

SRINIVASAN COLLEGE OF ARTS
AND SCIENCE
PERAMBALUR

STUDY MATERIAL .

I-B-COM

BANICINU THEORY, LAW AND PRACTICE .

II - SEM
CORE COURSE - IV

Banking Theory, Law and Practice.

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 its 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 - type 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 (Real Time Gross) - NEFT (National Electronic Fund Transfer) - MICR (Magnetic Ink Character Recognition).

19.12.19

Banking Theory, Law and Practice

Unit - I

1. Bank meaning:

Bank means accepting for the purpose of lending and investment, of deposits of money from the public, repayable on demand, order or otherwise and withdrawable by cheque, draft order or otherwise is called Banking.

2. customer Meaning:

customer means There must be some sort of account either a deposit or current account or some similar relation to make a man the customer of a bank is also called as customer.

3. The Relationship between Banker and customer.

The relationship between Banker and customer can be classified into two categories;

(i) General Relationship

(ii) Special Relationship

(i) General Relationship.

(a) Debtors creditors relationship

(b) Banker as a trustee

(c) Banker as a Bailee

(d) Banker as an agent

(i) Special Relationship

- (i) Statutory obligation. to honour cheques.
- (ii) Banker's lien
- (iii) A Banker's duty to maintain secrecy of customer's account.
- (iv) Right to claim incidental charges.
- (v) The Right to charge compound interest
- (vi) Exemption from the law of limitation act

(a) G.R.

(i) Debtors (creditors) Relationship:

- (i) The relation of a banker and a customer is primarily that of a debtor and creditor relationship.
- (ii) Instead of the money being set apart in a safety. It is replaced by a debt due from the Banker. The money deposited by a customer with the Banker becomes the latter's property. And is absolutely at his disposal.
- (iii) Hence, there exists a relationship of debtor and creditor being the debtor is bound to repay the deposit as and when the customer asks for it.

(ii) Banker as a Trustee:

A Banker becomes a trustee only under certain circumstances. For instance when money is deposited for a specific purpose till the purpose is fulfilled the banker is regarded as trustee for that money.

(iii) Banker as a Bailee:

(i) A Banker becomes a Bailee when he received hold and important documents for safe custody. In that case he cannot make use of them for his disadvantages because he is bound to return the identical articles in demand.

(ii) A Banker does not allow any interest on this article. It is only the customer who has to pay rent to dockers. So a Banker acts as a Bailee.

(iv) Banker as an Agent:

A Banker receives deposits from the customers. He is not regarded as an agent for his customers. If he acts as an agent he should use the deposit money according to the instruction of his

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customer in return for a remuneration for this agency services.

(b) Special Relationship between Banker and customer.

(i) obligation to honour cheques:

It is the statutory obligation of a Banker to honour the cheques drawn on him by the customer. otherwise he must compensate for any loss or damage cause to the customer. However, such obligation of a banker is subject to the following conditions.

(i) sufficiency of funds.

* There must be sufficient funds of the customer in the hands of the Banker for honouring the cheques drawn by the customer.

* The sufficiency of fund means the funds atleast equal to the ~~funds~~ amount of cheque.

* If the funds are insufficient the Banker may refuse the payment of cheque.

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proper requirements for payment.

The Banker must honour the cheque only when he is duly required to pay.

(a) a cheque must be complete in all respects and presented during Banking hours.

(b) The cheque should not be post dated.

(c) The cheque on a joint account must be signed by all the joint holders.

(ii) Obligation to Maintain Secrecy of Accounts:

* It is the statutory obligation of a Banker to maintain the secrecy of the customer account

* Otherwise the reputation of the customer and his business will be affected.

* Due to which the customer may have suffer to losses.

* This obligation will continue even after the customer has closed his account with the Banker.

* The Banker is justified in disclosing the secrecy of the customer's account under the following circumstances.

(a) when he is of opinion that the customer is involved in activities against the interest of the country.

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where sufficient funds are received from foreign countries by customers.

(iii) Right of a Banker:

(a) Right of Lien

Lien is a right of a person who can retain the goods of another in his possession until a debt due to him is ~~paid~~ paid.

Lien is of two kinds.

(i) General Lien.

It is a right to retain to possession of any property of another for the general balance of accounts.

A banker can exercise the right of general lien over the securities in his possession for the debt for his customer.

(ii) Special Lien

It is a right to retain the possession of a particular property in respect of which there debt arises.

(iv) Right to charge interest incidental charges:

A Banker has the right to charge interest on the returns on the advances made by him.

The interest may be simple or compound interest. The interest will be periodically debited to the customer's account.

In case of current account the banker will have to incur to some expenses for the maintenance. Therefore, in order to meet such expenses.

They may collect some amount from the customers as incidental charges on current account.

Unit - IITypes of Deposits:

The Bank accounts are opened with deposits of money.

The money raised through this accounts constitutes the major sources of Bank funds.

The accounts are primarily classified into following Three types.

- 1) Fixed Deposit Account
- 2) Savings Bank account
- 3) Current account.

I Fixed deposit account?

The deposits accepted by the banks for fixed period unspecified in advance are known as fixed deposit. The banks need not maintain cash reserves against these deposits since fixed deposits are repayable on the expiry of a fixed period determination in advance.

The amount of such deposits can be utilized by the banks more profitably.

Therefore higher rate of interest is offered by bank on such deposits.

Opening of a fixed deposit account:-

A depositor is required to fill in an application form for opening a fixed deposit account.

In which he must ~~not~~ mention the amount and ~~paid~~ period of deposit.

In case an application is made for a deposit in joined names the depositor must also mention whether it is payable jointly on the receipt of application form and money the banker will take the specimen signatures of the depositors.

Banker will issue a receipt to the customer called fixed deposit receipt.

Fixed Deposit Receipt:

It is an acknowledgment of receipt of money on fixed deposit account.

It contains on its name of Bank and holder of deposit, amount and period of deposit rate of interest and the date of maturity, etc...

On its Back it contains columns for making entries regarding the payment of interest and principle or renewal of deposits with column for signature of depositor.

To discharge this receipt the depositor must sign in this column after attached the revenue stamp.

Legal position of Banker as regards fixed deposit.

The legal position of a Banker as regards fixed deposits is that of a debtor.

He is bound to repay the pay after the expiry of the fixed deposit period.

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He will continue to be a debtor even after expiry of the fixed period.

After the expiry of such period the deposit will become a demand deposit payable without interest.

Pre-mature withdrawable of deposits:

A Banker should not allow the withdrawal before the duty.

The Banker allows such withdrawal after reducing one percentage from the rate of interest applicable to such deposits.

Advance against fixed Deposit:

The Banker can grant loans upto 75% of the deposit money.

Against the fixed deposit receipt.

The rate of interest on such loan is 3% higher than the rate applicable to such deposits.

Payment of interest:

The interest on fixed deposit is normally payable on the maturity of deposits.

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The bank pay interest quarterly or Half-yearly and credit the amount of such interest to the savings on current account of the depositor at his request.

II. Savings Bank Account.

It is meant for small savers. Its main object is to encourage the habit of savings among the public.

In order to attract the people towards savings deposit accounts, the commercial banks have introduced a number of new savings schemes.

(eg) daily savings scheme,
children savings scheme,
minor savings scheme etc.)

Features of small savings account:

Restriction on deposits.

Restriction on withdrawals.

Interest.

Restriction on deposits:

For opening this account a minimum of rupees five hundred is to be deposited and there after any amount can be deposited in this account.

The cheques or other instruments payable to third parties cannot be deposited in this account.

But such instruments payable to the customer can be deposited.

Restriction on withdrawals

Withdrawals from this account can be made by means of a cheque or withdrawal form.

If cheque facility is availed of a minimum credit balance should be maintained in the account.

If withdrawals are made only by withdrawal forms, the minimum credit balance to be maintained in the account.

Interest

The rate of interest on savings Bank deposits is $4\frac{1}{2}\%$ and regional rural Banks may give an additional interest upto $\frac{1}{2}\%$.

The interest is calculated on minimum balance in multiples of $\text{Rs } 100$ and credited to the accounts at the end of every six months.

III. Current Account.

Current account is a running account and it can be operated for any number of times without any restriction regarding the number and amount of withdrawals.

The primary object of this account is to safeguard the customers from the risk of handling cash by themselves.

Therefore it is suitable for big business concern, companies, institutions and public undertaking etc....

Features of current account:

No interest.

Incidental charges.

Privileges.

No interest:

The Banks do not pay interest on current accounts since they undertake to pay and collect any number of cheques, bills, draw, etc..., which involves heavy operating cost.

Incidental charges:

Some Banks may charge incidental charges on current accounts which are unremunerative.

The unremunerative accounts which involving lot of work without sufficient balances.

Privileges:

The current accounts are enjoying the following Privileges.

- (i) Overdraft facility.
- (ii) Loan and advances.
- (iii) Third party cheques.

* Opening of Savings and Current Account:

The procedure to be followed by a Banker for opening a current or savings account is as follows.

- (i) Application for opening the account.
- (ii) Letter of Introduction.
- (iii) Specimen signature.
- (iv) Mandate for operation by an agent.
- (v) Verification of documents.
- (vi) opening of an account.
 - (a) pay in slip book.
 - (b) cheque book.
 - (c) pass book.

(i) Application for opening the account:

A person who is willing to open an account in a bank must submit an application in the prescribed form.

In the application he must mention his name address and occupation.

He must also give an undertaking to comply with the bank rules in force from time to time for the conduct of the account.

(ii) Letter of Introduction:

The Banker before opening of an account must insist appoint the applicant to permit a proper introduction regarding his identity.

Such introduction is normally made by the customer of a Bank.

When the applicant is not properly introduced the banker may refuse to open an account in his name.

(iii) Specimen

As a result the Banker will have to suffer if any misrepresentation is committed by such person.

(iii) Specimen Signature:

The Banker must obtain one or more specimen signature of the applicant in a card called specimen card.

which is to be indexed and properly filed.

(v) Mandate for operation by Agent.

In case the customer desires to allow another person to operate his account the Banker must obtain a mandate in writing to that effect. He must also obtain the specimen signature of the person authorised to operate the bank account -

(v) verification of document:

When an account is to be opened for a company or trust the banker must verify the important document relevant to them and also study the law relevant to them.

(vi) opening of an account.

After satisfying the above formalities the customer must pay an initial deposit of Rs. 500. The Banker can open an account in the name of applicant and the authorised person who operate the account.

For operating the account the banker will provide him the following

(a) Pay in slip.

It is provided in a book form to facilitate the deposits made by the customer

(b) cheque book:

It is provided to the customer for the withdrawal of money from the bank.

(c) pass book:

It is an authorized copy of the customer account with the bank.

It is written by the bank, and handed over the customer for his reference.

The customer then get it ~~printed~~ updated by sending it periodically to the banker.

Since it passes between the banker and customer periodically is known as the pass book.

IV Recurring Deposit

Recurring deposits contains features of savings and fixed deposit account. The main objectives of recurring deposit is to develop the regular habit of savings among the public.

The rate of interest on this deposit are the same as applicable to fixed deposit.

Recurring deposit are also transferable from one branch to another without any charge.

Special Features:

Under this scheme a depositor has to deposit an amount taken by him generally a multiple of ^{Rs.} ~~₹~~ of before the last day of each month.

Any person including a minor can open this account.

The accumulated balance of the account including interest will be paid to the after a month of a last installment.

* Difference between Fixed deposit and Savings Bank account.

Fixed deposit	Savings Bank
① It is a time deposit	It is a demand deposit
② The Banker need not maintain cash reserve for the repayment of these deposits	The Banker must maintain sufficient cash reserve to meet the repayment on demand.
③ Need not necessary introduction for opening this account	This is necessary.
④ The rate of interest is high	The rate of interest is low
⑤ Loan facility is available	Loan facility is not available.

* Difference between Fixed deposit and ~~savings~~ Current account?

Fixed deposit	current account.
→ It is a time deposit.	It is a demand deposit.
→ Need not maintain cash reserve	The Banker must maintain sufficient cash reserve.
→ Introduction is not necessary	Necessary for introduction
→ Rate of interest is high	The rate of interest is low
→ Loan facility is available.	overdraft facility is available.

* Difference between Saving Bank account and current account.

Savings Bank	current account.
→ It is object to promote the habit of savings among the people.	The object is to provide convenience to the customers
→ overdraft facility is not available	overdraft facility is available.
→ Interest rate is payable at a reasonable rate	No interest is payable.
→ withdrawals are restricted	There is no such restriction.

New scheme for deposits.

- 1) Super savings package.
- 2) Cash certificate.
- 3) Annuity deposit.
- 4) Reinvestment plan.
- 5) Educational plan.
- 6) Deposit scheme for Indians living abroad.
 - (a) Non-resident external Rupee account
 - (b) Foreign currency non-resident account

Super Savings package: — ①

Under this scheme the depositor can make monthly deposit for a period ranging from fifty to forty years.

He will get a lumpsum amount the end of the year.

Cash certificate: — ②

The cash certificate are issued for different denomination and repayable after different periods of maturity.

The certificate is issued on payment of an amount which is less than its face value.

In case of maturity the face value will be paid.

The amount by which the face value is greater than the actual amount deposited will represent the interest.

The interest and issue prices are determined in advance.

Annuity Deposit: - (3)

The scheme has been introduced to provide a regular monthly income spread over a specified period say 36 months, 60 months, 84 months or 120 months. Under this scheme the depositor should make an initial deposit of a specified amount and thereafter he will get the monthly annuity deposited amount for the specified period selected by him.

The amount payable every month will include a part of deposit amount and interest.

Reinvestment plan: - (4)

It is a development over the fixed deposit scheme.

In case of fixed deposits the interest will be calculated and paid at the time of maturity.

But under this plan interest is calculated periodically and reinvested for earning interest.

Educational plan: - (5)

It is a plan to encourage the parents to save for meeting the educational expenses. Under this plan the parent should deposit a certain amount for every month for specified period.

Thereafter they will get specified amount annually for meeting of educational expenses of the children.

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6 Deposit scheme for Indians living abroad:

(a) Non-Resident external Rupee account.

This account can be open in the form of savings, current, term deposit account in Indian rupees.

The remittance to this account made from by draft in foreign currency also.

The remittance in foreign currencies will be converted in Indian rupees at the appropriate rate of exchange before crediting the account.

This account can also be open in joint names with other non-resident Indians.

The account can be operated by Indian resident on the basis of power of authority or a letter of authority.

(b) Foreign currency Non-Resident account.

The account can be opened in foreign currencies.

It can be opened in four foreign currencies. The remittance may also be sent in any other foreign currencies.

The same till the converted into any one of the four foreign currencies.

The deposits are accepted for a minimum period of 12 months and maximum period of 3 years.

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The interest shall be ~~paid~~ ^{paid} at half yearly interval in the same currency of deposit.

Types of customers1) Minor

A person who has not attained 18 years of age is a minor. But if a guardian is appointed by the court for a person during the period of his minority, he will remain as a minor till he attains age of 21 years.

A minor can not enter into a contract ~~except~~ except for necessities of life.

Therefore, a banker should bear in mind the following points while dealing with a minor.

(i) Types of Account!

(a) In the name of minor himself.

(b) In the name of natural guardian.

(ii) Date of Birth!

(iii) Death of minor or guardian.

(iv) Loans to a minor

(v) Loans to a minor on the guarantee of a third person

(vi) Liability regarding negotiable instrument.

(vii) Minor as a partner.

(viii) Minor as an agent.

A savings Bank account may be opened for a minor in any one of the following ways.

(i) In the name of minor himself.

In this case the minor must have at least attained the age of twelve years and must be able to read or write English or any regional language.

A minor can deal with negotiable instruments as per the negotiable instruments act.

Therefore, he himself operates the account opened in his name.

(ii) In the name of natural guardian.

In this case the account can be operated by the guardian on behalf of the minor.

Whenever the minor attains majority the Banker should not allow the guardian to operate on the account.

✓ Date of Birth:

At the time of opening the account the Banker must record in his ledger the date of Birth of the minor has disclosed in the operating form.

✓ Death of minor or guardian:

In the case of death of a minor, the balance in the account is paid to the guardian.

With the guardian is died the balance in the account ~~is paid~~ or operated by the guardian should be paid to the minor on attaining majority.

Loan to a minor:

A contract with a minor is void.

Therefore a minor cannot be compelled to repay a loan ~~under~~ it is for the necessities of his life, ^{unless}

Loan to a minor on the guarantee of a third person.

In this case the principle debtor being minor himself is not liable.

Therefore this loan cannot be recovered from the guaranteed also since his liability is secondary.

Liability regarding negotiable instruments.

A minor is not liable under a negotiable instrument even though he is allowed by law to deal with it.

Minor is a partner:

A minor may be admitted as a partner to the benefits of partnership firm with the consent of all the partners.

But he is not personally liable for the debts of a firm except to the extent of his share in the profits and properties of the firm.

Minor as a agent.

A minor can be appointed as an agent but he is not liable to the third parties, however his acts will bind the principals.

Thus the principal will be liable for all his dealing with the Banker.

2) Married woman:

(i) The Banker open an account in the name of married woman.

(ii) Like any other customer she has the power to operate her account and sell and the bonafide dealing with the account cannot be questioned.

(iii) But there was a time when married woman were allowed to open accounts only after getting the consent of the husband moreover, all her properties become the properties of her husband on the marriage.

(iv) She was not allowed to hold property in her own name the position of a married woman was satisfactory in those days.

Bankers to be regarding married woman:

(i) A Banker can very well open an account in the name of a married woman. A banker is say as long as her account shows a credit balance.

(ii) But in the case she applies for an OD, the banker should see that she owns separate property in her own name.

(iii) In the case of illiterate woman the left hand thumb impression should be obtain on the account opening form.

4. Lunatics :-

Lunatic is a person who is of unsound mind. He can not enter into a valid contract except during lucid intervals.

Therefore a banker should not knowingly open an account for a lunatic but customer may become lunatic after opening an account in such a case the banker should take the following steps:

- He should suspend the operation of Bank a/c as soon as he receives the news of lunacy of a customer.
- He should judge lunacy of the customer without a conclusive evidence.
- If he does not know the lunacy of a customer he may honour discount a cheque or bill duly drawn, accepted or endorsed by a lunatic in such a case he will not be liable.
- He should return all the cheques on the lunatic customer a/c with the remark 'refer to drawer' and not 'customer insane'.

He should make a note of the 'Lunacy order' if received from the court.

5. Drunkard:

The legal position of a person under the influences of drugs is the same as that of a lunatic.

The contracts entered into by him while he was in fully drunken state become void.

Therefore it is not advisable for a banker to open an account in his name.

(i) when a customer in fully drunken state presents a cheque at a counter the banker should make the payment only within the presence of a witness.

(ii) when a banker knows that a cheque has been drawn by a customer while he was under the influence of liquor, then he should not make payment on that cheque. otherwise drunkard may make use of it as a defence to avoid the contract.

6. illiterate person:

An illiterate person cannot sign but affix his thumb impression. This illiteracy is not a disqualification for opening of an account in bank. Therefore a banker may open an account for an illiterate person after taking the following steps.

(i) Thumb impression:

The banker should obtain the left hand thumb impression of the illiterate person on the account opening form and specimen signature card.

(ii) Identification of marks:

If possible the banker should make a note of one or two identification marks of that person.

(iii) photographs:

Two copies of passport size photographs of the illiterate person should be obtained and pasted on account opening form and specimen signature card. Such photograph must be renewed at the end of the three years.

conditions for operation :-

It is the duty of the banker to explain the implications and conditions for operation of the account to the illiterate person.

Withdrawals:

The withdrawal by an illiterate customer should normally be allowed when he comes personally with passport.

B. Trustees:

A trustee is created to look after the property of a person. The person appointed to manage such property is called a trustee.

The Banker must take the following precautions while dealing with the trustees.

- (i) Trust deed.
- (ii) operation of account.
- (iii) Death or retirement of trustees.
- (iv) Insolvency of trustee.
- (v) Misuse of Trust Funds.
- (vi) Loan to trustees.

(i) Trust deed

A trust is created by this document and it contains the names, powers, details of trust properties of trustees, etc. . . .

Therefore the Banker must study document.

operation of account.

In case of two or more trustees the Banker must obtain clear instructions regarding the person authorised to operate the account.

Death or retirement of Trustees.

In case of death or retirement one or more trustees the Banker must act according to the provisions of the trust deed regarding the further operation of the Bank.

Insolvency of a trustee:

In a trustee become insolvent his creditors cannot recover their claims from the trust properties.

Misuse of Trust funds:

The banker should not knowingly permit the misuse of the trust funds.

He should not allow the transfer of trust funds to the personal account of a trustee.

Loan to trustees:

The Banker should not advance money to trustees since they are not generally permitted to borrow or mortgage the trust properties.

A Banker permitted with any provision in the trust deed to a bank loans after taking due precautions.

7) Executors and Administrators:

An executor is a person appointed by the will of a deceased person to settle his accounts. The person appointing the executor is testator. The executor so appointed must act according to the will after getting it confirmed by the court.

An administrator is a person appointed by the court where no executor has been appointed. On appointment executor die, refuses to act. The document appointing him is letter of administration.

The precautions to be taken by a banker while dealing with executors and administrators as follows:

(i) Examination of document.

The Banker must examine letter of administration, powers and duties.

(ii) Style of account.

The Banker on the death of customer must stop operation of his account and transfer the balance to an account newly opened in the name of executors or administrators.

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(iii) operation of account

In case of two or more executors or administrators the banker must get clear instructions regarding the person authorised to operate the account.

(iv) precaution against misappropriation of accounts or fund

The banker should not permit the executors and administrators to misappropriate the funds.

(v) Borrowing powers of executors and administrators

The executors and administrators are personally liable to loan present to him to meet the obligation of the deceased unless loan given on pledging the specific assets.

8) Attorneys:

It is a person appointed by a document called 'power of attorney' to act on behalf another.

The power of attorney must be in writing is stamped and registered.

The power of attorney may be general or special.

The banker must take the following steps must dealing with the attorney appoint by com. no.

He must examine the power of attorney.

He must see whether the power of attorney is still in course.

He could not sanctioned a loan or an overdraft to an attorney.

9) Joint stock company!

A company is an artificial person created by law and has a separate existence apart from his members.

It has perpetual succession and a common seal.

An account may be also opened by a banker in the name of a company after taking the following precaution

- 1) Examination of Certificate of Incorporation.
- 2) Examination of certificate of commencement of business.
- 3) Examination of Certificate of Memorandum of Association.
- 4) Examination of Articles of Association.
- 5) Copies of Memorandum and articles of association.
- 6) Copies of Annual accounts.
- 7) Copies of Board's resolution.
- 8) Borrowing powers of the company.
- 9) Registration of charges.

- 1) It is a certificate of registrar of companies regarding birth
It is a proof to the banker that the company duly registered under the act, therefore he must examine this document first.
- 2) In case of PLC the banker must also examine the certificate that verify that the company to carry on its operation.
- 3) The banker must examine the document to know the constitution and objects of the company.
- 4) The banker must also study the articles of association to know the rules and regulation of the company.
- 5) The banker must obtain certified copies of memorandum & articles of association of a company and keep them for future reference.
- 6) The banker obtain the copies of annual accounts of the few years and study them to know the financial position of the company.
- 7) The banker should get a copy of board's resolution appointing him banker to company.
The directors to the trading company can borrow the money without any except authority.

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8. A company may also create charges against its assets for the loan raised.

9. The charges so created must be registered with the registrar of company.

10. Non-Trading Associations.

The Non-trading associations like educational institutions, club etc may enter into a contract only when they are registered. In India such associations are registered under the societies registration act or companies Act or co-operative society Act.

The Banker must take the following precautions while opening of an account for non-trading associations:

- * He must see that the association has been duly registered.

- * He must obtain copies of the memorandum and articles of association of the society.

- * He must know the object of the society by going through the Memorandum of Association.

- * He must know the rules and regulations of the association.

- * He must get a copy of the resolution of the managing committee appointing him as a banker to the association.

- * When a person authorised to operate the account dies and resigns or is removed he must stop the operation of the account.

* The Banker should not grant a loan to a non-trading association unless the memorandum of such association expressly permits it to borrow

1) Local Authorities

The Banker may open accounts in the names of local authorities like municipalities, corporations, etc.

Before opening accounts for them the Banker must take the following precautions:

* He should study the special acts by which a local authority is constituted.

* He must open separate account for different sections.

* He should obtain a certified copy of the resolution appointing him as a banker.

* In case of an overdraft he should study the borrowing power, limits to power, authorities to borrow, security to be offered and sanction of the government

Closing of an Account - Procedure

When an account is closed the relationship between a banker and customer will come to be an end.

The following are the circumstances under which an account with a bank may be closed.

(a) Customer Intention

When the customer wants to close his account he must inform the banker of his intention in writing.

He need not give any reason for his intention to close the account. He must draw a cheque for the balance in the account and return the unused cheque.

Then the banker can close the account by returning the balance to him.

(b) Banker's Intention.

The Banker may also close account of a customer on his own intention under the following cases.

- (i) when the account is inoperative
- (ii) when the customer is not desirable person.

(c) Death of a customer.

The banker should stop operation of the account on receiving notice of death of a customer.

(d) Insolvency of a customer:

On receiving the information about the petition file for the insolvency of a customer.

The banker should stop operation of his account.

The balance in the account should be paid to the official receiver or official Assignee.

(e) Winding up of a company.

The banker should stop operation of the company account immediately after receiving the notice regarding for the winding up of a company.

Then the balance in the company's account should be paid to the liquidator.

(f) Receipt of Garnishee Order.

The banker should stop operation on the account fails to pay the money due to his creditor, The creditor may apply to the court for attach in the debtor bank receipt or account.

Then the court will issue an order to the debtor's banker, the attaching the account.

Such an order is known as Garnishee order.

(g) Notice of Assignment.

When the banker receives a notice of an assignment he should pay the balance to the assignee.

The assignee is a person who is authorised by the customer to receive the balance standing the credit of his account.

(h) Resolution of partnership firm:

A partnership may be reconstituted on the death, retirement or insolvency of a partner.

In all these cases, the old firm stands dissolved therefore it is advisable for a banker to close the account of the old firm.

1. paying Banker: Meaning

The paying banker is a Banker on whom a cheque is drawn and presented for payment.

It is statutory obligation to honour his customer's cheques when there is sufficient funds of the customer in his hands. otherwise he is liable to compensate for any loss or damaged caused to the customer.

2. precautions to be taken by the paying Banker:

The following are the precautions to be taken by the paying banker before honouring his customer's cheques.

(i) Form of cheque.

- ⊗ The cheque should be in proper form
- ⊗ The form of a cheque has not been prescribed by law.
- ⊗ The Banks have made the drawing up of cheques in printed form as a condition for opening an account.
- ⊗ The opening of an account is a contract between the banker and customer.
- ⊗ The cheque must be drawn only in printed forms supplied by the banks.

(ii) Date of cheque:

A cheque may be current dated, post dated or undated.

If a cheque is current dated there is no problem.

In case of post dated cheque is honoured the position of a banker will be as follows.

* He cannot debit the customer's account with the amount of cheque when the customer

* Due to the payment of PDC the funds may becomes insufficient for honouring the other cheque issued by the customer.

* The payment of post dated shall not be considered as a payment.

(iii) Amount of cheque:

The amount of cheque can be written both in words and figures.

If the amount in words and figures differs the amount in words shall be taken as currently.

(iv) Sufficiency on funds.

The sufficiency of funds mean the funds atleast equal to the amount of cheque.

If the funds are insufficient the banker should refuse payment of cheque.

(v) Material Alteration.

The banker should not honour a cheque materially altered unless such alteration may be authorized by the drawer by his full signature.

(vi) Drawer's signature

It is duty of the banker to verify the signature of banker otherwise the banker cannot debit the customer account.

For the amount of cheque if the drawer signature is forged.

(vii) payment during Banking hours.

The cheque is payable on demand only, during the banking hours.

Any payment made by the banker after the working hours will not be considered as payment in due course.

(viii) open or crossed cheque.

An open cheque can be paid across the counter. But when a cheque is crossed the banker should see whether it is generally or specially crossed.

If it is crossed generally the payment should be made only to a banker.

If it is crossed specially the payment should be made only to a banker whose name is mentioned in the crossing.

(ix) Endorsement

The banker should see the regularity of endorsement made in the order cheques before making payment.

(x) Legal Restriction

If there is any legal restriction regarding the payment of a cheque like garnishee order the banker should act carefully.

(xi) Countermanding order.

If any order is received from the banker to stop payment of a cheque the banker should not honour the cheque.

(xii) Notice of death or Insolvency of a customer.

The banker should also take into consideration the information received regarding the death or insolvency of a customer. before honouring his cheque.

Duties regarding paying Banker:-

Banker duty is to make due payment of cheque. ~~certainly sec 31~~ ~~banker duty is contained~~ of ~~the~~ is contained in sec 31 of NIA 1881, where by it is stated that a banker (drawee) has to pay the cheque as per the instructions of the drawer.

* This duty of making payment basically debtor creditor relationship existing between the banker and customer.

* where the customer has sufficient balance of cash in his account it is responsibility of the banker to honour the cheque and make due payment.

- * The banker has to compensate the customer in respect of any damage or loss, so it is essential that the banker exercises ^{while} caution while honouring as well as dishonouring customer cheques.
- * A fundamental duty of a banker is to honour the cheque issued by his customer and make payment of the same according to the instructions given by the customer.
- * The duty of the paying banker is great responsibility which calls for great care.
- * Any negligence and carelessness in honouring a cheque is dangerous consequences.
- * It is essential that the banker makes due payment of the cheque as long as sufficient funds are available to his credit.
- * If the banker fails in his duty to pay he will be liable to compensate the customer in respect of any loss or damage caused.

II collecting banker.

When the customer receives a cheque he may get it encashed directly from the paying banker or he may deposit the cheque with his banker for collecting it from the paying banker. However if a cheque is a crossed one.

It should be deposited only with his banker for collection the banker who undertakes to collect the cheque is called collecting Banker.

Duties regarding collecting banker.

A banker bank may undertake the collection of instruments either as a holder for value or on agent to the holder thereof.

A collecting banker has the following duties towards

his customer :-

- (i) Duty to present the cheque.
- (ii) Duty of due care and diligence.
- (iii) Duty to serve notice of dishonour.

(i) Duty to present the cheque.

The duty of a collecting banker is to present the cheque deposited by the customer with the drawer's bank.

This function has to be performed with due care and caution and also within the reasonable time.

According to the current banking practice the collecting banker should present the cheque the next day after the receipt of cheques if the collecting and paying banker are in the same place.

Outstation cheques despatched to the drawer's banker on the day after he receives it.

The cheque may also be presented through a clearing house or through the post.

(a) Delayed presentation.

If there is delay in the presentation of the cheque by the collecting banker to the drawee's bank and on account which the drawer of the cheque suppose damage the drawer is discharge to the extend of such damage

For this purpose reasonable time frame is determined by taking into account the nature of the instrument, usage of trade and banker's and the facts of the particular case

(ii) Duty of due care and diligence.

A collecting banker should exercise due care and diligence in collection of cheques.

For this purpose the collecting banker has to present the cheque for payment within a reasonable time

Where the bankers are at two different places, the cheques must be despatched for collection by the next day.

(iii) Duty to serve notice of dishonour.

Another essential duty of the collecting banker is to serve a notice of dishonour on his customer cheque.

A cheque is deemed to be dishonoured when the paying banker refuses his payment.

If the banker fails to send such notice within reasonable time he will have to compensate any loss suffered by the customer.

Statutory protection of collecting banker:-

The collecting banker is given statutory protection under section 131 of the negotiable instruments act against the risk of conversion.

He can claim such protection only if the following conditions are satisfied.

- (i) collection of crossed cheques
- (ii) collection for customers.
- (iii) collection in the capacity of Agent
- (iv) Collection in good faith, and without negligence.

(i) collection of crossed cheques.

A collecting banker claim statutory protection if he has collected crossed cheque.

The crossing may be special or general crossing. But the cheque must have be crossed before he receives it for collection,

(ii) collection for customers:

The cheque must be collected by the banker on behalf of customers. In other words if the cheque is collected on behalf of a person who is not a customer the banker cannot claim statutory protection

(iii) collection in the capacity of agent.

The collecting banker must collect the cheques in the capacity of agent of the customer.

If he collects a cheque in the capacity of holder for value or in the personal interest he cannot claim protection under the section.

(iv) collection in good faith and without Negligence.

The collecting banker must have acted in good faith. He should have reasonable care and he should not be negligent. If he is found negligent in the collection of cheques he cannot claim statutory protection.

⊗ payment in due course.

It 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 believing that he is not entitled to receive payment of the amount there in mentioned.

Features!

Payment in accordance with the apparent tenor of the ~~following~~ instrument.

payment to the person in possession of instrument

- payment in good faith & without negligence.
- payment to the person in possession of instrument.

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Therefore the banker should not make a payment if he suspects the title of a person presenting the cheque for payment.

Example of payment not made in due force

Payment of post dated cheque.

payment of a cheque bearing forged signature of the drawer.

payment of cheque countermanded

payment of a crossed cheque at the counter.

The payment of a cheque involves a member of risk on the part of a paying banker.

In order to protect a paying banker from such risk the negotiable instrument act lays down following provisions

- (i) protection in case of order cheques.
 - (ii) protection in case of Bearer cheque.
 - (iii) protection in case of crossed cheque.
 - (iv) protection in case of Materially Altered cheques.
- (i) protection in case of order cheques.

Where a cheque is payable to order to be endorsed or on behalf of the payee, the drawer is discharged by payment in due course.

In this section protects the paying banker when he makes payment on order of cheque bearing forged endorsement. The protection has been granted paying banker since it is not possible for him to verify the signature of each and every endorser. However to get protection under this section the banker must satisfies the following two conditions.

- (i) He must have verified the regularity of endorsement.
- (ii) The payment must have been made in due course.

Bank pass book:

It is an authentic copy of the customer's account with the bank. It is written by the bank and handed over to the customer for his reference. The customer can get it updated by sending it periodically to the banker. Since it passes between the banker and customer periodically, it is known as a pass book.

Issuing of Duplicate pass book

If the pass book is lost or torn, a duplicate pass book can be obtained from the bank on payment of a certain amount. This amount will differ from bank to bank. Generally, it depends upon the number of entries to be made from the ledger.

Confirmation slips

Now-a-days the banks are getting confirmation slips signed by the customers regarding the balance in the account from time to time. In such a case, the customer can not object to any debit entry preceding the balance confirmed by him.

Precaution to be taken by the Banker and customer.

The customer must submit the pass book with bank regularly and periodically for recording the entries.

After making entries, the accountant or other responsible officer of the bank, must verify the entries and put his initials.

Then, the pass book must be handed over to the customer in such a manner to ensure the secrecy of its contents.

The customer must verify the entries in the pass book after receiving it from the bank. If any mistake is found, he must inform the banker for getting it rectified.

Meaning of cheque.

A cheque is a negotiable instrument and it freely transferable from one person to another. It performs almost all the functions of currency note though it is not a legal tender money.

It is safe and economical for carrying out the financial transaction.

Definition of cheque.

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

Requisites of a valid cheque.

1. It must be an instrument in writing.

The requisites of a cheque it must always be an instrument in writing. As per law, it may be in a piece of paper and written by means of a pen, pencil, typewriter or other printed character.

(54)
It must be an order.

The cheque must contain an order to pay. It should not contain any words of courtesy like please, kindly etc. However, the word 'order' need not form part of it since the word 'pay' itself implies an order.

The order must be unconditional.

The order to pay in a cheque should not be subject to any conditions. In other words, the payment of a cheque should not be made as dependent upon the happening of an event or fulfilment of a condition.

It must be drawn on a specified banker.

A cheque must be drawn by a customer only on the particular branch of a bank, where he keeps his account. The name and address of the drawee bank are normally specified in the printed forms of cheques.

payee must be certain.

The payee is a person to whom the amount of a cheque is payable, such person may be human being or an artificial person like companies, institutions, societies and other association of person etc. The payee may be mentioned by his name or designation like secretary, manager etc. But he must be certain person. The cheque may be made payable to him or to his order or to the bearer of the instrument. The point is made clear by the following examples:

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'pay to order' - It means pay to the drawer's order through the blank space has not been filled up.

'pay to... or order' - Here, the payee is not certain as long as the blank space remains unfilled by the drawer.

~~pay to... or order~~

'pay to... or bearer' It is payable to the bearer through the payee's name is not mentioned.

'pay to Roman only' It is payable to the payee only and not to his order or bearer.

'pay to Roman and Murugan' - In this case, there is more than one payee. Therefore, all of them must sign it for getting payment.

Amount must be certain.

The amount of a cheque must be certain and must be stated both in words and figures. When amount stated in words and figures differs, the amount in words shall be taken as a correct one. The amount of a cheque may be drawn in foreign currency.

It must be dated.

The cheque must be dated by the drawer. Otherwise any holder can fill up the date within reasonable time as per section 20 of the Negotiable Instruments Act. The failure to write the date will not make a cheque as invalid because it is always payable on demand.

It must be signed by the drawer.

The cheque must be signed by the drawer or a person authorised by him to do so. The signature must be made in the bottom of the right-hand side corner of a cheque. The signature must correspond to the specimen signatures made at the time of opening the account. Otherwise the banker need not honour cheque.

payable on demand

A cheque is always payable on demand. In other words, it must be presented to the banker for payment. Since such presentment itself is a demand, the words on demand need not be used in a cheque.

Drawing up of a cheque

It means an instrument drawn by one branch of a bank upon another branch of the ~~same~~ bank instructing the latter to pay a certain sum of money to the ~~It means~~ a person name therein or to his order.

Drawing up of a cheque.

The cheque must be drawn by a customer on the bank in which he maintains his account. Therefore, the customer is the drawer and the banker is the drawee of a cheque. The payee is the person to whom the cheque is payable.

The cheque must be drawn without mistake. Otherwise, the banker may refuse to honour it. Therefore, the customer must be very careful while drawing a cheque. He should not draw a cheque without sufficient balance in the account unless an overdraft has been arranged.

consequences of drawing up of a cheque without sufficient balance

As per section 138 of the 'NIA', a person who is drawing a cheque without sufficient balance in his account will be liable for punishment under criminal offence. However to make a person criminally liable the following conditions must be fulfilled.

- The cheque should have been issued to settle a debt or for a consideration.

- The cheque should have been presented with a reasonable period of time i.e., before six months from the date of issue.

- The cheque in question should have been dishonoured only ~~due~~ to the reason of insufficiency funds in the account of the drawer.

- The payee should have made a demand for payment of that dishonoured cheque through a written notice within 15 days of the return of the cheque question.

- The drawer should have failed to make payment of the amount within 15 days of the receipt of notice.

- If the drawer is found guilty of a criminal offence on the basis of the above conditions, he will be punishable with imprisonment for one year or a twice the amount of the cheque or both.

Crossing of a cheque.

A cheque may be open or crossed. An open cheque is one which is payable directly to the person presenting it across the counter. It will be subject to great risks in circulation. If it is stolen or lost, the finder can get it encashed. Hence there is a change of making payments to wrong persons. In order to avoid such risks, the system of crossing has been introduced.

The drawer or subsequent holder of a cheque may cross it. Such crossing may be hand written, stamped, printed or perforated on the face of a cheque.

The crossing may of two types viz...

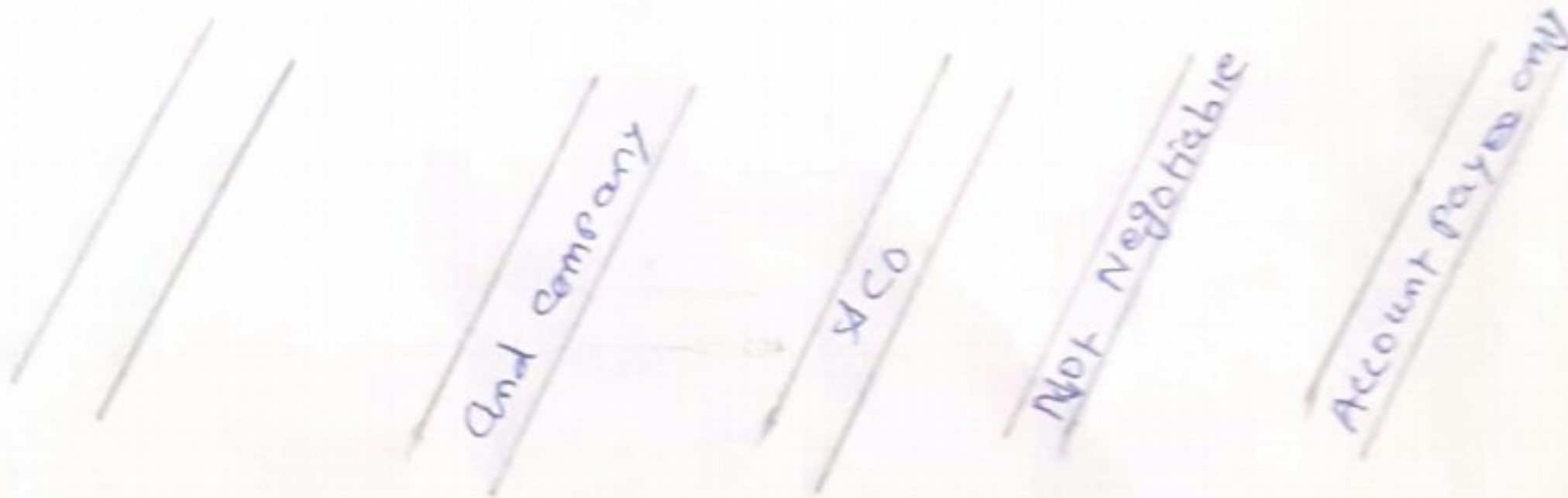
- ① General crossing.
- ② Special crossing.

Types of crossing:-

- ① General crossing
- ② Special crossing

I. General crossing:-

General crossing means "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."

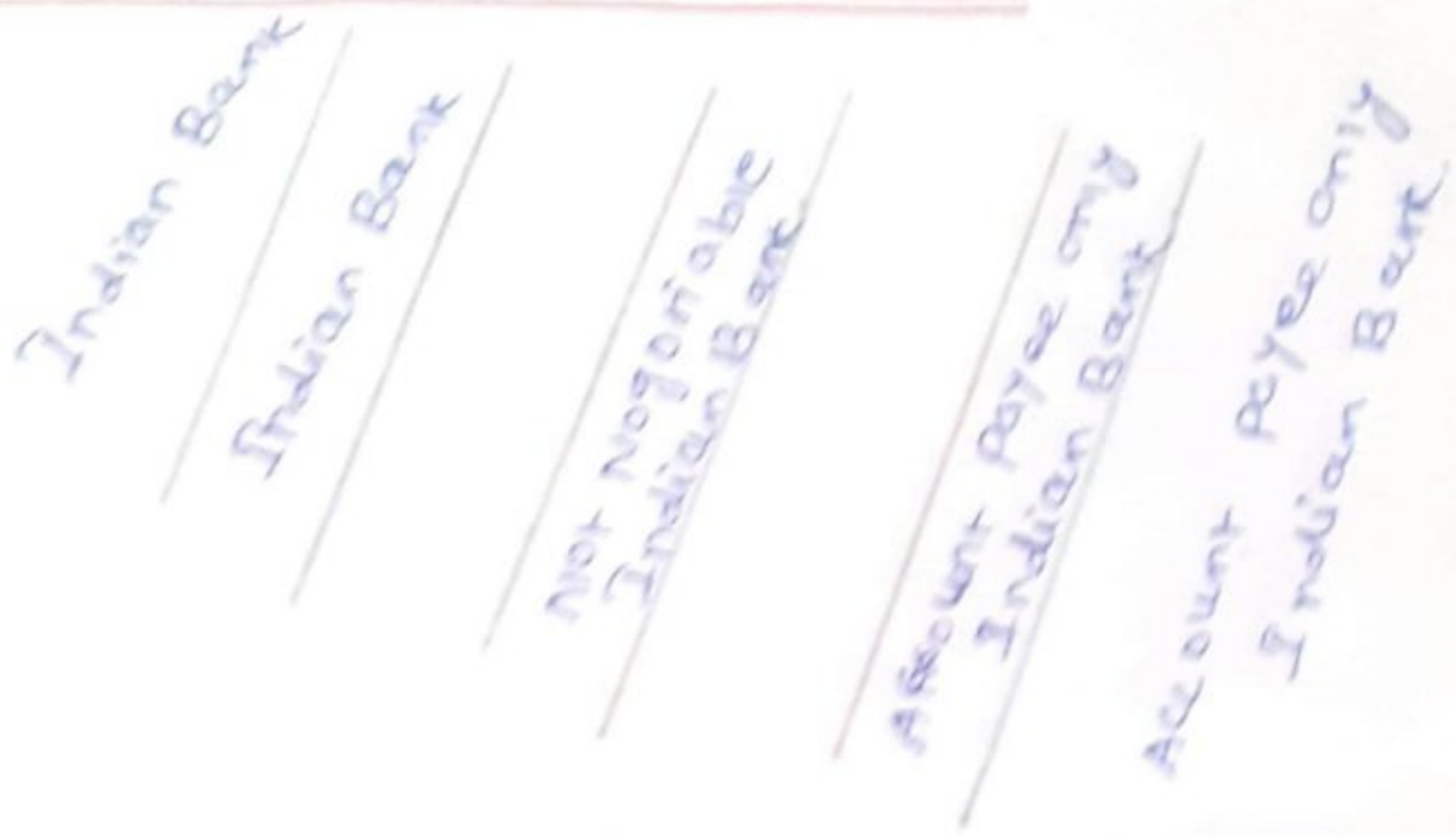
Specimens of General crossing.Significance:-

- ① When a cheque is generally crossed, the paying banker should not make at the counter. The payment should be made by through an account in the same bank or in another bank.
- ② If a crossed cheque is paid across the counter the payment will not be considered as payment in due course. As a result the paying banker will lose their statutory protection.

II Special Crossing:

Special crossing means where a cheque bears across its face an addition of the name of a 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.

Specimens of special crossing.



Significance

- ① When a cheque is specially crossed the paying banker should make payment only to the banker whose name is mentioned in the crossing or to his agent.
- ② It gives more protection than general crossing regarding the payment of cheques to right persons.
In special crossing the cheques are crossed in favour of the payee's banker who knows the payee and his signature well.

Types of cheques.

- ① Ante-dated cheque
- ② Post Dated Cheque.
- ③ State cheque
- ④ order cheque.
- ⑤ Bearer cheque

1. Ante-dated cheque:

A cheque which bears a date prior to the date of the issue is known as an ante-dated cheque.

2. Post Dated cheque.

A cheque which bears a date subsequent to the due date of issue is called a post-dated cheque.

The cheque the banker should honour it only on or after the date mentioned in it.

3. State cheque:-

The bankers normally refuse to pay cheques which are presented for payment after the expiry of a certain period from their dates.

The period for this purpose is generally six months.

4. order cheque:-

A cheque is an order cheque if it is expressed to be payable.

- i) to the order of a certain person
- ii) to a certain person without restricting the further transfer.

Bearer cheque:-

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A cheque is a bearer cheque if

- i) It is express to be payable to the bearer.
- ii) The only or last endorsement on it is blank.

Marking of a cheque.

When a cheque is marked or certified as 'Good for Payment' by the drawee bank, then it is known as marking of a cheque. Such marking is normally done on the face of a cheque by the drawee banker with his seal or initials. The marking may be done at the request of drawer, holder or collecting banker.

MISCELLANEOUS TOPIC

Subsidiary Services rendered by a Banker.

These services are broadly classified into

- ① Agency services
- ② General Utility Services.

I Agency Services :-

The bank is acting as an agent of its customers while performing the following services.

- ① Payment and collection work
- ② Buying and Selling Securities
- ③ Advertising about investments
- ④ Acting as a Trustee.
- ⑤ Acting as Executor and Administrator.
- ⑥ Banker as Attorney.
- ⑦ Bank as correspondents of other Banks.

II General Utility Services.

- ① Safe custody service
- ② safe deposit lockers
- ③ safe custody Deposits
- ④ Issuing Letter of credit
- ⑤ Traveller's cheque
- ⑥ Issue of Drafts
- ⑦ Mail Transfers
- ⑧ Foreign exchange service
- ⑨ Underwriting Securities
- ⑩ Gift cheque