

### **Q.1-Describe the powers and functions of banking courts .**

Ans. Under Section 7 of the Financial Institution Ordinance 2001, Banking Courts would have all the powers vested in a Civil Court under the Code of Civil Procedure 1908 and at the same time also have all the powers of a criminal court which a Sessions Court possesses under the Criminal Procedure Code. Some of the inherent powers of the Banking Courts include power to recall, examine execution proceedings, powers in auction procedure, power to grant adjournment, interim relief, and extraterritorial injunction. A banking court has power to summon witnesses for further cross examination, jurisdiction to determine fraud and misrepresentation and it also has powers to punish anyone who commits contempt of the court or any other offence under the provision of the law.

Section 9 of the Financial Institution Ordinance 2001 specifies the procedure of the Banking Courts. Where a customer or a financial institution commits a default in fulfillment of any obligation with regard to any finance the financial institution or as the case maybe, the customer, may institute a suit in the Banking Court by presenting a plaint.

The plaint shall be supported by a statement of account which in the case of a financial institution shall be duly certified under the Bankers Book Evidence Act 1898 and all other relevant documents relating to grant of finance. Without a valid statement of account a suit of a financial institution is liable to be dismissed. Legal presumption of correctness and truth lies with the statement of account however it can be questioned and challenged by the defendant with regards to its correctness and admissibility. The plaint must contain certain particulars which include the amount of finance availed, the amount paid back the outstanding amount etc.

After examining the correctness of the suit the court shall send notice\summons to the defendant who has by virtue of Section 10 of the Financial Institution Ordinance 2001 has thirty days to file a petition of leave to appear and defend the suit. In default of doing so the allegations of fact in the plaint shall be deemed to be admitted and the suit shall be decreed summarily. According to Section 10 application for leave to defend shall state the amount of finance availed by the defendant, the amount paid by the defendant, dates of payment, the total amount which in the view of the defendant is outstanding and the amount if any which the defendant disputes as payable

## WhaQ.2 -t do you know about negotiable act 1881 ?

Ans. Objectives of the Act

- It facilitates the settlement of payments in business as they pass freely from holder to holder due to easy transferability of value of instrument.
- It provides legal protection to different mercantile instruments.
- It presents an orderly and authoritative statement of leading rules of law relating to negotiable instruments.
- It provides for the special procedure in case the obligations which have to discharge under the instruments.
- It regulates the different types of negotiable instruments which include Promissory notes, Bills of Exchange and Cheques.
- It explains the capacity and liabilities of the parties to the instrument.
- It provides the understanding of different topics under the Act that are negotiation, assignment, endorsement etc.
- It inculcates faith in the efficacy of banking operations and credibility in transacting business on the negotiable instruments.

the meaning of negotiable instrument

Negotiable' means 'transferable by delivery' and the word 'instrument' means 'a written document by which a right is created in favor of some person'

Thus the term 'Negotiable Instrument' literally means 'a written document transferable by delivery'

According to Sec. 13 of the Act, negotiable instrument means 'a Promissory Note, Bills of Exchange or Cheque payable either to order or to bearer'.

The instruments should follow the given condition of negotiability that are;

- Easy negotiability.
- Transferee can sue in his own name without giving notice to the debtor.
- Better title to a bona fide transferee for value.

the different kinds of negotiable instruments?

It is covered under two heads that are;

- Negotiable Instruments by Statue: Promissory note, Bills of exchange and Cheque.
- Negotiable Instruments by Usage: Bank note, draft, Share warrants, Bearers, Debentures, Dividend warrants and Treasury bill.

1. Promissory Note- According to sec. 4 of the Act a promissory note is an instrument in writing (not being a bank or a currency note) containing an unconditional undertaking, signed by the maker to pay a certain sum of money to, or to the order of, a certain person or to the bearer of the instrument.
2. Bills of Exchange- According to sec. 5 of the Act an instrument in writing, containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to or to the order of, a certain person, or to the bearer of the instrument.
  - Cheque - According to sec. 6 of the Act a cheque is an order by the customer 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.

### **Q.3- State powers and functions of state bank of pakistan to regulate and control the functioning of the banking companies under the banking companies ordinance 1962 .**

Ans.

Powers of State Bank of Pakistan

Banking Companies Ordinance 1962 has conferred the following powers on SBP:

- a. Section 25 has authorized SBP to control advances by banks. SBP lays down conditions to be fulfilled which are given in Risk Prudential Regulations.
- b. Section 25-A authorized the SBP to collect credit information from banking companies and furnish them to other banking companies without disclosing the source of information.
- c. Section 25AA has authorized SBP to prepare and submit to the Federal Government every year a special report on cases of write off of loans, mark up and other dues or financial relief through rescheduling and restructuring of loans, etc., where banking companies have deviated from the established banking practices.
- d. Section 26 authorises the State Bank of Pakistan to prohibit banking companies incorporated in Pakistan or incorporated outside Pakistan but operating in Pakistan from accepting deposits.

e. No individual, association or a company is authorised to carry on banking business in Pakistan without obtaining a licence from the State Bank of Pakistan under Section 27.

f. When banking companies or their branches do not perform their functions properly, Section 27 (4) has authorized the State Bank of Pakistan to cancel the license granted to them. ^

Preparation/display of Balance Sheet. Section 34 prescribes that every banking company operating in Pakistan whether local or foreign, shall prepare balance sheet and profit and loss accounts as on the last working day each year, in the format given in Second Schedule of the BCO.

g. Section 38 makes it obligatory to display the copy of this balance sheet & profit and loss account at appropriate places in branches and principal offices in Pakistan.

Unclaimed deposits and valuables

Section 31 requires that banks maintain a record of all unclaimed items and if these remain unpaid or unclaimed for a period of ten years, transfer them to the State Bank. This includes all deposits and unpaid instruments such as dividend, drafts, bills of exchange, shares or valuable articles held in safe custody, for which there has been no transaction or no claim except those of a minor or a court of law or a government. The SBP has created a website where information regarding such unclaimed deposits is available.

Trade Unions — At the initiative of the Governor, State Banking Section B was inserted by the Banking Companies (Amendment) Act 1997 which barred any officer or member of a trade union in a banking company from using any bank car or telephone to promote union activities or to carry weapons into the bank premises etc. Any person violating any provisions of this section shall be guilty of an offense punishable with imprisonment that may extend to three years or with fine or with both.

Secrecy Section 33-A of the Act has made it obligatory for each bank to maintain complete secrecy and fidelity relating to the affairs of its customers except when law and practices so permit. In order to enforce this provision this section prescribes that every President, Chairman, Member Board, Auditor, Officer or Employee is required to make a declaration of fidelity and secrecy at the time of joining institutions which are covered under Banking Companies Ordinance, 1962.

Disclosure of Write Offs Moreover, this section has made it obligatory for every banking company to publish in its annual accounts all such loans as written off or financial relief provided to any customer amount of which is Rs.500,000/- or more.

Power of the State Bank of Pakistan to take the corrective measures against Banking Companies

a. Sections 41, 41-A and 41-B of the Banking Companies Ordinance, 1962 have conferred the powers to State Bank of Pakistan not only to give directions to the banking companies in Pakistan to manage themselves properly but to impose corrective measures. These powers include the removal of Chairman and members of the Board of Directors and/or Chief Executive; and appoint its nominees to manage the banking companies. This period can be upto three years.

b. Section 41-C of the Banking Companies Ordinance, 1962 allows that if any person or banking company is aggrieved with the orders made under section 41-A, 41-B of State Bank of Pakistan may make an appeal to the Central Board of Directors of the State Bank of Pakistan. Their decision shall be final.

#### **Q . 4- Highlight the salient features of Bankers book evidence**

Definitions. In this Act, unless there is something repugnant in the subject or context,

(1)“Company” means a company registered under any of the enactments relating to companies for the time being in force in any part of His Majesty’s dominions or incorporated by an Act of Parliament [of the United Kingdom] or by a [Pakistan] law or by Royal Charter or by Letters Patent;]

(2)“bank” and “banker” means,

(a) any company carrying on the business of bankers;

(b) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided;

(c) any Post Office Savings Bank or Money Order Office;

(3)“bankers’ books” include ledgers, day-books, cash-books, account-books, and all other books used in the ordinary business of a Bank;

(4)“Legal proceedings” means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration;

(5) “the Court” means the persons or person before whom a legal proceeding is held or taken;

(6) “Judge” means a Judge of a High Court;

(7) “trial” means any hearing before the Court at which evidence is taken;

(8) “certified copy” means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

3. Power to extend provisions of Act. The [Provincial Government] may, from time to time by notification in the official Gazette extend the provisions of the Act to the Books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set off not less than three ordinary account books, namely, a cash-book, a day-book, or a journal, and a ledger, and may in the like manner rescind any such notification.

4. Mode of proof of entries in Bankers’ Books. Subject to the provisions of this Act, a certified copy of any entry in a banker’s book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as the original entry itself is now by law admissible, but not further or otherwise.

5. Case in which an officer of a bank is not compellable to produce books. No officer of a bank shall in any legal proceeding to which the bank is not a party be compelled to produce any banker’s book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

6. Inspection of books by order of Court or Judge. (1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker’s book for any of the purpose of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding and such further certificate shall be dated and subscribed in manner hereinbefore directing reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show-cause against such order, and thereupon the same shall not be enforced without further order.

7. Costs.--- (1) The costs of any application to the Court or a Judge under or for the purpose of this Act and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purpose of this Act shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application in any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself:---

Provided that nothing in this subsection shall be construed to derogate from any power which the Court or Judge making the order may process for the enforcement of its or his directions with respect to the payment of costs.

### **Q.5- Write short notes on the following ;**

- 1- Effect of indorsement
- 2- Crossed cheque

Ans -

#### **Effects of Endorsement**

**B) Illustration :** B signs the following endorsement on different negotiable instruments payable to bearer :

- i) Pay the contents to C only.
- ii) Pay C for my use.
- iii) Pay C or order for the account of B.
- iv) The within must be credited to C.

These endorsements exclude the right of further negotiation by C.

v) "Pay C".

vi) "Pay C value in account with the Oriental Bank".

vii) "Pay the contents to C being part of the consideration in a certain deed of assignment executed by C to the endorsers and others."

These endorsements do not exclude the right of further negotiation by C.

## **Crossing of Cheque**

Definition: Crossing of a cheque is nothing but instructing the banker to pay the specified sum through the banker only, i.e. the amount on the cheque has to be deposited directly to the bank account of the payee.

Hence, it is not instantly encashed by the holder presenting the cheque at the bank counter. If any cheque contains such an instruction, it is called a crossed cheque.

The crossing of a cheque is done by making two transverse parallel lines at the top left corner across the face of the cheque.

## **Types of Crossing**

The way a cheque is crossed specifies the banker on how the funds are to be handled, to protect it from fraud and forgery. Primarily, it ensures that the funds must be transferred to the bank account only and not to encash it right away upon the receipt of the cheque. There are several types of crossing

1. **General Crossing:** When across the face of a cheque two transverse parallel lines are drawn at the top left corner, along with the words & Co., between the two lines, with or without using the words not negotiable. When a cheque is crossed in this way, it is called a general crossing.
2. **Restrictive Crossing:** When in between the two transverse parallel lines, the words 'A/c payee' is written across the face of the cheque, then **Special Crossing:** A cheque in which the name of the banker is written, across the face of the cheque in between the two transverse parallel lines, with or without using the word 'not negotiable'. This type of crossing is called a special crossing. In a special crossing, the paying banker will pay the sum only to the banker whose name is stated in the cheque or to his agent. Hence,

the cheque will be honoured only when the bank mentioned in the crossing orders the same. such a crossing is called restrictive crossing or account payee crossing. In this case, the cheque can be credited to the account of the stated person only, making it a non-negotiable instrument.