

COLLECTION OF CHEQUES

One of the important functions of a modern banker is to collect cheques and bills on behalf of his customers. While doing so the collecting banker has to act with responsibility towards his customers. For example, a banker should give adequate care and act quickly to protect the interests of his customer. A banker will get protection only when he acts in good faith and without negligence.

While undertaking the function of collection of cheques, a banker may act either as-

1. *A holder for value; or*
2. *An agent for collection.*

His rights will depend on position he takes.

COLLECTING BANKER AS A HOLDER FOR VALUE

When a banker parts with money or agrees to part with money to the customer before the cheque is collected, he becomes holder for value. A banker becomes a holder for value if he:

1. Allows the customer to draw against the cheque for collection before it is collected, or
2. Pays to the customer the amount of cheque deposited for collection before it is collected, or
3. Agrees to honour cheques of customer against such cheques in the process of collection before they are actually collected, or
4. Receive the cheque in meant for collection in settlement of an existing debt or advance, or
5. He lends to the customer against a cheque deposited for collection, or
6. When he exercises his lien on the cheque deposited for collection for any amount due from the customer.

When a banker assumes the position of a holder for value, he enjoys the following rights:

1. Since the banker has parted his money or committed to part with money against the cheque deposited for collection, he can receive the amount of the cheque in his own name and retain the amount for himself.
2. In case if the cheque accepted for collection is dishonoured, the banker can recover the amount from all or any of the endorsers of the cheque.
3. In case the drawer's signature or any endorsement turns out to be a forgery, he can recover the amount from all or any of the endorsers of the cheque. For example, suppose a cheque is drawn by A, favouring B. C forges the endorsement of B in favour of himself C, and then further endorses the cheque to D. The bank pays

cash against the cheque to D. The bank can recover the money from D or C, but he is liable to the true owner, B. The banker's right is only against those who have endorsed the cheque subsequent to forgery. If the only endorser after forgery is the customer, the banker should bear the loss if the customer is not able to meet his liability.

4. If the customer has no title or has defective title to the cheque, he can recover the amount from all the previous endorsers of the cheque as holder in due course.

COLLECTING BANKER AS AN AGENT

When a banker credits the account of the customer only after the cheque is sent for collection and is realised, he acts as an agent of the customer. The relationship of principal and agent between the customer and the banker comes to an end the moment the amount is realised and placed to the account of the customer. Then the general relation of debtor-creditor relationship emerges. Even if the banker credits the account of the customer with the amount of the cheque before it is collected, he would be deemed to be an agent for the customer, if crediting of the account was for convenience only and does not allow withdrawing the amount till the cheque is realised.

When a banker acts as an agent of a customer, he has no right of his own. His rights or title to the cheque will be the same as that of the customer. If the customer has a good title to the cheque, he too will have a good title to the cheque. On the other hand, if the customer has no title or has a defective title to the cheque, he too will have no title or defective title to the cheque. If the customer has no title over the cheque collected, the banker may be held for conversion unless he could claim protection under Section 131 of the Negotiable Instrument Act. Protection under this section is available to the collecting banker only when he acts an agent for *his customer*; it is not available when he acts a holder for value. Further, the banker should have acted in good *faith and without negligence* and the cheque should *have been crossed* before it was received for collection by him.

DUTIES AND RESPONSIBILITIES OF A COLLECTING BANKER

The duties and responsibilities of a collecting banker are discussed below:

1. Due Care and Diligence in the Collection of Cheques:

The collecting banker is bound to show due care and diligence in the collection of cheques presented to him. In case a cheque is entrusted with the banker for collection, he is expected to show it to the drawee banker within a reasonable time. According to

Section 84 of the Negotiable Instruments Act, 1881, “Whereas a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person in whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage, through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a large amount than he would have been if such cheque had been paid.” In case a collecting banker does not present the cheque for collection through proper channel within a reasonable time, the customer may suffer loss. In case the collecting banker and the paying banker are in the same bank or where the collecting branch is also the drawee branch, in such a case the collecting banker should present the cheque by the next day. In case the cheque is drawn on a bank in another place, it should be presented on the day after receipt.

2. Serving Notice of Dishonour:

When the cheque is dishonoured, the collecting banker is bound to give notice of the same to his customer within a reasonable time. It may be noted here, when a cheque is returned for confirmation of endorsement, notice must be sent to his customer. If he fails to give such a notice, the collecting banker will be liable to the customer for any loss that the customer may have suffered on account of such failure. Whereas a cheque is returned by the drawee banker for confirmation of endorsement, it is not called dishonour. But in such a case, notice must be given to the customer. In the absence of such a notice, if the cheque is returned for the second time and the customer suffers a loss, the collecting banker will be liable for the loss.

3. Agent for Collection:

In case a cheque is drawn on a place where the banker is not a member of the ‘clearing-house’, he may employ another banker who is a member of the clearing-house for the purpose of collecting the cheque. In such a case the banker becomes a substituted agent. According to Section 194 of the Indian Contract Act, 1872, “Whereas an agent, holding an express or implied authority to name another person to act in the business of the agency has accordingly named another person, such a person is a substituted agent. Such an agent shall be taken as the agent of a principal for such part of the work as is entrusted to him.”

4. Remittance of Proceeds to the Customer:

In case a collecting banker has realized the cheque, he should pay the proceeds to the customer as per his (customer's) direction. Generally, the amount is credited to the account of the customer on the customer's request in writing, the proceeds may be remitted to him by a demand draft. In such circumstances, if the customer gives instructions to his banker, the draft may be forwarded. By doing so, the relationship between principal and agent comes to an end and the new relationship between debtor and creditor will begin.

5. Collection of Bills of Exchange:

There is no legal obligation for a banker to collect the bills of exchange for its customer. But, generally, bank gives such facility to its customers. In collection of bills, a banker should examine the title of the depositor as the statutory protection under Section 131 of the Negotiable Instruments Act, 1881. Thus the collecting banker must examine very carefully the title of his customer towards the bill. In case a new customer comes, the banker should extend this facility to him with a trusted reference. From the above discussion, there is no doubt to say that the banker is acting as a mere agent for collection and not in the capacity of a banker. If the customer allows his banker to use the collecting money for its own purpose at present and to repay an equivalent amount on a fixed date in future the contract between the banker and the customer will come to an end.

CONVERSION BY COLLECTING BANKER

There is no contractual relationship between the collecting banker and a third party, i.e., the true owner of the cheque. As such no contractual liability is imposed on the collecting banker. But, still, the collecting banker may become liable to the true owner of the cheque under a doctrine called the *doctrine of conversion*.

Conversion is unlawful taking, using, disposing or destroying of goods or property which is inconsistent with the owner's right of possession. This means depriving the true owner of the possession and ownership of the goods or property to which he is entitled. The negotiable instruments are also included in the term "goods" for the purpose of conversion. Therefore, a banker will be liable to the true owner of the cheque for conversion, even if acts

innocently, if the negotiable instrument bearing a forged endorsement or to which his customer has no title or has defective title has been collected by him.

STATUTORY PROTECTION TO THE COLLECTING BANKER

The NI Act provides protection under Section 131 to the collecting banker in this respect provided the following conditions are satisfied:

1. The protection under the law is available only if he collects a crossed cheque for collection. No protection is available for uncrossed or open cheques.
2. The protection can be claimed only when the collecting banker has collected the cheque as an agent for his customer. If he collects the cheque for non-customers this protection is not available.

The banker should collect the cheque in good faith and without negligence.
