Ethics in Banking & Legal Environment

MUHAMMAD NURUL HOQ
EVP & HEAD OF ZONE
SYLHET

2^{nd} Session (10.45 AM – 12.00 PM)

- Financial Instrument Related Laws
- Business Related Laws

Contents of Financial Instrument Related Laws

- **Negotiable Instrument Act 1881**
- **Money Laundering Prevention Act - & Anti Terrorism Act**

Negotiable Instrument Act 1881

- Negotiable Instrument Act 1881, which is mostly known as the N I Act-1881. The basic purpose was to legalize the system of negotiable instruments. The Act was enforced during British rule and to date. The process of transfers from one person to another in dealings of monetary value in terms of legal documents is the negotiable instrument. The legal definition of negotiable is that something can be transferable from one party to another party by delivery so that the title shall pass with or without the endorsement to the transferee. Furthermore it plays an important role in financial transactions.

Negotiable Instrument Act 1881

- **Originally published: December 9, 1881**
- **Citation: Act No. 26 of 1881**
- **Enacted: 9 December 1881**
- **Commenced: 1 March 1882**
- **Total sections: 141 and Chapters: 17**

http://bdlaws.minlaw.gov.bd/act-details-46.html

Negotiable Instrument

- The bill Negotiable Instruments Act, 1881 defines
    - Promissory note
    - Bill of exchange, and
    - Cheque
    - Demand Draft

As negotiable Instrument.

Promissory note

A "promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay on demand or at a fixed or determinable future time a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Bill of exchange

A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay on demand or at fixed or determinable future time a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

Cheque

A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

Demand Draft

A demand draft is **a method used by an individual to make a transfer payment from one bank account to another**. Demand drafts differ from regular normal checks in that they do not require signatures to be cashed.

Cheque

- **What are the types of cheques?**
  - Bearer Cheque
  - Order Cheque
  - Crossed Cheque
  - Open cheque
  - Post-Dated Cheque
  - Stale Cheque
  - Traveler's Cheque
  - Self Cheque
  - Banker’s Cheque

Cheque

- **Parties of cheques?**
  - Drawer
  - Drawee
  - Payee

The drawer is the person or organization that issues the cheque, the drawee is the financial institution, and the payee is the person or organization that receives the cheque.

Cheque Dishonor

A cheque falls under the dishonored category when a payee cannot successfully deposit the payer's cheque. A payer is the one who issues a cheque to the payee. The payee deposits this cheque in the bank. If the bank refuses to pay the amount mentioned on the cheque, the cheque is dishonored.

Section 138 of the NI Act makes it clear that whenever a cheque is bounced then prima facie an illegal offence is created which entails punishment of criminal nature which may include 1 year imprisonment or fine which may extend to three times the value of the dishonored cheque or both.

Duties and Responsibilities of collecting bank

The collecting banker is the one who undertakes the collection of the drafts, bills, pay orders, transfer cheques, etc on behalf of the customer. The collecting banker gets protection under the Negotiable Instrument Act section 131.

Duties & Responsibilities:

- Acting as agent
- Scrutinizing the instruments
- Checking the endorsement
- Presenting the instrument in due time
- Collecting the proceeds in the payee’s account
- Notice of dishonor and returning the instruments

Duties and Responsibilities of paying bank

Paying bank is the bank on which a cheque is drawn and which pays the amount for which the cheque is written and deducts that sum from the customer's account. The paying banker should use due care and diligence in paying a cheque so as to refrain from any action potential enough to damage his customer's credit.

Duties & Responsibilities:

- Checking the signature of the drawer
- Holder's title on the cheque is valid
- Verification of the genuineness of the instrument
- A/c is not dormant one
- A/c holder is not bankrupt or deceased
- No 'Garnishee Order' is issued by court

Holder in Due Course

Section 9 of NI Act 1881 states that in order to be a holder in due course, a person must satisfy the following conditions:

- He must be the holder of the instrument
- He should have obtained the negotiable instrument for value
- He should have obtained the instrument before maturity
- The instrument should be complete and regular on the face of it
- The holder should take the instrument in good faith

Payment in Due Course

Section 10 of NI Act 1881 states that Payment in due course means payment in accordance with the apparent tenor of the instrument, in good faith and without negligence and under circumstances which do not afford a ground for believing that the person to whom it is made is not entitled to receive the amount.

In Good Faith

In human interactions, good faith *(Latin: bona fides)* is **a sincere intention to be fair, open, and honest**, regardless of the outcome of the interaction.

Money Laundering Prevention Act - & Anti Terrorism Act

Money laundering involves taking criminal proceeds and disguising their illegal sources in order to use the funds to perform legal or illegal activities. Money laundering is the process of making dirty money look clean.

Bangladesh Bank issued a circular to combat Money Laundering in Bangladesh which is BFIU Circular No-26, Dated: 16th June, 2020

Money Laundering Prevention Act - & Anti Terrorism Act

- **Palermo Convention defines Money Laundering as**
  - The conversion or transfer of property, knowing it is derived from a criminal offense, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of the crime to evade the legal consequences of his or her actions.

Money Laundering Prevention Act - & Anti Terrorism Act

- **There are three stages of money laundering:**
  - **Placement:** The physical disposal of cash or other assets derived from criminal activity.
  - **Layering:** This second stage involves converting the proceeds of the crime into another form and creating complex layers of financial transactions to obfuscate the source and ownership of funds.
  - **Integration:** This stage entails using laundered proceeds in seemingly normal transactions to create the perception of legitimacy.

Money Laundering Prevention Act - & Anti Terrorism Act

- **Four major risk of Money Laundering**
  - Reputational Risk
  - Operational Risk
  - Legal Risk
  - Concentration Risk

Credit backed money laundering:

Credit backed method of money laundering involves cleaning of money obtained from criminal activities such as insider trading, extortion, illegal gambling, and drug trafficking to appear to have been derived from legal activities in order for financial institutions to deal with it without any suspicion.

Trade Based Money Laundering

Trade Based Money Laundering:

"The term trade-based money laundering and terrorist. financing (TBML/FT) refers to **the process of disguising the proceeds of crime and moving**. **value through the use of trade transactions in an attempt to legitimize their illegal origins or**. **finance their activities**".

BAMLCO

- **BAMLCO means Branch Anti-Money Laundering Compliance Officer.**

  The BAMLCO must be **competent and knowledgeable regarding the anti money laundering legal framework**. Generally Branch Manager, Deputy Manager or experienced General Banking senior official nominated as BAMLCO.

BAMLCO

- **The responsibilities of a BAMLCO are as follows:**
  - Have a direct reporting line to Head of CCU committee.
  - Manage the transaction monitoring process and report any suspicious activity to Branch Manager, and if necessary to the CAMLCO
  - Are responsible for the implementation of the applicable Policies on AML & KYC.
  - Provide training to Branch staff.
  - Ensure that guidelines and procedures are in line with Anti Money Laundering laws / regulations and the applicable regulations of Bangladesh Bank.

BAMLCO

- Are the primary point of contact with regulators and law enforcement authorities
- Communicate to all staff in case of any changes in national or its own policy.
- Track and follow up on the conditions that have been imposed as part of the KYC approval
- Develop and maintain procedures and systems to ensure that unusual and suspicious transactions are reported to CAMLCO.
- Develop and carry out adequate controls to ensure that all applicable legal and regulatory AML requirements are being adhered to.
- Sign-off in the New Product Approval and Smart sourcing process where appropriate.
- Submit branch returns to CAMLCO timely.

KYC

- **Why is KYC required?**
- The objective of KYC guidelines is **to prevent banks from being used, by criminal elements for money laundering activities**. It also enables banks to understand its customers and their financial dealings to serve them better and manage its risks prudently.

CDD

- In the world of Financial Crime Compliance (FCC), Customer Due Diligence (CDD) is an important and complex field. Customer due diligence is **the processes used by financial institutions to collect and evaluate relevant information about a customer or potential customer**.

CDD

- **What are the types of CDD?**
- There are three levels of customer due diligence:
  - Standard
  - Simplified
  - Enhanced

Contents of Business Related Laws

- Contract Act 1872
- Company Act 1994
- Transfer of Property Act 1882
- Limitation Act 1908
- Stamp Act 1899
- Sale of Goods Act 1930
- Bankruptcy Act 1997
- Partnership Act 1932
- Registration Act 1908
- Securities & Exchange Commission Act 1993
- Merchant Banking & Port Folio Managers Rules 2001
- Customs Act-1969
- Shariah Rules regarding different types of Contract: Shariah Rules for Al-Mudarabah and Al-Musharaqua Companies.

Contract Act - 1872

The **Contract Act, 1872** is the chief contract law in Bangladesh. Based on English contract law and the British Indian contract law, it was enacted in the 19th century and re-enacted by the Parliament of Bangladesh after the country's independence.

Enacted: 25 April 1872
Commenced: 1 September 1872
Sections are 238, divided into 11 Chapters

Essential Elements of Contract

Bank Guarantee

Bank Guarantee is an undertaking given by a Bank to perform the promise or discharge the liability of its customer in case of his default. The guarantee must be for a certain fixed amount and the period of its validity must be limited and fixed.

Indemnity

Indemnity is a comprehensive form of insurance compensation for damages or loss. When the term indemnity is used in the legal sense, it may also refer to an exemption from liability for damages. Indemnity is a contractual agreement between two parties.

Companies Act 1994

The Companies Act, 1994 defines the word company as "a company formed and registered under this Act or an existing company". Therefore, a company is formed under the Companies Act, 1994 by a group of people who come together for achieving a common objective.

Enacted: 1 December 1994
Commenced: 10 November 1994
Sections are 404, divided into 11 Chapters

Transfer of Property Act 1882

The Act, 'transfer of property' means an act by which a person conveys the property to one or more persons, or himself and one or more other persons. The act of transfer may be done in the present or for the future. The person may include an individual, company or association or body of individuals, and any kind of property may be transferred, including the transfer of immovable property.

Enacted: 17 February 1882
Commenced: 1 July 1882
Section are 137, Divided into 8 Chapters

Transfer of Property Act 1882

- **Kinds of transfer under the Transfer of Property Act, 1882:**
  - **Sale of immovable property**
  - **Mortgage of immovable property**
  - **Leases of immovable property**
  - **Exchange of immovable property**
  - **Gift of immovable property**

Stamp Act 1899

The Stamp Act, 1899 was enacted by British Indian government for charging of stamp duty on instruments for recording of transaction and consolidate and amend the laws relating to stamps. IBBL has also separate circular on Stamp usages.

Enacted: 1 July 1899
Section are 78, Divided into 8 Chapters

Sale of Goods Act 1930

Sale and agreement to sell

- A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.
- A contract of sale may be absolute or conditional.

Bankruptcy Act 1997

In Bangladesh, bankruptcy is governed by the Bankruptcy Act, 1997. An individual can be declared 'bankrupt' through an order of adjudication by the bankruptcy court if he commits an act of bankruptcy as described in section 9 of the said Act.

Enacted: 15 September 1997
Section are 119, Divided into 11 Chapters

Partnership Act 1932

Partners are bound to carry on the business of the firm to greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner, his heir or legal representative.

Enacted: 8 April 1932
Commenced: 1 October 1932
Section are 74, Divided into 8 Chapters

Registration Act 1908

Registration Act 1908 (Act XVI of 1908) stipulates registration of title deeds. Its purpose is to ensure, through registration of documents, genuineness of title documents and to avoid fake documents.

Enacted: 1 January 1909
Section are 93, divided into 15 Chapters

Securities & Exchange Commission Act 1993

AN ACT To provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof, and for other purposes.

Enacted: 8 June 1993
Section are 27

Shariah Rules regarding different types of Contract

- **Al- Mudarabah :**

Mudarabah is an Investment partnership, whereby the investor (Rab-ul-Mal) provides capital to another party/entrepreneur (Mudarib) in order to undertake a business/investment activity. While profits are shared on a pre-agreed ratio, loss of investment is born by the investor only. The mudarib loses its share of the expected income.

Shariah Rules regarding different types of Contract

- **Musharakah:**

  Under Islamic law, Musharaka refers to a joint partnership where two or more persons combine either their capital or labor, forming a business in which all partners share the profit according to a specific ratio, while the loss is shared according to the ratio of the contribution.

Hire Purchase under Shirkatul Meelk

Hire Purchase under Shirkatul Melk is a Special type of contract which has been developed through practice.

Actually, it is a synthesis of three contracts:

- Shirkat
- Ijarah
- Sale

Hire Purchase under Shirkatul Meelk

- **Shirkatul Melk:**

  Shirkat means partnership. Shirkatul Melk means share in ownership. When two or more persons supply equity, purchase an asset, own the same jointly, and share the benefit as per agreement and bear the loss in proportion to their respective equity, the contract is called Shirkatul Melk contract.

Hire Purchase under Shirkatul Meelk

- **Ijarah:**

  Ijarah has been defined as a contract between two parties, the Hire and Hirer where the Hirer enjoys or reaps a specific service or benefit against a specified consideration or rent from the asset owned by the Hire. It is a hire agreement under which a certain asset is hired out by the Hire to a Hirer against fixed rent or rentals for a specified period.

Hire Purchase under Shirkatul Meelk

- **Sale:**

  This is a sale contract between a buyer and a seller under which the ownership of certain goods or asset is transferred by seller to the buyer against agreed upon price paid/to be paid by the buyer. Thus, in Hire Purchase under Shirkatul Melk mode both the Bank and the Client supply equity in equal or unequal proportion for purchase of an asset.

Self Study

- *"HPSM is a synthesis of three contracts"- explain it.*
- *What are essential elements of contract? Who are competent to contract?*
- *"All contracts are agreements but all agreements are not contract"-explain in the light of Contract Act-1872.*
- *Distinguish between 'Public Limited Company' and 'Private Limited Company'?*
- *What do you mean by Contract? Who are competent to make a contract? Can a minor enter into a contract?*
- *What are the basic principles of HPSM investment?*
- *Discuss the Shariah principles of "Mudaraba" and "Musaraka".*
- *'Contract is an agreement enforceable by law'- explain with elements of contract.*

Study Materials

Join the Whatsapp Group for slide and study materials by typing the link given below

t.ly/PphO