

ISQ Examination (Winter-2012)
Corporate and Banking Law - Associateship

- Q. Study the following cases and furnish your answers with brief explanations specifying particularly the legal issues involved therein.

Case- 1

Bank 'X' has extended packing finance facility to M/s 'Y' an exporter of garments to the tune of Rs.5.000 (m) which is secured by pledge of stocks and 5,000 shares of PSO of Rs.100 each with current market value of Rs. 1.000 (m). The stocks are pledged with a margin requirement of 50% and shares at 40% of the current market value.

The PSO has announced right shares to the existing shareholders in the ratio of 1 : 1 which must be subscribed latest by 31st July, 2011. On learning PSO's announcement the bank approached the borrower but he has shown his inability to subscribe for the right shares due to declining sales in the international market which has affected his liquidity severally. Suggest at least two possible ways with appropriate reasoning to protect the bank's interest assuming that non-subscription to the right shares will reduce the market value of the existing shares by 20% and will render part of the existing finance as clean for which the borrower may not be in a position to provide the desired security as per terms.

Case-2

The Bank Fair Deal Ltd. has advertised in the newspapers about availability of gold loan facility at their branches. Mr. 'X' approached one of the branch of the Bank Fair Deal Ltd. for a loan of Rs. 100,000 against gold ornaments of appropriate value. On scrutiny of the prospective borrower's request, the bank declined to accommodate him. Mr. 'X' has now filed a suit against the Bank Fair Deal Ltd., for not complying to their offer despite his acceptance and has claimed damages. Discuss whether Mr. 'X' would succeed in his claim.

- Q. a. Define a contract of guarantee and specify how it differs with the contract of indemnity?
- b. The Bank 'X' extended a loan to the tune of Rs. 2.5 million to Mr. Salman Khan against the guarantee of his elderly father, who banked with them supported by equitable mortgage of two houses one in the name of the borrower and the other in the name of the guarantor. The house in the name of the borrower is worth around Rs. one million. On borrower's default, the guarantor was called upon to pay the outstanding balance, but he too failed in discharge of the liabilities. To

recover the outstanding, bank on completion of the required formalities. The bank proceeded to arrange for sale of the mortgaged house of the guarantor. The guarantor claimed no liability because of "undue influence".

Required: Describe the concept of the "undue influence" in relation to the validity of a contract and whether the bank would succeed in recovery of the outstanding through sale of house owned by the guarantor in the instance case.

Q. The partners of M/s Diamond Brothers resolved to dissolve the firm due to continuous losses. At the time of dissolution the firm has an overdrawn account of Rs. 2 million with Bank 'Z' together with accrued interest of Rs.50,000. Other liabilities of the firm are as under:

Accounts Payable	Rs. 400,000
Notes Payable	Rs. 500,000
Taxes Payable	Rs. 30,000

There are four partners in the firm. Each partner has contributed a sum of Rs. 200,000. One of the partner in addition to his capital has contributed a loan of Rs.400,000 to the firm which attracts interest at 10% p.a. Interest for six months has been in arrears.

In terms of partners collective decision the assets of the firm were disposed of and a sum of Rs.4 million has been realized.

Required:

- List the order in which the proceeds of the firm's assets will be applied on dissolution of the partnership firm. Listing must be made in order of priority. Also specify the treatment of the asset if held as security with a lending agency.
 - Prepare a statement showing the application of proceeds amongst creditors and partners of the firm. Provide complete details with proper explanation where ever necessary.
 - Compute the loss of capital of each partner on dissolution.
- Q. A corporate customer is maintaining current account with bank 'Y' since January 2010. Cheques were authorized to be signed by the CFO and by any one of the two other nominated signatories.

The account opening form bears an express condition upon the operations of account and relating to statement of account bears the clause which read as under:

"The bank shall issue periodic statements of account to the account holder. Any discrepancy in the statement of account should be promptly brought to the notice of the bank in writing within fourteen days of dispatch of the statement of account, failing which the balance shown in the statement of account shall be deemed to be correct for all purposes whatsoever."

During 2011, the company's clerk forged the signatures of the CFO and two other signatories on about 20 cheques totaling Rs. 1.5 million. Since he was responsible for reconciliation of accounts as well, he succeeded in manipulating the accounts and the fraud could only be detected in January, 2012 when the books were audited by the external auditors. The company is now claiming re-credit of the amount relating to forged cheques. Statement of accounts were regularly received by the customer as per arrangement.

Discuss whether the company's claim is maintainable. The answer must cover the position of the bank regarding payment of forged cheques and legal position with reference to statement of account agreed to by the customer in the account opening form.

- Q. Banks/DFIs have been allowed to avail the benefit of FSV of the collaterals against NPL. Describe the criteria outlined under the Prudential Regulations for adjustment of value of different types of securities along with time frame together with conditions attached there with, if any.
- Q. Bank 'X' intends to clean his advances portfolio with non-performing loans where the chances of recovery are dim. Describe the guideline of State Bank of Pakistan which must be observed by the respective bank to implement the write off process.
- Q. a. Are the Directors of an incorporated company personally liable for the liabilities owing by the Company?

First answer "YES" or "NO" and then give reasons for your answer.

- b. The proprietor of a Sole-Proprietary concern requests you for a working capital finance against mortgage of property owned by his minor son. Will you entertain the request?

First answer "YES" or "NO" and then give reasons for your answer.

- Q. a. A bearer cheque for Rs. 100,000/= drawn by one of your account holders is presented for encashment at your counter on 1st September, 2012. There is sufficient balance in the account and the cheque is in order EXCEPT that it is dated 25th of January, 2012. Will you pass the cheque?

First answer "YES" or "NO" and then give reasons for your answer.

- b. A customer wants finance and offers as security the property of his wife. The wife is pardah nasheen and cannot sign. The property documents show her thumb impression instead of her signature. Will you entertain the request?

First answer "YES" or "NO" and then give reasons for your answer.

- c. A Police Officer comes to you and says that he is investigating frauds committed by an account holder of your branch. He requests you to give him copies of all cheques drawn by the account holder on his account during the last six months along with a statement of his account. He also shows you an order of court permitting him to obtain the required documents from the bank. Will you comply with his request?

First answer "YES" or "NO" and then give reasons for your answer.

- Q. You have granted a Running Finance limit of ten million to a customer against which he has drawn eight million only. The sanction advice provides for payment of mark-up every quarter. Mark-up of Rs. 300,000 became due on 1st of October, 2012 but has remained unpaid. You telephone the Customer reminding him about this over due and he asks you to debit his RF account against the available balance limit. How you will deal with the Customer's request? Explain.
