2. Simultaneous entry of transaction
3. Home banking
4. MICR cheque
5. Zero system
6. Identification of customer signature
7. Transfer of funds through electronic clearing system
8. Inter banking transfer
9. Debit card and credit card
10. ATM service
11. Foreign exchange transaction

**INTERNET BANKING**

 When the retail customer of the bank are allowed to open their bank account through their personal computer system throughout the country, it is called internet banking for operating the account the customer is provided with an identification number and password.internet banking has facilitated quick transfer of funds and enables customer to operate their account online and also to know their account position at any time of the day. This development enables the customert6o operate their bank accounts sitting at home or their office.

**ATM (AUTOMATIC TELLER MACHINE)**

 In order to enable credit card holders to with draw cash during any time of the day , automatic teller machine are installed at important place such as airports, hospitals, railway station, educational institution ec.,

The following procedure adapted for cash withdraw through ATMs

* The card holder has to choose a particular ATM
* After selecting the ATM the card holder will approach the machine or await her turnwhich is kept in closed enclosure
* First he insert his credit cards through the slit in the machine
* He choose the language either English or the local language for operating
* He/she will then enter the pin through the panel of the machine
* The machine will ask for the amount to be withdrawn
* He/she enter the amount to be withdrawn with in the limit prescribed in the card
* Cash will then flow from the machine through a particular opening.
* After checking the amount the card holder will press key to indicate the closure transaction

**RTGS (REAL TIME GROSS SETTLEMENT)**

 Real time gross settlement system is a kind of fund transfer mechanism

Where in there is transfer of money from one bank to another this is the fastest way to money transfer using banking channels. Real time means payment is not subject to any waiting period. Cross time a transaction is settled on one to one basis with out punching with any other transaction.

**NEFT (NATIONAL ELECTRONIC FUND TRANSFER)**

 It is a method of fund transfer spreading throughout the country by which any type of customers of a bank, namely individuals, firms or companies can electronically transfer funds from any bank branch to any other bank branch account. The nly condition for the facility is that the branches involved must have NEFT facility. In 2011 nearly 74,680 branches has NEFT facility in India if a customer gives instruction in the morning for remittance it will be carried out on the same day

**MICR (MAGNETIC INK CHARACTER RECOGNITION)**

 It refers to the line of number that appears at the bottom of cheque. The MICR line is a group of three numbers, which are the cheque number, account number and bank routing number. The MICR number includes the magnetic ink character recognition line printedusing technology that allows certain computers o read and process the printed information.

**BEBEFITS OF THE MICR LINE**

 One of the benefits of MICR line is its ability to facilitate the use of routing number. A routing number is a specific 9 digit code, which banking and other financial institutions use for the purpose of clearing funds. As it appears on the front of the cheque, the routing number represent the bank that holds the account from which the funds to be drawn.