# MAKERERE UNIVERSITY
## MAKERERE UNIVERSITY BUSINESS SCHOOL
## FACULTY OF COMMERCE
### DEPARTMENT OF BUSINESS LAW

# BANKING NOTES

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**Definition of bank, banker, banking business and customer**

It is not easy to define the words 'bank' and 'banker' because of the various functions performed by specialized banks. In order for one to give a proper definition of these words, one has to look at the functions of the various banking institutions. That is why in the case of United Dominions Trust Ltd. v Kirkwood [1966] 2 QB 431, Lord Denning remarked that *like many other beings, a banker is easier to recognize than to define.* The definition is descriptive of the roles and functions of the bank or banker. It is more of a guide. The FIA, 2004 defines financial institution business (which includes banking business) to mean the business of:-

a) Acceptance of deposits;
b) Issue of deposit substitutes;
c) Lending or extending credit;
d) Engaging in foreign exchange business;
e) Issuing and administering means of payment, including credit cards, travellers' cheques and banker's drafts;
f) Providing money transmission services;
g) Trading in money market instruments, debt securities, etc;
h) Collection of bills and cheques on behalf of customers
i) Etc, etc.

The FIA requires companies which carry out business of banking to have, as part of their name, the word 'Bank'. It is also prohibited for a person or company to use the word "Bank" if such person or company is not a bank except with the consent of the Central Bank.

In addition, section 47 of the BOU Act prohibits a financial institution from registering under any law by a name which includes the following words without prior written consent of the Minister: Central, national, Uganda, Ugandan, reserve, state or other equivalent word in any language.

**Types of Banks in Uganda**

In Uganda, there are various types of Banks and these include Development Banks, Central Bank, Commercial Banks, Post office Savings Bank, Merchant Banks, Mortgage Banks, etc. These banks are defined and licensed in relation to their functions which, are outlined under the 2nd Schedule to the FIA. (Students are referred to the actual text)

**Activity**

Define Bank, Banker, Banking Business and custome***r***

In Uganda's context, a **bank** is a financial institution which is licensed by the Central Bank to conduct banking business under any of the five (5) classes of licenses available under the FIA namely, Commercial Bank, Post office Savings Bank, Mortgage Bank, Merchant Bank and Islamic Bank.

A **banker** is a person that is engaged in the business of banking or one who offers banking services. Examples of bankers are the banking institution (the bank), tellers, credit/loan officers, Branch Managers, Heads of certain departments like compliance, CRB officer, Clearance officers, etc. Not all bank employees are bankers. The word 'banker' does not for example include legal team/department, accountants/auditors, security personnel, HR function, cleaners.

***Banking Business*** was defined in the case of United Dominions Trust Ltd. v Kirkwood *(supra)*, to mean the business of accepting deposits from the public, employing those very deposits by lending and collecting bills and cheques on behalf of customers. That where an institution offers all the above three services, that institution is likely to be a bank. That those three are what comprises banking business. One may have to examine the business offered by other related institutions to confirm whether what they offer is banking services or not. Eg, money lenders, MDIs, Forex Bureaus, Insurance companies, Remittance Companies, Mobile Money service providers, Credit Institutions, etc.

**Customer of the bank:** The word 'customer' has been defined differently at different times of the growth and development of the banking industry or sector.

**The olden days of banking**

In the early years of banking, for one to be called a 'customer' of the Bank, there had to be some sort of account held in that Bank. In the case of Commissioner for Taxation vs English, Scottish & Australian Bank Ltd (1920) AC 683, court observed that the word 'Customer' signifies the relationship that exists between the Bank and the person who deposits money on the understanding that such money would be paid on demand or on the instruction of the depositor. Even the other cases below are to the same effect that a customer is someone who has an account in the bank.

**Other cases**

Folley vs Hill – England, Chilala vs The Republic- from Malawi, Esso Petroleum Co. Ltd vs UCB – From Uganda, Mobil Uganda vs UCB – From Uganda, Joachimson vs Swiss Bank Corporation – From England, Ladbroke vs Todds – From England

**Question:**

1. Why is it important to define the word 'customer'?
2. Do you think that this definition of a customer still stands in today's banking business? Give reasons for your answer.

**The contemporary banking**

Nowadays, a bank customer is defined as one who enjoys the services of the bank irrespective of whether he has an account in that particular bank or not.

**Question:**

**Discuss atleast 20 services that can be provided to the customer who has no account in that particular bank**

1. Fees and tuition payment & other payments
2. Foreign exchange
3. Taxes eg PAYE, VAT, Income Tax, Customs taxes

4. Inquiries and financial advice
5. Utility payments: water, electricity, telephone, data, etc
6. Bancassurance
7. Custody of customer's valuables eg Will, academic documents, Insurance Policies, jewellery, Marriage and other Certificates, Accolades, etc
8. Enabling business to business transactions eg payment of vendors
9. Payment of money into another's account- the payer need not have an account in the payee's bank.
10. Remittance services like receiving and sending money through Western Union, Wave, Dahabshil, etc
11. Mobile money sending and withdrawal both from the banking hall and from the ATM
12. Obtaining change from the bank- denominations
13. Government payments & charges (Driving License, Passports, VISA, License fees eg NGO, business licenses) fines (traffic & courts fines)
14. Withdrawal using a VISA or Interswitch Card from the ATM of the bank that did not issue that card
15. ……..
16. ……..
17. ……
18. …….
19. ……
20. ……..

## Nature of the bank-customer Relationship

The relationship between the bank and the customer is ***contractual.*** This should drive us back to the essential elements of a valid contract such as offer, acceptance, consideration, intention to create legal relations/to be legally bound, capacity to contract, free will & volition, form. The banking contract must have these essential elements of a valid contract if it is to be enforceable.

***In Esso Petroleum Co. Ltd vs UCB (1992) CA no.14 of 1992***, the Supreme Court of Uganda held that the Bank -customer relationship is contractual. It is an implied contract whose terms are dependent on the customs of the Bank. Similarly, in Mobil (U) Ltd v UCB (1982) HCB 64, it was held that the bank -customer relationship is contractual.

List some relationships that are not contractual

- The relationship between friends
- Love relations before and outside marriage
- Flock- and the religious leader/s/place of worship
- Family relations eg parents and children & between siblings

## The Major Contract

The bank-customer relationship comprises of one major contract and many minor contracts. Major contract between the bank and the customer is that of a debtor to creditor, where the bank is the debtor and the customer is the Creditor. **This contract rhymes very well with the olden definition of the bank-customer where he was defined as someone who had an account with the bank.** The most fundamental term of this contract is that the bank undertakes to borrow money from the customer as and when the customer agrees to lend it to the bank or deposit it. And the bank undertakes to repay it as and when the customer demands for it. In the case of Chilala vs Republic (1973), the High Court of Malawi held that when a person pays his money into a Bank, that money becomes the property of the Bank and the relationship between the Bank and the customer becomes that of a ***debtor and creditor*** with the addition that the Bank promises to honour the customer's cheques on demand. This position was established way back in the case of Foley v Hill (1848) and consolidated in Joachimson v Swiss Bank Corporation (1921) 3 KB 110.

In Joachimson v Swiss Bank Corporation, Court added that the bank-customer relationship comprises of one major contract (*debtor-creditor relationship where the bank is the debtor and the customer is the creditor)* and many minor contracts the terms of which are majorly implied and dependent on the customs of each particular bank.

**Form of the Banking Contract**

1. Does the law require the banking contract to take any particular form? NO
2. Is it written, oral or partly oral and partly written?
3. Are all the terms of the banking contact express or partly express and partly implied?

**Documentation that form the banking contract**

1. Account opening application form
2. On boarding documents eg online banking document
3. VISA/ATM/Debit/Credit Card Application Form
4. Key Fact Document which summarises the bank charges on the specific account
5. Know Your Customer (KYC) document
6. Resolution to open a bank account or effect changes on the account
7. Terms and conditions attached to a particular account
8. PEP Forms
9. Email or telephone Indemnity Forms
10. Deposit Protection Form or Letter
11. Correspondences
12. …….
13. …….

**Ugandan Legislation implies terms into the banking contract**

1. Financial Institutions Act, 2004 and the Regulations made thereunder
2. Data Protection & Privacy Act, 2019 and the Regulations made thereunder
3. Anti Money Laundering Act, 2013 and the Regulations made thereunder
4. Foreign Exchange Act, 2014 and the Regulations made thereunder
5. National Payment Systems Act, 2021 and the Regulations made thereunder
6. Contracts Act, 2010
7. Mortgage Act, 2009 and the Regulations made thereunder
8. Electronic Transactions Act, 2011 and the Regulations made thereunder
9. Consumer Protection Guidelines Share the Case by Justice Mubiru on this

**Most of the terms of the banking contract are implied by:**

1. Law (Acts of Parliament/Statutes)
2. Course of dealings
3. Custom
4. Courts

**QUIZ**

So, from your experience, are most terms of the banking contract express or implied? Defend your answer

**The several other capacities of a banker/ Minor contracts between the bank and the customer**

In the preceding part, we have seen the banker-customer relationship as that of a debtor to a creditor. The bank may however act in several other capacities in relation to its customer and in some respects, the customer need not have an account with the bank. These are as follows:

**The bank as an agent (The contract of Agency)**

An agent is a person empowered/ authorised to act on behalf of another. The parties to this kind of relationship are the agent, principal and third party. The function of an agent is to bring the principal into contract with a third party. When an agent is entering into contract with a third party, he must keep strictly within the terms of agency and particularly, the powers given to him by the principal. Provided this is followed, the agent is not liable for any act committed during the execution of the agent's duties It is the principal who is liable.

In the banking contract, the banker acts as an agent of the customer whenever there is a third party involved. This may happen in the following cases:-

1. In case of collection of bills and cheques on behalf of a customer;
2. When the banker is making payments to third parties on behalf of the customer e.g. direct debiting, honouring standing orders, cheques, drafts, etc.
3. When the banker is remitting money on the customer's behalf eg EFT, RTGS, money remittance etc;
4. For purposes of purchasing property, shares, airtime and stock on behalf of its customer;
5. Where the banker is obtaining insurance on behalf of the customer - Bancassurance
6. Where the bank receives tuition and school fees payments on behalf of the customer (school)
7. In international trade, when the bank guarantees the customer's credit worthiness & sometimes pays for the customer's merchandize
8. Custodial services to customers
9. ……
10. …….

**The Banker as a Bailee (The contract of bailment)**

Bailment is a contract where the owner of goods (bailor) deposits them with another (bailee) on conditions that the bailee will return them in the same condition as deposited or as otherwise agreed and that the bailee will be responsible for the security of those goods or depending on the agreement between the bailor and the bailee.

Liability in this contract arises if the bailee gives the goods to a person other than the bailor. In the case of Langtry Vs Union Bank of London (1896), the plaintiff deposited jewelry with the banker. The bank was tricked into delivery of the same on a forged authority to a thief. The plaintiff was awarded a sum of £10,000.

If the servant who has custody of the goods in the course of his employment makes an unauthorized use of the property which has been bailed to his employer, the employer will be held liable for the damage and it will be no defence to an action by the bailor for the employer to plead that the servant was on a frolic of his own. That is what is called **vicarious liability** - Employer being responsible for the misdeeds of his employee.

In Express (K) Ltd v Patel [2001] 1EA 54 at 60, the security guards who stole the gunny bags were servants or agents of the Appellant company. Court held that the bailee looks after the bailor's property himself, by his servants or his gents and if the servant or agent steals the goods the master is liable. Despite the exemption clause, the Appellant was held liable for the loss of the gunny bags.

In the case of Lugumuza V Agip Petrol Station (1975) HCB 288, court held that a bailee entrusted with goods for reward is under a duty to keep them safe and he cannot escape that duty by delegating it to his servant. If the goods are lost or damaged whilst they are in his possession, he is liable unless he can show that the loss or damage occurred without any negligence on his part or that of his servant to whom he delegated his duty.

In another case of Morris v CW Martin and Sons Ltd [1965] 2 All ER 725 wherein Lord Denning MR puts that when a principal has in his charge the goods or belongings of another in such circumstances that he is under a duty to take all reasonable precautions to protect them from theft or depredation, then, if he entrusts that duty, to a servant or agent, he is answerable for the manner in which that servant or agent carries out his duty. If the servant or agent is careless so that they are stolen by a stranger, the master is liable. So also, if the servant or agent himself steals them or makes away with them.

**Note that**

1. Bailment creates agency in most cases. The bailee acts as an agent of the bailor.
2. Bailment applies to moveable property only and not the immovable one like land and all that is attached to the land eg trees, buildings, etc
3. In bailment, ownership does not change from the bailor to the bailee. It is only possession which changes from the bailor to the bailee and back to the bailor or to the 3rd party as instructed by the bailor.
4. Money deposited on the customer's account is not the subject of bailment.

**Questions**:

1. Discuss atleast ten (10) purposes of bailment (why would someone leave his property with another)
   i. For storage/ safe custody eg day and night parking of vehicles for security, even in the bank
   ii. As collateral for fulfillment of a debt or some other obligation common with banks
   iii. For remittance or transmission eg, couriering, carriage or delivery eg DHL
   iv. For keeping or use for the benefit of another person eg a minor, sick person, elderly, absentee
   v. For repair or service eg watch, shoe, car, TV set or radio
   vi. Property forgotten by the (implied) bailor in possession of the bailee- eg in the bank, classroom, taxi or bus or aircraft
   vii. For renewal of expired passport, license, Permit, etc
   viii. For other unique purpose eg leaving a passport at the embassy for obtaining a VISA
   ix. Sale eg vehicles in bonds and used furniture
   x. Changing the form eg tailoring of clothes, panel beating and painting the vehicle
   xi. …….
   xii. …….
   xiii. …….

2. Why is money deposited on the customer's account not the subject of bailment?
   - That money becomes the property of the bank and a person cannot be his own bailee or put differently, a person cannot be a bailee in respect of his own property- Chilala vs the Republic
   - This money changes in state and form - It does not remain in the same state (in terms of denominations and form) as deposited - eg customer may deposit coins and withdraws paper money; customer may deposit cash or a cheque but withdraws electronic money

3. In what circumstances does the banker/bank act as its customer's bailee?
   i. Safe custody eg precious stones, accolades, jewelry, academic and other credentials or certificates (Academic, Marriage, Birth & death certificates), Land Titles, Logbooks, Wills, etc.
   ii. As collateral for fulfillment of a debt or some other obligation eg securing loans/ mortgages
   iii. Property forgotten by the customer in possession of the bank eg Identification documents, phones, laptops, bags, etc
   iv. When the customers park their vehicles in the bank's premises as they take off time to transact in the banking hall
   v. Property left by the customer in the bank's possession as a security requirement eg at the security check-point eg ammunition, identification documents, laptop, etc

vi. When the collecting bank receives a cheque for collection purposes- the cheque is the subject of bailment- the payee of the cheque is the bailor while the bank is the bailee
vii. ……
viii. ……
ix. ……
x. ……..

## The Banker as a Trustee

There are three parties in a trust relationship (trustship). These are **the creator of trust** (owner/donor or testator- one who writes a Will), **trustee** and **beneficiary**. A trustee holds or uses the property which belongs to the creator of the trust for the benefit of the beneficiary. The trustee has to use the property in accordance with the conditions of the trust.

- Organised trust relationships/contracts come about through a document known as a Trust Deed and at times a Will but more often than not, trustship is created by circumstances/implied.
- Sometimes the creator of the trust may double as the beneficiary eg caretaker of property does it on behalf of the owner who doubles as the beneficiary; also in imports, the importer may double as the recipient of the imported goods.
- Trustship embeds (includes) agency and sometimes bailment; meaning that it is possible to have all the three contracts (trust, bailment and agency) in one arrangement

**A bank acts as trustee for the customer under the following circumstances:**

1. In respect of credit balances on minors' and invalid persons' accounts;
2. In respect of account proceeds of a deceased customer;
3. When the bank receives certain payments for transmission to the customer eg school fees, taxes and rental collections.
4. In respect of money for crediting on some account whose details are not clear.
5. In respect of unclaimed balances where the account becomes dormant inactive/deactivated.
6. In respect of some money sent by the government for distribution eg for the elderly, emyoga, youth development fund.
7. ……

**The banker as a creditor (Loan Contracts)**

Whenever the bank lends money to the customer, the relationship between the two is that of a creditor-debtor where the customer is the debtor and the bank is the creditor. Most of the terms of this contract are expressed in the instrument creating the loan. (**Refer to notes on loan contracts**). In Nkoloma v NBC Holdings Corporation Ltd (2000) 1 EA 187, it was held that whereas the role of the bank is that of a debtor while that of the customer is of a creditor, the roles are reversed where an account is overdrawn. We should add here that the roles are also reversed or switched or interchanged where the bank lends money to the customer against a mortgage, pledge, or any other security or arrangement.

The bank may act as its customer's creditor when:

1. It lends to the customer by an express loan
2. In case of an overdraft- Nkoloma's case
3. It erroneously credits the customer's account and the customer withdraws the money or part of it
4. It credits the customer's account with the equivalent of an un cleared cheque
5. The bank guarantee is called and the bank pays the 3rd party eg Letters of Credit
6. ……

**The banker as a seller and buyer**
In foreign exchange business, the banker sells and buys foreign currency to and from its customers and it is here that the relationship of a seller to buyer and *vice versa* comes in. See the law relating to foreign exchange business.

**The banker as a guarantor**

- A contract of guarantee arises when one person (the guarantor) undertakes to meet the obligations of another (the obligor) in the event that the obligor fails to meet his obligations to the obligee.
- Here we have three parties: The Obligor, the obligee and the guarantor.
- This means that the contract of guarantee is a secondary contract. It arises only where there is a primary contract between the obligor and the obligee such as a loan contract, an undertaking by the accused person to appear in court (surety is the guarantor), etc. Without a primary contract, the contract of guarantee cannot stand/exist.
- So, the guarantee is twofold: One, that the obligor will fulfil his obligations under the primary contract. Two, that in the event of the obligor's failure to fulfil the primary contract, the guarantor undertakes to meet the obligations of the obligor and later sort himself with the obligor.
- Sometimes, the guarantor's obligations to the obligee have limitations say in terms of sums of money.
- It is not lawful for the obligor and oblige to alter or vary or change the primary contract without the knowledge and consent of the guarantor otherwise, the guarantor is not bound anymore. The contract of guarantee collapses in that case and the guarantor is thereby discharged.
- It is difficult for the guarantor to be discharged before the primary contract is discharged.
- A contract of guarantee must be written and signed by the guarantor- Contracts Act, 2010
- At times, the banker guarantees the credit worthiness of its customers to suppliers and this is followed by effecting payments to those suppliers on behalf of its customers in case the customers are unable to do so in time.
- Refer to the Contracts Act, 2010 for more requirements of the contract of guarantee in Uganda.

Activity
Discuss at least five circumstances under which the bank may act as its customer's guarantor

1. To suppliers through Letters of Credit
2. To procuring entities through performance bonds and bank guarantees
3. To education institutions overseas
4. Health facilities

5. …….

**The bank as a Principal**
Refer to agent banking

**The banker as a referee**
There is no contractual relationship between the referee and the subject of reference. The act of giving a reference about another is gratuitous. But in **Hedley Bryne vs Heller Partners**, it was held that liability independent of contract arises whenever one makes a reference about another. This means that if the reference is too (unreasonably) favourable, it may give rise to a lawsuit by the person who relies on the reference to enter into some contractual arrangement with the subject of reference. And on the other hand, if it is too unfavourable, the subject may sue the referee for loss of opportunity. So the referee must strike a balance and also endeavour to be as discrete and truthful as possible.

The banker acts as its customers' referee in the following respects:

– To visa offices and embassies;

– To other banks through the credit Reference Bureau;
– To employers; etc.
– To procuring entities in the procurement process

**NEGOTIABLE & PAYMENT INSTRUMENTS (CHEQUES AND DRAFTS)**

- Meaning and law applicable- The Bills of Exchange Act, Cap 81
- **Terms used**: The holder of the cheque (holder in due course), Transferee/endorsee, transferor/endorser
- **Types and examples of negotiable instruments** still in use: Cheque & draft (I Owe You Notes – (IO U) are nolonger in use).

- *Cheque: **Salient features of a cheque (material particulars of a cheque)***

1. Drawer- Account Holder, Writes, draws, issues (filling in details and signing) the cheque
   - He orders the drawee bank to pay a certain sum of money to the payee
   - It is only the drawer with the right to rectify any error on the cheque and counter-sign it
   - The one with the obligation to pay the payee and chooses to pay him/her by cheque
   - If the cheque is dishonoured, the obligation to pay the payee remains and must be fulfilled
2. Drawee- Bank where the Drawer holds an account
   - Must be a bank. Drawee is an agent of the drawer in this payment arrangement (cheque)
   - The Drawee is the one who causes the cheque books to be printed & provides them to the account holders
   - The drawee is the one who pays the cheque value/proceeds to the payee on the instructions of the drawer
3. Payee – The one who is entitled to payment of the cheque value/sum payable
   - He receives the cheque from the drawer and presents it to the Drawee Bank then he gets cash from the drawee bank or the cheque equivalent posted on his account
   - The name of the payee should be filled in by the drawer
4. Sum payable- Cheque value/ Face value of the cheque.
   - Must be written both in words & figures & must be closed with the word "only" (/=)
   - In case of a discrepancy between the two, the cheque should be dishonoured with an endorsement "*Words & figures differ*" but that is remediable by the drawer correcting the sum payable to match in words and figures and then countersigning against the correction.
   - Should not exceed the allowable limits (Ugx 10 million)
   - Exceptions to the cheque limits: (1) in-house cheques (2) where the drawer doubles as the payee (3) where the payee is one of the signatories to the Drawer's Account
   - The sum payable is filled in by the Drawer
5. Due Date- Date of cheque payment – on the top right corner of the cheque
   - It is not possible to tell when the cheque was drawn because the date on the cheque is the date of payment/ due date and not the date of writing the cheque
   - Due due date is when the cheque can be presented by the Payee to the drawee

   Ante-dated, on-dated and post-dated cheques
   - Ante-dated cheque is one which is given a date that already passed before it was drawn eg, a cheque drawn today but dated 1st March 2024.
   - On-dated cheque is given the very date on which it is drawn e.g a cheque drawn today being dated 22nd March 2024.
   - Post-dated cheque- Given a future date eg a cheque drawn today but dated 1st April or 28th March 2024.

- The rule of thumb is that an ante-dated cheque and an on-dated cheque can be paid but a post-dated cheque should not be paid. It should be dishonoured with the endorsement "*post-dated*" because of the following reasons:
  - The drawer may fall out with the payee and he decides to countermand the cheque
  - The drawer could pass on before the cheque payment
  - Account closure by the drawer before the due date
  - …….
  - …….

Stale cheque: One which remains unpaid after six months from its due date (payment date)

- A prudent banker should dishonour a stale cheque – The bank should not pay a stale cheque

6. Drawer's Signature
   - Bottom right corner of the cheque
   - It authenticates the cheque – authorisation to the bank to pay money from the drawer's account
   - The meaning of "Drawer's Signature" depends of the signing mandate/instructions given by the Drawer to the Drawee bank at the time of account opening or even subsequently/later eg ANY TWO TO SIGN, EITHER OF THE TWO TO SIGN, BOTH TO SIGN, ALL TO SIGN, ONLY ONE SIGNATORY TO SIGN OR PRINCIPAL SIGNATORY MANDATE
   - If there are more than one signatories to the account and both or all or some must sign at the same time, then the words "drawer's signature" means/connotes that all the authorised signatories' signatures constitute "the drawer's signature".

7. Cheque number, Account number, date of printing- These are not cited among the material particulars of a cheque. They are printed on the cheque at the time of cheque designing & printing.

8. Cheque crossings and their meanings
   - Cheque crossings are two parallel lines found printed anywhere on the cheque.
   - Some crossings bear the words "Account Payee Only" or "Account Payee" between the lines
   - Crossings with "Not Negotiable"
   - Crossings with both "Account Payee (A/C Payee)" & "Not Negotiable".
   - "Account Payee" crossings mean that the cheque proceeds can only be paid through the Account of the payee. Such a cheque is not meant for encashment unless the signatories counter-sign against the crossings which is what we call "opening the crossings" or "opening the cheque".
   - "Not Negotiable" crossings prohibit the Payee of the cheque from negotiating or transferring it to a 3rd party. It means that such a cheque can only be paid to the named Payee.
   - Blank crossings- The cheque bears two parallel lines with no words written in between
   - These blank crossings mean the same thing as the "Account Payee" crossings and "Not Negotiable" crossings.
   - The restrictions on cheque encashment brought about by the cheque crossings do not extend to cheques where the payee is also the drawer of the cheque or one of the signatories to such a cheque- Such a cheque can be encashed over the counter once the crossings are counter-signed against.

A DRAFT

- How it works:
  (1) The person with the obligation to pay the payee goes to the bank with cash or with money on his account.
  (2) He instructs the bank to issue him with a Draft in favour of the payee
  (3) He deposits cash with the drawer/drawee bank or writes a cheque or makes an EFT Order to satisfy the draft
  (4) The bank writes or issues the Draft to the person paying but in favour of the Payee, and the draft is signed by or on behalf of the issuing bank so the bank doubles as the drawer and the drawee
  (5) The person paying takes the draft to the payee who then presents it to the drawer/drawee bank and gets paid.
- Draft: Salient features of a draft- Bears all features of a cheque
- Cheques & Drafts:
- Differences- Draft has no limit on sum payable; Drawer is same as drawee; The drawer of a draft is always the bank; The name of the person with the obligation to pay the payee does not feature anywhere on the draft; Can only be on-dated; Hardly be dishonoured
- Similarities: Drawer, drawee, payee, sum payable, due date, Signatories to the draft are the drawer's/drawee's representatives
- Cheque clearance – Cheque is cleared for payment and is actually paid
- Cheque maturity- That term applies to post-dated cheques which are said to mature on their due date
- Cheque Dishonour- This is when the cheque is returned unpaid
- Grounds for dishonour

Activity: ***Discuss atleast 15 justifiable grounds for cheque dishonour***

1. Stale cheque-expired
2. One which exceeds allowable limits and is not among the exceptions
3. Signature contrary to the account operating instructions
4. Insufficient funds to satisfy the cheque
5. Sums payable- words and figures differ
6. Drawer is known to be dead
7. Post-dated cheque presented before its maturity date
8. Un-counter-signed alterations/ Cancellations
9. Incomplete signature-if the cheque bears one signature instead of two or more or depending on the signing mandate
10. In case of cheque countermand- the drawer orders the bank to stop the cheque payment
11. When the cheque is dirty or defaced or mutilated
12. When the Drawer's account is inactive eg, frozen, court or other Order, de-activated, dormant, closed etc
13. …….
14. ……..
15. ……..

- Remedies for cheque dishonour- *(1) Replace cheque with another check (2) pay in cash (3) pay in kind (4) barter trade (5) EFT (6) transaction cancellation (7) Criminal charges (under the Penal Code Act)– Fine of twice the face value of the cheque plus paying the actual cheque value to the payee plus damages in civil case*

## RIGHTS AND DUTIES OF THE CUSTOMER AND THE BANK

Where the Bank customer relationship has been established, the parties must perform the following duties & obligations as imposed by law.

## CUSTOMER'S DUTIES/RESPONSIBILITIES/OBLIGATIONS

1. Reasonable Care

The customer must exercise reasonable care and diligence when dealing with the bank and the instruments & gadgets of banking so as not to facilitate fraud and not to mislead the bank. This duty extends only to the customer taking ordinary and reasonable precautions and not extra-ordinary precautions. The customer has no duty to prevent his servants and other people from committing forgery or fraud (and this is next to impossible) - Kepitigalla Rubber Estates Ltd – Vs- The National Bank of India Ltd [1909] 2 KB 1010. In London Joint Stock Bank Ltd – Vs- Macmillan and Arthur [1918] AC 777, the H.O.L stated that the customer is bound to exercise reasonable care in drawing the cheque and if he does so in a manner which facilitates fraud, he is guilty of breach of duty as between himself and the banker, and will be responsible for any loss sustained by the banker as a natural and direct consequence of the breach.

In Greenwood Vs Martins Bank Ltd. (1932), – Greenwood had an account with the defendant bank. On a number of occasions, his wife had stolen cheques and forged his signature and successfully withdrew money from Greenwood's account. Greenwood drew a cheque, presented it but it was dishonoured for insufficiency of funds on his account. On inquiry from the bank, Greenwood was showed records indicating the cheques that had been forged by his wife. Greenwood neither disowned nor owned these forged cheques. He however confronted his wife over these forgeries and she undertook never to repeat them. Mrs Greenwood again forged Greenwood's signature and successfully withdrew money from his account. Greenwood neither disowned nor owned these forged cheques. Greenwood and his wife had an argument and Greenwood threatened to disclose the forgeries to the bank. And as a result, his wife committed suicide. Subsequently, he sued the Bank for the amount it had paid on account of the forged signatures.

Court held in favour of the bank and stated that since in the past, the plaintiff had failed to warn the bank against forgeries, he could not now make a claim for recovery. He was estopped. That there is a duty on the part of the customer, if he became aware that forged cheques were being presented to his banker, to inform his banker in order that the he (banker) may avoid loss in the future.

### QUIZ

**Discuss five (4) ways in which Greenwood breached the duty of reasonable care and diligence**

1. He did not inform the bank of the wife's forgeries when he first learnt of them
2. He kept the cheque book in a place that was accessible to his wife
3. ……..
4. ……
5. ……

In Busongora Development Association Ltd Vs Centenary Rural Development Bank Ltd H.C.C.S No 048 of 2004, Court observed that Banks always warn customers that cheque books must be kept in a secure place. Usually, the words are printed prominently in the cheque book itself. Court was of the view that where the customer's cheque is altered, for example by writing in additional figures in words, this is accomplished by the customer leaving spaces which facilitate the fraud. That in those cases, the customer leads the bank to believe that that irregularity is condoned and the proximate cause of the loss is something that the customer has done which induces the bank to believe that the collection and payment of the cheque is in order.

- Elements of this duty in contemporary banking

i. Reporting known forgery- Greenwood's case
ii. Report suspected irregularities on the account
iii. Make the signature complicated to forge
iv. Keep the banking instruments and gadgets away from 3rd parties
v. Keeping secret codes confidential- Passcodes, passwords, PINs, OTP, User name
vi. Keeping PIN mailers (paper) separate from the Plastic Cards
vii. Change the secret codes and signature periodically- eg every six months
viii. Not to voice out while transacting
ix. Not to solicit for assistance from strangers
x. Not to share bank account information
xi. Not to leave blank spaces while writing a cheque- Busongora case
xii. Not issuing blank cheque Busongora case
xiii. Not to withdraw money that does not belong to the account holder- Barclays Bank of Kenya vs Jandy
xiv. Logging out after transacting electronically

**ACTIVITY: Discuss atleast 20 ways in which the customer can exhibit reasonable care and diligence in electronic banking.**

2. **The customer must make a written demand for payment.** The written order (cheque, ATM withdrawal, draft, standing order, P.O.S. transaction, mobile etc) had initially to be addressed to the bank and branch where the customer's account was held. But in contemporary banking, there is no more strict adherence to this rule and customers can, access their money at any branch of their bankers.

   **ACTIVITY**: How does the customer make the 'written demands' for electronic payments?

3. Seek the bank for payment: The customer must go to his bank or send an authorised agent acceptable to his banker whenever he wants to withdraw or deposit money. It is not the banker to seek out the customer. Repayment of the customer's money via the counter can only be made during normal banking hours dependent on each particular bank and on working days.

   ACTIVITY: How does this duty apply in electronic banking?
   - By subscribing for electronic banking and get on-boarded
   - Download the banking application
   - Buy data for those apps that require data to operate
   - Log on the electronic banking system
   - Follow prompts

4. Sufficient funds on account to meet he order. Before making a demand for payment, the customer must ensure that his account has the necessary funds to meet his order. Alternatively, he must make prior arrangement for overdraft facilities to be available from his bank. Otherwise, besides constituting breach of contract, it is an offence under the Penal Code Act to draw a cheque on a bank when there are no sufficient funds to meet it.

5. A customer must pay reasonable interest, commission and other charges for banking services. The bank is not a charitable organisation. Charges must be reasonable or else the customer can challenge them in courts of law
6. The customer must keep his account active or else, it is rendered inactive/deactivated.
   How should the customer keep his account active? By carrying out any transaction like balance inquiry, deposit the smallest amount possible, withdraw, buy airtime, etc

7. Customers' duty in regard to bank statements

What is the customer's duty in regard to bank statements? A customer does not have the duty to scrutinize the bank statement. However, if the customer happens to identify any errors in the bank statement, a duty arises immediately to inform the bank so that such an error can be corrected/rectified – Kepitigalla case

## BANKER'S DUTIES

These are divided into three categories namely:

i. General duties of the bank
ii. Duties of the collecting bank
iii. Duties of the paying bank

## GENERAL DUTIES OF THE BANK

**1. Secrecy/ Confidentiality**

Under Common Law, the bank must maintain strict secrecy about its customer's affairs while the account is open and even after it has been closed. This duty extends to information obtained from the customer and from other sources. Section 45 of the B.O.U. Act provides that the Central Bank & members of the Board of Governors shall not publish or disclose any information regarding the affairs of a financial institution or a customer of a financial institution except under compulsion of law.

In the case of **Tournier Versus National Provincial and Union Bank of England Ltd** (1924), Tournier had an overdraft account with the defendant bank. He failed to pay as agreed. The bank manager telephoned Tournier at his workplace but he was unable to speak to him in person. He discussed the overdraft position and other matters with Tournier's employer. The bank Manager disclosed that he had done learnt that Tournier was engaged in bookmaking (gambling) and as a result, Tournier was dismissed from his employment. Tournier sued the bank for damages arising out of the disclosure. Court held that the bank has a duty of secrecy but added that this duty is not absolute but qualified. That disclosure is justified in four circumstances.

Exceptions to the banker's duty of secrecy

a) **Disclosure with the customer's consent.** The customer's consent may be **express or implied**. An example of implied consent is where the customer authorises a reference to his banker such that the banker answers to inquiries from a prospective employer or a new banker of the customer.- Parsons v Barclays & Co. Ltd. ( 1910).

b) **Disclosure in the bank's interests**. The bank may disclose its customer's affairs when it takes steps to recover monies owing, when suing a guarantor or when legal proceeding are started against it by a customer or a third party. Also, when a complaint is raised against the bank by the customer at the Central Bank, Financial Intelligence Authority, Internal Police (Interpol), Personal Data Protection Office (PDPO), Insurance Regulatory Authority (in regard to bancassurance) or at the Credit Reference Bureau (CRB). The bank must, in order to defend itself satisfactorily, be able to disclose the relevant information pertaining to the complaint.

c) **Disclosure in public interest**. If there is a clear duty to the public, the bank is justified in disclosing its customer's affairs. e.g. In war time, if a customer is trading with the enemy, disclosure would be justified. Also, when an account is used to facilitate illegal activities such as money laundering, terrorism, homosexuality, commission of financial crimes like hacking, fraud, forgery, impersonation, etc, this should be disclosed to the appropriate authorities like the Bank of Uganda, Financial Intelligence Authority, Interpol, local police, etc. The forum and subject of

disclosure is important here. The disclosure should be made to that authority which can represent the public interests.

d) **Disclosure under compulsion of law**. In pursuance of their investigations, police officers may sometimes feel that information about a suspect's financial dealings or bank account could be helpful and they might approach the bank. In such a case the bank has to disclose information relating to the customer's account. But in order to achieve this, the police must first obtain a written order of court compelling the bank to disclose the required information. Under section 225 of the Magistrates Courts Act, upon a written request, every bank manager or other authorised officer is obliged to issue copies of any document in the bank's custody to the DPP.

Under the Evidence (Banker's Books) Act, court has the power to authorize a party to a suit to inspect and copy entries in the banker's books for purposes of such proceedings. Under the Leadership Code Act, the I.G.G. is authorized to inspect any bank account or any document in the custody of the bank. All the financial laws such as the MDI Act, FIA, FEA, etc make it mandatory for the Directors of the respective institutions to avail whatever information may be required by the Central Bank. There is no need for a court order in these instances. The Anti-Money Laundering Act, 2013 also compels Financial institutions as accountable persons, to disclose certain information to Financial Intelligence Authority. In this instance also, there is no need for a court order.

2. The Bank must advise the customer on investments. See the 2nd Schedule to the FIA, 2004 as amended from time to time. However, the bank must particularly be careful here because there is liability for financial loss resulting from negligent and unskilful advice given to the customer. In Woods Vs Martins Bank**,** Court held that if the Bank offers financial advice, even though giving of such advice was not within the scope of the bank's general business, such advice **must be reasonably careful and skilful.**

3. Honouring Customer's Orders. Provided the customer's written orders are properly drawn/placed/written and there are no circumstances preventing payment, the bank must honuor the customer's cheques to the tune of the balance or if the account is overdrawn, to the agreed limits.

4. Reasonable notice before account closure. The bank must give reasonable notice to its customer before closing an account. In Joachimson v Swiss Bank Corporation (1921), Atkin L.J stated that it is an implied term of the bank-customer contract that the bank will not cease to do business with the customer except upon reasonable notice.

   What is reasonable time is a question of fact and therefore depends on the special circumstances of each case. The reasonableness of the period of notice depends on the how busy the account is, the nature of the business of the account holder, the geographical distance to which the customer sends his or her cheques, number of cheques still in circulation, the number of transactions handled on the account and whether or not the customer is a natural person or an entity. In Prosperity Limited v Lloyds Bank Limited (1923), notice for a period of one month was said to be inadequate for a company to give it sufficient opportunity to make fresh arrangements.
   However, it has been argued that where the customer is using the account for illegal transactions, the bank is under no obligation to give reasonable notice to such customer before closure of his or her account. That the banker's public duty not to aid illegality is superior. (Tumwine-Mukubwa, Essays in African Banking Law and Practice, Uganda Law Watch, 1998 p.340.

5. **Providing bank statements.** The bank has the duty to provide account statements to the customer either on a monthly basis or as requested by the customer and this statement must contain accurate

entries. However, customer does not have the duty to scrutinize the bank statement, identify errors and inform the bank accordingly for correction. And the fact that the customer has not raised any queries about the account statement does not render it accurate or plausible. However, if the bank happens to identify any errors in the bank statement, it has the duty as well as the right to correct the said statement and make it accurate – Kepitigalla case

6. **Taking references about a new customer.** The bank has the duty to take references (recommenders) about a new customer so that they can be contacted in case need arises. Need may arise in case of an investigation about the customer. Case law has it that the bank's failure to take references about a new customer amounts to negligence. Bank of Baroda (U) Ltd Vs Wilson Buyonjo Kamugunda Supreme Court Civil Appeal No.10 of 2004; Ladbroke vs Todds; Underwood Ltd V Barclays Bank Ltd. (1924).

## DUTIES OF THE COLLECTING BANKER

Collecting here means receipt of a cheque from the payee, presenting the cheque to the clearing house and then the paying bank, collecting the cheque proceeds from the drawee/paying bank and crediting them to the payee's account. The cardinal duty of the collecting bank is to use reasonable skill, care and diligence in presenting and securing payment of cheques entrusted to it for collection and placing the proceeds to the customer's account, as in taking such other steps as may be proper to secure the customer's interest.

Facets/elements of the duty of reasonable skill, care and diligence while dealing with the cheque and the proceeds

i. Securing the cheque from loss, obliteration or destruction
ii. Informing the Payee in case of cheque loss or obliteration within a *reasonable time*
iii. Presenting the cheque to the Drawee bank within a reasonable time - What is the practice- on the very day of cheque deposit
iv. Informing the Payee in case of cheque dishonor- when? Within a reasonable time
v. Crediting the (entitled) Payee's account with the correct sums (cheque proceeds) within a reasonable time- The practice is that for inter-bank cheques, the payee should expect the cheque proceeds to hit his account after two working days from the date of cheque deposit and for in-house cheques, within 24 hours from the date of cheque deposit.

Where a banker collects money on a cheque which rightfully belongs to a company and credits the account of the company director, the bank will be liable for conversion. In the case of Underwood Ltd V Barclays Bank Ltd. (1924), A sole director of the plaintiff company had an account with Barclays. He owned all the shares in the company except one, which was owned by his wife. The plaintiff company had an account at a different bank. While Barclays knew the existence of the company, it did not know of the separate account.

This director came into possession of several cheques payable to the company, endorsed the cheques in his own names and deposited them on the account in Barclays. Barclays bank collected the cheque proceeds, credited the director's account with the money. The plaintiff's liquidator sued the bank to recover the cheques and court held that by collecting proceeds of cheques belonging to the company and crediting the director's account, the defendant banker was guilty of conversion and had to pay the money to the company liquidator.

**Challenges of crediting the Payee's account before the cheque matures** – What is the law on this?

- The collecting bank has to credit the customer's account only when the cheque has been cleared. However, modern banks have developed a tendency of crediting the payee's account before clearing the cheque. This may breed problems for the bank as illustrated by the following case.

  In **Silayo vs CRDB (1996) Ltd**, (2002) 1 EA 288 (Tanzania), Silayo was given a cheque by a certain man as payment of the purchase price for building materials supplied by S. He deposited the cheque

into the bank account that day but told the purchaser/his customer that the materials would be released when the cheque had been cleared. The cheque proceeds were credited in Silayo's account that same day. Six days later Silayo started drawing against the cheque and continued doing so until one of his cheques was dishonoured. Upon inquiring with CRDB, he was informed that his cheque had been mysteriously lost *en route* to Azikiwe branch to be cleared. He was asked to request a replacement from the drawer, to whom Silayo had since released the building materials. It came to pass that the firm in whose name the cheque was drawn had never existed and had never had an account at the Azikiwe branch.

CRDB required Silayo to repay the amount already drawn or to have the amount treated as loan and he was aked to make a payment plan and offer collateral as well. Silayo rejected both, whereupon the Respondent bank reversed the entry, froze Silayo's account and sued to recover the money which he had so far withdrawn. Silayo denied the claim and counterclaimed general damages for breach of contract for being denied access to his account. The Court of Appeal of Tanzania held that it is perfectly in order to credit a customer's account with amounts of an uncleared cheques but if the cheque is subsequently dishonoured, the banker is entitled to reverse the entry and ask the customer to obtain a replacement cheque. In other words the amounts entered in the customer's account do not irreversibly accrue until the completion of the clearing process. Underwood Limited v Barclays Bank [1924] 1 KB 775 was cited.

It was further held that should the banker represent to the customer, either expressly or by conduct, that he might treat the money as his own, or negligently fail to discharge his duty to the customer, as to lead the customer to change his position and act to his detriment, the banker will not be permitted to recover money. (Re Jones Limited v Waring and Gillow Limited [1926] AC 670 and Dukhiya v Standard Bank [1959] EA 958 followed).

The above legal position can be summarized as follows:

- It is perfectly in order/lawful for the collecting bank to credit the cheque equivalent onto the payee's account before cheque maturity.
- The payee holds that money (the cheque equivalent) in trust for the Collecting Bank
- Should the cheque be returned unpaid/dishonoured, the collecting bank is entitled to reverse the previous entry and the payee is obliged to refund the used part of the cheque equivalent to the Collecting Bank.
- If the payee had not touched the credited sums, the collecting bank is entitled to recover it from the payee's account by merely debiting his account

What are the circumstances under which the collecting bank may be estopped from reversing the entry and recovering the cheque equivalent from the payee?

1. If the conduct of the collecting bank amounts to a misrepresentation (if the collecting bank misrepresented to the payee that he may treat the money on his account as his).
2. If the payee honestly believes that the money on the account is his. This honest belief must have factual basis eg, a donation (with evidence), a salary expectation, a cheque deposit, etc.
3. The payee acts on that misrepresentation to his prejudice/detriment/disadvantage (changing/altering his position) in reliance on the misrepresentation eg drawing a cheque and it is dishoured, spending the money which he would not have spent had there been no misrepresentation

**Protection of the collecting banker**

Where a banker in good faith and without negligence receives payment for a customer of a cheque that is crossed either generally or specially to it and the customer has no title or has a defective title, the banker is not liable to the true owner of the cheque by reason only of having received such payment. This means that the Collecting Bank is protected from liability for its actions and omissions done during the collection process provided that the said actions and omissions are made in good faith - under section 81 of the

Bills of Exchange Act Cap 68.

- What amounts to good faith? (*bonafide*)– Lack of bad faith eg (Not restricted to Collecting Bank Only)
  - Acting reasonably
  - Acting legally or lawfully
  - Following the known or prescribed procedures
  - Being transparent
  - Acting fairly
  - Acting within a reasonable or prescribed or usual time frame
  - Honest mistakes/errors

- What is bad faith? (mal-fide)- The following point to bad faith (Not restricted to Collecting Bank Only)
  - Acting unreasonably
  - Connivance – Aiding wrong-doing
  - Condonation – Tolerating wrong-doing
  - Acting illegally or unlawfully
  - Flouting procedures
  - Lack of transparency- Failure or delay to communicate
  - Acting unfairly- preferential treatment to others
  - Acting outside known standards and norms
  - Inordinate delay- Justice delayed is justice denied
  - Acting too fast – Justice hurried is justice crushed
  - Failure to act when notified or after receiving a complaint
  - Acting neutral in face of suspicious circumstances- Busongora vs CERUDEB

- Bank of Baroda (U) Ltd Vs Wilson Buyonjo Kamugunda Supreme Court Civil Appeal No.10 of 2004; Underwood Ltd V Barclays Bank Ltd. (1924); **Read Obed Tashobya vs DFCU Bank H.C. (Commercial) C.S. 742/2004**

## DUTIES OF THE PAYING BANKER

Whenever the bank is faced with the obligation to pay money out of the customer's account, it is referred to as "the paying bank".

1. Pay only on the customer's orders. The paying banker must make payment only when its customer has ordered it to do so. The bank has no right whatsoever to pay money out of the customer's account without the customer's orders. That would amount to breach of contract and negligence.

2. If the order is in written form, the teller must ensure that the cheque is still valid (not stale and within the allowable maximum limits). The B.O.E. Act states that a cheque is overdue (stale) when it appears on the face of it to have been in circulation for an unreasonable length of time. Banking practice has determined this time to be six months after which the cheque is rendered stale. The paying banker should be careful with post-dated cheques because anytime the customer can stop payment before the date on which it is actually due or the customer may die before the due date. If a banker pays before the due date, then it faces the possibility of a suit for the bouncing of other cheques issued by the customer and payable before the due date of the postdated cheque.

3. **Genuine signature**. If the order is in form of a cheque, draft or other written orders, the paying banker must ensure that the signature on the payment order is genuine. For electronic orders, the bank must ensure that the secret code is correct. The banker has no authority to pay money from a customer's account without the customer's authority. This authority is given by signature or secret code/s. If the bank has two authorized signatories, it cannot pay one or some of them without authorization from the account holder. This principle is contained in the case Ligett (Liverpool) Vs Barclays Bank Ltd. (1928).

In that case, the plaintiff was a limited liability company and gave instructions that two directors must sign cheques from the company. The bank carelessly paid money on a cheque with one signature. The company sued the bank for breach of contract and to recover monies which had been paid. The court failed to find in favour of the company because the money had been paid to the creditors of the company and therefore the company lost nothing. However, this should not have been the same conclusion if for example a single signatory had withdrawn money inappropriately for himself.

Where the signatures of the authorized signatories to the account are forged, a modern bank is expected to be able to detect this and failure to do so renders the bank liable to the account holder. In Busongora Development Association Ltd Vs Centenary Rural Development Bank Ltd court stated that the bank cannot escape liability by pleading that the forgery was of such high standard that no ordinary banker could have detected it or that the state of art at the time would not easily expose the forgery. That such a defence is untenable in this computer age, e-commerce and cyber-crime.

That there must be assurance to customers that their money is safe in the Bank. If the handwriting expert could so easily detect the problem on the cheque (one of the signatures on this cheque was scanned), there is no reason why the Bank cannot employ people of the same specialized skill to detect electronically scanned and transferred signatures on to the bills of exchange. The Bank must apply high-tech methods to detect such forgeries or else be prepared to make good losses occasioned to their customers. The law will not suffer a wrong to be without a remedy.

Where there are more than one account signatories and both or all must sign, genuine signature means that all the required signatures must be on the written order for payment and all or both must be genuine. – Refer to the following cases:

- Busongora Development Association Ltd Vs Centenary Rural Development Bank Ltd- one signature was genuine and the other was merely scanned onto the cheque;
- Brewer vs Westminster Bank & Another – Only one out of the two authorized signatories signed the cheque. It was half a signature and therefore no signature at all;
- Kepitiggala Rubber Estates vs National Bank of India – All the signatures on the cheques were forged
- Ligett (Liverpool) Vs Barclays Bank Ltd. (1928) Only one out of the two authorized signatories signed the cheque. It was half a signature and therefore no signature at all

4. **Words and figures correspond**. The paying banker must ensure that the sum payable as expressed in words and figures on the cheque correspond. When the sum payable is expressed in words and figures and the two differ, a prudent banker should never pay such a cheque. It should be returned with this endorsement: “words and figures differ”. But this is instantly remediable where the payee is either the sole signatory to the cheque or where the payee is also the drawer of the cheque. He can cancel the wrong amount, correct it and countersign.

5. **No bars to payment.** The paying banker must ensure that there are no bars to payment. The duty to pay is a general one and a bank has a duty not to pay where payment was stopped or countermanded by the customer or order from Court and on getting to know of the death or bankruptcy of the customer.

   Activity:
   Discuss atleast ten bars to payment (reasons why a payment order can be turned down despite the fact that it is properly drawn and there are sufficient funds to meet it)

6. It is also the duty of a paying banker to ensure that the customer or his or its agent has received the money.

**ACTIVITY:**

a) **How does the contemporary bank ensure that the customer has received the money?**
   - By serving one customer at ago, usually, on a first come, first serve basis- to be organised and avoid a possibility of the customer losing money in confusion
   - Involving the customer in the money counting process
   - Giving the customer sufficient time to verify that he has received the very sum that he intended to withdraw
   - Asking the customer to confirm his money before leaving the counter
   - Sending a confirmatory email and SMS to the customer after every transaction
   -

b) **Propose five additional ways in which the bank can ensure that its customer has received the electronic payment**
   - Network stability
   - Sending verification messages to the customer before the transaction is completed for the customer to confirm that he is the one actually initiating the transaction

## Liability of the Banker in Tort

A tort is a civil wrong independent of contract. e.g. negligence, conversion, trespass, detinue, defamation etc. There are various wrongs. The first categorization is between civil and criminal wrongs. Civil wrongs are also divided into three or four namely:

a) Contractual breach/wrongs – This arises out of breach of contract
b) Statutory wrong – This arises out of breach of a statutory provision
c) Tortious wrong which arises from committing a tort

The Banker must be aware of tortuous liability which may arise under the following heads:

### a) Negligence

Negligence was defined by the Commercial Court in Busongora Development Association Ltd Vs Centenary Rural Development Bank Ltd [1] where Bamwine, J. held that it is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent reasonable man would not do. In short, negligence is doing what a reasonable person is not expected to do in similar circumstances or failure to do what a reasonable person in similar circumstances would be expected to do. Read about the concept of "*a reasonable person*".

A banker may be held liable in negligence under the following circumstances:

– Releasing money or goods to a person other than the entitled customer
– Wrongly debiting a customer's account
– Failure to credit a customer's account
– Failure to make the necessary inquiries. In Ladbrooke Vs Todds (1914), the plaintiff drew a cheque and posted it to the payee. The cheque was stolen from the post and the thief opened an account with that cheque at the defendant's bank. The endorsement on the cheque was forged. In opening the account the thief requested for special clearance. Immediately, the thief withdrew all the money on the account and disappeared. The Banker's defence failed. This was because it had failed to make any inquiries and moreover it had given the man special clearance. The bank was regarded to be negligent and it had to pay the cheque proceeds to the legitimate customer.

– Paying on an irregular order

**c) Conversion**

The tort of conversion is where one person wrongfully interferes with the property of another person in such a manner as to show that he denies or is indifferent to the title of the other. A banker may be liable for conversion under the following circumstances:

– Selling off a loan security before the date of payment
– Collecting a cheque for a customer with a defective or no title Ladbrooke Vs Todds (1914),
– Giving goods which are the subject of bailment to a person other than the owner

**d) Defamation**

Defamation is the publication of a false statement which tends to lower a person's reputation in the minds of right thinking members of the community generally. e.g. slander (spoken) and libel (written). Slanderous publication may be in form of a song, radio and television utterances, video footages if published, face to face, audios and voice calls. Liberous publication can be in form of newspapers, letters if copied to others, whatsapp group chats, email, facebook posts, etc. A banker may be liable in defamation under the following circumstances:

The ingredients of a defamatory statement are:

1. It must have been published by its utterer- And publication goes beyond the two persons i.e. beyond the utterer and the complainant
2. The statement must be false
3. Must have the tendency of lowering one's reputation in the minds of other people generally
4. The statement must have been referring to the complainant

– Replying unfavourably to an inquiry about a customer's financial posision
– Dishouring a cheque with an endorsement which may be considered libellous e.g. "no money", "present again," "refer to the rawer (RD)", or "no sufficient funds " Bakers Vs Australian and Newsland Bank (1958), the bank put the customers money on somebody else's account. This gave the impression that the customer's account was overdrawn beyond the agreed limit. The Bank dishonoured 3 cheques with the endorsement "present again." The Court stated that this answer was capable of defamatory interpretation and it awarded damages to the customer. In David Vs Barclays Ltd (1940), it was held that "Not sufficient" is libellous.

- Publishing a statement of loan default before the due date of payment.

Before a cheque is paid or dishonoured, it is desirable for precautions to be taken to ensure that no mistakes have occurred in relation to the customer's account. The customer's paid cheques, which are still in the bank's possession, should be examined in order to make certain that they all appear to have been drawn by him i.e. to eliminate the possibility that a cheque drawn by a customer of a similar name may have been debited to the account in error. The dates on the paid cheque should be examined to ascertain that no post-dated cheques have been paid in error. The whole account should be examined in order to discover whether a regular credit, such as payment of salary, is missing. Such a item may have been credited in error to the account of another customer.

If a bank discovers that it has dishonoured a cheque wrongfully, it ought to act immediately with a view to minimising the damages suffered by the customer. The mistake should be communicated by telephone to the payee or to his bankers. A letter of apology should also be sent forthwith to the customer.

**d) Negligent statements** - In Hedley Bryne Vs Heller Partners (1964) The customers were facing

trading problems. When the plaintiff asked the bank about the status of the customer, the banker replied extremely favourably. Relying on the statement from the bank the plaintiff entered into contract with the customer. The 3rd party sued the bank and the court found that the statement had been so negligently and carelessly given. The defendant said that there was no contractual or other duty to the plaintiff therefore the issue of negligence was immaterial. The defence succeeded in the first 2 courts and the plaintiff appealed to the House of Lords, which stated that in such cases, a duty independent of contract may exist if the person making inquiry is relying on the bank to exercise its special knowledge of the customer to give a true and faithful reply. The defendant bank would have lost the case but for the fact that when it replied to the inquiry it made a written disclaimer denying any responsibility for loss.

**Conclusion**

Barclays Bank of Uganda Vs Mubiru Godfrey Civil Appeal No 1 of 1998, the Supreme Court held that Managers in the banking business have to be particularly careful and exercise a duty of care more diligently than managers of most businesses. This is because banks manage and control money belonging to other people and institutions, perhaps in their thousands and therefore are in a special fiduciary relationship with their customers. That in the banking business any careless act or omission, if not quickly remedied, is likely to cause great losses to the bank and its customers. Loose talk, irregular or unconventional banking acts or behaviour could lead to speculation about and the under mining of the reputation of the (bank) and therefore loss of customers and investors upon which the existence and business of a bank depend.

**SPECIAL ACCOUNTS**

**JOINT ACCOUNTS**

A joint account is one which is operated by two or more individuals eg husband and wife, accounts of partners and those of friends or family members. The special requirement for opening up a joint account depend on the relationship of the intending holders. For example, a marriage certificate is essential for a married couple and yet no special document is strictly needed for a joint account for mere friends.

**The presumption of survivorship**

The presumption of survivorship is to the effect that in case one party dies, the survivor takes the balance irrespective of how much each one contributed. This presumption may be rebutted. Personal representatives may challenge the survivorship of the other party and the challenge may be based on whether the deceased person paid in the money on the account and whether the deceased in fact did not intend for the survivor to take the proceeds of the account.

In Foley Vs Foley , the husband expressed that the money which they had on a joint account should in the event that he predeceased the wife be given to his wife. When the husband dies, the personal representative challenged the survivorship of the wife on the grounds that the husband had paid in all the money on the account and furthermore it was not his intention for the wife to survive him. The court held that notwithstanding the fact that the husband had paid all the money in his account, the relatives had failed to prove that as a matter of fact he did not intend the wife to inherit.

**Joint liability**

If the account is joint without the word "several," it means that the joint account holders' liability in respect of the account is joint (together, not separate). If the bank wants to recover its money from them, it has to proceed against both or all of them jointly and not separately. It can embark on either of the parties' account and debit it. However, if it fails to recover money it cannot sue the other party separately.

**Several liability**

Several liability means that the joint account holders are liable in respect of the account debts individually. If the account is in debt, the bank can embark on either of the parties' account and debit it or sue either of

the customers separately. **I**f it fails to recover its money from one of the account holders, it can sue the other party separately. It is in the bank's interest that the liability of joint account holders be both joint and several.

**PARTNERSHIP ACCOUNTS**

A partner has no implied authority entitling him to open an account in his own name so as to bind the partnership. This position was taken in the case of Alliance Bank vs. Kearsley (1871), which held that the opening of an account in the partner's own names does not bind the co-partners. One partner can effectively assent to the transfer of the partnership account when the business of the firm's bankers had been transferred to another bank. The liability of the partners for the firm's debts including overdrafts and loans is joint and several. The special requirements for opening an account for a partnership firm are: a certified true copy of the partnership deed and a registration certificate. If a different bank is named in the deed, an amended copy of the deed should be furnished, either adding your bank to the list of the firm's bankers, or removing the particularity on the bank.

**EXECUTORS/ ADMINISTRATORS**

An executor is a person who fulfils the wishes of the deceased as expressed in the will. This person is appointed by the author of the will. On the death of the testator, the executor petitions court to be allowed to prove the will as genuine, and thereafter assume his office. If the will is duly proved, the executor is given Probate of the Will. It is a piece of paper that authorizes the executor to carry out his duties of distributing the estate of the deceased in accordance with the will.

On the other hand, if the author of the will appointed no executor, anyone who is entitled under the Succession Act can apply to court for letters of administration with a will annexed. If the deceases left no will at all, he is said to have died intestate. An executor or administrator (personal representative) has no authority to continue operating the deceased customer's account. His authority is limited to accessing the proceeds of the account. If he or she wishes, he can open a fresh account in his capacity as an Executor of Administrator. Before releasing these proceeds to the personal representative, a prudent banker should receive evidence of death of the deceased customer, and proper introduction of the one claiming to be the personal representative.

**COMPANIES**

A company is an artificial person. It is taken as a natural customer except that it acts through its agents, the directors and secretary. To open a company account, a certificate of incorporation, memorandum and articles of association are necessary. The me articles of associations must be looked at closely and if a they require that the company should operate an account in specified banks, then contravention of this provision will be *ultra vires* and unauthorised. In case of any problems relating to the operation of the account, the bank cannot successfully sue the company. If no specific bank is provided for, the bank should require that a resolution authorising the operation of the account in that particular bank be provided together with the signatories thereto.

**UN INCORPORATED ASSOCIATIONS EG SOCIETIES**

The capacity of an un incorporated association to contract is synonymous with the capacity of its members. The members, like its partnerships, act as agents of the association and the rules applicable are the same as those applicable to partnership. In African Continental Bank v Balogun & ors (1969) the Bank sued members of an unincorporated trading company to recover an overdraft. However, clubs are different in this regard. In the event that a club's account is overdrawn, the members will not generally be personally liable in respect of the obligation arising therefore, except to the extent stated in their Constitution. Some clubs and associations register themselves as companies limited by guarantee. Cooperative Societies however are not un incorporated associations because they are incorporated under the Cooperative

Societies Act of Uganda and assume the status of companies. The certificate of registration and by-laws are the documents that prove their legal existence.

**LOCAL GOVERNMENTS**

The Local Government Act, provides that a Local Government is a body corporate and can therefore open and operate an account. However, borrowing by a local Government must be first authorised by the minister responsible for local Government and must be published in the Gazette. Urban Councils can raise temporary loans and overdraft facilities which are not subject to ministerial approval (Reg 21) with these the Banker should insist on the resolution of the council approving such borrowing and should demand for the council's budget to make sure that the limit on the borrowing is not exceeded.

**MINOR'S ACCOUNT**

The law of contract in relation to minors applies to banking. A minor can operate an account and practically, minors do operate accounts. However, a child should not be given an overdraft facility because he will not be compelled to pay. The guarantor of this loan will not be liable either because his liability is secondary. At common law, loans for necessities are repayable and enforceable against the minor but other loans are void. To open a minor's account, a birth certificate is essential. Secondly, it is legally safer for the bank to deal with the minor's guardian or any other person of majority age and may be get directly in touch with the beneficiary when he comes of age.

**TRUST ACCOUNTS**

An account may be operated for a minor, an insane person or one who is out of the country. The account will be opened under the style 'A in trust for B' (or A re B). The legal owner of the account is A, the trustee, but the equitable owner is B, the Beneficiary. The Banker-customer relationship is between the bank and the trustee. The law imposes a duty on the bank not to pay out money to the trustee knowing well that it will not be applied for the benefit of the beneficiary. But this does not mean that the bank is bound to make enquiries. Mere suspicion is not sufficient. It must have actual knowledge of misappropriation. The bank is allowed by law to deal with the trustee as if he is the owner of the proceeds.

**REFERENCES**

Banks open customers' account after obtaining references and after making inquiry as to the customers' standing In the words of Holden Milnes J. The Law and Practice of Banking (London, Pitman Publishers 1996)5th ed. P. 392), When an application is made to a bank to open an account in the name of a private individual, there are four (4) principle matters for consideration regarding the prospective customer, namely:

- Whether he has authorised the opening of an a/c in his name;
- Whether he is the person he claims to be;
- Whether he is employed by someone else, and if so the name of the employer.

A banker who fails to take references and cross check the identity of an intending customer will be held negligent. See Ladbroke &co. v Todd (1924) supra.

**BANK STATEMENTS**

The banker is under an obligation to provide periodic statements of account to its customer. However, a customer is under no duty to check his statements monthly so as to be able to notify the bank of any items which were not authorised by him. Nevertheless, a customer should check the statements and if any errors are detected, they should be brought to the attention of the banker. The possible errors could be over-debiting or over -crediting. If a customer's account is over -credited and the customer honestly believes that the money is his and he alters his position in reliance on the statement, then the banker is estopped from debiting the customer's account. The amount credited to the customer's account will be treated as being

due to him. **Note** that estoppel only operates after the customer has acted upon the representation.

Over debiting will normally occur as a result of an error or fraud or forgeries of cheques and other payments without the authority of the true owner of the account. The bank is generally liable for the amounts paid on account of the forged authority. In Kepitingalla Rubber Estates Ltd v National Bank of India Ltd (1909) the bank paid money to the secretary of the plaintiff's company on account of forged cheques. Statements had been given to the company but the directors did not examine them. It was held that the bank could not charge the company with the amounts paid out on the forged cheques.

## THE BANKER'S RIGHTS UNDER THE BANK-CUSTOMER RELATIONSHIP

### INTEREST

The bank has a right to charge interest on loans and overdraft facilities but the law requires that this interest be fair and reasonable. A bank has no power to charge a penal rate of interest on overdrafts or to change the method of calculating reasonable rates of interest without the consent of the customer. It is implied by trade usage that the bank is entitled to charge interest and commission except where special arrangements have been made. The bank is entitled to debit the account with charges usually quarterly or half yearly by its own custom, without specific advice to the customer. A charge for an item such as the stopping or dishonour of a cheque would usually be advised. This interest has to be charged at reasonable rates and court has power to reduce rates that are on the higher side (unconscionable) under the Civil Procedure Act.

Although the Tier 4 Micro-finance and Money Lenders Act, 2016 and the Regulations made thereunder do not apply to banks, their provisions are a good guide in regard to Uganda's statutory spirit in relation to matters of interest. It provides that a money lending contract must indicate the interest charged on the principal and this interest must be stated in percentage per year (not per month or day). According to section 86 of that Act, the interest must be simple interest and not compound interest. Section 90 of the Act empowers the Minister for Finance to set maximum interest rates that can be charged by money lenders.

### COMBINATION OR CONSOLIDATION OF ACCOUNTS

One of the implied terms of the contract between the customer and the banker is that the banker has an automatic right to combine or consolidate his customer's accounts. In Halesowen Press work and Assemblies Ltd v Westminster Bank Ltd (1970), Lord Denning said that the banker has a right to combine the two accounts whenever he pleases and to set-off one against the other unless he has made some agreement, express or implied, to keep them separate.

Combination of accounts applies whenever a customer has one account in credit and another in debit. The banker is legally allowed to set off the debit against the credit so that the customer can only be liable for the balance, if any.

In Nkoloma v NBC Holdings Corporation Ltd (2000) 1 EA 187, the Court of Appeal of Tanzania held that the power of a bank to combine accounts where a customer had more than one account with a bank was a common law right exercisable in the context of a banker / customer relationship. It could only be exercised where a customer was unable or unwilling to repay an overdraft incurred in one account although another account was in credit or where a customer drew a cheque for an amount exceeding the balance in the account. That where there was no agreement to keep the funds separate, a bank was not obliged to give notice to the customer before combining the accounts. Furthermore, where a customer was aware of his commitments to a bank but deliberately avoided meeting them, then the bank was entitled to combine accounts without notice even where there was an agreement not to do so. The bank was therefore justified in combining the Appellant's accounts.

Combination of accounts can also be exercised in respect of accounts at different branches of the same

bank. It is not limited to the one particular branch. This is the position as expressed in the Halsbury's Laws of England 3rd Ed. This right has exceptions: One, the right could be abrogated by a special agreement. Two, the right is inapplicable where the money was remitted to the bank and appropriated for a special purpose eg rental or tax payment. Lastly, a customer's account cannot be combined with a trust account or an account to be utilized by the customer as a trustee.

**BANKER'S LIEN**

A lien is the right to retain property belonging to a debtor until he has discharged a debt due to the retainer of the property. A banker's lien is the banker's right over securities deposited with the banker to secure a customer's indebtedness. This kind of lien does not require express agreement but is implied by law under Section 109 of the Contracts Act, 2010 which provides that a banker may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to him or her".

It should be noted however that this right does not apply to money because it is not capable of being earmarked. For that matter, a banker does not have nor can he have a lien over a customer's credit balance. In Re Morri's Coneys v Morris (1922) the court observed that a banker has no lien in respect of a customer's account. In Nkoloma v NBC Holdings Corporation Ltd (2000) 1 EA 187, on the issue of lien, court held that a lien could not attach the balance standing to the credit of a customer's account as that money was part of the bank's general funds and the bank could not have a lien over its own property, especially when that property was also in its possession.

The logic behind this proposition is that when a customer deposits money with the banker, that money becomes the property of the bank and ceases to be customer's. In Halesowen Press works and Assemblies Ltd V Westminster Bank (supra), Buckley L.J stated (obiter) that no man can have a lien on his own property and consequently, no lien can arise affecting a customer's deposits. (the same views are expressed in Paget's Law of Banking p.504). The property which is the subject of the banker's lien includes land titles, jewellery, insurance policies and other valuable property, which may have been deposited with the bank to secure a customer's indebtedness.

**SET-OFF**

A set-off is the legal right of a debtor to apply what is owed to him by the creditor in settlement of the creditors claim so that the debtor is only liable for the balance if any. For example, if the customer deposited money with the bank, the bank is the customer's debtor. Suppose then during the continuance of the banker-customer relationship, the bank advances a loan to the customer and the customer later runs bankrupt with his current account having a substantial balance, the banker will have a right of set off. It will be legally allowed to break the two accounts and use the balance on the current account to set off the outstanding balance on the loan account. If there is any balance the bank will pay it to the insolvent customer. If on the other hand some portion of the loan remains unsatisfied, the banker as the creditor will prove his claim and seek for payment for the balance.

It has been said that a set –off situation postulates mutual but independent obligations between the two parties - Halesowen Presswork and Assembles Ltd V Westminster Bank (supra). The right of set off appears to arise only in situations where the customer has run bankrupt or has been wound up. Upon a receiving order being made or the commission of an act of bankruptcy, the bank should terminate the bank-customer relationship and exercise this right of set off. In Mutton v Peat (1900), stockbrokers had a loan account and a current account with their bank. when they went bankrupt, the current account was in credit while their loan account was in debit. The count held that the two accounts should be treated as one so they could use the securities to satisfy the difference between those two balances.

In British Guiana Bank V Official Receiver (1911), A company which was indebted to a bank on a current

account opened another account under a written agreement which provided that the bank would not appropriate any of the funds which may be stanching to the credit of the new account in reduction of the debt due to the bank, without the consent of the customer (company). A few years later the company was wound up. A large sum was still outstanding on the original account and there was a substantial balance on the second account. Despite the agreement to the contrary, the Privy Council held that the Bank had the right of set -off of one account against the other.

## TERMINATION/DETERMINATION OF CONTRACT BETWEEN THE BANKER AND CUSTOMER

The banking contract continues up to its extinction by either the bank, customer or operation of the law. The termination may flow from the following factors: mutual agreement, proper notice, mental disorder, winding up or bankruptcy of either party.

1) **Closure of account by customer**

For a current account, the customer must specify in writing his intention to close the account. In Wilson v Midland Bank Ltd, the bank manager relied on a telephone conversation with the customer to close the account. The customer forgot all about the telephone conversation and paid some money into his account which the bank credited to a wrong account. When the customer issued a cheque on his account, it was dishonoured with the words "No account.'' The bank was condemned in damages for breach of contract and libel.

Secondly, the customer should withdraw all the balance. If the account is overdrawn, the customer must repay the overdraft together with accrued bank charges and interest. Then the customer should hand over to the bank all unused cheque forms and other documents which the bank may demand. Where a customer maintains say deposit account or a savings account, giving the requisite notice of intention to withdraw all balance on the account and closing the same is sufficient

2) **Closure of account by the Banker**

The banker can also close the account or determine the banker- customer relationship by giving reasonable notice to the customer. It is part of the implied contract between the parties. In Joachimson v Swiss Bank Corporation (1921), Atkin L.J stated that it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. However, where a bank has closed the account and later receives cheques in favour of a former customer, the bank may credit these cheque on a suspense account and inform the former customer of the existence of his money.

3) **Death of a customer**

The death of customer terminates the authority which the customer gave to the bank to operate his account. Once the bank learns of the customer's death, it must stop / terminate the account. Before learning of such death however, the bank can honour the cheques drawn by the customer before his or her death.

Any balances that may exist on the deceased's account are vested in the legal representative (executor or administrator) of the deceased. The bank must diligently guard against instances of forged or disputed wills by insisting on production of Probate or Letters of Administration before the personal representative can be allowed to withdraw money from the account. Where the deceased customer's account is overdrawn, the bank can sue the personal representative for the debt and if the debt was secured, the bank may realise the security.

4) **Bankruptcy of a customer**

When the bank learns of the bankruptcy of the customer it must stop the account and keep the balance thereon, if any, for the trustee in bankruptcy. On making a receiving order (which has the effect of protecting the debtor's estate for the benefit of all the creditors), the account becomes the subject of the receiver's protection. After the receiver or interim receiver is appointed, the bank can no longer honour cheques drawn by its indebted customer.

When the bank receives notice of the presentation of a bankruptcy petition, it should, as a matter of caution, not honour the customer's cheques. This is because drawing of such cheques may be classified as an act of bankruptcy (fraudulent preference of creditors) before the receiving order is made. In effect, the payment may be deemed void as against the trustee in bankruptcy and the bank and the creditor who received the money would have to refund it to the trustee. Where the bankrupt customer's account is overdrawn, the bank, like any other creditor will have to prove its debts before the trustee in bankruptcy.

**5) Mental disorder of the Customer**

The mental incapacity of a customer renders him incapable of contracting and automatically suspends the relationship. However, its difficult to determine the level of mental incapacity and some times an insane customer may not appear as such to the banker. In such cases, the bank may pay the customer in accordance with his instructions. It is wise for banks to regard the customer as sane unless there is valid evidence to the contrary. If a customer is mentally disturbed, a next of kin can be allowed access to the proceeds of the account.

**6. Winding up of the customer**

(a) Winding up of a company.

As soon as the bank learns of the passing of resolution for winding up petition in court, it should not honour cheques drawn on the company's account. The mandate of the bank to operate the account is terminated. The bank can learn of the resolution or petition from the company itself or from notice in the newspaper or the gazette.

On making a winding up order, the liquidator takes over the affairs and property of the company. He is in effect empowered to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect as if the same were done on behalf of the company in the course of its transaction. The liquidator can operate the company's bank account until the same is fully dissolved.

**(b) Winding up of a partnership**

On the voluntary dissolution of the firm, the partners' authority to bind the firm continue in so far as its winding up is necessary. However, if it is a winding up by the court, the affairs of the firm are placed in the hands of a receiver and the partners' powers as agents of the firm cease. Occasionally a manager is appointed to deal with the firm's business and he can operate an account to such effect but any borrowing by the receiver or manager is solely on his own account and the receiver/ manager cannot pledge the firm's assets.

Any payments out after receipt of notice of petition or after the date of a receiving order are void against the trustee and cheques should be returned with "refer to drawer." Since the partners are severally liable for the firm's debts, the cheques drawn on the partners' private accounts should also be dishonoured and the bank exercises a right of set- off. The case of Melite Mayasi Vs National Bank of Commerce (1977) LRT no. 42 illustrates this position.

In that case, in 1964, a partnership called Rombo Brothers was formed. All the 5 partners signed the

agreement to open an account where they bound themselves jointly and severally for the obligations of the firm to the bank. In 1967 the partnership was dissolved. NBC was not notified about this dissolution and therefore the partnership account was not closed. It continued in operation until 1970. By 9th Nov 1970, the account was overdrawn. The cheques which led to the overdraw were stamped with the firm's rubber stamp. The NBC demanded for payment of the overdraft with no success. When Merita Mayasi, one of the partners, deposited a cheque drawn in his favour with NBC, the bank sold it and used the proceeds to settle the firm's indebtedness. Merita Mayasi sued NBC for conversion. The court held in favour of NBC on ground that the bank had properly exercised its right of set-off because the plaintiff was jointly and severally liable for the settlement of the firm's debt. Merita appealed and the appeal was dismissed.

**7) License revocation and winding up of the Bank**

Where a bank is wound up, it ceases to have legal personality and hence its contractual relationship with its customers is terminated. The bank's right to transact banking business will be terminated once the central bank revokes its license (see notes on circumstances where the license may be revoked (supra). The customer who has a credit balance is entitled to prove as creditor before the Liquidator and get paid.

**8) Determination under operation of law**

An event which may terminate the banker-customer relationship by operation of law may be the enactment of a piece of legislation in a time of war against trading with the enemy. A foreign bank originating from an enemy country may be forced to close down and its assets taken. Similarly, a national from an enemy country may be prevented from accessing his funds in the bank in which case the account will be said to be frozen.

The other instance is where the court places restrictive orders on the operation of any bank account of a person accused of corruption, embezzlement, causing financial loss and theft by agents, or where a garnishee order has been issued. (A garnishee order requires the bank as the customer's debtor, to pay the proceeds or part of the proceeds on the account to the customer's creditor, normally a judgment creditor). The effect of these restrictive orders is not termination of the account as such. They only affect the account to the tune of the amounts owed and sometimes they merely suspend the operation of the accounts till another court order is issued

Activity: Some factors may terminate the banker-customer relationship while others may merely curtail it. Discuss

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