



UNIVERSITI SAINS ISLAM MALAYSIA

جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

# Law of Banking and Security

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Week III

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- **The Banker-Customer Relationship**
- Definition of 'Banker' and 'Customer'
- Nature of Banker-Customer Relationship
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# Definition of banker

- Common law
- Text books/profound scholars
- Statutes
- Judicial Interpretation

# Common law

- *Bank of Chettinad v Commissioner of Income Tax*  
*Colombo*[1948] *AC* 378

The terms “banking” and “bank” may bear different shades of meaning at different periods of history, their meaning may not be uniform in countries due to different habits of life and degrees of civilization.

*Bank of New South Wales v Commonwealth* [1948] 76 CLR 1  
334- Dixon J:

- “Banking should have ascribed to it anything but a wide meaning and a matter forming part of the commercial, economic and social organization of the community”.
- Varied from age to age and country to country.

*Commonwealth v Bank of New South Wales* [1950] ac 235  
303.

- “the creation and transfer of credit, the making of loans, the purchase and disposal of investments and other kindred activities”.

*United Dominions Trust Ltd v Kirkwood* [1966] 1 ALL  
ER 968

- Lord Diplock: it is essential to the business of banking that a banker should accept money from its customers upon running account into which sums of money are from time to time paid by the customer and from time to time withdrawn by him.

# Textbooks

- Halsbury's Law of England
  - Banker is an individual, partnership/corporation, whose sole/predominating business is banking.
- Dr HL Hart
  - A person/company carrying on the business of receiving moneys and collecting drafts
  - Honour cheques
  - Current Account
- Paget's Law of Banking:
  - Accept money on current accounts
  - Payment of Cheques
  - Collection of Cheques

# Statutory Definitions

- Section 4(a) of BAFIA- all banks must be public companies.
- Section : Banking business means:-
  - (a) (i) Receiving deposits on current account, deposit account, savings account or other similar account;
  - (ii) paying or collecting cheques drawn or paid in by customers and
  - (iii) provision of finance
  - (b) Such other business as the Bank, with the approval of the Minister, may prescribe.
- Bills of Exchange Act 1949 Banker is a body of persons, whether incorporated or not, who carrying the **business of banking**.



# Judicial Interpretation

*United Dominions Trust Ltd v Kirkwood* [1966] 1 ALL ER 968

- Business of banking:-
  - i) the conduct of current accounts
  - Ii) the Payment of cheques drawn on bankers;
  - Iii) The collection of cheques for customers.

# Recover Debts

- *Bank of China v Lee Kee Pin* [1961] MLJ 40

*HC: A bank which was refused a license could still recover debts because it does not amount to carrying on banking business.*

# Foreign Bank Acquiring and Accepting Charges of Land

- *Koh Kim Chai v Asia Commercial Banking Corporation Limited* [1984] 1 MLJ 322
- FC: the transaction of acquiring and accepting charges of land in Malaysia could not be said to come within the ambit of banking business in Malaysia

# Development finance

- *Sabah Development Bank Bhd v SKBS (Sabah) Sdn Bhd & Ors* [1992] 1 mlj 454
- HC: Development finance institutions are not banks.  
Banks: Take current account, Pay Cheques, Collect Cheques
- *Bank Industri M Bhd v Technopro Corp M Bhd & Ord* [1998] 6 MLJ 754
- HC: Development finance business:- the business of providing capital or credit facility or such other business as the Bank may prescribe.

## Soliciting Business in Malaysia and Offering facilities in foreign currency

- *Banque Nationale De Paris v Wuan Swee May & Anor* [2000] 3 mlj 587
- HC: Although being a banking business, it does not mean that the bank is carrying on the business of banking in Malaysia.

# Definition of Customer

- No statutorily defined
- Depositor v Customer
- Depositor: a person entitled to repayment of deposit, whether made by him or any other person.
- BAFIA is silent on the definition of customer.
- Have to rely on the definitions laid down by the courts

## The Relationship of B&C exists when the parties intend to enter into it

- *Robinson v Midland Bank Ltd* (1925) 41 TLR 402- COA: unless both parties intend to enter into it.
- There exists an account with a bank through which transactions are passed
- *Oriental Bank of Malaya v Rubber Industry (Replanting Board)* [1957] MLJ 153
- COA-A person is a customer from the time a bank accepts instruction to collect monies from a third party although no account is formally opened

# Nature of the Banker and Customer Relationship

- Contractual In Nature
- Debtor-creditor
- Agent and principal
- Fiduciary
- Constructive trustee and beneficiary



# Contractual in nature

*Joachimson v Swiss Bank Corporation [1921] 3 KB 110*

The bank undertakes to receive money and to collect bills- the bank borrows the proceeds and undertakes to repay

*Bank Pertanian Malaysia v Mohd Gazzali Mohd Ismail [1997]- Zaleha Zahari JC*

- *HC: Express term of the loan. A demand is absolute necessity as stipulated in the agreement.*

# *Debtor-Creditor Relationship*

- *Foley v Hill (1848] 2 HL Cas 28*
- *The trade of a banker is to receive money and use it as if it were his own, he becoming a debtor to the person who has lent or deposited with him the money to use as his own.*

# 3. Agent and Principal Relationship

- Customer gives the banker a mandate (account) to do certain acts in regards to his account/permit any other person to do such an act.
- E.g Standing Orders
- Making remittances

## 4. Fiduciary Relationship

- Banker as trustee over trust funds.
- Equity imposes a duty on a bank not to take undue advantage over a customer
  - *Woods v Martin Bank Ltd & Anor* [1959]
- Avoid conflict of interest

# 5. Constructive Trustee and beneficiary Relationship

- Banker is subject to constructive trust- look at the breach and liability
- See *Barnes v Addy* (1874)
  - The bank offered assistance
  - Had actual or constructive knowledge
  - There was dishonest and fraudulent design or intention