

BANKING

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Objectives

1. To create an idea of modern banking
2. To familiarise the students with the banking activities

Unit I: Banker and Customer- Relationship between banker and customer – General & Special relationship – Rights of the banker – Negotiable instruments – Promissory note, Bill of exchange & Cheque (Meaning & Features) – Proper Drawing of the cheque – Crossing (Definition & Types) – Endorsement (Definition & Kinds) – Material alteration. **(20 hours)**

Unit II: Banking System- Indigenous Bankers – Commercial Banks – Co-Operative Banks – Land development Banks – Industrial Development Banks - NABARD- EXIM Banks – Foreign Exchange Banks. **(10 hours)**

Unit III: Traditional Banking- Receiving Deposits – General Precautions – Kinds of deposits – Fixed – Current – Saving – Recurring & Others. Lending Loans & Advances – Principles of sound lending – forms of advances – loan , cash credit , over draft & purchasing and discounting of bills. Mode of charging security – lien , pledge , mortgage , assignment & hypothecation. **(20hours)**

Unit IV: Modernised Banking- Core banking – Home banking – Retail banking – Internet banking – Online banking and Offline banking – Mobile banking –Electronic Funds Transfer – ATM and Debit Card – Smart Card – Credit Card – E-Cash – Swift – RTGS. **(10 hours)**

Unit V: Reserve Bank of India- Functions of Reserve Bank of India – Methods of Credit Control. **(15 hours)**
(75 hours)

Text Books

1. K.C.Sherlekar, Banking Theory Law and Practice, Himalaya Publishing House.
2. E.Gordon and K.Natarajan, Banking Theory Law and Practice, Himalaya Publishing House.

Reference Books

1. S.N.Lal, Banking Theory Law and Practice.
2. M.C.Tannen , Banking Theory Law and Practice. Lexix Nexix Vutterworth, Nagpoor.
3. S.S.Gulshan and Gulshan K.Kapoor, Banking Theory Law and Practice.
4. S. Guruswamy, Banking Theory Law and Practice –3rd Edition, Vijay Nicole Imprints Private Limited, Chennai.

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Unit I: Banker and Customer- Relationship between banker and customer – General & Special relationship – Rights of the banker – Negotiable instruments – Promissory note, Bill of exchange & Cheque (Meaning & Features) – Proper Drawing of the cheque – Crossing (Definition & Types) – Endorsement (Definition & Kinds) – Material alteration. **(20 hours)**

BANKER - CUSTOMER RELATIONSHIP

DEFINITION OF A 'BANKER'

The Banking Regulations Act (B R Act) 1949 does not define the term 'banker' but defines what banking is? As per **Sec.5 (b)** of the B R Act —'Banking' means accepting, for the purpose of lending or investment, of deposits of money from the public repayable on demand or otherwise and withdraw able by cheque, draft, order or otherwise."

As per **Sec. 3** Indian Negotiable Instruments Act 1881, the word 'banker' includes any person acting as banker and any post office savings bank

According to Sec. 2 of the Bill of Exchange Act, 1882, 'banker' includes a body of persons, whether incorporated or not who carry on the business of banking. 'Who is a 'Customer'?

The term Customer has not been defined by any act. The word 'customer' has been derived from the word 'custom', which means a 'habit or tendency' to-do certain things in a regular or a particular manner's .In terms of Sec.131 of Negotiable Instrument Act, when a banker receives payment of a crossed cheque in good faith and without negligence for a customer, the bank does not incur any liability to the true owner of the cheque by reason only of having received such payment. It obviously means that to become a customer account relationship is must. Account relationship is a contractual relationship.

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

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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 be 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 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

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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 more wide 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

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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

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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 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

Principall.

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. Rights of general lien

One of the important rights of banker is the right of general lien. Lien means the right of the creditor to retain the goods or securities own by debtor until the debt due from him is repaid.

There are some exceptional cases in which the right of general lien is not applicable.

These are:

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- Safe custody deposit.
- Documents deposited for special purpose.
- Security held in trust.

2. Right of the set off

A banker possess the right of set off which enables him to combine two accounts in the name of same customer and to adjust the debit balance in one account with the credit balance in the other. The right of set off can be exercised subject to the fulfillment of the following conditions:

- The accounts must be in the same name in the same right.
- The right can be exercised in respects of debts due only not in respects of future debts or contingent debts.
- The amount of debts must be certain.
- The banker may exercise that right at his discretion.

3. Banker's right of appropriation

If the customer has more than one account or he has taken more than one loan from the banker, the banker has the right to appropriation these loans by the accounts.

4. Right to charge interest, incidental charges

As a creditor, a banker has the implied right to charge interest on the loans granted to the customer.

In the same way incidental charges like service charges, processing fees, appraisal charges, panel charges may be imposed by the banker to the customer.

Deposit are repayable on term and made by the customer but the period of limitation for the refund of bank deposit is three years with affect from the date a customer made a demand for his money.

CHEQUE-MEANING:-

A written order of a depositor upon a bank to pay the designated party or the bearer a specified sum of money on demand. The person who draws the cheque is called drawer and the person whom the payment is made called payee. The bank will be called the drawee.

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ESSENTIALS FOR A VALID CHEQUE

The following are essential requirements for a valid cheque

Printed versions:

- Name of the bank and branch
- IFSC code of the bank branch
- Cheque number
- MICR code
- Account category

Written versions:

- Date of the cheque - the validity period of the cheque is three months and it should not be a stale cheque or post dated cheque - to be written by the drawer
- Name of the payee - to be written by the drawer
- Amount in words - to be written by the drawer
- Amount in figures - to be written - The amount mentioned in figures and words should be identical and in case of any difference, only the amount mentioned in words will be taken into account and the cheque need not be returned - to be written by the drawer
- Signature of the drawer - should match with the signature as recorded in the system
- Out of the following five items namely - date of the cheque, amount mentioned in words, amount in figures, name of the payee and signature of the drawer; the absence of anyone or more of the items will make the cheque as invalid

Origin of Crossing

Crossing first originated in England when cheques were sent from one bank another. There was the possibility that a cheque might fall in the hands of wrong or unauthorized parties and thereby the original holder was likely to be put to a loss or inconvenience. Crossing also ensures safety in case of a clerk carrying check to the clearing house was assaulted and robbed. To avoid this disadvantage, the bankers introduced new system of crossing of cheque. Crossing automatically means that a cheque should be presented for payment through bank.

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MEANING AND OBJECT OF CROSSING OF CHEQUE

Cross of cheque means drawing two parallel transverse lines on the left hand top corner of a cheque. Crossing on cheque is a direction to a paying banker by drawer that payment should not be made across the counter. The payment on a crossed cheque can be collected only through a banker. Therefore crossing protects the holder of the cheque and reduces the possibilities of fraud.

Advantages of crossing

- If payment is made by means of crossed cheque receipt need not be obtained
- Account payee crossed cheque makes sure that only a particular person to whom the cheque or drawn can receive payment
- If crossed cheque is lost the finder of the cheque cannot encash it without a help of a banker
- Payments made through cheque particularly crossed cheque enable and automate record of the amount in passbook.

Impact of crossing

Crossing serves the purpose of direction to the bank only or to a particular bank as a case may. Crossing may be written, stamped or printed. Whenever two parallel transverse lines appear on the cheque bank, will not make payment to its holder at the counter of bank.

The payment of a crossed cheque can only be obtained through the bank of the holder. Thus crossing affords security and protection to the true owner of the cheque. The object of crossing is to secure payment to a banking order to easily trace for whose benefit the money was received. Crossing is done to avoid losses arising from open cheque falling into the hands of wrong person however crossing of a cheque thus not affect its negotiability crossed cheque is negotiable by mere delivery if it is payable to bearer and by endorsement and delivery case it is payable to order but where the words non negotiable are added to the crossing the cheque is not negotiable though transferable.

Types of crossing

1. General crossing

Where a cheque bears across its face and addition of the words "and company" or any abbreviation thereof (&co) between two parallel transverse lines or two simple parallel transverse lines with or without words —Not Negotiable, it is known to be crossed

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generally. The paying banker shall make payment only to banker in case of a generally crossed cheque.

2. Special crossing

Where a cheque bears across its faces an addition of the name of a bank with or without the words —Not negotiable, the cheque is said to be crossed specially. The paying banker shall make payment, on such a cheque, only to the banker whose name is written on the face of a specially crossed cheque.

3. Restrictive crossing:

Where a cheque bears across its face such words —Account payee or —A/C payee only along with general or special crossing it is known as restrictive crossing or account payee crossing (account payee cheque). The addition of these words to the crossing restricts the transferability of the cheque. The payee, in such cheque, should obtain payment through his own account in the bank.

4. Not negotiable crossing:

Where a cheque bears across its face the words —Not Negotiable in addition to a general or special crossing, it is known as —Not Negotiable in addition to general or special crossing, it is known as —Not Negotiable crossing. A cheque with such words loses its characteristic of negotiability. The transferee of such cheque gets no better title than that of his transferor or previous holder. A person in possession of a negotiable instrument is permitted to alter it in certain respects without the consent of the drawer or the drawee (acceptor). In the same following respects without the consent of the drawer or of the banker on whom it is drawn:

- a) If is a bearer cheque, he can convert it into an order cheque
- b) If the cheque is uncrossed, he can cross it.
- c) If the cheque is crossed generally, he can convert the crossing into a special crossing by adding the name of the banker to whom alone it can be paid.
- d) He can add restrictive words on the cheque, such as, —not negotiable or —account payee only.

A banker in possession of a cheque which has been given to him by his customer for collection can also convert a general crossing into a special crossing.

Stale cheque:

If a cheque is not presented for payment within a reasonable time, it becomes stale or out-of-date cheque. What is a reasonable time depends upon the arrangement between

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the various banks and the customers; in India, the reasonable period is six months. No payment is made on stale cheque without getting it confirmed by the drawer.

Mutilated cheque:

Mutilated cheques are those cheques which have been damaged or mutilated in course of circulation. Such cheques are not honoured by the bankers, in general, for payment.

Marked cheques:

In some countries (other than India) there is a practice that the cheques are marked or certified by the drawee bankers indicating that on the date of presentation, the banker had sufficient funds for payment of the cheque.

DEFINITION OF 'BANK ENDORSEMENT'

An endorsement by a bank for a negotiable instrument, such as a banker's acceptance or time draft, that assures the counterparty that the bank will stand behind the obligations of the creator of the instrument

SEVEN IMPORTANT KINDS OF ENDORSEMENTS

1. Blank or genera 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)].

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, SdA4. 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

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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 part 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 endorsees separately, and not jointly is also treated as partial endorsement and hence would be 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.

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.

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,

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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. Such an endorsement is generally made by adding the words ‘sans recourse’ or ‘without recourse.’ Thus, —Pay X or order sans recourse¹ or

—Pay X without recourse to me¹ or —Pay X or order at his own risk¹ 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 dishonour waived¹ 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.

MATERIAL ALTERATION

The term ‘material alteration’ indicates alteration or change in the material parts of the instrument. It may be defined as any change, which alters the very nature of the instrument. Thus, it is the alteration, which changes and destroys the legal identity of the original instrument and causes it to speak a different language in legal effect from that which it originally spoke. A material alteration makes the instrument void, i.e., inoperative and affects the rights and obligations of the parties to the instrument. It, however, does not affect one who becomes a party to an instrument subsequent to its material alteration, if any.

10.1 Cheques

A very common form of negotiable instrument is a cheque. A cheque is similar to a bill of exchange; the only difference being that the bank is always the drawee in case of a cheque.

10.1.1 Definition of a Cheque

“Cheque is an instrument in writing containing an unconditional order, addressed to a banker, signed by the person who has deposited money with the banker, requiring him to pay on

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demand a certain sum of money only to or to the order of certain person or to the bearer of instrument.”

The Negotiable Instruments Act, 1881 defines a cheque as: “a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.”

The person who draws a cheque is called the ‘drawer’. The banker on whom it is drawn is the ‘drawee’ and the person in whose favour it is drawn is the ‘payee’. In other terms, a cheque is an order by the account holder of the bank directing his banker to pay on demand, the specified amount, to or to the order of the person named therein or to the bearer.

10.1.2 Features of a Cheque

A cheque possesses the following features:

- i. Cheque is an instrument in writing: Oral orders are not considered as cheques.



Caution A cheque must be in writing.

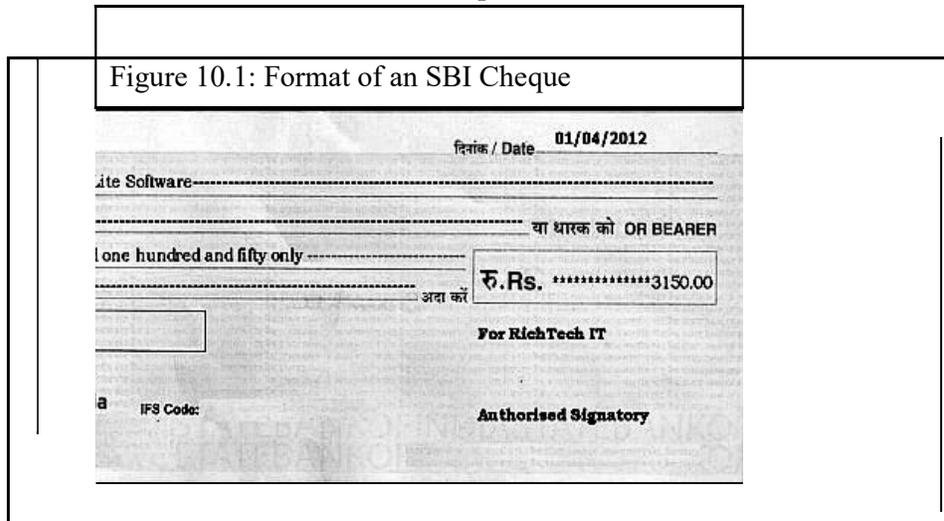
- ii. Cheque contains an unconditional order: Every cheque contains an unconditional order issued by the customer to his bank. A cheque containing conditional orders is considered invalid and is dishonoured by the bank.
- iii. Cheque is drawn by a customer on his bank: A cheque is always drawn on a specific bank mentioned in that. Cheque book facility is made available only to account holder who is supposed to maintain certain minimum balance in the account.
- iv. Cheque must be signed by customer: A cheque must be signed by customer, i.e. the account holder. Unsigned cheques or cheques signed by persons other than customers are not regarded as cheque.
- v. Cheque must be payable on demand: A cheque when presented for payment must be paid on demand. If cheque is made payable after the expiry of certain period of times then it will not be a cheque.
- vi. Cheque must mention exact amount to be paid: Cheque must only be for money. The amount to be paid by the banker must be certain and written in words as well as figures.
- vii. Payee must be certain to whom payment is made: The payee of the cheque should be certain whom the payment of a cheque is to be made i.e. either real person or artificial person like Joint Stock Company. The name of the payee must be written on the cheque or it can be made payable to bearer.
- viii. Cheque must be duly dated by customer of bank: A date must be duly mentioned by the customer of bank. A cheque is valid for a period of six months from the date of issue.
- ix. Cheque has three parties:
 - (a) Drawer: A drawer is a person, who draws a cheque.
 - (b) Drawee: A drawee is a bank on whom a cheque is drawn.

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(c) Payee: A payee is a person in whose favour a cheque is drawn. 10.1.3 Parts of a Cheque

The four parts of a cheque are:

1. Drawee: The party directed to pay the amount of a draft or check.
2. Drawer: The party who draws the draft upon another party for payment.
3. Payee: The person to whom a cheque, money order, etc., is made out.
4. Amount: The amount that is to be paid.



Source: www.richtechindia.com

10.1.4 Types of Cheque

1. Bearer Cheque: When the words “or bearer” which appear 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 because if they are lost, the one who finds it can collect money from the bank.
2. Order Cheque: When the word “bearer” appearing on the face of a cheque is cancelled and in its place the word “or order” is written on the face of the cheque, it is called an order cheque. Such a cheque is payable to the person specified in that as the payee, or to anyone else to whom it is endorsed.
3. Uncrossed/Open Cheque: A cheque is called an “open cheque” when it is not crossed. It is also known as an “uncrossed cheque”. The payment of such a cheque can be obtained at the counter of the bank. It can be an order cheque or a bearer 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 can only be credited to the payee’s account.

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5. Anti-dated Cheque: If a cheque is presented to the bank after the date that is mentioned on it, it is called as “anti-dated cheque”. Such a cheque is valid up to 6 months from the date of the cheque.
6. Post-dated Cheque: If a cheque bears a date which is yet to come, then it is known as post-dated cheque. A post dated cheque cannot be honoured earlier than the date on the cheque.
7. Stale Cheque: If a cheque is presented for payment after six months from the date of the cheque it is called stale cheque. A stale cheque is not honoured by the bank.

10.1.5 Dishonour of Cheques

According to Section 138 of the Negotiable Instruments Act, 1881:

“Dishonour of cheque for insufficiency etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an arrangement made with that bank, such person shall be deemed to have committed an offence and shall, be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both.”

Reasons for Dishonour of Cheques

Following are the various reasons for dishonour of cheques:

Insufficient fund: When the amount written on a cheque is more than what the drawer has in his account in the bank.

The death of the drawer: If the bank receives information of the death of its customer, the bank won't honour any cheque presented on the account of the dead customer, until further notice.

Irregular signature: If the signature on the cheque differs from the specimen signature in the bank.

Non-existing account: Sometimes, scammers who have no bank account but possess false cheque books may issue cheque to those whom they have conned.

Bankruptcy: If one is judged by a law court to be unable to pay his debts in full, the bank will dishonour any cheque presented on behalf of that customer.

Frozen account: If court orders or a military government rules that some people's account be frozen, the bank must definitely dishonour all checks bearing the account's numbers.

When there is attention: If anything is cancelled on a cheque, the bank will dishonour such a check, except the drawer signs his signature above or under the altered word.

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A post-dated check: If this is presented for payment, the bank will dishonour such a cheque.

A stale cheque: A cheque presented for repayment after 6 months of the date written on it, such a kind of cheque must be dishonoured by the bank.

If there is a difference between the amount written in words and that in figures: If for instance, the drawer writes thirty dollars only in words and \$20 in figure.

When payment is stopped: If the drawer asks a bank not to pay a cheque already issued.

The proceedings of a cheque bounce case generally take an average of 1 year before the trial court. The important stages in a cheque bounce case are:

1. Filing of complaint: The complaint needs to be registered before the magistrate within 30 days from the accrual of claim and the complainant should be present at the time of filing of complaint. The original documents are presented to the magistrate. If prima-facie a case is made out, the magistrate posts the matter for sworn statement.
2. Sworn Statement: A sworn statement is also known as “affidavit”. At this stage, the complainant needs to enter the witness box and give further details pertaining to the case. If the magistrate is satisfied that there is some meaning in the case of the complainant, then he will issue a summon to the accused.
3. Appearance of Accused: The accused needs to appear in the court on receiving the summons. In case of non-appearance, the court issues an arrest warrant against him. After appearance, the accused is supposed to take a bail from the court with or without securities. If the accused is unable to furnish a security then he can deposit a cash security. This cash security is refundable to the accused after the closing of the case.
4. Recording of Plea: In the next stage, the court asks the accused as to whether he has committed the offence or not. If the accused admits the guilt, the court immediately gives him punishment. If he pleads innocence, the court posts the matter for proof.
5. Evidence: The complainant furnishes his evidence, generally by way of affidavit; this is known as examination-in-chief. He needs to produce all documents in support of his case like bounced cheque, dishonour memo, copy of notice etc. Later, complainant is cross examined by the accused. If there are other witnesses in support of the complainant, then their evidence is also recorded.
6. Statement of the Accused: After the complainant side evidence is over, the court puts some questions to the accused regarding his guilt. An accused needs to give his version to the same.
7. Defense Evidence: After the accused statement the court gives an opportunity to the accused to leave his evidence. The accused can also produce documents as well as witnesses in support of his case. Accused and his witnesses are cross examined by the complainant. After this, the case is posted for arguments.
8. Arguments: Both the complainant and the accused will submit their arguments before the court. They can also submit judgments of high courts and Supreme Court in support of

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their case. Normally a written argument containing a gist of the oral argument is also presented to the court.

9. **Judgement:** After the arguments, case is posted for judgement. If the court finds that the accused has committed offence, he is punished with fine or imprisonment. If he is innocent,

the court will discharge him. If accused is pronounced, then he needs to suspend his sentence, for a period of 30 days with in which time, he can file an appeal before the sessions court.

10.1.6 Crossing of Cheques

Crossing is a popular practice devised for protecting the drawer and payee of a cheque in case it is lost, stolen or the signature is done by some other person for endorsing it. Both bearer and order cheques can be crossed. Crossing prevents fraud and faulty payments. Crossing of a cheque means “Drawing Two Parallel Lines” across the front of the cheque. Thus, crossing is essential in order that safety is maintained.

Different Types of Crossing

Cheques can be crossed in following ways:

General Crossing: Generally, cheques are crossed when there are two transverse parallel lines, marked across its face or the cheque bears an abbreviation “& Co.” between the two parallel lines or the cheque bears the words “Not Negotiable” between the two parallel lines or the cheque bears the words “A/c. Payee” between the two parallel lines.

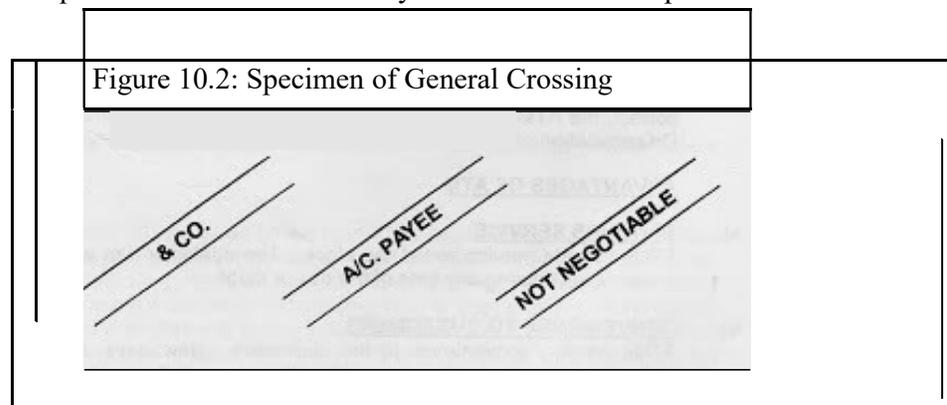
A crossed cheque can be made bearer cheque by cancelling the crossing and writing that the crossing is cancelled and affixing the full signature of drawer.

Generally, cheques are crossed when:

There are two transverse parallel lines, marked across its face, or

The cheque bears an abbreviation “& Co.” between the two parallel lines, or

The cheque bears the words “Not Negotiable” between the two parallel lines, or The cheque bears the words “A/c. Payee” between the two parallel lines.



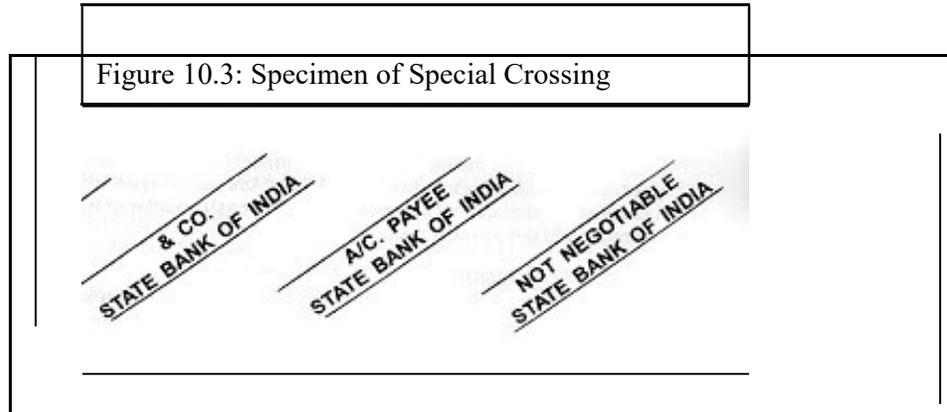
Source: <http://kalyan-city.blogspot.com/>

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Special or Restrictive Crossing: Section 124 of the Act refers to Special crossing as:

“Where a cheque bears across its face in addition to the name of the banker either with or without the words or the words ‘not negotiable, then the cheque is said to have been crossed specially. The object of special crossing is to direct the banker to pay the cheque only if it is presented through the particular bank mentioned.”

When a particular bank’s name is written in between the two parallel lines the cheque is said to be specially crossed.



Source: <http://kalyan-city.blogspot.com/>

In addition to the word bank, the words “A/c. Payee Only”, “Not Negotiable” may also be written. The payment of such cheque is not made unless the bank named in crossing is presenting the cheque. The effect of special crossing is that the bank makes payment only to the banker whose name is written in the crossing. Specially crossed cheques are safer than generally crossed cheques.

| General Crossing | Special Crossing |
|--|---|
| 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 honours the cheque from any bank A/C. | 3. In Special Crossing paying banker honours the cheque only when it is presented through the bank specified 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. |

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| | |
|--|---|
| <p>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.</p> | <p>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.</p> |
|--|---|

Double Crossing: A cheque is said to be doubly crossed when it bears 2 separate special crossings. As per section-127, “where a cheque is crossed specially to more than one banker except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.” Thus a paying banker shall pay a doubly crossed cheque only when the second banker is acting just as the agent of the first collecting banker and this has been clearly mentioned on the instrument.

Who can cross a cheque?

- (a) A cheque may be crossed generally or specially by the drawer.
- (b) Holder may also cross it.
- (c) Holder may turn a general crossing into special crossing.
- (d) A banker may cross an uncrossed cheque & he may cross it especially to himself or to another banker for purpose of collection through him.

The above content is confirmed by section 125 of Negotiable Instruments Act, 1881.

Opening of crossing/cancellation of crossing: A crossed cheque becomes an open cheque if the crossing on it is cancelled and this is known as “opening of crossing”. Only the drawer of the cheque has the right to open the crossing of the cheque by writing the words “Pay Cash” and cancelling the crossing along with his full signature. His initials are not enough for this purpose.

The paying banker must be very careful in ascertaining the validity or genuineness of the drawer’s signature opening the crossing. If drawer’s signature (already on the cheque) is forged by the holder in order to open the crossing and the payment is obtained at the counter, the banker will remain liable to the true owner of the cheque. The banker is under an obligation to pay the cheque according to the directions conveyed through the crossing on the cheque.

10.1.7 Endorsement of Cheques

The act of signing a cheque for the purpose of transferring it to somebody else is known as “Endorsement”. Under Negotiable Instruments Act this means writing of one’s name on the back of the instrument or any paper attached to it with the purpose of transferring the rights therein. Endorsements are usually made on the back of the cheque, though they can be made on its face as well. If, however, no space is left on the instrument, it may be made on a separate paper attached to it.

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A bearer cheque can be transferred by mere delivery but an order cheque is transferred by endorsement and delivery.

Endorsement on the cheque must be made in proper manner, or the bank will not pay it. The endorser must sign his name exactly as it is written on the cheque. He must sign his name with the same spellings as it appears on the cheque. He may also put down the correct spellings after he has signed in the manner already appearing on the cheque. Where a cheque is endorsed on behalf of a company, a firm or some other institution, the person signing the endorsement must sign so as to make it clear that he is doing it on behalf of the company or the firm and not in his personal capacity.

Types of Endorsement

According to the N.I. Act, 1881 endorsement can be done in any of the following forms:

1. Endorsement in blank or general endorsement.
2. Endorsement in full or special endorsement.
3. Restrictive endorsement.
4. Partial endorsement.
5. Conditional endorsement.

These are discussed as below:

Endorsement in Blank or General Endorsement: In this case, the payee or endorser does not specify an endorsee and he simply signs his name (Sec. 16, NIA).

Endorsement in Full or Special Endorsement: When the endorser specifies the person to whom or to whose order the instrument is to be paid, the endorsement is called special endorsement or endorsement in full. The specified person i.e. the endorsee then becomes the payee of the instrument.

Restrictive Endorsement: When an endorsement prohibits further negotiation of a negotiable instrument, it is said to be restrictive. Section 50 of the NI Act 1881 states, "The endorsement may, by express words, restrict or exclude the right to negotiate or pay constitute the endorsee an agent to endorse the instrument or to receive its contents for the endorser or for some other specified person."

Partial Endorsement: If only a part of the amount of the instrument is endorsed, it is called partial endorsement. An endorsement which proposes to transfer to the endorsee only a part of the amount payable, or which aims to transfer the instrument to two or more endorsees individually, is not valid.

Conditional Endorsement: If the endorser of a negotiable instrument, by express words in the endorsement, makes his liability or the right of the endorsee to receive the amount due thereon, dependent on the happening of a specified event, although such event may never happen, such endorsement is called a conditional endorsement (Section 52 of NI Act). Such an endorser gets the following rights:

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He may make his liability on the instrument conditional on the happening of a particular event.

He will not be liable to the subsequent holder if the specified event does not take place to the instrument even before the particular event takes place.

Effect of Endorsement: An unconditional endorsement of a negotiable instrument followed by its unconditional delivery has the effect of transferring the property in that to the endorsee. The endorsee acquires a right to negotiate the instrument further to anyone he wishes.

Section 50 of NI Act also permits that an instrument may also be endorsed so as to constitute the endorsee an agent of the endorser.

To endorse the instrument further or,

To receive its amount for the endorser or for some other specified person.

Self Assessment

State whether the following statements are true or false:

1. A cheque can be either in written form or in oral form.
2. A cheque can be conditional or unconditional.
3. The amount on the cheque should be written in both numbers and figures.
4. A cheque is valid for a period of 6 months.
5. Drawer is the one who draws the cheque.
6. A crossed cheque can be encashed either at the cash counter of the bank or to the payee's account.
7. Under Negotiable Instruments Act, writing one's name at the back of the instrument is called an "endorsement".

10.2 Bills of Exchange

Bills of exchange are similar to cheques and promissory notes. They can be drawn by individuals or banks and are generally transferable by endorsements.

10.2.1 Definition of Bills of Exchange

A bill of exchange can be defined as follows:

"A non-interest-bearing written order used primarily in international trade that binds one party to pay a fixed sum of money to another party at a predetermined future date."

10.2.2 Special Characteristics of Bills of Exchange

An instrument, in order to amount in law to as bill of exchange, must fulfil the following conditions:

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1. It must be in Writing: A bill of exchange cannot be oral. It must always be in written document. Although it's not necessary to use particular words and nor is it required to set form in which alone a bill of exchange can be drawn. Provided the document fulfils the above conditions laid down by law it will amount to a bill of exchange, whatever its form may be. Writing includes printing.
2. Signed by the Maker: A bill, not signed by the drawer, is regarded in law as an "inchoate bill". The signature of the drawer may not be appended to the document at the time it is drawn but until this is done, the bill is not inchoate and ineffective in law. So, no action can be brought by a holder against acceptor on a bill which is unsigned by the drawer. Signature includes a mark and even an impressed or litho stamp.
3. It must contain an Order: Though no particular form of words is necessary to form a valid bill, it is required that the words used must amount to an "order". In other words, they must not be precatory, i.e. amounting to as mere request.
4. Which must be Unconditional: It is of importance for a bill that the order directing payment should be unconditional, i.e. the payment should not be dependent on the happening as eventuality or the fulfilment of a condition.
5. It must direct a certain person: The drawee must be certain. There can be joint drawee of bill but not alternate or successive drawee. Also, if the drawee's name is wrongly mentioned, evidence may lead to prove who was the person really intended.
6. To pay certain sum of Money Only: The amount to be paid must be expressed in terms of money only.
7. To a Certain Person or his Order or to Bearer: The bill must be drawn and made payable either to a certain person or his order to bearer. In this connection it has been recently held in England that a document drawn payable to "cash or order" is not a bill of exchange as it is not made payable "to or to the order of any specified persons or bearer".
8. It must be properly stamped: Art. 13 of the Stamp Act lay down the proper stamp for bills of exchange. Generally speaking, notice stamp is chargeable on a bill payable only demand. A bill must be properly stamped when necessary. In absence of a proper stamp, the bill may be inadmissible in evidence (sec. 35, Stamp Act). Notice that under sec. 46, the making (acceptance or endorsement) of a bill of exchange is not completed till delivery thereof, either actual or constructive.

In short, before a document can be called a bill of exchange, the following things must be certain:

Drawer

Order

Drawee

Payee

Sum payable

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These are popularly called the “five certainties” of a bill of exchange.

The following points regarding bills of exchange should also be kept in mind in case of a bill of exchange.

Figures: the bill at the top or bottom corner mentions the amount in figures. The act provides that where the sum payable is expressed in words is the amount payable (sec.18).

Date: the date is mentioned in order to compute maturity of bill. That date is by law regarded as the date of the issue of the bill. A bill is not invalid because it is undated. Evidence may be adduced to prove the date of its issue. As bill may be antedated or post dated.

Place of issue is also mentioned: This is to determine whether it is an “inland “or a “foreign” bill.

· “For vale received”: the words though typically found in bills of exchange are really superfluous, consideration being always presumed in case of negotiable instrument (sec.118) and also because consideration can always be proved by external evidence.

Self Assessment

Fill in the blanks:

8. Difference between a promissory note and a bill of exchange is that a bill of exchange is
9. A bill not signed by the drawer is called as a/an bill.
10. The amount to be paid must be expressed in terms of

10.3 Promissory Note

A promissory note is a term used for a legal document that declares the intention of an individual or an entity to pay an amount on demand or at a specified time. A promissory note can be written on the face value of a debt or for an amount that would include accumulated interest.

A promissory note is simply a “promise to pay.” It contains a maker, i.e. the payer and a lender, i.e. the payee. An unsecured promissory note is not attached to anything; the loan is made on the basis of the maker’s ability to repay. A secured promissory note may also be made based on the maker’s ability to repay, but it is secured by a thing of economic value such as a car or a house.

10.3.1 Definition of Promissory Note

“A written, signed, unconditional promise to pay a certain amount of money on demand at a specified time. A written promise to pay money that is often used as a means to borrow funds or take out a loan.”

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The individual who promises to pay is the maker, and the person to whom payment is promised is called the payee or holder. If signed by the maker, a promissory note is a negotiable instrument. It contains an unconditional promise to pay a certain sum to the order of a specifically named person or to bearer—that is, to any individual presenting the note. A promissory note can be either payable on demand or at a specific time.

10.3.2 Parties to a Promissory Note

A promissory note has the following parties:

The maker: the person who makes or executes the note promising to pay the amount stated therein,

The payee: one to whom the note is payable,

The holder: is either the payee or some other person to whom he may have endorsed the note,

The endorser,

The endorsee.

10.3.3 Essentials of a Promissory Note

To be a promissory note an instrument must possess the following essentials:

It must be in writing. An oral promise to pay will not do.

It must contain an express promise or clear undertaking to pay. A mere acknowledgement of debt is not sufficient.

The promise or undertaking to pay must be unconditional. A promise to pay “when able”, or “as soon as possible”, or “after your marriage”, is conditional. But a promise to pay after a specific time or on the happening of an event which must happen, is not conditional.

The maker must be a certain person, i.e., the note must show clearly who the person is engaging himself to pay. .

The payee must be certain. The promissory note must contain a promise to pay to some person or persons validated by a name or designation.

The sum payable must be certain and the amount must not be capable of contingent additions or subtractions.

Payment must be in legal money of the country.

It must be properly stamped in accordance with the provisions of the India Stamp Act. Each stamp must be duly cancelled by maker’s signature or initials.

It must contain the name of place, number and the date on which it is made.

However, their omission will not make the instrument invalid, e.g. if it is undated, it is assumed to be dated on the date of delivery.

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Self Assessment

Fill in the blanks:

11. In case of a promissory note, an individual who promises to pay is known as the
12. The person to whom the payment is promised is known as the
13. According to of RBI Act, a promissory note cannot be made payable or issued to bearer, no matter whether it is payable on demand or after a certain time.

10.4 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 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.

“A holder is an individual who is in possession of an instrument that is either payable to him or her as the payee, endorsed to him or her, or payable to the bearer. Those who obtain instruments after the payee are holders if such instrument is either payable to the bearer or endorsed properly to their order. The party in possession is not considered to be the holder in a case in which a necessary endorsement has been forged.” Holder in Due Course

Section 9 states that a holder in due course is:

- i. a person who for consideration, obtains ownership 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 enough cause to consider that any defect subsisted in the title of the person from whom he deduced his title.

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

He must be the holder of the instrument.

He should have obtained the instrument for value or consideration.

He must have obtained the negotiable instrument before maturity.

The instrument should be complete and regular on the face of it.

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The holder should take the instrument in good faith.

“A holder in due course is in a privileged position. He is not only himself protected against all defects of the persons from whom he received the instrument as current coin, but also serves as a channel to protect all subsequent holders. A holder in due course can recover the amount of the instrument from all previous parties, although, as a matter of fact, no consideration was paid by some of the previous parties to the instrument or there was a defect of title in the party from whom he took it.” Once an instrument passes through the hands of a holder in due course, it is purged of all defects. It is like current coin. Whoever takes it can recover the amount from all parties previous to such holder.

Self Assessment

Fill in the blanks:

14. A person who has obtained the possession of an instrument by is not a holder.
15. A holder in due course is a position.

10.5 Paying Banker and Collecting Banker

Paying banker and collecting banker can be defined as follows:

“The bank on which a cheque is drawn (the bank whose name is printed on the cheque) and which pays the amount for which the cheque is written and deducts that sum from the customer’s account.” The paying banker should use due care and diligence in paying a cheque so as to refrain from any action potential enough to damage his customer’s credit.

“A Collecting banker is the one who attempts to collect different types of instruments representing money in favour of his customer or his own behalf from the drawers of these instruments; some are negotiable instruments as provided for in the Negotiable Instruments Act, 1881.”

10.5.1 Rights and Liabilities of Paying and Collecting Banker

Rights and liabilities of a both types of bankers can be discussed as follows:

Rights of Paying and Collecting Banker

The rights of the banker include:

1. Right of General Lien: can be retained till the owner discharges the debt or obligation to the possessor. A lien is the right of a creditor in possession of goods, securities or any other assets belonging to the debtor to retain them until the debt is repaid, provided that there is no contract express or implied, to the contrary. A banker has the right to retain the property belonging to the customer until the debt due from him has been paid. It is a right

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to retain possession of specific goods or securities or other movables of which the ownership vests in some other person and the possession

2. Right to set off: The right of set off is also known as the right of combination of accounts. Right to set off is a right of the banker to adjust his outstanding Joan (debit) in the name of the customer from his credit balance of any of the accounts he s maintaining with the bank. A bank has a right to set off a debt owing to a customer against a debt due from him. Right to set off is nothing but combine the two or more accounts of a customer of the customer. If the customer have two or more account and in case of absence of agreement the banker can exercise has right of set off:

- (a) The two or more accounts must be in the name of same customer
- (b) There must be same capacity
- (c) There must be same bank ,though different branches
- (d) One account should show debit balance and other should show a credit balance
- (e) The debt must be manual
- (f) The amount of debit should be certain one.

Thus set off is adjustment of debit balance with that of credit balance

3. Right to close an account: There should be no confusion between closing the account and stopping operation of the account. The contractual relationship between banker and customer is terminated by closing the account. There is no opportunity for the customer to operate the account once again. On the other hand, stopping operation of an account refers to the suspension of the operation of an account for the time being, at the advent of certain events. It is purely suspension of the relationship between a banker and a customer and the customer can operate the account, after such events come to a close

The circumstances for closure of account are:

- (a) Customer's intension to close the account
 - i. The customer can close the account in any of the following condition
 - ii. If he does not agree to the terms of the banker such as rate of interest, bank charges etc
 - iii. If the customer does not enjoy such facilities as are offered by some other banks e.g. free transfer of money up to ` 10000
 - iv. When the confidence of the person is shaken
- (b) Bankers intension to close the account
 - i. The banker can close the account of the customer when he finds ii. The account is not remunerative

iii. When the customer is not a desirable one.

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- (c) Customer's death-as soon as the bank gets notice of the death of the customer, he should immediately stop the operations of the account. It is because death puts an end to the contract.
 - (d) Customers insanity-the banker should stop the operation of his account .the banker should apply for the official copy of Lunacy Order.
 - (e) Customers insolvency-when the banker comes to know that the customer is insolvent than the bank will close the account of the customer.
4. Right to appropriate payments: The banker has the right to appropriate the money deposited by a customer to any one of the loan account due by him. The appropriation arises when the customer has more than one account one showing the debit balance and the other with a credit balance. The customer is given the first option to decide the account to which the amount should be credited. If the customer fails to indicate his choice then the banker has every legal right to credit the amount in any one account of that customer.

Liabilities of Paying Bankers

Following are the liabilities of paying bankers:

Checking the signature of the drawer.

Verification of the genuineness of the instrument.

Payment not stopped by the A/c holder

Holder's title on the cheque is valid.

A/c is not dormant one.

A/c holder is not bankrupt or deceased.

A/c is not under subject of liquidation process.

No 'Guernsey Order' is issued by court.

Properly endorsed.

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

Instrument being presented is crossed.

Instrument is not state or post dated.

No material adjustment is made.

Sufficient balance in the A/c

Liabilities of Collecting Bankers

Following are the liabilities of collecting bankers:

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1. Acting as agent: While collecting an instrument, the Bankers works as agent of his customer. As an agent he has to take some steps & precautions to protect the interest or his customer as a man of ordinary discretion would take to safeguard his own interest.
2. Scrutinizing the instruments: Name of the holder, Branch name, amount in word and figure, date, material alteration of any to be checked carefully.
3. Checking the endorsement: Bankers have to check the instrument whether it has been endorsed properly.
4. Presenting the instrument in due time: It is the responsibility of the collecting bank to present the instrument in due time to the paying bank.
5. Collecting the proceeds in the payee's account: It is the duty of collecting banks to collect and credit the proceeds of the instruments to the proper/correct account.
6. Notice of dishonour and returning the instruments: If any instrument is dishonoured by the paying bank it should be informed to the customer on the day following the receipt of the unpaid instruments.

Self Assessment

Fill in the blanks:

16. Acting as agent is a of a collecting Banker.
17. Bankers have to check the instrument whether it has been properly.
18. Liability of Paying Banker is to check that no is issued by court.

10.6 Summary

Negotiable instruments are written orders or unconditional promises to pay a fixed sum of money on demand or at a certain time

A cheque is a document that orders a payment of money from a bank account.

Check that is returned unpaid by the bank on which it was drawn due to lack of sufficient funds. To knowingly issue a check that will be dishonoured is a criminal offence in many jurisdictions.

Section 123 of the Act refers to general crossing as- "Where a cheque bears across its face two transverse lines with or without the words or the words 'not negotiable, the cheque is said to have been crossed generally. Where a cheque is crossed generally, the banker shall not pay it, otherwise than to the banker"

Section 124 of the Act refers to Special crossing as- "Where a cheque bears across its face in addition to the name of the banker either with or without the words or the words 'not negotiable, then the cheque is said to have been crossed specially. The object of special

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crossing is to direct the banker to pay the cheque only if it is presented through the particular bank mentioned.”

A cheque is said to be doubly crossed when it bears 2 separate special crossings. As per section-127, “where a cheque is crossed specially to more than one banker except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.”

Cheque has 3 parties : Drawer, Drawee and Payee

The act of signing a cheque for the purpose of transferring it to somebody else is known as “Endorsement”.

A non-interest-bearing written order used primarily in international trade that binds one party to pay a fixed sum of money to another party at a predetermined future date.

A promissory note is a term used for a legal document that declares the intention of an individual or an entity to pay an amount on demand or at a specified time.

A holder is an individual who is in possession of an instrument that is either payable to him or her as the payee, endorsed to him or her, or payable to the bearer. Those who obtain instruments after the payee are holders if such instrument is either payable to the bearer or endorsed properly to their order. The party in possession is not considered to be the holder in a case in which a necessary endorsement has been forged.

A Collecting banker is the one who attempts to collect different types of instruments representing money in favour of his customer or his own behalf from the drawers of these instruments

10.7 Keywords

Cheque: a written order directing a bank to pay money;

Drawee: The party directed to pay the amount of a draft or check.

Drawer: The party who draws the draft upon another party for payment.

Endorsement: The act of signing a cheque for the purpose of transferring it to somebody else.

Payee: The person to whom a cheque, money order, etc., is made out.

Promissory Note: promise to pay

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