



CHARTERED INSTITUTE OF BANKERS, GHANA

ASSOCIATESHIP EXAMINATION

LEVEL III

PRACTICE OF BANKING – LAW & PRACTICE

OCTOBER 2022

N.B.

- 1. Read carefully the instructions on the cover of the answer book.**
- 2. Answer FIVE (5) questions only as follows:
SECTION A: THREE questions.
SECTION B: TWO questions.**
- 3. Each question carries 20 marks.**
- 4. Marks allotted are shown in brackets by the questions.**
- 5. In awarding marks, the examiner will look for answers which show:
a) an appreciation of the significance of the question
b) a reasoned practical approach to the problem.**
- 6. Answers in listed note form are accepted, provided they are clearly and logically presented and the points made are adequately developed.**
- 7. No aids such as calculators, books, dictionaries, papers or mathematical sets are permitted in this examination.**
- 8. Time allowed: THREE HOURS.**
- 9. An additional 15 minutes reading time is allowed at the beginning of the examination when candidates may write on this paper but NOT in the answer book.**
- 10. Candidates must ensure that they answer questions in the appropriate answer book and NOT on loose sheets which are used only as supplementary sheets. Such answers will be cancelled.**
- 11. The total number of questions in this paper is SEVEN (7).**
- 12. DO NOT WRITE YOUR NAME ON THE ANSWER BOOK.**
- 13. DO NOT OPEN THIS QUESTION BOOK UNTIL YOU HAVE BEEN INSTRUCTED TO DO SO.**

SECTION A – ANSWER THREE (3) QUESTIONS

Question 1 Multiple Choice – Answer all questions

1. Section 18 of the BSDTI Act 2016 Act 960 provides for banks and specialized deposit taking institutions to undertake a number of permissible activities. Which of the following are included?
 - a. Insurance business
 - b. Mortgage lending business
 - c. Purchase and sale of foreign currency on own account or for the account of customers
 - d. (a), (b) & (c)
 - e. (b) & (c)
2. A person without an account, walks into your bank premises and presents a cheque to you asking you to clear the cheque on his behalf. What key risk would the bank be exposed to in undertaking such a task?
 - a. There is the risk of conversion and the bank needs to undertake the necessary due diligence before collecting the cheque.
 - b. There is no risk because once the person asks for this service that person qualifies to be a customer of the bank.
 - c. Failure from protection afforded by the Bills of Exchange Act because that person is not a customer of the bank.
 - d. (a) & (c)
 - e. None of the above
3. Your customer has overdrawn his account without an authorized overdraft. You remember he has deposited with you a land certificate in safe custody. Your operations manager advises you that the bank has a banker's lien over the land certificate.
 - a. Your Operations Manager is ignorant of the law.
 - b. Your Operations Manager is on point.
 - c. The correct procedure is to notify customer your intend to dispose off the property.
 - d. You may also force the customer to execute a Legal Mortgage over the property
 - e. All the above suggestions have no basis in law.
4. A banker's lien does not confer a right of sale true or false?
 - a. True
 - b. False
5. What are the duties of a remitting bank in the service of money transfer?
 - a. Duty to exercise due care in effecting the transfer
 - b. Duty to account to the Payer
 - c. Duty to account to the Receiver
 - d. Duty to notify Receiver of transfer
 - e. (a) & (b)

6. Customer's account has not been operated for the past twenty-five months. What action should the bank take?
 - a. Transfer the balances to Bank of Ghana.
 - b. Transfer the balances to commission account and earn income for the bank.
 - c. Transfer the balances to dormant accounts with notice in writing to the last known address of the customer.
 - d. Transfer the balances to dormant accounts and place advertisement in two daily papers of national circulation notifying all depositors concerned of this action.
 - e. Transfer the balances to dormant accounts and notify Bank of Ghana.
7. Albert, Kojo, Peter and Company, is a partnership firm dealing in antique art works. Peter Mensah one of the partners is deceased at a time when the firm had a balance of GHC 50,000 CR with you. The Partnership continues to use the same name and at a time the balance is GHC 450,000 DR (overdrawn) you call in the facility. Your Legal Department has sued the partners and the estate of the deceased. Under Section 18 of the Incorporated Private Partnership Act 1962 Act 152, will the estate of the deceased be liable for payment of the debt?
 - a. Yes, because by the personal representatives of the deceased allowing the firm to continue using the same name including the name of deceased, the estate of the deceased is estopped from escaping liability.
 - b. Yes, because the sections states that the deceased estate will be liable.
 - c. No, because the section says the deceased estate will not be liable.
 - d. It depends on the circumstances. If the personal representatives can prove that they were not aware of the continued use of the business name, they will escape liability.
 - e. None of the above.
8. Under the Incorporated Private Partnership Act of Ghana (1962) Act 152 a partner is what type of agent as regards the Partnership?
 - a. Special agent
 - b. General agent
 - c. Universal agent
 - d. Del credere agent
 - e. Sub-agent
9. The following is a copy of the accounts of ABC & Co.

ABC & Co Ledger –
(2020)

| Date | Particulars | DR | CR | Balance | |
|--------|-------------|----------|----------|-----------|-----------|
| 1-Jan | BF | | | (3000.00) | Overdrawn |
| 5-Jan | | | 2,000.00 | (1000.00) | Overdrawn |
| 7-Jan | | 1,500.00 | | (2500.00) | Overdrawn |
| 15-Jan | | | 1,000.00 | (1500.00) | Overdrawn |

To what extent is B's estate liable if the bank received notice of death on 8th January 2020?

- (a) GHC 1,000
 - (b) GHC 2,000
 - (c) GHC 1,500
 - (d) GHC 2,500
 - (e) None of the above
10. Under the new Companies Code 2019 Act 992 what is the required suffix in the name of a private limited liability company?
- a. PBLLC
 - b. LTD
 - c. PLC
 - d. PBLC
 - e. None of the above
11. Under the new Companies Code 2019 Act 992 what is the required suffix in the name of a company limited by guarantee?
- a. PLBG
 - b. LTDBG
 - c. LBG
 - d. GRC
 - e. None of the above
12. You gave an overdraft facility to your customer BL Company Ltd. before the company was incorporated. The company is now in distress and you have called in the facility. The company is resisting on the grounds that the company was not in existence when the facility was granted and therefore cannot be liable. What is the law on the company's position?
- a. By Section 13 of the Company's Act and the common law principle of estoppel, the company is estopped from denying liability as they subsequently opened the account and operated the overdraft in the company's name.
 - b. By Section 11 (3) of the Companies Act, the company is not liable for debts incurred before incorporation.
 - c. Both (a) & (b) depending on the circumstances.
 - d. None of the above.
13. One of your customers, a private company limited by shares has lost one of its two directors who passed away two weeks ago. Both directors were signatories on the company's account. What action would you take on receipt of notice of death?
- a. Ask the company to provide a new mandate.
 - b. Do nothing. Continue to operate the account as authority devolves on the surviving director.
 - c. Advise the company to commence winding up as a company is required to have a minimum of two directors.
 - d. Ask the company to choose between (a) and (c), whichever it prefers.
 - e. None of the above.

14. A cheque is made payable to bearer and negotiated. What are the rights of a holder if the cheque bears a forged endorsement? Assume that the cheque is not crossed 'accounts payee only'.
- The holder cannot be a holder in due course because of the forged endorsement.
 - The forged endorsement does not in itself prevent the holder from being a holder in due course.
 - The holder can only be holder for value.
 - Forged endorsements free the drawer from liability.
 - None of the above.
15. The following are some of the conditions for an instrument to be designated as a negotiable instrument:
- Instrument can be negotiated by endorsement and deliver or mere delivery
 - The transferee obtains absolute title free of any defects in the title of the previous transferor.
 - The transferor is required to give notice of transfer to the person liable on the instrument.
 - (a) & (b)
 - (a), (b) & (c)
16. D is the Payee of an open cheque which is stolen from him by X. Later X forged D's endorsement and then gave the cheque to Y in exchange for goods. What is Y
- A holder in due course
 - A holder for value
 - A mere holder
 - Wrongful possessor
 - Wrongful holder
17. A mere crossing of a cheque makes it non-negotiable?
- Yes
 - No
18. Which of the following cases supports your answer in the previous question?
- National Bank Ltd. V Silke 1891.
 - Joachimson V Swiss Banking Corporation.
 - Foley V Hill.
 - Yakubu V Musa.
 - None of the above.
19. Section 81 of the Bills of Exchange Act affords protection to a bank faced with the claim of conversion. What are the conditions required for the collecting bank to benefit from this protection?
- To collect the cheque for a customer in the ordinary course of business.
 - To collect the cheque for any party whether customer or not, in good faith, in the ordinary course of business and without negligence.
 - To collect the cheque for a customer in good faith and without negligence.
 - To collect the cheque for a customer in good faith and in due course.
 - This section rather provides protection for the paying bank.

20. The Bills of Exchange Act affords protection for a paying bank which pays an order cheque. Which section is it?
- a. Section 81
 - b. Section 61
 - c. Section 58
 - d. Section 80
 - e. Section 56

QUESTION 2

You enter your office as Retail Manager this morning to find commotion at the front desk of your branch. As you enter you see three persons in police uniforms claiming to be from the National Investigations Bureau (NIB). They claim they have got wind that one Mr. Mahama Obeng who is under investigation for drug trafficking has an account with your branch where he has lodged his ill-gotten gains. They are demanding that your Operations Manager produce the information immediately or he would be hauled to the NIB for impeding an investigation.

- (a) What rule of law do you require to resolve this problem? **[2 Marks]**
- (b) Discuss the four (4) exceptions to the duty a bank owes its customers identified in (a) **[8 Marks]**
- (c) How would you deal with the situation that is before you?

[10 Marks]

[Total marks: 20]

QUESTION 3

State the legal principles you would take into consideration in resolving the following legal matters that have come to your attention.

- (a) Mr. Nkumsah is majority shareholder and Chairman of the Board of Directors of Nkumsah Trading Ltd, which has an account with you for the past twenty years. The company issued debentures secured by a floating charge over the company's assets three years ago. Mr. Nkumsah has 60% shares in the company and is also the sole signatory of the account. Nkumsah Trading Ltd. was established with a registered constitution with the objects of importing medical equipment and ancillary materials. He has applied for a loan of GHC 400,000 for the importation of baby pampers as he claims baby pampers move faster than medical equipment. In appraising the facility, your attention is drawn to the fact that since the company has incorporated with registered objects the company must amend the constitution to enable the company to undertake the new venture. In your discussion with him he asks you of advice of how he could amend the objects of the company's constitution to enable him to enter into the new venture. He also asks you

what legal difficulties may arise if he engaged in business outside the established objects of the company. **[10 Marks]**

- (b) Secondly Mr. Nkumsah has a cheque payable to a sister company Jamsah Ltd., in which he has shareholding of 50%. His lifelong friend owns the remaining 50%. You advise him that it is a company policy not to credit a cheque payable to a company into a personal account of a director or employee of that company. He argues with you and tells you that since he is the one of the key shareholders he has the right to do so as it is an internal arrangement for him to undertake a specified transaction for the company. **[10 Marks]**

[Total marks: 20]

QUESTION 4

As a new Manager at the Edubiase branch of your bank, in the course of your work, your branch has collected a cheque for the account of a customer who turned out not to be the true owner of the cheque. Your Operations Manager did not open the account straightaway but for reasons unknown to you, he told the customer Timothy Ankrah that the bank would not open the account immediately but would only open the account if the cheque of GHC 500,000 the prospective account holder presented was cleared. After the cheque had cleared, your Operations Manager proceeded to open the account and the very next day, Timothy withdrew an amount of GHC 400,000.00 which he claimed was for the purchase of a car.

It transpires that the cheque had been stolen and Timothy was only an impersonator. Timothy is nowhere to be found.

The drawer of the cheque Mr. Banson has sued the bank for refund of the monies he has lost.

- (a) What is a collecting bank? **[2 Marks]**
(b) Mention three duties of a collecting bank. **[3 Marks]**
(c) Mention and explain the statutory protection available to a collecting bank that collects a cheque for a party who is not the true owner of the cheque? **[9 Marks]**
(d) What are the common law defences available to a collecting bank? **[4 Marks]**
(e) Will the bank be able to avail itself of the statutory protection? **[2 Marks]**

[Total marks:20]

SECTION B – ANSWER TWO (2) QUESTIONS

Question 5 – Multiple Questions – Answer all questions

1. Which of the following requires registration at the Companies Registry under the Companies Act (2019) Act 992?
 - a. An equitable mortgage over the company's factory
 - b. A legal mortgage over the director's house which secures the borrowing of the company
 - c. A mortgage of a factory of Joe Enterprise, Sole Proprietor

- d. A mortgage over a life policy taken out by a company on the life of a director
 - e. (a) & (b)
2. Within how many days must a fixed and floating charge over a company's assets be registered at the Collateral Registry under Section 22 (1) of the Borrowers and Lenders (Act 2020) Act 1052?
 - a. 26 days
 - b. 21 days
 - c. 45 days
 - d. 28 days
 - e. None of the above
 3. Which of the following is not a mode of enforcement of security under the Corporate Insolvency and Restructuring (Act 2020) Act 1015
 - a. Appointment of receiver under the debenture instrument securing the property.
 - b. Application to court for appointment of receiver.
 - c. Entry into possession.
 - d. None of the above.
 - e. (a) and (b).
 4. Which of the following may void a guarantee under the common law?
 - a. Variation in loan agreement
 - b. Granting of further time to pay
 - c. Compromise – accepting less in payment
 - d. All of the above
 - e. Only (a) and (b)
 5. You have been asked to value a whole life insurance policy in taking the policy as security to ensure that the bank has good security value over the borrowing. Which of the following would be relevant?
 - a. The capital value
 - b. The surrender value
 - c. The paid up value
 - d. The liquidation value
 - e. (b) & (c)
 6. Which of the following would amount to constructive notice of an earlier assignment?
 - a. Defaced policy contract
 - b. Non-production of the policy
 - c. Presentation of copy of certificate
 - d. (a), (b) & (c)
 - e. (b) & (c)
 7. Which legislation in Ghana provides the rules for taking a legal assignment?
 - a. Insurance Act, 2020 Act 1061
 - b. Contracts Act 1960 Act 25
 - c. Policies of Life Assurance Act 1860
 - d. Assignment of Contracts Act 1975, Act 365
 - e. None of the above
 8. In taking a legal mortgage of shares, banks normally have the title to the shares transferred in the name of a Nominee Company of the Bank. What is a “Nominee Company”?

- a. A company nominated to dispose of the shares for the proceeds to be kept in an escrow account as security.
 - b. A company responsible for executing and perfecting the security.
 - c. A company holding title to the shares on behalf of the bank.
 - d. It is an associate company of the bank.
 - e. None of the above.
9. A partner provides his personal residential property as security for partnership borrowing. What type of security is this?
- a. Direct security
 - b. Partnership security
 - c. Third Party Security
 - d. Guarantee
 - e. None of the above
10. In taking security over Leasehold Property, which of the following is true?
- a. The value of the property appreciates over time
 - b. The value of the property remains stable over time
 - c. The value of the property depreciates over time
 - d. The value of the property fluctuates over time
 - e. None of the above.
11. Tenancy in common and joint tenancy are the two modes of shared ownership. What are the main features of tenancy in common?
- a. Each party owns the property jointly and at the same time.
 - b. Each party owns a distinct share of the property.
 - c. Each party can dispose off his share of the property without the consent of the co-owner
 - d. (a) and (b)
 - e. (b) and (c)
12. What are the key requirements for a valid guarantee?
- a. A guarantee need not be in writing, the only requirement being that the guarantor should have capacity.
 - b. Guarantee needs not be in writing, but an indemnity has to be in writing.
 - c. The guarantee must be in writing, the guarantor need not have contractual capacity but the original loan need not be in writing.
 - d. It must be in writing, the original loan must be enforceable and the guarantor must have contractual capacity.
 - e. None of the above
13. Under which of the following situations will the law presume undue influence?
- a. Uncle and nephew
 - b. Doctor and patient
 - c. Driver and passenger
 - d. Student and school mate
 - e. University student and Lab assistant
14. What action may a bank take to prevent a claim of undue influence?
- a. Disclaimer of liability clause in the third-party security document.
 - b. Ensure the third-party security is signed at the bank premises in the presence of a senior bank official.
 - c. Ensure and document that third party has obtained an independent legal advice prior to signing.
 - d. All three above.

- e. b & c
15. Under a guarantee, a guarantor is entitled to
 - a. Inspect the debtor's bank statement
 - b. Be informed of the balance of the debtor's account
 - c. Be able to see any cheques issued by the debtor
 - d. Make repayment at any time
 - e. None of the above
 16. When may a third party security provider succeed in a claim "non est factum"?
 - a. When she was well educated and had the ability to read the document
 - b. When she had a disability, she was not careless and thought she was signing a different document.
 - c. When she was shown only the signing page of the document and she signed without asking why.
 - d. When she was uneducated and did not ask the contents of the document she was signing.
 - e. When she was under a disability irrespective of whether she was careless or not.
 17. What is a floating charge?
 - a. A charge over borrowing subject to a floating interest rate.
 - b. A charge where the chargee's permission is not required before chargor can deal with the asset.
 - c. A charge over assets on a boat on the high seas.
 - d. a & b
 - e. None of the above.
 18. When we say a floating charge has crystallized, what is the implication?
 - a. The interest rate on the facility has been changed from a floating rate to a fixed rate.
 - b. The assets over which the charge has been given has arrived at the port.
 - c. The Chargor now needs permission from the Chargee to deal with the asset.
 - d. None of the above
 - e. All of the above
 19. There are two land registration regimes in Ghana, namely "deed" registration and "title registration? What is the key difference between the two
 - a. In the case of deed registration it is only "instruments" pertaining to transactions pertaining to land that are registered whilst with Land title it is the title and other encumbrances in the land which is registered
 - b. Only "conveyances by way of deed" are registrable with deeds registration whilst with land title registration it is only sales of land that are registered
 - c. They are one and the same. There is no difference between the two.
 - d. a & b
 - e. None of the above.
 20. What is a Trust Receipt in relation to Pledges of Goods as Security?
 - a. The security charge form.
 - b. A guarantee from a third party.
 - c. A notice of the release of merchandise to a buyer from a bank, with the bank retaining the ownership
 - d. A notice of release of merchandise to a guarantor with the buyer retaining ownership.
 - e. None of the above.

QUESTION 6

- (a) Your key customer BBA Construction Ltd. is engaged in a contract for the construction of a 200 kilometer road in the Central Region. He has completed over 60 % of the project and has certified works of GHC 800,000 to be paid. He is applying for working capital loan of GHC 500,000 to purchase materials for the project.

He has no security to offer save the assets of the company which comprise a one storey office building and the road construction equipment. Your managing director is not enthused about taking a fixed and floating charge over the assets of the company as they are subject to rapid wear and tear. The key person Mr. Aras also does not have any personal landed property to offer.

From the above, identify what alternative security may be available in the circumstances and how you would proceed to take the security to ensure that the bank's interest is protected.

[16 Marks]

- (b) You have been asked to deliver a lecture on the remedies of a lender in the event of a borrower defaulting in the servicing of a facility. Mention the four key remedies provided under the Borrowers and Lenders Act (2020) Act 1052. **[4 Marks]**

[Total marks:20]

Question 7

Amoasi Enterprise is a sole proprietorship owned and controlled by John Amoasi. The business is engaged in the supply of chips and stones for building projects. John Amoasi has applied for a loan of GHC 500,000 for the purchase of a used tipper truck. He shows you an Indenture covering his Leasehold interest in a property located a Winneba valued GHC 1,000,000.00.

- (a) What key consideration would you have in mind in taking a legal mortgage over a leasehold interest? **[8 Marks]**
- (b) Outline the steps which you would take to acquire a legal mortgage over the property in such a manner that the bank's interest is absolutely protected. **[12 Marks]**

[Total marks:20]