



UNIVERSITI SAINS ISLAM MALAYSIA

جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

Law of Banking and Security

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Week IV

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- Banker's Rights and Duties
- Customer's Rights and Duties
- Termination of Banker-Customer Relationship

Banker's rights and duties

- 1. Right to commission/service charge
- 2. Right to interest
- 3. Right to set-off

Right to commission/service charge

- -right to charge a customer commission & service charges for keeping the account, clearing cheques and etc.
- fixed by Association of Bankers. For deposit account, no service charge/commission

Right to interest

- express agreement between the banker and the customer/
- Sometimes through an agreement implied from the usual course of dealings between the B and C.

Right to set-off

- the bankers may only exercise the right of set-off when all the relevant accounts are held in the same right.

Right to set-off

- *Rahimah bte Abdullah v Bank Bumiputra Malaysia Bhd* [1994] 1 MLJ 477
- The plaintiff deposited RM300,00 on fixed deposit with BBMB partially to secure an overdraft facility granted to Malrich Holdings. Upon default by Malrich, BBMB exercised its rights under a Letter of Set-off signed by Rahimah.
- Issues: whether the fixed deposit receipt by BBMB created a valid lien in favour of BBMB as security for an overdraft facility? Whether the lien was bad in law?

Held: (High Court)

- Any money credited into the account of a customer in a bank represents indebtedness by the bank of the customer.
- The bank however, has a general lien on all securities deposited with the bank by a customer. The bank's action was valid.

Banker's duties

- Duty to receive money and to collect cheques for his customer's account
- Duty to honour his customer's cheques and not to pay without a valid authority
- Duty of secrecy- customer's accounts
- Duty with regards garnishee orders

Implied duty

- Implied duty to honour his customer's cheques provided that:
 - i) Drawn in the proper form
 - Ii) Credit to an amount sufficient to pay them
 - Iii) No legal cause (service of a garnishee order) which makes the credit balance or the agreed overdraft limit unavailable
 - Iv) Presented during banking hours

Dishonour customer's cheques

- The customer may be able to sue him for damages in breach of contract
- Customer is a trader- he may be able to recover substantial damages for injury to his commercial credit without having to prove any actual loss
- *Rolin v Steward* (1854) 14 CB 595: C is trader: Substantial Damages for injury to his commercial credit without having to prove any actual loss
- *Gibbons v Westminster Bank* [1939] 3 All ER 577
- If C is not a trader: substantial damage if he can prove actual loss

Duty to produce documents in court

- AntonPillar Order
- There is also duty to produce documents in court under subpeona

- *Robertson v Canadian Imperial Bank of Commerce*
[1995] 1 All ER 824
- Facts: Dispute over loan b/n R and Dennie. Subpoena duces tecum against the B to give evidence. B disclosed information of R without his consent. R sued the B for breach of contract and negligent.
- Held: Duty of the B to produce documents in court under subpoena.

Banking secrecy in Malaysia

- Section 97- Secrecy (1) (2) (3)
- Any information or document relating
 - 1. to the affairs of customer
 - 2. Account of customer
- Section 99: other permitted disclosures
- Section 100: Disclosure under Banker's Books (Evidence) Act 1949

May disclose information

- *Tournier v National Provincial Bank* [1924] 1 KB 461
- Only entitle to disclose information if:-
 - 1. compelled by law
 - 2. owes duty of disclosure to the public
 - 3. in the interest of the banks
 - 4. the customer consents

Privilege of Confidentiality

- *Tan Lay Soon v Kam Mah Theathre Sdn Bhd (Malayan United Finance Bhd, Intervener)* [1990] 2 MLJ 482
- The privilege of confidentiality was that of the customer who was the Dt and who by his letter had expressly authorised utilisation of the proceeds of sale to discharge its liability to the intervener. This would amount to the required consent.

No extra-territorial effect

- *Attorney General of Hong Kong v Lorrain Esme Osman & Ors* [1994] 3 MLJ 480 High Court
- *Attorney General of Hong Kong v Zauyah Wan Chik 7 Ors and another appeal* [1995] 2 MLJ 620 Court of Appeal
- Orders to give evidence in Hong Kong
- Issue: Whether the Bank would be in breach of obligation of confidentiality s 97 BAFIA?
- Held: No extra territorial effect. No criminal liability in Malaysia.

Information relating to Bank Accounts

- *Wako Merchant Bank (Singapore) Ltd v Lim Lean Heng* 7 Ors [2000] 3 MLJ 401, High Court
- *Lim Lean Heng v Wako Merchant Bank (Singapore) Ltd* 7 Other Appeals 3 CLJ 9, Court of Appeal
- Mareva injunction. Information on account
- Held: Account information obtained in breach of s97 is still admissible as evidence.

Restate information as per court orders

- *Hj Salleh Hj Janan v Financial Information Services Sdn Bhd, Affin-ACF Finance Bhd (Third Party)* [2005] 1 CLJ 241, High Court
- The Pt-bankrupt twice. The Financial Information Services did not include the information that the 2 adjudication orders were rescinded. Brought an action for libel.
- Held: It was a public fact which everybody is entitled to state. Dismissed the claim.

Customer's rights

- Right to repayment- *Foley v Hill* [1848] 2 HL Cas 28
- Right to draw cheques
- Right to interest

Customer's duties

- Duty to take reasonable care in drawing cheques
- Duty to disclose forgeries once he is aware of it.

Not to mislead the bank

- *Joachimson v Swiss Bank Corporation* [1921] 3 KB 110-
not to mislead the bank or facilitate forgery

Clear and free from ambiguity

- *London Joint Stock Bank v Macmillan and Arthur* (1918)
AC 777: Cheques must be clear and free from ambiguity

Implied duty to inform

- *Greenwood v Martin Bank [1933] AC 51*
- The C has an implied duty to inform the bank if he discovers that cheques purporting to have been signed by him have been forged.

Macmillan duty and Greenwood duty

- *United Asian Bank Bhd v Tai Soon Heng Construction Sdn Bhd* [1993] 1 MLJ 182, Supreme Court-
- Forged cheques and the respondent's account was debited.
- Held: Judgment for the Respondent
- Establish charge of forgery on a balance of probabilities
- C owes two duties:
- (1) Macmillan Duty=to refrain from drawing a cheque in such a manner as may facilitate fraud
- (2) Greenwood Duty=to inform the bank of any forgery of a cheque.
- No further duty
- Obiter: signature on a document has been forged is a question of fact, credibility of witnesses

Estoppel

- *Proven Development Sdn Bhd v Hongkong and Shanghai Banking Corp* [1998] 6 MLJ 150 HC
- Instruction to debit the account by one of the BOD. The Pt disputed this and alleging the B that they were done so without proper authority.
- Held:
 - It is incumbent upon the company to inform the bank of any irregularities in the company's account as soon as the company became aware of it.
 - The company should be estopped from claiming against the bank for the loss arising therefrom.

Termination of B-C R/Ship

- Termination by the Parties
- By operation of law

Termination By the Parties

- By mutual agreement
- By unilateral contract
- Must give reasonable notice
 - Eg demanding repayment of the balance due
 - Eg if the account is overdrawn by repaying the overdraft

Written Notice

- *Ng Cheng Kiat v Overseas Union Bank* [1984] 2 MLJ 140, HC
- Bank did not give written notice to close the customer's current account.
- Held: the Bank had the duty to honour cheques and must give written notice.

Termination by Law

- By notice of death
- Notice of bankruptcy
- Notice of winding up
- Notice of mental incapacity
- The account will be frozen until it is operated by an executor or administrator
- Verification of the Grant of Probate or Letters of Administration