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BANK'S LIABILITY IN INTERNET FRAUD



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Mobile banking, one of the technological developments that we all have and often use in our daily life, brings several risks with it besides all the convenience it provides. In order to give services in a secure manner, banks record customer information. However, with the technological advances, our private information such as our passwords, account number and personal information are faced with the risk of being unlawfully acquired by third parties. Banks wish to eliminate their liabilities by adding provisions such as “Do not share your password with anyone, including bank staff”, “The customer will be liable for any losses that may occur as a result of sharing password.” to the agreements signed with the customers. Nonetheless, it poses a risk to both banks and customers that information such as passwords and account number may be unlawfully acquired by third parties, even if it is not shared by the customers.

The biggest problem for the bank customers who are victimized by security vulnerability is whether or not the money can be recovered. In case of the seizure of the customer's money by the third parties, what will be the bank's liability? In such cases, when the depositors apply to the banks, banks claim that the damage was caused by the wrongful act of the third parties and therefore they are not responsible for the damage. In such a case, the only way for the depositors may seem to be claiming compensation for losses from the third parties who have committed the wrongful act. However, third parties are able to commit such fraud over the internet from anywhere in the world. As a result, it takes a long time to identify the relevant third party and then refund of money which is unlawfully transferred to the third party's account, and mostly it fails.

As per the decisions rendered by the Supreme Court, in cases that a customer filed against the bank with the demand of the refund of the money, the Supreme Court ruled that the bank is also liable for the unlawfully transfer of the deposit to the third parties or different bank accounts. Thus, the Supreme Court decided that the seizure of money by the third parties due to the security vulnerability that occurs for a reason not caused by the depositor's fault, would not eliminate the banks' liability to refund deposits. The relationship between the banks and their customers is based on the payment and return of the deposits. In this context, the Supreme Court adopts an opinion that protects customers, by ruling that fraud by third parties will not eliminate the obligation to return deposits. The 11th District of Supreme Court ruled in its relevant decision that the bank is responsible for all the money withdrawn from the account unless it is proven that the person whose money is withdrawn from the bank account without his knowledge is also negligent in this transaction. In its rulings, the Supreme Court states that it is mandatory for the bank to combat abusive transactions and develop effective security measures, otherwise its responsibility would arise.

As a result of the withdrawal of the money from the account, identifying the perpetrator and retrieving the money back without a loss becomes a huge burden for the customer. Therefore, the customer has the opportunity to get its money back much more easily by contacting its bank. As a natural consequence of the Supreme Court precedent regarding the bank's liability, banks are developing much more effective security mechanisms. As mentioned, the banks are also responsible for the cases when the money is seized by the third parties.

Consequently, in today's world, the spread of internet fraud and cyber-attacks and the fact that they can be easily conducted by almost anyone, poses great risks. The Supreme Court, has adopted an opinion protecting the depositors in such cases. This opinion, besides protecting depositors, pushes banks to spend a lot of overtime and capital on preventing possible security vulnerabilities. The increasing development of security mechanisms and customer's right to retrieve the money by applying to the bank protects the depositor against internet fraud.

Answers. Not theories.

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