



Banker-Customer Relationship

Introduction

Banking industry occupies an important place in a nation's economy. A bank is an indispensable institution in a modern society. One cannot think of the development of any nation without the active assistance rendered by financial institutions. Banks, in fact, do finance trade, industry and commerce. The modern business and the entrepreneur cannot carry on the commercial activities without the different methods of financing done by the banks. Gone are the days when borrowing was criticised and objected to and the borrower was looked down upon. But today, the time and circumstances have changed. It is natural that every businessman has to change according to the new challenges. Right from small businessman, up to the biggest business tycoon, they invariably depend upon finances of different types given by the banks. Therefore, one has to accept that the banking industry play a vital role in every field and at every juncture of the business. This chapter deals with the relationship that exists between the banker and customer. All the legal aspects associated with these two vital organs of the banking operations are discussed. The relationship between the customer and the banker is vital. The relationship starts right from the moment an account is opened and it comes to an end immediately on closure of the account. The relationship stands established as soon as the agreement or contract is entered into. The nature of the relationship depends upon the state of the customer's account. Before we take up the relationship that exists between a banker and his customer, let us understand the meaning of the terms 'banker' and 'customer'.

Meaning and Definition of a Banker

The term 'banker' refers to a person or company carrying on the business of receiving moneys, and collecting drafts, for customers subject to the obligation of honouring cheques drawn upon them from time to time by the customers to the extent of the amounts available on their current accounts. There are differences of opinion regarding the meaning of the term banker. We have discussed here some of the important ones.

1. **Sheldon H.P.:** "The function of receiving money from his customers and repaying it by honouring their cheques as and when required is the function above all other functions which distinguishes a banking business from any other kind of business."
2. **Sir John Paget:** "No person or body corporate or otherwise can be a banker who does not take deposit accounts, take current accounts, issue and pay cheques and collect cheques crossed and uncrossed for his customers."
3. **G. Crowther:** "A banker is a dealer in debt, his own and other people."
4. **Macleod:** "The essential business of banker is to buy money and debts, by creation of other debts. A banker is therefore essentially a dealer in debts or credit."
5. **Dr. H.L. Hart:** "A banker or bank is a person or company carrying on the business of receiving moneys, and collecting drafts, for customers subject to the obligation of honouring cheques drawn upon them from time to time by the customers to the extent of the amounts available on their current accounts."

Meaning and Definition of a Customer

The term 'customer' of a bank is not defined by law. In the ordinary language, a person who has an account in a bank is considered its customer. The term customer also presents some difficulty in the matter of definition. There is no statutory definition of the term either in Bangladesh or in England. However, the legal decisions on the matter throw some light on the meaning of the



term. According to an old view, as expressed by Sir John Paget, “to constitute a customer, there must be some recognizable course or habit of dealing in the nature of regular banking business..... It has been thought difficult to reconcile the idea of a single transaction with that of a customer that the word predicates, even grammatically, some minimum of custom, antithetic to an isolated act.” According to this view, in order to constitute a customer of a bank, two conditions are to be fulfilled.

- (a) There must be some recognizable course or habit of dealing between the customer and the banker.
- (b) The transactions must be in the form of regular banking business.

Further, for a person to be a customer of a bank, he should have some sort of account with the bank and the initial transaction in opening an account would not constitute the relation of banker and customer; there should be some kind of continuity. The concept of duration does not hold good any longer. At present to constitute a customer, duration is not essential.

According to Dr. Hart “a customer is one who has an account with a banker or for whom a banker habitually undertakes to act as such.” Supporting this view point, the Kerala High Court observed: (Central Bank of India Ltd., Bombay Vs V. Gopinathan Nair and others – A.I.R., 1970, Kerala 74). “Broadly speaking, a customer is a person who has the habit of resorting to the same place or person to do business. So far as banking transactions are concerned he is a person whose money has been accepted on the footing that the banker will honour up to the amount standing to his credit, irrespective of his connection being of short or long standing.”

Thus, a person who has a bank account in his name and for whom the banker undertakes to provide the facilities as a banker is considered to be a customer. It is not essential that the account must have been operated upon for some time.

A more acceptable view is that expressed in *Ladbroke Vs Todd* (1914, 30, TLR., 433). According to the Learned Judge: “The relation of banker and customer begins as soon as the first cheque is paid in and accepted for collection. It is not essential that the person should have drawn on any money or even that he should be in a position to draw any money.”

Therefore, neither the number of transactions nor the period during which business has been conducted between the parties is material in determining whether or not a person is a customer.

In a later case that took place between *official Assignee Vs Natesam Pillai*: (Indian case), According to learned judge “the fact that person had no prior banking transaction with the bank would not by itself exclude the possibility of his becoming a customer when he paid in the amount.”

All these court decisions lay stress on the fact that the customer need not have continuous transactions with the bank to become a customer. Mere opening, any type of account will satisfy the basic condition to become a customer. His position must be such that transactions are likely to become frequent. When the accounts are opened with the bank, there will be an implication that the person is likely to operate the account frequently.



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

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

The Banker-Customer Relationship

The relationship between the banker and the customer arises out of the contract entered in between them. This contract is created by mutual consent. A contract that exists between a bank and its customer is a loan contract. This is because if the customers account is in credit, the bank owes him that money and vice versa, if the account is overdrawn. This contractual relationship between banker and customer is regulated by the rules contained in the Negotiable Instruments Act, 1881 and the Contract Act, 1872. The relationship between the banker and the customer is vital. The relationship starts right from the moment an account is opened and it comes to an end immediately on closure of the account. This relationship is of two types:

A. General relationship, and B. Special relationship.

A. General relationship:

The general relationship between banker and customer can be classified into two types, viz.,

1. Primary relationship, and
2. Secondary relationship.

These are discussed below.

1. Primary Relationship

Primary relationship is in the form of a 'Debtor' which arises out of a contract between the banker and customer. Banker is neither a bailee nor a trustee nor an agent but only a debtor. Thus, the fundamental relationship is that of "Debtor and Creditor." Sometime the banker discharges agency functions like collection of bills, cheques etc., acts as a bailee by keeping valuables in safe custody and acts as trustee by administering the property for the benefit of defined beneficiary. Here the relationship is not that of 'Debtor and Creditor'. The authorities on banking law and many court decisions have said that primary relationship is that of 'Debtor and Creditor'.

Relation of Debtor and Creditor

The true relationship between a banker and his customer is that of a debtor and a creditor. Sir John Paget says: "The relation of banker and customer is primarily that of a debtor and creditor, the respective positions being determined by the existing state of the account. Instead of money being set apart in the safe room, it is replaced by a debt due from the banker. The money



deposited with him becomes his property and is absolutely at his disposal.” As long as the customer’s account shows a credit balance, the banker would be a debtor and in case the customer’s account show a debit balance, the banker would be creditor.

In the case of Joachimson Vs Swiss Banking Corporation, it was held that “the banker undertakes to receive money and collect bills for its customer’s account and that money so received is not held in trust for the customer but borrowed from him with a promise to repay it or any part of it.” Even in Indian courts similar opinion is given. By perusing these court decisions and sayings of the authorities on the subject, it is clear that the relationship that exists between the banker and customer is primarily that of debtor and creditor. The mere fact that the banker invites deposits and is prepared to pay interest, and on this condition, the customer deposits his savings, is a clear indication that the customer object to non-payment of interest by the banker so long as the banker is ready and willing to return the deposits, through a legal tender, when demanded in the proper form.

- I. **The Creditor must Demand Payment:** Although the banker is a debtor and the customer is creditor, it is not at all necessary for the debtor to go to the creditor to pay the amount. This is normally expected in case of commercial transactions where in there are two parties one a debtor and the other a creditor i.e., ordinary debtorcreditor relationship. But, here in case of banker and customer relationship, though the banker is a debtor, he is not expected to approach the creditor for settlement of dues. Here, the relationship is different and has a special feature, namely, demand is necessary from the customer.

Case : Joachimson Vs Swiss Banking Corporation 1921 - It was held that in case of debt due from a bank, an express demand for repayment by the customer is necessary before the debt becomes “actually and accruing due.” In case the banker pays the amount on his own accord, he would be indirectly closing the customer’s account.

- II. **Proper Place and Time of Demand:** The demand by the creditor must be made at the proper place and in proper time. It means that the customer should present the cheque for payment at that place of the bank where the customer’s account is maintained. It is quite clear that at other places, the customer of the state of his account are not known. It is also essential that the customers should demand payment on a working day i.e., not on a holiday or a day which is closed for public. And in addition, it must be presented during business hours i.e., it should not be presented either before or after the business hours.
- III. **Demand Must be Made in Proper Form:** The demand made by the customer must be in the prescribed form as required by the bank. It means that the demand for the refund of money deposited must be made through a cheque or an order as per the common usage amongst the bankers. Otherwise the banker has every right to refuse payment. So far we have discussed the primary relationship between the banker and the customer. There are other types of relationship called secondary relationship.

2. Secondary Relationship

It will be in the form of:

- (a) Banker as agent
- (b) Banker as trustee



(c) Banker as bailee

Let us analyse these three aspects.

- (a) **Banker as Agent:** A banker acts as an agent of his customer and performs a number of agency functions for the convenience of his customers. These are as follows:
- (1) Purchasing or selling of securities.
 - (2) Collection of income
 - (3) Making periodical payments as instructed by his customers.
 - (4) Collecting interest and dividend on securities lodged by his customers.
 - (5) Receiving safe custody valuables and securities lodged by his customers.
 - (6) Collecting cheques, hundies, drafts of the customers.

In this case, the banker and customer relationship is, in the form of an ‘Agent’ and ‘Principal’.

- (b) **Banker as Trustee:** Ordinarily, a banker is a debtor of his customer in respect of the deposits made by the latter, but in certain circumstances he acts as a trustee also. The customer may request the banker to keep his valuables in safe vaults or one may deposit some amount and can request the bank to manage that fund for a specific purpose, which the bank does, or in case of corporate debentures, the bank can become trustee for debenture holders or the bank collects the cheques, hundies of the customers in the capacity of trustee. Thus, there are wide varieties of trustee functions discharged by the banker.
- (c) **Banker as Bailee:** Section 2 of the Contract Act defines that bailment as 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 direction of the person delivering them. As a bailee, the banker should protect the valuables in his custody with reasonable care. If the customer suffered any loss due to the negligence of the banker in protecting the valuables, banker is liable to pay such loss. If any loss is incurred due to the situation beyond the control of the banker, he is not liable for penalty. To conclude, the primary general relationship exists when the account is opened by customer with bank. The relationship is that of debtor and creditor. When the bank acts as trustee or agent or bailee for the valuables, he will be establishing the secondary general relationship.

B. *Special relationship*

The special relationship between banker and customer takes the form of rights which the banker can exercise and the obligations which he owes to his customers.

Following are the rights enjoyed by the banker with regard to the customer’s account:

1. Right of general lien
2. Right of set-off



3. Right to appropriate payments
4. Right to charge interest, incidental charges
5. Right not to produce books of accounts
6. Right under Garnishi order
7. Right to close accounts

Some of these rights are discussed below.

1. **Right of General Lien:** One of the important rights enjoyed by a banker is that of general lien. A lien may be defined as the right to retain property belonging to a debtor until he has discharged a debt due to the retainer of the property. In case lien is exercised by a trader on his customer's goods, he has no right to use the goods nor any right to sell them. All that he can do is to retain the goods until the obligations are cleared. Once the obligations are cleared by the customer, it is an obligation on the part of the trader to return back his goods immediately. There are two kinds of lien:

(a) **Particular lien, and (b) General lien.**

- (a) **Particular Lien:** A particular lien confers a right to retain the goods in respect of a particular debt involved in connection with a particular transaction. This lien is enjoyed by the persons who have spent their labour on such properties and have not yet recovered their labour charges or service charges from the debtors. For example, a tailor has the right to retain the cloths made by him for his customer until his tailoring charges are paid by the customer. So is the case with public carriers and the repair shops.
- (b) **General Lien:** A general lien confers a right to retain goods not only in respect of debts incurred in connection with a particular transaction but also in respect of any general balance arising out of the general dealing between the two parties. This right can be exercised only by persons such as bankers, factors, policy brokers, wharfingers, attorneys of High Court, etc. The basic object of general lien is to have protection for the bank funds. The loans or advances granted to customers can be recovered easily if the general lien is exercised by the bankers. Banker's lien is a general lien. It has been held in *Brandao Vs Barnett* (1864, 3, CB 519) that bankers have general lien on all securities deposited with them as bankers by a customer, unless there be an express contract or circumstances that show an implied contract, inconsistent with the lien.

Further, in the same judgement, a banker's lien has been defined as an implied pledge. Pledge is superior and strengthens the hands of the person who exercises the pledge. In case of pledge, not only the goods will come into the possession of the pledgee but in addition, if default is made in complying with the terms of the pledge, the pledgee after giving reasonable notice, can definitely auction the property pledged, recover the proceeds and appropriate the same towards his outstanding arrears. It is because of this reason pledge is said to be much superior and more powerful than lien. But in case of bankers, whenever they exercise their power of lien, it has the effect of pledge. Therefore, it is rightly said that the banker's lien is an implied pledge.

The banker can exercise his power of lien in respect of the following:



- (a) Bonds and coupons belonging to the customer deposited for collection.
- (b) Customer's securities leftover with the banker after paying the loan.
- (c) Any security given by the customer for the purpose of a covering loan.

The banker cannot exercise his power of lien in respect of the following:

- (a) Contents of safe deposit lockers belonging to the customer.
- (b) Securities and money deposited for specific purpose.
- (c) In respect of trust accounts wherein his customer (on whom the banker desires to put up his lien) is acting in the capacity of trustee.
- (d) Amounts not due.
- (e) In respect of joint accounts wherein one of the joint account holder is a customer on whom the banker desires to exercise his lien.
- (f) Documents etc., submitted for getting a loan.
- (g) A general lien cannot arise in respect of property of a customer pledged as security for a particular debt.
- (h) No lien arises over properties on which the customer has no title.
- (i) The banker cannot exercise lien when credit and liability are not in the same rights.
- (j) The banker's lien is not affected by the Limitation Act.

2. Right of Set-off: The right of set-off is a statutory right which enables a debtor to take into account a debt owed to him by a creditor, before the latter could recover the debt due to him from the debtor. In other words, the mutual claims of debtor and creditor are adjusted together and only the remainder amount is payable by the debtor. A banker, like other debtors, possesses this right of set-off which enables him to combine two accounts in the name of the same customer and to adjust the debit balance in one account with the credit balance in the other. For example, Abdul has taken an overdraft from his banker to the extent of Tk. 10,000 and he has a credit balance of Tk. 5,000 in his savings bank account, the banker can combine both of these accounts and claim the remainder amount of Tk. 5,000 only. This right of set-off can be exercised by the banker if there is no agreement - express or implied contrary to this right and after a notice is served on the customer intimating the latter about the former's intention to exercise the right of set-off. To be on the safer side the banker takes a letter of set-off from the customer authorising the banker to exercise the right of set-off without giving him any notice. There are conflicting decisions regarding the application of right of set-off. In the case of *Garnett Vs Mckean* (1872, 27, L.T. 560), it was held that in the absence of any special agreement to the contrary, a banker might set-off a customer's credit balance against a debt due to him from the customer and that there was no legal obligation on a bank to give notice to a customer of his intention to combine accounts. But in another subsequent case *Greenhalgh and Sons Vs Union Bank of Manchester* (1924, 2, K.B. 153), the Learned Judge observed: "If the banker agrees with his customer to open two accounts or more; he has not in my opinion, without the assent of the customer, any right to move either assets or liabilities from one account to the other; the very basis of his agreement with his customer is that the two accounts shall be kept separate." In view of these conflicting opinions, the banker can be on the safer side by taking an agreement from the customer authorising him to combine the accounts at any time without notice and to return cheques which, as a result of his having taken such action, would overdraw the combined account. However, in such cases as the death or bankruptcy of the customer, the banker can



exercise the right of set-off without notice even in the absence of an agreement, in order to ascertain the net amount owing to him.

Conditions Necessary for Exercising the Right of Set-off

The right of set-off can be exercised subject to the fulfillment of the following conditions:

- (a) The accounts must be in the same name and in the same right.
- (b) By giving notice to customer of banker's intention to combine accounts.
- (c) The right can be exercised in respect of debts due and not in respect of future debts or contingent debts.
- (d) The amount of debts must be certain.
- (e) If there is letter of set-off given by customer.
- (f) If the accounts are of dissimilar nature.
- (g) The right may be exercised in the absence of an agreement to the contrary.
- (h) The banker has the right to exercise this right before the Garnishee order is made effective.

Conditions Under which the Right Cannot be Exercised

- (a) If the accounts are not in the same right.
- (b) The right of set off cannot be extended to a future contingent debt e.g., a bill which will mature in future.
- (c) If the amounts of debts are uncertain.
- (d) Trust account in which personal account of the customer cannot be combined.
- (e) The account balance of an individual cannot be set-off against a joint account balance in which he is one of the account holders.

Automatic Right of Set-off

The banker enjoys the right of Automatic set-off in following cases:

- (a) On the death, insolvency or insanity of customer.
- (b) On the insolvency of a partner.
- (c) On receipt of Garnishee order
- (d) On receiving the notice of assignment of a customer's credit balance.
- (e) On receiving the notice of second mortgage on the security on which the bank holds first charge.
- (f) On the winding up of a company.

Thus, the right of set-off a statutory right. But to exercise this right, it is the normal practice of the banker to obtain a letter of set-off from the customer.

3. **Right to Appropriate Payments:** Whenever the customer deposits funds into his account in the bank, it is his duty to inform the bank to which account they are to be credited (provided the customer has more than one account at the same bank). Once the



customer gives specific directions regarding appropriation, the banker has no right to alter them. It is his bounden duty to carry out the instructions of the customer. This right of appropriation is to be exercised by the customer at the time of depositing funds and not later. In case the customer is silent or fails to give instructions, the banker has every right to appropriate in his own way. In case both have not used their powers, the rule given in Clayton's case would be applicable. In this famous case (Davayness Vs Noble, 1816, 1-Merivale 529, 572), the verdict given by the court was as follows: The first item on the debit side is reduced by the first item on the credit side.

Certain conditions have to be fulfilled to apply the rule in Clayton's case. They are:

- (a) This rule cannot be applied to the accounts which were stopped in the middle and revived after certain date.
 - (b) The rule is not applicable to broken accounts.
 - (c) If two separate accounts are maintained the rule is not applicable.
 - (d) Contrary intentions should not be evidenced by the parties concerned.
4. **Right to Charge Interest:** As a creditor, a banker has the implied right to charge interest on the advances granted to the customer. The rate of interest is nowadays levied as per the directions of Bangladesh Bank. It is charged on half yearly or quarterly basis and generally compound interest is used. The interest is directly debited, i.e., charged to the customer's account and then the interest is calculated on the principal with interest. Interest may also be fixed by the banker and customer by mutual consent. It may not however be beyond the prescribed limits of Bangladesh Bank. Banks also charge incidental charges on the current accounts to meet the incidental expenses on such accounts.
 5. **Right not to Produce Books of Accounts:** According to the provisions of the Bankers Book Evidence Act, the banker need not produce the original books of accounts as an evidence in the cases in which the banker is not a party. He can issue only an attested copy of the required portion of the account which can be utilised as an evidence before the court. When the court is not satisfied with the certified copy, the court can summon the original books. But when a banker is a party to the suit, the court can force the banker to produce the original records in support of his claim.
 6. **Right under Garnishee Order:** The term "Garnishee" is derived from the Latin word "garnire" which means "to warn." This order warns the holder of money of judgement debtor, not to make any payment out of it till the court directs. It is an order issued by a competent court of law addressed to a banker instructing him to stop or withhold payment of money belonging to a particular person who has committed a default in satisfying the claim of his creditors. Therefore, whenever a bank receives such an order, the banker has to obey the order fully. Let us take an example to clearly explain this procedure. Mr. "X" is a contractor and obtains a loan from Mr. "Y" a money lender or banker. Mr. "X" fails to pay the money to Mr. "Y" as per the stipulation. Hence Mr. "Y" files a suit in the court of law for dues. Mr. "Y" also knows that the money is due to Mr. "X" from the agency (third party) with which he is doing his contract business. Now Mr. "Y" can request the court to issue an order directing the Mr. "X"'s agency not to make any payment to Mr. "X". If the court issues the order that becomes a garnishee order. In this suit Mr. "X" is



judgement debtor and Mr. “Y” is a judgement creditor. The third party is garnishee. Sheldon defines Garnishee order thus, “It is an order obtained by a judgement creditor attaching funds in the hands of a third party, who owes the judgement debtor money, warning the third party, not to release the money attached until directed by court to do so.” Thus, garnishee order is a direction given by the court to a third party who is due to the judgement debtor not to make any payment till it gives a verdict regarding the paid money. This order is issued at the request of the judgement creditor.

The Garnishee order is issued in two parts.

- A. **Order-Nisi:** It is an order issued by a court on a specific banker ordering him, not to release any funds belonging to a particular customer (judgement debtor) until further orders are issued. In the meantime, the judgement debtor is requested to appear before the court for further proceedings.
- B. **Order-Absolute:** This is an order of the court issued to a banker after completion of the hearing of the parties concerned and through this order, the court specifies how much amount is to be kept separate. The banker has to follow these orders after looking at the position of the customer’s account.

In the following circumstances the Garnishee order would not be applicable:

- (a) Where the account of the judgement debtor is a joint account holder with another person;
 - (b) Where the identity of the judgement debtor is doubtful;
 - (c) Where the account of the judgement debtor is held by him in the capacity of a trustee;
 - (d) Where the judgement debtor has previously made an official assignment of his balance in favour of a third party and the banker is informed about it in writing;
 - (e) Where the account of the judgement debtor reveals a debit balance.
7. **Right to Close Accounts:** Banker also enjoys the right to close his customer’s account and discontinue operations. This process terminates the relationship between banker and customer. This is done only in situations where the continuation of relationship seems unprofitable to the banker.

These are the rights enjoyed by the banker with regard to the customer’s account.

Obligations of Bankers

Bankers are under the obligations to fulfill certain duties while dealing with customers. Such obligations are as under:

1. Obligation to honour the customer’s cheques.
2. Obligation to maintain secrecy of customer’s account.
3. Obligation to receive the cheques and other instruments for collection.
4. Obligation to honour the cheques of customers across the counter.
5. Obligation to give reasonable notice before closing the customer’s accounts.



Some of these obligations are discussed below.

1. *Obligation to Honour the Customer's Cheques*

Section 31 of the Negotiable Instruments Act, 1881, imposes a statutory obligation upon the banker to honour the cheques of his customer drawn against his current account so long as his balance is sufficient to allow the banker to do so, provided the cheques are presented within a reasonable time after their ostensible date of issue. The section 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.”

This provision clearly indicates that the banker should honour the customers demand for payment by cheque on certain conditions which are stated below.

- (a) **Sufficient Balance:** There must be sufficient funds in the account of the drawer. The cheques sent for collection by the customer are not treated as cash in the hands of the banker until the same are realised. The banker credits the amount of such cheques to the account of the customer on their realisation. If the customer draws a cheque on the unrealised amounts, the banker is justified in dishonouring the cheque with the remark “effects not cleared.”
- (b) **Application of the Funds:** The funds must be capable of being properly applied to the payment of customer's cheque. This means, the funds maintained for a specific purpose or trust funds or the funds assigned in the name of some other person cannot be applied for honouring the cheques. Thus, the funds so sought by the customer by cheque should be unencumbered and must be capable of being properly applied.
- (c) **Duly Required to Pay:** The banker is bound to honour the cheques only when he is duly required to pay. This means that the cheque, is complete and in order, must be resented before the banker at the proper time. Ordinarily a period of six months is considered sufficient within which a cheque must be presented for payment. On the expiry of this period the cheque is treated as stale and the banker dishonours the cheque. Similarly, a post-dated cheque is also dishonoured by the banker because the order of the drawer becomes effective only on the date given in the cheque.
- (d) The instrument used for drawing the amount should be properly written and fulfill and legal obligations.
- (e) The banker should have reasonable time to collect the bill or cheque.
- (f) There should not be any legal restriction to pass the cheque for payment say in case of Garnishee order, restriction is imposed in the account.
- (g) The banker need not honour the cheques presented against domiciled bills. Thus, the banker should be very careful while honouring a cheque drawn by a customer.

Consequences of Wrongful Dishonour of Cheque

A cheque may be dishonoured by a banker by mistake or by negligence on the part of any of his employees. Even though there is sufficient balance, and the cheque has been drawn in a proper



manner. The banker will be held responsible for wrongful dishonour of a cheque because of loss or damage to the customer. The phrase “Loss or damage” in Section 31 of the Negotiable Instruments Act, 1881 includes (a) The monetary loss suffered by the customer, and (b) The loss of credit or reputation in the market. Thus, the banker is liable to compensate the drawer not only for the actual monetary loss suffered by him, but also for the injury to or loss of his reputation, as a result of dishonour of a cheque. In case the customer happens to be a trader, the loss would be substantial damages. In case the customer is a non-trader, the banker would be liable only for normal damages. In the case of *Sterling Vs Barclay’s Bank Ltd.*, where the banker had made a mistake in wrongfully dishonouring the customer’s cheque, the customer was not entitled to substantial damages but reasonable damages as the customer had two cheques dishonoured earlier and further, people in that trade did not think much of cheques being dishonoured as they just carried on their living with bare necessities. (Case: *Davidson Vs Barday’s Bank Ltd.*, 1940 AII. E.R. 316). The customer had issued a cheque for £ 2-15-8 and it was dishonoured and the matter was referred to the court and the court ordered that substantial damages to the tune of £ 250 should be paid.

2. *Obligation to Maintain Secrecy of Customer’s Account*

In every profession, there are certain things to be maintained absolutely in secret; for example, a doctor is not expected to disclose the details of his patients to others. The profession demands from him that he must maintain those matters in strict confidence. Similarly, a bank’s profession also demands that he should maintain the particulars of his customer’s accounts in secret. The banker has an implied obligation to maintain secrecy of the customer’s account. He should not disclose matters relating to the customer’s financial position since it may adversely affect the customer’s credit and business. This obligation continues even after the account of the customer is closed.

Only in the following circumstances, disclosure is justified:

- (a) ***To Satisfy Statutory Requirements:*** According to the Income Tax Act, the banker is required to give out information regarding his customers to the Income Tax Department. Similarly, whenever the court needs any information regarding the customers, the banker is required to give the information. According to the Banking Regulation Act, all banks are required to give in the prescribed forms detailed information regarding the customers to the Bangladesh Bank.
- (b) ***As a Common Courtesy:*** In this case, it is a common practice followed among bankers to exchange information regarding their customers, accounts etc., as a matter of common courtesy. Whenever the banker is called upon to give information regarding his customers, he can do so without any difficulty. As far as possible, he should furnish bare facts while expressing his opinion. He should be very careful while expressing his opinion. He should not exaggerate nor underestimate the financial standing of his customers.
- (c) ***Disclosure at the will of Customer:*** The banker can disclose the state of affairs of the customer’s account when the customer gives his consent to disclose the accounts. The auditor of the organisation can fully examine the customer’s account when an express consent is given by him. Similarly when a customer gives the name of a guarantor, the



guarantor can examine the accounts of the customer which the banker should furnish. When banker acts as a reference, he can disclose the accounts of the customer.

- (d) **To Protect his Own Interest:** Whenever the banker is required to protect his own interest, if he discloses the details of a customer's account, it must be a reasonable and proper occasion. For example, if the banker is to recover his own money from a particular customer, he may give the details to his lawyers.
- (e) **To Protect Public Interest:** The Banking Commission (1972) opined as follows: When banks are required to give out information regarding their customers in the interest of the public, the information should relate to financial aspect of the customers. The following are instances of such cases:
- I. Where considerable amounts are received from other countries.
 - II. In case the bank thinks that the customer is carrying on such activities which are not congenial in the interest of the nation.
 - III. In case the banker thinks that the customer is trying to break the provisions of the law on the basis of his records.
 - IV. When the Government calls upon the bank to give information regarding a particular customer and when the bank feels that a particular customer has committed an offence.

3. Obligation to Receive Cheques and Other Instruments for Collection

Basically, the business of banking, as it is known today, comprises acceptance of money on deposit account and payment of cheques. It also includes collection of cheques. It may rightly be contended that anyone who does not perform these essential services is not a banker. Whenever a banker is entrusted with the job of collection of cheques, they must be collected as speedily as possible through the accepted channels. Failure to exercise proper care and employ the recognised route for collection may make the bank liable for any loss which the customer may sustain.

4. Obligation to Give Reasonable Notice before Closing the Account

According to law, a debtor and a creditor may terminate the relationship without notice by the debtor paying off the balance or the creditor recalling the debt. It is not so simple between a banker and a customer for the obvious reason that the banker is under an obligation to honour his customer's cheques. If this obligation could be terminated by the banker without notice, the customer might be faced with an embarrassing situation. Reasonable time must be granted to enable him to make alternative arrangements. Where any customer becomes a nuisance through overdrawing without arrangement or issuing post-dated cheques etc., it is advisable to close his account. But reasonable time has to be given to enable him to make alternative arrangements if he so desires. If a bank abruptly closes the customers account, it might affect his credit, giving cause for an action against the bank for damages.

Obligations of Customers

Customers are under the obligations to fulfill certain duties while dealing with banks. Such obligations are as under:

- (a) Not to draw cheques without sufficient balance.
- (b) To draw cheques in such a manner so as to avoid any change of alternation.



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- (c) To pay reasonable charges for services rendered.
- (d) To make a demand on the banker for repayment of deposit.

So far we have discussed the primary and special relationship between the banker and the customer. This relationship starts right from the moment an account is opened and it comes to an end immediately on closure of the account. The relationship stands established as soon as the agreement or contract is entered into. This relationship is shown in the following chart.

Conclusion

To conclude, it is rightly said that the relationship between a banker and its customer is that of a bailee and bailor. As a bailee, the banker is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed. However, in the absence of any special contract, the bailee gets protection and is not held responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it.