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Banker Customer Relationships

Banker



Dr. H. L. Hart- One who in the ordinary course of his business, honors cheques drawn upon him by persons from and for whom he receives money on current accounts

Crowther- A banker is a dealer in debt, his own and other people's

Macleod- The essential business of a Banker is to buy money and debts, by creating other debts. A banker is therefore, essentially, a dealer in debts or credit.



Section 5(1)(b) of Indian Banking Regulation Act

1949:

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

According to this, features of a bank are:

- ✓ Acceptance of deposits
- ✓ Allowing withdrawals
- ✓ Utilization of deposits for lending





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- ✓ Performance of subsidiary activity
 - ✓ Performance of banking business
 - ✓ Using the term bank, banker or banking company

Customer



~~Sir John Paget-~~ To constitute a customer there must be some recognizable course or habit of dealing in the nature of regular banking business.

2 conditions

1. Duration theory:

- Maintaining account for a reasonable duration
- duration dealing



2. Regular banking business

- Transaction must be in nature of regular banking transactions

Casual transactions

- won't make a person a customer of a bank even with long transactions
- Example, encashment of cheques without having an account

Features for a customer



- Should have an account
- Need not be duration of dealing
- Need not be frequency of transactions
- Dealing should be banking in nature
- Casual transactions won't make a person a customer

Relationship B/w Banker and Customer



It is divided into General and Special Relationship

General Relationship

Sub-divided into Primary and Subsidiary

Primary General Relationship



Features:

1. Commencement of Primary General Relationship
2. Contractual Primary General Relationship

3. Nature



1. Of debtor and a creditor
2. Banker is not a Bailee or depositor
3. Not a trustee
4. Not an agent
5. Only a debtor in respect to customer's money

Subsidiary General Relationship



- bailee and bailor
- Trustee and beneficiary
- Agent and principal

by special agreements or arrangements

1. Bailee and Bailor Relationship



When a banker accepts valuables and documents from a customer for safe custody, he becomes a bailee and customer becomes a bailor.

Duties and liabilities of banker as a bailee:



- ✓ To safeguard the safe-custody deposits
- ✓ Liable to compensate the customer for the loss
 - Arising out of his negligence
- ✓ Handing over the safe custody deposits to depositors



2. Trustee and Beneficiary Relationship

✓ when he is entrusted with some trust work

Duties:

- deal with the trust money
- give detailed account of administration of trust property
- hand over the benefit earned from trust property



3. Agent and Principal Relationship

- ✓ When a banker undertakes agency services like
 - Collection of cheques
 - Drafts and bills
 - Collection of interest and dividend on securities
 - Payment of premium and subscriptions
 - Purchase and sale of securities



Duties performed are:

- To act in accordance with the instruction of the principal
- Bound to return all income he earns as an agent

Special relationship



Meaning

The special obligations and rights of the banker against the customer and vice versa

The mutual obligations and rights of the banker and the customer arising out of the general debtor and creditor relationship

Banker's Obligations



A. To honour his customer's cheques

As long as there are sufficient funds available in customer's account

Nature

- A contractual agreement on banker to honour cheques and repay deposits

Conditions



- Sufficient funds must be available
- properly applicable to the payment of the cheques
- Banker must be duly required to pay the cheque
- no legal bar preventing the payment of the cheques



- ❖ Extends to cheques against overdraft or cash credit
- ❖ Does not apply to uncleared cheques or bills
- ❖ Does not apply to domiciled bills of exchange



□ Dishonour of customer's cheques

- Insufficiency of funds
- Irregularity in cheques
- Presentation of cheques after it becomes stale
- Presentation of post dated cheques

Wrongful Dishonour of a Cheque



- Dishonour of cheque without any justifiable reason
- Lands banker in trouble
- Liable to compensate
- Compensation towards the drawer

Compensation for wrongful dishonour



○ General damages for breach of contract

- Damage to credit

Rules:

1. Not restricted to amount of cheque
 - Smaller the amount, larger the damage
2. Does not depend on actual pecuniary loss



3. Depends on injury caused to credit

4. Amount of damage awarded by court depends on circumstances
5. Determines the damage after assessing the injury
6. Trader-customer is not required to prove damage
7. Trustee is gravely affected
8. Non-trader customer get nominal general damage

○ Special damages for pecuniary loss



- Actual financial losses as a direct result
- Limited to amount of financial loss to customer
- Claimed by trader-customer/ non-trader customer
- Actual financial loss should be proved

○ Substantial General damages for libellous or defamatory statement



If the reasons for dishonour given by banker is defamatory to the customer, he can claim substantial general damages even without proving the actual damage

- “No Account” , “Not Sufficient Funds” are held libellous
- “Refer to Drawer”, “Present Again”

○ Vindictive damages



If the dishonour of cheque is wilful, banker becomes liable to pay vindictive damages.



B. To maintain the secrecy of customer's account

- ▶ Contractual and legal obligation
- ▶ Section 13 of Banking Companies Act 1970

Meaning

Banker should not disclose to any outsider the details of customer's account .

Nature



- contractual in nature
- Legally imposed
- not a statutory duty
- information from customer, his account and from the banker's possession in his capacity
- Continues even after account is closed or death of customer

Exceptions



- ✓ When there is express consent of customer
- ✓ When there is implied consent of the customer
- ✓ When he is compelled by the law of the country



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- ✓ When he is under a public duty to disclose
 - ✓ When his own interest requires disclosure
 - ✓ When an enquiry is received from a fellow banker

Precautions to be taken



- Not be negligent in giving information
- Information should be given confidentially
- Information should be given honestly



- depend on facts as disclosed by customer's account

- Should be in a most general manner
- Should not make statement which make him liable to defamation
- Specify that he doesn't take any responsibility

Consequences of unjustified disclosure



- Liable to compensate
- May be nominal or substantial

Banker's Rights



1. Banker's Right of General Lien

Lien is the right of a person to retain the property, in his possession, belonging to another, until the debt due from the owner of that property is repaid.

It is the right of the creditor to retain the property in his possession, belonging to the debtor, until the debt due from the debtor is repaid.

Types of Lien



1. Particular Lien

It is the right of a creditor to retain a particular property until the particular debt is repaid.

2. General Lien

It is the right of a creditor to retain any property until the general balance is repaid

Difference



Particular Lien

General Lien

Only a particular property

Any property of debtor

Only for the non payment of a debt

Any other due from his debtor

Enjoyed by any person on property retained

Enjoyed only by few persons

Less valuable

More valuable

Banker's General Lien



It is the right of a banker to retain the goods and securities entrusted to him as a banker by a customer in respect of general balance due from customer.

Objective

To ensure safety of the banker's funds by serving as a protection against the loss that may arise

Conferring of general lien on a banker



- By custom or usage of trade.
- By legal decisions

Nature of Banker's general lien

- A possessory lien
- An implied pledge

Conditions



- Securities in possession of banker
- must belong to customer
- Must come into his hand in his capacity as a banker
- Must be obtained lawfully



- No entrustment of securities for special purpose
- No agreement inconsistent with banker's right
- Debt should be due or payment
- Credit & debit be in same capacity
- Cannot go beyond agreement

Circumstances to exercise general lien



- Goods coming into the hands of banker
- document of title to goods
- fixed deposit receipt
- life insurance policy



- cheques, bills etc.
- negotiable instruments deposited for safe custody
- dividend and interest warrants
- Interest and dividend coupons
- Both coupons and bonds



- Specific securities left
- Surplus sale proceeds of security
- Negotiable securities
- In respect of time-barred debts

Circumstances where a banker cannot exercise his right



- ✓ deposits of money
- ✓ safe-custody deposits
- ✓ money deposited for a specific purpose
- ✓ bills, promissory notes, etc. deposited for a special purpose



- ✓ securities left with him inadvertently

- ✓ securities obtained by force
- ✓ securities left to cover a loan which is not granted
- ✓ securities received for sale
- ✓ securities furnished to cover a specific debt



- ✓ non-negotiable securities to which the customer has no title
- ✓ fixed deposit receipt which has not been endorsed and discharged on maturity
- ✓ bonds when customer separates the coupons from bonds
- ✓ In respect of contingent debts

2. Banker's Right to Combine Accounts



Meaning

It is the right of debtor to adjust the amount due to him from a creditor against the amount payable by him to the creditor to determine the net balance payable by one to the other.

Right of a banker to adjust the amount due to him from a customer on one account against amount due from him to the customer on another account



□ Banker's right to set-off without previous notice

- A statutory right of set-off

- Can exercise without any prior notice

□ Wise course to be adopted to get right of set-off

- A letter of set-off while opening account

Other ways to get right of set-off



- ❑ By giving a previous notice to customer
- ❑ The right of automatic set-off under certain circumstances
 - without obtaining any letter of set-off or previous notice

Circumstances for a banker's right of automatic set-off



1. Death of the customer
2. Insolvency of customer
3. Insanity of customer



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4. garnishee order
 5. notice of assignment of customer's credit balance
 6. notice of a second charge over the security of customer

Scope of Banker's Right of Set-off



- ❖ 2 or more current accounts
- ❖ Debit balance in current accounts and credit balance in SB account
- ❖ Debit balance in current account & credit balance in FD account
- ❖ Debit & credit balances in 2 or more of above accounts



Conditions for exercising the right of set-off

1. Debts must be due b/w same parties
2. customer's accounts opened in same name & capacity

Cannot set-off if a/c held in different capacities on the ground:

- a joint account
- a trust account



- executor's account

- partnership firm's account
- held by a person in his capacity as an agent
- held by a person in his capacity as a guardian for minor
- client's account of an advocate
- held by a person in his official capacity



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3. If mutual debts are determined & are certain in amount
 4. In respect of debts due & recoverable on the date of set-off
 5. In the absence of an agreement to the contrary

Difference



Right of General Lien Right of Set-off

To retain securities in his possession

To adjust debit and credit balances of 2 or more accounts

No agreement is necessary

An agreement is necessary

Does not apply to money deposited/ credit balance

Only applies to money & credit balance in bank

Can exercise on surplus sale proceeds that remain after settlement of advance

Cannot be set-off

More advantageous

Less advantageous

Relationship B/w Banker and Customer

General

Primary

Of a debtor and creditor

Subsidiary

By special agreements

Special

Banker's Obligations

To honour customer's Cheque

To maintain the secrecy of customer's account

Banker's Rights

General Lien

To set-off/Combine accounts