



UNIVERSITI SAINS ISLAM MALAYSIA

جَامِعَةُ الْعُلُومِ الْإِسْلَامِيَّةِ الْمَالِيزِيَّةِ

ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

Law of Banking and Security

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11th October 2011

Week V

Content

- Account Opening
- Stopping an account
- Accounts of Customers
- Types of Customers

Open an Account

- Opening an account- banker takes a 'mandate'
- Mandate: instructions from the customer:
customer's signature, address and occupation.
- Customer's identity
 - IC/Passport
 - Company registration records
- Current Account
 - Introducer
 - Search at CCM

Customer

- The Code of Good Banking Practice – 1 July 1995- PARA 2, Part A-2.1 & 2.1 provides the requirements of opening an account
- In 1989, Guidelines on Money-Laundering, Know Your Customer Policy which incorporates BASEL statement.
- Section 16 of Anti- Money Laundering 2001
- Section 18 of AMLA 2001- opening an account in false name.

Preliminary Inquiries and Introducers

- Identity, Integrity and Reliability
- A proper person, legal capacity and authority

Need for Introducers

- *Ladbroke & Co v Todd* (1914) 111 LT 43
- A thief opened an account with a stolen cheque. No introducer.
- Held: Banker's failure to get satisfactory intro/reference- a breach of duty to the true owner of the cheque, so the bank had not acted "without negligence"

Need for Preliminary Inquiries

- *The Rubber Industry (Replanting Board v Hong Kong and Shanghai Banking Corp* [1957] 1 MLJ 103
- Cheque ‘account payee only’. The cheque got into the hands of third party and he opened an account with the B. No search and no preliminary inquiries have been made.
- Held: Liable for damages. Not entitled to the protection (Section 82 of the Bills of Exchange Ord. 1949)

Stopping An Account

- When mandate is revoked
- Death or mental incapacity
- Bankruptcy
- Resolution for voluntary liquidation or winding up-order
- A garnishee order or other court order
- An assignment of the credit balance in the account by the customer to a third party.

Types of Accounts

- Savings and Current
- Fixed Deposit
- Trust Account
- Unincorporated Clubs and Societies
- Loan and Overdraft
- Joint Bank Accounts

Saving and Current

- Most common
- CA: the use of cheques to withdraw fund
- Funds deposited are payable when demanded by the C. *Foley v Hill* [1848] 2 HL. Ca. 28.

Fixed Deposit

- Certain period of time
- To produce deposit receipt before the money deposited may be withdrawn
- Can only pay to a third party on a customer's instruction.
- The rship btn B and C only come to an end up to time the deposited money are repaid to the C.
- FD can be used as a security

Safe Deposit Boxes

- For safekeeping of jewellery and other personal valuables.
- Relationship:-
 - 1. Bailment
 - 2. Licensor and licensee *Malayan Banking Bhd v Hong Sek Mee & Anor* [1998] 4 AMR 3265
 - To maintain security system *Susan Cheah Pik Yee & Ors v Mayban Finance Berhad* [2003]3 MLJ 376

Trust Account

- Person who hold funds in trust for others.
- Trustee- Deposit trust funds
- Administrator- Estate account
- Duty to the B: Not in breach of trust

Partnership

- Must be in the firm's name
- When a partner retires from a firm, he is under a duty to notify the B. *Tan Boo Cheo v Ho Hong Bank Ltd* [1934] MLJ 180

Unincorporated Club and Societies

- Members liability: Member is personally not liable for the debts incurred by the club unless he has agreed. Overdraft facilities granted by B cannot be recovered from its members.
- Contracts by committee members: the contract is solely b/n the CM and the third party. No liability to members.

Loan and Overdraft

- Loan or overdraft facilities
- If the B makes an offer of loan and the offer is accepted by a C, it is legally binding.
- *Kluang Wood Products Sdn Bhd v Hong Leong Finance Bhd* [1999] 1 MLJ 193
 - The B was liable for breach of contract.
- *United Overseas Bank Ltd v Mohamed Arif* [1994] 2 SLR 296
 - If the bank fails to disburse the loan once the C accepts the offer, the C is entitled to sue for breach of contract.

Joint Account

- Account of more than one person
- Conducted by 2 or more persons
- The B needs to know the 'mandate'. Should obtain a written mandate signed by all parties to the account.
- To specify which and how many of the parties have authority to sign the cheques.
- The mandate is revoked:- 1. C's instruction 2. death 3. bankruptcy 4. mental incapacity

Types of Customers

- Natural Person
- Companies
- Partnership
- Sole proprietorships
- Societies, Clubs
- Minors
- Executors, Administrators and trustees
- Agents

Natural person

- Age of Majority Ac 1971- 18 years and above.
- The requirements: sound mind, not disqualified from contracting (S 11 of the Contracts Act 1950), sample of signature, personal detail, for current account-need an introducer

Mental Disorder

- *Prem Singh & Ors v Kirpal Singh* [1989] 2 MLJ 89
 - Chao Hick Tin JC:
 - Section 3(1) of the Mental Disorders and Treatment Act 1985- gives discretion to the court to determine whether a person is mentally disordered, an inquiry should be ordered.
 - It does not mean that an inquiry must be ordered in every case.
- *Chow Yee Wah v Choo Ah Pat* [1978] 2 mlj 41 PC
 - Drawn a cheque and paid into a joint account for the benefit of his wife. His thumbprints affixed to the said cheques.
 - FC: Deceased was not mentally capable.
 - PC: Allowed the appeal.

Companies

- Refer to Companies Act 1965.
- If shareholders passed away, the company's account is not effected.
 - *MBF Finance Sdn Bhd v Ting Kah Kwang & Anor* [1993] 3 MLJ 73
 - Change of company's name does not affect the identity of the company, rights and obligations
 - *Abdul Aziz bin Atan & 87 Ors v Ladang Rengo Malay Estate Sdn Bhd* [1985] 2 MLJ 165- shareholders of a company transferred their entire shareholdings to a certain buyer, the court held- the company's identity and personality are not effected

Companies

- A corporation is an artificial legal person
- A company is a separate entity- not related to the directors or shareholders.
- Legal entity- has the right to sue and the right to be sued in its own name, deal with property and enjoy 'perpetual succession'

Veil of incorporation

- The members are below two members
- Fraudulent trading
- Publication of name
- Taxation and nationality rules
- Holding and subsidiaries companies
- Abuse of legal rights
- Fraud

Types of Company

- Refer Section 14(1) of the Companies Act 1965
- 14(2) Classification of Companies
 - Limited by shares
 - Limited by guarantee
 - Shares and guarantee
 - Unlimited company

Partnership

- Legal firms, accounting firms and medical practices
- Section 3(1) of the Partnership Act 1961
 - A relationship which subsists between persons carrying on business in common with a view of profit.
- Section 4(a) of the Registration of Business Act 1956 A company may be a partner
- Search at the ROB, existence of the firm, identity of the partners, other particulars, firms' rubber stamp, signatories of the partners.

Partnership

- A minor also can be a partner with an adult provided that the minor is not answerable for the debts of firm until he/she reaches the age of 18.
- Legal entity, accounts, liabilities and termination of partnership.
- *The Chartered Bank v Yong Chan* [1974] 1 MLJ 157
 - Partnership account- a partner can sue for breach of contract
- *Malayan Banking Bhd v Lim Chee Leng & Anor* [1985] 1 MLJ 214
 - A partner remains liable for debts incurred before his resignation

SOLE PROPRIETORSHIP

- Does not have a separate legal entity.
- Sole proprietorships are registered with ROB (Registry of Business)
- Account payee- firm's account
- Death, bankruptcy, and mental incapacity of the sole proprietorship
- *Wong Yoon Yar v Lin Yin Thai & Ors* [1987] 2 MLJ 714
 - No legal entity nor personality of its own

Societies, Club and Unincorporated Bodies

- Formed by persons grouping themselves together.
- No legal status-cannot be sued or sued others
- To recover debt, legal proceedings have to be commenced against the committee.
- Registered under Societies Act 1996
- Banker should obtain: certificate, constitution of association, member's resolution, committee's resolution and account mandate

Minors

- Full age- 18 years (section 2 of Age of Majority Act 1971)
- A minor is not bound by certain agreements-
- No legal capacity in contract
- *Halijah v Morad & Ors [1972] 2 MLJ 166*
 - *High Court*, decides that the agreement was absolutely void as the respondents were infants.

Executors, Administrators & Trustees

- A person may die testate/ intestate
- Executor/administrator will be appointed to manage the property of deceased, often it is the personal representatives of deceased estates.
- Dies intestate, the court of Public Trustee
- Trustee- a legal arrangement to administer for the benefits of beneficiary. Strictly follow the terms of trust in the Trust Deed.
- Executors: Grant of probate. Administrator: Letter of Administration Trustees: Trust Deed

Power to charge the Trust Property under the Trust Deed

- *Mohamad Salleh v Lau Siok Kee* [1974] 1 MLJ 102
 - The trustees charged land to the respondent. Failed to pay the loan, the respondent applied for an order to sell the land. Appellant applied for declaration that the trustees had no power to charge the land.
 - Held: there was power granted under the trust deed.

Lawyers

- Client Account
- Lawyers account or office account
- *Dato' Seri Au Ba Chi v Malayan United Finance Bhd & Anor, Dato Au Development Sdn Bhd v Malayan United Finance Bhd & Anor* [1989] 3 MLJ 434
 - Duty of the a stakeholder is to hold the stake in medio pending the outcome of a future event. He holds it as trustee for both parties to await that event until that event is known.

Agents and Powers of Attorney

- Law of Agency- agent and principal relationship
- Part x of Contracts Act 1950 (SS 135- 191)
- Power of Attorney Act 1949- only for Peninsular Malaysia, registered with the HC.

PA created against the Provisions of PA 1949.

- *Wan Salimah bte Wan Jaafar v Mahmood bin Omar (Anim bte Abdul Aziz, Intervener)* [1985] 5 MLJ 162
 - Lease agreement b/n the P and Dt. The Dt agreed to lease his share in certain lands to the lands. The Dt sold the lands to the Intervener. The Intervener was represented by Harun who claimed to be the holder of a PA granted by the Intervener.
 - PA is null and void.