

The
LAW
relating to
**DOMESTIC
BANKING**



BANKING LAW VOLUME 1

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and A. ARORA**

Sweet & Maxwell

THE LAW RELATING TO DOMESTIC BANKING

BANKING LAW VOLUME 1

by

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LONDON

SWEET & MAXWELL

1987

Published in 1987 by
Sweet & Maxwell Ltd. of
11 New Fetter Lane, London.
Computerset by Promenade
Graphics Ltd., Cheltenham.
Printed in Scotland.

British Library Cataloguing in Publication Data

Penn, G. A.

Banking law

Vol. 1; The law relating to domestic banking.

1. Banking law — Great Britain

I. Title II. Shea, A.M. III. Arora, A.

IV. The law relating to domestic banking.

344.106'82 KB1715

ISBN 0-421-39000-X

ISBN 0-421-36060-7 Pbk

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Preface

The idea for a two volume work in banking law, the first of which deals with domestic banking law and the second dealing with international banking law, arose out of a series of meetings between Graham Penn and Don Fiddes, a former Director of Studies at the Chartered Institute of Bankers, who were both concerned about the absence of an up-to-date text which covered the entire spectrum of banking law. It soon became clear that such a project would require the specialist knowledge of more than one individual, hence Tony Shea and Anu Arora were invited to “join the team” of authors.

This new work was originally conceived as being intended for degree and post-graduate students and for practitioners who regularly find themselves engaged in this complex area of law. The emphasis in both volumes is directed firmly towards the law in practice, and it is hoped that those who concern themselves with banking law, in its broadest sense, will find some of the answers to the often difficult questions which arise. Where the material fails to provide an answer we hope it will at least lead to other sources, and thus assist in solving practical banking law problems, hence the heavy referencing which is to be found throughout both volumes.

The original conception became slightly altered during production in order that the two volumes would cover the Chartered Institute of Bankers’ examinations in both Law Relating to Banking and Practice and Law of International Banking. This slight change in emphasis has led to the omission of some material but the addition of other new chapters, namely, the sizeable chapters on Securities and Insolvency, and the expansion of the original material dealing with Agency, Partnerships and Corporate Customers.

Anybody who writes a book of this sort could not possibly start without the benefit of the learning of others. We have relied heavily upon a number of articles (many of which are acknowledged in the footnotes), and upon the publications listed in the Table of Abbreviations. Special mention must be made, however, of Philip Wood’s excellent book, *Law and Practice of International Finance* and of the *Encyclopaedia of Banking Law* which provides the most comprehensive coverage of English Banking Law presently available.

In addition to published material we have placed considerable reliance on the knowledge and practical expertise of many lawyers and bankers, who have made helpful suggestions during the preparation of this work. Unfortunately, the individuals themselves are too numerous to mention. The authors would, however, wish to acknowledge the very considerable assistance given by the following people:

David Lewis of the Reserve bank of Australia (Volume 1, Chapter 1 on the Regulation of Banks); Maurice Allen of Clifford Chance (Volume 2, Chapter 8 on Transferability of Loans and Loan Participations); Stephen Edlmann of Linklaters and Paines (Volume 2, Chapter 10 on Notes and Commercial Paper); Armel Cates, Robert Palache and Phillip Palmer of Clifford Chance (Volume 2, Chapter 11 on Swaps and Related Instruments); Andrew McKnight of Cameron Markby (Volume 2, Chapter 16 on

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Legal Opinions). These experts are not, of course, responsible for any errors or omissions, which remain those of the authors alone.

The authors would also like to express their indebtedness to National Westminster Bank PLC for permission to reproduce their standard form documentation in Volume 2, Chapter 12 and for supplying copies.

The law is stated as at May 31, 1987.

London
May 31, 1987

G. A. Penn
A. M. Shea
A. Arora

To the late Don Fiddes
who is greatly missed

Table of Abbreviations

Books

Byles	<i>Byles on Bills of Exchange</i> , ed. Megrah & Ryder, (Sweet & Maxwell, 25th ed., 1983)
Chorley	Chorley, <i>Law of Banking</i> , (Sweet & Maxwell, 6th ed. 1974)
Encyclopaedia	<i>Encyclopaedia of Banking Law</i> , ed. Cresswell, Blaire, Hill, Wood (Butterworths, 1982)
Goode LPCS	Goode, <i>Legal Problems of Credit and Security</i> , (Sweet & Maxwell/CCLS, 1982)
Goode CL	Goode, <i>Commercial Law</i> , (Penguin, rev. 1985)
Gower	<i>Gower's Principles of Modern Company Law</i> , (Stevens, 4th ed., 1979 with 1987 supplement)
Holden	Holden, <i>The Law and Practice of Banking</i> , Vol. 1 and 2 (Pitman 3rd ed., 1982)
Paget	<i>Paget's Law of Banking</i> , ed. Megrah & Ryder (Butterworths, 9th ed., 1982)
Pennington	<i>Pennington's Company Law</i> , (Butterworths, 5th ed., 1985)

Journal

J.I.B.L.	<i>Journal of International Banking Law</i> (ESC Publishers Ltd.)
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Reports

F.T.	<i>Financial Times</i> (Law Report)
L.D.A.B.	<i>Legal Decisions Affecting Bankers</i>

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Statutes

B.O.E. Act	Bills of Exchange Act 1882
C.A.	Companies Act (year stated)
C.D.D.A.	Company Directors Disqualification Act 1986
I.R.	Insolvency Rules 1986
I.A.	Insolvency Act 1986
I.P.O.	Insolvent Partnerships Order 1986
L.P.A.	Law of Property Act (year stated)
L.C.A.	Land Charges Act 1972
L.R.A.	Land Registration Act (year stated)
L.R.R.	Land Registration Rules 1925
M.H.A.	Matrimonial Homes Act 1983

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