



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : BALLB/BBALLB

SEMESTER : VIIIth

SUBJECT : Banking law

SUBJECT CODE: BAL -802/BBL-802

LECTURE : 5

FACULTY NAME: Mr JP Srivastava

Obligation to Maintain Secrecy:

- **Obligations to maintain secrecy of Account:** It is of utmost important that the bank ensures all banking records of the customers are protected and are not available to any other party or organisation with the customer's consent. Section 13 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, specially requires them to "observe, except as otherwise required by law, the practices and usages customary amongst bankers and in particular not to divulge any information relating to the affairs of the constituents except in circumstances in which they are, in accordance with law or practices and usages or appropriate for them to divulge such information." Like the law states, there are circumstances where there are provisions to access the details to one's account. These are:

(a) Disclosure of Information required by Law. A banker is under statutory obligation to disclose the information relating to his customer's account when the law specially requires him to do so. The provisions are:

(i) Under the Income- Tax Act, 1961. According to Section 131, the income tax authorities possess the same powers as are vested in a Court under the Code of Civil Procedure, 1908, for enforcing the attendance of any person including any officer of banking company or any officer thereof, to furnish information in relation to such points or matters, as in the opinion of the income-tax authorities will be useful for or relevant to any proceedings under the Act. The income –tax authorities are thus authorized to call for necessary information from the banker for the purpose of assessment of the bank customers. Section 285 of the Income- tax Act, 1961, requires the banks to furnish to the Income-tax Officers the names and addresses of all persons to whom they have paid interest, mentioning the actual amount of interest paid by them.

(ii) Under the Companies Act, 1956. When the Central Government appoints an Inspector or to investigate the affairs of any joint stock company under Section 235 or 237 of the Companies Act, 1956, it shall be the duty of all officers and other employees and agents (including the bankers) of the company to-

(a) produce all books and papers of, or relating to, the company, which are in their custody or power, and

(b) otherwise to give the Inspector all assistance in connection with investigation which they are reasonably able to give (Section 240). Thus the banker is under an obligation to disclose all information regarding the company but not of any other customer for the purpose of such investigation (Section 251).

(iii) By order of the Court under the Banker's Books Evidence Act, 1891. When the court orders the banker to disclose information relating to a customer's account, the banker is bound to do so. In order to avoid the inconvenience likely to be caused to the bankers from attending the Courts and producing their account books as evidence, the Banker's Books Evidence Act, 1891, provides that certified copies of the entries in the banker's book are to be treated as sufficient evidence and production of the books in the Courts cannot be forced upon the bankers. According to Section 4 of the Act, "a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent, as the original entry itself is now by law admissible, but not further or otherwise." Thus if a banker is not a party to a suit, certified copy of the entries in his book will be sufficient evidence. The Court is also empowered to allow any party to legal proceedings to inspect or copy from the books of the banker for the purpose of such proceedings.

(iv) Under the Reserve Bank of India Act, 1934. The Reserve Bank of India collects credit information from the banking companies and also furnishes consolidated credit information from the banking company. Every banking company is under a statutory obligation under Section 45-B of the Reserve Bank Act. The Act, however, provides that the Credit information supplied by the Reserve Bank to the

banking companies shall be kept confidential. After the enactment of the Reserve Bank of India (Amendment) Act, 1974, the banks are granted statutory protection to exchange freely credit information mutually among themselves.

(v) Under the Banking Regulation Act, 1949. Under Section 26, every banking company is requiring to submit a return annually of all such accounts in India which have not been operated upon for 10 years. Banks are required to give particulars of the deposits standing to the credit of each such account.

(vi) Under the Gift Tax Act, 1958. Section 36 of the Gifts Tax Act, 1958, confers on the Gift Tax authorities powers similar to those conferred on Income- Tax authorities under Section 131 of the Income Tax Act.

(vii) Disclosure to Police. Under Section 94 (3) of the Criminal Procedure Code, the banker is not exempted from producing the account books before the police. The police officers conducting an investigation may also inspect the banker's books for the purpose of such investigations (section 5. Banker's Books Evidence Act).

(viii) Under the Foreign Exchange Management Act, 1999, under section 10. Banking companies dealing in foreign exchange business are designated as 'authorized persons' in foreign exchange. Section 36, 37 and 38 of this Act empowers the officer of the Directorate of Enforcement and the Reserve Bank to investigate any contravention under the Act.

(ix) Under the Industrial Development Bank of India Act, 1964. After the insertion of sub-section 1A in Section 29 of this Act in 1975, the Industrial Development Bank of India is authorized to collect from or furnish to the Central Government, the State Bank, any subsidiary bank, nationalized bank or other scheduled bank, State Co-operative Bank, State Financial Corporation credit information or

other information as it may consider useful for the purpose of efficient discharge of its functions. The term 'credit information' shall have the same meaning as under the Reserve Bank of India Act, 1934.

(b) Disclosure permitted by the Banker's Practices and Usages. The practices and usages customary amongst bankers permit the disclosure of certain information under the following circumstances:

(i) With Express or Implied Consent of the Customer. The banker will be justified in disclosing any information relating to his customer's account with the latter's consent. In fact, the implied term of the contract between the banker and his customer is that the former enters into a qualified obligation with the latter to abstain from disclosing information as to his affairs without his consent (*Tourniers vs. National Provincial and Union Bank of India*). The consent of the customer may be expressed or implied. Express consent exists in case the customer directs the banker in writing to intimate the balance in his account or any other information to his agent, employee or consultant. The banker would be justified in furnishing to such person only the required information and no more. It is to be noted that the banker must be very careful in disclosing the required information to the customer or his authorized representative. For example, if an oral enquiry is made at the counter, the bank employee should not speak in louder voice so as to be heard by other customers. Similarly, the pass-book must be sent to the customer through the messenger in a closed cover. A banker generally does not disclose such information to the customer over the telephone unless he can recognize the voice of his customer; otherwise he bears the risk inherent in such disclosure. In certain circumstances, the implied consent of the customer permits the banker to disclose necessary information. For example, if the banker sanctions a loan to a customer on the guarantee of a third person and the latter asks the banker certain questions relating to the customer's account. The banker is authorized to do so because by furnishing the name of the guarantor, the customer is presumed to have given his implied consent for such disclosure. The banker should give the relevant information correctly and in good faith. Similarly, if the customer furnishes the name of the banker to a third party for the purpose of a trade reference, not only an express consent of the customer exists for the disclosure of relevant information but the banker is directed to do so, the non-compliance of which will adversely affect the reputation of the customer. Implied consent should not be taken for granted in all cases even where the customer and the enquirer happen to be very closely related. For example, the banker should not disclose the state of a lady's account to her husband without the express consent of the customer.

(ii) The banker may disclose the state of his customer's account in order to legally protect his own interest. For example, if the banker has to recover the dues from the customer or the guarantor, disclosure of necessary facts to the guarantor or the solicitor becomes necessary and is quite justified.

(iii) Banker's Reference. Banker follows the practice of making necessary enquires about the customers, their sureties or the acceptors of the bills from other bankers. This is an established practice amongst the bankers and is justified on the ground that an implied consent of the customer is presumed to exist. By custom and practice necessary information or opinion about the customer is furnished by

the banker confidentially. However, the banker should be very careful in replying to such enquiries. Precautions to be taken by the banker. The banker should observe the following precautions while giving replies about the status and financial standing of a customer:

(i) The banker should disclose his opinion based on the exact position of the customer as is evident from his account. He should not take into account any rumour about his customer's creditworthiness. He is also not expected to make further enquiries in order to furnish the information. The basis of his opinion should be the record of the customer's dealings with banker.

(ii) He should give a general statement of the customer's account or his financial position without disclosing the actual figures. In expressing his general opinion, he should be very cautious—he should neither speak too low about the customer nor too high. In the former case he injures the reputation of the customer; in the latter, he might mislead the enquirer. In case unsatisfactory opinion is to be

given, the banker should give his opinion in general terms so that it does not amount to a derogatory remark. It should give a caution to the enquirer who should derive his own conclusions by inference and make further enquiries, if he feels the necessity.

(iii) He should furnish the required information honestly without bias or prejudice and should not misrepresent a fact deliberately. In such cases he incurs liability not only to his own customer but also to the enquirer.

(c) Duty to the public to disclose: Banker may justifiably disclose any information relating to his customer's account when it is his duty to the public to disclose such information. In practice this qualification has remained vague and placed the banks in difficult situations. The Banking

Commission, therefore, recommended a statutory provision clarifying the circumstances when banks should disclose in public interest information specific cases cited below:

(i) when a bank asked for information by a government official concerning the commission of a crime and the bank has reasonable cause to believe that a crime has been committed and that the information in the bank's possession may lead to the apprehension of the culprit,

(ii) where the bank considers that the customer's is involved in activities prejudicial to the interests of the country.

(iii) where the bank's books reveal that the customer is contravening the provisions of any law, and

(iv) where sizable funds are received from foreign countries by a constituent.

Risks of Unwarranted and Unjustifiable Disclosure. The obligation of the banker to keep secrecy of his customer's accounts – except in circumstances noted above – continue even after the account is closed.

If a banker discloses information unjustifiably, he shall be liable to his customer and the third party as follows:

(a) Liabilities to the customer. The customer may sue the banker for the damages suffered by him as a result of such disclosure. Substantial amount may be claimed if the customer has suffered material damages. Such damages may be suffered as a result of unjustifiable disclosure of any information or extremely unfavourable opinion about the customer being expressed by the banker.

(b) Liabilities to third parties. The banker is responsible to the third parties also to whom such information is given, if –

(i) the banker furnishes such information with the knowledge that it is false, and

(ii) Such party relies on the information and suffers losses.

Such third party may require the banker to compensate him for the losses suffered by him for relying on such information. But the banker shall be liable only if it is proved that it furnished the wrong or exaggerated information deliberately and intentionally. Thus he will be liable to the third party on the charge of fraud but not for innocent misrepresentation. Mere negligence on his part will not make him liable to a third party. The general principles in this regard are as follows:

(1) A banker answering a reference from another banker on behalf of the latter's constituent owes a duty of honesty to the said constituent.

(2) If a banker gives a reference in the form of a brief expression of opinion in regard to creditworthiness, it does not accept and there is not expected of it any higher duty than that of giving an honest answer.

(3) If the banker stipulates in its reply that it is without responsibility, it cannot be held liable for negligence in respect of the reference.

- All the banking transactions and statements should be maintained in the Pass Book, and is considered an authenticated view of the customer's transactions with the bank. There may be situations where a record is erroneously entered in the passbook. The customer has all the rights to correct it at any point of time, even after it has been verified by the customer once before. The decision of the Madras High Court in *Oakley Bowden and Co. vs. The Indian Bank Ltd.* (A.I.R., 1964, Madras 202) says that "generally speaking, a bank owes a duty to its customer to maintain proper and accurate accounts of credits and debits. If a bank makes wrong credit entries without knowing the fact at the time the entries were made and intimates to its customers the credit entries and the customer acting upon the intimation of credit entries, alters his position to his prejudice, the bank, therefore, will be stopped from contending that the credit entries were wrongly made and that the amounts covered by them should be refunded to it by the customer. Such an intimation by the bank is obviously a representation made to the customer, which the customer is at liberty, in fact, entitled, to act upon. Once it is acted upon by the customer bonafide, of course, it will then be

too late for the bank to realize from the credit entries they made mistakenly and seek to have recompensed by means of adjustment in the accounts or recovery of the amounts from the customer.”

MCQS:

1. The Banker has a statutory obligation to –

- (A) Exercise Lien,
- (B) Maintain Secrecy of his customer’s account (3)**
- (C) Honour Customers Cheques (2)
- (D) Honour Customers bills

2. The document drawn by a debtor on the creditor agreeing to pay a certain sum is called-

- (A) Cheque
- (B) Promissory Note**
- (C) Draft
- (D) Bill of Exchange

3. The followings are the salient features of a Fixed Deposit account, except –

- (A) It is repayable on the expiry of the specified period
- (B) It is a transferable instrument**
- (C) Length of time is fixed
- (D) Rate of interest is fixed

4. Which shariah principle is used for mobilizing current deposits by the Islamic banks of Bangladesh –

- (A) Mudaraba
- (B) Musharaka
- (C) Al-wadia**
- (D) None of these

5. The safest form of crossing is –

- (A) General Crossing
- (B) Special Crossing**
- (C) Double Crossing

(D) A/C Payee Crossing