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BANKING THEORY, LAW AND PRACTICE

MAJOR BASED ELECTIVE – III – BANKING THEORY, LAW AND PRACTICE

UNIT I: (Pg.No. 3-25)

Relationship of banker and customer – 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 – safe custody deposit – letter of credit – issue and payment of demand drafts and foreign bills, merchant banking.

UNIT II: (Pg.No. 26- 39)

Operations of bank accounts – fixed deposits – fixed deposit receipts and its implications, savings deposit 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 – nonresident (external) accounts scheme.

UNIT III: (Pg.No. 40-59)

Types of customers, account holders – procedure and practice for opening and conducting and closing of accounts of customers particular of individuals including minor, illiterate persons – married women – lunatics – drunkards – joint stock companies – non trading associations – registered and unregistered clubs – societies customers’ attorney – executive and administrators – charitable institutions – trustees – liquidators – receivers – local authorities – steps to be taken on death, lunacy, bankruptcy – winding up in case of Garnishee orders.

UNIT IV: (Pg.No. 60-72)

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

UNIT V: (Pg.No. 73-93)

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 – loss of cheques in transit – legal effect.

TEXT BOOKS RECOMMENDED:

1. Banking law & practice by K.P.Kandasami, S.Natarajan & R.Parameswaran –S.Chand&Co.
2. Banking law & practice by – C.Geevanatham – learntech press – Trichy.
3. Banking, Theory Law & practice by E.Garden and N.Natarajan – Himalaya Publication.
4. Banking, Theory Law & practice by Sundaram and Varshney, Sultan Chand & sons.

BANKING THEORY LAW AND PRACTICE

UNIT - 1

Meaning of Bank:

A bank is a financial institution which deals with deposits and advances and other related services. It receives money from those who want to save in the form of deposits and it lends money to those who need it. A bank is a financial institution and a financial intermediary that accepts deposits and channels those deposits into lending activities, either directly by loaning or indirectly through capital markets. A bank is the connection between customers that have capital deficits and customers with capital surpluses.

The term bank has originated from the term 'Banchi'. In olden days, the traders of Italy who performed the job of exchanging money were known as Banchi or Bancheri because the table which they used for making payment was called a Banchi.

According to some people, the term bank is derived from the Greek word 'Banque.'

A bank deals in money in the same way as a businessman deals in goods. Banks are business enterprises which deal in money, financial instruments and provide financial services for a price called interest, discount, commission etc.

DEFINITIONS

Banking Regulation Act of 1949 defines banking as "accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise".

FEATURES OF BANKING

1. Dealing in Money

The bank accepts deposit from the public and advancing them as loans to the needy people. The deposits may be of different types –current, fixed, savings etc accounts. The deposits are accepted on various terms and conditions.

2. Deposits must be Withdrawals

The deposit (other than fixed deposits) made by the public can be withdraw able by cheques, draft or otherwise, i.e. the bank issue and pay cheques. The deposits are usually withdrawal able on demand.

3. Dealing with Credit

The bank are the institutions that can create credit i.e., creation of money for lending. Thus creation of credit is the unique features of banking.

4. Commercial in Nature

Since all the banking functions are carried on with the aim of making profits, it is regarded as a commercial institution.

5. Nature of Agent

Besides the basic functions of accepting deposits and lending money as loans, banks possess the characters of an agent because of its various agency services.

POWERS OF RESERVE BANK OF INDIA UNDER THE BANKING REGULATION ACT

The Reserve Bank of India exercises control over all commercial bank from their birth to death. All powers have been centralized in the hands of the Reserve Bank of India with a view to regulating the banking system in the national interest and to prevent bank failures. Some of the main powers have been summarized follows:

- ❖ **Power to Issue Directions:** Under section 35 of the Act, the Reserve Bank of India has the power to issue directions as it deems fit to the banking companies in general or to any bank in particular and the bank concerned shall be bound to comply with such direction.
- ❖ **Power to Control Management:** As per section 38AA of the Act, the Reserve Bank of India may in the public interest of depositors, remove from office any chairman/ director/ employee after giving them a reasonable opportunity of being heard.
- ❖ **Power to advise banks:** Under section 36 of the Act, the Reserve Bank of India may caution or prohibit or give general advice to a bank in particular or to all banks in general against entering into a particular transaction or class of transaction.
- ❖ **Power to assist in proposals for amalgamation:** The Reserve Bank of India may assist a banking company in proposals for the amalgamation on its request. No court shall sanction a scheme of agreement for amalgamation unless the scheme is certified by the Reserve Bank of India.
- ❖ **Power to appoint Liquidator:** In regard to the winding up of a banking company, the Reserve Bank of India has the power to make an application to the High Court for the appointment of Reserve Bank of India, the State Bank of India or any other bank notified by the Central Government as the official liquidator that bank.
- ❖ **Power to give advice to the Central Government:** Above all, the Reserve Bank of India has been authorized to give to the central government in respect of any amendments to the present Act or rules framed there under from time to time.

In the process of economic development, the significance or contribution of banking system can be summarized as follows.

1 Capital Formation

The capital formation depends upon savings of various categories of people / organization. Bank offer facilities for savings and thus, encourage the habits of thrift and industry among people. They mobilize the idle and dormant capital of a commodity and make it available for productive purposes.

2. Creation of Money

Banks have become significant by their power to creation of money. Bank money forms a large part of the total quantity of money supply and represents a cheap, efficient and economical means of payment. Banks are described as factories of credit. It results in the economic progress of the country.

3. Strengthen the link between the Organized and Un organizes sectors

Indian money market consists of organized and un organized sectors. Bothe of them are to be linked for the economic wellbeing of the country, As the nervous system of the economy, the banks link the organized and unorganized sectors for the overall economic development.

4. Provision of long term loans

Industrial development which is the rock-basis for the economy depends upon the long term loans. Banks provide medium and long –term loans for the industries.

5. Development of Entrepreneurs

Banks have special drives and specific schemes for the development of entrepreneurship. They foster their strength and health. This helps the nation as a whole in various ways including the increase in productivity etc.

6. Regulation of the flow of national savings

Banks regulates the flow of national savings into various productive channels, while lending money, they discriminate between a genuine trader and a speculator and they discourage the speculator. Thus, banks ensure the diversion of national savings into the productive purposes.

7 Comprehensive Infrastructure Facilities

Banks can develop comprehensive infrastructure facilities in the country. It includes the social, educational, fiscal and other aspects whose development is essential for the economic progress of a nation.

8. Maintain Balance of Trade

Through properly devised banking system the country can promote exports through easy and timely credit facilities to exporters, quickly obtaining money from foreign buyers of goods, etc. This may help maintain the balance of trade at favorable position.

9. Sectoral Priorities

The mobilized resources can be used for the development of backward areas or a particular sector. This can be effectively done with the efficient banking system. For example, encouraging the flow of credit to small scale industries, artisans and farmers under priority sector.

10. Effective Implementation of Monetary Policy

The effective implementation of monetary policy can be done only through properly organized banking system of the country.

BANKER

Definition of bank varies from countries to countries. Under English common law, a banker is defined as a person who carries on the business of banking, which is specified as conducting current accounts for his customers, paying cheques drawn on him/her, and collecting cheques for his/her customers.

According to H. L. Hart, a banker is “one who in the ordinary course of his business honours cheques drawn upon him by person from and for whom he receives money on current accounts”.

CUSTOMER

The term customer has not been defined either in English law or Indian law. Ordinarily, a person who has an account in a bank is considered its customer.

According to Sir John Paget, “**to constitute a customer, there must be some recognizable habit of dealing in the nature of regular banking business**”.

This definition clearly points out two basic requirements for being a customer of a bank:

1. To be a customer, the person should have some type of an account with the bank.
2. He should also have completed a few transactions with the banker which are of banking business in nature.

(The number of such transactions i.e. deposits/withdrawals were not clearly stated by Sir John Paget.)

This definition intends that the purchaser of a bank draft does not become a customer of a bank. Even a person who just opened a bank account does not entitle himself to be a customer unless he waits for **some time** for completing a few transactions and be familiar with the banker.

According to Dr.Herbert.L.Hart, “A customer is one who has an account with a banker or for whom a banker habitually undertakes to act as such”.

BANKER-CUSTOMER RELATIONSHIP:

Banking is a trust-based relationship. There are numerous kinds of relationship between the bank and the customer. The relationship between a banker and a customer depends on the type of transaction. Thus the relationship is based on contract, and on certain terms and conditions.

These relationships confer certain rights and obligations both on the part of the banker and on the customer. However, the personal relationship between the bank and its customers is the long lasting relationship. Some banks even say that they have generation-to generation banking relationship with their customers. The banker customer relationship is fiducially relationship. The terms and conditions governing the relationship is not being leaked by the banker to a third party.

CLASSIFICATION OF RELATIONSHIP:

The relationship between a bank and its customers can be broadly categorized in to General Relationship and Special Relationship. If we look at Sec 5(b) of Banking Regulation Act, we would notice that bank 's business hovers around accepting of deposits for the purposes of lending. Thus the relationships arising out of these two main activities are known as General Relationship. In addition to these two activities banks also undertake other activities mentioned in Sec.6 of Banking Regulation Act. Relationship arising out of the activities mentioned in Sec.6 of the act is termed as special relationship.

GENERAL RELATIONSHIP:

1.Debtor-Creditor:

When a 'customer' opens an account with a bank, he fills in and signs the account opening form. By signing the form, he enters into an agreement/contract with the bank. When customer deposits money in his account the bank becomes a debtor of the customer and customer a creditor. The money so deposited by customer becomes bank 's property and bank has a right to use the money as it likes. The bank is not bound to inform the depositor the manner of utilization of funds deposited by him. Bank does not give any security to the depositor i.e. debtor. The bank has borrowed money and it is only when the depositor demands, banker pays. Bank's position is quite different from normal debtors.

Banker does not pay money on its own, as banker is not required to repay the debt voluntarily. The demand is to be made at the branch where the account exists and in a proper manner and during working days and working hours.

The debtor has to follow the terms and conditions of bank said to have been mentioned in the account opening form. {Though the terms and conditions are not mentioned in the account opening form, but the account

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opening form contains a declaration that the terms and conditions have been read and understood or has been explained}. In fact, the terms and conditions are mentioned in the passbook, which is issued to the customer only after the account has been opened. In the past while opening account some of the banks had the practice of giving a printed handbill containing the terms and conditions of account along with the account open form.

This practice has since been discontinued. For convenience and information of prospective customers a few banks have uploaded the account opening form, terms and conditions for opening account, rate charge in respect of various services provided by the bank etc., on their web site. While issuing Demand Draft, Mail / Telegraphic Transfer, bank becomes a debtor as it owes money to the payee/ beneficiary.

2.Creditor–Debtor:

Lending money is the most important activities of a bank. The resources mobilized by banks are utilized for lending operations. Customer who borrows money from bank owns money to the bank. In the case of any loan/advances account, the banker is the creditor and the customer is the debtor. The relationship when person deposits money with the bank reverses when he borrows money from the bank. Borrower executes documents and offer security to the bank before utilizing the credit facility. In addition to opening of a deposit/loan account banks provide variety of services, which makes the relationship wider and complex. Depending upon the type of services rendered and the nature of transaction, the banker acts as a Bailee, trustee, principal, agent, lessor, custodian etc.

SPECIAL RELATIONSHIP:

1. Bank as a Trustee:

As per Sec. 3 of Indian Trust Act, 1882, A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. 'Thus trustee is the holder of property on behalf of a beneficiary.

As per Sec. 15 of the _Indian Trust Act, 1882, A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property. 'A trustee has the right to reimbursement of expenses (Sec.32 of Indian Trust Act.).

In case of trust banker customer relationship is a special contract. When a person entrusts valuable items with another person with an intention that such items would be returned on demand to the keeper the relationship becomes of a trustee and trustier. A customer keeps certain valuables or securities with the bank for safekeeping or deposits certain money for a specific purpose (Escrow accounts) the banker in such cases acts as a trustee. Banks charge fee for safekeeping valuables.

2. Bailee – Bailor:

Sec.148 of Indian Contract Act, 1872, defines "Bailment" "bailor" and "bailee". A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

The person delivering the goods is called the "bailor". The person to whom they are delivered is called, the "bailee". Banks secure their advances by obtaining tangible securities. In some cases, physical possession of securities goods (Pledge), valuables, bonds etc., are taken. While taking physical possession of securities the bank becomes bailee and the customer bailor. Banks also keeps articles, valuables, securities etc., of its customers in Safe Custody and acts as a Bailee. As a bailee the bank is required to take care of the goods bailed.

3. Lessor and Lessee:

Sec.105 of _Transfer of property Act 1882‘defines lease, Lessor, lessee, premium and rent. As per the section —A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Definition of Lessor, lessee, premium and rent:

- (1) The transferor is called the lessor,
- (2) The transferee is called the lessee,
- (3) The price is called the premium, and
- (4) The money, share, service or other thing to be so rendered is called the rent.

Providing safe deposit lockers is as an ancillary service provided by banks to customers. While providing Safe Deposit Vault/locker facility to their customers ‘bank enters into an agreement with the customer. The agreement is known as —Memorandum of letting and attracts stamp duty.

The relationship between the bank and the customer is that of lessor and lessee. Banks lease (hire lockers to their customers) their immovable property to the customer and give them the right to enjoy such property during the specified period i.e. during the office/ banking hours and charge rentals. Bank has the right to break-open the locker in case the locker holder defaults in payment of rent. Banks do not assume any liability or responsibility in case of any damage to the contents kept in the locker. Banks do not insure the contents kept in the lockers by customers.

4. Agent and Principal:

Sec.182 of _The Indian Contract Act, 1872‘defines —an agent as a person employed to do any act for

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another or to represent another in dealings with third persons. The person for whom such act is done or who is so represented is called —the Principal.

Thus an agent is a person, who acts for and on behalf of the principal and under the latter's express or implied authority and the acts done within such authority are binding on his principal and, the principal is liable to the party for the acts of the agent.

Banks collect cheques, bills, and makes payment to various authorities viz., rent, telephone bills, insurance premium etc., on behalf of customers. Banks also abides by the standing instructions given by its customers. In all such cases bank acts as an agent of its customer, and charges for these services. As per Indian Contract Act agent is entitled to charges. No charges are levied in collection of local cheques through clearing house. Charges are levied in only when the cheque is returned in the clearinghouse.

5. As a Guarantor:

Banks give guarantee on behalf of their customers and enter in to their shoes. Guarantee is a contingent contract. As per sec 31, of Indian Contract Act guarantee is a " contingent contract ". Contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. It would thus be observed that banker customer relationship is transactional relationship

RIGHTS OF THE BANKER

The rights of a banker that the banker can enjoy are as follows

1. Right to charge interest

Every bank in India has the right to charge interest on the loans and advances sanctioned to customers. Interest is usually charged monthly, quarterly, semiannually or annually.

2. Right to levy commission and service charges

Along with interest, banks also have the right to levy a commission and service charges for the services rendered. The service rendered by the bank might be SMS notification service, retail banking and so on. Banks can also debit these charges from the customer's bank account.

3. Right of Lien

Another important right enjoyed by banks is the Right of Lien. Banks have the right to keep goods and securities belonging to the debtor as a security, until the loan is repaid by the debtor. Banks have only the right to maintain the security of the debtor and not to sell.

The right of a creditor (Bank) to retain goods and securities owned by the debtor bailed (as security) to the bank until the loan due from the debtor is repaid is called the right of lien. But the banker can insist on lien only in the absence of an agreement to the contrary. The creditor (bank) has the right to maintain the security

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of the debtor but not to sell it. There are two types of lien such as:

- Particular Lien
- General Lien

Particular Lien

Particular lien is one, in that the craftsman can retain those goods on which he has spent time, effort and money until he is paid. In Particular lien the creditor doesn't have the right to retain all the properties of the debtor.

General Lien

General lien gives the banker the right to retain goods and securities delegated to him in his capacity as a banker, in the absence of a contract contradictory to the right of lien. It extends to all goods/properties placed with him as a banker by his customer which are not particularly identified for another purpose.

Cases in which lien cannot exercise:

- If the goods and securities have been entrusted to the banker as a trustee or an agent
- If a contract exists between the banker and the customer that is contradictory with the banker's right of general lien

A banker's lien is more than a general lien, it is an implied pledge and he has the right to sell the goods in case of default. The right of lien is granted upon the banker by the Indian Contract Act and it helps to avoid the need of a separate agreement. To be in a safe position the banker should take a letter of lien stating that the goods/ properties are entrusted as security for a loan at present and in future and that the banker can exercise his lien on them. The banker can also sell the goods if the customer doesn't make the payment (defaults)

- The banker can exercise the right of lien only on goods standing in the name of the borrower and not jointly with others.
- The banker can exercise his right of lien on securities remaining in his possession after the loan for which they were lodged is repaid by the customer only if there is no contract to the contrary.

Exception to the Right of lien:

- The banker cannot exercise the right of lien on valuables entrusted to the banker as a bailee or trustee.
- Right of lien is not applicable on documents deposited for a special purpose or with specific instruction that the earnings are to be utilized for a specific purpose.

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- The banker's general lien is displaced by circumstances that show an implied agreement contradictory to the right of general lien.
- The banker has no right of lien on securities left with the banker negligently or unintentionally.
- The banker doesn't have the right of lien on securities deposited as a trustee in respect of his personal loan.

The banker's right of lien extends over goods and securities handed over to him. Money deposited in the bank and credit balance in his/her account does not fall in the category of goods and securities. Therefore, the banker can use his right of setoff as opposed to lien with regard to money deposited with him.

- The right can be exercised only on the customer's property and not on joint accounts the customer.
- The banker cannot have the right to exercise the lien when the debt has not matured.
- The banker cannot exercise the lien when he can exercise set off.

4. The Right of Set-off

The banker has the right to set off customer accounts. Banks can merge a couple of accounts which are in the name of the customer and set off the debit balance in one account with the credit balance in the other, provided the funds belong to the customer.

The banker has the right to set off the accounts of its customer. This enables a debtor (Bank) to set off a debt owed to him by a creditor (customer) before the latter recovers a debt due to him from the debtor. Banks can merge two accounts in the name of the same customer and set off the debit balance in one account with the credit balance in the other. But the funds should belong to the customer.

The right of set-off can be exercised only if there is no agreement express or implied that is divergent to this right. It can be exercised only after a notice is served on the customer informing the customer that the banker is going to exercise the right of set-off. To be on the safe side bankers must take a letter of set-off from the customer authorizing the bank to exercise the right of set-off without giving him any notice.

5. Right of Appropriation

Let us consider that a customer has taken many loans from the bank and he deposits some money in the bank without any instructions. If that amount is not sufficient to discharge all loans, the bank has the right to appropriate the amount deposited to any loan, even to a time-barred debt. But the customer should be informed on the same.

In the normal course of business, a banker accepts payments from customers. If the customers have more than one account or he/she has taken more than one loan, the customer has the right to direct his banker against which debt the payment should be appropriated/settled. If the customer does not direct the banker and there is

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more than one debt outstanding in his/her name, the bank can exercise its right of appropriation and apply it in payment of any debt. The banker can apply it against time barred debts also. Once an appropriation has been made it cannot be reversed.

Section 59 of the Indian Contract Act states that the right of appropriation is vested in the hands of debtor. He/she can appropriate the payment by an express intimation. Money received will first be set off against interest.

Section 60 of the Indian Contract Act states that if the debtor does not intimate or there is no circumstance of indicating how the payment is to be used, the right of appropriation is vested in the creditor.

Section 61 of the Indian Contract Act states that where neither party makes any appropriation, the payment shall be used in discharge of the debts in order of time. If the debts are of equal standing, the payment should be applied in discharge of each proportionately. Any payment made by a debtor should be applied in the first instance towards fulfillment of interest and thereafter towards principal unless there is an agreement to the contrary. If a customer has only one account and he deposits and withdraws money from it regularly, the order in which the credit entry will set off the debit entry is in the chronological order, this is known as Clayton's rule.

A debtor can appropriate the payment by an express intimation or under circumstances implying that the payment is made for a particular debt. For example, when the customer has accepted a bill for rs 1000 falling due on 15th march 2007. The bill was discounted with the bank. The customer has also taken a loan from the bank for rs 25000. When the customer pays rs 1000 on 15th march 2007 without any instruction to the bank, it is assumed that the customers' intention is to pay the bill only and not the loan.

CLAYTON'S CASE 1816:-

A banking firm, consisting of a 5 partners was running the business in which Mr. Clayton had an account. At the time of death of one of the partners, Mr. Clayton had a credit balance in his account .he continued the account and a later date bank failed. Now Mr. Clayton had withdrawn sums in excess of the credit balance but he also paid in sums sufficient to now Mr. Clayton had withdrawn sums in excess of the credit balance but he also paid in sums sufficient to put the account more in credit than it had been when the partner died. According to Mr Clayton his payments into the account should be apportioned against the withdrawals so that at the time of the death of the partner he would be having a credit balance and it should be claimed from the estates of the deceased partner. But the claim of Mr Clayton was turned down the ground that the credit balance in the current account had been extinguished by the withdrawals thus Mr. Clayton had no claim against the estate of the deceased partner. From the above judgement, the following principles are derived.

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(1) When payments are made by a debtor to the creditor, the debtor has a right to inform the creditor as towards which loan he is making payment.

(2) When the debtor has not exercised his right, the creditor has the right to appropriate the payment made by debtor towards any loan according to the discretion of the creditor.

(3) When neither debtor nor creditor exercises their right of appropriation, then it is then it is the chronological order in which the debit entries have arisen, in the same sequence, the credit entries will do to discharge the debit entries.

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

(5) In case of customer, as a single account in which he deposits and with draws a money, the order in which the credit entry will set off the debit entry is the chronological order. This has been decided in the famous Clayton's case. It is first item on the debit side that is discharged by the first item on the credit side.

(6) The relevance of appropriation arises in the case of death, insolvency, or retirement of a partner of a firm. Here the banker will close the old account and open a new account in the name of surviving partners. If the firm makes subsequent deposits, then it cannot be used for discharging the old debt when the deceased partner was alive.

6. Right to Close the Account

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

OBLIGATIONS OF BANKER

- Banks have an obligation to honour the cheques drawn on it if the customer has sufficient funds in his account. It is also obliged to honor cheques up to the overdraft limit of a customer.

- Banker is bound to act as per the directions given by the customer. If directions are not given the banker should act according to how he is expected to act.

- Care should be taken to make sure that the information given is general and only facts that are evident should be revealed.

- Banks are obliged to maintain secrecy of their client accounts. There are times when information may be revealed.

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When a banker can reveal the information:

- When the customer is statutorily required to do so.
- With express or implied permission of the customer.
- In common common courtesy, whenever the other banks ask for details they have to provide. In this case no specific information such as balances, etc is given.
- If the bank's interest requires that the bank can reveal the information
- If the disclosure is under the intention of protecting public/ national interest.

Termination of Banker - Customer Relationship

The relationship between banker and customer terminates in the following situations:

- Voluntary termination.
- Death of the customer
- Bankruptcy of the customer
- Liquidation of the company
- Insanity of the customer

MAIN FUNCTIONS OF COMMERCIAL BANKS

The main functions of commercial banks are accepting deposits from the public and advancing them loans. However, besides these functions there are many other functions which these banks perform. All these functions can be divided under the following heads:

1. Accepting deposits
2. Giving loans
3. Overdraft
4. Discounting of Bills of Exchange
5. Investment of Funds
6. Agency Functions
7. Miscellaneous Functions

1. Accepting Deposits:

The most important function of commercial banks is to accept deposits from the public. Various sections of society, according to their needs and economic condition, deposit their savings with the banks.

For example, fixed and low income group people deposit their savings in small amounts from the points of view of security, income and saving promotion. On the other hand, traders and businessmen deposit their savings in the banks for the convenience of payment.

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Therefore, keeping the needs and interests of various sections of society, banks formulate various deposit schemes. Generally, there are three types of deposits which are as follows:

(i) Current Deposits:

The depositors of such deposits can withdraw and deposit money whenever they desire. Since banks have to keep the deposited amount of such accounts in cash always, they carry either no interest or very low rate of interest. These deposits are called as Demand Deposits because these can be demanded or withdrawn by the depositors at any time they want. Such deposit accounts are highly useful for traders and big business firms because they have to make payments and accept payments many times in a day.

(ii) Fixed Deposits:

These are the deposits which are deposited for a definite period of time. This period is generally not less than one year and, therefore, these are called as long term deposits. These deposits cannot be withdrawn before the expiry of the stipulated time and, therefore, these are also called as time deposits.

(iii) Saving Deposits:

In such deposits, money up to a certain limit can be deposited and withdrawn once or twice in a week. On such deposits, the rate of interest is very less. As is evident from the name of such deposits their main objective is to mobilize small savings in the form of deposits. These deposits are generally done by salaried people and the people who have fixed and less income.

2. Giving Loans:

The second important function of commercial banks is to advance loans to its customers. Banks charge interest from the borrowers and this is the main source of their income. Banks advance loans not only on the basis of the deposits of the public rather they also advance loans on the basis of depositing the money in the accounts of borrowers. In other words, they create loans out of deposits and deposits out of loans. This is called as credit creation by commercial banks.

(i) Cash Credit:

In this type of credit scheme, banks advance loans to its customers on the basis of bonds, inventories and other approved securities. Under this scheme, banks enter into an agreement with its customers to which money can be withdrawn many times during a year. Under this set up banks open accounts of their customers and deposit the loan money. With this type of loan, credit is created.

(ii) Demand loans:

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These are such loans that can be recalled on demand by the banks. The entire loan amount is paid in lump sum by crediting it to the loan account of the borrower, and thus entire loan becomes chargeable to interest with immediate effect.

(iii) Short-term loan:

These loans may be given as personal loans, loans to finance working capital or as priority sector advances. These are made against some security and entire loan amount is transferred to the loan account of the borrower

3. Over-Draft:

Banks advance loans to its customer 's up to a certain amount through over-drafts, if there are no deposits in the current account. For this banks demand a security from the customers and charge very high rate of interest.

4. Discounting of Bills of Exchange:

This is the most prevalent and important method of advancing loans to the traders for short term purposes. Under this system, banks advance loans to the traders and business firms by discounting their bills. In this way, businessmen get loans on the basis of their bills of exchange before the time of their maturity.

5. Investment of Funds:

The banks invest their surplus funds in three types of securities—Government securities, other approved securities and other securities. Government securities include both, central and state governments, such as treasury bills, national savings certificate etc. Other securities include securities of state associated bodies like electricity boards, housing boards, debentures of Land Development Banks units of UTI, shares of Regional Rural banks etc.

6. Agency Functions:

Banks function in the form of agents and representatives of their customers. Customers give their consent for performing such functions. The important functions of these types are as follows:

- (i) Banks collect cheques, drafts, bills of exchange and dividends of the shares for their customers.
- (ii) Banks make payment for their clients and at times accept the bills of exchange: of their customers for which payment is made at the fixed time.

7. Miscellaneous Functions:

Besides the functions mentioned above, banks perform many other functions of general utility which are as follows:

- (i) Banks make arrangement of lockers for the safe custody of valuable assets of their customers such as gold, silver, legal documents etc.

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- (ii) Banks give reference for their customers.
- (iii) Banks collect necessary and useful statistics relating to trade and industry.
- (iv) For facilitating foreign trade, banks undertake to sell and purchase foreign exchange.
- (v) Banks advise their clients relating to investment decisions as specialist
- (vi) Bank does the under-writing of shares and debentures also.
- (vii) Banks issue letters of credit.
- (viii) During natural calamities, banks are highly useful in mobilizing funds and donations.
- (ix) Banks provide loans for consumer durables like Car, Air-conditioner, and Fridge etc.

BANK SUBSIDIARIES

- Bank Controls One or More Subsidiaries
- Subsidiaries Offer Other Services Such as Insurance and Security Brokerage Services
- Profits and Losses of Each Subsidiary Impact Parent Bank

AGENCY SERVICES OF COMMERCIAL BANKS

Agency Services or Agency functions of commercial banks are elaborated in detail below

1. Collection of Cheques, Dividends, Interests etc.:

Collecting cheques, drafts, bill of exchange, dividends, interests etc. on behalf of its customers and credit the amount in their account is one of the most important agency services rendered by the banks. Banker accepts standing instructions from the customers and arranges to collect dividend, interest, pension, salaries, bills etc. on behalf of his customers.

2. Payment of Subscription, Rent, Insurance Premium etc.:

Banks undertake the payment of subscriptions, rent, insurance premium etc. on behalf of the customers and debit the account with the amount. It accepts the standing instructions of the customer and arranges for the payment of such expenses on their behalf. It charges a small amount by way of commission for these services.

3. Conduct of Stock Exchange Transactions:

Banks purchase and sell various securities such as shares, debentures, bonds etc. of joint stock companies both private and Government on behalf of their customers.

4. Acting as Executor, Trustees, Attorneys etc.:

Banks act as executors of will, trustees, attorneys and administrators. As an executor it preserves the —Wills of the customers and executes them after their death. As a trustee, it takes care of the funds of the customers. As an attorney, it signs transfer forms and documents on behalf of the customer.

5. Preparation of Income Tax Returns:

Banks prepare income tax returns for their customers through their tax service departments.

6. Conducting Foreign Exchange Transactions:

Commercial banks purchase and sell foreign exchange for their customers.

7. Banker acts as an agent to the customer.

When a customer deposits cheques, drafts, bills or any other promissory notes, the banker collects them and on realization credits the account of the customer. For this activity, the banker is given commission. Banks also act as a correspondent, representative of their customers. Some banks may even get the travelers tickets, passport etc. for their customers.

GENERAL UTILITY SERVICES OF COMMERCIAL BANKS

1. RBI allows certain branches to **undertake foreign exchange transactions**. They are called authorized dealers. The bank purchases and sells foreign currency at the rate prescribed by RBI.
2. The bank **enables foreign trade by issuing letter of credit** on behalf of the importer. It is a letter of guarantee and that enables the importer to purchase goods.
3. In the case of foreign trade or domestic trade, **bankers accept bills on behalf of customers** and make payment on the due date on these bills. Later on, they collect from the customers.
4. The income tax assesseees can pay their **income tax through banks** notified by RBI.
5. In view of the **development of technology**, the bank is in a better position to provide various data which are in general interest.
6. The banks **help companies to mobilize funds in foreign market** through the sale of global deposit receipt.
7. **Issuing Gift Cheques:** Some banks issue cheques of various denominations to be used on auspicious occasions. These cheques are known as gift cheques.
8. **Advising on Financial Matters:** Commercial banks also advise their customers on financial matters as to expansion, modernization, diversification etc.
9. Banks **undertake factoring and leasing finance** by which trade bills of customers are given finance.
10. **Issuing Travelers' Cheques:** Banks issue travellers' cheques to help their customers by avoiding carrying money while traveling within India and abroad. With this facility, people need not carry cash with them during their travel and travel, in and out of India without the fear of theft or loss of money.
11. **Acting as Referees:** Banks are also acting as referees and provide information as to the financial standing, business reputation and respectability of their customers on enquiries made by third parties. Banks provide

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this service only on the acceptance of the customers. This function helps businessmen to obtain prompt and accurate information as to financial standing of the people with whom they are dealing.

12. **Giving Trade Information:** Commercial banks collect trade information from different places within the country and also from foreign countries and inform customers about the feasibility of entering into such trade.
13. **Providing ATM Facility:** “ATM” means “Automating Teller Machine”. It is also known as “Any Time Money”. Now-a-days, almost all the banks have ATM facility. Even small banks, which do not have their own ATM entering into tie up with big bankers and provide ATM facility to their customers. Under this facility, customer can withdraw money 24 hours a day. Deposits to accounts can also be made with this facility. Banks issue magnetic card for carrying any banking operation with this machine.
14. **Issuing Credit Cards:** Banks issue credit cards to their customers to enable them to purchase goods and obtain services on credit basis from certain specified retail and service establishments up to a limit and also to withdraw cash up to a specified limit through ATM, 24 hours a day including Sunday. Banks pay amount for the purchase made by the customers by using credit cards. Before the expiry of the period fixed by the banks for payment by customers for the credit purchases made by them say 30 days, customers should repay the money. Banks normally collect a nominal service charge on the amount of each credit transaction.

If the customer failed to pay the money before the specified period, banker will charge a certain percentage of interest as agreed between the banker and customer. Some banks allow the customers to repay the credit availed in installments also. As per this arrangement, customer need not pay the full amount of credit purchase in a lump sum. They can spread the amount over a fixed period say 20 months and pay in installments also. However, until the amount is fully paid, customer has to pay interest on the balance of amount unpaid.

Besides, customers can also draw cash from ATM up to a certain limit prescribed by the Bank, which can be either repaid in lump sum or in a particular number of installments. Banks charge a prescribed rate of interest on the cash drawn by the customers. Customers are given with secret code numbers to avail this facility by means of ATM.

Secret code number will be informed to the cardholder very secretly and he/she also will be asked not to disclose the. Same to others. In other words, the cardholder has to keep it secretly. This is to prevent the unauthorized use of card by anybody. So it is the duty of the customers not to disclose the secret code numbers to anybody. Master Card, Visa Card, BOB Card are some examples of credit card.

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LETTER OF CREDIT

Letter of credit has been in existence for many years. It is in fact the most important single document in the international trade. Simply stated, a letter of credit is an undertaking by a banker in the importer's country to pay or to arrange to pay specified merchandise, provided that the exporter satisfies certain stipulated conditions.

Through the instrument of letter of credit, the promise to pay usually made by the overseas buyer is substituted by the promise to pay by the banker. It is only this feature of the letter of credit, which gives the exporter greater security.

A letter of credit is a written undertaking given by a bank to the seller of the goods at the request of the importer of the goods, to meet the bill of exchange drawn by the seller in accordance with the terms of the undertaking providing the documents of title to goods prescribed by the buyer are tendered on presentment of the bill of exchange for payment.

PARTIES TO THE LETTER OF CREDIT

There are different parties to a letter of credit. They include the opener, issuer, beneficiary, confirming bank, notifying bank, paying bank and the negotiating bank.

1. **The opener:** The opener is the buyer (importer). A letter of credit is opened on the request of the buyer.
2. **The issuer:** The issuer is also known as the opening or issuing bank. The issuer is actually the bank in the importer's country, issuing the letter of credit at the initiative of the importer.
3. **The beneficiary:** The seller or exporter is the beneficiary in whose favor the letter of credit is issued.
4. **The negotiating bank:** The negotiating bank pays or accepts the draft of the exporter. When no paying bank is specified in the letter of credit, the beneficiary may go to any bank of his choice and present the draft and related documents under the credit. If the bank agrees to negotiate the documents, it becomes an endorsee and bonafide holder of the draft. It has recourse on the drawer of the bill until it is accepted and paid by the drawer.

TYPES AND FEATURES OF LETTERS OF CREDIT

1. **Irrevocable LC.** This LC cannot be cancelled or modified without consent of the beneficiary (Seller). This LC reflects absolute liability of the Bank (issuer) to the other party.
2. **Revocable LC.** This LC type can be cancelled or modified by the Bank (issuer) at the customer's instructions without prior agreement of the beneficiary (Seller). The Bank will not have any liabilities to the beneficiary after revocation of the LC.

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3. Stand-by LC. This LC is closer to the bank guarantee and gives more flexible collaboration opportunity to Seller and Buyer. The Bank will honour the LC when the Buyer fails to fulfill payment liabilities to Seller.

4. Confirmed LC. In addition to the Bank guarantee of the LC issuer, this LC type is confirmed by the Seller's bank or any other bank. Irrespective to the payment by the Bank issuing the LC (issuer), the Bank confirming the LC is liable for performance of obligations.

5. Unconfirmed LC. Only the Bank issuing the LC will be liable for payment of this LC.

6. Transferable LC. This LC enables the Seller to assign part of the letter of credit to other party(ies). This LC is especially beneficial in those cases when the Seller is not a sole manufacturer of the goods and purchases some parts from other parties, as it eliminates the necessity of opening several LC's for other parties.

7. Back-to-Back LC. This LC type considers issuing the second LC on the basis of the first letter of credit. LC is opened in favor of intermediary as per the Buyer's instructions and on the basis of this LC and instructions of the intermediary a new LC is opened in favor of Seller of the goods.

8. Payment at Sight LC. According to this LC, payment is made to the seller immediately (maximum within 7 days) after the required documents have been submitted.

9. Deferred Payment LC. According to this LC the payment to the seller is not made when the documents are submitted, but instead at a later period defined in the letter of credit. In most cases the payment in favor of Seller under this LC is made upon receipt of goods by the Buyer.

10. Red Clause LC. The seller can request an advance for an agreed amount of the LC before shipment of goods and submittal of required documents. This red clause is so termed because it is usually printed in red on the document to draw attention to "advance payment" term of the credit.

DOCUMENTATION REQUIREMENTS

In order to receive payment, the beneficiary must present documentation of completion of their part in the transaction to the issuing bank. The documents that the issuing bank will accept are specified in the letter of credit, but may often include:

- Bills of exchange
- Invoices
- Government documents, such as licenses, certificates of origin, inspection certificates, embassy legalizations, and phytosanitary certificates
- Shipping and transport documents, such as bills of lading and airway bills
- Insurance policies or certificates, except cover notes

Risks in Letter of Credit Transactions

Letter of credit transactions are not without risks. The risks inherent in these types of transactions include:

- **Fraud risk**, in which the payment is obtained through the use of falsified or forged documents for worthless or nonexistent merchandise
- **Regulatory risk**, in which government action may prevent completion of the transaction
- **Legal risk**, in which legal action prevents completion of the transaction
- **Force majeure risk**, in which completion of the transaction is prevented by an external force, such as war or a natural disaster
- **Failure of the issuing or collecting bank**
- **Or insolvency of the buyer or beneficiary**

In addition, the normal risks inherent in transactions, such as non-delivery, shipping less than was ordered, inferior quality merchandise, early or late shipment, or goods being damaged in transit, apply.

DEMAND DRAFT

A **demand draft** is a negotiable instrument similar to a bill of exchange. A bank issues a demand draft to a client (drawer), directing another bank (drawee) or one of its own branches to pay a certain sum to the specified party (payee).

A demand draft can also be compared to a cheque. However, demand drafts are difficult to countermand. Demand drafts can only be made payable to a specified party, also known as pay to order. But, cheques can also be made payable to the bearer. Demand drafts are orders of payment by a bank to another bank, whereas cheques are orders of payment from an account holder to the bank.

FOREIGN BILL

A financial instrument that is drawn on one country but payable in another. The instrument must be addressed by one person to another, requiring him to pay the bearer or holder a sum certain in money. This instrument is used in foreign trade.

MERCHANT BANKING: MEANING AND FUNCTIONS OF MERCHANT BANKING

The term 'merchant banking' has been used differently in different parts of the world. While in U.K. merchant banking refers to the 'accepting and issuing houses', in U.S.A. it is known as 'investment banking'. The word merchant banking has been so widely used that sometimes it is applied to banks who are not merchants, sometimes to merchants who are not banks and sometimes to those intermediaries who are neither merchants nor banks.

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In India merchant banking services were started only in 1967 by National Grindlays Bank followed by Citi Bank in 1970. The State Bank of India was the first Indian Commercial Bank having set up separate Merchant Banking Division in 1972. In India merchant banks have been primarily operating as issue houses than full- fledged merchant banks as in other countries.

A merchant bank may be defined as an institution or an organisation which provides a number of services including management of securities issues, portfolio services, underwriting of capital issues, insurance, credit syndication, financial advices, project counselling etc. There is a distinction between a commercial bank and a merchant bank. The merchant banks mainly offer financial services for a fee. while commercial banks accept deposits and grant loans. The merchant banks do not act as repositories for savings of the individuals.

FUNCTIONS OF MERCHANT BANKS:

The basic function of a merchant banker is marketing corporate and other securities. Now they are required to take up some allied functions also.

1. Promotional Activities:

A merchant bank functions as a promoter of industrial enterprises in India He helps the entrepreneur in conceiving an idea, identification of projects, preparing feasibility reports, obtaining Government approvals and incentives, etc. Some of the merchant banks also provide assistance for technical and financial collaborations and joint ventures

2. Issue Management:

In the past, the function of a merchant banker had been mainly confined to the management of new public issues of corporate securities by the newly formed companies, existing companies (further issues) and the foreign companies in dilution of equity as required under FERA In this capacity the merchant banks usually act as sponsor of issues.

They obtain consent of the Controller of Capital Issues (now, the Securities and Exchange Board of India) and provide a number of other services to ensure success in the marketing of securities. The services provided by them include, the preparation of the prospectus, underwriting arrangements, appointment of registrars, brokers and bankers to the issue, advertising and arranging publicity and compliance of listing requirements of the stock-exchanges, etc.

They act as experts of the type, timing and terms of issues of corporate securities and make them acceptable for the investors on the one hand and also provide flexibility and freedom to the issuing companies.

3. Credit Syndication:

Merchant banks provide specialised services in preparation of project, loan applications for raising

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short-term as well as long- term credit from various bank and financial institutions, etc. They also manage Euro-issues and help in raising funds abroad.

4. Portfolio Management:

Merchant banks offer services not only to the companies issuing the securities but also to the investors. They advise their clients, mostly institutional investors, regarding investment decisions. Merchant bankers even undertake the function of purchase and sale of securities for their clients so as to provide them portfolio management services. Some merchant bankers are operating mutual funds and off shore funds also.

5. Leasing and Finance:

Many merchant bankers provide leasing and finance facilities to their customers. Some of them even maintain venture capital funds to assist the entrepreneurs. They also help companies in raising finance by way of public deposits.

6. Servicing of Issues:

Merchant banks have also started to act as paying agents for the service of debt- securities and to act as registrars and transfer agents. Thus, they maintain even the registers of shareholders and debenture holders and arrange to pay dividend or interest due to them

7. Other Specialized Services:

In addition to the basic activities involving marketing of securities, merchant banks also provide corporate advisory services on issues like mergers and amalgamations, tax matters, recruitment of executives and cost and management audit, etc. Many merchant bankers have also started making of bought out deals of shares and debentures. The activities of the merchant bankers are increasing with the change in the money market.

OPERATIONS OF BANK ACCOUNT

A banker is essentially an intermediary of short term funds. He can carry out extensive lending operations only when he can effectively channelise the savings of the community. A good banker is one who effectively mobilizes the savings of the community as well as makes such as savings by making it available to productive and prior sectors of economy thereby fostering growth and development of nation's economy. Traditionally the banker used to accept three types of deposits viz., current, fixed and savings deposits. But because of the

Intense competition for resources, there are a variety of other innovations introduced by the bankers in recent times.

FIXED DEPOSIT

The account which is opened for a particular fixed period (time) by depositing particular amount (money) is known as Fixed (Term) Deposit Account. The term '**fixed deposit**' means that the deposit is fixed and is repayable only after a specific period is over. Under fixed deposit account, **money** is deposited for a fixed period say six months, one year, five years or even ten years. The money deposited in this account cannot be withdrawn before the expiry of period.

The rate of interest paid for fixed deposit vary (changes) according to amount, period and from bank to bank. All Banks in India (including SBI, PNB, BoB, BoI, Canara Bank, ICICI Bank, Yes Bank etc.) offer fixed deposits schemes with a wide range of tenures for periods from 7 days to 10 years. These are also popularly known as FD accounts. However, in some other countries these are known as "Term Deposits" or even called "Bond".

The term "fixed" in Fixed Deposits (FD) denotes the period of maturity or tenor. Therefore, the depositors are supposed to continue such Fixed Deposits for the length of time for which the depositor decides to keep the money with the bank. However, in case of need, the depositor can ask for closing (or breaking) the fixed deposit prematurely by paying a penalty (usually of 1%, but some banks either charge less or no penalty). Some banks introduced variable interest fixed deposits.

The rate of interest on such deposits keeps on varying with the prevalent market rates i.e. it will go up if market interest rates go and it will come down if the market rates fall. However, such type of fixed deposits has not been popular till date.

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The rate of interest for Fixed Deposits differs from bank to bank (unlike earlier when the same were regulated by RBI and all banks used to have the same interest rate structure. The present trends indicate that private sector and foreign banks offer higher rate of interest.

The earlier trend that private sector and foreign banks offer higher rate of interest is no more valid these days. However, now a day's small banks are forced to offer higher rate of interest to attract more deposits. Usually a bank FD is paid in lump sum on the date of maturity.

However, most of the banks have also facility to pay/ credit interest in saving account at the end of every quarter. If one desires to get interest paid every month, then the interest paid will be at a marginal discounted rate. In the changed computerized environment, now the Interest payable on Fixed Deposit can also be easily transferred on due dates to Savings Bank or Current Account of the customer.

Features of Fixed Deposit Account

The main features of **fixed deposit account** are as follows: -

- The main purpose of fixed deposit account is to enable the individuals to earn a higher rate of interest on their surplus funds (extra money).
- The amount can be deposited only once. For further such deposits, separate accounts need to be opened.
- The period of fixed deposits ranges between 15 days to 10 years.
- A **high interest** rate is paid on fixed deposits. The rate of interest may vary as per amount, period and from bank to bank.
- Withdrawals are not allowed. However, in case of emergency, banks allow to close the fixed account prior to maturity date. In such cases, the bank deducts 1% (deduction percentage many vary) from the interest payable as on that date.
- The depositor is given a fixed deposit receipt; which depositor has to produce at the time of maturity. The deposit can be renewed for a further period.

Advantages of Fixed Deposit Account

- Fixed deposit encourages savings habit for a longer period of time.
- Fixed deposit account enables the depositor to earn a high interest rate.
- The depositor can get **loan** facility from the bank.

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- On maturity the amount can be used to make purchases of assets.
- The bank can get the funds for a longer period of time.
- The bank can lend such funds for short term loans to businessmen.
- Fixed deposits indirectly boost economic development of the country.
- The bank can also **invest** such funds in profitable areas.

FIXED DEPOSIT RECEIPT (FDR)

As one of the most common savings and investment options used by individuals, fixed deposits are risk free and offer guaranteed returns. Fixed deposits provide investors with an interest rate that is higher than what is offered on normal savings accounts. The maturity value of a fixed deposit is based on the date of maturity chosen by the individual. Individuals opt for fixed deposits as they are not risky and also provide assured returns, even if these returns are not very high such as those provided by mutual investments and equities.

Applicants can procure Fixed Deposits by visiting their bank or even on their bank's website as many banks have enabled the facility of providing fixed deposits online. Once applicants apply for their fixed deposit scheme and all formalities are complete, they will receive a fixed deposit receipt as an acknowledgment. This is an important document and should be kept safely.

What is a Fixed Deposit Receipt?

A Fixed Deposit Receipt (FDR) is nothing but a document provided by the bank after the applicant procures a fixed deposit scheme from their bank. This document contains details such as the individual's name, age, address, details of the scheme chosen by them such as deposit amount, tenure and interest rate applicable on the deposit and so on.

Components and Importance of a Fixed Deposit Receipt

A Fixed Deposit Receipt contains all the details related to the deposit option procured by the individual. These details include:

- Name of the applicant
- Age of the applicant
- Account Number of the applicant
- Amount of principal that has been placed

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- Rate of Interest that is applicable
- Date of Maturity
- Amount of interest that the individual will receive on maturity
- Instructions regarding maturity date such as account transfer or rollover amount

The Fixed deposit receipt acts as an acknowledgment and proof of the ownership of the fixed deposit account by a particular individual. Apart from this, this receipt contains every single detail pertaining to the fixed deposit such as interest applicable, term and so on. Hence this receipt is a very important document and must be in the possession of the applicant.

SAVINGS DEPOSIT ACCOUNT

These deposits accounts are one of the most popular deposits for individual accounts. These accounts not only provide cheque facility but also have lot of flexibility for deposits and withdrawal of funds from the account.

Most of the banks have rules for the maximum number of withdrawals in a period and the maximum amount of withdrawal, but hardly any bank enforces these. However, banks have every right to enforce such restrictions if it is felt that the account is being misused as a current account.

Till 24/10/2011, the interest on Saving Bank Accounts was regulated by RBI and it was fixed at 4.00% on daily balance basis. However, wef 25th October, 2011, RBI has deregulated Saving Fund account interest rates and now banks are free to decide the same within certain conditions imposed by RBI.

Under directions of RBI, now banks are also required to open no frill accounts (this term is used for accounts which do not have any minimum balance requirements). Although Public Sector Banks still pay only 4% rate of interest, some private banks like Kotak Bank and Yes Bank pay between 6% and 7% on such deposits. From the FY 2012-13, interest earned upto Rs 10,000 in a financial year on Saving Bank accounts is exempted from tax.

Features of Saving Account

- The main objective of saving account is to promote savings.
- There is no restriction on the number and amount of deposits. However, in India, mandatory PAN (Permanent Account Number) details are required to be furnished for doing cash transactions exceeding ₹50,000.

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- Withdrawals are allowed subject to certain restrictions.
- The money can be withdrawn either by cheque or withdrawal slip of the respective bank.
- The **rate of interest** payable is very nominal on saving accounts. At present it is between 4% to 6% p.a in India.
- Saving account is of continuing nature. There is no maximum period of holding.
- A minimum amount has to be kept on saving account to keep it functioning.
- No **loan** facility is provided against saving account.
- Electronic clearing System (ECS) or E-Banking are available to pay electricity bill, telephone bill and other routine household expenses.
- Generally, equated monthly installments (EMI) for housing loan, personal loan, car loan, etc., are paid (routed) through saving bank account.

Advantages of Saving Account

- Saving account encourages savings habit among salary earners and others who have fixed income.
- It enables the depositor to **earn income** by way of saving bank interest.
- Saving account helps the depositor to make payment by way of issuing cheques.
- It shows income of a salaried and other person earned during the year.
- Saving account passbook acts as an identity and residential proof of the account holder.
- It provides a facility such as Electronic fund transfer (EFT) to other people's accounts.
- It helps to do online shopping via facility like internet banking. It aids to keep records of all online transactions carried on by the account holder.
- It provides immediate funds as and when required through ATM.
- The bank offers number of services to the saving account holders.

CURRENT ACCOUNT

Current Accounts are basically meant for businessmen and are never used for the purpose of investment or savings. These deposits are the most liquid deposits and there are no limits for number of transactions or the

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amount of transactions in a day. Most of the current account are opened in the names of firm / company accounts.

Cheque book facility is provided and the account holder can deposit all types of the cheques and drafts in their name or endorsed in their favour by third parties. No interest is paid by banks on these accounts. On the other hand, banks charge certain service charges, on such accounts.

For example, a current account will often be used by individuals, businesses and financial institutions around the world as a means of keeping liquid funds available for making necessary payments and withdrawals. In the retail market, a Current Account is a relatively safe investment when opened with an insured and regulated financial institution like a bank, building society, savings and loan corporation, or credit union.

Most current accounts do not pay interest on the funds deposited in them since they can be withdrawn at any time without advance notice or penalty. Current bank account is opened by businessmen who have a higher number of regular transactions with the bank. It includes deposits, withdrawals, and contra transactions. It is also known as Demand Deposit Account.

Features of Current Accounts:

- (a) The main objective of Current Account holders in opening these account is to enable them (mostly businessmen) to conduct their business transactions smoothly.
- (b) There are no restrictions on the number of times deposit in cash / cheque can be made or the amount of such deposits;
- (c) Usually banks do not have any interest on such current accounts. However, in recent times some banks have introduced special current accounts where interest (as per banks' own guidelines) is paid
- (d) The current accounts do not have any fixed maturity as these are on continuous basis accounts

The main features of **current account** are as follows: -

- Current bank accounts are operated to run a business.
- It is a non-interest bearing bank account.
- It needs a higher minimum balance to be maintained as compared to the savings account. Penalty is charged if minimum balance is not maintained in the current account.
- It charges interest on the short-term funds borrowed from the bank.
- It is of a continuing nature as there is no fixed period to hold a current account.

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- It does not promote saving habits with its account holders.
- Banker requires KYC (Know your Customers) norms to be completed before opening a current account.
- The main objective of current bank account is to enable the businessmen to conduct their business transactions smoothly.
- There is no restriction on the number and amount of deposits.
- There is also no restriction on the number and amount of withdrawals made, as long as the current account holder has funds in his bank account.
- Generally, bank does not pay any interest on current account. Nowadays, some banks do pay interest on current accounts.

Advantage of Current Bank Account

The advantages of current account are as follows:-

- Current account is mainly opened for businessmen such as proprietors, partnership firms, public and private companies, trust, association of persons, etc. that has a large number of daily banking transactions, i.e. receipts and/or payments.
- It enables businessmen to carry out their business transactions properly and promptly.
- The businessmen can withdraw from their current accounts without any limit, subject to banking cash transaction tax, if any levied by the government.
- Home branch is that location where one opens his bank account. There are no restrictions on deposits made in the current account opened in a home branch of a bank. However, the current account holder can deposit the cash from any other branch of a bank other than the home branch by paying a nominal charge as applicable.
- It helps businessmen to make a direct **payment** to their creditors by issuing cheques, demand-drafts or pay-orders, etc.
- It enables a bank to collect money on behalf of its customers and credits the same in their customers' current accounts.
- It enables the current account holder to obtain overdraft (short-term borrowing) facility.

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- The creditors of the account holder can get **credit**-worthiness information of the account holder through inter-bank connection.
- It facilitates the industrial progress of the country. Without its help, businessmen would face difficulties in running their businesses.

It has the facilities of Internet-banking and mobile-banking to carry out important business transactions with ease and quickly.

- It also provides various other advantages (benefits) such as:
 - Deposit and withdrawal of money (cash) at any location.
 - Multi-location funds transfer,
 - Electronic funds transfer,
 - Periodical (monthly, quarterly or yearly) e-mail or download of bank statements in various formats like '.XLS', '.TXT', '.PDF', etc.
- Support from customer care executives.

RECURRING DEPOSIT

Recurring deposit refers to the periodic placement of a fixed sum of funds with a bank or financial institution into a special term account, with a specified tenure, generally between one and five years. At the end of the tenure, the funds are typically withdrawn by the depositor with accrued interest.

Recurring deposit account is generally opened for a purpose to be served at a future date. Generally opened to finance pre-planned future purposes like, wedding expenses of daughter, purchase of costly items like land, luxury car, refrigerator or air conditioner, etc. Recurring deposit account is opened by those who want to save regularly for a certain period of time and earn a **higher interest** rate.

In recurring deposit account certain fixed amount is accepted every month for a specified period and the total amount is repaid with interest at the end of the particular fixed period.

These are popularly known as RD accounts and are special kind of Term Deposits and are suitable for people who do not have lump sum amount of savings, but are ready to save a small amount every month. Normally, such deposits earn interest on the amount already deposited (through monthly installments) at the

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same rates as are applicable for Fixed Deposits / Term Deposits. These are best if you wish to create a fund for your child's education or marriage of your daughter or buy a car without loans or save for the future.

Under these type of deposits, the person has to usually deposit a fixed amount of money every month (usually a minimum of Rs,100/- p.m.). Any default in payment within the month attracts a small penalty. However, some Banks besides offering a fixed installment RD, have also introduced a flexible / variable RD. Under these flexible RDs the person is allowed to deposit even higher amount of installments, with an upper limit fixed for the same e.g. 10 times of the minimum amount agreed upon.

These accounts can be funded by giving Standing Instructions by which bank withdraws a fixed amount on a fixed date of the month from the saving bank of the customer (as per his mandate), and the same is credited to RD account. Recurring Deposit accounts are normally allowed for maturities ranging from 6 months to 120 months. A Pass book is usually issued wherein the person can get the entries for all the deposits made by him / her and the interest earned. Banks also indicate the maturity value of the RD assuming that the monthly instalments will be paid regularly on due dates.

In case instalment is delayed, the interest payable in the account will be reduced and some nominal penalty charged for default in regular payments. Premature withdrawal of accumulated amount permitted is usually allowed (however, penalty may be imposed for early withdrawals). These accounts can be opened in single or joint names. Nomination facility is also available.

Features of Recurring Deposit Account

- The main objective of recurring deposit account is to develop regular savings habit among the public.
- In India, minimum amount that can be deposited is Rs.10 at regular intervals.
- The period of deposit is minimum six months and maximum ten years.
- The rate of interest is higher.
- No withdrawals are allowed. However, the bank may allow to close the account before the maturity period.
- The bank provides the loan facility. The loan can be given upto 75% of the amount standing to the credit of the account holder.

Advantage of Recurring Deposit Account

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- Recurring deposit encourages regular **savings** habit among the people.
- Recurring deposit account holder can get a **loan** facility.
- The bank can utilise such funds for [lending](#) to businessmen.
- The bank may also invest such funds in profitable areas.

FORMS USED IN THE OPERATION OF ACCOUNT

Immediately after opening the account the customer is supplied with the following

1. The Pay-in-slip book:-

Every deposit made by the customer in cash or cheque or bill must be accompanied by this book. This book contains slips with perforated counter foils. separate slips are to be made for cash or cheques. Some banks have devised different forms, while others made use of the same form with provisions for both. The form is to be filled by the depositor and the bank after receipt of the cash or cheques. Put the date –stamp and the counter foil is initialed by responsible officer and serves as a record for the customer. It is also preferable for the customer to record on the back of the counter foil the source of receipt so that he will be in a position to explain the credits in the passbook to the tax authorities. The slip retained by the banker becomes the basis for making necessary entries in the ledger.

2. The Cheque book:-

It consists of 10 to 20 blank forms. As per the rules and regulations the customer is expected to draw the cheques only in the forms provided by the banker. Cheque books are given in recent years to saving bank account holders also but on the condition that they should maintain a minimum balance of rs1000. Persons unwilling are permitted only after producing the pass book. Cheque books are issued only on the basis of a requisition slip. Every cheque book contains one such a slip to facilitate the customer to obtain new book before the old one is exhausted. To prevent the misuse of cheque leaves the banker enters the account number on each cheque left and book is issued only after obtaining the signature of the customer.

3. The Pass book: -

A pass book is nothing but a copy of the account of the customer as it appears in the bank 'ledger. All the amounts deposited are credited and the cheques paid against the account are debited. The balance is shown from time to time.

CASH CERTIFICATES

Cash certificates are a type of deposit that is purchased for a certain amount. The account holder purchases the cash certificate for a certain amount, but needs to make payments toward this amount only as

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long as the term of the certificate lasts. Typically, the account holder builds up to the full amount of the certificate, earning interest as the money is transferred to the account, like a reverse loan. Account holders make payments once every quarter. Cash certificates can last years, and holders can even borrow money against them if necessary.

ANNUITY DEPOSIT

A lump sum amount is deposited by a customer which is repaid to the customer over a period in equated monthly installment which comprises part of principle amount and interest on the reducing principle amount as well. Using the scheme customer can have fixed monthly amount against his one-time deposit. Payment will start on anniversary date of the month. If date is non-existent (29th, 30th and 31st), it will be paid on 1st day of next month.

PERENNIAL PREMIUM DEPOSITS:

It is a life time deposit made by a depositor. This account matures on the death of the account holder. In case of the death of an account holder the principal amount and interest will paid to his legal heirs.

NON-RESIDENT EXTERNAL ACCOUNTS:

Salient Features:

1. Indian citizens who are working in foreign countries can deposit their savings in their own name in India.
2. The amount can be invested either in Indian currency or foreign currency.
3. The Rate of interest prevailing in India for SB account and time deposits can be applied for this account also.

The deposit schemes for the Indian nationals or persons of Indian origin living abroad as follows:

1) Non-Resident Rupee Account

This type of account can be opened in Indian Rupees. But the remittance can be made in foreign currency. The Banker will convert the foreign currency into Indian Rupees. The interest is charged once in three months which is free from Income Tax. Period of this deposit varies from 46 days to 5 years.

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2) Foreign currency Non-Resident Account

This account can be opened only in foreign currencies namely US Dollar, pounds sterling, Deutschemark and Japanese Yen. It is important to note that remittance can be made in any other foreign currency after conversion. Period of these deposits varies from 12 months to 36 months. Interest is charged once in 6 months. Just like non-resident rupee account, interest is free from Income Tax.

Distinguish between FD a/c and SB a/c.

Fixed deposit Account	Savings bank Account
1. It is a time deposit. Since it is repayable only after the expiry of a fixed period.	It is a demand deposit. Since it is repayable on demand made by the customer.
2. The banker need not maintain cash reserves for the repayment of these deposits.	The banker must maintain sufficient cash reserves to meet the repayments on demand.
3. Introduction or reference is not necessary for opening this account.	It is necessary.
4. The rate of interest is high.	The rate of interest is lesser.
5. It is suitable for investors since it yields more return than savings bank account.	It is suitable for small savers since it promotes the habit of savings.
6. Loan facility is available against the security of FDR.	No loan facility is available.
7. In this case, the depositor is a customer theoretically but not practically since there is no frequency of transaction between him and the banker.	In this case, the depositor is a customer both Theoretically and practically.
8. Only a deposit receipt is given on opening this account	A pass book, Cheque book and pay-in-slips are provided on opening this account for its

	operation
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Difference between FD A/c and Current A/c

Fixed deposit account	Current account
1. It is a time deposit. Since, it is repayable only after expiry of a fixed period	It is a demand deposit. Since it is repayable on demand made by the customer
2. The banker need not maintain cash reserves for the repayment of these deposits	The banker must maintain adequate cash reserve to meet heavy repayments on demand
3. Introduction or reference is given on opening this account	It is necessary
4. Only on a deposit receipt is given on opening this account	A pass book, Cheque book and pay-in-lips are provided on opening this account for its operation
5. The rate of interest are high	No interest is payable
6. It is suitable for investors. Since, it yields more return	It is suitable for big business people. Since its object is t provide convenience to the customers
7. loan facility is available	Overdraft facility is available
8. In this case, the depositor is a customer theoretically but not practically	In this case, the depositor is a customer in all respects.

Distinguish between SB A/c and Current A/c.

Savings bank account	Current account
1. Its object is to promote the habit of savings among the people	Its object is to provide convenience to the customer

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2. Third party cheques with endorsement cannot be deposited for collection and credit	Third party cheques with endorsement can be deposited for collection and credit
3. O/D facility is not available.	O/D facility is available.
4. Interest is payable at a reasonable rate.	No interest is payable.
5. Withdrawals are restricted.	There is no such restriction.
6. Comparatively lesser cash reserves are required. Since, the withdrawals are restricted.	Comparatively more cash reserves are required. Since, the withdrawals are not restricted.

TYPES OF CUSTOMERS

In recent times, commercial banks compete with one another and resort to attractive advertisements informing the public about the facilities available in their banks, rates of interest, their services, location of ATM centers etc. These advertisements are legally considered as ‘invitation to offer’.

Only when a proposed customer submits an application for opening an account in a prescribed form, it is a real offer. In other words, a customer makes an offer by submitting an application. It is for the banker to accept the offer, a contract is formed between a banker and customer and the contract is complete once the banker accepts the initial deposit. Thus he opens an account in the name of the customer. The relationship between the banker and the customer starts with the opening of an account in the bank.

PROCEDURES FOR OPENING A BANK ACCOUNT

Before opening a deposit account, the banker should observe certain general precautions. They are as follows:

1.Application form:

The prospective customer is to be asked to sign in the duly filled in application form which is available with the banker at free of cost. Different bankers have different printed application forms. They also vary with the kinds of deposits. These application forms contain the rules and regulations of the bank along with the terms and conditions of the deposit. The following are the advantages of using printed forms:

- Uniformity can be confirmed
- No matters can be omitted

Normally the application contains the following particulars:

- Name of the applicant
- Age and date of birth
- Father or husband’s name
- Occupation
- Address with telephone number
- Name and signature of the referee

2. Specimen signature:

Three or more signatures of every new customer are obtained on cards which are filed alphabetically for ready reference. Now-a-days, banks obtain specimen signatures on the application itself.

3. Letter of introduction:

It is advisable on the part of the banker to allow the prospective customer to open an account only with a proper introduction. The usual practice for the banker is to demand a letter of introduction from a responsible person known to both the parties. Failure to get a letter of introduction may land him in trouble and affect his position. A letter of introduction or letter of reference always protects the banker in the following ways:

a) Protection against fraud:

The purpose of introduction is to identify the depositor and to find out whether he is a genuine party or an impersonator or a fraudulent person.

b) Protection against inadvertent overdraft

It may so happen that a bank clerk may misread the balance of a customer and pay a cheque the result will be the emergence of an overdraft. The banker can recover the money only if the customer is a man of good character.

c) Protection against negligence under see 131 of the negotiable instruments Act

If a banker fails to obtain a letter of introduction at the time of opening a new account, it constitutes negligence on the part of the collecting banker under see 131 and so he will lose the statutory protection.

d) Protection against giving incorrect information to fellow bankers

It is a courtesy among bankers to give reference about the financial position of their customers to fellow bankers. In the absence of a reference letter, a banker may not be able to supply correct information.

4. Interview

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

5.Account in cash

It is a common practice among bankers to allow a new party to open an account only in cash. If the account is opened by depositing a cheque, the risks are greater, i.e., there will be no amount in the account when the cheque is dishonored.

6.Mandate in writing

If a new party wants his account to be operated by somebody else, the banker should demand a mandate from his customer in writing. The mandate contains the agreement between the two regarding the operations of the account, the specimen signatures of the authorized person and the power is delegated to the authorized person.

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7. Verification of documents

If the new party happens to be a corporate body or firm, it is essential that the banker should verify some of the important documents like memorandum of association, articles of association, partnership deed etc.,

8. Conversant with the provisions of special acts

Since a banker has to deal with deferent classes of customers, he has to be thoroughly conversant with certain laws like Indian Companies Act, Indian partnership Act, the co-operative societies act etc.

9. Pay-in-slip Book, cheque book & pass book:

Then, the customer is supplied with a pay-in-slip book. The pay-in-slip is a document which is used for depositing cash or any other instrument into the account. It has a counter foil which is returned to the customer for making necessary entries in his book.

10. Passport size photograph

Now-a-days bank insist upon the prospective customers to affix their passport size-photography on the application forms at the time of opening accounts. This is to prevent impersonation and for easy identification.

CLOSING A BANK ACCOUNT

The banker customer relationship commences as soon as an account is opened at a bank and this relationship continues as long as the parties concerned. It will be terminated with the closure of the customer's account either own act or at the banker's request. The account also may be closed by the operation of law.

Following are the circumstances under which a banker can close his customer's account:

1. Mutual agreement:

By mutual agreement an account of a customer can be closed by the banker paying balance to him. In case of overdraft, account can be closed after it is cleared by the customer.

2. Notice by the customer:

If the customer gives notice to the banker to close the account for any reason, the banker has to comply with such notice and the account is to be closed with immediate effect.

3. Notice by the banker:

The banker himself may give notice to the customer of his intention not to act as the customer's banker, if the banker feels that the customer is no longer a desirable person as a customer. If the customer does not close the account,

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after the expiry of the period of notice given by the banker, the banker can treat the account closed and return the balance to the customer and demand the return of the unused Cheques.

4. Death, lunacy and insolvency of the customer:

On receipt of notice of the death of the customer, the banker must stop the operation of the account because the authority of the customer terminates as soon as he dies. The lunacy or insanity of a customer results in automatic termination of relationship since lunatic is not competent to be a party of contract. Upon insolvency of a customer, his account must be closed because insolvent customer cannot give effective mandate in writing against the banker.

5. Garnishee order:

If a garnishee order is issued on the bank attaching all the funds of the customer, then the account is automatically closed, so as to be applied for payment to the Judgement creditor as per the direction of the court.

6. Assignment made by the customer of his credit balance:

A notice of assignment to a third party, of the balance standing to the credit of the customer has an indication to the bank to close the account. The balance so assigned has to be paid to the assignee since the assignor cannot operate the account.

Thus, the account of a customer with a banker should be closed or its operations suspended under varying circumstances stated above.

TYPES OF CUSTOMERS OF BANKS

In the ordinary language, a person who has an account in a bank is considered its customer. The term customer also presents some difficulty in the matter of definition. There is no statutory definition of the term either in India or in England. However, the legal decisions on the matter throw some light on the meaning of the term.

According to Dr. Hart “a customer is one who has an account with a banker or for whom a banker habitually undertakes to act as such.”

“Broadly speaking, a customer is a person who has the habit of resorting to the same place or person to do business. So far as banking transactions are concerned he is a person whose money has been accepted on the footing that the banker will honour up to the amount standing to his credit, irrespective of his connection being of short or long standing.” Thus, a person who has a bank account in his name and for whom the banker undertakes to provide the facilities as a banker is considered to be a customer. It is not essential that the account must have been operated upon for some time.

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Thus, in order to constitute a person as a customer, he must satisfy the following conditions:

1. He must have an account with the bank – i.e., saving bank account, current deposit account, or fixed deposit account.
2. The transactions between the banker and the customer should be of banking nature i.e., a person who approaches the banker for operating Safe Deposit Locker or purchasing travelers cheques is not a customer of the bank since such transactions do not come under the orbit of banking transactions.
3. Frequency of transactions is not quite necessary though anticipated.

Special Types of Customers

Special types of customers are those who are distinguished from other types of ordinary customers by some special features. Hence, they are called special types of customers. They are to be dealt with carefully while operating and opening the accounts. They are:

I. Minors:

Under the Indian law, a minor is a person who has not completed 18 years of age. The period of minority is extended to 21 years in case of guardian of this person or property is appointed by a court of law before he completes the age of 18 years. According to Indian Contract Act, a minor is recognised as a highly incompetent party to enter into legal contracts and any contract entered into with a minor is not only invalid but voidable at the option of the minor. The law has specially protected a minor merely because his mental faculty has not fully developed and as such, he is likely to commit mistakes or even blunders which will affect his interests adversely. It is for this reason; the law has come to the rescue of a minor. A banker can very well open a bank account in the name of a minor. But the banker has to be careful to ensure that he does not open a current account.

If a current account is opened and stands overdrawn inadvertently, the banker has no remedy against a minor, as he cannot be taken to a court of law. It is for this reason that the banker should be careful to see that he invariably opens a savings bank account.

The conditions for opening and maintaining accounts in the names of the minors are:

1. The minor should have attained the age of discretion, i.e., he must be about 14 years of age. He must be capable of understanding what he does.
2. The minor should be able to read and write.
3. The minor should be properly introduced. The account opening form should be signed by the minor in the presence of a bank officer who should be able to identify the minor. The date of birth of the minor should be recorded in the account opening form.

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4. Banks usually stipulate limits up to which deposits in such accounts can be accepted.

5. Amount tendered by the minor should as far as possible be in cash.

6. In case of time deposits, the amount should be paid in cash on maturity. Prepayment cannot be allowed. Periodical payment of interest on deposits may be made to the minor.

Legal Provisions Regarding Guardianship of a Minor

According to Hindu Minority and Guardianship Act, 1956, a Guardian is one who is recognised by law to be one of the following:

(a) Natural Guardian:

According to Section 6 of the Hindu Minority and Guardianship Act, 1956, in case of a minor boy or an unmarried girl, his/her father and after him the mother shall be the natural guardian. In case of a married girl (minor), her husband shall be the natural guardian. The terms father or mother do not include step-father or step-mother.

(b) Testamentary Guardian:

A Hindu father, who is entitled to act as the natural guardian of his minor legitimate children may, by will, appoint a guardian for any of them in respect of the minor's person or property. Such guardian acts after the death of the father or the mother.

(c) Guardian Appointed by Court:

A guardian may be appointed by the court under the Guardians and Wards Act, 1890, but the court shall not be authorised to appoint or declare a guardian of the person of a minor, if his father is alive and is not, in the opinion of the court, unfit to be guardian of the person of the minor. Similar is the case of a minor girl, whose husband is not, in the opinion of the court, unfit to be guardian of her person. Thus the father (or the husband in case of a married girl) is exclusively entitled to be the guardian.

II. Lunatics:

A lunatic or an insane person is one who, on account of mental derangement, is incapable of understanding his interests and thereby, arriving at rational judgement. Since a lunatic does not understand what is right and what is wrong, it is quite likely that the public may exploit the weakness of a lunatic to their advantage and thus deprive him of his legitimate claims. On account of this, the Indian Contract Act recognises that a lunatic is incompetent to enter into any contract and any such contract, if entered into, is not only invalid but voidable at the option of the lunatic. Since a lunatic customer is an incompetent party, the banker has to be very careful in dealing with such customers. Bankers should not open an account in the name of a person of unsound mind. On coming to know of a customer's insanity, the banker should

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stop all operations on the account and await a court order appointing a receiver. It would be dangerous to rely on hearsay information. The bank should take sufficient care to verify the information and should not stop the account unless it is fully satisfied about the correctness of the information. In case a person suffers from a temporary mental disorder, the banker must obtain a Certificate from two medical officers regarding his mental soundness at the time of operation on the account.

III. Drunkards:

A drunkard is a person who on account of consumption of alcoholic drinks get himself intoxicated and thereby, loses the balance over his mental capacity and hence, is incapable of forming rational judgement. The law is quite considerable towards a person who is in drunken state. A lawful contract with such a person is invalid. This is for the simple reason that it is quite likely that the public may exploit the weakness of such a person to their advantage and thus, deprive him of his legitimate claims. A banker has to be very careful in dealing with such customers. There cannot be any objection by a banker to open an account.

In case a customer approaches the banker for encashment of his cheque especially when he is drunk, the banker should not make immediate payment. This is because the customer may afterwards argue that the banker has not made payment at all. Therefore, it is better and safer that the banker should insist upon such a customer getting a witness (who is not drunk) to countersign before making any payment against the cheque.

IV. Married Women:

An account may be opened by the bank in the name of a married woman as she has the power to draw cheques and give valid discharge. At the time of opening an account in the name of a married woman, it is advisable to obtain the name and occupation of her husband and name of her employer, if any, and record the same to enable detection if the account is misused by the husband for crediting there in cheques drawn in favour of her employer. In case of an unmarried lady, the occupation of her father and name and address of her employer, if any, may be obtained and noted in the account opening form. If a lady customer requests the bankers to change the name of her account opened in her maiden name to her married name, the banker may do so after obtaining a written request from her. A fresh specimen signature has also to be obtained for records.

While opening an account of a purdah lady (purdah nishin), the bank obtains her signature on the account opening form duly attested by a responsible person known to the bank. It is advisable to have withdrawals also similarly attested. In view of practical difficulties involved, it would be better not to open accounts in the names of purdah ladies.

V. Insolvents:

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When a person is unable to pay his debts in full, his property in certain circumstances is taken possession of by official receiver or official assignee, under orders of the court. He realizes the debtor's property and rate ably distributes the proceeds amongst his creditors. Such a proceeding is called 'insolvency' and the debtor is known as an 'insolvent'. If an account holder becomes insolvent, his authority to the bank to pay cheques drawn by him is revoked and the balance in the account vests in the official receiver or official assignee.

VI. Illiterate Persons:

A person is said to be illiterate when he does not know to read and write. No current account should be opened in the name of an illiterate person. However, a savings bank account may be opened in the name of such a person. On the account opening form the bank should obtain his thumb mark in the presence of two persons known to the bank and the depositor. Withdrawal from the account by the account holder should be permitted after proper identification every time. The person who identifies the drawer must be known to the bank and he should preferably not be a member of the bank's staff.

VII. Agents:

A banker may open an account in the name of a person who is acting as an agent of another person. The account should be considered as the personal account of an agent, and the banker has no authority to question his power to deal with the funds in the account unless it becomes obvious that he is being guilty of breach of trust. However, if a person is authorised to only on behalf of the principal, the banker should see that he is properly authorised to do the acts which he claims to do. If he has been appointed by a power of attorney, the banker should carefully pursue the letter-of-attorney to confirm the powers conferred by the document on the agent. In receiving notice of the principal's death, insanity or bankruptcy, the banker must suspend all operations on the account.

VIII. Joint Stock Company

A joint stock company has been defined as an artificial person, invisible, intangible and existing only in contemplation of law. It has separate legal existence and it has a perpetual succession. The banker must satisfy himself about the following while opening an account in the name of a company:

(a) Memorandum of Association:

Memorandum of Association is the main document of the company, which embodies its constitution and is called the charter of the company. It gives details, especially regarding objects and capital of the company's copy of this document should be insisted upon while opening an account.

(b) Articles of Association:

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The Articles of Association contain the rules and regulations of the company regarding its internal management. It contains in detail all matters which are concerned with the conduct of day-to-day business of the company. The Articles of Association is also another document that a banker insists upon. It enables the banker to know the details of company's borrowing powers quantum, persons authorised to borrow etc. This will also enable the banker to understand whether the acts of the officers are within the orbit of the Company's Memorandum and Articles.

(c) Certificate of Incorporation:

This is another vital document the banker has to verify and insist upon receiving a copy. This document signifies that the company can commence its business activities as soon as it gets this Certificate which is not the case with a public company.

(d) Certificate to Commence Business:

Only for public companies, the banker insists upon this document for verification. This document gives the clearance to public companies to commence their business activities. A company can borrow funds provided it has obtained this certificate.

(e) Application Form and Copy of the Board's Resolution:

A copy of the prescribed application form duly completed in all respects has to be submitted in the beginning and that too duly signed by the company's authorised officers. Along with this, a copy of the resolution passed at the meeting of the board regarding appointment of company's bankers is quite necessary to make everything lawful. The resolution copy should be signed by the company's Chairman and Secretary in addition, a copy of the specimen signatures of the officers empowered to operate the bank account has to be furnished.

(f) A Written Mandate:

This is also another document that a banker insists upon. It contains all the details regarding operation, overdrawing of the account and giving security to the bank by the officers of the company. This document is useful to the bank for opening as well as for operating the account of the company.

(g) Registration of Charges:

Whenever a company borrows, it has to give certain assets by way of security and in case the banker accepts them as security, it has to be properly recorded in the company's books, register of charges and duly registered.

(h) Any Change in the Company's Constitution or Offices:

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Whenever there is any change in the constitution like Memorandum or in respect of company's offices, it has to be communicated in writing to the bank and it should not in any way affect the earlier contracts entered into by the company with the bank. To this effect, the bankers usually take an undertaking from the company.

IX. Clubs, Associations and Educational Institutions:

Clubs, Associations and Educational Institutions are non-trading institutions interested in serving noble courses of education, sports etc. The banker should observe the following precautions in dealing with them:

(a) Incorporation:

A sports club, an association or an educational institution must be registered or incorporated according to the Indian Companies Act, 1956, or the Co-operative Societies Acts. If it is not registered, the organisations will not have any legal existence and it has no right to contact with the outside parties.

(b) Rules and by-laws of the Organisation:

A registered association or organisation is governed by the provisions of the Act under which it has been registered. It may have its own Constitution, Charter or Memorandum of Association and rules and by-laws, etc., to carry on its activities. A copy of the same should be furnished by the organisation to the banker to acquaint the latter with the powers and functions of the persons managing its affairs. The banker should ensure that these rules are observed by the persons responsible for managing the organisation.

(c) A Copy of Resolution of Managing Committee:

For opening a bank account, the managing committee of the organisation must pass a resolution—

- (i) Appointing the bank concerned as the banker of the organisation.
- (ii) Mentioning the name/names of the person or persons, who are authorised to operate the account.
- (iii) Giving any other directions for the operation of the said account. A copy of the resolution must be obtained by the bank for its own record.

(d) An Application Form:

An application form duly completed in all respects along with specimen signatures of the office bearers of the institution is quite essential for operation of the account.

(e) A Written Mandate:

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It is an important document which contains specific instructions given to the banker regarding operations, over drawing etc.

(f) Transfer of Funds:

All funds and cheques which are in the name of the Institution should be invariably credited to the Institution account and not to the personal or private accounts of the office bearers of the institution.

(g) Death or Resignation:

In case the person authorised to operate the account on behalf of an organisation or association dies or resigns, the banker should stop the operations of the organisation's account till the organisation nominates another person to operate its account.

X. Partnership Firm:

A partnership is not regarded as an entity separate from the partners. The Indian Partnership Act, 1932, defines partnership as the "relation between persons who have agreed to share the profit of the business, carried on by all or any of them acting for all." Partnership is formed or constituted on account of agreement between the partners and with the sole intention of earning and sharing profits in a particular ratio. Further, the business is carried on either by all the partners or some partners acting for all. The partners carry joint and several liabilities and the partnership does not possess any legal entity. A banker should take the following precautions while opening an account in the name of a partnership firm:

(a) Application Form:

A prescribed application form duly completed in all respects along with specimen signatures of the partners of firm is quite essential for operation of the account.

(b) Partnership Deed:

The banker should, very carefully examine the partnership deed, which is the charter of the firm, to acquaint himself with the constitution and business of the firm. This will help him to know his position while advancing funds to the firm.

(c) A Mandate:

A mandate giving specific instructions to the banker regarding operations, over- drawing etc., is quite necessary. It will enable the banker to handle the accounts according to the needs of the firm.

(d) Transfer of Funds:

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The banker has to be very careful to see that the funds belonging to the firm should not be credited to the personal or private accounts of the partners.

(e) Sanctioning of Overdraft:

While sanctioning funds by way of overdraft, the banker has to check up the partnership deed and examine the borrowing powers of the partners empowered to borrow and he can even ask for the financial statements of the previous years for information and perusal.

(f) Retirement of a partner:

On notice of retirement of a partner, the bank closes the existing account and opens a new account of the firm with the remaining partners or along with the new partner if admitted to the new firm.

(g) Death of a partner:

Death of a partner dissolves the partnership. However, for the purpose of winding up of the firm, the bank may allow the surviving partner(s) to operate the firm's account, if the account is in credit. Cheques drawn by a partner before his death and presented for payment are honoured after obtaining confirmation of the surviving partners.

Dissolution of a partnership firm:

Dissolution of a firm amounts to the breaking up of relation of partnership between all the partners. In the event of dissolution banks do not permit operations in the account. A partnership firm may be dissolved by any of the following Modes

- (a) By mutual agreement between all the partners.
- (b) By notice of dissolution in case of partnership at will.
- (c) By operation of law or compulsory dissolution of the firm.
- (d) By happening of certain contingencies such as death or insolvency of a partner.
- (e) Dissolution by Court of Law in cases like insanity, permanent incapacity, misconduct of a partner affecting business etc.

XI. Joint Accounts:

When two or more persons open an account jointly, it is called a joint account. The banker should take the following precautions in opening and dealing with a joint account:

- (a). The application for opening a joint account must be signed by all the persons intending to open a joint account.
- (b). A mandate containing name or names of persons authorised to operate an account.

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(c). The full name of the account must be given in all the documents furnished to the banker, even if the account is to be operated upon by one or a few of the joint account holders.

(d) Banker must stop operating an account as soon as a notice of death, insolvency, insanity etc., of any one account holder is received.

(e) The joint account holder, who is authorised to operate the joint account, himself alone cannot appoint an agent or attorney to operate the account on his behalf. Such attorney or agent may be appointed with the consent of all the joint account holders.

(f) If all the persons are operating the account, then banker must see that any cheque drawn on him is duly signed by all.

(g) Banker must stop making payments as soon as letter of revocation is obtained.

(h) Banker must see that no loan or overdraft is granted without proper security.

XII. Joint Hindu Family:

Joint Hindu family is an undivided Hindu family which comprises of all male members descended from a common ancestor. They may be sons, grandsons and great grandsons, their wives and unmarried daughters. "A joint, Hindu family is a family which consists of more than one male member, possesses ancestral property and carries on family business." Therefore, joint Hindu family is a legal institution. It is managed and represented in its dealings and transactions with others by the Kartha who is the head of the family. Other members of the family do not have this right to manage unless a particular member is given certain rights and responsibilities with common consent of the Kartha. The banker has to exercise greater care in dealing with this account.

(a) He must get complete information about the joint Hindu family including the names of major and minor coparceners and get a declaration from the Kartha to this effect along with specimen signatures and signatures of all coparceners.

(b) The account should be opened either in the personal name of the Kartha or in the name of the family business.

(c) The documents should be signed by the Kartha and major coparceners.

(d) The account should be operated on only by the Kartha and the authorised major coparceners.

(e) While making advances, the banker should ascertain the purpose for which the loan is obtained and whether the loan is really needed by the joint Hindu family for business.

XIII. Trustees:

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According to the Indian Trusts Act, 1882, “a trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in an accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.” As per this definition, a trustee is a person in whom the author or settler reposes confidence and entrusts the management of his property for the benefit of a person or an organisation who is called beneficiaries. A trust is usually formed by means of document called the “Trust Deed.”

While opening an account in the names of persons in their capacity as trustees the banker should take the following precautions:

- (a) The banker should thoroughly examine the trust deed appointing the applicants as the trustees.
- (b) A trust deed which states the powers and functions of trustees must be obtained by the banker.
- (c) In case of two or more trustees, the banker should ask for clear instructions regarding the person or persons who shall operate the account.
- (d) In case of death or retirement of one or more trustees, banker must see the provision of the trust deed. On the death of one of the trustees, the trust property passes to the other trustees as per the provisions of the trust deed. If the deceased is the sole trustee, his executor has no right to recover the trust money. The executor, however, has the right to appoint a new trustee, provided the deceased trustee has in his will specifically authorized such an appointment.
- (e) The banker should not allow the transfer of funds from trust account to the personal account of trustee.
- (f) The banker should take all possible precautions to safeguard the interest of the beneficiaries of a trust, failing which he shall be liable to compensate the latter for any fraud on the part of the trustee.
- (g) The insolvency of a trustee does not affect the trust property and the creditors of the trustee cannot recover their claims from trust property.
- (h) A copy of the resolution passed in the meeting of trustees open the account should be obtained.

XIV Co-Operative Societies & Co-Operative Banks:

Co-operative institutions are authorised to open accounts under the Cooperative Societies Act only with banks, which are recognised for the purpose. Our Bank has been recognised for accepting funds of co-operative societies. It is, however, for the co-operative society or the co-operative bank to obtain permission from the Registrar of Co-operative Societies in the State concerned to invest their funds in the Bank.

The bank is not affected by the omission on the part of the society or the co-operative bank to obtain the Registrar's permission to open the account or even to observe the limits imposed on it by the Registrar on the amount and period of

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the deposit lodged with the Bank. These are matters of internal routine of the co-operative institution, whose compliance can be presumed by the Bank.

While opening the account, the branch should call for the following documents:

- (i) Certificate of registration of the society or the Bank;
- (ii) Certified copy of the byelaws of the society or the Bank;
- (iii) Resolution of the managing committee appointing the Bank as its banker and stipulating the conditions for the conduct of the account.
- (iv) List of members of the managing committee with the copy of the resolution electing them to the committee. In case of accounts of co-operative banks, bank obtains a copy of the licence issued by RBI.

XV Unincorporated Associations:

Banks open accounts of unincorporated associations and clubs started for purposes of sports, recreation, promotion of fine arts, education etc. Accounts are opened for reliable and reputed parties. These unincorporated associations have no legal entity. While opening the account in the name of the association, bank makes detailed inquiry into the existing rules, regulations and byelaws governing such associations. All usual formalities for opening the account are adhered to by the bank viz. obtaining account-opening form, specimen signature card etc.

Bank also obtains certified copy of the resolution passed by the Governing Body or the Managing Committee of the club/ association for opening of the account in the bank and names of the office bearers authorised to open and to operate the account on behalf of the club/ association duly certified by the Chairman are obtained. Banks generally do not permit account to go into debit, even for temporary period. Bank does not collect cheques in the personal accounts of the office-bearers, payable to associations.

XVI Accounts of Religious and Charitable Trusts:

To regulate public religious and charitable trusts some States have passed Acts. These charitable trusts are registered with the Charity Commissioner or the Assistant Charity Commissioner of the region concerned. A Certificate of registration is issued to these trusts by the authorities. Mostly these trusts do not have a properly written trust deed. Bank opens account of religious and charitable trusts on merits and on being satisfied as to the integrity of the trustees and their status.

Opening and operations of account:

While opening account bank obtains following documents in addition to account opening form duly signed by the trustees.

- A resolution specifying the name of the bank passed in a proper meeting held by all the trustees.
- Indemnity signed by all the trustees, indemnifying the bank for having allowed operations on the trust account.
- Banks do not permit operations in the account by one person.
- Reasonable number of members is required for opening and operating the account.

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- If the number of trustees is larger, then the number of person operating the account has to be large.
- Bank periodically obtains confirmation of balance in the account, signed by all the trustees.
- Wherever possible, order or direction from the Charity Commissioner is obtained, permitting the bank to allow operations on the trust account in the manner approved by the trustees.

XVII Provident Fund Accounts:

Provident fund accounts are treated as trust accounts. In case a provident fund is recognised by the income tax authorities, a certificate to that effect issued by the concerned Commissioner of Income Tax, should be obtained for registration with the Bank. It should be recorded in the Power of Attorney Register. This certificate is to be obtained in addition to all other credentials mentioned earlier.

XVIII Executors and Administrators:

Executors and administrators are persons appointed by a person through a will to manage the affairs of his estate after his death. The person appointing an executor in his will is known as testator. There can be more than one executors or administrators. Sec.311 of Indian Succession Act, 1925 deals with the powers of several executors or administrators exercisable by one. If the person has not appointed any one to manage the affairs of his estate after his death court appoints administrator for the purpose.

An administrator derives power to deal with the estate of the deceased from the letters of administration issued by the Court. The estate of the deceased vests in the executor from that date of letters of administration. Banks generally do not permit an executor to deal with the moneys or securities of the deceased until he produces the probate as the evidence for his title. In law, executors and administrators constitute a single person. In the absence of any mandate to the contrary, either or any one of the two or more executors or administrators can open and operate the account and deal with the estate of the deceased without a written authority from the others.

Opening of Account of Executors and Administrators:

Bank obtains account opening form duly signed by all the executors or administrators and obtains clear instructions as to the manner in which the account will be operated.

- Bank also obtains copy of probate or letters of administration in original for scrutiny and registration in their books.
- Bank ascertains identity of executors or administrators for their satisfaction. (KYC norms)

An executor or administrator has no right to delegate his authority to an outside party, not being co-executor or administrator. Any one of the executors or administrators can countermand the actions of the others. Cheques drawn or payable to the executor or administrator's account are not collected for credit of their personal accounts without inquiry.

XIX Liquidators:

A company can go into liquidation either voluntary or by the orders of court. In case a company goes in to liquidation by the orders of court, it appoints a liquidator Under Section 552 of the Companies Act, 1956. The liquidator

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so appointed by courts is known as official liquidator. When a company goes into voluntary liquidation, it appoints liquidators at its extraordinary general meeting convened for the purpose. Official liquidators have to deposit the moneys only into the public account of the Government of India with the Reserve Bank of India. Official liquidator cannot open accounts with scheduled banks. In case of voluntary winding up, authority to operate account by the liquidator is passed in the general meeting.

XX Local bodies:

Banks open accounts of local bodies include Municipal Corporation, Panchayat, Board etc., created by special act of the parliament or legislative Assembly.

a) Accounts of Village Panchayats:

Banks open accounts of village panchayats/district/taluka after getting a copy of the resolution passed by the Panchayat of the Village or Taluka of the District concerned. In various states the village panchayat is governed by the Panchayat Raj Acts passed by the respective state governments. While opening such accounts banks refer to the Act for ascertaining the nature of transactions permitted by the Act.

The accounts of village panchayats are operated only by the President or Sarpanch. The Vice-President (Vice Sarpanch) of the Panchayat can operate the account only in the absence of the President (Sarpanch) only after the written authority of the sarpanch. Accounts of village panchayats/district/taluka are opened and styled as "President (or Sarpanch) Gram/Panchayat".

b) Local Authorities/bodies:

Banks open accounts of local authorities like municipalities, district boards, port trust, state financial corporations and such bodies created by statute. These are considered as local bodies or quasi- government institutions. While opening accounts of such authorities' banks go through the municipal enactments and regulations. Transactions in account are permitted strictly in accordance with the statutory provision.

A banking institution solicits deposits of money from the members of the public. An account in a bank for this purpose may be opened by any person who (i) is legally capable of entering into a valid contract, (ii) applies to the banker in the proper manner, i.e., he follows the procedure laid down by the banker and accepts the terms and conditions stipulated by the latter. The banker, however, possesses the right to reject an application for opening an account, if he is not satisfied with the identity of the applicant, i.e., if the latter is deemed to be an undesirable person. Some persons like the minors, lunatics and drunkards are not competent to enter into valid contracts. Some persons who act on behalf of others have limitations on their power to contract, e.g., the agents, trustees; executors etc., Institutions like schools, colleges, clubs, societies, and corporate bodies are the impersonal customers of a banker. The authority power and functions of the persons managing these institutions are embodied in their respective constitutions. The banker should, therefore, take special care

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and precautions to ensure that the accounts of these institutes are being conducted in accordance with the provisions of their respective charters. A banker should know the legal position of the special classes of customers and the necessary precautions to be taken while dealing with them.

GARNISHEE ORDER:

The term 'garnishee' is derived from the Latin word 'gamire' which means 'to warn'. This order warns the holders of money of judgments debtor, not to make any payments out of it till the court directs. Garnishee order is issued by the court at the request of the judgments creditor.

A garnishee order is an order issued by the court, at the instance of judgment creditor to the garnishee first attaching the funds of the judgment debtor lying with the garnishee and later directing him to pay the same to the judgment creditor if he does not have any objection to do so.

Let us see how a garnishee order can affect the relationship between the banker and the customer. Suppose Mr. A is the customer of SBI. He has taken a loan from his friend Mr. B. But Mr. A fails to repay the loan to Mr. B and as a result Mr. B files a case against Mr. A. Now Mr. B requests the court to issue an order on the bank of Mr. A directing the banker (SBI) not to make any payment from the available balance in the account of Mr. A. If the court issues such an order, it is known as 'Garnishee Order'. Here, Mr. A (debtor) is known Banking Law and Operations as 'judgement debtor', Mr. B (creditor) is known as 'judgement creditor' and the SBI is known as 'garnishee'.

The garnishee order is issued in two phases. First, 'order nisi' is issued directing the garnishee (banker) not to make any payment from the account of the garnishee debtor. The garnishee is asked to give his reply in the court whether the funds in the account of the garnishee debtor can be appropriated towards the payment of the particular debt in question. If the garnishee has no objection, then in the second phase the court issues the 'order absolute' i.e. the garnishee order, to make the payment to garnishee creditor to satisfy the debt from the account of the judgement debtor. Then the banker's obligation to the customer (garnishee debtor) is discharged to that extent.

The banker as garnishee has to discharge the following duties on receipt of the garnishee order.

- 1) He must issue notice to his customer regarding the garnishee order received against his account.
- 2) The banker should also inform, whether the entire amounts are attached or only a part of it is subjected to garnishee order.
- 3) He should advise the customer to open a new account for future operations, as the existing account cannot be operated because of attachment under garnishee order.
- 4) Banker has no right to surrender the amount to the court until the 'order Absolute' is received.
- 5) He can ask the customer to raise any objection against the garnishee order.

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Conditions to be satisfied for the operation of a garnishee order served on a banker:

- The customers' account must be in credit.
- The account should belong to the customer in his own right and should not be held as a trustee or jointly with another person.
- If the garnishee order attaches several accounts held by the customer, then all the accounts must be held by him in the same right or capacity.
- The debt to be attached by a garnishee order must be actually due or accruing due at the time the order to be served.
- The garnishee order must state the name and the address of the customer accurately.

Application of the Garnishee Order to Various Types of Account

(a) Joint Accounts :

A joint account is opened in the names of two or more persons. *If only one of them is a judgement-debtor, the joint account cannot be attached.* But, if both or all the joint account-holders are joint judgement-debtors in any legal proceedings, the joint account can be attached. For example, if A owes a debt of ₹ 1,000 to B in his personal capacity, the latter cannot pray for the attachment of a joint account in the names of A and C. But if A and C are jointly responsible for the debt, their joint account may be attached. But the reverse is possible, i.e., in the case of a debt jointly taken by two or more joint judgement-holders, their individual accounts with the banks may be attached because each one of them is jointly and severally liable for the loans jointly taken by them.

- **Partnership Account:**

In case of debt taken by a partnership firm, the personal accounts of the partners can also be attached in addition to the account in the name of the firm because the liability of partners is both joint and several. But the reverse is not possible. If a partner is a judgement-debtor, only his individual account may be attached and not that of the firm or those of other partners.

- **Trust Accounts:**

A trustee holds the funds or property of some else for the benefit of the beneficiary. An account opened in the personal name of the Trustee, in his capacity as such, cannot be utilized for paying his personal liabilities. The banker should, therefore, inform the court that the account is a Trust account and in the meanwhile stop payments from the account and instruct the Trustee.

Rights of the Attaching Creditor

When the garnishee deposits the attached amount in the Court, the attaching creditor (or judgement-creditor) becomes a secured creditor. In *Rikhabchand Mohanlal Surana vs. The Sholapur Spinning and Weaving Co. Ltd.*

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(76 Bombay Law Reporter 748) the High Court held that – “While the attachment is only by a prohibitory order then the attaching creditor has no rights in the property attached, but once the property or moneys come into the possession of the Court for the attaching creditor. The Court does not hold the money for the debtor more so when the garnishee obtains complete discharge by making payment in Court.”

PAYING AND COLLECTING BANKERS

The term 'Collecting Banker' refers to the function of receiving cheques by a banker from his customers for the purpose of collecting the proceeds and crediting them to the respective customers account, i.e, the banker who is assigned the job of collecting the amount of cheque from another banker, is called the collecting banker.

A collecting banker is one who undertakes to collect the amount of a cheque for his customer from the paying banker. A banker is under no legal obligation to collect cheques drawn upon other banks for a customer will be satisfied merely with the function of payment of cheque alone. Moreover, in-the case of crossed cheque, there is no other alternative to collect the cheques except through some banker. In rendering such service, a banker should be careful, because, he is answerable to a number of people with whom he has no contractual relationship and any negligence or carelessness on his part may land him in difficulties.

DUTIES AND RESPONSIBILITIES OF A COLLECTING BANKER

(i) **Exercise Reasonable Care and Diligence in his Collection Work:** when banker collects a cheque for his customer, he acts only as an agent of the customer. As an agent, he should exercise reasonable care, diligence and skill in collection work. He should observe almost care, care when presenting a cheque or a bill for payment. Reasonable care and diligence depends upon the circumstances of each case.

(ii) **Present the cheque for collection without any delay:** the banker must present the cheque for payment without any delay. If there in delay in presentment, the "customer may suffer" losses due to the insolvency of the drawer or insufficiency of funds in the account of the drawer or insolvency of the banker himself. In all such cases. The banker should bear loss.

(iii) **Notice to customer in the case of dishonour of a cheque:** if the cheque, he collects, has been dishonoured, he should inform his customer without any delay. The Negotiable Instruments Act has prescribed a reasonable time for giving the notice of dishonour. If he fails to do so, and consequently, any loss arises to the customer, the banker has to bear the loss.

(iv) **Present the bill of acceptance at an Early Date:** As per Sec: 61 of the Negotiable Instruments Act, a bill of exchange must be accepted. Acceptance gives an additional currency to the bill, because, the drawee becomes liable thereon from the date of acceptance. Moreover, in the case of a bill of exchange payable after sight, acceptance, is absolutely essential to fix the date of maturity. If banker undertakes to collect bills, it is his duty to present them for acceptance at early date. Sooner a bill is presented and got accepted, earlier is its maturity.

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(v) **Present the bill for Payment:** the banker should present bills for payment in proper time and at proper place. If he fails to do so, and if any loss occurs to the customer, then, the banker will be liable, according to Sec 66, of the Negotiable Instruments Act a bill must be presented on maturity. As per Sec.21, sight bills are payable on demand. Sec.22 lays down that the maturity of the bills is the date on which it is due for payments, to which, 3 days of grace are added.

(vi) **Protest and Note a Foreign bill for Non- Acceptance:** in case of dishonor of a bill by non-payment, it is the duty of the collecting banker to inform the customer immediately. Generally, he returns the bill to the customer. In the absence of specific instructions, collecting bankers do not get the- inland bills noted and protested for dishonor, If the bill in question happens to be a foreign bill; the banker should have it protested and noted by a Notary Public, and then, forwarded it to the customer.

CAPACITY OF COLLECTING BANKER

While collecting the instrument on behalf of the customer, the collecting banker acts

- (a) As holder for value
- (b) Holder in due course
- (c) As agent for collection

(a) As holder for value:

The collecting banker is said to be acting as holder for value.

1. When the collecting banker advances money to the customer before the realization of the cheques given for collection.
2. When the collecting banker settles the loan amount due from the customer with the cheque amount given for collection, even before its realization.
3. Where a collecting banker reduces an overdraft with the amount for collection before its realization.
4. Where a part of the amount is given by the collecting banker to the customer even before the realization of the cheque.
5. By allowing the customer to draw the full amount of the cheque before its realization.

Holder

According to Section 8 of the Act a person is a holder of a negotiable instrument who is entitled in his own name (i) to the possession of the instrument, and (ii) to recover or receive its amount from the parties thereto. It is not every person in possession of the instrument who is called a holder. To be a holder, the person must be named in the instrument

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as the payee, or the endorsee, or he must be the bearer thereof. A person who has obtained possession of an instrument by theft, or under a forged endorsement, is not a holder. as he is not entitled to recover the instrument. The holder implies de jure (holder in law) holder and not de facto (holder in fact) holder. An agent holding an instrument for his principal is not a holder although he may receive its payment.

Holder in Due Course

Section 9 states that a holder in due course is (i) a person who for consideration, obtains possession of a negotiable instrument if payable to bearer, or (ii) the payee or endorsee thereof, if payable to order, before its maturity and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In order to be a holder in due course, a person must satisfy the following conditions:

1. He must be the holder of the instrument.
2. He should have obtained the instrument for value or consideration.
3. He must have obtained the negotiable instrument before maturity.
4. The instrument should be complete and regular on the face of it.
5. The holder should take the instrument in good faith.

For Example, anyone who accepts a third party cheque is a holder in due course. In other words, the holder in due course is the holder of a bill who meets certain additional requirements. The holder in due course has the same rights as the holder for value, but also holds the bill free from any defect in title of prior parties and free from personal defenses between previous parties.

On receiving cheques drawn on other banks the customer deposits them in his own bank and requests the banker to collect them and credit the proceeds to his account. The bank executes this service for the customer.

After receiving a cheque for collection from the customer, the banker acts as the agent of the customer, but the banker becomes a holder when pays the amount of the cheque or credits the amount of the cheque to his customer in anticipation of collection. The banker becomes a 'holder in due course' if the conditions attaching to the term are satisfied.

(b) As agent for collection:

When the banker undertakes to collect the cheques and credits the account of the customer only on realization. Thus, in acting as agent for collection, there is no risk for the collection, there is no risk for the collecting banker whereas in the case of holder for value, the collecting banker has enormous risks, especially when the cheque is dishonored or payment has been made to the wrongful owner of the cheque.

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STATUTORY PROTECTION OF COLLECTING BANKER

Statutory protection to collecting banker under Section 131 of the Negotiable Instrument Act According to this Section, "A Banker who has in good faith received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective incur any liability to the true owner of the cheque by reason only of having received such payment".

Thus, Sec., 131 protects the collecting banker against an action of conversion. Of course, this a very high privilege given to the collecting banker. Here, the banker is protected to a certain extent even against the equity principles of law i.e., the object of law is always to protect the rights of the true owner.

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

1. Collecting for a customer:

A collecting banker must collect the cheque or draft or any other instrument only for a customer. A customer is one who has an account opened with the bank which may be a savings or a current account. A savings account can be opened by any person, only when that person is introduced by another savings account holder of the same branch of the bank.

2. The cheque presented to the bank for collection should be crossed

That is, the banker is collecting the cheque only on behalf of a customer. If a customer gives an open cheque which is uncrossed, the banker will cross the cheque before it is sent for collection.

3. In good faith:

A collecting banker should accept the cheque for collection from the customer on good faith.i.e., there should not be any ambiguity with regard to the ownership of the cheque. If any doubt arises, the banker should clarify the same before the collection of the cheque.

4. Without negligence:

Negligence pertains not only with regard to the instrument but also the manner and the circumstance under which the cheque is given for collection. However, the fact of negligence will be seen under the duties of collecting banker. There are number of instances revealing the negligence of the collecting banker.

5. Agent for collection:

Section 131 gives statutory protection to the collecting banker acts agent for collection and not as holder for value.

PAYING BANKER

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The paying banker is the bank whose name is printed on a given cheque. This bank pays the specified amount by the cheque to the collecting banker and withdraws that amount from the customer's account. This is only done if the customer has sufficient funds within their account in order to enable the transaction.

It is also the duty of the paying banker to examine the cheque and ensure that it has been properly signed, the endorsements are correct and that the cheque is generally in order. In the case of bills, it is part of the paying banker's duty from instruction by the customer to pay them. Otherwise the banker is not legally required to do so. The paying banker is considered a party to a given cheque as they are considered the drawee; however a bill is merely left with the banker to take care of and has no part in it.

Meaning of Paying Banker

A Paying banker is one who is a drawee of a cheque. He takes the responsibility of making payment on a cheque to the true owner. Any wrong payment will make the paying banker liable to the true owner of cheque and also to the drawer of the cheque (one who has drawn the cheque).

Payment in due course (Section 10)

Section 10 of the Negotiable Instruments Act, 1881 clearly mentions the manner in which the paying banker should make payment on a cheque when presented to him and demanded payment. Section 10 defines "Payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned".

PRECAUTIONS OF PAYING BANKER

1. Proper Form

On receiving the cheque, the paying banker must see that the cheque must be in the proper form as supplied by the banker. The cheque should not be torn or mutilated.

2. Place of presentment of Cheque

The paying banker must see the account against which the cheque has been drawn is maintained in the same branch. If the cheque is drawn against an account which is maintained in some other branch of the bank, the paying banker should refuse to pay the amount.

3. Date of the Cheque

The paying banker must be cautious regarding the time of presentation and payment date of the cheque. A cheque must be presented for payment within the normal business hours of the bank. Moreover, the banker must see the date for

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payment. Because a cheque can be honoured only on the date of payment as mentioned on the cheque or within three months from that date. At the same time, a cheque without date or a post- dated cheque before the due date cannot be paid.

4. Words & figures

Another aspect that the paying banker must observe is that the amount of the cheque must be written both in figures and in words and they must be similar.

5. Alteration & Over writing

The paying banker must be cautious about the material alteration of the cheque. Material alteration means altering the contents of the cheque to make it invalid. If such material alteration is visible, the banker can make the payment of the cheque only after getting full signature of the customer at the places of material alteration.

6. Verification of Drawer's Signature

Signature of the customer is another important aspect where the banker must exercise due care. The signature of the customer on the cheque must be similar with the specimen signature that he has given at the time of opening the account.

7. Open cheque or crossed cheque

The paying banker must also see whether the cheque is an open cheque or a crossed cheque and accordingly make the payment. The paying banker must also be careful about the validity of the endorsement, if any, on the cheque.

8. Sufficiency of Funds

The banker should see whether the credit balance in the customer's account is sufficient to pay the cheque or not. If there is an over draft agreement, then should see that the limit is not exceeded. The banker should not make part payment of the cheque. The banker should pay either full amount or refuse payment.

DUTIES AND RESPONSIBILITIES OF A PAYING BANKER

Section 31 of the Negotiable Instruments Act provides that " the drawee of a cheque having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required to do so, and in default of such payment must compensate the drawer for any loss or damage caused by such default."

Obligation of Paying Banker to Honour Cheques

The paying banker is under an obligation to honour cheques subject to the fact that certain conditions are satisfied.

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1. There must be sufficient funds in the customer's account and only in the account on which the cheque is drawn. The amounts in the credit of the customer's account in other branches will not be considered.

2. The funds should be properly applicable to the payment of such cheques.

3. The cheque should be properly drawn and should not be irregular or ambiguous.

4. Cheques should be presented during the banking hours of the bank.

5. Cheques should be presented for payment within a reasonable time. They should be presented within three months of their issue. Usually, cheques presented after three months of their issue are considered stale.

STATUTORY PROTECTION TO PAYING BANKER

1. Protection in case of order cheque :

In case of an order cheque, Section -85(1) provides statutory protection to the paying banker as follows : "Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course". However, two conditions must be fulfilled to avail of such protection.

(a) Endorsement must be regular : To avail of the statutory protection, the banker must confirm that the endorsement is regular.

(b) Payment must be made in Due Course : The paying banker must make payment in due course. If not, the paying banker will be deprived of statutory protection.

2. Protection in case of Bearer Cheque :

Section -85(2) provides protection to the paying banker in respect of bearer cheques as follows: "Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or blank appearing thereon and notwithstanding that any such endorsement purports to restrict or exclude further negotiation". This section implies that a cheque originally issued as a bearer cheque remains always bearer. In other words, it retains its bearer character irrespective of whether it bears endorsement in full or in blank or whether any endorsement restricts further negotiation or not.

So the banks are not required to verify the regularity of the endorsement on bearer cheque, even if the instruments bear endorsement in full. The banker shall free from any liability (discharged) if he makes payment of an uncrossed bearer cheque to the bearer in due course. If such cheque is a stolen one and the banker makes its payment without the knowledge of such theft, he will be discharged of his obligation and will be protected under Section -85(2).

3. Protection in case of Crossed cheque :

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The paying banker has to make payment of the crossed cheques as per the instruction of the drawer reflected through the crossing. If it is done, he is protected by Section -128. This section states "Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights, and be placed in if the amount of the cheque had been paid to and received by the true owner thereof".

It is clear that the banker who makes payment of a crossed cheque is by the Section -128 given protection if he fulfills two requirements (a) That he has made payment in due course under Section -10 i.e. in good faith and without negligence and according to the apparent tenor of the cheque, and (b) That the payment has been made in accordance with the requirement of crossing (Section -126), i.e. through any banker in case of general crossing and through the specified banker in case of special crossing.

Thus, the paying banker is free from any liability on a crossed cheque even if the payment was received by the collecting banker on behalf of a person who was not a true owner. For example, a cheque in favour of X is stolen by Y. He endorses it in his own favour by forging the signature of X and deposits it in his bank for collection. In this case, the paying banker shall be discharged if he makes payment as mentioned above and shall not be liable to pay the same to X, the true owner of the cheque.

The drawer of the cheque is also discharged since protection is also granted to him under this Section. There is, however, one limitation to the protection granted under this Section. If the banker cannot avail of the protection granted by other Section of the Act, the protection under Section -128 shall not be available to him.

For example, if the paying banker makes payment of a cheque crossed with (a) Irregular endorsement or (b) A material alteration or (c) Forged signature of the drawer, he loses statutory protection granted to him under the Act for these lapses on his part. Hence he cannot avail of the statutory protection under Section -128, even if he pays the cheque in accordance with the crossing.

PAYMENT IN DUE COURSE

Analysis of section 10 reveals that the following conditions must be satisfied before a payment of a negotiable instrument can be called as a payment in due course.

1. Payment in accordance with apparent tenor:

When a paying banker receives cheques, he has to carefully go through the instructions given by the drawer. For example, if the drawer has issued a cheque dated 10th June 2000, Payment cannot be made before the date. If the cheque is crossed, then the banker cannot make payment across the counter.

2. In good faith:

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

3. Without negligence:

The paying banker has to go through the contents of cheque before making payment. If the cheque contains any alteration, overwriting or cancellation, payment cannot be made. Sometimes, the cheque may also contain " material alteration".

4. To the person in possession:

Paying banker can make payment to a holder in due course only when he is in possession of the instrument. Possession is a must for a holder in due course. For a holder it is not a must. Thus, a paying banker should make payment only to that person who is in possession and presents the cheque for payment.

5. Circumstances:

Even though the person presenting the cheque may fulfill all conditions, but still creates a doubt in the minds of the paying banker at the time of making payment, the paying banker must get it clarified before making payment. There are instances where the amount of the cheque and the status of the presenting the cheque are inconsistent.

DISHONOUR OF CHEQUE

The bank should pay the amount mentioned on the cheque as soon as it is presented. If the amount of cheque is paid by the bank to the payee, the cheque is said to be honored. If the bank refuses to pay the amount of cheque, then the cheque is said to be dishonored. Thus the dishonored of the cheque means the refusal by the bank to pay the amount of cheque to the payee. It is a condition in which the bank does not pay the amount of the cheque to the payee. In fact, when the drawer draws the cheque without following all the rules of issuing cheque or when he/she draws the cheque exceeding the bank balance then the bank dishonors the cheque.

CONDITIONS FOR DISHONOUR OF A CHEQUE BY A PAYING BANKER

1. If the date is not written or written incorrectly or the date given is of three months before or if the advance date is given.
2. If the name of the payee is not written or not written clearly.
3. If the ordered or crossed cheques are transferred without proper endorsement and delivery.
4. If the amount is not written in words and figures or written incorrectly or if the amount written in words and figures does not match with each other.
5. If the alteration made on the cheque is not proved by the drawer giving signature.

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6. If the account number is not mentioned or if it is not clear or if it is not mentioned clearly.
7. If the signature is not given or if the signature given in the cheque does not match with the signature given on the signature specification card kept by the bank.
8. If the amount mentioned on the cheque is more than the amount that the drawer has in his bank account or if as per bank's rule the minimum balance in the account of the drawer cannot remain.
9. If the cheque is overwritten.
10. If the cheque is not found in proper condition or it is found wet, torn or spotted.
11. If the drawer has given order to the bank to stop payment of the cheque.
12. If the bank has got the information regarding the death or insolvency or lunacy of the drawer or depositor.
13. If the court of law orders the bank to stop payment of the cheque.
14. If the bank balance remains shortage on account of not collecting the cheque deposited.
15. If the drawer has closed his/her account before presenting the cheque.

GROUND'S FOR REFUSING PAYMENT OF A CUSTOMER'S CHEQUE

Dishonoring a cheque is different from refusing payment on a cheque. Dishonour takes place when there is defect in the instrument or when there are insufficient funds in the accounts. Refusing payment of a cheque takes place on the happening of certain events. We can see the grounds under which a bank refuses payment.

1. Countermanding of payment:

When a customer after having issued the cheque to third party, instructs the banker to stop payment on the cheque before the instrument is presented, it is called countermanding of payment. It is the responsibility of the customer to inform the banker before the payment is affected.

2. Death of customer:

Notice of death of customer has to be given by the close relative of the deceased. On receipt of the notice, banker will close the account and any cheque received thereafter, payment will be refused.

3. Insolvency of the customer:

When the court adjudged the customer of a bank as insolvent, the account of that customer will be taken over by an official assignee appointed by the court. Hence, any cheque received thereafter will be refused payment.

4. Lunacy (Mental Illness):

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When a customer is of unsound mind, his account cannot be operated. But the lunacy of the customer has to be certified by a doctor and the nature of the lunacy must also be stated. If it is of a temporary nature, the account may be suspended till such time the lunacy is cured. But when the lunacy is of a permanent nature, on the advice of the doctor, the account will be closed and cheques received thereafter will be refused payment.

5. Garnishee order:

Here, the court gives order to the bank to close the account of the customer partially or completely and according to that order cheques will be refused payment.

6. Closing of account voluntarily:

When the customer on his own accord, closes the account by giving a written declaration, the bank will close the account. But, the customer has to surrender all the unused cheques and the passbook. The banker will close the account after arriving at the balance. The amount will be paid to the customer.

7. Assigning the entire balance to a third party:

When a customer gives in writing to the bank to assign his entire credit balance to a third parties' account, the bank will close the account automatically.

8. Undesirable customer:

When a customer issues cheques frequently with insufficient funds, these are dishonored causing embarrassment, both to the banker and customer. Such a customer will be intimated by the banker to close the account, failing which the banker on his own will close the account and will send the balance, if any, to the customer.

9. Partnership firms, companies and institutions:

Their account will be operated according to the bye-law. In the case of death of a partner, winding up of companies or dissolution of institutions, the account will be closed.

10. In public interest:

When a banker comes to know that the account holder is building an account by cheating the public, he may close the account by giving notice to the party. The bank does this in the interest of the public and prevents the public from incurring any monetary loss.

The responsibility of a collecting banker is to collect the amount specified on a cheque and/or bill from a paying banker. This amount is then deposited into the customer's account. No banker is under any legal obligation to collect money from other banks via cheques given by the customer, however most modern banks do perform this service.

If a banker, without justification, dishonours his customer's cheque, the banker makes himself liable to compensate the customer for any loss or damage. The words 'loss or damage' used in Section 31, not only mean the pecuniary loss but also loss of credit or injury to reputation of the customer. Thus, if the customer is a trader or a business man, the damages may be substantial. But, a non-trader is not entitled to recover substantial damages for the wrongful dishonour of his cheque. Thus, a non-trader may be awarded only nominal damages because of the absence of any special loss. In assessing the damages for injury to credit, the Courts give due consideration to various factors, such as financial position and business reputation of the customer and the customs of the trade to which he may belong.

PAYMENT BY BANK UNDER MISTAKE - WHETHER RECOVERABLE

The question whether a bank paying a forged cheque can recover the same from the payee was considered by the Calcutta High Court in *United Bank of India vs AT Ali Hussain & Co.* (AIR 1978 Calcutta 169). The High Court held that so long as the status quo is maintained and the payee has not changed his position to his detriment, he must repay the money back to the payer.

If, however, there has been a change in the position of the payee who, acting in good faith, parts with money to another without any benefit to himself before the mistake is detected, he cannot be held liable. Equity disfavours unjust enrichment. When there is no question of unjust enrichment of the payee by reaping the benefit of an accidental windfall he should not be made to suffer, for he would be as innocent as the payer who paid the money acting under a mistake.

Collection of cheques, bills of exchange and other instruments on behalf of a customer is an indispensable service rendered by a banker to his customer. When a customer of a banker receives a cheque drawn on any other banker he has two options before him – (i) either to receive its payment personally or through his agent at the drawee bank, or (ii) to send it to his banker for the purpose of collection from the drawee bank. In the latter case the banker, deputed to collect the amount of the cheque from another banker, is called the 'collecting banker'. He presents the cheque for encashment to the drawee banker and on its realization credits the account of the customer with the amount so realized.

A banker is under no legal obligation to collect his customer's cheques but collection of cheques has now become an important function of a banker with the growth of banking habit and with wider use of crossed cheques, which are invariably to be collected through a banker only.

While collecting his customer's cheques, a banker acts either (i) as a holder for value, or (ii) as an agent of the customer. The legal position of the collecting banker, therefore, depends upon the capacity in which he collects the cheques. If the collecting banker pays to the customer the amount of the cheque or credits such amount to his account

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and allows him to draw on it, before the amount of the cheque is actually realized from the drawee banker, the collecting banker is deemed to be its 'holder for value'. He takes an undertaking from the customer to the effect that the latter will reimburse the former in case of dishonour of the cheque.

Banker as a holder for value

A banker becomes its holder for value by giving its value to the customer in any of the following ways:

- by lending further on the strength of the cheque;
- by paying over the amount of the cheque or part of it in cash or in account before it is cleared;
- by agreeing either then or earlier, or as a course of business, that customer may draw before the cheque is cleared;
- by accepting the cheque in avowed reduction of an existing overdraft; and
- by giving cash over the counter for the cheque at the time it is paid in for collection.

In any of these circumstances the banker becomes the holder for value and also the holder in due course. He bears the liability and possesses the rights enjoyed by the holder for value. If the last but one endorsement is proved to be forged, he will be liable to the true owner of the cheque. But he shall have the right to recover the money from the last endorser, i.e., his own customer, if the customer is unable to pay, the banker himself will bear the loss. If the cheque sent for collections returned dishonoured, the collecting banker can sue all the previous parties after giving them notice of dishonour. It is, however, essential that the amount of the cheque is paid to the customer in good faith.

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.

Correspondingly, the bank records them in the customer's account maintained in its books. Then they are copied in a passbook and given to the customer. With the computerization of banking operations, bank statements (in lieu of passbook) are issued to the customers periodically.

Thus passbook is a record of the banking transactions of a customer with a bank. All entries made by a customer in his cashbook (bank column) must be entered by the bank in the passbook.

Hence, the balances as per bank column of the cashbook must agree with the balance as per passbook. Of course the balances will be equal and opposite in nature. For example, if the cash book shows a debit balance of Rs.5000, then the passbook must show a credit balance of Rs.5000 and vice versa. But in most cases, these two balances may disagree on account of various reasons.

Format of a Bank Passbook or Bank Statement:

Name of the bank_____

Address of the bank_____

ADVERTISEMENTS:

Account No._____

Customer Name:_____

Address of the customer._____

Date	Particulars	Cheque No.	Withdrawals (debits)	Deposits (credits)	Balance	Initials

NEGOTIABLE INSTRUMENTS

Many documents are used in the modern commercial world. But, certain documents are freely used in commercial transactions which are called negotiable instruments. 'Negotiable' means transferable whereas 'instrument' means a

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document, therefore negotiable instruments means a transferable document. A negotiable instrument is one the legal title of which can be transferred freely from all defects and the transferee can sue in his own name. But this negotiable instrument is not assignable, but transferable. Thus, negotiability "easy transferability from one person to another in return for consideration".

Negotiable Instruments Act

In India, the negotiable instruments are governed by the Negotiable Instruments Act of 1881. Sec.13 of the Negotiable Instruments Act simply states that "negotiable means promissory note of exchange or cheque payable either to order or to bearer ". Thus, Law recognizes three kinds of negotiable instruments, namely a cheque, a bill of exchange and a promissory note. But, in recent times because of mercantile usage or custom, certain other documents have been included in the category of Negotiable Instruments there are: dividend warrants, bearer bonds, bearer scrips debentures payable to bearer, share warrants to bearer and treasury bills.

Definition:

A Negotiable Instruments thus plays a key role in the modern business as a document which can be transferable with ease. Wills defines it as "one property is acquired by anyone who takes it bonafide and for value, notwithstanding any defects of title in the person from whom he took it."

Characteristics of Negotiable Instruments

- (i) **Free Transfer:** there is no formality to be complied with for the transfer of a negotiable instrument. It can be very easily transferred from one person to another, either by mere delivery or, by endorsement and delivery.
- (ii) **Transfer free from Defects:** it confers an absolute and goods title on the transferor has a bad title to the instrument, he can still pass on a good title to any holder, who takes it in good faith and without negligence and for valuable consideration. Thus, it cuts off prior defences in the instruments. This is a peculiar feature of a negotiable instrument.
- (iii) **Right to Sue:** it confers a right on the holders to Sue in his own name, in case of need.
- (iv) **No Notice to transfer:** the transferor of Negotiable Instruments can simply transfer the documents, without serving any notice of transfer, to the party who is liable on the instruments to pay.
- (v) **Presumptions as Negotiable Instruments:** Secs.118 and 119 of the Negotiable Instruments Act deal with certain presumptions which are applicable only to all Negotiable Instruments. For instance, it is presumed that the instrument has been always obtained for consideration. Likewise there are other presumptions regarding date time of acceptance, time of transfer, order of endorsements, stamp holder to be a holder in due course etc.

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(vi) **Credit of the party:** the credit of the party who signs the Instruments to the instruments. Therefore, such instruments will never be dishonored normally.

Types of Negotiable Instruments

In India law recognizes only three instruments as negotiable and they are:

- (i) Promissory note;
- (ii) Bill of Exchange
- (iii) Cheque.

PROMISSORY NOTE

A promissory note has been defined by Sec. 4 of the Act as follows: A "promissory note" is an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

The person making the promise to pay is called the "maker" and the person to whom the payment is to be made is called the "payee". Arun is the maker and Vijay is the payee. Thus a promissory note contains a promise by the debtor to the creditor to pay a certain sum of money after a certain date. Hence, it is always drawn by the debtor. He is called the 'maker' of the instrument.

Essentials of Valid Promissory Note:

1. It must be in writing:

A promissory note must be in writing. An oral promise cannot become a promissory note. It may be handwritten, typed or printed. It also includes writings in pencil.

2. An express promise to pay:

There must be an express promise to pay. It cannot be implied. A mere acknowledgement of a debt is not sufficient. For example, a promissory note, "I am indebted to pay B Rs. 500", is not a promissory note because there is not an express promise to pay but only an acknowledgement of debt. It should be noted that the use of the word 'promise' is not necessary. However, there must be clear intention to show an unconditional undertaking to pay.

3. Promise must be certain and unconditional:

The promise to be valid must not be uncertain or conditional, otherwise the instrument will be invalid.

4. The instrument must be signed by the maker:

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The instrument be signed by the maker even if it has been written by the promisor himself in his own handwriting. The law is not very particular about the place or form of signature. The signature may be done at any place, even at the top or at the back of the instrument. It is not necessary that the signature should be done at the bottom. The signature may be in full or mere initials. It may be in pencil or ink. Even a rubber stamp or facsimile may be used for the signature. The only thing is that it should prima facie show the intention of the maker to sign the instrument. In case the maker of the promote is illiterate, his thumb impression is sufficient.

5. The amount of the instrument must be certain:

The amount to be paid must be certain; otherwise the instrument will be invalid.

6. Promise to pay must be in legal tender money:

The promise to pay must be in legal tender money of India. It will be invalid if it is payable in foreign money or in goods.

7. Bank note or currency note is not a promissory note:

They have been expressly excluded from the definition as they are treated at par with money. In other words, a bank note or a currency note is money itself.

8. The parties must be certain:

The person making the promise, i.e., the person by whom the payment is to be made and the person to whom the payment is to be made must be certain. They may be named or their designations may be given. The maker may be a single person or may be more than one person. In case there are two or more persons, they will bind themselves jointly and severally or jointly but not alternatively. A promissory note payable to the maker himself is not valid promissory note, however, if it is endorsed by him, it becomes a bearer instrument and is valid.

9. Miscellaneous formalities:

Promissory note must be stamped according to the Indian Stamp Act, otherwise it will be inadmissible in evidence. However, other formalities like place of making the instrument, date or the words, "value received" are not necessary in law. In practice, however, these formalities are usually complied with. The date of the instrument can be proved independently.

BILL OF EXCHANGE

A bill of exchange has been defined under Section 5 of the Act as “an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to order of, a certain person or to the bearer of the instrument.” A bill of exchange is also called a draft.

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There are three parties to a bill of exchange, namely drawer, drawee and payee. The maker of the bill is called the drawer, the person who is ordered to pay is called the drawee and the person to whom or to whose order the money is directed to be paid is called the payee. In some cases, drawer and payee may be one person. The payee, or if, it is endorsed; endorsee is called the holder of the bill. The drawee of a bill of exchange who has signified his assent to the order of the drawer is called the acceptor. The acceptor becomes liable to the holder only when he has communicated his assent but not before.

Essentials of a bill of exchange:

In order that an instrument may be called a bill of exchange it should satisfy the following conditions:

1. It must be in writing.
2. It must contain an unconditional order to pay.
3. It must be signed by the drawer.
4. There must be three parties to the instrument and the parties must be certain.
5. The order must be to pay a certain sum of money.
6. The instrument must contain an order to pay money and money only.
7. It must comply with the formalities as regards date, consideration, stamp etc.

Difference between Promissory note and bill of exchange

1. Parties

There are three parties to a bill of exchange, namely, the drawer, the drawee and the payee; while in a promissory note there are only two parties – maker and payee.

2. Nature of payment

In a bill of exchange, there is an unconditional order to pay, while in a promissory note there is an unconditional promise to pay.

3. Acceptance

A bill of exchange requires an acceptance of the drawee before it is presented for payment, while a promissory note does not require any acceptance since it is signed by the persons who is liable to pay.

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4. Liability

The liability of the maker of a promissory note is primary and absolute, while the liability of a drawer of bill of exchange is secondary and conditional. It is only when the drawee fails to pay that the drawer would be liable as a surety.

5. Notice of dishonor

In case of dishonor of bill of exchange either due to non-payment or non-acceptance, notice must be given to all persons liable to pay. But in the case of a promissory note, notice of dishonor to the maker is not necessary.

6. Maker's position

The drawer of a bill of exchange stands in immediate relationship with the acceptor and not the payee. While in the case of a promissory note, the maker stands in immediate relationship with the payee.

7. Nature of acceptance

A promissory note can never be conditional, while a bill of exchange can be accepted conditionally.

8. Copies

A bill of exchange can be drawn in sets, but a promissory note cannot be drawn in sets.

9. Payable to bearer

A promissory note cannot be made payable to a bearer, while a bill of exchange can be so drawn provided it is not payable to bearer on demand.

10. Payable to maker

In a promissory note, the maker cannot pay to himself. While in the case of a bill of exchange, the drawer and the payee may be one person.

11. Protest

Foreign bills must be protested for dishonor when such protest is required by the law of the place where they are drawn. But no such protest is required in the case of a promissory note.

CHEQUES

A cheque, being a Negotiable Instruments can be passed from hand to hand easily and so it has become a popular mode of payments. A cheque is the most economical and safe method of money transaction because the transfer cost is very low and also the possibility of loss is minimum.

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A cheque 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 person writing the cheque, the drawer, has a transaction banking account (often called a current, cheque, chequing or checking account) where their money is held. The drawer writes the various details including the monetary amount, date, and a payee on the cheque, and signs it, ordering their bank, known as the drawee, to pay that person or company the amount of money stated. A cheque, is a bill of exchange drawn on a specified banker, expressed to be payable only on demand (Sec.6).

Although a cheque is a bill of exchange, yet it has two additional characteristics, namely:

- (i) A cheque is always drawn on a specified banker with whom the drawer has deposited the money;
- (ii) It is always payable on demand.

Thus all cheques are bills of exchange but all bills of exchange are not cheques.

THE SALIENT FEATURES OF A CHEQUE

1. Instruments in writing

A cheque must necessarily be an instrument in writing. Oral orders therefore do not constitute a cheque. There is no specific rule regarding the writing materials to be used. It may be done by means of a nib, a pencil, a type writer or any other printed character. So also, according to the Negotiable Instruments Act, writing out cheques with lead pencils also. But, bankers in their own interest, and in the interest of their customers, allow the cheques to be drawn only in ink. In all other cases, fraudulent alterations unauthorized by the drawer are easy to make but difficult to detect.

2. An Unconditional Order

A cheque is an order to pay and it is not a request. In the indigenous bill of exchange, words of courtesy with little monetary implication were generously employed. They are conspicuous by their absence in the modern cheque. It is not essential that the word 'order' must form a part of the writing because the word 'order' must form a part of the writing because the word 'pay' itself denotes a command and words like 'please' or 'kindly' are dispensed with in cheque.

3. On a Specified Banker

A Cheque is always drawn on a particular banker only. Usually the name and address of the banker is clearly printed on the cheque leaf itself. It is advisable that the full name of the banker is mentioned in the cheque. For e.g. instead of "I O B" it must be written "Indian Overseas Bank." A cheque drawn on a particular branch of a particular bank cannot be encashed at another branch of the same bank, unless there is an agreement between the parties.

4. Payee to be certain

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In order that a cheque may be a valid one, it must be made payable to the order of a certain specified person or to his agent or the bearer thereof. That is why Sir John Paget rightly points out that "A normal cheque is one in which there is a drawer, a drawee whom the amount the cheque is payable. The payee must, therefore, be a certain person. He may be a human being or an artificial person i.e., a body corporate, e.g., a company, an authority, a trade union etc.

5. A Certain Sum of Money

A cheque is usually drawn for a definite sum of money. Indefiniteness has no place in monetary transaction any phrase like 'less than Rupee One Hundred Only' or Above rupees two hundred only does not give a clear and concrete idea to the parties concerned and it will render the cheque invalid. That is why the modern bankers request their customers to draw the amount both in words and figures even though, the Negotiable Instruments Act is silent on this point. If there is any difference between the amount in figures and words, the bankers can return the cheque, since, the amount is not certain.

6. Payable on Demand

A cheque is always payable only on demand. It is not necessary to use the word 'on demand' as in the case of a demand bill. As per Sec.19 of the Negotiable Instruments Act, unless a time factor is specified by the drawer, the cheque is always payable on demand.

7. To signed by the drawer

The cheque must be signed by the drawer i.e., the drawer normally puts his- signature at the bottom right hand corner of the cheque. The signature must be that of the person in whose name the account is kept or his authorised agent. When the signature differs from the specimen or it is slightly different, the banker need not honour the cheque.

TYPES / KINDS OF CHEQUES

1. Bearer Cheque

When the words "or bearer" appearing on the face of the cheque are not cancelled, the cheque is called a bearer cheque. The bearer cheque is payable to the person specified therein or to any other else who presents it to the bank for payment. However, such cheques are risky, this is because if such cheques are lost, the finder of the cheque can collect payment from the bank.

2. Order Cheque

When the word "bearer" appearing on the face of a cheque is cancelled and when in its place the word "or order" is written on the face of the cheque, the cheque is called an order cheque. Such a cheque is payable to the person specified therein as the payee, or to any one else to whom it is endorsed (transferred).

3. Uncrossed / Open Cheque

When a cheque is not crossed, it is known as an "Open Cheque" or an "Uncrossed Cheque". The payment of such a cheque can be obtained at the counter of the bank. An open cheque may be a bearer cheque or an order one.

4. Crossed Cheque

Crossing of cheque means drawing two parallel lines on the face of the cheque with or without additional words like "& CO." or "Account Payee" or "Not Negotiable". A crossed cheque cannot be encashed at the cash counter of a bank but it can only be credited to the payee's account.

5. Anti-Dated Cheque

If a cheque bears a date earlier than the date on which it is presented to the bank, it is called as "anti-dated cheque". Such a cheque is valid upto three months from the date of the cheque.

6. Post-Dated Cheque

If a cheque bears a date which is yet to come (future date) then it is known as post-dated cheque. A postdated cheque cannot be honoured earlier than the date on the cheque.

7. Stale Cheque

If a cheque is presented for payment after three months from the date of the cheque it is called stale cheque. A stale cheque is not honoured by the bank.

Requisites of Cheque :

1. **Form of the Cheque :** A cheque can take the form of an order written on an ordinary piece of paper. But generally the banks will supply printed cheque forms to the customer while opening the account and the customers as a rule must use only the printed cheque forms supplied only as that rule, if the order is made on piece of paper the bank will refuse payment.
2. **Issue of Cheque :** A cheque is said to be issued when the drawer parts it to another person. The issue of cheque is very important because the drawer is not liable on a cheque until he has issued it. Even if drawer is induced by fraud, it is deemed to be duly issued.
3. **Dating of Cheque :** A cheque is not invalid simply because it is not dated. But dating of a cheque is essential to find whether it is stale cheque or not. A stale cheque is one which is not presented for payment before three months from the date of issue of cheque.

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4. **Payee :** Where the cheque is payable to or order, it is essential to mention the name of the payee. If the drawer has not mentioned the payee's name, any holder of the cheque can insert the payee's name. Bank will dishonor a cheque presented without the name of the payee.
5. **Amount of the cheque :** Amount of the cheque is to be stated clearly both in words and figures without leaving any space before and after the amount stated to avoid any alteration of the amount.
6. **Signature :** The cheque must be properly signed by the drawer and it should tally with the specimen signature signed at the time of the opening account. If the drawer is illiterate, cheques can be drawn by; means of the thumb impression duly witnessed by a person known by the banker.
7. **Delivery :** Unless the cheque is properly delivered, the drawer does not become liable there on. Hence to make drawer liable, he must have delivered the cheque complete in all respects to the payee, with the intention that the amount is payable to payee or to his order.

Essential characteristics of a cheque

If one takes a close look at the definition of a cheque, it becomes clear that a cheque has the following 10 essential elements or characteristics.

1. **It must be in writing:** A cheque must be in writing. An oral order to pay does not constitute a cheque.
2. **It should be drawn on banker:** It is always drawn on a specified banker. A cheque can be drawn on a bank where the drawer has an account, saving bank, or current.
3. **It contains an unconditional order to pay:** A cheque cannot be drawn so as to be payable conditionally. The drawer's order to the drawee bank must be unconditional and should not make the cheque payable dependent on a contingency. A conditional cheque shall be invalid.
4. **The check must have an order to pay a certain sum:** The cheque should contain an order to pay a certain sum of money only. If a cheque is drawn to do something in addition to, or other than to pay money, it cannot be a cheque. For example, if a cheque contains '*Pay USD 500 and a TV worth USD 500 to A*' it is not a cheque.
5. **It should be signed by the drawer and should be dated:** A cheque does not carry any validity unless signed by the original drawer. It should be dated as well.
6. **It is payable on demand:** A cheque is always payable on demand.
7. **Validity:** A cheque is normally valid for six months from the date it bears. Thereafter it is termed as stale cheque. A post-dated or antedated cheque will not be invalid. In both cases, the validity of the cheque is presumed to commence from the date mentioned on it.
8. **It may be payable to the drawer himself:** Cheques may be payable to the drawer himself/herself. It may be drawn payable to bearer on demand unlike a bill or a pro-note.

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9. **Banker is liable only to the drawer:** The banker on whom the cheque is drawn shall be liable only to the drawer. A holder or bearer has no remedy against the banker if a cheque is dishonored.

10. **It does not require acceptance and stamp:** Unlike a bill of exchange, a cheque does not require acceptance on part of the drawee. There is, however, a custom among banks to mark cheques as 'good' for the purpose of clearance. But this marking is not an acceptance. Similarly, no revenue stamp is required to be affixed on cheques.

DRAWING OF A CHEQUE

If the drawer makes the cheque properly and if the balance of the drawer at the bank permits, the bank must pay the amount of cheque as soon as it is presented. If the drawer does not make the cheque properly, the bank rejects payment. Hence, to issue the cheque properly, the following points or rules must be considered: -

1. **Date**

The date should be mentioned on the cheque properly. If the cheque is more than three months old or if it contains future date then the bank will not pay the amount.

2. **Name of the payee**

The name of the payee should be mentioned in the cheque.

3. **Amount of the cheque**

The amount of the cheque should be mentioned both in words and figures clearly. The amount written in words should tally with the amount written in figures.

4. **Signature**

The drawer should sign the cheque properly. The signature given on the cheque should tally with the signature given on the signature specification card. The signature specification card is kept by the bank. The drawer should prove by giving his signature for any alteration of the cheque.

5. **Account number**

The drawer should mention his account number clearly and correctly.

6. **Minimum balance**

The amount mentioned on the cheque should not be more than the amount deposited in the bank. Besides it, a certain amount of minimum balance should always be there in the account as per the rule of the bank.

7. **Endorsement**

The order and crossed cheques should be transferred by the proper endorsement and delivery, otherwise, the amount of cheque will not be paid by the bank.

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8. Crossing and overwriting

There should not be any crossing and overwriting on the cheque.

9. Condition of the cheque

It should be in proper condition. If the cheque is torn, wetted and spotted, it will not be acceptable to the bank.

DISHONOUR OF CHEQUE

The bank should pay the amount mentioned on the cheque as soon as it is presented. If the bank pays the amount of the cheque to the payee, the cheque is said to be honoured. If the bank refuses to pay the amount of cheque, the cheque is said to be dishonoured. Thus, the dishonour of the cheque means the refusal made by the bank to pay the amount of the cheque to the payee. It is a condition in which the bank does not pay the amount of the cheque to the payee. The dishonoured cheque is returned by the bank to the payee using remarks for the reasons of dishonour. In fact, when the drawer draws the cheque without following the rules of issuing the cheque, the bank dishonours the cheque.

The following are some important reasons of dishonouring a cheque: -

- If the date is not written or written incorrectly or the date is more than 90 days old
- If the name of the payee is not written or written unclearly.
- If the order or crossed cheques are transferred without proper endorsement and delivery.
- If the amount is not written in words and figures or written incorrectly or the amount written in words and figures does not match with each other.
- If the alteration made on the cheque is not proved by the drawer giving a signature.
- If the account number is not mentioned or unclear or mentioned incorrectly.
- If the signature is not given or the signature that is given on the cheque does not match with the signature given on the 'signature specification card'.
- If the amount mentioned on the cheque is more than the amount that the drawer has in his bank account or the minimum balance in the account cannot remain.
- If the cheque is overwritten.
- If the cheque is not found in proper condition or found wetted, torn or spotted.
- If the drawer has given an order to the bank to stop payment of the cheque.
- If the bank has got the information regarding the death or insolvency or lunacy of the drawer or depositor.

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- If the court of law orders the bank to stop the payment of the cheque.
- If the drawer has closed his account before presenting the cheque.

Endorsement of cheque

A bearer cheque can be transferred by mere delivery. It does not require endorsement. But an order cheque and crossed cheque except account payee cheque can be transferred only by proper endorsement and delivery. The endorsement is the act of giving signature usually on the back of the cheque for the purpose of transferring it to somebody else. While making the payment, the bank should identify both first and second payees. Any subsequent holder can make the endorsement. The person making the endorsement for the purpose of passing on the cheque to another person is called endorser and the person to whom it is passed or transferred is called endorsee.

CROSSING OF CHEQUES

Cheques are of two types, open cheques and crossed cheques. Open cheques are those which are paid over the counter of the bank. In other words, they need not be put through a bank account. Open cheques are liable to great risk in the course of circulation. They may be either lost or stolen and the finder or thief can get it encased at the bank unless the drawer has in the meantime countermanded payment. With a view to avoiding such risks, and protect the owner of cheque, a system of crossing was introduced.

Crossing is a direction to the banker not to pay the cheque across the counter but to pay to a bank only or to particular bank in an account with the bank. Thus crossing provides a protection and safeguard to the owner of the cheque as by securing payment through a banker; it can easily be detected to whose use the money is received. Crossing does not, however, affect the negotiability or transferability of a cheque. But where the words 'not negotiable' are added, the cheque is not negotiable. The practice of crossing is confined to cheques only and cannot be extended to any other instrument.

Kinds of crossing:

Crossing is of two type's namely general crossing and special crossing.

1. General Crossing:

In a general crossing, simply two parallel transverse lines, with or without the words 'not negotiable' in between, may be drawn. Such a cheque is crossed generally.

The effect of general crossing is that the payment of the cheque will not be made at the counter, it can be collected only through a banker.

Essential of General Crossing:

1. Two lines are to paramount importance in crossing.

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2. The lines must be drawn parallel and transverse, Transverse means, that, they should be arranged in a crosswise direction. They should not be straight lines.

3. The lines are generally drawn on the left hand side so as not to obliterate or alter the printed number of the cheque. Preferably, the line should cut across some of the writings.

4. The words 'And company' or its abbreviation may be written in between the lines. They themselves are not essential, and so, they do not constitute crossing without two parallel transverse lines.

5. So also, the words 'Not negotiable' may be added to a crossing but they themselves do not constitute a crossing.

Significance of general crossing:

(i) The effect of general crossing is that it gives a direction to the paying banker.

(ii) The direction is that, the paying banker should not pay the cheque at the counter. It should be paid only to a fellow banker. In other words, payment is made through an account and not at the counter.

(iii) If a crossed cheque is paid at the counter contravention of the crossing:

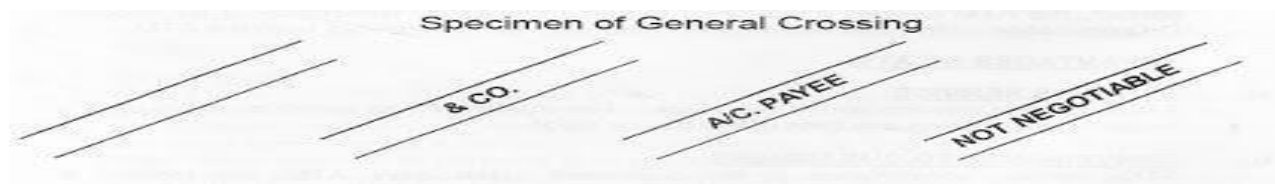
a. The payment does not amount to payment in due course. So, the paying banker will lose his statutory protection.

b. He has no right to debit his customer's account since, it will constitute a breach of his customer's mandate.

c. He will be liable to the drawer for any loss, which he may suffer,

d. He will be liable to the true owner of the cheque who may be a third party, irrespective of the fact, that, there is no contract between the banker and the third party. As a general rule, a banker is answerable only to his customer and this liability to a third party here is an exception.

(iv) The main intention of crossing a cheque is to give protection to it. When a cheque is crossed generally, a person who is not entitled to receive its payment is prevented from getting that cheque cashed at the counter of the paying banker.



2. Special Crossing

A special crossing implies the specification of the name of a banker on the face of the cheque. Sec.124 of N.I. Act 1881 reads. "Where a cheque bears across its face an addition of the name of a banker, either with or without the

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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”.

Drawing of two transverse and parallel lines is not necessary in case of a special crossing. When a cheque has been specially crossed, the banker upon whom it has been drawn will make the payment only to that banker in whose favour it has been crossed. The effect to special crossing is that the paying banker will be the amount of the cheque only through the bank named in the cheque

Essential of Special Crossing:

- (a) Two parallel transverse lines are not at all essential for a special crossing.
- (b) The name banker must be necessarily specified across the face of the cheque. The name of the banker itself constitute special crossing.
- (c) It must appear on the left hand side, preferably on the corner, so as not to obliterate the printed number of the cheque.
- (d) The two parallel transverse line and the words 'Not negotiable' may be added to a special crossing.

Significance of special crossing:

- It is also a direction to the paying banker. The direction is that, the paying banker should pay the cheque only to the banker whose name appears in the crossing or to his agent.
- If a cheque specially crossed to a banker is present by another bank, not in the capacity of its agent, the paying banker is justified in returning the cheque.
- A special crossing gives more protection to the cheque than a general crossing. It makes a cheque still safer because, a person, who does not have a real claim for it, without find it difficult to obtain payment. In special crossing, the cheque is specially crossed to the payee's banker.

Specimen of Special or Restrictive Crossing



Difference between General and Special Crossing

General Crossing	Special Crossing
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1. Drawing of two parallel transverse lines is a must.	1. Drawing of two parallel transverse lines is not essential.
2. Inclusion of the name of a banker is not essential.	2. Inclusion of the name of a banker is essential.
3. In General Crossing paying banker to honor the cheque from any bank A/C.	3. In Special Crossing paying banker to honor the cheque only when it is presented through the bank mentioned in the crossing and no other bank.
4. General Crossing can be converted into a Special Crossing.	4. Special Crossing can never be converted to General Crossing.
5. In case of General Crossing the words “And Company” or “& Company” or “Not Negotiable” between the transverse lines to highlight the crossing does not carry special Significance.	5. In case of Special Crossing the name of a banker may be written within two parallel transverse lines or with the words “And Company” or “Account Payee Only” or “Not Negotiable” the inclusion of these words has Become customary.

3. Not Negotiable Crossing:

A person is taking cheque crossed generally or specially, bearing in either case the words 'not negotiable' shall not be able to give a better title to the holder than that of the transferor. The effect of a not negotiable crossing is that the cheque can be transferred but the transferee will not acquire a better title to the cheque. Thus a cheque is deprived of its essential feature of negotiability.

The objects of "not negotiable" crossing is to protect the drawer against loss or theft in the course of transit.

Significance of not negotiable crossing:

'Not Negotiable' does not mean transferable. Not Negotiable crossing does not affect the transferability; it kills only the 'negotiability'. Negotiability is something different from transferability. As per law, negotiability means transferability by mere delivery or endorsement and delivery plus transferability free from defect.

4. Account Payee Crossing:

Section 123 of Negotiable Instruments Act defines that when a cheque crossed generally bears across its face an addition of the words 'Payee's Account' between the two parallel transverse lines, it is known as Payee's Account Crossing.

Significance of Account Payee Crossing:

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A/c payee crossing does not restrict the transferability of cheques. This type of crossing gives a further protection to a cheque. This crossing gives a direction to the collecting banker. The direction is that, the collection banker should not collect it for any person other than the payee. In other words, a collecting banker should ensure that, the cheque is credited only to the account of the payee. Hence such cheque cannot be negotiated further in actual practice, A/c payee crossed cheques cannot be collected to the account of any person other than the payee himself. The safest form of crossing will be a combination of 'Not Negotiable' and A/c payee crossing, which give the fullest protection to a cheque.

5. Double Crossing

When a cheque bears two separate special crossing, it is said to have been doubly crossed. Sec.125 of the Act provides that "where a cheque is crossed specially, the banker to whom it is crossed may be again cross it especially to another banker, his agent for collection".

Sec. 127 of the Act lays down that, "where 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 therefore".

Thus, if a cheque is crossed to two or more banks, the paying banker is put in confused position as to whom he should pay. Such ambiguity renders the cheque is crossed, can cross it again in favour of another banker for the purpose of collection It does not render the cheque invalid.

ENDORSEMENT

The word 'endorsement' in its literal sense means, a writing on the back of an instrument. But under the negotiable instruments Act it means, the writing of one's name on the back of the instrument or any paper attached to it with the intention of transferring the rights therein.

Thus endorsement is signing a negotiable instrument for the purpose of negotiation. The person who effects an endorsement is called an 'endorser' and the person to whom negotiable instrument is transferred by endorsement are called the 'endorsee'.

"The word endorsement is said to have been derived from Latin 'en' means 'upon' and 'dorsum' meaning 'the back'. Thus usually the endorsement is on the back of the instrument though it may be even on the face of it. Where no space is left on the instrument, the endorsement may be made on a slip of paper attached to it. This attached slip of paper is called 'Allonge'.

Definition of Endorsement:

Endorsement has been defined in Sec. 15 of the Negotiable instrument Act 1881 as follows: "where the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiable, on the back or face thereof, or a slip of a paper annexed thereto... he is said to endorse the same, and is called the endorser."

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It is quite evident from the above mentioned definition that, the endorsement can be made that either on the back of the instrument or on the face/thereof. But according to Sec. 6 of the Indian securities Act of 1886, an endorsement made on a document, elsewhere than on the back itself, is not valid. In practice, an endorsement must be made on the back of the instrument.

Essentials of a valid Endorsement

An endorsement in order to operate as mode of negotiation must comply with the following conditions, namely:

1. It must be written on the instrument itself and be signed by the endorser. The simple signature of the endorser, without additional words, is sufficient.

2. The endorsement must be of the entire instrument. A partial endorsement, that is to say, an endorsement, which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the instrument to two or more endorsees severally (i.e. separately), does not operate as a negotiation of the instrument.

3. Where a negotiable instrument is payable to the order of two or more payees or endorsees who are not partners, all must endorse unless the one endorsee has authority to endorse for the others.

4. Wherein a negotiable instrument payable to order, the payee or endorsee is wrongly designated or his name is misspelt, he should sign the instrument in the same manner as given in the instrument. Though, he may add, if he thinks fit, his proper signature.

5. Where there are two or more endorsements on an instrument, each endorsement is deemed to have been made in the order in which it appears on the instrument, until contrary is provided.

6. An endorsement may be made in blank or special. It may also be restrictive.

Kinds of Endorsement

Important kinds of endorsements are given below:

1. Blank or general endorsement:

If the endorser signs his name only and does not specify the name of the endorsee, the endorsement is said to be in blank Sec. 16(1). The effect of a blank endorsement is to convert the order instrument into bearer instrument (Sec. 54), which may be transferred merely by delivery.

2. Endorsement in full or special endorsement:

If the endorser, in addition to his signature, also adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person the endorsement is said to be in full [Sec. 16(1)].

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If, for example, A, the holder of a bill of exchange, wants to make an endorsement in full to B, he would write thus: "Pay to B or order, S." After such an endorsement it is only the endorsee, i.e., B, who is entitled to receive the payment of the instrument and to further negotiate the instrument by his endorsement.

A blank endorsement can easily be converted into an endorsement in full, According to Section 49, the holder of a negotiable instrument endorsed in blank may, without signing his own name, by writing above the endorser's signature a direction to pay to any other person as endorsee, convert the endorsement in blank into an endorsement in full; and since such holder does not sign himself on the instrument he does not thereby incur the responsibility of an endorser.

3. Partial Endorsement:

Section 56 provides that a negotiable instrument cannot be endorsed for a part of the amount appearing to be due on the instrument. In other words, a partial endorsement which transfers the rights to receive only a part payment of the amount due on the instrument is invalid. Such an endorsement has been declared invalid because it would subject the prior parties to plurality of actions (one action by holder for part value and another action by endorsee for par value) "and will thus cause inconvenience to them.

Moreover, it would also interfere with the free circulation of negotiable instruments. It may be noted that an endorsement which purports to transfer the instrument to two or more endorses separately, and not jointly is also treated as partial endorsement and hence would be invalid.

Thus, where A holds a bill for Rs 2,000 and endorses it in favour of B for Rs 1,000 and in favour of C for the remaining Rs 1,000, the endorsement is partial and invalid.

Section 56, however, further provides that where an instrument has been paid in part, a note to that effect may be endorsed on the instrument and it may then be negotiated for the balance.

Thus, if in the above illustration the acceptor has already paid Rs 1,000 to A, the holder of the bill, A can then make an endorsement saying "Pay B or order" Rs 1,000 being the unpaid residue of the bill." Such an endorsement would be valid.

4. Restrictive endorsement:

Stating the effect of endorsement, Section 50 provides that "the endorsement of negotiable instrument followed by delivery transfers to the endorsee the property herein with the right of further negotiation." However, Section 50 permits restrictive endorsement.

An endorsement which, by express words, prohibits the endorsee from further negotiating the instrument or restricts the endorsee to deal with his instrument as directed by the endorser is called 'restrictive' endorsement.

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The endorsee under a restrictive endorsement gets all the rights of an endorser except the right of further negotiation. In other words, such an endorsement entitles the endorsee to receive the payment on due date and sue the parties for it but he cannot further negotiate the instrument.

Illustrations:

(a) B, the holder of the bill, makes an endorsement on the bill saying "Pay C only." It is a restrictive endorsement as C cannot negotiate the bill further.

(b) B, the holder of the bill, makes an indorsement on the bill, saying "Pay C for my use or "Pay C or order for the account of B." In either case there is a restrictive endorsement as the right of further negotiation by C has been excluded thereby.

The person liable on the hill must pay by drawing a cheque in the name of the holder (or the endorser) B. If he makes the payment to C on C's own account, he will still be liable to B, the endorser; Hence C cannot endorse the bill further in his own name.

5. Conditional endorsement:

If the endorser of a negotiable instrument, by express words in the endorsement, makes his liability, dependent on the happening of a specified event, although such event may never happen, such endorsement is called a 'conditional' endorsement (Sec. 52).

The law permits a conditional endorsement and therefore it does not in any way affect the negotiability of the instrument. Thus, endorsements can validly be made in the following terms:

- (i) "Pay B or order on his marriage;"
- (ii) "Pay B on the arrival of Pearlless ship at Bombay."

In the case of a conditional endorsement the liability of the endorser would arise only upon the happening of the event specified. But the endorsee can sue other prior parties, e.g., the maker, acceptor, etc., if the instrument is not duly met at maturity, even though the specified event did not happen.

6. Sans recourse endorsement (Sec. 52):

When the endorser expressly excludes his own liability on the negotiable instrument to the endorsee or any subsequent holder in case of dishonour of the instrument, the endorsement is known as 'sans recourse' endorsement.

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Such an endorsement is generally made by adding the words 'sans recourse' or 'without recourse.' Thus, "Pay X or order sans recourse" or "Pay X without recourse to me" or "Pay X or order at his own risk" is examples of this type of endorsement.

7. Facultative endorsement:

When the endorser expressly gives up some of his rights under the negotiable instrument, the endorsement is called a 'facultative' endorsement. Thus, "Pay X or order, notice of dishonor waived" is a facultative endorsement.

As a result of such an endorsement the endorsee is relieved of his duty to give notice of dishonour to the endorser and the latter remains liable to the endorsee for the non-payment of the instrument, even though no notice of dishonour has been given to him.