UNIT – 4

Collecting Banker Garnishee Material Alteration Expanded

Collecting Banker • Mutilated Cheque • Date • Words & Figures • Material Alteration • Garnishee • Noting & Protest • Bankers Books Act

Banking Law – Expanded Edition

SYNOPSIS

Unit Overview

This expanded unit covers the collecting banker in detail (documents, procedure, capacity, statutory protection, conversion), rules relating to mutilated cheques, date of cheque, difference in words and figures, material alteration with legal consequences, Garnishee Order with additional features, full details of Noting and Protest, and the Bankers’ Books Evidence Act 1891 including electronic records and key judgments.

LEARNING OBJECTIVES

What You Will Learn

01 Collecting Banker

Explain duties, protection under s.131 and conversion

02 Cheque Issues

Handle mutilated cheques, date, words vs figures

03 Material Alteration

Know legal consequences and RBI position

04 Garnishee

Apply full rules including FD and unspecified amount

05 Noting Protest

Master contents of protest and related provisions

06 Bankers Books

Explain certified copies, electronic records and key case law

COLLECTING 1

Collecting Banker – Role and Documents Collected

Role	Collects cheques, drafts, bills, pay orders, traveller’s cheques, Letters of Credit, dividend warrants, interest warrants on behalf of customer
Documents	Local & outstation cheques, drafts, bills of exchange (D/P and D/A), gift cheques, traveller’s cheques, LCs, dividend & interest warrants
Commission	Charged as per RBI guidelines for outstation and certain instruments

COLLECTING 2

Procedure of Collection – Local vs Outstation

Segregation	Instruments are sorted into local (own bank branches + other local banks) and outstation
Local	Sent through local clearing house or intra-bank clearing
Outstation	Sent to the branch/bank at the place of payment; realisation takes longer
Credit	As agent for collection, amount is credited only after realisation

CAPACITY

Capacity of Collecting Banker – Agent vs Holder for Value

Agent for Collection	Collects on behalf of customer; credits only after realisation; full protection under s.131 available if conditions met
Holder for Value	Gives immediate credit or advances against the instrument; becomes holder in due course in certain cases; higher risk
Implication	Statutory protection under Section 131 is primarily designed for the agent-for-collection situation

PROTECTION

Statutory Protection – Section 131 NI Act

A collecting banker is protected if he collects for a customer, the cheque is crossed, he acts in good faith and without negligence.

Customer	Must collect only for a customer who has a properly introduced account
Crossed Cheque	Cheque must be crossed generally or specially
Good Faith	No reason to doubt the customer’s title to the instrument
Without Negligence	Utmost care in examining the instrument and circumstances
Consequence of Negligence	Bank loses protection and becomes liable for conversion

Conversion by Collecting Banker

Meaning	Wrongful interference with another person's property inconsistent with the owner's right
When Occurs	Bank collects and credits a person who has no title or defective title
Liability	Bank becomes liable to the true owner for the face value of the instrument
Defence	Only the statutory protection under Section 131 if all conditions are fulfilled

MUTILATED

Mutilated Cheque

Meaning	A cheque that is torn, damaged or otherwise mutilated
Banker’s Right	Bank has the right to return a mutilated cheque with the remark “Mutilated Cheque”
Confirmation	If the cheque is torn accidentally, bank may pay after obtaining the drawer’s confirmation on the cheque itself
Caution	When in doubt, it is safer to return the instrument

Date of the Cheque – Importance and Validity

Importance	Date is a material particular; legal validity of the cheque depends on it
Validity Period	A cheque is valid for three months from the date written on it (RBI direction)
Post-dated	Cheque bearing a future date; cannot be paid before that date
Stale Cheque	Cheque presented after three months; bank should return it

Difference in Amount in Words and Figures

Rule	When amount in words and figures differ, the amount in words is taken as the amount payable (Section 18 NI Act)
Banker’s Action	Bank may return the cheque with the remark “Amount in words and figures differ”
If Paid	If bank pays the amount in words, it is protected
Only Figures	If amount is written only in figures, bank should return the cheque

MATERIAL 1

Material Alteration – Meaning and Examples

Meaning	Any change that affects the operation of the instrument – date, amount, name of payee, removal of crossing, etc.
Landmark Cases	Central Bank of India v. Ram Narain (alteration of date); Punjab National Bank v. Durga Prasad (change of payee’s name)
RBI Position	RBI does not permit alteration of any part of the cheque

MATERIAL 2

Material Alteration – Legal Consequences

Void Instrument	Material alteration renders the instrument void against parties who did not consent to the alteration
Discharge	If alteration is made by an endorsee, it discharges the endorser from liability
Bank Liability	A bank that pays a materially altered cheque may not get protection and can be held liable
Consent	If the drawer confirms the alteration by full signature, the instrument may still be valid

GARNISHEE 1

Garnishee Order – Basic Features

A Garnishee Order is issued by the court under Order 21 Rule 46 CPC attaching debts owed by a third party (the bank) to the judgment debtor. The bank is called the Garnishee.

Applies To	Credit balances in Savings, Current, RD and FD accounts
Does Not Apply	Money deposited after receipt of the order; unrealised collection cheques; unutilised portion of OD/CC limits
Same Right	Only when both debts are in the same right and same capacity
Set-off	Bank can exercise its right of set-off before applying the Garnishee Order

Garnishee Order – Additional Features

FD as Security	Garnishee Order does not apply to fixed deposits that have been taken as security for a loan
Loan against FD	If loan is outstanding against FD, the order applies only to the surplus amount after adjusting the loan
Amount Not Specified	If the order does not specify the amount, it attaches the entire balance in the account
Specific Amount	If a specific amount is mentioned, the bank can pay the excess balance to the customer

Noting (Section 99 NI Act)

Meaning	When a promissory note or bill is dishonoured, the holder may cause the dishonour to be noted by a notary public
Time	Must be done within a reasonable time after dishonour
Contents	Date of dishonour, reason assigned for dishonour (or why the holder treats it as dishonoured), notary’s charges

PROTEST 1

Protest – Meaning and Contents (Sections 100 & 101)

Meaning	Formal certificate of dishonour issued by a notary public
Contents (s.101)	(a) Instrument or its literal transcript (b) Names of parties (c) Statement that demand was made and the answer (d) Place and time of dishonour (e) Subscription of the notary (f) Details of acceptance/payment for honour if any

PROTEST 2

Further Provisions on Protest

Notice of Protest (s.102)	When protest is required, notice of protest is given instead of notice of dishonour
Protest after Non-acceptance (s.103)	Bills payable elsewhere may be protested for non-payment without further presentment
Foreign Bills (s.104)	Must be protested if required by the law of the place where they are drawn
Noting = Protest (s.104A)	Where protest is required within a time limit, noting within that time is sufficient; formal protest can be completed later

Bankers’ Books Evidence Act 1891 – Overview & Definitions

Object	Allow certified copies of bank records to be used as evidence without producing original books
Bankers’ Books	Ledgers, day books, cash books and other books used in ordinary course of business – includes records kept in electronic form after IT Act amendment
Certified Copy	True copy certified by principal accountant or manager with prescribed particulars

Electronic Records and Section 2A

Electronic	Printout of data stored on computer, microfilm, magnetic tape or other electronic medium
Section 2A Certificates	(1) Certificate by principal accountant/branch manager that it is a true printout (2) Certificate by person in charge of computer system describing the system and safeguards (3) Certificate that the computer was operating properly and the printout correctly represents the data

Important Sections and Key Judgments

Section 4	Certified copy is prima facie evidence of the existence of the entry and of the matters recorded
Section 5	Bank officer not compelled to produce books or appear as witness unless the court so orders for special cause
Section 6	Court may order inspection of books and production of certified copies
Key Judgment	Om Prakash v. CBI – Section 2A of Bankers’ Books Act (special law) prevails over Section 65B of the Indian Evidence Act for banking records

SUMMARY POINTS

Must-Remember Points

- Collecting banker must act in good faith and without negligence to claim s.131 protection; otherwise liable for conversion.
- Mutilated cheques, difference in words & figures, and stale/post-dated cheques require careful handling.
- Material alteration voids the instrument against non-consenting parties; RBI does not permit any alteration.
- Garnishee Order attaches existing credit balances but not future deposits, OD limits, or FDs held as security.
- Noting and Protest provide formal evidence of dishonour; contents of protest are prescribed in s.101.
- Bankers’ Books Evidence Act allows certified (including electronic) copies as evidence; special law prevails over s.65B Evidence Act.