

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
Course: **Law of Banking and Negotiable Instruments**
Semester- VI (Batch: 2020-25)
End Semester Examination: May 2023

Date: 08th May, 2023**Duration: 3 hours****Max. Marks: 50****Instructions:**

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

Marks

- Q.1 "The duty of confidence is subject to and overridden by the duty of any party to that contract to comply with the law of the land. If it is a duty of such a party to a contract whether at common law or under statute, to disclose in defined circumstances confidential information, then he must do so, and any express contract to the contrary will be illegal and void. For example, in the case of a banker and customer, the duty of confidence is subject to the overriding duty of the banker at common law to disclose and answer questions as to his customer's affair when he is asked to give evidence on them in the witness box in a court of law".

(10)

"Although the basis of the law's protection of confidence is that there is a public interest that the confidences should be preserved and protected by the law, nevertheless the public interest may be outweighed by some other countervailing public interest which favours disclosure"

In light of the above statements, critically analyse the nature, extent, and exceptions of the banker's duty of secrecy and fidelity. Substantiate your answer with the help of leading case laws and suitable examples.

- Q.2 Answer **any two** of the following:

(5x2=10)

- a) What is the Depositor Education Awareness Fund (DEAF), and how is it relevant in promoting financial literacy among the public? Discuss the objectives, functions, and rationality of DEAF in India. What actions can the Reserve Bank of India take if any bank has failed to follow the mandate of DEAF? Substantiate your answer with the help of relevant provisions and contemporary examples.
- b) ABC Bank (bank), a private sector bank in India, has faced severe governance issues, mismanagement, and financial irregularities. As a result, the Reserve Bank of India (RBI) decides to exercise its powers under the Banking Regulation Act, 1949. As a legal consultant, outline the steps and actions that the RBI may take to restore the stability and sound governance in the bank effectively. Whether RBI can take similar actions on the public sector banks? Substantiate your answer with the help of relevant provisions and contemporary examples.
- c) What is the significance and role of the credit information companies in promoting responsible lending and reducing credit risk? How are these companies regulated in India?

- Q.3 The ABZ Bank (bank) had extended some financial assistance to the tune of Rs 80,00,000 to Mr C for which Mr C had secured a bungalow. Since Mr C defaulted in repayment of the secured debt/installments, the loan of Mr C has been classified by the bank as a non-performing asset. Therefore, the bank is now willing to enforce its security interest under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. You are required to give legal advice to the bank concerning the procedure that a bank has to follow to enforce its security interest and further how a bank can sell off the said property to recover its debt. Whether the procedure for taking possession would have been different had the secured asset been a movable property? Further, would it make any difference if the possession of the secured asset (bungalow) is with the lessee of Mr C? Advise the bank about the rights of Mr C and his lessee, if any. (10)

Substantiate your answer with the help of applicable provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Security Interest (Enforcement) Rules, 2002, leading case laws, and suitable examples.

- Q.4 Answer the following: (5x2=10)
- a) Mr T has taken a loan of Rs 1,00,000 from BSI Bank (bank) and has a savings account with the same bank. He owes Rs 20,000 to his friend and has deposited Rs 80,000 in his savings account. He is also a guarantor for a loan of Rs 50,000 that his brother took from the same bank. Due to some financial crisis, Mr. T could not repay the loan amount to the bank. In this situation, can the bank exercise its right of set-off against Mr T's savings account and recover the loan amount? explain the legal implications of the right of set-off in this scenario. Would it make any difference if the said debt of Mr T is a time-barred debt? Substantiate your answer with the help of leading case laws.
 - b) Ms S rented a locker at CNN bank (bank) to safely keep her valuable jewellery and important documents. The bank provided her with a locker and a key. After a month-long vacation, Ms S returned to the bank and found that her locker had been broken and all her valuables were missing. Ms S immediately reported the theft to the bank and demanded compensation for her losses. The bank claims that they are not liable for the stolen items, as its contract with Ms S states that they are not responsible for any loss or damage to the locker's contents. However, Ms S argues that the bank should be held responsible for the security of the locker and the theft that occurred within their premises. In light of this situation, what is the bank's liability? Can Ms S hold the bank accountable for the stolen items from her rented locker? Explain with the help of leading case laws, examples, and governing laws.

- Q.5 Mr H has defaulted on a loan of Rs 50,00,000 from NOK Bank (bank). After several attempts at recovery, the bank failed to recover the debt from Mr H. As a result, the bank decided to initiate the recovery process through the Debts Recovery Tribunal (DRT). In this scenario, explain the steps involved in the debt recovery process through the DRT and the remedies available to both parties. (10)

Further, in case of an appeal, explain the process involved in filing an appeal before the Debts Recovery Appellate Tribunal, including the grounds on which the appeal can be filed, the time limit for filing the appeal, and the remedies available to the parties.
