

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Law of Banking and Negotiable Instruments  
Semester-V (Batch: 2017-22)

End Semester Examination: October-2019

Date: 19<sup>th</sup> October, 2019

Duration: 3 hours

Max. Marks: 50

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- Bare Act is not allowed.

**Answer any five questions**

**Marks**

- Q.1 R was advanced financial facilities by the UCO Bank, J.M.E College Branch, Ludhiana. For securing these advances R had mortgaged an immovable property in favour of the bank. On default in repayment of bank dues, the Authorised Officer had issued a demand notice to R on 16.03.2018 under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The notice was delivered to the borrower by hand with his acknowledgement, even then R failed to pay the Bank's dues and consequently, the Authorized Officer of the Bank issued possession notice of the property on 04.08.2018. Accordingly, the physical possession of the mortgaged property was taken by the Authorized Officer on 09.12.2018 and possession notice was published in two leading newspapers. Subsequently, the auction notice for the sale of the property for realisation of the Bank's dues was issued on 18.02.2019 and the same was published in the newspapers. Pursuant to the publication of the auction notice in the newspaper, P participated in the auction and was declared as the highest bidder. As an auction purchaser, P deposited twenty five percent of the sale proceed with the bank and agreed to pay the remaining amount within fifteen days. (10)
- However, P through other sources was informed that dues of house tax amounting to ₹ 1,42,409 is pending and also there is an encumbrance of ₹ 2,23,936 as arrears of electricity dues on the said property. P approached the bank and bank also confirmed the said encumbrances but strictly asked P to deposit the remaining amount within the specified period.
- On the basis of the above stated factual matrix advice P about the further course of action and remedy available, if any. Also explicate what possible defence bank may take to defend itself? Whether it would have been possible for the bank to take the physical possession of the property if the property would have been in the possession of the tenants of R? Substantiate your answer with the help of leading case laws and relevant provisions of the law.
- Q.2 On 19.08.2018, A approached C requesting for a friendly loan of ₹ 5,30,000/- as he was in dire need of money. Considering the friendly relationship with A, C advanced friendly loan of ₹ 5,30,000/- to A for period of four months i.e. 01.09.2018 to 01.01.2019 vide a (10)

written cash loan agreement. After expiry of four months, at request of A, C granted two more months' time to A for repayment. Thereafter also A kept on taking time for repayment. Finally, A in discharge of his liability issued a cheque bearing no. 713481 drawn on Punjab National Bank, Adarsh Nagar, Delhi, on 15.08. 2019 in favour of C. C presented the cheque in his account maintained at Syndicate Bank, Civil Line Branch, Allahabad, which was returned with the remarks "Funds Insufficient" vide bank return memo dated 20.08.2019. Thereafter, C served a legal notice dated 25.08.2019 upon A through his counsel demanding the said amount. A received the notice on 27.08.2019. Upon receipt of the notice, A requested C not to initiate any legal action and gave assurance that he will settle the dispute by depositing sufficient balance in his account. Based on this assurance C did not prosecute A. Subsequent thereto, the cheque was again presented before the Bank on 26.09.2019 by C. On presentation, the said cheque was dishonoured for want of sufficient funds. Consequently, C served the statutory notice again upon A dated 30.09.2019 which A received on 02.10.2019. Further, neither any reply was sent nor was the money repaid by A.

In light of the above facts, answer the following with the help of relevant provisions of the Negotiable Instruments Act, 1881 and suitable judicial pronouncements:

- (a) Advise C about the procedure and territorial jurisdiction for filing the complaint under section 138 of the Negotiable Instruments Act, 1881. Whether it will make any difference if the cheque would have been issued as a donation?
- (b) Whether a cheque can be presented multiple times? Is it open for C to file a complaint under section 138 of the Negotiable Instruments Act, 1881, when he failed to prosecute A after his first default?

- Q.3 ARS is a leading scheduled banking company. Its deposits increased tremendously in recent years and it has 132 branches spread over half a dozen states. However, it was brought to the notice of RBI that the bank is in a very disquieting situation, Further, substantial portion of the bank's advances are unsecured and, either irrecoverable or, "sticky". The bank has also given two-thirds of its loans to a single company whose creditworthiness is already under a cloud. The bank kept on declaring dividends where no profits really existed, and was periodically presenting a false picture of its position to the public and, in effect, paying the dividends out of its capital and reserves. It was also brought to the notice of RBI that the management of the bank is not efficient and incapable of managing the affairs of the bank in the interest of the depositors. The Managing Director of the bank is also a director in another real estate company. Therefore, the affairs and business of the bank is not being conducted on sound lines. (10)

In light of the above stated facts, advice RBI about the actions and measures that it may take to protect the bank and also the interest of the depositors of the bank. Substantiate your answer with the help of suitable examples and relevant provisions of the Banking Regulation Act, 1949.

- Q.4 "There is also a fundamental flaw in transferring NPAs to ARCs. A mere transfer of NPA from one entity to another does not enable recovery. The transfer is just cosmetic without actual recovery and it is simply a transfer of the problem from one entity to another. ARCs have the same rights to recourse as banks do, but they do not have any magic wand for recovery. In fact, the financing bank will have more comfort while dealing with the borrower, as it has handled the borrower right from the time of the appraisal. ARCs do not have any special skill or judicial means to recover the money". (10)

In light of the above mentioned statement, explain the process of acquisition of financial asset by ARC's and modes of realisation of financial assistance. Do you think that changes introduced through the 2016 amendment in the procedure and regulatory regime of securitization and asset reconstruction are sufficient to promote the business of ARC model in India for recovery of NPAs?

- Q.5 Critically analyse various rights of a banker. Substantiate your answer with the help of leading judicial pronouncements and relevant provisions of the applicable laws. (10)
- Q.6 Answer any two of the following: (5+5=10)
- (a) Significance of the Banking Ombudsman in resolving disputes between bankers and customers
  - (b) Whether regulatory powers of RBI are ownership neutral?
  - (c) Critically analyse the case - *Dharani Sugars & Chemicals Ltd v Union of India* 2019.

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