

UNIT – I

DEFINITION OF BANKING :

The Banking Regulation Act 1949 section 5(b) defines Banking as —accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdraw able by cheque, draft, order or otherwise.

Definition of Banker

Definition of the Bills of Exchange Act 1882

“A person or a body of persons in incorporated or not, carrying on the business of banking”.

Banking Regulation Act

“Banking means, the acceptance for the purpose of lending or investment, of deposit of money from the public, repayable on demand or otherwise and withdrawable by cheques, draft, order or otherwise”.

CUSTOMER :-

“A person who has an account in a bank is considered its customer”.

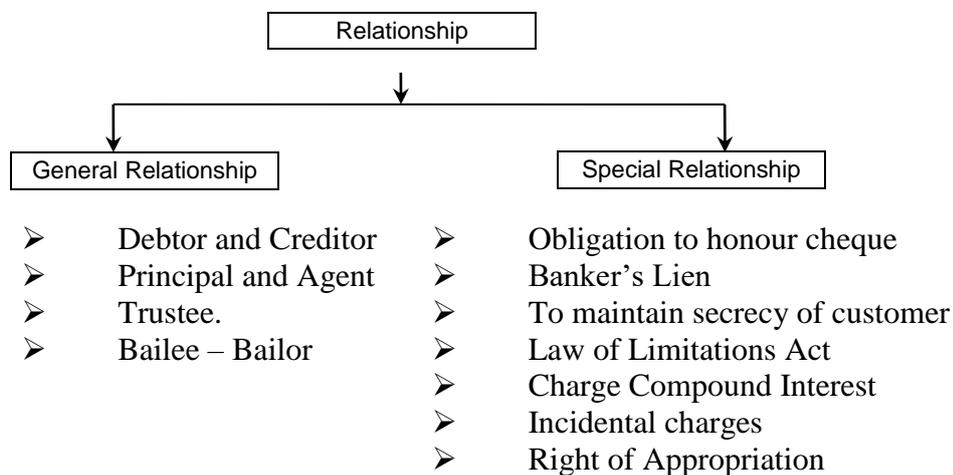
“To constitute a customer there must be some recognizable course or habit of dealing in the nature of regular banking business”. Sir John Paget.

This definition of a customer of a bank lays emphasis on the duration of the dealings between the banker and the customer and is therefore called the duration theory.

According to Dr. Hart, “a customer is one who has an account with a banker or for whom a banker habitually undertakes to act as such”.

RELATIONSHIP BETWEEN A BANKER AND A CUSTOMER

The relationship between a banker and his customer is basically contractual. This relationship falls under two broad categories namely,



GENERAL RELATIONSHIP

It is the ordinary Relationship between banker and customer.

A.) Debtor – Creditor Relationship

The actual relationship between a banker and customer is that of debtor and creditor. When a customer opens an account, the banker is said to borrow money from the customer and he must be repay it whenever it is demanded.

By way of depositing certain amount, the customer becomes the creditor and the banker becomes the debtor.

When money is deposited into the bank, it becomes property of the banker and the banker has the rights to use the money in any manner as he like.

B) Principal and Agent

Modern bank performs many functions as the agent of his customer and for his convenience. Some of the agency functions are buying and selling of securities, collection of cheques, and payment of bills and periodic payments. In this position, the relationship between banker and customers is that of agent and principal.

C) Trustee Relationship

In certain circumstances a banker acts as trustee also. A trustee holds money or asset and performs certain functions for the benefit of some other person called the beneficiary.

For example;

If the customer deposits securities or other values with the banker for the safe custody, the banker acts as a trustee of his customer.

D) Bailee – Bailor: A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called, the "bailee".

Banks secure their advances by obtaining tangible securities. In some cases physical possession of securities goods (Pledge), valuables, bonds etc., are taken. While taking physical possession of securities the bank becomes bailee and the customer bailor. Banks also keep articles, valuables, securities etc., of its customers in Safe Custody and acts as a Bailee. As a bailee the bank is required to take care of the goods bailed.

SPECIAL RELATIONSHIP

Some of the important special relationships between the banker and customer are enumerated as below.

A) Obligation to honour customer's cheque

The deposit accepted by a banker is his liabilities repayable on demand or otherwise. The banker is therefore under a statutory obligation to honor his customer's cheque in the usual course.

According to section 31 of the negotiable instruments. Act 1881 the banker is bound to honor his customer's cheque provided by following conditions are fulfilled:

1. Availability of sufficient fund of the customer.
2. The correctness of the cheque.
3. Proper presentation of the cheque.
4. A reasonable time for collection.
5. Proper drawing of the cheque.

B) Banker's Lien

A lien may be defined as the right to retain property belonging to a debtor until he is discharged of his debt due to the retainer (creator) of the property. The banker's lien refers to the right of banker over such of his customer's securities as may come into his possession in the ordinary course of business. According to Sec. 171 of the Contract Act, a banker has a general lien on cash, cheques, bills of exchange and securities deposited with him.

Conditions required for the banker to exercise general lien

1. The securities and goods must come to his hands in his capacity as a banker.

2. The banker should have obtained the possession of the securities and goods lawfully.
3. The goods or securities should not have been entrusted to the bank for a specific or special purpose.
4. The goods and securities, held by the bank shall stand in the name of borrower only and not jointly with others.
5. There must be no arrangement either express or implied that is inconsistent with the banker's right to lien.

C) Secrecy of Customer's Account

According to Sir John Paget, "This secrecy should be maintained even after the account is closed and even after the death of a customer". If a customer suffers any loss due to disclosure of his account by the banker, the banker should make good the loss. Hence, secrecy is very important. Every employee takes on oath of secrecy at the time of joining a bank.

It is immaterial whether the account shows a Debit balance (or) Credit balance secrecy should be maintained at any cost.

D) Right to charge Compound Interest:

A banker is given the special privilege of charging compound interest. As per general law compound interest is strictly prohibited. But in the case of banking debt, the banker has a right to charge compound interest unless there is an agreement to the contrary, the customer has to pay interest once in a quarter. If the customer does not pay interest, it will be ordered to the principal amount. Thus a banker can charge compound interest.

E) Right to claim incidental Charges:

Another feature of special relationship is that the banker can claim incidental charges on remunerative account. It may take other forms also like services charges, processing charges, ledger folio charges, appraisal charges penal charges handling and collection charges for cheques/drafts etc.,

F) Exemption from the Law of Limitation Act:

Another distinguishing feature of the relationship is that the banker is exempted from the law of limitation act. For a banking debt, the period of three years will be calculated from the date if which the express demand is made for the repayment of the deposits in the case of savings and current deposits.

Sec 26 of the Banking Regulation Act prescribes a period of ten years to consider a banking debt as a bad one.

In actual practice no banker waits for ten years. If there is no operation in an account for two years of marking, it will be transferred to an account called inoperative account.

G) Right of Appropriation:

Another important special relationship between a banker and a customer is the enjoyment of appropriation.

The problems of appropriation will arise when a customer.

- 1) Owes several debts to a banker, and
- 2) Makes a payment which is not sufficient to discharge all his debts.

The general rule is that the debtor has the right to appropriate payment and instruct the creditor to utilize the payment for settling any Debt.

Opening a New Bank account

1. Deciding the Type of Bank Account

There are several types of bank accounts such as Saving Account, Recurring Account, Fixed Deposit Account and Current Account. So a decision regarding the type of account to be opened must be taken.

2. Approaching the Bank of choice

Once the type of account is decided, the person should approach a convenient bank. He has to meet the bank officer regarding the opening of the account. The bank officer will provide a proposal form (Account Opening Form) to open bank account.

3. Filling up Bank Account Opening Form - Proposal Form

The proposal form must be duly filled in all respects. Necessary details regarding name, address, occupation and other details must be filled in wherever required. Two or three specimen signatures are required on the specimen signature card. If the account is opened in joint names, then the form must be signed jointly. Now a days the banks ask the applicant to submit copies of his latest photograph for the purpose of his identification.

4. Give References for Opening your Bank Account

The bank normally required references or introduction of the prospective account holder by any of the existing account holders for that type of account. The introducer introduces by signing his specimen signature in the column meant for the purpose. The reference or introduction is required to safeguard the interest of the bank.

5. Submit Bank Account Opening Form and Documents

The duly filled in proposal form must be submitted to the bank along with necessary documents. For e.g. in case of a joint stock company, the application form must accompany with the Board's resolution to open the account. Also certified copies of articles and memorandum of association must be produced.

6. Officer will verify your Bank Account Opening Form

The bank officer verifies the proposal form. He checks whether the form is complete in all respects or not. The accompanying documents are verified. If the officer is satisfied, then he clears the proposal form.

7. Deposit initial amount in newly opened Bank Account

After getting the proposal form cleared, the necessary amount is deposited in the bank. After depositing the initial money, the bank provides a pass book, a cheque book and pay in slip book in the case of savings account. In the case of fixed deposits, a fixed deposit receipt is issued. In the case of current account, a cheque book and a pay in slip book is issued. For recurring account, the pass book and a pay in slip book is issued.

TYPES OF DEPOSITS

This is an era of keen competition among banks. Most of the banks view with one another in tapping the savings of the public by means of different kinds of deposits. A banker offers various types of accounts depending upon the requirements of each class of customers. They are,

1. Savings Account
2. Current Account
3. Fixed deposits
4. Recurring deposits

I. SAVINGS ACCOUNT

The savings accounts are opened to promote the habit of savings among the salaried people and low income group people. This type of account is suitable for salaried people, wage earning people, small traders, non-trading associations etc.,

This account is opened with a small amount if Rs.100 (or) Rs.500. The minimum amount that can be deposited (or) withdrawn Rs.100. A minimum balance of Rs.100 should be maintained.

Features

1. The main objective of saving account is to promote savings.
2. There is no restriction on the number and amount of deposits. However, in India, mandatory PAN (Permanent Account Number) details are required to be furnished for doing cash transactions exceeding ₹50,000.
3. Withdrawals are allowed subject to certain restrictions.
4. The money can be withdrawn either by cheque or withdrawal slip of the respective bank.
5. The rate of interest payable is very nominal on saving accounts. At present it is between 4% to 6% p.a in India.
6. Saving account is of continuing nature. There is no maximum period of holding.
7. A minimum amount has to be kept on saving account to keep it functioning.
8. No loan facility is provided against saving account.
9. Electronic clearing System (ECS) or E-Banking are available to pay electricity bill, telephone bill and other routine household expenses.
10. Generally, equated monthly installments (EMI) for housing loan, personal loan, car loan, etc., are paid (routed) through saving bank account.

After opening the savings Account, the Banker supplies Pay-in-Slip, Withdrawal slip, Cheque Book, Pass Book and Debit Card / ATM Card.

Advantages of Saving Account

1. Saving account encourages savings habit among salary earners and others who have fixed income.
2. It enables the depositor to earn income by way of saving bank interest.
3. Saving account helps the depositor to make payment by way of issuing cheques.
4. It shows income of a salaried and other person earned during the year.
5. Saving account passbook acts as an identity and residential proof of the account holder.
6. It provides a facility such as Electronic fund transfer (EFT) to other people's accounts.
7. It helps to do online shopping via facility like internet banking.
8. It aids to keep records of all online transactions carried on by the account holder.
9. It provides immediate funds as and when required through ATM.
10. The bank offers number of services to the saving account holders.

II. CURRENT ACCOUNT

Current accounts are accounts which can be opened to any number of times on a day. There is no restriction for deposits and withdrawals. Since the deposits are repayable on demand, they are called as “Demand Deposits” (or) “Demand Liabilities”.

These accounts are suitable to large scale business, local authorities, Government departments and colleges.

Features of Current Bank Account

1. Current bank accounts are operated to run a business.
2. It is a non-interest bearing bank account.
3. It needs a higher minimum balance to be maintained as compared to the savings account.

4. Penalty is charged if minimum balance is not maintained in the current account.
5. It charges interest on the short-term funds borrowed from the bank.
6. It is of a continuing nature as there is no fixed period to hold a current account.
7. It does not promote saving habits with its account holders.
8. Banker requires KYC (Know your Customers) norms to be completed before opening a current account.
9. The main objective of current bank account is to enable the businessmen to conduct their business transactions smoothly.
10. There is no restriction on the number and amount of deposits.
11. There is also no restriction on the number and amount of withdrawals made, as long as the current account holder has funds in his bank account.
12. Generally, bank does not pay any interest on current account. Nowadays, some banks do pay interest on current accounts.

III. FIXED DEPOSIT

The account which is opened for a particular fixed period (time) by depositing particular amount (money) is known as Fixed (Term) Deposit Account.

The term 'fixed deposit' means that the deposit is fixed and is repayable only after a specific period is over. Under fixed deposit account, money is deposited for a fixed period say six months, one year, five years or even ten years. The money deposited in this account can not be withdrawn before the expiry of period.

The rate of interest paid for fixed deposit vary (changes) according to amount, period and from bank to bank.

Features of Fixed Deposit Account

1. The main purpose of fixed deposit account is to enable the individuals to earn a higher rate of interest on their surplus funds (extra money).
2. The amount can be deposited only once. For further such deposits, separate accounts need to be opened.
3. The period of fixed deposits range between 15 days to 10 years.
4. A high interest rate is paid on fixed deposits. The rate of interest may vary as per amount, period and from bank to bank.
5. Withdrawals are not allowed. However, in case of emergency, banks allow to close the fixed account prior to maturity date. In such cases, the bank deducts 1% (deduction percentage many vary) from the interest payable as on that date.
6. The depositor is given a fixed deposit receipt, which depositor has to produce at the time of maturity. The deposit can be renewed for a further period.
7. The depositor can get loan facility from the bank

Legal position of a Banker regarding Fixed Deposit

1. The Banker on receipt of an application shall open a fixed deposit Account without any introduction (or) Reference letter.
2. In evidence of the deposit, the Banker shall issue a receipt is called "Fixed Deposit Receipt" (F.D.R).
3. The F.D.R. shall consist of particulars of deposit and depositors.
4. Interest is payable periodically and it is recorded on the back side of F.D.R.
5. The F.D.R is not a Negotiable Instrument. It cannot be transferred.
6. Deposits can be accepted for any period ranging from 15 days to 7 years.
7. The interest is payable only on demand.

8. If the depositor is desirous of closing account before the maturity, the banker shall pay only such rate of interest 1% less than the actual rate applicable to the period.
9. Interest on Fixed deposit is paid directly to the depositor only in the form of “Cash”. The depositor is neither given a cheque nor to withdrawn by cheque.
10. If the depositor lost the F.D.R, the Banker should repay the deposit money after getting an “Indemnity Bond”.

If the depositors become insolvent, the banker is required to make payment only to official assignee (or) Receiver (or) Executor is as the case may be.

IV. RECURRING DEPOSITS

There is a proverb known as “little drops of water makes a big ocean”. It fits to this deposit. It is one form of savings deposits. Depositors save and deposit regularly. i.e. every month / week / day. Hence, they will get the sizable amount at a later period.

Under Recurring deposit, usually in multiples of Rs.100 is deposited for every month. After the end of a stipulated period, the amount of deposit plus interest at a certain rate will be repaid.

The recurring deposit account can be opened for a period ranging from 1 to 6 years. The larger period of deposit, the higher will be the rate of interest is allowed.

Sometimes, deposits are also allowed to close the account before the agreement period, but in this case, the banker is allowed a lesser rate of interest than the actual rate of interest. While opening account, the depositors are given by a pass book.

Features

1. Deposits may be made in multiples of Rest. Five every month for a period ranging from 12 months to 72 months.
2. The rate of interest is similar to the rates offered on fixed deposit but the interest is compounded.
3. After the expiry of the fixed period, the depositor gets the principal amount plus interest in a lump sum.
4. The banker may be granted 75% of the deposits paid as a loan and the interest rate is 2% more than the interest allowed.
5. Any person including a minor can open the recurring deposit.
6. The depositor is given a pass book in which the entries are made by the bank
7. If a customer fails to pay three instalments, the banker may close the account.

Distinguish between Savings Deposits and Fixed Deposits

Saving account is a bank account which is opened by persons in order to save a part of their income. Fixed Deposit (FD) account is that type of account where a fixed sum of money is deposited for a fixed period.

S.No.	Heading	Savings Deposits	Fixed Deposits
1.	Purpose for Depositors	The main purpose of savings account is to save a part of the income.	The main purpose of fixed deposit account is to get a lump sum amount on the maturity of the deposit.
2.	Savers	Saving account is operated by individuals such as, salary earners, small traders and others.	Fixed Deposit is operated by those individuals and organisations who have surplus / excess or idle money.

3.	Rate of Interest	The saving account earns a nominal rate of interest. At present it is about 5% p.a. (in India).	The rate of interest is quite high. The longer the period of deposit, the higher is the rate of interest. At present it is about 10% p.a. (in India).
4.	Period / Duration	The savings account is of continuous nature. It can be operated for any number of years.	The amount can be kept for a fixed period, after which the amount is repaid to the depositor alongwith accrued Interest.
5.	Minimum Amount	The savings account can be operated with lesser amount.	To open a fixed deposit account more amount is required.
6.	Withdrawals	In case of saving account, withdrawals are allowed but are subject to certain restrictions.	In case of fixed deposit account, withdrawals are not permitted until the expiry of the fixed period.
7.	Loan Facility	The bank does not normally provide a loan facility to saving account holders.	The fixed deposit account holders can get a loan facility to the extent of 75% of the fixed deposit amount.
8.	Pass Book and FD Receipt	Bank provides a pass book, a cheque book and a pay-in-slip book to the saving account holders.	The bank gives a fixed deposit receipt to the FD account holders.
9.	Frequency of Deposits	In saving account, amount can be deposited for any number of times.	In fixed deposit account, amount is deposited once. However, it can be renewed.

Distinguish between Savings Deposits and Current Deposits

Saving account is opened by individuals for the purpose of saving a part of their income. Current account is maintained by businessman and others who have to do regular bank transactions.

S.No.	Heading	Savings Deposits	Current Deposits
1.	Purpose	The main purpose of opening a saving account is to save a part of the income.	The main purpose of opening a current account is to facilitate regular transactions.
2.	Savers	Saving account is operated by salary earners, small traders and others.	Current account is operated by businessmen and other organisations.
3.	Interest Rate	The saving account earns a nominal rate of interest. At present, it is about 5% p.a. (in India).	Normally, banks do not pay interest on current account.
4.	Minimum Amount	The saving account can be operated with lesser amount.	To open current account more amount is required.

CHEQUE

MEANING

It is a form used by a customer to draw money from his bank account. In other words, it is an instrument in writing used by the customer to effect payment from their accounts.

It is a written order by which the customer requires his banker to repay the money which has been lent to him.

Definition of a Cheque

"Cheque is an instrument in writing containing an unconditional order, addressed to a banker, sign by the person who has deposited money with the banker, requiring him to pay on demand a certain sum of money only to or to the order of certain person or to the bearer of instrument."

Parties involved in a Cheque

There are three parties to a cheque. They are

1. Drawer

The person one who draws the cheque. The customer one who signs the cheque is called "Drawer".

2. Drawee

The bank on whom the cheque is drawn is called "Drawee".

3. Payee

The person to whom the cheque is payable is called "Payee".

ESSENTIALS OF A CHEQUE

1. Instrument in writing

A cheque must be an instrument in writing. There are no legal restrictions regarding writing materials. Therefore, a cheque may be written with a pen, pencil, typewriter and printed characters. Generally, the banker should discourage the use of pencil in writing a cheque.

2. Unconditional Order

It must contain an unconditional order. Generally the order is expressed by the word "PAY". It should be drawn on a specified banker. To avoid any mistake, the name and address of the banker should be stated. Usually bank supply cheque books to their customers.

3. Payee to be certain

The person to whom the amount is to be paid must be certain. Here the word "Person" should not be understood in a limited sense. The term "Person" includes not only human beings but also legal persons like body corporate, local authorities, club etc.

4. Date

Date is very important while drawing a cheque. A cheque without date is incomplete. A banker should not honour a post dated cheque and stale cheques.

5. Payable on Demand

The amount mentioned in the cheque must be payable on demand only and not otherwise.

6. Amount

The cheque should contain the actual amount payable. The amount must be written both in words and figures and both of them must be tally. If there is any difference between the amount stated in figures and words the banker can refuse to pay the cheque.

7. Signature

A cheque will be valid only when it contains the signature of the drawer. The signature in the cheque must tally with the specimen signature given by the customer at the time of opening the account. The cheque must be actually signed by the drawer and it should not be printed (or) affixed with the help of rubber stamp. All cheques are bills but all bills are not cheques.

CHEQUE VS BILL OF EXCHANGE

BASIS	Cheque	Bill of Exchange
Meaning	A document used to make easy payments on demand and can be transferred through hand delivery is known as cheque.	A written document that shows the indebtedness of the debtor towards the creditor.
Defined in	Section 6 of The Negotiable Instrument Act, 1881	Section 5 of The Negotiable Instrument Act, 1881
Drawee	1. It must be drawn only on a banker	It can be drawn on any person including a banker
Payment	2. The amount is always payable on demand.	The amount may be payable on demand or after a specified time.
Grace Period	3. The holder of a cheque has no grace period	A holder of a bill is entitled three days of grace Period
Acceptance	4. Acceptance is not needed	A bill payable after sight must be accepted
Crossing	5. A cheque can be crossed	Crossing of a bill of exchange is not possible
Dishonour	6. Notice of dishonour is not necessary. The parties thereon remain liable, even if no notice of dishonour is given	Notice of dishonour is necessary to hold the parties liable thereon. A party which does not receive a notice of dishonour can generally escape liability thereon
Protection	8. The protection given to the paying banker in respect of crossed cheques is peculiar to this investment.	No such protection is available in the case of bills
Validity Period	3 months	Not Applicable
Stamping	No such requirement.	Must be stamped.
Noting or Protesting	If the cheque is dishonoured it cannot be noted or protested	If a bill of exchange is dishonoured it can be noted or protested.

Rules For Drawing A Cheque

If the drawer makes the cheque properly and if the balance of the drawer at the bank permits, the bank must pay the amount of cheque as soon as it is presented. If the drawer does not make the cheque properly, the bank rejects payment. Hence, to make the cheque properly, the following points or rules must be considered.

1. Date

Date should be mentioned on the cheque properly. If the cheque is more than three months old or contains future date then the bank will not pay the amount.

2. Name Of The Payee

The name of the payee should be mentioned on the cheque.

3. Amount Of The Cheque

The amount of the cheque should be mentioned both in words and figures clearly. The amount written in the word should tally with the amount written in figures.

4. Signature

The drawer should sign the cheque properly. The signature given on the cheque should tally with the signature given on the signature specification card. The signature specification card is kept by the bank.

5. Account Number

The drawer should mention his account number clearly and correctly.

6. Minimum Balance

The amount mentioned on the cheque should not be more than the amount deposited in the bank. Beside it, a certain amount of minimum balance should always be there in the account as per the rule of the bank.

7. Crossing And Overwriting

There should not be any crossing and overwriting in the cheque.

8. Condition Of The Cheque

Cheque should be in proper condition. If the cheque is torn, wet and spotted, it will not be acceptable to the bank.

9. Endorsement

The ordered and crossed cheques should be transferred by proper endorsement and delivery; otherwise, the amount of cheque will not be paid by the bank

Dishonour of Cheque

1. **Funds Insufficient / Exceeds Arrangement** – It is a very common mistake or reason due to which bank return the cheque unpaid. Sometime, you write the cheque against salary to be credited on a specific date. But if salary is not credited or get late then cheque is presented for payment, Bank will return it unpaid. So, confirm or maintain bank balance in your account before issuing. In case of overdraft account, Cheque is dishonoured with the reason “Exceeds Arrangement”.
2. **Amount in Words and Figures** – Bank dishonour the Cheque if amount written in words and figures are different. So, avoid this mistake.
3. **Payee Name** – If payee name is absent then bank can dishonor the Cheque with the reason that “Payee Name Required”.
4. **Signature Differ** – Sometime you forget your signatures as you did while opening your bank account. Bank will dishonor the Cheque if your(drawer) signature don't match with specimen available in bank record.
5. **Alterations / Overwriting** – Bank will not honor the Cheque in case you overwritten / altered something on Cheque. So avoid overwriting and alternation on Cheque.
6. **Post Dated Cheque** – When date written on Cheque is yet to come is called post dated Cheque. Suppose, Date written on Cheque is 04th June 2018, But you present it for

payment on 1st June 2018. Bank will dishonour the Cheque and return it unpaid as bank can not honour it before the date mentioned on Cheque.

7. **Instrument Out-Dated / Stale Cheque** – A Cheque is valid for three months from the date written on Cheque. If a Cheque is presented after three months of the date written on Cheque then Cheque is called Stale Cheque. Bank can not make the payment of Stale Cheque and return it unpaid with the reason “Stale Cheque or Instrument”.
8. **Payment Stopped by Drawer** – Mostly drawer stop the payment in case of Cheque is lost or stolen or other reason may be. In this case, Bank dishonor the Cheque and return it unpaid with the reason that payment stopped by drawer.
9. **Dormant / Inoperative Account** – If account is dormant or inoperative then bank can dishonor the Cheque.
10. **Account Number** – If account number is not mentioned in Cheque clearly or it is absent. Then bank dishonor the Cheque.

Material alteration

The term ‘material alteration’ indicates alteration or change in the material parts of the instrument. It may be defined as any change, which alters the very nature of the instrument. Thus, it is the alteration, which changes and destroys the legal identity of the original instrument and causes it to speak a different language in legal effect from that which it originally spoke.

A material alteration makes the instrument void, i.e., inoperative and affects the rights and obligations of the parties to the instrument. It, however, does not affect one who becomes a party to an instrument subsequent to its material alteration, if any.

What constitutes a Material Alteration?

Every alteration or change on a negotiable instrument cannot be established as material alteration and would not necessarily vitiate the instrument or affect the rights and obligations of the parties thereto.

Accordingly, an alteration can be termed as material alteration if it is such that it alters or attempts to alter the character of the instrument and affects or attempts to affect the contract, which the instrument contains. It may arise not only by means of altering, changing, or erasing a certain thing already written on the instrument, but also by a new insertion.

EXAMPLES OF MATERIAL ALTERATION

The following are the most common examples of material alterations:

(i) Alteration of date: The date is an important part of a cheque, because, it fixes the period of limitation for obtaining payment. Hence, if the date is altered without the consent of the drawer, it amounts to a material alteration. It is so because the original intention of the drawer has been changed due to this unauthorised alteration.

(ii) Alteration of place of payment: A cheque must be always drawn only on a specified banker. In particular, it must be drawn on a particular branch, in which the account is kept. Hence, if the place of payment is altered, no banker will pay the cheque. It amounts to a material alteration.

(iii) Alteration of crossing: According to the Act, crossing is a material part of a cheque. Hence, alteration of crossing or addition thereto not authorised by the drawer, amounts to a material alteration.

(a) Where the words ‘Not Negotiable’ added to cheque have struck through and is not confirmed.

(b) Where there is an unauthorised opening of crossing, writing ‘pay cash’ against a crossing

amounts to a material alteration.

(iv) Alteration of the words 'or order or 'or If the words 'or order' on the face of an order cheque are altered to 'or bearer', the cheque becomes payable to the bearer, for the time being. This amounts to a material alteration. However, any person can alter a cheque payable 'to bearer' to that payable 'to order' since, it does not affect the fundamental character of the instrument.

(v) Alteration of the amount: The 'amount' column is a very important material part of a cheque. Changing the amount leads to material alteration.

MATERIAL ALTERATION AND THE BANKER

1. Material alteration renders the cheque invalid. So, the paying banker should not honour it.
2. The banker should return the cheque to the drawer with remarks like 'Alteration requires drawer's confirmation.'
3. The drawer should confirm the alteration by means of his full signature. As far as possible, a banker should prefer full signature to initials, as initials can be forged easily.
4. In case the cheque is drawn by two or more persons jointly, material alteration requires the signature of all the drawers.
5. In the case of cheques drawn by registered companies and other corporate bodies, material alteration must be confirmed by those persons who are authorised to operate the account.
6. In the case of a partnership firm, any partner can authorise the alteration,
7. A banker who is honouring a materially altered cheque is not eligible for any legal protection, because, he is said to be negligent in his duty.
8. If a banker honours a materially altered cheque, he has no authority to debit the drawer's account. So, he should bear the loss.

IMMATERIAL ALTERATION

If an alteration does not affect the fundamental character of the instrument, then it is called an immaterial alteration.

Examples:

1. Conversion of a bearer cheque into an order cheque.
2. Alteration made with the consent of parties.
3. Alteration made to carry out the common intention of the original party, *i.e.*, where the drawer of a cheque omits to use the word 'or order' in the cheque.
4. Where the word 'rupees' has been mentioned twice, and then, one is cancelled.

Different Kinds / Types of Cheques

1. Bearer Cheque

The bearer cheque is payable to the person specified therein or to any other else who presents it to the bank for payment. However, such cheques are risky, this is because if such cheques are lost, the finder of the cheque can collect payment from the bank.

2. Order Cheque

When the word "or order" is written on the face of the cheque, the cheque is called an order cheque. Such a cheque is payable to the person specified therein as the payee, or to any one else to whom it is endorsed (transferred).

3. Uncrossed / Open Cheque

When a cheque is not crossed, it is known as an "Open Cheque" or an "Uncrossed Cheque". The payment of such a cheque can be obtained at the counter of the bank. An open cheque may be a bearer cheque or an order one.

4. Crossed Cheque

Crossing of cheque means drawing two parallel lines on the face of the cheque with or without additional words like "& CO." or "Account Payee" or "Not Negotiable". A crossed cheque cannot be encashed at the cash counter of a bank but it can only be credited to the payee's account.

5. Anti-Dated Cheque

If a cheque bears a date earlier than the date on which it is presented to the bank, it is called as "anti-dated cheque". Such a cheque is valid upto three months from the date of the cheque.

6. Post-Dated Cheque

If a cheque bears a date which is yet to come (future date) then it is known as post-dated cheque. A post dated cheque cannot be honoured earlier than the date on the cheque.

7. Stale Cheque

If a cheque is presented for payment after three months from the date of the cheque it is called stale cheque. A stale cheque is not honoured by the bank.