**BANKING THEORY LAW AND PRACTICE**

**Objectives: To impart knowledge on the theory and practice of Banking and to understand the process of Banking activities.**

**(Theory only)**

**Unit I:**

Definition of the term banker and customer – General relationship – special relationship – main functions and subsidiary services rendered by banker – agency services and general utility services.

## Unit II:

Operations of Bank Accounts – Fixed Deposits – Fixed Deposit Receipt and it’s implications – Savings Bank accounts – Current accounts – Recurring Deposit accounts- New Deposit savings schemes introduced by Banks – Super Savings Package – Cash Certificate, Annuity Deposit – Reinvestment plans – Perennial Premium plan – Non Resident (External) accounts Scheme.

## Unit III:

Types of Customers – Account holders – Procedure for opening and closing of accounts of Customers- particulars of individuals including Minor, illiterate persons- Married women – Lunatics – Drunkards – Joint Stock Companies – Non- Trading Associations

– Registered and Unregistered Clubs – Societies, Attorney - Executive and administration

– Charitable institutions – trustees – Liquidators – Receivers – Local authorities – steps to be taken by banker in the event of death, Lunacy, Bankruptcy – winding up Garnishee Order.

## Unit IV:

Paying and collecting bankers – rights, responsibilities and duties of paying and collecting banker – precautions to be taken in payment and collection of cheques – protection provided to them – nature of protection and conditions to get protection – payment in due course – recovery of money paid at mistake.

## Unit V:

Pass book and Issue of duplicate pass book – cheques - Definition of a cheque – requisites of a cheque – drawing of a cheque - types of cheque – alteration – marking – crossing – different forms of crossing and their significance – Endorsement loss of cheques in transit – legal effect. Modern Banking, Banking practice – e banking – Internet banking – Mobile banking – ATMS- Cash Machine – EFT (Electronic Fund Transfer) – RTGs, NEFT, MICR.

## Text and Reference Books (Latest revised edition only)

* + 1. Sundaram and Varshney,**“Banking Theory, Law & Practice”** Sultan Chand Company, New Delhi
    2. S.M. Sundaram“**Banking Theory, Law & Practice”** Sri Meenaksi Publications, Karaikudi
    3. M.Kumar, Srinivasa,” **Banking”** New Central Book Agency
    4. M.S. Ramasamy,”**Tannan’s Banking Law & Practice in India”** Sultan Chand Company, New Delhi.
    5. E. Gorden and N. Natarajan” **Banking Theory, Law & Practice”**Himalaya Publication.

B.Santhanam, “**Banking Theory, Law &Practice**“Margham Publications, Chennai

## Unit IV:

Paying and collecting bankers – rights, responsibilities and duties of paying and collecting banker – precautions to be taken in payment and collection of cheques – protection provided to them – nature of protection and conditions to get protection – payment in due course – recovery of money paid at mistake.

**Paying and collecting bankers**:

The banker who is liable to pay the value of a cheque of a customer as per the contract, when the amount is due from him to the customer is called “**Paying Banker**” or “Drawee **Bank**.” The payment to be made by him has arisen due to the contractual obligation.

A banker on whom a cheque isdrawn should pay the cheque when it is presented for payment

Rights:

The **paying banker** is responsible to his customer and is under a **duty** to make **payment** of the cheques to the right persons in accordance with the instructions of the drawer. If he dishonours the cheque wrongfully or honours the cheques carelessly and negligently he subjects himself to heavy liabilities.

* A Banker on whom a cheque is drawn should pay the cheque when it is presented for payment. ,
* This cheque paying function is a distinguished one of a banker.
* This obligation has been imposed on him by sec.31of the NI. Act, 1881.
* A banker is bound to honour his customer’s cheque, to the extent of the funds available and the existence of no legal bar to payment.
* Again, for making payment the cheque must be in order and it must be duly presented for payment at the branch where the account is kept.
* The paying banker should use reasonable care and diligence in paying a cheque, so as to, abstain from any action likely to damage his customer’s credit.
* lf the paying banker wrongfully dishonors a cheque, he will be asked to pay heavy damages.

**Paying Bankers duties & responsibilities.**

A banker on whom the cheque is drawn should pay the cheque, when it is presented for payment. It is his obligation by section 31 of the NI Act. A banker is bound to honour his customers cheque to the extent of the fund available & the existence of no legal bar for payment. The paying banker should use reasonable care and diligence in paying a cheque so as to abstain from any action likely to damage his customers credit.

**At the time of making payment of he should observe the following very carefully:**

i.        Verification of signature of the drawer.

ii.      Verification of the genuineness of he instrument.

iii.            Payment not stopped by the A/c holder.

iv.           Holders title on the cheque is valid.

v.            A/c is not dormant one.

vi.           A/c holder is not bankrupt, deceased and insanse.

vii.          A/c is not under subject of liquidation process.

viii.         No. ‘Guernsey Order’ is issued by count.

ix.           Properly endorsed.

x.            Cheque is not drawn beyond limit fixed by the drawer is respect of amount.

xi.           Instrument  being presented is crossed.

xii.          Instrument  is not state or post dated.

xiii.         No material alteration is made.

xiv.         Sufficient balance in the A/c

### Collecting and Paying Banker

**Collecting Banker:** A Collecting Banker is one who undertakes to collect various types of instruments representing money in favour of his customer or his own behalf from the drawers of these instruments; some are negotiable instruments as provided for in the negotiable instruments Act. 1881 and some are quasi negotiable instruments.

**Negotiable Instruments:** As per section number 13 of the negotiable instrument Act. 1881, “A negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer”.  A Banker’s draft is also negotiable instrument.

1. **Promissory Note:** A promissory note is an instrument in writing containing an unconditional under taking signed by the maker to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument.
2. **Bill of Exchange:** A bill of exchange is an instrument in writing containing an  unconditional order signed by the maker directing a certain person to pay on demand or at a fixed or determinable future time a certain sum of money only to or the order of a certain person or to the bearer of the instrument.
3. **Cheque:** A cheque is a  unconditional order of the drawer in writing bearing a date, to the Banker maintaining his account to pay on demand, to a named person, his order or bearer, a certain specified sum of money, expressed in both figures and words.

**Quasi Negotiable instruments:** The negotiable instruments Act. 1881 does not talk of any other negotiable instruments except bills, promissory notes, cheques and bank drafts. But there are some instruments which are in practice, treated negotiable for certain events only and are so regarded by usage and custom. Some of these are documents of tittle of goods and property while others are documents of value. Such as, Bill of lading, railway receipts, stock and share certificates, debentures, dividend warrants, interest coupons & treasury bills.

**Duties & Responsibilities of Collecting Bankers:**

* **Acting as agent:** While collecting an instrument, whether for credit to customer’s account or for himself, the Bankers works as agent of his customer. As an agent he has generally to take such steps & precautions to protect the interest or his customer as a man of ordinary prudence would take to safe-guard his own interest.
* **Scrutinizing the instruments:** Name of the holder, Branch name, date, amount in world and figure, any cutting without signature, material alteration of any to be checked carefully.
* **Checking the endorsement:** Bankers has to check the instrument whether it has been endorsed properly.
* **Presenting the instrument in due time:** It is the responsibility of the collecting bank to present the instrument in due time to the paying bank.
* **Collecting the proceeds in the payee’s account:** It is the duty of collecting banks to collect and credit the proceed of the instruments to the proper/correct account.
* **Notice of dishonor and returning the instruments:** If any instrument is dishonored by the paying bank it should be informed   to the customer on the business day following the receipt of the unpaid instruments.

**Collecting Banker’s Protection:**

Under section 131 of negotiable instrument Act the collecting banker is not liable to the true owner of a cheque or a banker’s draft if his title to the instrument proves defective provided the cheque or draft was one crossed generally or specially to himself and collected for a customer is good faith and without negligence.

The above statutory protection is available to the collecting banker only if he fulfills the following conditions:

i.              The cheque he collected is a crossed cheque.

ii.             He collected such crossed cheque only for his customer as an agent & not as a holder for value.

iii.            He collected such crossed cheque in good faith and without negligence.

**No Protection:**

* Opening of A/c without satisfactory references/ introduction.
* Crediting the proceeds of cheque to an endorsee with irregular endorsement.
* Crediting the proceed of a cheque to the personal A/c of director, partners or any employee when it is payable to the company.
* Crediting the proceeds of charge to personal name of the official when it is payable to a govt. agency, autonomous body, or corporation.
* Crediting the amount of a cheque in the personal A/c which is drawn by an agent on behalf of its principal.
* When the customer depositing the cheque is of little means and the cheque deposited suddenly is of sizable amount and the banker credited the proceeds there to without making proper enquiry.
* Cheque drawn by customer is dishonored very often and crediting such account with the proceeds of collecting cheque without making proper enquiry.
* If the crossed cheque is collected and credited the proceed to the other account.

# Recovery of Money Paid Under Mistake of Fact

The recovery at law of money paid under mistake affords one of the most striking illustrations of the equitable nature of quasi-contractual obligations, — obligations that are, unfortunately, usually called in our law, contracts implied in law.

Where A intentionally pays money to B, and B intentionally receives it as payment from A, plainly the legal title has passed; and a Court of law, if the money has been paid under a proper case of mistake, compels B to restore to A the money so received, not because the Court does not regard B as the legal owner thereof, but because it is inequitable that he should retain it.

The equitable principle which enables A to recover in this case, as in quasi-contractual obligations generally, is the principle of enrichment: “One shall not be allowed to unjustly enrich himself at the expense of another;” or, as it is usually stated in the common law, “One shall not unjustly profit at the expense of another.”

It is proposed in the present article to deal with the general principles under which one is allowed to recover money paid under mistake of fact, and not with their application in detail to specific facts, except so far as it is necessary to a correct understanding of the principles. And the question will be discussed mainly with reference to the remedy at law. Indeed, it has recently been decided[[1]](https://en.wikisource.org/wiki/Recovery_of_Money_Paid_Under_Mistake_of_Fact" \l "cite_note-1) by [Jessel, M. R.](https://en.wikipedia.org/wiki/Sir_George_Jessel" \o "w:Sir George Jessel), that the sole remedy of a party seeking only to recover money paid under mistake of fact, is at law.

## Unit V:

Pass book and Issue of duplicate pass book – cheques - Definition of a cheque – requisites of a cheque – drawing of a cheque - types of cheque – alteration – marking – crossing – different forms of crossing and their significance – Endorsement loss of cheques in transit – legal effect. Modern Banking, Banking practice – e banking – Internet banking – Mobile banking – ATMS- Cash Machine – EFT (Electronic Fund Transfer) – RTGs, NEFT, MICR.

#### ****Meaning of Bank Pass Book:****

Passbook or Bank Statement is a copy of the account of the customer as it appears in the bank’s books. When a customer deposits money and cheques into his bank account or withdraws money, he records these transactions in the bank column of his cashbook immediately.

# What is the procedure for getting a duplicate pass book from my bank?

You already know the account number

In case you had not noted the account number anywhere in your diary or records, you can find out the same from your cheque book

You write a letter to the branch where you had opened your account furnishing the following details:

* Name as mentioned in the account
* Account number
* Name of the branch where the account had been opened
* Details of entries required for the period from\_\_\_\_\_\_\_\_\_\_to\_\_\_\_\_\_\_(date)
* Prepare a letter with the required details as mentioned above and submit the letter to the branch where you are having the account and you will be issued with a duplicate pass book; however, the branch will debit service charges for issue of duplicate pass book in your account
* You can use the enclosed format also

Cheque:

## ****What is a Cheque?****

Cheques are a type of bill of exchange and were developed as a way to make payments without the need to carry large amounts of money. It is a document that orders a bank to pay a specific amount of money from a person’s account to the person in whose name the cheque has been issued. The amount is transferred only to the person to whom a cheque is addressed.

There are various types of cheques and these are described in the following sections.

* Order Cheque
* Bearer Cheque
* Blank Cheque
* Counter cheque
* Stale Cheque
* Multilated Cheque
* Post Dated Cheque
* Open Cheque
* Crossed Cheque
* [Gift Cheque](https://in.answers.yahoo.com/question/index?qid=20100824033419AAjofJH)
* Traveller’s Cheque
* Self Cheque,etc

### ****Parties Involved in Cheque Transaction****

**Drawer:** The person writing the cheque is known as a drawer.

**Drawee:** The party on whom the cheque is written, i.e., your Bank.

**Payee:** The person named in the cheque to whom the money is paid.

## ****Crossing of Cheques****

**Crossing**a cheque refers to drawing **two parallel transverse lines** on the cheque with or without **additional words** like “& CO.” or “Account Payee” or “Not Negotiable” **between the lines.**

By using a crossed cheque, one can make sure that the **amount** specified **cannot be en-cashed** but can only be **credited**to the **payee’s bank account**.

Crossing of Cheque is recognized under **The Negotiable Instruments Act, 1881.**

The crossing of cheque had developed gradually as a means of **protection** against misusing of cheques.

Crossing of cheque **provides instruction** to the paying banker to **pay the amount through banker** only, and not directly to the payee or holder presenting it at the counter. This ensures that payment is made to the actual payee.

## ****Types of Crossing of Cheques****

Crossing of Cheques can be done in two ways:

1. General Crossing
2. Special Crossing

### ****General Crossing****

Section 123 of **The** **Negotiable Instruments Act, 1881**defines General Crossing as:

“Where a cheque bears across its face an addition of the words “and company” or any abbreviation thereof, between two parallel transverse lines, or of 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”.

* Two parallel transverse lines are drawn on the face of the cheque, generally, on the top left corner of the cheque
* Holder or payee cannot get the payment at the counter but through the bank only
* Including the name of the banker is not essential, hence, the amount can be **encashed by any banker**
* The words, “& Company”, “Not Negotiable”, “A/C. Payee” may or may not be written
* It can be converted into Special Crossing

### ****Special Crossing****

Section 124 of **The** **Negotiable Instruments Act, 1881**defines Special Crossing as:

“Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable”, that in addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially and to be crossed to that banker.”

* Also known as Restricted Crossing
* Two transverse lines are not necessary to be drawn
* Name of the banker is added across the face of the cheque
* The Name of the Banker may or may not carry the abbreviated word, ‘& Co.’, ‘Account payee’ or ‘Not Negotiable’
* Payment can be made **only through the bank mentioned** in the Crossing. The Banker, mentioned in the Crossing, may appoint another banker as his agent to collect such cheques. thus, making it safer than ‘generally’ crossed cheques
* Specially Crossed Cheques can never be converted to General Crossing.

### ****Double Crossing****

Here the cheque bears two separate “**special**” crossing. For eg., a cheque is crossed specially in the name of ‘Canara Bank’, and further in the name of ‘Bank of Baroda’.

As per Section 127 of **The** **Negotiable Instruments Act, 1881**:

“Where a cheque is crossed specially to more than one banker except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.”

Thus, a cheque doubly crossed shall be payed by the banker when the second banker is acting only as the agent of the first collecting banker and this has been made clear on the Cheque, i.e., crossing must specify that the banker to whom it has been specially crossed again shall act as the agent of the first banker for the purpose of collection of the cheque.

It is done in case, the banker, to whom a cheque is specially crossed, does not have a branch at the place of the paying banker, or if he, otherwise, feels the necessity, he may cross the cheque specially to another banker (by clearly specifying).

Endorsemet:

The act of a person who is a holder of a negotiable instrument in signing his or her name on the back of that instrument, thereby transferring title or ownership is an endorsement. An endorsement may be in favour of another individual or legal entity. An endorsement provides a transfer of the property to that other individual or legal entity.

### ****Types of Endorsement****

* **Blank Endorsement** – Where the endorser [signs](https://www.toppr.com/guides/reasoning-ability/mathematical-operations/interchange-of-signs-and-numbers/) his name only, and it becomes payable to bearer.
* **Special Endorsement** – Where the endorser puts his sign and writes the name of the person who will receive the payment.
* **Restrictive Endorsement** – Which restricts further negotiation.
* **Partial Endorsement** – Which allows transferring to the endorsee a part only of the amount payable on the instrument.
* **Conditional Endorsement** – Where the fulfilment of some conditions is required.

# What are my rights if the cheque that I deposit gets lost in transit? Will the bank inform me about the reason for dishonouring a cheque?

## The customer care executives have been known to wash their hands off the matter by asking you to issue a new cheque.

A cheque deposited in a bank can be rejected for reasons ranging from an incorrect date to a spelling error. Then there are the numerous cheques that are lost in transit — you put it in the drop box, but it never turns up for processing at the bank branch. In both the cases, you learn of the problem when the money has not been credited to your account even after a month. The customer care executives have been known to wash their hands off the matter by asking you to issue a new cheque.

But did you know that RBI has directed all commercial banks in the country to return dishonoured instruments to the customer within 24 hours? According to a circular issued by the Indian Banks’ Association on orders from the apex bank, “In respect of cheques lost in transit or at the paying bank’s branch, banks should immediately bring it to the notice of the account holder so that he can issue a stop payment instruction. He can also take care that other cheques issued by him are not dishonoured due to the non-crediting of the amount of the lost cheque.”

Since the onus for such a loss is on the collecting banker, not on the account holder, customers are not only expected to be reimbursed for any ensuing expenses, but are also entitled to the interest for the time taken to obtain the duplicate cheque.

Typically, a photocopy of the deposited cheque is enough to prove a deficiency in service. The pay-in slip does not bear any bank endorsement, so customers should not rely on these alone. Should you have a cheque-related grievance, you can file an online complaint with the banking ombudsman (<https://secweb.rbi.org.in/BO/comp> ltindex.htm). However, you will have to wait for a month for the bank to reply to your complaint.

Says an ICICI Bank executive: “The lengthy redressal process can be avoided if the customer is more aware. An outstation cheque should not take more than 15 days to be processed, while a local cheque should be cleared within 48 hours. So, if you monitor your account during this period, you will notice things are amiss early on and can issue a stop payment instruction immediately.” Unfortunately, a random check among five leading banks reveals that you are unlikely to have the associated fee waived. However, some banks do not charge this fee if you issue the instruction through Net banking.

As far as dishonoured cheques are concerned, RBI also takes customers to task. If cheques drawn on a particular account are dishonoured four times during a financial year for want of sufficient funds, banks are allowed to deny a fresh cheque book to the customer. However, they have to alert the customers on time. Says an RBI official: “The cheques dishonoured due to insufficient funds have to be returned to the customer along with a memo clearly stating the reason.”

e-banking:

Electronic banking has many names like e banking, virtual banking, online banking, or internet banking. It is simply the use of electronic and telecommunications network for delivering various banking products and services. Through e-banking, a customer can access his account and conduct many transactions using his computer or mobile phone. In this [article](https://www.toppr.com/guides/english/writing/article/), we will look at the importance and types of e-banking services.

### Popular services under e-banking in India

* ATMs (Automated Teller Machines)
* Telephone Banking
* Electronic Clearing Cards
* Smart Cards
* EFT (Electronic Funds Transfer) System
* ECS (Electronic Clearing Services)
* Mobile Banking
* Internet Banking
* Telebanking
* Door-step Banking

**Further, under Internet banking, the following services are available in India:**

1. **Bill payment**– Every bank has a tie-up with different utility companies, service providers, [insurance](https://www.toppr.com/guides/business-studies/business-services/insurance/) companies, etc. across the country. The banks use these tie-ups to offer online payment of bills (electricity, telephone, mobile phone, etc.). Also, most banks charge a nominal one-time registration fee for this service. Further, the customer can create a standing instruction to pay recurring bills automatically every month.
2. **Funds transfer** – A customer can transfer funds from his account to another with the same bank or even a different bank, anywhere in India. He needs to log in to his account, specify the payee’s name, account number, his bank, and branch along with the transfer amount. The transfer is effected within a day or so.
3. **Investing**– Through electronic banking, a customer can open a fixed deposit with the bank online through funds transfer. Further, if a customer has a demat account and a linked bank account and trading account, he can buy or sell shares online too. Additionally, some banks allow customers to purchase and redeem mutual fund units from their online platforms as well.
4. **Shopping**– With an e-banking service, a customer can purchase goods or services online and also pay for them using his account. Shopping at his fingertips.