BANKING
THEORY, LAW AND PRACTICE

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BANKING
THEORY, LAW AND PRACTICE

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It is with immense pleasure and deep gratitude we present this Twenty-eighth Edition in the hands of our esteemed readers.

As usual, the banking scenario in India is witnessing far-reaching changes to keep pace with the modern technology. New types of banks, viz., payments banks and small finance banks have started functioning. The subsidiaries of the State Bank of India along with the Bharathia Mahila Bank Ltd. have been merged with the SBI. New norms have been laid down to resolve stressed assets. E-banking has emerged as a dominant force in the Indian banking system. Again, merger of banks is on the move.

The Insolvency and Bankruptcy Code (IBC) has been enacted to promote a sound banking sector in the country. Again, recapitalisation of banks has taken place on a large scale to relieve them from high levels of stressed advances.

All these developments have been duly accommodated in this edition at suitable places with a view to providing the latest information in the field of banking to the students of banking. The subject matter has been presented in the most simple and lucid manner. It is a restructured, revised and updated version of the previous edition.

As usual, many Indian case laws affecting bankers have been added in appropriate places so that the reader might be well acquainted with the Indian banking practice.

It is hoped that the present edition will meet fully the requirements of both categories of readers, practical and academic.

We place on record our profound thanks to the Himalaya Publishing House Pvt. Ltd., particularly Mrs. Meena Pandey, Mr. Niraj Pandey, Mr. K.N. Pandey, Mr. Anuj Pandey and Mrs. Nimisha and other members of the publishing house for bringing out this edition in an elegant manner. We are also greatly indebted to all our well-wishers for their constant inspiration and motivation so that this book may see the light of Twenty-ninth Edition in a short span of time.

Constructive comments and useful suggestions for the improvement of this book are most welcome.

Sivakasi

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K. NATARAJAN
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Today, banks have become a part and parcel of our life. There was a time when the dwellers of city alone could enjoy their services. Now banks offer access to even a common man and their activities extend to areas hitherto untouched. Apart from their traditional business oriented functions, they have now come out to fulfil national responsibilities. Banks cater to the needs of agriculturists, industrialists, traders and to all the other sections of society. Thus, they accelerate the economic growth of a country and steer the wheels of the economy towards its goal of “self-reliance in all fields”. It naturally arouses our interest in knowing more about the ‘bank’ and the various personnel and activities connected with it.

### ORIGIN OF BANKING

Since banking activities were started in different periods in different countries, there is no unanimous view regarding the origin of the word ‘bank’. The word, ‘bank’ is said to have been derived from the French word ‘Banco’, or ‘Bancus’ or ‘Banc’ or ‘Banque’ which means, a ‘bench’. In fact, the early Jews in Lombardy transacted their banking business by sitting on benches. When their business failed, the benches were broken and hence, the word ‘bankrupt’ came into vogue. But, Macleod in his book, Theory and Practice of Banking has expressed a different view. According to him, the money changers were never called ‘Benchieri’ in the Middle Ages. So, this derivation may be a mere conjecture.

Another common held view is that the word ‘bank’ might be originated from the German word ‘back’ which means a joint stock fund. Of course, a bank essentially deals with funds. In due course, it was Italianised into banco, Frenchised into ‘bank’ and finally Anglicised into ‘bank’. This view is most prevalent even today.

### BANKER

A person who is doing the banking business is called a banker. But, it is not at all easy to define the term ‘banker’ precisely because a banker performs multifarious functions. First, a banker must be a man of wisdom.

He deals with others’ money but with his own mental faculties. Secondly, a banker is not only acting as a depository or agent, but also as a repository of financial advices. The scope of activities of a banker is ever expanding. Thus, a banker is dealing in the field of banking which is highly dynamic, complex and sophisticated and which must cater to the ever growing requirements of millions of people belonging to different strata of society. The banks have diversified their activities on an accelerated pace to cater to the sophisticated needs of corporate clients and other segments of trade and industry. Hence, the banking terminology seems to be the most incomprehensible one.

Still, some attempts have been made to define the term ‘banker’. This can be studied under the following heads:
Earlier Views

The early definitions were not positive in the sense, they did not point out any of the functions performed by a banker. For instance, The Bill of Exchange Act of 1882 defines the banker thus: ‘Banker includes a body of persons whether incorporated or not who carry on the business of banking’. So also, Sec. 3 of the Negotiable Instruments Act states that ‘the term banker includes a person or a corporation or a company acting as a banker’. These definitions are vague. They amount to saying that a person who acts as a banker is a banker.

Experts’ Views

Later on, some attempts were made by experts to define the term ‘banker’. Among them, the most important ones are the following:

Macleod’s view: According to Macleod, ‘The essential business of a banker is to buy money and debts by creating other debts. A banker is essentially a dealer in debts or credit.’

Dr. Hart’s view: Dr. L. Hart states in his book, ‘Law of Banking’ that ‘A banker is one who in the ordinary course of his business honours cheques drawn upon him by persons from and for whom he receives money on current accounts.’

Sir John Paget’s view: Sir John Paget in his book, ‘Law of Banking’ defines the term ‘banker’ as follows: ‘That no person or body, corporate or otherwise can be a banker who does not (i) take deposit accounts, (ii) take current accounts, (iii) issue and pay cheques, and (iv) collect cheques crossed and uncrossed for his customers.” He embellishes his definition by adding that “one claiming to be a banker must profess himself to be a full-time banker and the public must accept him as such and his main business must be that of banking from which, generally, he should be able to earn his living.”

All these experts have pointed out some aspects of a banker. They are the following: receiving deposits of various kinds, lending money or creating credit, issuing cheques, honouring cheques and collecting cheques. These are the essential functions of a bank. However, these definitions do not include any agency and general utility services rendered by modern bankers.

Indian View

The definition given in India in the Banking Regulation Act appears to be more precise and acceptable. Thus, Sec. 5(B) of the above-mentioned Act defines the term ‘Banking company’ as ‘a company which transacts the business of banking in India’, and the term, ‘Banking’ has been defined as ‘Accepting for the purpose of lending and investment, of deposits of money from the public, repayable on demand, order or otherwise and withdrawable by cheque, draft order or otherwise’. This definition also pinpoints the principal functions of a banker, namely, receiving deposits, lending or investing these deposits and repaying these deposits on demand by cheque or otherwise. Even this definition does not indicate the subsidiary services rendered by the bankers. By now, it is quite evident that no definition of the term ‘banker’ will be a complete one.

BANKING AND OTHER BUSINESS

In this connection, an interesting question may arise as to whether to call a moneylender a banker or not. Traditionally, moneylenders and indigenous bankers have been advancing loans. But they do not receive deposits from the public. They rely upon their own resources. In Samyukta Samajan Vs. Goli Kalyani, it was held that the firm lending money out of its own capital was not a bank. Moreover, their main business is not banking. They used to combine banking with trading business. In Stafford Vs. Henry, it was held that carrying on the banking business as a part of any business would not entitle a man to be called a banker. Similarly, these moneylenders do not issue cheques which is one of the essential functions of the bankers. Hence, moneylenders and indigenous bankers are not regarded as bankers in the strict sense of the term.

Some financial institutions like IFC, SFC, IDBI, Cooperative Land Development Banks, etc. are providing loans to industries and agriculturists. They are not regarded as banks since they do not accept deposits from the public regularly. Of late, many business houses and industries have begun to invite fixed deposits from the public by offering attractive rates of interest. They cannot be strictly called banks because they do not lend and issue any cheques.
CUSTOMER

It is equally difficult to define the term ‘customer’. Different views have been expressed at different times. Even under the law, the term ‘customer’ is not defined. But this term, ‘customer’ is of much significance to a collecting banker because he can get protection under Sec. 131 of the Negotiable Instruments Act only if he collects a crossed cheque for his customer in good faith and without negligence. Thus, to solve many of the disputes that may arise in banking transactions, a clear-cut definition of the term, customer is essential. Who is then a customer?

To have a proper understanding of this subject, a study of the term, ‘customer’ as they obtained at different stages can be made.

Early Stage — Some Sort of an Account

In early periods, a man who held some sort of an account was considered to be a customer. In Great Western Railway Co. Vs. London and County Bank, it was held that ‘there must be some sort of account either a deposit or current account or some similar relation to make a man the customer of a bank’. The opening of an account is the only qualification needed by a man to become a customer. This argument appears to be logical. However, in those days, other different opinions were also prevalent. For instance, Lord Brampton was of the view, ‘It is not necessary to say that the keeping of an ordinary banking account is essential to constitute a person as customer of a bank’. It is not prudent to call a person having no account as a customer and so it is totally unacceptable. Thus, we can say that some sort of an account is necessary for a person to be called a customer.

Second Stage — Frequency of Transactions

At this stage, some refinements were made to the early definitions. Since the word ‘customer’ itself implies a custom, Sir John Paget puts forth a different view. According to him, ‘to constitute a customer, there must be some recognisable course or habit of dealing in the nature of regular banking business.’ Hence, a person cannot become a customer on mere opening of an account and so there must be frequent transactions so as to establish a recognisable course between a banker and his customer. Thus, Sir John Paget gives importance to the time element and therefore, his theory is popularly known as the ‘duration theory’. The same view was expressed in the case of Mathews Vs. Williams Brown & Co. His view regarding the dealing of banking nature has been universally accepted. But his view about ‘duration’ is subject to several criticisms. It is very difficult to say how many transactions will make a person a customer or how much time should elapse between two successive transactions to qualify a person as a customer.

THE MODERN VIEW

Single Transaction

Eminent jurists in recent times have completely exploded the view expressed by Sir John Paget. According to them, even a single transaction can constitute a person as a customer. They have gone to the extent of saying that the moment a banker has agreed to collect a cheque for a person, the latter becomes a customer. It means that a person becomes a customer the moment his banker agrees to admit him as a customer. Thus, in Ladbroke Vs. Todd, Justice Bailhache rightly observed: ‘the relation of banker and customer begins as soon as the first cheque is paid in and accepted for collection and not merely when it is paid’. Commenting upon the case, Lord Chorely observed: ‘By accepting a request to open an account, the banker enters into a contract with the offeror in which it is considered that such a continuous relationship is implicit. Again, the same view was expressed in Commissioner of Taxation Vs. English Scottish and Australian Bank, wherein it was confirmed by Lord Dunedin that, ‘the word customer signifies a relationship in which duration is not the essence’. It is now beyond doubt that neither the number of transactions nor the period is material in deciding whether or not a person is a customer. In Savory & Co. Vs. Lloyds Bank Ltd., Mr. Smith had instructed the Lloyds Bank to collect the cheques stolen by him and credit them to his wife’s account at the Red Hill Branch. His wife did not have any account at all. But, it was held that Mrs. Smith became a customer from the moment the banker had accepted those cheques for collection.
Moreover, a person does not become a customer by virtue of the bank performing a casual service like accepting valuables for safe custody or giving change for a hundred rupee currency note for him. Hence, the dealing must be of a banking nature.

To sum up, the following are the prerequisites to constitute a person as a customer:

(a) He must have some sort of an account.

(b) Even a single transaction may constitute him as a customer.

(c) Frequency of transactions is anticipated but not insisted upon.

(d) The dealings must be of a banking nature.

THE RELATIONSHIP BETWEEN A BANKER AND A CUSTOMER

Any dispute between two parties can be settled only on the basis of the nature of the existing relationship between the two. Hence, it is imperative that one should know the exact relationship between the banker and the customer. This relationship falls under two broad categories, namely: (i) general relationship, and (ii) special relationship.

General Relationship

Is there a Depository Relationship? When a person opens an account with a banker, there arises a contractual relationship by implication. Once, the banker was thought of as a depository. This was the case during the period of Goldsmiths of London. A depository is one who receives some valuables and returns the same on demand. But at present, a banker is not bound to return the same coins and currency notes deposited by a customer. Instead, he is required to give the same amount. So, he is not a depository. If a customer insists upon the return of the same coins and currency notes, then a banker cannot run his main business, namely, lending. Moreover, if a banker is acting as a depository, he cannot make use of the money to his best advantage. A banker has to make use of the money in deposit with him for earning the maximum profit and the whole income is not returned to the customer. Only a part of it is returned to the customer. That is why Lord Cottenham rightly observed in Foley Vs. Hill, ‘the money paid into a bank ceases altogether to be the money of the principal; it is then the money of the banker. He is known to deal with it as his own .......... He is bound to return an equivalent by paying a similar sum that was deposited with him when he is asked for it.’

A banker as a bailee: A banker becomes a bailee when he receives gold ornaments and important documents for safe custody. In that case, he cannot make use of them to his best advantage because he is bound to return the identical articles on demand. Moreover, a banker cannot acquire any title in respect of stolen articles. A banker does not allow any interest on these articles. It is only the customer who has to pay rent for the lockers. So, a banker acts as a bailee only when he receives articles for safe custody and not when he receives money on deposit account.

Is there a Trustee Relationship? Prof. Keeton defines a trust as ‘a relationship which arises wherever a person called trustee is compelled in equity to hold property, whether real or personal by legal or equitable title for the benefit of some person.’ If a banker is regarded as a trustee, he cannot make use of the money deposited by a customer to his best advantage. He will be bound by the trust deed and he will have to render an account for everything he does with the money. For this reason, he is not a trustee when he opens an account for a customer.

A banker as a trustee: A banker becomes a trustee only under certain circumstances. For instance, when money is deposited for a specific purpose, till that purpose is fulfilled, the banker is regarded as a trustee for that money. In Official Assignee of Madras Vs. J.W. Irwin, a certain sum of money was deposited with the bank with the specific instruction to buy shares. When that bank failed, it was held that the banker was a trustee for that part of the amount which was earmarked for the specific purpose. So also, when a cheque is given for collection, till the proceeds are collected, he holds the cheque as a trustee. But the proceeds are not to be held in trust. That is why Lord Justice Atkin has rightly observed in Joachinson Vs. Swiss Banking Corporation, ‘The bank undertakes to receive money and to collect bills for its customer’s account. The proceeds so received are not to be held in trust for the customers but the bank borrows the proceeds and undertakes to repay them.’

Is there an Agent Relationship? Section 182 of the Indian Contract Act defines an agent as one employed to do any act for another or to represent another in dealing with a third person.
When a banker receives deposits from the customers, he is not regarded as an agent of his customers. If he acts as an agent, he should use the deposit money according to the instructions of his principal (customer) in return for a remuneration for this agency service. But this is not the case. The agent is also accountable to the principal and as such, the banker should give a detailed list of how he used the deposit money, the income earned thereon and so on. The whole income should go to the customer.

**A banker as an agent:** The agent-principal relationship is said to exist between a banker and his customer, when the banker buys and sells shares, collects cheques, bills, dividend warrants, coupons and pays insurance premia, subscriptions, etc. on behalf of his customer. The banker is acting as an agent of his customer under such circumstances. So also when he executes the will of a customer, he is acting as an Executor; when he administers the estate of a customer he is regarded as an Administrator. This kind of relationship doesn’t exist when he receives deposits from a customer.

**What then is the Relationship?** At this stage, we are curious to know the exact nature of the relationship that exists between a banker and his customer. When a banker receives deposits from a customer, he is technically said to borrow money from the customer. So, he is acting as a debtor who is bound to return the money on demand to his creditor, namely, his customer.

**Debtor-creditor relationship:** According to Sir John Paget, ‘The relation of a banker and a customer is primarily that of a debtor and a creditor, the respective position being determined by the existing state of the account. Instead of the money being set apart in a saferoom, it is replaced by a debt due from the banker. The money deposited by a customer with the banker becomes the latter’s property and is absolutely at his disposal.’ Hence, there exists a relationship of debtor and creditor; the banker, being the debtor, is bound to repay the deposit as and when the customer asks for it.

**The banker as a privileged debtor:** A banker, as a debtor is not the same as an ordinary commercial debtor. An ordinary commercial debtor’s duty is to seek out the creditor and pay the money. But, a banker as a debtor enjoys many privileges and hence, he is called a privileged debtor. The privileges enjoyed by a banker have been listed below:

1. The creditor, *i.e.*, the customer must come to the banker and make an express demand in writing for repayment of the money. According to the decision given in *Joachinson Vs. Swiss Banking Corporation*, an express demand by a customer in writing is essential to get back the deposit money. But for this privilege, the banker will have to go to the very doors of thousands of his customers and find out whether or not they are in need of money. This will be detrimental to the very business of banking.

2. In the case of an ordinary commercial debt, the debtor can pay the money to the creditor at any place. But, in the case of a banking debt, the demand by the creditor must be made only at the particular branch where the account is kept. It was held in *Clare & Co. Vs. Dresdner Bank*, that locality is an essential element in a banking debt and the banker should pay the money only when the demand is made at the branch where the account is kept. But, today, this privilege has lost its significance due to the introduction of e-banking practices and adoption of anywhere banking strategy.

3. Time is not an essential element in the case of an ordinary commercial debt whereas the demand for repayment of a banking debt should be made only during the specified banking hours of business which are statutorily laid down. In *Arab Banks Vs. Barclays Bank*, it was held that a banker is liable to honour a cheque provided it is presented during the banking hours. However, e-banking facilitates 24-hour banking.

4. The banker is able to get the deposit money without giving any security to the customer while it is not possible in the case of an ordinary debtor. Thus, the customer is acting only as an unsecured creditor. It is really an enviable privilege given to the banker.

5. The Law of Limitation which is applicable to all debts lays down that a debt will become a bad one after the expiry of three years from the date of the loan. But this Law is not applicable to a banking debt. According to Article 22 of the Law of Limitation Act, the period of 3 years will be calculated from the date of demand for repayment of the banking debt and not from the date of the deposit. Practically, when the demand is made, the banker will return the money immediately and so this law does not apply to a banking debt. Otherwise, the customers will be deprived of their deposits on the ground that they have become bad debts by being not withdrawn within 3 years from the date of the deposit. This will not be conducive to the smooth running of the banking business. Thus, a banker is a highly privileged debtor who is not bound to repay the debt unless
an express demand by the customer in writing is made at the branch where the account is kept and during the banking hours.

6. A banker as a debtor has the right to combine the accounts of a customer provided he has two or more accounts in his name and in the same capacity. This is another of his privilege. In the early days, a banker was allowed to combine the accounts of a customer even without obtaining the permission of the customer as was decided in the case of *Garnett Vs. Mckervan*. However, prudence demands the banker getting the consent beforehand for exercising his right to combine the accounts. Now it has been clearly established in *Greenhalgh Vs. Union Bank of Manchester* that a banker can combine the accounts of a customer only after getting the consent of his customer. It is advisable on the part of a banker to get a letter of set-off duly signed by a customer at the time of his opening two or more accounts. This will avert many complications. This letter of set-off permits the banker to exercise the right to set-off even without giving any prior notice to his customer.

7. Similarly, an ordinary debtor can close the account of his creditor at any time. But, a banker cannot close the account of his creditor at any time without getting his prior approval.

**A banker as a creditor:** The debtor-creditor relationship holds good in the case of a deposit account. But in the cases of loan, cash credit and overdraft, the banker becomes a creditor and the customer assumes the role of a debtor. Here again, the banker is a privileged person because he is acting as a secured creditor. He insists upon the submission of adequate securities by the customer to avail the loan or cash credit facilities. Moreover, the Law of Limitation will operate in such cases from the date of the loan unless it is renewed.

**Special Relationship**

Apart from these general features of the relationship, there exists some special features which are discussed hereunder:

1. **Statutory Obligation to Honour Cheques**

   When a customer opens an account, there arises a contractual relationship between the banker and the customer by virtue of which the banker undertakes an obligation to honour his customer’s cheques. This obligation is a statutory obligation since Sec. 31 of the Negotiable Instruments Act compels a banker to do so. Sec. 31 runs as follows:
   
   ‘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 so to do, and in default of such payment, must compensate the drawer for any loss or damage caused by such default.’

2. **Limited Obligation**

   Even though law compels a banker to honour all cheques, he cannot blindly honour all cheques. Thus, this obligation is not an absolute but only a qualified one. The statutory obligation to honour cheque is limited in the following ways:

   (a) **The availability of money in the account of the customer:** A banker’s obligation to pay a cheque is subject to the amount available in the deposit account. If there is no sufficient balance, the banker is justified in overriding his obligation. At times, this obligation may be extended to the extent of the overdraft or cash credit sanctioned by the banker. If there is a prior arrangement for OD, the banker is bound to honour the cheque as was decided in the case of *Rayner & Co. Vs. Hambros Bank*. If a banker, by mistake, honours a cheque in the absence of sufficient balances, it will be taken as a precedent and he will be expected to pay cheques in future also in the absence of sufficient balance.

   (b) **The correctness of the cheque:** The obligation to pay a cheque depends upon the correctness of the cheque. All the required particulars like the date, name of the payee, amount in words and figures and the signature of the drawer ought to have been correctly filled in.

   (c) **Proper drawing of the cheque:** The cheque will be honoured only when it is drawn according to the requirements of law. It must be drawn on a printed form supplied by the banker and it should not contain any ‘request’ to pay the amount.

   (d) **Proper application of the funds:** The banker will honour a cheque only when the funds are meant for its payment. For instance, if trust funds are withdrawn by a cheque for private use, the banker will not honour it.
(e) **Proper presentation:** The banker will undertake to honour cheques provided they are presented at the branch where the account is kept and during the banking hours. If the cheques are presented after six months from the ostensible date of issue, they will be regarded as stale cheques and they will not be honoured. So, this obligation of the banker to honour cheques is conditioned by the proper presentation of cheques.

(f) **Reasonable time for collection:** A customer cannot impose on the banker a condition that the latter should pay his cheques blindly even when they are drawn against cheques sent for collection before they are collected. In *Underwood Vs. Barclays Bank*, it was held that in the absence of an express or implied agreement giving the customer a right to draw cheques against uncleared items, a banker is entitled to return such cheques with the remarks, “Effects not Cleared”.

(g) **Existence of legal bar:** A banker is relieved from his statutory duty of honouring his customers’ cheques if there is any legal bar like Garnishee Order attaching the customer’s account.

**Overriding the Obligation**

When a banker overrides his statutory obligation and dishonours a cheque on reasonable grounds discussed above, the banker is justified in doing so. However, if he dishonours a cheque by mistake, it amounts to a wrongful dishonour. In such a case, the banker is violating the provisions of law and hence, he should be penalised for his offence. Thus, a banker may fail to honour a cheque by oversight. It amounts to saying that the banker is negligent in his duty of paying cheques and there is a breach of contract between the banker and the customer. To err is human and so in spite of all his careful observation of the procedures laid down, a banker may, by chance, dishonour a cheque even though it is good for payment. When a banker does so, he brings injury to his customer’s credit for which he is liable to compensate the customer for any loss or damage caused to him.

In *Marzetti vs. Williams*, Lord Teterden rightly observed, ‘It is discredit to a person and therefore injurious, in fact, to have payment refused of a cheque/draft .... it is an act particularly injurious to a person in trade.’

**Liability to the Customer Only**

When a cheque is wrongfully dishonoured, a banker is liable only to his customer who happens to be the drawer of the cheque in question and he is not at all liable to any other parties.

In *Jagjivan Manji Vs. Ranchhod Das Meghji*, it was held that the liability of the banker for wrongful dishonour is only towards the drawer or the customer and not towards the payee or the holder of the cheque.

**Assessment of Damages**

As per Sec. 31 of the Negotiable Instruments Act, if a banker wrongfully dishonours a cheque, he has to compensate for any loss or damage suffered by the customer. The word ‘loss’ or ‘damage’ as mentioned in Sec. 31 of the N.I. Act does not depend upon the actual amount of the cheque but upon the loss to one’s credit or reputation. That is why ‘the smaller the amount of the cheque, the greater the damage’ principle is adopted. In fact, the customer suffers more loss of credit when a cheque for a small amount is dishonoured.

**Ordinary Damage vs. Special Damage**

A banker is always liable to pay damages for wrongful dishonour of cheques. The damage may be of two kinds: (i) ordinary damage or nominal damage, and (ii) special damage or substantial damage. As a general rule, a customer must always prove and plead for his loss. He will get only nominal damages. But, there are two exceptions to this. Under the following two circumstances, a special damage can be claimed:

(i) An action brought forth for breach of marriage.

(ii) An action brought forth by a businessman having sufficient funds for the wrongful dishonouring of his cheque.

A banker is primarily concerned with the second case and he has nothing to do with the first one. In assessing damages, the loss to one’s credit or reputation is mainly taken into account. A trader-customer is supposed to suffer more in credit if his cheque is dishonoured. Non-traders are generally allowed only ordinary damages for wrongful dishonour, because, it will not affect their credit much. If the dishonour of the cheque is wilful, the banker is liable to pay vindictive damages. Thus, a customer can proceed against the banker for wrongful dishonour on the following grounds:
(i) Breach of contract
(ii) Negligence
(iii) Libel

Hence, the words, ‘loss or damage’ as appearing in Sec. 31 imply the following:

(a) Damage for the breach of the contract to pay cheques,
(b) Damage to the drawer’s general business,
(c) Damage to his general reputation and credit, and
(d) Damage for the negligence of the banker.

Case Law Illustration

In *New Central Hall Vs. United Commercial Bank Ltd.*, it was held that a trader could get special damage as the dishonour of a cheque would affect his major asset, namely, his credit and a non-trader could claim only nominal damages. In *Gibbons Vs. Westminster Bank*, Mrs. Gibbons, a non-trader, had issued a cheque for a sum of £ 9 16 sh in favour of her landlord towards the rent. Owing to a mistake, it was dishonoured. The court awarded only a nominal damage of sh 40 since, she happened to be a non-trader. In *Sterling Vs. Barclays Bank Ltd.*, the banker had wrongfully dishonoured Mrs. Sterling’s cheque. Though Mrs. Sterling was a trader, the court awarded only nominal damages since she had two cheques dishonoured previously and also people of that trade did not worry about their cheques being dishonoured as they led a hand-to-mouth existence. In *Davidson Vs. Barclays Bank Ltd.*, the banker of a bookmaker had dishonoured a cheque for a small sum of £ 2-15 sh by mistake. Taking into account his business and the amount of the cheque, he was awarded a special damage of £ 250. Hence, in assessing damages, the courts of law give due weight to factors like the financial position, business reputation and the custom of trade.

In *Canara Bank Vs. I.V. Rajagopal*, the banker had dishonoured by mistake a cheque for ₹ 294.40 drawn by a non-trader customer, Mr. I.V. Rajagopal. It was proved in the court that this erroneous dishonour led to the termination of his employment. The court found that the customer had suffered much damage and so a special damage of ₹ 14,000 was awarded to the customer.

Thus, generally, a non-trader customer is not entitled to recover substantial damages. However, the damages which he has suffered is alleged and proved, he can claim special damages.

It is evident from the above case law illustrations that the damage will be assessed on the basis of the loss to one’s credit or reputation, irrespective of the fact whether he is a trader or non-trader, though non-traders are not generally entitled to claim special damages.

**Is there any obligation to pay bills?** Even though there is no statutory obligation on the part of a banker to honour the bill of a customer, modern bankers undertake the duty of paying the bills on behalf of their customers. When a customer accepts a bill and makes it payable at his bank, it is called domiciliation of a bill. If a bill is so domiciled, the banker should pay it on the due date.

**Prior Arrangement**

Bankers generally do not render this service unless they are appointed to do so by their customers. A customer should have made prior arrangement with his banker to honour such domiciled bills. Otherwise, it will be taken as a precedent and he will be expected to do so in future also.

**Indemnity Bond**

In the absence of any compulsion from outside, a banker voluntarily takes up the duty of honouring a bill just to please his customer, and thus, to render him some service. But, he should keep in mind that the statutory protection extended to cheques under Sec. 85 of the Negotiable Instruments Act is not extended to the payment of bills. So, in his own interest, he should demand an indemnity bond from his customer for whom he renders this service. This bond safeguards the banker against possible losses that may arise on account of the payment of such a bill.

**Precautions**

In spite of the above-mentioned safeguards, a banker should observe the following additional precautions. He must see:
(a) Whether all the particulars in the bill are correctly filled in.
(b) Whether it is adequately stamped.
(c) Whether it is due for payment.
(d) Whether the signature of his customer on the bill is genuine.

2. Banker’s Lien

Another special feature of the relationship existing between a banker and his customer is that a banker can exercise the right of lien on all goods and securities entrusted to him as a banker.

Right to Retain the Goods

A lien is the right of a person to retain the goods in his possession until the debt due to him has been settled. For instance, a creditor who has in his possession, goods of his debtor, may have a lien over the goods in respect of the money due by the debtor. This right to retain goods as security is known as lien. According to Sec. 171 of the Indian Contract Act, ‘Bankers… may in the absence of a contract to the contrary, retain as security for a general balance of account, any goods bailed to them…’

Kinds of Lien

Lien is of two kinds – particular lien and general lien. A particular lien is so called because it confers a right to retain the goods in connection with which a particular debt arose. In other words, a particular lien applies to one transaction or certain transactions only. For example, a watchmaker has a lien over the watch till the repair charges due from the owner of the watch are paid to him. General lien, on the other hand, gives a right to a person to retain the goods not only in respect of a particular debt but also in respect of the general balance due from the owner of the goods to the person exercising the right of lien. It extends to all transactions and, thus, it is more extensive than that of a particular lien.

A Banker’s Lien is a General Lien?

A Banker’s lien is always a general lien. A banker has a right to exercise both kinds of lien. His general lien confers upon him the right to retain the securities in respect of the general balance due from the customer. In Brandao vs. Barnett, it was held, ‘Bankers most undoubtedly have a general lien on all securities deposited with them as bankers by a customer unless there is an express contract or circumstances that show an implied contract inconsistent with lien.’

Circumstances for Exercising Lien

If the following conditions are fulfilled, a banker can exercise his right of lien:
(a) There must not be any agreement inconsistent with the right of lien.
(b) The property must come into the hands of a banker in his capacity as a banker (qua banker).
(c) The possession should be lawfully obtained in his capacity as a banker.
(d) The property should not be entrusted to the banker for a specific purpose.
These are four vital factors of a banker’s lien.

Lien Cannot Go Beyond the Agreement

In C.R. Narasimha Setty Vs. Canara Bank (1990), the plaintiff Mr. C.R. Narasimha Setty had purchased a vehicle under a hire purchase finance by executing a hypothecation deed. Subsequently, the banker exercised a lien on the vehicle by seizing it for the amount still due ₹ 3,694.90 (ground rent charges, seizure charges, etc.), and also for the open cash credit limit of ₹ 50,000 sanctioned to a firm in which he was a partner and for which the vehicle was offered as a collateral security only. The plaintiff contended that no right of lien was available to the bank in respect of the debt due by the firm.

Decision

It was held that the banker could not exercise his lien on the vehicle in respect of the cash credit dues of the firm since the hypothecation deed did not give any right to the bank to seize the vehicle for the dues of the firm. The bank
was directed to return the vehicle subject to the recovery of ₹ 3,694.90 only. Thus, it is evident that a lien cannot go beyond the terms of the loan agreement.

Again, in *K. Jagdishwar Reddy Vs. Andhra Bank* (1988), it was held that the banker has no right of lien on the gold ornaments deposited for a loan in respect of another debt due by him as a guarantor, since, there is no contract by the customer offering the gold ornaments as a pledge for the debt due by him as a guarantor. In another case, *Vyasa Bank Ltd. Vs. Akkem Mallikarjuna Reddy*, the customer had obtained two gold loans and one crop loan. When the gold loans were repaid, the banker refused to give the jewels, exercising lien on them for the amount due under the crop loan. But, the customer pleaded that the banker couldn’t exercise his general lien on the jewels, since, the crop loan, had been already waived under the waiver scheme of the government. Moreover, the jewels were deposited specifically for the gold loans only. It was held that the bank can exercise his general lien on the jewels because: (i) the waiver scheme is not applicable to private banks, and (ii) there is an agreement ‘to retain the gold ornaments for all the monies now owing, or which shall, at any time thereafter be owing, to the bank in any capacity whatsoever’.

Again, in *Syndicate Bank Vs. Vijayakumar* (1992), it was held that the bank has a general lien on the FDRs which were given along with a special agreement giving power to the bank the liberty of adjusting the proceeds to any loan or OD.

A Banker’s Lien as an Implied Pledge

It must be noted that a banker’s lien is generally described as an implied pledge. It means that a lien not only gives a right to retain the goods but also gives a right to sell the securities and goods of the customer after giving a reasonable notice to him, when the customer does not take any steps to clear his arrears. In *Deverges Vs. Sandeman*, a month’s notice was considered as a reasonable one. That is why Sir John Paget rightly says in his book, ‘Law of Banking’ that ‘It has been generally understood that the banker’s lien conferred rights more extensive than ordinary liens ...’ This right of sale is normally available only in the case of a pledge. That is why lien is regarded as an implied pledge. This right of sale is available only in exceptional circumstances in the case of lien.

Lien on Negotiable and Quasi Negotiable Securities

A banker has a lien on all securities entrusted to him in the capacity of a banker. In *Mia Vs. Currie*, it was ruled that a banker’s general lien applies to bills, cheques and money paid to bankers in the capacity of bankers. A banker’s lien over negotiable securities applies even to instruments which are not the property of the customer. It is so because the banker becomes a holder in due course provided he has acted in good faith. Hence, his title will be superior to that of his customer. The lien also extends to quasi negotiable securities like a policy of insurance, share certificates, documents of title to goods, deposit receipts, etc.

No General Lien on Safe Custody Deposits

Bankers have no general lien on safe custody deposits. The bankers receive valuables such as sealed boxes, parcels, documents and jewellery for safe custody. Such articles are left with the bankers for a specific purpose. In *Pollock Vs. Mulla*, it was held that the general lien of a banker does not extend to securities deposited for safe custody or for special purpose. Moreover, the banker becomes a bailee in such cases and as such he cannot acquire a better title than that of his customer from whom he got them. Hence, a banker’s lien does not cover safe custody deposits. To quote Sir John Pager again, ‘a banker’s lien only attaches to such securities as a banker ordinarily deals with for his customer otherwise than for safe custody, when there is no question or contemplation of indebtedness on the part of the customer’. But, Heber Harot in the Gilbert lectures has expressed a different view which does not hold good. However, the banker can exercise his particular lien on them for the locker charges due.

No Lien on Documents Entrusted for a Specific Purpose

In *Greenhalgh Vs. Union Bank of Manchester*, it has been clearly established that if a bill of exchange or any other document or money is entrusted for a special purpose, a banker’s lien cannot be extended to them. It is so because when they are entrusted for a specific purpose, the banker becomes a trustee till that purpose is fulfilled. Hence, he cannot avail of his right of lien. In *K. Jagadeshwar Reddy Vs. Andhra Bank*, Nizamabad (1988), it was held that in the absence of any agreement to the contrary, the bank has no general lien in respect of those securities which were given specifically for a particular loan.
No Lien on Articles Left by Mistake

A banker cannot exercise any lien in respect of the property which comes into his hands by mistake. It amounts to unlawful possession. In Lucas Vs. Dorrien, the banker had refused to grant an advance against certain securities. The customer by mistake forgot to take back the securities while leaving the bank premises. It was held that the banker could not exercise his right of lien over those securities because they came into his possession in an unlawful manner.

Lien on Securities Not Taken Back After the Repayment of the Loan

The banker can exercise the right of lien on securities which are allowed to remain with him even after the repayment of the loan. This is so because the securities are supposed to be redeposited with him. This view was held in London and Globe Finance Corporation.

Lien on Bonds and Coupons

Lien applies to bonds and coupons that are deposited for the purpose of collection. The reason is that the banker is acting merely as a collecting agent. But, Lord Chorley has questioned the validity of this view. However, if the coupons and bonds are left in safe custody, a banker’s lien cannot cover them. The court will therefore apply “Collection/Safe Custody Test”. If the bonds are deposited with the condition that the banker can cut off the interest coupons for collection, then lien would attach both to coupons and bonds. On the other hand, if the customer himself cuts off the coupons, then lien does not apply to coupons since the customer’s intention is to provide for the ‘safety’ of the coupons. In the case of bonds, however, lien applies.

No Lien Until the Due Date of a Loan

When a specific amount is given as loan for a definite period, no lien arises until the due date. The reason is that no debt arises till that date. In the same way, a banker cannot retain any money belonging to the customer against the discounted bills which have not yet been matured. The reason is that no liability arises till the date of maturity. Moreover, even on the date of maturity, this liability may or may not arise.

No Lien on Deposits

Generally speaking, a banker has no lien upon the deposit account of a customer in respect of a loan account due from the same customer. However, he has a right to set off one account against the other. Set-off is an accounting situation which is always available to the banker and it should not be confused with lien. Sec. 171 gives a right of lien only in respect of goods bailed as security. Under bailment, the same goods should be returned to the borrower. But, in the case of a deposit, the money deposited into any account ceases to be the property of the customer and it need not be repaid in identical coins and currency notes. Hence, a deposit does not come within the meaning of bailment and hence, a banker’s general lien is not available in respect of a deposit account. In Official Liquidator, Hanuman Bank Ltd. Vs. K.P.T. Nadar & Others, it was held that when moneys are deposited into a bank, the ownership of the money passes on to the bank. So, the right of the bank over the money deposited with it cannot be a lien at all. In the same way, a banker cannot exercise the right of lien on the deposit account of a partner in respect of a debt due from the partnership firm. Also, no lien arises on trust account in respect of the debt due from the person operating that trust account.

A banker has no lien on a stolen bond given for sale if the true owner claims it before the sale is effected.

A banker’s lien is not barred by the Law of Limitation Act.

A banker has no lien on the security of fixed deposit receipt which has not been endorsed and discharged on maturity. In Union Bank of India Vs. Venugopalan, it was held that the banker cannot exercise his lien on the fixed deposit account of the defendant’s brother (Venugopalan’s brother) unless the FDR is duly discharged and given to the bank as a collateral cover to the loan given to the defendant.

When a Bill of Exchange is handed over to the banker for the purpose of safety till maturity and thereafter for collection, then the banker’s lien does not extend to that bill till maturity since that bill has been entrusted to him for a specific purpose. On the date of maturity, there is no objection to the exercising of the right of lien on that bill since it is given for collection which is a routine business of a banker.

Negative Lien

It is otherwise called non-possessory lien. In the case of a negative lien, the securities are not in the possession of the creditor. But, the debtor gives an undertaking that he will not create any charge on those securities in question
without the prior written permission of the creditor. Such a letter of undertaking must be duly stamped. Thus, in the
case of a negative lien, the possession of the security is with the debtor himself, who promises not to create any charge
over them until the loan is repaid.

3. A Banker’s Duty to Maintain Secrecy of Customer’s Accounts

A banker is expected to maintain secrecy of his customer’s account. The word ‘Secrecy’ is like a Damocle’s
Sword hanging on the head of the banker and every employee of a bank has to take an oath of secrecy regarding the
customer’s accounts. The banker should not disclose his customer’s financial position and the nature and the details of
his account. Even though this practice came into vogue as early as in 1868 in Hardy Vs. Veasey, it was firmly rooted
only in 1924 in a leading case, popularly known as Tournier’s case (Tournier Vs. National Provincial and Union Bank
of England Ltd.). In the above case, the banker had disclosed to a third party the customer’s connection with
bookmakers. It resulted in the loss of employment to the customer. It was held by Justice Bankes that there is a
qualified contractual duty which has been acquired by the bank in the character of banker not to disclose information
concerning the depositor. In this case, it was not done and hence, the bank was held liable to compensate for the loss
suffered by the customer.

Of course, the duty of secrecy is not a statutory one. Only the nationalised banks in India are compelled, under Sec.
13 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, to maintain secrecy of their
customers’ accounts. However, professional etiquette demands that a banker should not reveal the nature of his
customer’s account to any third person.

Sir John Paget goes to the extent of saying that this secrecy should be maintained even after the account is closed
and even after the death of the customer. It is immaterial whether the account is in debit or credit. This duty of secrecy
goes beyond the state of the account. It extends to all transactions that go through the account.

The disclosure of the financial position of a customer may affect his reputation and bring considerable loss. If a
customer suffers any loss on account of the unwanted disclosure of his account, the banker will be compelled to
compensate for the loss suffered by his customer.

At the same time, a banker must remember that he cannot maintain cent per cent secrecy at all times. There may be
certain reasonable grounds under which he can justifiably disclose his customer’s account. In the words of Judge
Bankes, ‘... the duty is a legal one arising out of contract, and the duty is not absolute but qualified... on principle.
I think that the qualifications can be classified under four heads: (a) Where disclosure is under compulsion by law;
(b) Where there is a duty to the public to disclose; (c) Where the interests of the bank require disclosure; (d) Where
the disclosure is made by the express or implied consent of the customer.’

(A) Disclosure under the Compulsion of Law

When law requires the disclosure of the state of a customer’s account, he cannot override it. His duty to his
customer is subject to his duty to the law of the country. The following are the examples of this category:

(i) Under Sec. 4 of the Bankers Book Evidence Act, 1891, a banker may be asked to produce a certified copy of
his customer’s account in his ledger.

(ii) Under Sec. 285 of the Indian Income Tax Act, 1961, a banker is asked to advise the Income Tax Officer the
names of those who have earned ₹ 10,000 or above as interest on deposits during any financial year.
Moreover, the officials have free access to the books of accounts kept by bankers.

In Sankarlal Agarwalla Vs. State Bank of India and Another, it was held that the banker cannot be made
liable for having disclosed the deposit of high denomination notes as per law to the Income Tax Department.

(iii) Under Sec. 45B of the Reserve Bank of India Act, the Reserve Bank is empowered to collect credit
information from banking companies relating to their customers.

(iv) Under Sec. 26 of the Banking Regulation Act, 1949, every bank is compelled to submit an annual return of
deposits which remain unclaimed for 10 years.

(v) Under Sec. 36 of the Gift Tax Act, the Gift Tax Officer can examine a banker on oath and compel him to
produce the books of account.

(vi) Under the Exchange Control Act, 1947, the government has the power to gather information about the
financial position of a customer who is suspected of violating the provisions of the above-mentioned Act.
(vii) When a Garnishee order nisi is received, the banker must disclose the nature of the account of a customer to the court.

In Kattabomman Transport Corporation Ltd. Vs. State Bank of Travancore (1992), it was held that banks are justified in disclosing the account of a customer without his consent under the compulsion of law.

(B) Disclosure in the Interest of the Public

As between individual interest and public interest, public interest is more important and so, the individual interest should be sacrificed for the sake of public interest. Hence, a banker is justified in disclosing the state of his customer’s account in the interest of the public. It is not easy to give an example of this type. The following grounds generally fall under this category:

(i) Disclosure of the account where money is kept for extreme political purposes.
(ii) Disclosure of the account of an unlawful association.
(iii) Disclosure of the account of a revolutionary body to avert danger to the state.
(iv) Disclosure of the account of an enemy in times of war.

(C) Disclosure in the Interest of the Bank

When his own position is at stake, a banker may be compelled to ignore his oath of secrecy. Any prudent banker will safeguard his position before fulfilling his obligations. The following are the instances of this kind:

(i) **Disclosure of the account of the customer who has failed to repay the loan to the guarantor.**
(ii) **Disclosure to a fellow banker:** Bankers amongst themselves have the practice of exchanging information about customers for the sake of common courtesy. When an enquiry of this type comes to a banker, he should in his own interest answer the enquiry because later on he may also be in need of such information for which he has to approach his fellow banker. Usually, when a piece of information about a customer who happens to be an acceptor of a bill under discount is required, the banker will make a courtesy call on his fellow banker. This is called common courtesy.

(iii) **As a defence of past action disclosure can be made:** In Sunderland Vs. Barclays Bank, the banker had dishonoured the cheque of Mrs. Sunderland drawn in favour of a tailor. In fact, she had asked the banker to give proper reasons for the dishonour of that cheque to her husband. To defend his past action (i.e., dishonour), the banker had to reveal the fact of her having drawn cheques in favour of bookmakers without the knowledge of her husband. After having honoured the last cheque drawn in favour of a bookmaker, the banker had to dishonour the cheque in question for want of funds. Mrs. Sunderland could not tolerate this disclosure to her husband and so she sued the banker for unwarranted disclosure. It was held that the banker was not liable because the banker had to disclose the fact in his own interest. Besides, there were supposed to be no secrets between a husband and a wife. Moreover, she had permitted the banker to give proper reason for the dishonour of her cheque to her husband.

(D) Disclosure under the Express or Implied Consent of Customer

It is implied in the contract between a banker and his customer that the banker would not reveal anything about the state of the bank balance without the customer’s express or implied consent.

(i) If a customer has given the name of his banker for trade reference, then the banker would be justified in answering the same.

(ii) So also, when a proposed guarantor puts questions to the banker regarding the account of the customer, the banker is expected to reveal the exact position. This is so because any guarantor who has assumed great responsibility would be anxious to know about the monetary position of the person whose position is being guaranteed. In all cases, it would be advisable to get the consent of the customer in writing.

General Precautions

In disclosing the state of the account to a customer, great care should be exercised. If the banker is careless, he is liable to pay damages:
(i) To his customer who suffers damage because of unreasonable disclosure, and  
(ii) To a third party who incurs loss relying upon the information which is untrue and misleading.  
Hence, a banker should have certain norms about disclosing the state of his customer’s account. They are:  
(i) The banker should not be negligent in giving information.  
(ii) He should strictly give bare facts. That is, only a general information must be given. He should not disclose  
the actual state of the account.  
(iii) Information should be given only after getting the express consent of his customer.  
(iv) He should not speak too favourably or too unfavourably of a customer. Such misleading informations may  
put the parties in difficulties and the banker will have to compensate for the consequent loss.  
(v) The information should be given in such a way that he may avoid any liability in future. That is why, while  
supplying credit information, bankers add a clause stating, ‘This information has been given in strict  
confidence and without any liability on our part.’ In Banbury Vs. Bank of Montreal, it was established that the  
bank ‘was not liable for the statement made by the manager and the manager himself was not liable if he  
did not sign the letter’. Further, it was expressly stated that the information was given “without prejudice”  
and in ‘strict confidence’.  
(vi) As far as possible, the banker should supply the information only to a fellow banker.  
(vii) On no account should he disclose to the holder of a cheque the exact balance in a customer’s account.  

4. Right to Claim Incidental Charges  
Another special feature of the relationship that exists between a banker and a customer is that the banker may  
claim incidental charges on unremunerative accounts. This practice is much more in vogue in England. In India, in  
order to encourage people to open more accounts, such charges are not levied. However, of late, banks in India resort  
to this practice of claiming incidental charges on an increasing scale. Perhaps, it is due to the fact that their profitability  
has been very much affected in recent times.  
These incidental charges take the form of ‘service charges’, ‘processing charges’, ‘ledger folio charges’, ‘appraisal  
charges’, ‘penal charges’, ‘handling/collection charges’ and so on.  
The charges which came into effect from 1st January, 2016 onwards in public sector banks have been listed below:  
(i) Ledger folio charges of ₹ 100 per ledger page with ₹ 40 entries on half-yearly basis.  
(ii) Collection charges for cheques:  

<table>
<thead>
<tr>
<th>Amount</th>
<th>Charges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to ₹ 5,000</td>
<td>₹ 25 per instrument for SB A/c</td>
</tr>
<tr>
<td>Up to ₹ 10,000</td>
<td>₹ 50 per instrument for other accounts</td>
</tr>
<tr>
<td>Above ₹ 10,001 to 1 lakh</td>
<td>₹ 50 per instrument plus Service Tax.</td>
</tr>
<tr>
<td>Above ₹ 1 lakh</td>
<td>₹ 100 per instrument.</td>
</tr>
<tr>
<td>Above ₹ 1 lakh</td>
<td>₹ 150 per thousand.</td>
</tr>
</tbody>
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(iii) Issue of Duplicate DD – ₹ 100 per instrument.  
(iv) Handling charges for cheques dishonoured ₹ 150 per instrument for Savings Bank ₹ 250 for current plus 18%  
p.a. interest on cheque amount.  
(v) Processing charges for mortgage loans at the rate of 1% of the loan. For Housing loans 0.5%.  
(vi) Standing instruction charges of ₹ 50 per instrument.  
(vii) A charge of ₹ 3 per cheque leaf to be levied at the time of issue of cheque books for current account/MICR/  
CTS and ₹ 2.50 for rural branches.  
(viii) A penal charge of ₹ 115 per operation, if that operation has the effect of bringing down the balance in the  
current account below the minimum balance, thereafter ₹ 25 per instance.  
(ix) Stop payment instruction charge of ₹ 50 per cheque for Savings Account and ₹ 100 for current account.  
(x) Regular service charges such as those for ATM cards, internet banking etc. For instance, for reset of  
password ₹ 10 per case/instance.
The Damodaran Committee’s Recommendation

The following important suggestions have been made by the Damodaran Committee with regard to bank charges in the interest of the customers:

- Intimation of charges levied through SMS/E-mail/Letter immediately.
- To charge only the proportionate amount to the shortfall in the minimum balance.
- To notify any new charges at least one month before levying them.

There is a proposal to introduce Auto Debit charges from 2018 onwards. For example:

(i) Pass book updation – ₹ 10 per updation (Auto Debit)
(ii) Balance Statement – ₹ 25 per statement (Auto Debit)
(iii) Cheque book request – ₹ 25 per request (Auto Debit)
(iv) Issue of DD/ECS – ₹ 25 per request (Auto Debit)
(v) Cheque deposit – ₹ 10 per cheque plus speed clearing charges
(vi) KYC updation – ₹ 25 per request
(vii) Duplicate pass book – ₹ 50 per request
(viii) Request for debit cards – ₹ 25 per request (Auto Debit)

However, in practice, the above service charge regulations are not strictly followed by all banks. They have a tendency to manipulate the service charge regulations so as to attract more and more customers. Customers do not hesitate to shift from one bank to another depending upon the personalised services available in a particular bank and also at the cost at which they are available. Thus, there is a shift from ‘relationship banking’ (opening an account in a bank and patronising it for ever) to ‘transaction banking’. It is not a healthy trend.

5. The Right to Charge Compound Interest

As per general law, levying of compound interest is strictly prohibited. But, a banker is given a special privilege of charging compound interest. Usually, bankers charge interest on the money lent at the end of every quarter. The same practice of crediting the customer’s account with interest at the end of every half-year is followed.

In National Bank of Greece Vs. Pinios Shipping Co. (1990), the House of Lords has categorically established the banker’s right to capitalise interest, if unpaid, by the borrower on yearly or half-yearly basis, irrespective of the fact, whether it is a secured or unsecured loan. This judgement is very useful in Indian context where the existence of this right has been doubted in D.S. Gowda Vs. Corporation Bank. However, in Syndicate Bank Vs. M/s. West Bengal Cement Ltd. (1989), the method of dealing with loan accounts in bank transactions by adding interest unpaid when due, to the amount advanced and treating the merged amount as the principal loan has been recognised. In re Bank of India case, the Supreme Court has very recently ruled that banks cannot charge compound interest with periodic rests, for agricultural loans. It is so because, agriculturists do not have any regular sources of income other than the sale of crops, which normally takes place only once in a year.

Again, in M/s. Kharvela Industries Private Ltd. Vs. Orissa State Financial Corporation & Others, it was held that the payments made by a debtor is, in the first instance, to be applied towards interest and thereafter towards the principal unless there is an agreement to the contrary.
6. Exemption from the Law of Limitation Act

Another distinguishing feature is that the banker is exempted from the Law of Limitation Act. As per the provisions of this law, a debt will become a bad one after the expiry of three years from the date of the debt. But, according to Article 22 of the Law of Limitation Act, 1963, for a banking debt, the period of three years will be calculated from the date on which an express demand is made for the repayment of the debt. It follows that a banker’s debt cannot be made time barred. However, in practice, a reasonable period has been fixed for the banker’s debt also. Sec. 26 of the Banking Regulation Act prescribes a period of 10 years to consider a banking debt as a bad one. In the case of fixed deposit, this period of 3 years/10 years will be calculated from the date on which the FDR is surrendered. In the case of a safe custody deposit, this period commences from the date of demand. In the case of an overdraft, the period of these years will be counted from the date on which it is made use of.

In the actual banking practice, no banker would wait for the expiry of 10 years. If there is no operation in an account for one year, it will be marked as a ‘dormant account’. After two years of marking, it will be transferred to an account called ‘Inoperative account’ and it will be thereafter transferred to the Central Office after five years.

How Long the Relationship Would Continue?

As long as there is some sort of an account either a deposit or a loan account, the relationship would continue. The relationship would be terminated on the happening of events like death, insolvency or insanity of a customer or closing of the account either on the initiative of the customer or banker. This relationship would not come to an end just because the banker has demanded the repayment of the loan outstanding as was decided in the case of National Bank of Greece Vs. Pinios Shipping Co. (1990).

Since banking is a service industry, it is all the more essential that good relationship is not only created but also maintained by means of offering excellent personalised services.
Objective Type:

I. Fill up the blanks with suitable word/words:

1. A banker is a _________ debtor.
2. A banker’s lien is always a _________ lien.
3. Accepting a bill and making it payable at the bank is called _________.
4. For wilful dishonour of a cheque, _________ damage is payable by the banker.
5. To claim a banking debt _________ in writing is necessary.
6. Honouring of a cheque is a _________ obligation, whereas maintenance of secrecy is a _________ obligation.
7. _________ is necessary to exercise a lien.
8. The word ‘customer’ signifies a relationship in which _________ is of no essence.


II. Match the following:

| 1. Deposit accounts | (a) Agent and principal |
| 2. Advances         | (b) Bailee and bailor   |
| 3. Safe custody deposit | (c) Debtor and creditor |
| 4. Collection of a cheque | (d) Creditor and debtor |
| 5. Safe deposit locker | (e) Mortgagee and mortgagor |
|                    | (f) Lessor and lessee    |

Answers: 1. (c), 2. (d), 3. (b), 4. (a), 5. (f)

III. State whether the following statements are true or false:

1. Maintenance of secrecy is an absolute obligation. _________
2. The damage payable in the case of wrongful dishonour of a cheque depends upon the amount of a cheque. _________
3. A negative lien does not give any right of possession to the creditor. _________
4. A banker can exercise his particular lien on the safe custody articles. _________
5. When the funds are deposited for a specific purpose, the banker becomes a trustee. _________
6. The Law of Limitation runs from the date of the deposit. _________


IV. Choose the best answer from the following:

1. The relationship between a banker and a customer is _________.
   (a) That of a debtor and creditor  (b) That of a creditor and a debtor
   (c) Primarily that of a debtor and a creditor  (d) (a) and (b) together
2. The banker has a lien on _________.
   (a) Bonds given for collection  
   (b) Bonds given for safe custody  
   (c) Bonds left by mistake  
   (d) (a) and (b) together

3. In executing the standing instructions, there exists a relationship of _________.
   (a) Debtor and creditor  
   (b) Trustee and beneficiary  
   (c) Bailee and bailor  
   (d) Agent and principal

4. To constitute a person as a customer _________.
   (a) There must be frequency of transactions  
   (b) There must be a dealing of a banking nature  
   (c) There must be some sort of an account  
   (d) There must be a single transaction of any nature.

5. The banker has a statutory obligation to _________.
   (a) Honour customers’ cheques  
   (b) Exercise lien  
   (c) Maintain secrecy of his customers’ accounts  
   (d) Honour customers’ bills

Answers:  1. (c), 2. (a), 3. (d), 4. (c), 5. (a)

Short Answer Type:
1. What do you understand by the term ‘banker’?
2. What is duration theory?
3. What is meant by ‘Common Courtesy’?
4. What is Banker’s lien? Is there any negative lien?
5. What do you know about ‘Bank charges’?
6. What do you mean by ‘lien as an implied pledge’?
7. What do you understand by ledger folio charges?
8. How will you assess damages in the case of a wrongful dishonour of a cheque?
9. What is the period of limitation for a banking debt?
10. Can a moneylender be called a banker?

Essay Type:
1. Define the terms ‘banker’ and ‘customer’ and bring out the relationship that exists between them.
2. What is Banker’s lien? When can he exercise such a lien?
3. Is a banker obliged to maintain the secrecy of his customer’s account? Under what circumstances can he disclose the account and what precautions should he take in such cases?
4. State and explain the banker’s obligation to honour the cheques. What risks does he have to face in the case of wrongful dishonour of a cheque?

Higher Abilities Type:
1. Distinguish between ‘general lien’, ‘particular lien’ and ‘negative lien’. Can a banker claim lien on the following:
   (a) A gold bar deposited for safe custody  
   (b) A Hundi deposited for safe custody till maturity and then for collection  
   (c) A cheque given for collection  
   (d) A stolen bond given for sale (no lien since a customer’s title is defective)
2. A customer’s account shows a credit balance of ₹ 950 and the following cheques are presented at the same time:
   (a) A cheque for ₹ 900  
   (b) A cheque for ₹ 2,000  
   (c) A cheque for ₹ 300  
Which of the above cheque/cheques will you honour and why?
3. Can a football club claim special damages for the wrongful dishonour of a cheque?

4. Can a banker disclose the account of his customer to the following persons when they demand for such a disclosure:
   (a) Wife of his customer
   (b) Payee of a cheque
   (c) An Income Tax Officer

5. ‘The relationship between a banker and a customer is primarily that of a debtor and creditor.’ Discuss.

6. Distinguish between:
   (i) A banking debt and a commercial debt.
   (ii) Dormant account and inoperative account.
   (iii) Handling charges and processing charges.
   (iv) Relationship banking and transaction banking.