

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Banking & Negotiable Instruments**
Semester-V (Batch: 2012-17)



End Term Examination: Oct-Nov. 2014

Date: 22nd October, 2014

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.**

	Part-A	Marks
Answer any four Questions		
Q.1	(a) Ratan opened an account with SBI bank in order to take a safe deposit locker. The account was not operated at all, however the safe deposit locker was operated at various occasions. SBI announced a Diwali bonanza gifts for its customers. Ratan claimed the gift but SBI refused on the ground that the account was not operated and therefore, Ratan is not a customer of SBI bank. Whether Ratan is a customer of the SBI bank? Substantiate your answer with the help of leading case laws.	(05)
	(b) Discuss in detail the law relating to appropriation of payments. State the principle contained in Clayton's Rule.	(04)
Q.2	(a) Mr Raman was a director in a banking company. Reserve Bank of India terminated Mr Raman on the ground that his conduct was detrimental to the interest of the depositors of the banking company. Whether RBI has power to terminate the said director under the provisions of Banking Regulation Act, 1949? What remedies are available to Mr. Raman against his removal under the provisions of the said Act? Can the Reserve Bank of India appoint an additional director under the Banking Regulation Act, 1949?	(04)
	(b) Various complaints have been made to the Reserve Bank of India against the activities and management of the Board of Directors of ZNZ banking company. If no actions will be taken, the shareholders, depositors and others will suffer heavily and the complainants requested Reserve Bank of India to take some strict action against the management of the banking company. What actions the Reserve Bank of India can take against the banking company and its Board of Directors as per the provisions of the Banking Regulation Act, 1949?	(05)
Q.3	The Union Bank of India had initiated an action in the High Court of Calcutta claiming different reliefs against the defendant Mr. Ravi (Resident of Calcutta), who had availed loan of Rs. 12 lac against which he mortgaged certain plant and machineries in favour of the bank. Out of the said loan amount Mr. Ravi Failed to repay Rs. 10 lac. During	(09)

the pendency of the proceeding, the Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as 'the Act') to provide for the establishment of tribunals for expeditious adjudication and recovery of debts due to Banks and Financial Institutions and for the matters connected there with or incidental thereto. By operation of the Act, the suit in question stood transferred to the Debts Recovery Tribunal (Calcutta), established under the Act and was renumbered as transferred application No. 163 of 1996. Mr. Ravi moved an application before the tribunal, contending that, tribunal had no jurisdiction to entertain suit in question in view of the nature of the reliefs prayed for and since the said plant and machineries are installed at Delhi where Mr. Ravi partially carries on his business activities. The tribunal disposed of the application filed by the defendant holding that the tribunal has the jurisdiction to decide the claim of the Bank and the tribunal consequently issued certificate of recovery and thereafter the recovery officer initiated the recovery proceedings by attaching the said plant and machineries. The defendant, thereafter filed a petition under Article 226 of the Constitution of India, before the High Court, challenging the orders passed by the tribunal. Decide the case by examining the relevant provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 with the help of suitable case laws.

- Q.4 On 4.2.2014, 'M' (Resident of Delhi) handed over a cheque of Rs. 50,000/- to 'S' (Resident of Bihar) in satisfaction of the loan amount, which he had taken from 'S'. The said cheque was presented to the bank for encashment on 5.2.2014, but the same was returned for want of sufficient fund. Then 'S' had sent a notice to 'M' on 15.2.2014 for making the payment of the aforesaid amount. On receipt of the said notice 'M' approached 'S' and requested him for grant of some time to pay the amount. In view of such assurance given by 'M', 'S' did not initiate any further proceeding, however 'M' failed to keep his promise, so 'S' presented the said cheque on 14.3.2014 in the bank. This time also the cheque was dishonoured for want of sufficient fund. Therefore, another notice was sent on 19.3.2014 to 'M' and which was received on 21.3.2014, but he failed to make the payment. As a result of such non-payment, 'S' filed his complaint on 20.4.2014, before the Judicial Magistrate First Class in Bihar under section 138 of the Negotiable Instruments Act 1881. The Magistrate took cognizance of the complaint and summoned 'M'. 'M' appeared and filed his objections, that there could not be more than one cause of action in respect of a single cheque and the magistrate court has no jurisdiction to try the case, as demand notice was received in Delhi by 'M' and the drawee bank is also situated at Delhi therefore, the complaint is not maintainable and the court has no jurisdiction. (09)

Whether the payee of a cheque can initiate proceedings for an offence under section 138 of the Negotiable Instrument Act, 1881 for its dishonour for the second time, if he has not initiated such proceedings on the earlier cause of action? Examine the scope of various provisions of law relating to dishonour of cheque and discuss whether the magistrate court has the jurisdiction to try the case with the help of various judicial pronouncements.

OR

Discuss in detail the law relating to dishonour of cheque with the help of Judicial pronouncements. State how territorial jurisdiction is determined in case of an offence under section 138 of the Negotiable Instruments Act, 1881?

- Q.5 Mr. Pillai had obtained a loan of Rs. 20 lac from Hind bank, in order to secure the loan, Mr. Pillai mortgaged a land in favour of Hind bank. Since Mr. Pillai failed to repay the (09)



loan, bank declared and classified the loan as NPA. The bank now wants to enforce its security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In the meantime Mr. Pillai in order to escape from any liability leased out the land in favour of Mr. Krishna. Whether Hind bank would be able to enforce its security interest in the given circumstances? Advice the bank about the procedure of enforcement of security interest. Whether Mr Krishna is having any remedy against action of the bank? Whether it would have made any difference if the lease would have been created before availing loan from the bank? Whether bank can take assistance from District magistrate for taking over the possession of the said secured asset? Advice Hind bank with the help of relevant case laws.

Part-B

Answer **all** the Questions

- Q.6 Discuss in detail various powers of Reserve Bank of India over NBFC'S. (05)
- Q.7 TRT bank classified the financial asset of Mr. A as non-performing assets and decided to transfer the acquisition of financial asset to Nio Securitization and Reconstruction company. (05)
- How can the Nio Securitization and Reconstruction company acquire the financial asset from TRT bank and what measures the Securitization and Reconstruction company can adopt for realization of debt from Mr. A as per the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002?

Part-C

Answer **all** the Questions

- Q.8 Write a note on Depositors Education Awareness Fund. (02)
- Q.9 Discuss with reasons, whether the following persons can be called as a "holder" under the Negotiable Instruments Act, 1881: (02)
- (i) X who obtains a cheque drawn by Y by way of gift.
- (ii) A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.

