

Tutorial Notes

Class: B.Com (Prog.) Semester VI (DSE3)

Subject: Banking & Insurance.

Topic: Paying Banker and statutory protection for paying Bankers.

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### **Meaning of Paying Banker**

The banker who is liable to pay the value of a cheque of a customer as per the contract, when the amount is due from him to the customer is called “Paying Banker” or “Drawee Bank.”

The payment to be made by him has arisen due to the contractual obligation. He is also called drawee bank as the cheque is drawn on him.

The payment has to be made by the banker as per the legal obligation also. Section 31 of Negotiable Instrument Act 1881, says that “the drawee of a cheque, having sufficient funds of the drawer in his hands properly applicable to the payment of such a cheque, must pay the cheque, when duly required to do so, and in default of such payment, must compensate the drawer for any loss or damage caused by such default.” According to this provision, the drawee of a cheque, *i.e.*, paying banker has a legal obligations to honour the demand of the drawer or customer. If he fails to pay the money held, he is liable for damages. Thus paying banker has certain obligations to discharge.

### **Statutory Protection for Paying Banker**

The paying banker should take the following protection, in order to protect himself and customer’s interest, while making the payment of his customer’s cheques:

#### **(i) Protection regarding the order cheque**

In case of an order cheque, Section 85(1) of the NI Act provides statutory protection to the paying banker as follows, where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

### **(ii) Protection in case of bearer cheques**

Section 85 (2) of the Negotiable Instruments Act, 1881 states, “Whereas a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, notwithstanding that any such endorsement purports to restrict or exclude further negotiation.”

### **(iii) Protection in case of crossed cheques**

Regarding payment of crossed cheque, the paying banker gets the protection under Section 128 of the Negotiable Instruments Act, 1881: “Whereas the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque and the drawer thereof (in case such cheque has come to the hands of the payee) shall be entitled respectively to the same rights and placed in the same position if the amount of the cheque had been paid to and received by the true owner thereof.”

### **(iv) Protection in case of draft**

Section 85A of the NI Act states that, Drafts drawn by one branch of a bank on another payable to order where any draft, that is an order to pay money, drawn by one office of a bank upon another office of the same bank for a sum of money payable to order on demand, purports to be endorsed by or on behalf of the payee, the bank is discharged by payment in due course.