

LEGAL ASPECTS OF BANKING

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Module A:

Unit 1 LEGAL FRAMEWORK OF REGULATION OF BANKS:

1. Banking definition – Banking Regulation Act – sec. 5 (b) – acceptance of deposits for lending or investment
2. Banker – can refuse opening a/c for undesirable persons.
3. Opening of a/c – introduction & kyc & aml
4. KYC - RBI – proof of identity & proof of address
5. AML – source of funds
6. Acceptance of deposits – nbfc – rbi act – can accept only from relatives (manufacturing or trading – public)
7. Acceptance of deposits – nb nfc – companies act – accept deposits – public
8. Licence – RBI – BR Act – sec. 22 (Nationalised banks exempted)
9. “bank” – all to use. Subsidiaries of banks & association of banks, primary credit societies – exempted.
10. Permitted – sec. 5 & sec. 6 (lc, bg, forex, collection, remittances, insurance, gold coins etc.)
11. Prohibited – trading – buying or selling prohibited. Bartering – prohibited. Enforcing securities – permitted.
12. Immovable properties – own use – yes. Other purposes – 7 years. Rbi – extension – 5 years. Total – 12 years.
13. Constitution
 - Body corporate – special statute (SBI, Nationalised banks, NABARD and RRBs)

- Companies act – old and new generation private sector banks
- Co-operative societies – state / multi state

14. Public sector banks – nationalised banks, sbi group, rrbs

15. Banking company – defined – B.R. Act – 5 (c)

16. Multi state co-operative bank – primary co-op. Bank

17. Foreign company – defined – 591 – companies act

18. RBI Act – regulator – note issue – currency sec. 22 rbi act – sec. 20 banker to govt. – B.R. Act

19. CRR – sec. 42 RBI Act – Net Demand and Time Liabilities – by cash – currency chest - 5.5 %

20. Sec. 18 – RBI Act – direct discounting of bills

21. BR Act 1949 – consolidate banks – regulate banking companies

22. BR Act – not apply – primary ag. Credit societies, co-op. Land mortgage banks

23. RBI – management of currency – note issue 2 to 10000.

24. RBI Act – sec. 20 – banker to central govt.

25. Power of central government to regulate banks – rbi act, br act.

Sec. 20 – RBI Act - banker to central govt.

Sec. 20 – B.R. Act - control on advances by banks

Sec. 20 – N.I. Act – inchoate instruments

sec. 22 – RBI Act – note issue

sec. 22 – B.R. Act - licence to banks

Unit 2 - CONTROL OVER ORGANISATION OF BANKS:

1. Licensing for banks – permission extended once a year – operationalised in one year
2. RBI can grant or refuse licence
3. Capacity to pay all depositor – general character of management – adequacy of capital – public interest etc.
4. Foreign banks – public interest – no discrimination against branches of indian banks in that country – compliance of br act
5. Bank branch licensing - sec. 23 br act - same city, town, village – no. temporary – exhibition, mela for 30 days - no
6. Share holdings – voting rights – max. rights not to exceed 10 % of total voting rights.
7. declaring dividend –
 1. all capitalised expenses to be written off
 2. preliminary expenses, share selling commission, losses accumulated etc.
 3. dividends can be paid without writing off depreciation, bad debts etc.
8. Subsidiaries of banking companies – sec. 19 br act -
 1. permissible business (sec. 6)
 2. business outside india with prior permission of rbi
 3. any other business – rbi + central govt.
9. Board of Directors – qualification shares – articles – 51 % - accountancy, agriculture, rural economy, banking, co-operation, economics, finance, law, ssi etc.
10. Directors – period of office – max. 8 years continuously.
11. Banking company – full or part time chairman. or managing director. exempted from qualification shares.
12. Additional directors – no qualification shares
13. Control over management – rbi can remove any chairman, director, ceo of a banking co.
 1. – in public interest
 2. – preventing conducting of business detrimental to interests of depositors etc.
14. corporate governance –
 1. promotion of corporate fairness,
 2. transparency and accountability in the interest of shareholders,
 3. employees, customers and other stakeholders.
- 15. Consultative group – Chairman A.S. Ganguly – to strengthen internal supervisory role of boards of banks.**

Unit 3 - REGULATION OF BANKING BUSINESS:

1. Directives of rbi – statutory in nature – non compliance - penalty
2. Loans and advances – b r act – sec. 20 - selective credit control - quantum / margin / roi. – making bank borrowing more costly
3. Regulation of loans and advances – sec. 21
4. Regulation of banking business – sec 35
5. Regulation of interest rate – loans and advances – section 21
6. Regulation of interest rate – deposits – sec. 35 a
7. Roi charged by banks cannot be reopened by courts – sec. 21 a of br act
8. Return on unclaimed deposits – sec. 26 b r act
- not operated for 10 years
9. Nomination – banking regulation act –
 Sec. 45za – deposits;
 45zc – safe custody;
 45ze – safe deposit locker
10. Regulation of payment systems – information technology act 2000
11. Banking ombudsman:
 1. Authority established by rbi – sec. 35 a of b r act
 2. Redressal of grievances against deficiency in banking services – loans, advances and other specified matters
 3. Complaint to be taken up first with bank
 4. Bank rejected / no reply within 1 month / unsatisfactory reply
 5. Complaint to be made not later than one year after reply etc.
 6. Max. Award – rs. 10 lakhs
 7. Award if accepted (15 days) by complainant, binding on bank – settlement within 30 days
 Complainant / bank with permission from cmd can go for appeal to RBI who is appellate authority

Creation of Reserve Fund:

Banking company. – every year – transfer 20 % min. to reserve fund.
dividend only after this.

12. Banking co. – Cash Reserve – RBI Act – sec. 42 – 5.5 % - on Net Demand and Time Liabilities - Balance with RBI - 3 % to 20 %.
13. Return to RBI - Weekly NDTL positions - notified Fridays, if holiday, preceding working day.
14. SLR Statutory Liquidity Ratio - Sec 24 - B.R.Act- 24 % NDTL - cash, gold, unencumbered app. securities. valuation of securities – current market price. risk weightage 10 %. - [15 – 40 %.]

Unit 4 Returns, inspection & winding-up:

1. Banking co. Balance Sheet and Profit and Loss A/c – sec. 29 B.R. Act – to ROC and RBI - Nationalised banks: RBI.
2. Audit of Balance Sheet and P & L – Banking co. – Sec. 30 B.R. Act
3. Return on assets and liabilities – Banking Co. – Sec. 27 B.R. Act – Last Friday every month.
4. Return of paid instruments to customers – retain xerox and return originals.
5. Inspection by RBI – sec. 35 - B.R. Act
6. Board for financial supervision
 1. Committee – RBI Act
 2. Banking companies, nationalised banks, SBI and SBI group
 3. Powers of supervision and inspection under RBI Act and BR Act

Unit 5 - Public sector banks and co-operative banks:

1. state bank of india – sbi act – body corporate – major shareholdings by govt.
2. subsidiaries of sbi – body corporates – major shareholdings by state bank of india
3. regional rural banks – body corporate – central govt. – 50 %. state govt – 15 %, sponsor bank – 35 %. operation: in a notified area. business - sec. 5 (b) and sec. 6.
4. nationalised banks – body corporate – banking companies (acquisition and transfer of undertakings) act, 1970 & 1980 -
5. auditor for nationalised bank – a qualified auditor as per sec. 226 of companies act.
6. provisions of licensing under sec. 22 of br act – not applicable to nationalised banks.
7. co-operative bank: state co-op bank, central co-op bank, primary co-op bank.
8. state co-op. bank – funding the objectives of other societies in state
9. central co-op. bank – funding the objectives of other societies in district
10. co-op. banks to submit balance sheet & p & l – rbi and national bank.

Module B

Unit 6 – Responsibility of paying bank :

1. sec. 31 – N.I. Act – drawee / paying banker - -
sufficient funds, properly available, cheque in order – must pay.
if not, compensate drawer. if paid wrongly, compensate true owner.
2. sec. 10 – payment in due course:
 1. apparent tenor – instructions on face of instrument
 2. in good faith
 3. without negligence – not overlooking instructions as above
 4. without notice of any defective title – no doubts from circumstances
3. section 85 – protection – order cheques. 85 (2) – bearer.

4. section 89 – protection – what is alteration ? and what is materially altered instruments ? alteration not apparent, payment in due course. otherwise, alterations have to be authenticated before payment.
5. sec. 128 – protection to paying banker – crossed instrument.
6. customer's signature forged: paying banker cannot debit customer's account. paying banker liable.
7. joint accounts – one signature forged – no protection. paying banker liable.
8. payment to a person who had nothing to do with the firm or payment to an agent of the bank would not be a payment to the firm. (bank employee absconded with money)
9. cheque received by liquidator in his official capacity paid across the counter – paying bank is held negligent.
10. cheque signed by account holder – contents written by others – business account – court held drawer is liable and paying bank in order.
11. question whether a signature is forged or not depends on the evidence and the court in coming to a conclusion that the signature is forged would look into the facts and circumstances that led to the payment of the cheque.
12. three cheques issued by account holder for overdraft. one was used and the other two fraudulently used by employees. these three cheques paid by the bank. account holder refused to pay the two cheque amounts. the cheques were not issued to that account. – bank is held negligent.

Unit 7 – responsibility: collecting bank:

1. Protection to collecting banker – crossed cheque – n i act – s. 131 – for a customer / cheque crossed / as agent / in good faith / without negligence
2. Axle conductor industries ltd. Sd. Prop. R .k. Vyas – collecting bank negligent. (syndicate bank vs jaishree industries 1994)
3. Indian bank vs catholic syrian bank –Rs. 20 altered as Rs. 29000. – bank: account holder was not from that area. Address given was that of introducer.
4. scrutiny of customer's state of account

5. Collecting bank has to make enquiries if the cheques to be collected were third party cheques

Unit 8 – Indemnities

1. Indemnity – to save from loss - Indian Contract Act
2. Two parties – indemnifier and indemnified
3. Issue of duplicate DD / FDR
4. Risk is contingent – may or may not arise
5. Loss may be caused by the indemnifier or any third party.
6. Indemnity holder or indemnified to act within the scope of authority to claim loss.
7. Indemnity – for reimbursement of a loss. Guarantee – for repayment of a debt.

Unit 9 – Bank Guarantees

1. Banker is a surety / guarantor
2. Guarantee – Indian Contract Act
3. Three parties – customer, beneficiary, banker-surety
4. To pay third party on behalf of customer, in case customer defaults
5. Financial guarantee – security deposit, tender money
6. Performance guarantee – wordings for performance – liability will be financial.
7. Deferred payment guarantee – bank guaranteeing payment of future instalments over a few years
8. Statutory guarantee – gtee fvg. Courts / tax authorities etc.
9. Banker's liability in bg is primary
10. Verify amount guaranteed, period of gtee, claim period, counter guarantee etc.
11. Payment – proper invocation, on time, by proper authority

12. Bank's liability continues – co. Wound up, main contract suspended,

Unit 10 - Letters of Credit:

1. Banker's commercial credit or letters of credit
2. Commitment by issuing bank, on behalf of customer-buyer, favouring beneficiary-seller.
3. Parties to LC:
 1. Applicant – buyer – importer – opener
 2. Issuing bank
 3. Beneficiary – seller – exporter
 4. Advising bank – genuineness
 5. Negotiating bank – handles documents
 6. Confirming bank – u / t to pay
 7. Reimbursing bank - paying money
4. Acceptance credit
5. Revocable credit
6. Irrevocable credit
7. Confirmed credit
8. With recourse credit
9. Transferable credit
10. back to back credit
11. Anticipatory LC – red clause – storage, before shipment
12. Anticipatory LC – green clause – procure goods.
13. Revolving LC – period, no. of times, quantum
14. Right to receive payment or to draw bills and receive payment as per terms of lc – with beneficiary – exporter – seller [p.173 – beneficiary]
15. UCPDC 600 and Payment obligation under LC – bank's liability primary

Unit 11 - deferred payment guarantee:

1. Deferred payment guarantees: - guarantee –
2. Payment of interest and / or instalments guaranteed by
3. Banks and financial institutions

Unit 12 - Bill Finance:

1. Bills – advance against book debts / receivables
2. Bill – bill of exchange – defined – n.i. act – sec. 5 – drawn by seller / exporter / beneficiary
3. Instrument raised by seller and accepted by buyer.
4. Three parties – drawer (seller-creditor), drawee(buyer-debtor) and payee
5. Inland bills – drawn within india – accepted and paid anywhere.
6. Foreign bills – drawn outside india – accepted and paid anywhere
7. Demand bill – sight bill – dp bill – payment on demand
8. Usance bill – acceptance bill – da bill – bills payable after sight - payment after tenor [30 / 60 days]
9. clean bill – not supported by documents of title to goods – rr, lr, bill of lading
10. documentary bill – bill accompanying documents of title to goods - can be dp bills or da bills - lr, rr, warehouse receipt, bl
11. Documents of title to goods - ownership in goods can be transferred by endorsement and delivery
12. Advance 25000. Value of goods 35000. Bill not paid. Bank can sue for - zero, 25000, 35000
13. Supply bills – advance against receipted challans - not falling within ambit of n.i. act. But provisions of bill apply to supply bills also

14. bill purchased – advance against bills payable on demand
15. Bills discounting – advance against bills payable after tenor
16. Bills negotiated – bills drawn under l c.
17. Advance against bills sent for collection – advance against receivables
18. When bank advances against bills – banker becomes holder in due course
19. Negotiation – transfer for consideration to another to claim the amount in the bill
20. No interest specified in instrument – how much interest – 18 % interest can be charged

Unit 13 – Types of securities:

1. Land / real estate : value increases – physical movement not possible.
2. Land / real estate: valuation - title - realisation - charge costly
3. precautions: financial soundness of borrower - enquiry for prior charges
- valuation - documentation - registration - insurance

Stocks and shares:

1. Value ascertained easily [media]
2. Stability in value
3. Realisability
4. Charging less expensive
5. Yield income – dividend / interest
6. Demat – comparatively safe
7. Get beneficial interest certificate

Debentures:

1. Easy to sell
2. Transferred at minimum cost.
3. Bearer debentures are negotiable.
4. Most debentures have a charge on company's properties.
5. Non-interest payment, affects marketability
6. Non-registration of charge makes the security unsecured.
7. Borrowings powers of co. To be seen
8. Class of debentures – redeemable, irredeemable, participating etc.

Goods:

1. Marketability, transferability, stability, valuation – easy. Short periods only
2. Banker should have working knowledge on the nature of security, price, marketability etc.
3. Charging of security is cheap and minimum formalities.
4. Perishability, deterioration, value sometimes difficult, storage, transportation.
5. Insurance, margin, possession.

Documents of title to goods

1. Sale of goods Act, 1930.
2. Railway Receipt, Lorry Receipt, Warehouse Receipts, Bill of Lading
3. Title can be transferred by endorsement and delivery
4. Nature of charge – pledge
5. Easily transferable
6. Delivery against indemnity letter by transport carriers

7. Not negotiable instruments – transferee will not get a better title than that of transferor
8. Unpaid seller's right over goods
9. Bank's name on the goods
10. Transport carrier approved one – IBA code number

Trust receipt:

1. High risk document
2. Release of goods without collecting payment
3. Letter of trust is taken
4. Borrower to take delivery and pledge or sell and deposit money.
5. To be considered for high creditworthy customers

Life insurance policies:

1. Surrender value
2. Assignment process simple
3. Assignment – transfer of property act
4. Registration of assignment – safe security
5. Payment direct from lic
6. Realisation on borrower's default
7. Age admission
8. Regular payment of premium

Book debts:

1. Assignment
2. Transfer of property act
3. Assignment – in writing, notice to borrower's debtor
4. Actionable claim – debt without security
5. Future debts also can be assigned
6. Charge – registration with roc
7. Undertaking from borrower to deposit funds, if paid directly by his debtor
8. Practice – being hypothecated

Fixed deposits: Highly safe, Not to advance against FDR of other banks, Security lies with the bank, Interest accruing, Discharge by depositors.

1. Note lien on fixed deposits
2. No loan against deposits of minor
3. Loan against third party deposit – caution and care. Discharge by third party. Documents by borrower

Supply Bills:

1. Transactions of supplies to govt. And public sector undertakings
2. Advance against acknowledgement of receipt of goods
3. Bills raised and sent to railways etc.
4. Advance – self liquidating in nature
5. Clean advance – full payment not given -
6. Borrowers of integrity and experience
7. Obtain a power of attorney and register
8. Inspection note

9. Banker to reserve right to demand payment from borrowers.

Unit 14 - Mortgage :

1. Creation of interest in specific immovable property as security.
2. 6 kinds – simple, conditional sale, Uusufructuary, English, Deposit of title deeds, Anamolous.
3. Simple – personal liability, no possession, written, stamped, registered. Remedy - sale through court.
4. Conditional sale – sells with a condition. Amount repaid, sale - null. Amount not repaid, sale confirmed. No personal liability. Remedy- suit for foreclosure (depriving the right of redemption by mortgagor)
5. Uusufructuary – possession. Adjustment of mortgage money with interest from yields. – for longer periods
6. English – personal liability, transfer of interest absolute, amount repaid – re-transfer. Remedy – sue mortgagor.
7. Equitable / mortgage by deposit of title deeds – delivery of title deeds to creditor or agent, notified place, intention to mortgage, debt. – normal: not writing, no stamping – tamilnadu – in writing, stamping, regn. Optional – sale through court.
8. Anamolous – characteristics of more than one or more of the above.
9. Priority of mortgages - he has a better title who is first in time.
10. Registered vs unregistered – registered - exceptions – EMT – knowledge by mortgagee –
11. limitation – 12 years. foreclosure – 30 years

Unit 15 – Pledge & Hypothecation

Pledge:

1. Indian contract act: Bailment (delivery) of goods – existing only
2. Physical or constructive (key of godown) or attornment (warehouse keeper's certificate)
3. Security for debt
4. Right of sale
5. Ownership with borrower
6. Owner – mercantile agent – seller with possession
7. Pledgee – no right to retain goods for other debts.
8. banker as pledgee – right to retain goods for other debts also.
9. for sale, effective notice to be given.
10. when pledgor repays debt, pledgee has to return the goods pledged.
11. pledgee can sell goods pledged alongwith accretion.
12. pledgee to repay debt, expenses and other charges.
13. security – continuing one.
14. pledgee to take reasonable care of goods pledged.

Hypothecation:

1. SARFAESI Act, 2002
2. mortgage of movables – hypothecation
3. charge without possession
4. ownership with borrower
5. borrower's of high integrity and networth – no double financing.
6. possession also with borrower but on behalf of banker-creditor
7. registration of charge with roc.
8. periodical stock statements to be collected
9. inspection of stocks to be done
10. insurance to be taken
11. margin level to be maintained
12. borrowers may not repay after sale.
13. deed of hypothecation – borrower to sign
14. agreement – both to sign

Unit 16 – Types of Borrowers:

individual: Capacity to contract, age of majority, sound mind, not prevented by law

Minor:

not completed 18 years - contract, if entered – void - protected under law
supply of necessities – right of recovery from assets

Individuals: - void contract

1. not sound mind
2. disqualified persons – insolvent
3. drunkards etc. – voidable

Partnership firm :

1. Indian Partnership Act, 1932
2. individually partners, collectively firm.
3. minimum 2 maximum 20 - banking max. 10
4. minor can only be admitted to benefits of partnership
5. mortgage – by all or any one specifically authorised by other partners
6. insolvency of firm – suspend operations
7. insolvency / death of partner – account in credit – fresh mandate
8. insolvency / death of partner – account in debit – suspend operations

Hindu Undivided Family

1. joint hindu family
2. customary law among hindus
3. co-parceners: all members of family
4. senior-most male member: kartha or manager
5. liability of karta is unlimited
6. liability of co-parceners limited to their share
7. karta – possession, management, represent family, receive income for huf

Limited companies

1. Registered under companies act
 2. Certificate of incorporation
 3. Memorandum of association
 4. Articles of association
 5. Board resolution
-
1. long term loans - > 7 years
 2. failure of one instalments – bank can recover the whole debt, if agreement provides
 3. limitation – 3 years from each instalment

Non Fund based facilities:

1. Letters of Credit
2. Bank guarantees
3. Underwriting – giving assurance to company to ensure that the entire issued capital will be subscribed
4. Derivative products – a new future contract, derived from an existing contract. delivery at a future date, but that date, amount and rate decided now.

Unit 18 – secured & unsecured loans:unsecured loans:

1. personal security
2. creditworthiness of borrower
3. clean loan.

secured loans:

1. loans extended relating to economic activity

2. securities are demanded as a fall back
3. primary security – purchased out of the loan proceeds
4. collaterals – additional security obtained from borrower
5. pledge / hypothecation / mortgage / assignment / lien

Registration of firms:

1. Indian Partnership Act - not mandatory – optional
2. non registration imposes certain constraints on firms
3. registered firm – all changes have to be recorded
4. unregistered firm –
 1. cannot sue others
 2. partners cannot sue each other/s
 3. protection: enforcement of rights for dissolution of a firm / accounts / realise properties
 4. powers of a receiver of an insolvent partner to realise from that partner's assets / property

Company:

1. public limited company
2. certificate of incorporation
3. memorandum of association – constitution – what – powers
4. articles of association – how – day to day – internal admn.
5. certificate of commencement of business
6. natural legal person
7. common seal – signature of the company
8. copy of board resolution
9. authorised signatories – photo, address

Unit 19 – Registration of Charges – Companies Act:

1. section 125 – companies act
2. charge on assets of company – compulsory regn.
3. period of regn – 30 days – further 30 days
4. form 8 / 13 / 17 – electronic form – including signatures
5. beyond this take up with roc / compnay law board – charge will be prospective only
6. non registration – banker creditor become unsecured creditor
7. debt continues – priority over securities will be lost, if there are other creditors
8. register of charges - roc and concerned co.
9. fixed charge – security same through-out
10. floating – securities are similar – continuously changing from one form into another. cyrstallised into fixed, when enforcement takes place

Module –C

Unit 20 to 26 – SARFAESI Act

1. securitisation and reconstruction of financial assets and enforcement of security interest act 2002
2. power to enforce security for realisation of money due without intervention of court.
3. setting up central registry for registration of securitisation, reconstruction and creation of security interest transactions
4. aggrieved borrower can file appeal to drt against the creditor (stage 1) by paying 50% of claim amount. (reduced from 75 %)
5. creditor to be secured one but without possession of securities.
6. applies to banking companies, nationalised banks, state bank of india group, co-op. banks
7. “board” – SEBI
8. originator – bank, which advanced money
9. obligor – borrower
10. property – immovable or movable – debt, receivables, intangibles
11. SARFAESI Act overrides provisions of Transfer of Property Act
12. conditions – secured creditor without possession, account became NPA .
13. hypothecation – charge on movable property – existing or future – without delivery of possession
14. notice by secured creditor – banker - secured / no possession / registration / a/c NPA / time 60 days / inform manner
15. Action within normal limitation period – 3 / 12 / 30 years
16. manner - take possession / takeover
17. management / appoint manager / claim money from person who acquired the security interest asset

18. during notice period borrower cannot dispose off asset
19. borrower may take up with drt - pay 50 %. drt can reduce or waive this.
20. Objection by borrower – within 45 days.
21. Bank to reply within 7 days.
22. Realisation of secured asset – borrower is a company - dues to workmen to be paid - balance file suit or apply to drt.
23. Sarfaesi act – authorised officer -Scale iv and above of public sector bank.
24. Secured creditor can seek help of chief metro magistrate or district magistrate for possession / sale of asset.
25. Appeal against DRT with DRAT - pay 50 %. – drat can reduce this to 25 %.
26. Sarfaesi – non application - lien / pledge / any vessel / aircraft / rights of unpaid seller / liab. Not > 1.00 lac / agri. Lands / principal < 20 %.
27. Property – sale certificate by authorised officer – conveys property – to be stamped as per state laws
28. Register charge with central registry – within 30 days
29. Delay – central registrar can condone upto next 30 days with payment of penalty.
30. Central registry is not yet formed.

Unit 27 and 28

Banking ombudsman

1. appointed by rbi under b r act
2. resolve complaints relating to bkg services.
3. minimum and max age stipulation withdrawn.
4. other part-time work – approval of rbi.
5. mediation / arbitration, if agreed to by the parties
6. first take up with bank - no reply within one month / reply unsatisfactory etc.
7. complaint not later than one year from cause of action.
8. first stage – by agreement

9. if not, award - max. award – 10 lacs
10. acceptance by complainant - within 15 days.
11. bank to settle within one month.
12. appeal to rbi within one month – appellate authority – deputy governor, RBI – complainant bank with permission from MD.
13. rejection of complaint - frivolous, vexatious, without sufficient cause etc.
14. award is effective from the date of signing by ombudsman.
15. any new claim connected to the claim already taken-up, can be referred to ombudsman.

Unit 29 to unit 33 - Recovery of debts due to banks & financial institutions act, 1993 – DRT 1993

1. purpose is to have expeditious adjudication and recovery of debts due to banks / fi and matters connected thereto and debt due to be more than Rs. 10 lacs. debt may be secured or unsecured and. security may be movable or immovable
2. from date of establishment of drt, no court has jurisdiction to deal with recovery cases above Rs. 10 lacs.
3. DRT consist of one presiding officer – appointment by central government
4. DRAT is headed by a chairperson – appointment by central government.
5. bank to file application with DRT.
6. defendant borrower can file written statement.
7. chairperson can transfer cases from one presiding officer to any other presiding officer.
8. DRT / DRAT can pass interim orders, attachment orders, appoint receiver etc.
9. aggrieved person can prefer appeal with drat within 45 days from date of receipt of order. late filing – discretion of drat
10. aggrieved person to deposit 50 % of amount. drat can reduce or waive this.
11. DRT issues recovery certificate for effecting recovery of debt.
12. no provision for further appeal against the orders of drat. only writ can be filed
13. recovery officer can sell any of the property owned by defendant
14. recovery officer can demand payment from any person who owes money to the defendant
15. provisions of drt will override any provision inconsistent in any other act.

Unit 34 – Bankers Books Evidence Act:

1. Bankers Book – ledgers, micro-film, magnetic tape, mechanical or electronic data retrieval mechanism. it includes data at back-up or disaster recovery site.
2. legal proceeding – proceeding or enquiry in which evidence can be given / arbitration / investigation
3. judge – judge of a high court
4. evidence – written, electronic, mechanical form
5. print out copy to be signed by two – manager of the bank and the person in-charge of computer system
6. computer in charge to certify that the system is operated properly and that print out is appropriately and correctly derived
7. certified copy of banker's book is a prima facie evidence (on the face of it)
8. bank not a party – no document can be demanded
9. evidence or personal appearance – three clear working days notice

Unit 35 - Lok Adalats:

1. organised by --
 - a. state authority
 - b. district authority
 - c. supreme court legal services committee
 - d. high court legal services committee
 - e. taluk legal services committee
2. can determine and arrive at a compromise
3. dispute – pending case in court or case falling within jurisdiction but not pending in court
4. offences which are compoundable under any law cannot be brought under this
5. monetary ceiling - 20 lacs
6. if no compromise or settlement is reached, matter referred back to court or referred back to parties
7. award – decree of a civil court
8. fee payable as applicable in court
9. award binding on parties – no appeal provision

Unit 36 - 38 - Consumer Protection Act

1. quasi judicial machinery to provide speedy redressal to consumer complaints.
2. three tier system – district, state, national.
3. monetary jurisdiction - 20 lacs, 20 – 100 lacs, above 100 lacs.
4. consumer – who purchased goods on cash or credit - not include a person who availed any free service

5. goods – all movables – does not include stocks and shares, growing crops, things attached to earth and to be severed
6. deficiency – default, imperfection, shortcoming, inadequacy – quality, nature and manner of performance
7. person – individuals, firm, huf, co-op. society, association of persons
8. appeal against district forum with state forum – within 30 days
9. appeal against state forum with national forum – within 30 days
10. appeal against national forum - supreme court
11. state commission can transfer cases from one district to another district.
12. national commission can transfer cases from one district to another or from one state to another.

Unit 39 - Law of Limitation

1. to consolidate and amend the law for the limitation of suits and other proceedings
2. period of limitation – in relation to a document which entitles the beneficiary to take action in a court of law
3. when limitation expires on a day when court is closed - suit to be filed on the day of reopening
4. day from which such period is to be reckoned is excluded
5. notice to government, period required for obtaining consent from govt. etc. is excluded
6. defendant absent from india – excluded
7. acknowledgement in writing – extend limitation
8. payment of debt / interest by the person liable to pay – extend limitation
9. demand loans – three years
10. Bill of exchange at or after sight – three years from presentation
11. B.E. or DPN payable after fixed time – three years from expiry
12. DPN – three years
13. specific performance – 12 years – from the date of expiry or when plaintiff notices refusal
14. mortgage – 12 years from due date
15. foreclosure – 30 years from due date
16. where no period of limitation is stipulated – 30 years from due date

Unit 40 - Tax Laws:

1. income tax – basis – residence & place of source of income
2. assessment – current financial year
3. tax is calculated – previous financial year
4. salaries - income from house - profits & gains - capital gains - income from other sources
5. company or partnership to file return of income
6. advance tax - june 15 – 15 % sept. 15 – 30 % - dec. 15 - 60 % - march 15 - 100 %
7. TDS – 10 % - 20 % + service tax
8. fringe benefit tax - to tax fringe benefits provided by employer
9. fringe benefits – deemed fringe benefits
10. banking cash transaction tax - withdrawal of cash beyond 50000 on any day – individual / HUF
11. BCTT – beyond 1 lac – other than individual / huf
12. Service tax – telephone, general insurance, stock broking.
13. service tax – 12 % plus education cess 3 %
14. Service tax not applicable, when services are rendered outside india

MODULE D -
COMMERCIAL LAWS WITH REFERENCE TO BANKING OPERATIONS:

UNIT 41 – Meaning and essentials of a contract

1. contract – agreement enforceable by law
2. promise / proposal / offer – proposer
3. acceptance - promisee / acceptor
4. purpose lawful
5. consideration lawful
6. persons competent to contract
7. identity of mind
8. free consent
9. without fraud, coercion
10. not disqualified

Unit 42 - contracts of indemnity

1. two parties : indemnifier – indemnified
2. to save from loss
3. within the scope of authority

Unit 43 - contracts of guarantee

1. personal guarantee
2. person giving guarantee – surety
3. person on whose behalf given – principal debtor
4. person to whom given – creditor / beneficiary
5. consideration
6. liability of surety – neither more nor less than principal debtor
7. continuing guarantee – series of transactions – personal guarantee obtained by banks
8. death / insolvency / insanity – guarantee comes to end
9. variance in terms of contract without consent of surety - surety discharged
10. discharge of principal debtor – surety discharged
11. forbearance to sue – surety not discharged
12. release of one co-surety – other surety not discharged
13. misrepresentation by creditor – invalid guarantee
14. implied promise by principal debtor to indemnify surety

Unit 44 - contract of bailment:

1. Bailment – delivery of goods, physical movement - Indian contract act and may be constructive, physical, attornment

Unit 45 - contract of pledge:

1. pledge
2. right of sale
3. banker's lien – equal to pledge
4. notice to owner mandatory

Unit 46 - contract of agency

1. agent – person – age of majority – sound mind and express – oral or writing
2. implied – from the circumstances authority to do lawful acts. not to exceed.
3. Authority in emergency – principal bound if done to protect him
4. Agent cannot, as a rule, delegate his authority
5. Acts done by agent without authority of principal – principal can accept or revoke.
6. Termination – revocation, renunciation, work completion, death, insolvency.
7. Agent to be indemnified by principal for consequences out of lawful acts.

UNIT 47 TO 49 - Sale of Goods Act: 1930

1. Goods – movable property, stocks, shares, growing crops, grass, things attached to earth.
2. price – money consideration
3. document of title to goods – rr, lr, b l, warehouse keeper's certificate, multimodal transport document
4. future goods [unascertained goods] – to be manufactured, produced or acquired
5. specific goods [ascertained goods] – identified at the time of contract
6. sale – transfer of ownership, seller to sue for price if buyer did not pay
7. agreement to sell – no immediate transfer of ownership. seller to claim damages, if buyer did not accept.
8. bilateral contract – two persons – buyer and seller
9. money consideration – price – money – cannot be barter, viz., goods
10. movable property
11. goods immediate – payment immediate – cash
12. goods immediate – payment later – credit
13. goods immediate – payment through bank in instalments – instalment loan
14. goods immediate – payment in instalments with right of recall – hire purchase
15. payment immediate – goods postponed – vehicles, flat purchase
16. payment immediate – goods in instalments – aavin, education fees for one year
17. condition – title of seller
18. condition – sale by description
19. condition – sale by sample
20. condition – sale by sample & description
21. warranty – quiet possession
22. warranty – free from encumbrance
23. warranty – quality for a purpose
24. caveat emptor – buyer always beware
25. non fulfilment – cancellation, rejection of contract
26. warranty – non fulfilment – damages
27. unpaid seller – goods - property already passed - lien / stoppage in transit / re-sale
28. unpaid seller – goods - property not passed – withhold delivery / stoppage in transit
29. unpaid seller – against buyer – suit for price, suit for damages, repudiation.

UNIT 50 TO 55 - PARTNERSHIP:

1. Relation between persons to share profits mutually and to - carry on business by all or any one acting for all
2. Individually – partners -- collective – firm
3. Partnership at will
4. partnership – fixed period
5. partnership – particular
6. partners – principal and agent to one another
7. implied authority - not available - open bank a/c - submit dispute to arbitration – compromise or relinquish a claim of firm – withdraw a suit or proceeding – admit any liability – acquire or transfer immovable property – enter into partnership
8. implied authority – extended or contracted
9. holding out – by words or in writing permit himself to be presented to be a partner – becomes liable
10. minor – cannot be a partner – admitted to benefits – to elect to be a partner or not - after 18 – within 6 months – silence – partner
11. non registration

Unit 56 - 62 - Limited company:

1. registration – artificial legal person
2. certificate of incorporation
3. memorandum of association - name, regd. office, objectives, liability, capital, borrowing powers
4. Articles of association - indoor management – subordinate to memorandum
5. Can sue and be sued
6. Perpetual succession
7. Common seal
8. Corporate veil – pierced when court orders
9. Statutory company – special act - act of parliament – rbi act 1934
10. Companies act 1956
11. Private company
12. Public company
13. Government company
14. Foreign company
15. Holding company
16. Subsidiary company
17. Doctrine of constructive notice - documents filed by company with roc becomes open information to all public.

18. doctrine of indoor management – public can presume that company officials have to conduct their business as per law.
19. becoming a member of a company:
 1. Subscribing to memorandum
 2. Allotment
 3. Transfer
 4. Transmission [survivor / lh]
 5. Acquiescence
 6. Joint membership
20. Member – sound mind, competent to contract – individual – regd. Entity
21. Minor, unsound mind, firm, nri - n o
22. Application in fictitious name – prosecution
23. Prospectus – only after incorporation of co.
24. Prospectus – misstatements – rescind – claim damages
25. Prospectus – failure to report – fine
26. Prospectus – untrue statements – fine, imprisonment or both
27. Members – statutory rights – new share offer, notices, copies of account, inspection
28. Members – documentary rights - memo / articles right.
29. Proprietary rights – no personal liability, to receive dividends, etc.
30. Directors – retirement – long in office, agreement, lots

UNIT 63 - Foreign Exchange Management Act:

1. FEMA 1999
2. Proper utilisation of foreign exchange, regulate payments etc.
3. Capital account – decrease or increase in assets or liabilities outside india by residents and in india for persons resident outside india
4. Currency notes – currency, postal orders, money orders, lc, bg, dpn, cheque etc.
5. Foreign exchange – all the above except dpn, cheque
6. violation under fema - thrice the sum if amount quantifiable or rs. 2 lacs.

Unit 64 - Transfer of Property Act

1. Sale without intervention of court – english mortgage
2. Power of sale mentioned in mortgage deed and mortgagee is a government
3. Power of sale mentioned in mortgage deed and the property is in metros
4. Mortgage suit to be filed where property is situate

Actionable claim – debt without security

Unit 65 & 66 - Right to Information Act :

1. Public authority – central govt. Or state government - by constitution / by parliament / by legislature
2. Information – any material in any form - printed / electronic
3. Public information officers – to provide information to the citizens
4. PIO to assist to reduce the request to writing
5. PIO to furnish information within 30 days
6. Information relates to life or liberty of a person - within 48 hours
7. Rejection of request – pio to communicate reason – period to prefer appeal – details of appellate authority
8. Fee – Rupees ten by cash or Indian Postal Order
9. Disclosure of third party information is allowed if public interest in disclosure outweighs in importance of a harm or injury to third party
10. Appeal within 30 days to a senior officer
11. Penalty – Rs. 250 per day till information is provided

Unit 67 - Prevention of Money Laundering Act 2002

1. To prevent money laundering and to provide for confiscation of property derived from money laundering
2. Activity connected with proceeds of crime and projecting it as a untainted property
3. Rigorous imprisonment – 3 to 7 years
4. Banks – cash transactions of 10 lacs & above in a month
5. Suspicious transactions
6. Maintain in hard and soft copies
7. Cash transactions report
8. Suspicious transactions report

Unit 68 – INFORMATION TECHNOLOGY ACT, 2000

1. ATM – RTGS – NEFT – SWIFT
2. Digital certificates
3. Key infrastructure: Public key infrastructure and Private key infrastructure
4. e-cheque