

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Banking & Negotiable Instruments
Semester-V (Batch: 2013-18)

End Semester Examination: Oct-Nov. 2015

Date: 21st October, 2015

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 clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed.**

Part-A

Answer any four questions

Marks

- Q.1 "Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realised without delay. In 1981, a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfil a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on 30th September, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs.5622 crore in dues of Public Sector Banks and about Rs.391 crore of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country". (10)

Discuss the statement in detail and state the significance of establishment of Debt Recovery Tribunals for recovery of debts. Elaborate the procedure of the tribunal. Discuss the issues pertaining to bar on jurisdiction of other courts in the matters related to debt recovery with the help of leading case laws.

- Q.2 ZND Bank is a nationalized bank. A company named M/s. Mairayden Limited ("Borrower") had availed for financial facilities from the bank to the tune of Rs.11.55 Crore in the year 2007. At the time of availing of the financial facilities borrower created (10)

a mortgage in favour of the bank by deposit of title deeds in respect of the land. Borrower defaulted in repayment of the credit facility availed of and accordingly the account of the borrower was classified as a non performing asset. The bank thought fit to proceed against the borrower under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. A notice was served upon the borrower and pursuant to the same the symbolic possession of the secured asset was taken over by the bank in the year 2014. Thereafter, the bank filed an application with the District Magistrate, for the purpose of taking over the actual possession of the secured assets from the borrower. The said application of the bank was allowed. Pursuant to the order passed by the District Magistrate, the physical possession of the secured asset was taken over by the bank on 18th March, 2015. The bank thereafter placed the property in question for auction, where M/s. Talco Recycle Industries Limited ("Bidder") being the highest bidder got the property and 'Sale Certificate' was issued by the bank in favour of the auction purchaser.

Discuss the procedure for enforcement of security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. What are the essential formalities that a bank is required to comply with for auction and sale of the property? Whether the District Magistrate can assist secured creditor in taking over the possession of the property? What are the essential requirements that a secured creditor must satisfy before getting the assistance from the District Magistrate? Substantiate your answers with the help of case laws, illustrations, relevant provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Security Interest (Enforcement) Rules, 2002.

- Q.3 In "*Dashrath Roopsingh Rathod v. State of Maharashtra & Anr*" it was held that the place, situs or venue of judicial inquiry and trial of the offence must logically be restricted to where the drawee bank is located." Elaborate and justify this statement with reference to Section 138 of the Negotiable Instrument Act 1881. Whether you agree with the principles propounded in the judgment? Explain the various steps involved in case of dishonour of a cheque. (10)
- Q.4 (a) "Non-banking financial institutions (NBFCs), engaged in varied financial activities are part of the Indian financial system providing a range of financial services". Explain the role of RBI in the working of these NBFCs. (5+5=10)
- (b) How a bank can get license for commencing its banking activities? Whether license can be cancelled, if yes, under what circumstances? Substantiate your answer with the help of relevant provisions of Banking Regulation Act, 1949 and RBI guidelines.
- Q.5 (a) Explain in brief, the essential terms of the banker and customer relationship as expounded in the case of *Joachimson v. Swiss Bank Corporation*. (5+5=10)
- (b) Rohan works for one of the companies situated in Delhi. The company pays Rohan his salary through his bank. This practice has been there for two years. One day, the employer sent a request to the bank asking the bank to provide information on the operations of Rohan's account. Advise the bank with the help of leading case laws.

Part-BAnswer **any two** questions

- Q.6 SARD Co. Ltd, Hyderabad (Securitization Co.) acquires financial assets worth Rs. 50 crores from USI Bank of India, Hyderabad, on 17th March 2015 by way of an agreement. The assets originally belonged to AZD Co. (Chennai) but due to default of payment, the bank sold the assets. On 16th July 2015, SARD Co. gets information for recovery of debts worth Rs.20 crores due from AZD Co, filed by Sanco Bank of India, under the DRT (Chennai). On 17th August the company gets information of debts worth Rs.5 crores due from AZD Co. filed by Lynca Bank of India, under the DRT (Bangalore). (05)

In the present instance, what are the options available to SARD Co. for recovery of debts filed under these two different Debt Recovery Tribunals? Elaborate your answers with the appropriate provisions given under SARFESI Act 2002. In lieu of the present case who can issue a notice of acquisition of the financial assets to AZD Co.?

State the steps to be followed by AZD Co. for the discharge of obligation, as per the provisions of SARFESI Act 2002.

- Q.7 Write a short note on Banking Ombudsman. (05)
- Q.8 State the difference between a holder and a holder in due course, with proper illustrations. (05)

1. *Introduction*
General remarks on the subject

The first part of the paper deals with the general principles of the theory of the subject. It is divided into two main sections: the first section deals with the general principles of the theory, and the second section deals with the specific principles of the theory.

The second part of the paper deals with the specific principles of the theory. It is divided into two main sections: the first section deals with the specific principles of the theory, and the second section deals with the specific principles of the theory.

The third part of the paper deals with the specific principles of the theory. It is divided into two main sections: the first section deals with the specific principles of the theory, and the second section deals with the specific principles of the theory.