REGULATORY FRAMEWORK FOR BUSINESS TRANSACTIONS (RFBT)

CPALE Concept Notes

BANKING LAWS

Source: REO Live (Atty. Kris), ReSA Lecture (Atty. Nicko), and CPAR Lecture (Atty. Kid)

Topics Covered:

2. *Bouncing Checks*
   - 2.1. *Requisites to be liable under BP 22*
   - 2.2. *Comparison with Estafa*
8. *Law on Other Business Transactions*
   - 8.1. *PDIC Law*
   - 8.2. *Secrecy of Bank Deposits*
   - 8.3. *Truth in Lending Act*

BP 22 – Bouncing Checks

Prosecution Process:

Criminal Offense	Proof beyond reasonable doubt
Civil Damages	Preponderance of evidence

First Level Courts
(Municipal Trial Courts)

Brought up to?

Prosecutor's Office
(Needs **probable cause** – prima facie evidence)

Where?

File a **Complaint**

- ***Nature***: Special Penal Law *(Commercial and Criminal Law)*
- Acquittal *(of criminal liability)* does not mean that civil liability for the checks is also extinguished.
- ***Prescription Period***:

  4 years from the lapse of the 5-day period of payment (based on recent SC decision)

Punishable Acts under BP 22:

a. **ISSUANCE OF WORTHLESS CHECK**

Requisites:

1. ***Unfunded at issuance***
2. ***Making, Drawing, and Issuance of Check***
   - Must be the ***drawer (signee) and issuer*** of the check
   - *Current Dated Checks*
     - Deemed to be **Issued upon Delivery**
   - *Post Dated Checks*
     - Deemed to be **Issued upon Maturity**
3. ***Issuer's Knowledge of Check Being Unfunded at Issuance***

Encashment of Check	Issuer's Knowledge of Being Unfunded
Within 90 days from issuance	Presumed
Beyond 90 days from issuance	Not Presumed *(May still be liable, but the prosecutor must now provide direct knowledge of issuer)*

4. ***Dishonor by Reason of Lack of Funds***
   (including those that should have been dishonored for same reason if there was no stop payment order)
   - ***Covered Reasons***: Insufficient Fund, NSF, Closed Account
   - ***Excludes***: Stale Check
5. ***Notice of Dishonor to Issuer***
   - Must be ***written notice***, ***received by the issuer***
   - Only if after *5 banking days upon receipt* that there was still no payment as valid defense, can there be a case violating BP 22

b. **FAILURE TO MAINTAIN SUFFICIENT FUND**

Requisites:

1. ***Funded at issuance***
2. ***Encashed within 90 days from issuance***
3. ***Making, Drawing, and Issuance of Check***
4. ***Dishonor by Reason of Lack of Funds***
5. ***Notice of Dishonor to Issuer***

Penalties for Violating BP 22

- Imprisonment – 30 days to 1 year
- Fine – ***Double*** the amount of check, *not to exceed 200,000*

Differences Between BP 22 and Estafa

	BP 22	Estafa
Nature	Malum Prohibitum *(regardless of intention)*	Mala in se *(inherently evil)*
Good Faith as a Defense	✕	✓
Damage to Payee as a Required Element	✕	✓
Scope of Payment	For Value and For Account	For Value only
Requirement of Being the Maker/Drawer *(Must also be the maker/drawer)*	✓ *(Must be Both)*	✕ *(Either only)*
Payment Period upon Receipt of Notice of Dishonor to Avoid Violation	5 banking days	3 calendar days

- ***For Value***
  - Check was issued *simultaneous* to the receipt of the consideration involved
- ***For Account***
  - Check was issued to *settle a pre-existing obligation*

PDIC Law (RA 3591, as amended by RA 11840)

Functions of the PDIC

- Insure deposits in a bank
- Act as co-regulator of banks
- Receiver and liquidator of closed banks

Risk Covered: Bank Closure *ordered by the Monetary Board* only

General Rules under PDIC Law

- Requires mandatory membership of the banks
- Premiums are to be paid by the *banks*
- Insurance covers bank deposits, but ***excludes trust accounts and government securities***
- Maximum Coverage:
  - Before March 15, 2025 = 500,000
  - As of March 15, 2025 = 1,000,000

Deposits Not Entitled to Payment from PDIC *"SHAOU2I"*

- Those resulting from **S**plitting of Deposits
  - Outstanding balance exceeds maximum coverage, and transferred to other accounts with no beneficial ownership
  - Must have ***occurred within 120 days*** from the bank holiday or closure, for the purpose of availing maximum coverage
  - Effect:
    - Deposits will be *treated as owned by one depositor*
    - ***Criminal act*** punishable of a fine of 50,000 to 10 million, and/or imprisonment of 6 to 12 years
- Those by the **H**ead Office of a Foreign Bank to its Philippine Branch
- Those that are Proceeds from an Unlawful Act under **A**MLA
- Those Payable **O**utside the Philippines *(Foreign Branches)*
- Those that are **U**nfunded and Fictitious or Fraudulent
- Those emanating from **U**nsafe and Unsound Banking Practices
- **I**nvestment Products *(bonds, securities, trust accounts)*

Determination of Insured Deposit Amount

- Per Bank
- Per Depositor
- Per Capacity
  - Separate for individual (single) accounts and separate for joint (combined) accounts

Terminology Clarification:

- *"In Trust For" and "For the Account of"* – owned by the Latter
- *"By"* – owned by the Former

Step 1:

Separate the individual and joint accounts

Step 2:

Compute the total individual account deposits and compare with the maximum insured coverage. Choose whichever is LOWER.

Step 3:

For each joint account, compute both the depositor's share in the actual deposits and the depositor's share in the maximum insured coverage. Choose whichever is LOWER.

***Share in Actual Deposits** = Total Deposits ÷ No. of Depositors*
***Share in Max. Coverage** = Max. Coverage ÷ No. of Depositors*

Step 4:

Compute the total of all the lower amounts for all the joint accounts computed with Step 3, and compare with the maximum insured coverage (500k or 1M). Choose whichever is LOWER.

Step 5:

Combine the amounts from Step 2 (for the individual accounts) and Step 4 (for the joint accounts).

For Joint Account Sharing:

- If all are natural person, or all are juridical persons, ***sharing is equal***.
- If one of the party or depositors is a juridical person and another is a natural person, all the deposits are ***only the juridical person's share*** *(Natural persons get **zero share**)*

Example:

Keef, an individual, owns the following deposit accounts in a bank that has recently closed. Compute for his total insured deposit.

Keef's Business Account (Sole Proprietorship)	700,000
Keef's Personal Savings Account	800,000
Keef or Gif Account	600,000
Keef, Beef, and Reef Account	1,200,000
Keef and Leafy, Inc. Account	1,000,000

Step 1:

Individual accounts

Business Account (Sole Proprietorship)	700,000
Personal Savings Account	800,000

Joint Accounts

Keef or Gif Account	600,000
Keef, Beef, and Reef Account	1,200,000
Keef and Leafy, Inc. Account	1,000,000

Step 2:

Individual accounts

Business Account (Sole Proprietorship)	700,000
Personal Savings Account	800,000
Total	1,500,000
vs. Maximum Coverage (Limit)	1,000,000
Lower Amount	**1,000,000**

Step 3:

Keef or Gif Account

Share in Deposit *(600k ÷ 2)*	300,000
Share in Maximum Coverage *(1M ÷ 2)*	500,000
Lower Amount	**300,000**

Keef, Beef, and Reef Account

Share in Deposit *(1.2M ÷ 3)*	400,000
Share in Maximum Coverage *(1M ÷ 3)*	333,333
Lower Amount	**333,333**

Keef and Leafy, Inc. Account

Share in Deposit *(All Leafy's)*	0
Share in Maximum Coverage *(1M ÷ 2)*	500,000
Lower Amount	**0**

Step 4:

Joint accounts

Lower Amount – Keef or Gif	300,000
Lower Amount – Keef, Beef, Reef	333,333
Lower Amount – Keef and Leafy, Inc.	0
Total Lower Amount from Step 3	633,333
vs. Maximum Coverage (Limit)	1,000,000
Lower Amount	**633,333**

Step 5:

Individual Accounts Lower Amount	1,000,000
Joint Accounts Lower Amount	633,333
Total Insured Deposits	**1,633,333**

Modes of Payment by the PDIC to Depositor

- Cash
- Transferred deposit to another insured bank

Effect of Payment to Depositor

- PDIC is subrogated of all the depositor's rights against the closed bank, as a **preferred credit** *(similar with taxes)*

Claiming of Insurance

Filing of Claim	2 years from the actual takeover of closed bank
Enforcement of Claim	2 years after the 2-year period to file claim
Settlement of Claim *(by the PDIC)*	6 months from the date of filing the claim

- Failure to settle the claim within 6 months *without reason of resolution of facts with other agencies* penalizes the responsible officer or employee of PDIC of ***6 months to 1 year imprisonment***

Effects of Non-Filing or Non-Enforcement of Claim within the Periods

- Depositor shall have *no more (barred) rights against the PDIC*
- Subrogated rights of the PDIC against the closed bank reverts back to the depositor
- PDIC is ***discharged of any liability*** on the insured deposit

Bank Secrecy Law (RA 1405 and RA 6426)

Coverage:

- All deposits in a bank of **any nature** *(includes trust accounts)*
- Investment in government-issued bonds

Prohibition Imposed:

(Grounded on the rule of Strict Confidentiality)

- For any person to inquire, examine, or look into deposits
- For banks to disclose any information concerning deposits to any unauthorized person

XPNs to Prohibition Imposed

- ***Applying to Both Peso (RA 1405) and Foreign Currency (RA 6426) Deposits "WATE"***
  - Written permission or waiver of depositor or investor
  - Anti-Money Laundering Council (AMLC) on probable cause of money laundering *upon an order of a competent court*

    Instances where a Court Order is Not Required:
    - Kidnapping for ransom
    - Hijacking, destructive arson, and murder
    - Terrorism and conspiracy to commit terrorism
    - Violation of the Comprehensive Dangerous Drugs Act

- Terrorism cases under the Human Security Act

  Requisites:
  - The examination must be made by law enforcement officers
  - Upon the order of the Court of Appeals

- Examinations made by the following:
  - ***BSP***
    For reasonable ground of bank fraud or serious irregularity
  - ***PDIC***
    For unsafe or unsound banking practices
  - ***PCGG***
    For recovering ill-gotten wealth of Pres. Marcos and family
  - ***COA***
    For audit of government deposits *(revenue, receipts, expenditures)*

- ***Applying to Peso Accounts or Deposits Only*** *"OBARIO"*
  - Upon the Order of a Competent Court in any of the following cases:
    - Bribery, plunder, or dereliction of duty of public officials
    - Unexplained wealth under Anti-Graft and Corrupt Practices Act
    - The money deposited or invested itself is the subject of litigation
  - BIR Commissioner's inquiry for Net Estate purposes
  - Examination made by an Independent Auditor hired by the bank for regular audit and for exclusive use of the bank
  - Reports
    - By treasury for unclaimed balances
    - By banks to AMLC for covered and suspicious transactions
  - Impeachment Cases
  - Ombudsman, under the following conditions:
    - An existing pending case before a competent court
    - The account is clearly identified
    - Limited to the subject matter of the pending case
    - Notification to and presence of both the bank personnel and the account holder during inspection

Garnishment
- Does not violate bank secrecy law
- Exempt deposits from garnishment:
  - Foreign currency deposits *(except for one certain case)*
  - Those exempt under Rules of Court

Penalties for Violation of the Prohibition Imposed

	Fine	Imprisonment
Peso Deposits	Up to 20,000	Up to 5 years
Foreign Currency Deposits	5,000 to 25,000	1 to 5 years

Truth in Lending Act (RA 3765)

Objective*: Disclosure of the True Cost of Credit*

Required Disclosures under RA 3765
Must be disclosed in writing before the consummation of the transaction

1. Cash Price (Delivered Price) of Property or Service
2. Amount credited as Downpayment and/or Trade-in
3. Difference between Cash Price *(Item 1)* and Downpayment and/or Trade-in Credited *(Item 2)*
4. Charges, individually itemized
5. Total Amount to be Financed
6. Finance Charge, expressed in pesos and centavos
7. Percentage of Finance Charge *(Item 6)* over the Total Amount to be Financed *(Item 5)*

Required Disclosures under BSP Circular No. 755, Series of 2012

1. Total Amount to be Financed
2. Finance Charge, expressed in pesos and centavos
3. Net Proceeds of the Loan
4. Percentage of Finance Charge over the Total Amount to be Financed *(known as the* ***Effective Annual Interest Rate****)*

Failure to Disclose
- ***Does not affect*** the validity and enforceability of the agreement
  - The undisclosed charges will be uncollectible *(disclosed ones are still collectible)*
  - Lenders *(creditors)* will have to pay for the corresponding penalties

Penalties
Does not apply to the Government, including any of its agencies or political subdivisions

- ***Ordinary Failure to Disclose***
  - Subject to a *maximum amount of 2,000*, whichever is HIGHER between:
    - 100 pesos
    - Twice the finance charge required by the creditor
  - The costs of litigation may also be recovered from the creditor
  - ***Prescriptive Period:***
    1 year from occurrence of violation

- ***Willful Violation of RA 3765***
  - Fine – 1,000 to 5,000, and/or
  - Imprisonment – 6 months to 1 year