

" DUTIES OF A BANKER TOWARDS HIS CUSTOMERS "

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CHAPTER I

Bank, Banker and Banking.

In England, the definition of a "bank" or "banker" has caused considerable confusion as Parliament has never defined those terms. In Malaysia, although the terms are defined in the Banking Act, 1973¹ confusion however arises over what the authorities concerned it to mean since in Malaysia, whether a body is a bank or not, depends on whether or not it has been granted a banking licence from the Minister.

Sheldon stated that it may either be unprofitable or undesirable to try to answer the question "What is a bank?" apart from the particular context in which it is asked. This is because different criteria may be found to apply in different cases and indeed in some contexts, a person may be a bank simply because some authority says he is².

In Malaysia, the words 'banker' and 'bank' are used quite loosely. Quite often employees of banks are described as 'bankers'.

Hart has described a bank and a banker as "a person or company carrying on the business of receiving moneys, and collecting drafts for customers subject to the obligation of honouring cheques drawn upon them from time to time by the customer to the extent of the amounts available on their current accounts."³

In Halsbury's Laws of England, the term receives a similar but much wider meaning. A banker is defined as "an individual, partnership or corporation, whose sole or predominant business

is banking, that is, the receipt of money on current or deposit account and the payment of cheques drawn by and the collection of cheques paid in by a customer." Here the Court must ascertain, without prejudice to other businesses of the company, person or corporation, which is its predominating or primary business. If it is banking business, then the company or person must be a bank. In other words, if the banking business is subsidiary to another major business or other businesses carried on by the same concern, that concern is not a banker.

The leading case supporting this view is Re Sheilds Estate⁴. Here, one Laberto, carried on several classes of business, stock-broking, agency and money broking, including some banking business. The Court held that banking was not his chief business but was only ancillary to it and, therefore, he was not a banker.

Yet another definition of a bank is given by Paget. In his view, "no one and nobody, corporate or otherwise can be a banker who does not conduct current accounts, pay cheques drawn on himself and collect cheques for his customers."⁵

In United Dominions Trust v. Kirkwood⁶ where the question was whether a certain finance house was carrying on banking business or not, the handling of cheques as a requisite function of a bank was stressed by Lord Denning, who said:

"Money is now paid and received by cheques to such an extent that no person can be considered a banker unless he handles cheques as freely as cash".

Thus the traditional view that no one may be considered a banker unless he pays cheques drawn on himself was re-affirmed.

In Malaysia, the term 'Bank' is defined in the Banking Act of 1973 as "any person who carries on banking business."⁸

Further it is provided in S.3(1) of the same Act that:

"Banking business shall not be transacted in the Federation except by a corporation which is in the possession of a licence in writing from the Minister authorizing it to do so."

Thus a bank in this country must be a corporation carrying on banking business and holding a licence from the Minister. Unlike the practice in Malaysia, in England, there are private bankers. They are private persons who keep banks and engage in the business of banking by receiving money on deposit with or without interest, by buying and selling bills of exchange, promissory notes, bonds or stock, or other securities, and by lending money without being incorporated.

The next question to be asked is "What is 'banking business'?"

In this regard the banking Act 1973 provides that banking business means:

"The business of receiving money on current or deposit account, paying and collecting cheques drawn by or paid in by customers and making advances to customers and includes such other business as the Central Bank with the approval of the Minister may prescribe for the purpose of this Act."⁹

The section thus tells the function which a person has to perform in order that he may be said to be trading as a banker.