



**CHARTERED INSTITUTE OF BANKERS (GHANA)
ASSOCIATESHIP EXAMINATIONS**

**CHIEF EXAMINER'S REPORT
Of
Marking Scheme
&
Suggested Solutions**

of the
LAW & PRACTICE OF BANKING - LEVEL III

in the

October 2019 Examinations

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The October 2019 Examination

The October 2019 Examination has followed the trend of a low-pass rate in October Examination sittings in the last few years. Even though there was a script with 81%, just like in April 2019, performance was not anything to rejoice about. **Albeit, introduction of the 20 mark multiple choice questions (MCQs) in both sections, continue to receive high patronage with a 96% and 91% patronage in Sections “A” & “B” respectively, with performance following the usual “average” – an indication that, Candidates would not have had the benefit of “complete” lecture on the entire syllabus.**

The October 2019 Examination made a 32% or 71\221 pass (against 51% or 127\248 April 2019 sitting) and perhaps in a back-to-batman, in line with October 2018 at 37% passes (78\211) against 51% passes (130\253 candidates) in April 2018.

Centre		Oct-19			Apr-19		
		# of scripts	Passes	%age Pass	# of scripts	Passes	%age Pass
	Total	221	71	32%	248	127	51%
Ghana	Accra	153	50	33%	173	92	53%
	Kumasi	45	33	33%	54	33	61%
	Sunyani	11	4	36%	13	2	15%
Gambia	Banjul	1	1	100%			

Despite a general state of little knowledge in both Sections “A” for the Banker & Customer Relationship (BCR) and Section “B” for Securities for Bankers’ Advances in previous Examination sittings, there has been a significant decline in performance with over 50% scoring marks in the “1 to 10” category.

Question “1”, the MCQ however, recorded 67% passes in the “11 to 20” marks category, as the best performance altogether.

The MCQs, (questions “1” & “6”) were the most patronized at 96% (121\221) and 91% (201\221) respectively, with Question “5” about the “Life Policy”, as Security for Bankers’ Advances and which has always been the most popular, also registering 88% or 194\221 patronage, with 42% (88\194) performance in the “11 to 20” marks category. The table below refers.

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	Q1	Q2	Q3	Q4	Q5	Q6	Q7	
Highest Marks recorded	20(2)	21	16	19	22	198	17	
Lowest Marks recorded	2	6	3	2	2	5	2	
Total # of Scripts	221	212	190	119	137	194	201	43
%age of patronage	96%	86%	54%	62%	88%	91%	19%	
Marks (16 to 20)	34	3	1	1	20	10	2	
Marks (11 to 15)	108	25	14	24	62	80	9	
%age of performance "11 to 20" marks	67%	15%	13%	18%	42%	45%	26%	
Marks (1 to 10)	79	162	104	112	112	111	32	

Of course, Candidates who demonstrated exceptional understanding of the issues and dealt appropriately with the requirements in the questions were adequately rewarded and deserving Candidates scored very good marks as follows:

- Question “1”: 2 Candidates scored 20\20marks; 1 made 18; 4 others scored 17; 15 also made 16 marks and 15 registered 12 marks;
- Question “2”: 1 script scored 21\20 marks; and 2 made 16 marks;
- Question “3”: 1 made 16\20 marks and another scored 15 marks;
- Question “4”: 1 recorded 19\20 marks; and another made 15 marks;
- Question “5”: 1 scored 22\20 marks; 2 made 21\20 marks; 4 got 19\20 marks; 6 registered 17 marks; 5 made 16 marks; and 9 scored 15 marks
- Question “6”: 1 made 19\20 marks; 2 scored 17 marks; 7 registered 16 marks; and 5 made 15\20 marks;
- Question “7”:1 made 17\20 marks and another scored 16\20 marks; and indication of the continued weakness in Section “B” of the syllabus.

Multiple Choice Questions

The MCQs, (questions “1” & “6”) were the most patronized at 96% (121\221) and 91% (201\221) respectively, but didn’t reflect same performance levels. Questions “1” and “6” recorded passes in the “11 to 20” category of marks at 67% (141\221) and 45% (91\221) respectively – an indication that Candidates continue to confirm their inability to totally cover the entire syllabus before sitting the Examination.

Candidates are encouraged to give serious attention to the entire syllabus in their desire to pursue a career in Banking, especially those who have not got the opportunity to work in Banking Operations and\or Branch Banking.

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The above notwithstanding, the MCQs (which were set to cover more than 75% of the syllabus in both sections) recorded the best performance as follows, even though 2 Candidates in Accra Obtained “1\20” in each question.

	Q1	Q6
Highest Marks recorded	20(2)	19
Lowest marks	1	1
# of Scripts (221)	212	201
%age Patronage	96%	91%
Marks (16 to 20)	34	10
Marks (11 to 15)	108	80
%age of performance "11 to 20" marks	67%	45%
Marks (1 to 10)	70	111

MCQ challenges

Some Candidates continue to make the inexcusable mistake of writing out the answers instead of, just the ID of the answers. For example “A: Prosperity Ltd. v. Lloyds Bank, saw “Prosperity Ltd. v. Lloyds Bank” written out as an answer instead of just “A”.

Others would not just list from ‘i’ to “xx”; or “1” to “20”; but left spaces between these to finish on another page. The worst state was those who made 2 columnar tables like:

1	2
3	4

In all cases, Candidates who did any of the above created problems for marking scripts. Candidates should note to simply number these as follows:

1. A.
 2. B.
 3. E.
- Etc.

Patronage at the Centres

221 Candidates took this paper (248 in April2019) in all the Centres, with Accra, as at all times, recording the highest number of candidates at 153, significantly lower than 173 in April2019; and a generally poorer performance in Accra and Kumasi. This this time around, Sunyani performed better at a 36% (4\11) passes against 15% passes in 2\13 scripts in April2019, as shown below:

Centre	October2019			Apr-19		
	# of scripts	Passes		# of scripts	Passes	
		#s	%age		#s	%age
Accra	153	50	33%	173	92	53%
Kumasi	45	15	33%	54	33	61%
Sunyani	11	4	36%	13	2	15%
Takoradi	4	1	25%	3		0%
Tamale	7	0	0%	5		0%
Banjul, the Gambia	1	1	100%			0%
Total	221	71	32%	248	127	51%

October2019, not unexpectedly though, also revealed that some Banking Students continue to specialize in specific sections of the syllabus and though, these could make very high marks in a question, same lost out painfully in 4 other questions.

It is sad to note candidates score 15\20 or more marks in one question but were unable to make 36\80 or more marks in 4 other 20-mark questions to obtain a 51% or more pass marks.

- Question “1”:

 - 5 candidates in Accra; Kumasi and Sunyani made 16\20 and settled for marks between 50% and 41;
 - settled for marks between 45% and 47% in Kumasi and Sunyani; and
 - 2 Candidates in Accra made 50% and a 3rd Candidate made 41%;
 - 3 Candidates made 15\20 and scored overall marks at 47%; 49% & 50% in Accra, Kumasi and Tamale respectively;

- Question “2” had a few scoring between “11 and 21” and all passed; and 85% scripts made marks below 11\20;
- In question “3”, 87% (104\119scripts) made marks between 11 and 20, and a Candidate in Accra scored the highest 16\20, but made only 44%;
- Question “4”: 46\137 Candidates who attempted this question passed the paper; and 25\46 of same scripts that passed scored marks between 5\20 and 10\20; and 82% (112\137 scripts) recorded marks below 10\20. Another poorly patronized question;

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- In Questions “6” & “7”, a Candidate in Accra scored 15\20 marks in question “6” and managed just 47%, and another obtained 16\20 and made only an overall 46%; with a 16\20 in question “7” with a 42% final mark.

It has become very necessary for Lecturers and Students alike, to work mutually, to cover the entire syllabus and Students will need to equip themselves sufficiently to demonstrate understanding of the whole syllabus.

On the other hand, all stakeholders may be compelled to establish a good number of hours of tuition in this Subject to qualify to register for any Examination in this subject.

Number of Questions attempted and performance

221 Candidates attempted 1095 questions out of 1,105 (221 times 5).

As has always been the case, Accra & Kumasi registered higher number of Candidates:

- Accra 153 Candidates and 50 passes (173 and 92 successful Candidates in April2019) and
- Kumasi 45 and 15 successful Candidates (54 and 33 passes in April2019);
- Sunyani registered 11 Candidates and 4 passes (against 13 and 2 passes in April2019);
- Takoradi made 4 Candidates, against 3 in April2019, with some passes; while
- Tamale recorded 7 against 5 Candidates in April2019, but did not obtain any passes.

Mandatory requirements

As usual, Candidates continue to pay much more attention to Section “A”, than to section “B, but with some significant improvement this time round.

- 2\221 Candidates attempted all 7 questions and another answered 6 questions; and much as the Chief Examiner gave them the benefit of the doubt and, marked all questions to examine the best 5”, these candidates still failed.
- 207\221 candidates attempted the mandatory 5\5 questions; and
- 13 answered 4 questions only; and Candidates must take note that it is never alright, not to attempt the set required numbers.
 - 2\13 did 3\4 in Section “A”; 1 from Section “B”;
 - 11\13 did 2 questions from each of Sections “A” & “B”; and 2 Candidates did 3 and 1 respectively.

As stated earlier, such non-compliance has never been rewarding so Candidates need to comply with Examination instructions strictly, because non-compliance rewards little or nothing. I wouldn't want to be tempted to penalize any Candidate as a result of such non-compliance, so let candidates “not lead me into temptation”!

Section “A” – Banker and Customer Relationships – 3\4 questions

- 5\221 Candidates attempted 4\4 questions against the mandatory 3\4;
- 206\221 scripts recorded the mandatory 3\4 questions, and 10 attempted 2\4 questions against the mandatory 3\4; and only 1 such Candidate passed.

Section “B” – Securities for Bankers’ Advances – 2\3 questions

- 210\221 scripts recorded the mandatory 2\3 questions, with 11\221 non-compliant scripts.
 - 7\221 attempted 1\2 instead of the mandatory 2\3;
 - 4\221 did 3\3 against the mandatory 2\3

The message that, no Candidate would cheat and get away with it, seems to have reached Candidates effectively; and there was no such record in the October2019 Examination sitting.

For whatever reason, a few Candidates attempted all 7 questions; and the Chief Examiner would take the best “5” questions - in the ratio 3:2 without fail.

A Candidate attempted 3\3 questions in Section “B” instead of 2\3, with very good marks, but the third and lowest mark of “15\20” was not examined; and same Candidate was fortunate to have got away with a 63% pass mark.

Performance of candidates

Performance was generally unimpressive, although this sitting recorded another “Distinction”; with some very good marks, but not as good as in April2019.

It is noteworthy that, in both sittings, 2 females Candidates registered the “Distinction” marks.

Both 2019 Examination sittings saw a good number of new Candidates to the subject, especially, those who obtained exemptions from the “Law Relating to Banking” paper, but would not “push” themselves sufficiently in preparing for the “Law & Practice” paper.

Unfortunately, we continue to record interesting submissions with very poor grammar; bad handwriting; and unpardonable spelling mistakes. Candidates continue to use the 2nd person singular “You”, thus making submissions meaningless.

Candidates have succeeded in pushing me to consider such bad grammar; bad punctuation and lexis and then to deal with the said scripts deservingly, in subsequent sittings.

Several Candidates did not spend good time to read the questions well and many Candidates ended up making submissions for unexamined issues.

For example, several questions spent good time dealing with the definition of a Customer in question “2”, which required mention of the *payee* and/or *endorsee* as the Customer in a “Cheque Deposit” transaction.

Performance – Categories of Marks by questions

Performance was generally unimpressive and Candidates continue to demonstrate little knowledge in Section “B”, and a full question on “Debenture in Company Security for Bankers’ Advances” in question “7”; saw a disappointing 19% patronage at 43\221 and only 11 Candidates made marks between “11 and 20”.

		Q1	Q2	Q3	Q4	Q5	Q6	Q7
Highest Marks recorded		20(2)	21	16	19	22	19	17
Lowest Marks recorded		2	6	3	2	2	5	2
Total # of Scripts	221	212	190	118	137	194	201	43
%age of patronage		96%	86%	54%	62%	88%	91%	19%
Marks (16 to 20)		34	3	1	1	20	10	2
Marks (11 to 15)		108	25	14	24	62	80	9
%age of performance "11 to 20" marks		67%	15%	13%	18%	42%	45%	26%
Marks (1 to 10)		79	162	104	112	112	111	32

Performance by Sections

Performance at this sitting turned out interestingly, with Section “B” contributing more marks, proportionally, in terms of the 3:2 ratio of 60% and 40% marks in Section “A” and Section “B” respectively. Gradually, the signs are bright that Candidates seem to be giving some extra effort at equipping their capacity for dealing with Section “B” for “Securities for Bankers’ Advances”.

Section “A” failed the test of the 3:2 ratio - 60%:40% marks - in the 51% pass mark, and did not contribute to total marks in same proportion in several scripts.

Out of the 71 successful Candidates:

- 2\71 Candidates who passed demonstrated equal strengths in both Sections; and
- 4\71 scripts recorded 3:2 ratio of 60% and 40% marks in the respective sections.
 - 6\150 scripts which couldn’t obtain pass marks showed equal strength in both Sections;

Section “A”

- Out 71\221 successful candidates:
 - 16\71 scripts registered passes in the usual ratio of 3:2 or better; and
 - 55\71 or 79% Candidates obtained higher marks from Section “B” in contribution to total marks, than in Section “A”;
 - 15\55 did not only defy the above ratios; but also contributed very good marks to the total marks from Section “B”.
- Out of 150 Candidates who failed:
 - Section “A” registered higher contribution of marks from 116\150 Candidates. An indication that Candidates want to always specialize in Section “A”

Section “B”

- Out of 71\221 successful candidates:
 - 4\71 Candidates demonstrated equal strengths in both Sections in the 3:2 ratio;
 - 15\71 or 21% of scripts obtained passes with higher marks from Section “B” than in Section “A”; and defied the 3:2 ratio of 60% and 40% in Sections “A” and “B” respectively.
- Out of 150 Candidates who failed:
 - 6 candidates showed equal strength in both Sections;
 - 49\150 scripts fell into the 3:2 ratio or higher with Section “A” contributing higher marks; and
 - 95\150 defied the above ratio - an indication that these performed better in Section “B” than in Section “A”; no doubt
 - 27\95 scripts recorded much higher contribution to total marks from Section “B” than Section “A”.

The multiple choice questions (MCQs)

The 2 MCQs, once again were the most patronized questions at 96% and 91%, in Sections “A” & “B” respectively. Patronage has been very encouraging and so the MCQ idea will be sustained and made much more effective to ensure a highest quality setting for this paper.

- 1) **MCQ in Section “A”** produced the following results in the October2019 sitting against April2019.
 - Both sittings recorded nearly 100% patronage and an above average performance of 60% in both cases.
 - Candidates would always seek to do their best in Section “A”, and only 31% or 66\212 Candidates who attempted the MCQs made pass marks in the paper at both sittings.
 - 142\212 Candidates scored between “11 and 20” marks against 147\243 scripts in April2019.

	Section “A”	
	Oct2019	April2019
	Q1	Q2
Highest Marks recorded	20(2)	18
Lowest marks	1	4
Patronage\# of Scripts	212\221	243\248
%age Patronage	96%	98%
Marks (11 to 20)	142	147
%age of performance "11 to 20" marks	67%	60%
Marks (1 to 10)	70	96

- A woeful 146 Candidates who patronized this MCQ failed the paper in the October2019 sitting.

- 2) **The MCQ in Section “B”** produced the following results, with a 91% and 87% patronage in October2019 and April2019 respectively.
- In October2019, 91% (201\221 Candidates) patronage got a 45 % or 90\201 scripts in the “11 to 20” marks category; against 87% or 215\248 patronage in April2019.
 - As was not unexpected, and even for lower patronage stance, in April2019; Candidates performed better at 51% 106\215 in the “11 to 20” mark category, than in October2019.
 - 63\201 or 31% of Candidates who attempted Question “6” made pass marks in the paper; and 111\201 obtained marks between “1 and 10” in the paper in October (against 51% or 109\215 Candidates in April2019).

	Section “B”	
	Oct	April
	Q6	Q6
Highest Marks recorded	19	18
Patronage\# of Scripts	201\221	215\248
%age Patronage	91%	87%
Marks (11 to 20)	90	106
%age of performance "11 to 20" marks	45%	51%
Marks (1 to 10)	111	109

In both cases, performance had been disappointing, but the good bit is that, the Chief Examiner’s Report of a Marking Scheme and Suggested Solutions continues to provide a very useful piece of material for Banking Students and Candidates.

The answers to the MCQ were along the following letters:

- **Question “1”:** letters “**B**”; “**E**”; “**A**” and “**D**” or the word, “**BEAD**”, in MCQs “1, 2, 3, 4”, then “5, 6, 7, 8” in that order to the MCQ20; and
- **Question “6”:** letters “**C**”, “**A**”, “**B**”, “**E**”, “**D**” or my coined word “**CABED**” in MCQs “1, 2, 3, 4, 5”; “6, 7, 8, 9, 10”, in that order to MCQ20.

Performance by questions

- In Question “1” and MCQs:
 - Patronage was highest at 212\221 or 96%; and
 - 66\212 Candidates passed the paper;
 - 2 Candidates scored 20\20marks; and 1 made 18;
 - 4 others scored 17; 15 made 16 marks; and
 - 12 registered 15 marks; 13 recorded 14 marks and 25 made 13\20.
- Question “2” which examined the responsibility of a Collecting Bank in **s. 81 BEAct 55:**
 - Patronage was highest at 190\221 or 86%; and
 - 59\190 Candidates passed the paper;
 - 1 script scored 21\20 marks; 2 made 16 marks; and
 - a woeful **162** made marks between “1 and 10”.

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- Question “3” for the Customer’s Rights of Appropriation of Payments and its application in the BCR:
 - Patronage was 53% or 118\212 candidates; and
 - 41\212 made pass marks;
 - 1 Candidate made 16\20 marks; another scored 15 marks;
 - 5 scripts made 13\20; 7 did 12\20; 1 Candidate scored 11\20 marks; and
 - 103\118 Candidates made marks between “1 and 10”.

- Question “4”, which examined the basic “Transaction” and the constituents of the “Banking Balance” on a “Customer Statement of Account”; registered the following:
 - Patronage at 62% or 137\212 candidates; and with a very poor performance of;
 - 46\137 Candidates obtaining pass marks;
 - 1 recorded 19\20 marks; and another made 15 marks; 2 scripts had 14\20 marks;
 - 3 scored 13\20; 7 made 12\20 marks; 11 also made 11\20 marks; and
 - 112\137 Candidates earned marks between “1 and 10”.

- Question “5” was about the Life Policy, particularly, the “Keyman” Insurance, and most popular type of Property in Securities for Bankers’ Advances:
 - Patronage was 88% or 194\212 candidates;
 - 68\194 Candidates were able to obtain pass marks;
 - 1 scored 22\20 marks; 2 made 21\20 marks;
 - 4 got 19\20 marks; 6 registered 17 marks; 5 made 16\20 marks; and 62 scored marks between “11 and 15”; and
 - 112\194 or 82% of scripts saw marks between “1 and 10”;

- Question “6” and MCQ:
 - Patronage was 91% or 201\221 candidates;
 - 63\201 Candidates only, were able to obtain pass marks;
 - 1 made 19\20 marks; 2 scored 17 marks;
 - 7 registered 16 marks; and 5 made 15\20 marks;
 - 14 scripts recorded 14\20 marks;
 - 22 made 13\20; 12 scripts recorded 12\20; and 27 made 11\20;
 - Of course, 111\201 Candidates obtained marks between “1 and 10”.

- Question “7” examined the Debenture in Company Securities, and turned out
 - a woeful 19% patronage; and
 - 1 Candidate made 17\20 marks and another scored 16\20 marks; and
 - 2 Candidates scored 14\20; 1 scripts for 13\20;

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- 6 scripts made 11\20; and
- 32 others registered marks between “1 and 10” – an indication of the continued weakness in Section “B” of the syllabus, and as in October2018, a previous sitting which featured a scenario involving the Limited Liability Company went with 78% or 123\157 scoring marks between “1 and 10”!!!

Performance by Centres – Passes

		Oct-19			Apr-19		
		# of scripts	Passes		# of scripts	Passes	
			# Passed	% age Pass		# Passed	% age Pass
Centres		221	71	32%	248	127	51%
Ghana	Accra	153	50	33%	173	92	53%
	Kumasi	45	15	33%	54	33	61%
	Sunyani	11	4	36%	13	2	15%
	Takoradi	4	1	25%	3	0	0%
	Tamale	7	0	0%	5	0	0%
Gambia	Banjul	1	1	100%			

As indicated early on, performance, against April2019, was not encouraging at all, and that has been the trend since 2018.

The October2019 Examination made a 32% or 71\221 pass (against 51% or 127\248 April2019 sitting) and perhaps in a back-to-batan, in line with October2018 at 37% passes (78\211) against 51% passes (130\253 candidates) in April2018.

- Accra made a woeful 33% or 50\153 successful Candidates, even with the benefit of a “Meet the Examiner” Session; which saw a demonstration of a little or no knowledge to the subject and exemptions in the “**Law Relating to Banking**” paper at the instance of several new Candidates.
- A Lecturer in one of the Banking Schools in Accra and who attended the “Meet the Examiner” Session made an impressive summary of the presentation\discussions at the session and same went viral to the benefit of Candidates. While, it may be difficult to measure the success rate by such Banking Schools, I will not contest any assertion regarding the performance of Candidates who had access to that paper.
- The Chief Examiner will be available to these Schools by invitation, for the benefit of Banking Students and Continuing Candidates, before Lecture begins.

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- Kumasi made a reduced performance from a 61% or 33\54 passes in April 2019 to an expected 33% or 15\45 successful Candidates at the October sitting, due to a cancelled\deferred “Meet the Examiner” Session at the Centre.
- Sunyani and Takoradi bounced back into “winning spree” at 36% or 4\11 successful Candidates and 25% or 1\4 successful Candidate respectively. In both cases, better than in April2019, when Sunyani made a 15% or 2\13 successful Candidates; and Takoradi made 0%.
- The last time Tamale made passes was in October2018, and it is worrying to note same, particularly, with the reforms in Ghana’s Financial Services\Banking Industry in recent times.
- The above performance in 2019 is too dramatic to gloss over, following a similar trend in 2018, even though the numbers of successful Candidates have increased over the years.
- I have reproduced performance in 2018 to guide Lecturers and Students in their pursuit of the Banking Career to put some more seriousness to preparation for the Examination.

Centre	October 2018			April 2018		
	# of scripts	Passes	%age Pass	# of scripts	Passes	%age Pass
Accra	133	55	41%	162	93	57%
Kumasi	61	20	33%	74	31	42%
Sunyani	8		0%	7	1	14%
Takoradi	3		0%	4	3	75%
Tamale	6	3	50%	6	2	33%
Total	211	78	37%	253	130	51%

Performance year-on-year from 2016

From all indication and purposes, April sittings have produced better performances than October in 2018 and 2019 (tables below refers) and very much against the trends in 2016 and 2017; as shown in the table below.

Passes year on year by Centres												
Centres	Apr-16			Oct-16			Apr-17			Oct-17		
	Scripts	Passes		Scripts	Passes		Scripts	Passes		Scripts	Passes	
	# of	# of	%age	# of	# of	%age	# of	# of	%age	# of	# of	%age
Accra	177	23	13%	170	53	31%	168	31	18%	167	94	56%
Kumasi	44	11	25%	44	18	41%	55	12	22%	45	21	47%
Sunyani	4	0	0%	16	0	0%	12	0	0%	12	0	0%
Takoradi	2	0	0%	1	1	100%	2	0	0%	10	3	30%
Tamale	5	2	40%	10	0	0%	14	1	7%	8	2	25%
# at Exam.	232	36		241	72		251	44		242	120	
%age Passes at sittings		16%			30%			18%			50%	

Performance by Centres – Failures

October 2019 registered a 68% or 150\221 unsuccessful Candidates against 49% (121\248) in April 2019, and strangely, 2018 produced very similar statistics.

- October 2018 registered 63% failures (133\211) against
- a 49% (123\253) in April 2018; and same reflected in the 3 categories.
- The trends are too dramatic for purpose, and so Lecturers and Banking Students\Candidates have to sit up and equip their capacity for knowledge acquisition.

Year 2019 sittings

Failures by Centres	Oct-19					Apr-19			
	#s	“A”	“B”	“C”		#s	“A”	“B”	“C”
Total	150	28	73	49		121	52	58	11
Accra	103	19	52	32		81	35	40	6
Kumasi	30	6	14	10		21	8	11	2
Sunyani	7	1	2	4		11	5	4	2
Takoradi	3		2	1		3	1	1	1
Tamale	7	2	3	2		5	3	2	-
	68%	19%	49%	33%		49%	43%	48%	9%

Performance by Centres – Failures

Year 2018 sittings

Failures by Centres	Oct-18					Apr-18			
	#s	“A”	“B”	“C”		#s	“A”	“B”	“C”
Total	133	25	49	59		123	33	56	34
Accra	78	17	26	35		69	29	32	8
Kumasi	41	6	20	15		43	3	21	19
Sunyani	8	1	1	6		6	1	1	4
Takoradi	3	1	-	2		3		2	1
Tamale	3	-	2	1		2			2
	63%	19%	37%	44%		49%	27%	46%	28%

Lecturers, Students \ Candidates and the Syllabus

The “Meet the Examiner” sessions have always revealed that a lot more will be desired at Lecture times and Lecturers would need much more quality time, at their lecture sessions, to encourage Students to avail themselves to their chosen profession, commit to this course of study and apply themselves to obtain sufficient understanding of the various Banking Principles and underlying authorities.

The Chief Examiner went out of the way to do what he had never known to do, and nearly 80% of the way, introduced the set questions, particularly with regards to the MCQs, in the form of scenarios mimicking Customer complaints during the “Meet the Examiner Session”, but only those who **“had ears and eyes heard and saw”** through this **silent gesture!!!**.

Much as I have, always, admonished Students NOT to expect me to indicate areas to be examined for their purposes, but to consider questions set as Customer complaints, which would not be registered as tailor-made issues; several Candidates COULD NOT see these; even when such scenarios in the guise of Customer complaints were presented to them on a silver plate.

It is also necessary that Lecturers and Students alike, will work mutually to cover the entire syllabus and Students will need to equip themselves sufficiently to demonstrate understanding of the entire syllabus.

The question paper and Customer Service

All scenarios in the questions represent needs of the Customer in the Banker \ Customer Relationship; and every question was made to simulate a Customer need \ request or complaint.

Candidates should be so guided and endeavour to prepare adequately to go into the Examination halls with the desire to satisfy the Customer in every question so attempted.

The Examination questions will always be framed to provide an opportunity for Candidates to exhibit their competences and preparedness to serve and satisfy the Customer in the BCR.

Marks obtained in the Examination will therefore always be an indication of how a Candidate would have performed in dealing with 5 Customer complaints on a typical Branch Banking day.

Dealing with the examination questions

The underlying principles in the questions have been dealt with by identifying same in the various scenarios examined to make this Examiner’s Report, as useful as intended, for the purposes of Banking Students; Candidates and Bank workers, without seeking to indicate that these are exhaustive.

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The frameworks shown in the table below will always be posted in the report as a guide, using the mnemonics TIPS and/or PERCS which have always been very useful tools for Banking Students; candidates and Bank workers seeking to acquire knowledge and information.

Format I TIPS		Format II - PERC	
T	Read the question carefully, THINK and proceed.	P	What Banking PRINCIPLE does the question pose?
I	What is the ISSUE (including exceptions, if any) in the question?	E	Are there any EXCEPTIONS to this principle?
P	What ISSUE has the PROBLEM breached and must be addressed?	R	RELATE the problem to the breached PRINCIPLE to address in the question?
S	Resolve the PROBLEM with the ISSUE for the SOLUTION .	C	Match the PRINCIPLE to the problem, resolve and CONCLUDE .

Only a few Candidates sought to use the PERC format, but mixed the various elements and made submissions under the various headers, albeit with wrongly stated principles, which did not translate into good passes.

Lecturers are advised to assist Banking Students and Candidates to equip themselves with the format, to facilitate their delivery during the Examinations and in their routine work at their offices.

It is my joy to help Students to **acquire knowledge first and foremost**, and then to *use this knowledge to prepare*, sufficiently, to **enable them** to pass the Examinations and ultimately, to **obtain the qualification** they so earnestly seek. So join hands with me and let's make our Profession an enviable specialty.

The Question Paper

The question paper, as indicated above, is intended to test the understanding of the Banking Student and the ability to demonstrate same in the questions examined.

Although Banking Students and candidates are required to make 3\4 choices of questions in Section “A” and 2\3 questions in Section “B”, they should prepare themselves sufficiently and accept the questions as likely real Branch setting situations worthy of resolving, just the same way, they will capably deal with 7\7 Customer complaints coming up in the Branch on any given day.

The statistics of passes in this subject shows the extent to which knowledge and expertise in our chosen profession is sitting at the very foundation of Ghana’s Banking Industry.

It is worth noting that this subject has a history, in the UK Banking Industry, as an important and useful Training Platform developed for Branch Managers, and so I encourage Lecturers to step up their teaching strategies to attract Banking Students to the Lecture Rooms; and Banking Students will need to put in some more effort in unlearning, learning and relearning to enable them demonstrate understanding, not only during the Examination, but in their daily routines in the Banking business.

Because of the performance and weaknesses coming up over time, some useful material information has been provided under the Examiner’s Commentary and Banking Students may use same for revision purposes in their next attempt at the Examination, although these are in no way exhaustive and should not be considered as a replacement for the textbooks.

Finally, Candidates are only expected to demonstrate understanding and exhibit same in dealing with the questions, just as if Customers were sitting with them and complaining (as in the questions), and much as they will not be expected to reproduce all that knowledge in dealing with the complaints, the Chief Examiner shall expect Candidates to demonstrate their ability to apply that information such as would satisfy the Customer, to obtain full marks and\or associated rewards.

As indicated earlier, the Chief Examiner is delighted when marking scripts in which the Candidate had taken pains to:

- **DETERMINE the ISSUE;**
- **DEMONSTRATE UNDERSTANDING &**
- **DEAL WITH THE PROBLEM**

**The Questions,
Underlying
Principles
and
Authority.**

QUESTION ONE – Multiple Choice questions

- i. Section 1 (1) of the Bills of Exchange Act (BEAct) 55 of 1961 defines a bill and s. 72 distinguishes a cheque as a type of bill. What was the distinguishing element?
- a. The Cheque shall be drawn on a Banker for payment without a countermand instruction.

b. A bill of exchange payable on demand applies to a cheque.

- c. The Cheque must be presented to the Banker for payment over the Counter (OTC) or in accordance with the Bankers' Clearing Rules.
- d. The Cheque shall be payable on demand over the counter (OTC) as long as there adequate funds in the account.
- ii. In the ordinary or due course of operation of a cheque, s. 1(1) BEAct 55, introduces the parties in the workings of the cheque. Who are these?
- a. The Banker and the Customer.
- b. The Banker, Drawer, the holder and the Customer.
- c. The Drawer, the Drawee, the payee and Paying Bank.
- d. All of the above.

e. The Drawer, through the Payee to the Drawee.

- iii. A Cheque is said to be payable to order in accordance with s. 6(4) BEAct 55, when it is expressed to be so payable. What does this mean when it doesn't contain words prohibiting transfer?

a. The said Cheque, as a negotiable bill, becomes available to create another holder in the due course of operation of the Cheque.

- b. The said Cheque becomes available to a Holder for Value.
- c. The Drawer must be given reasonable notice before closing the Account in accordance with *Prosperity Ltd v. Lloyds Bank*.
- d. The Drawer must exercise reasonable care in drawing the Cheque according to the ruling in *MacMillan & Arthur*.
- e. None of the above.
- iv. Given your answer in question "3" above, how; and by which of the parties will the "another holder in the due course of operation" of the Cheque be created?
- a. By negotiation of the Cheque by the Banker;
- b. By an endorsement and postage of the Cheque to the payee.
- c. With the Consent of the Customer.

d. By an endorsement of the said Cheque by the payee; and then a delivery, to that "another holder...".

- e. Interest of the Bank for the Customer.

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- v. Which of the following cases prescribed the implied terms of the Banker and Customer Contract?
- United Dominion Trust *v.* Kirkwood.
 - Joachimson *v.* Swiss Bank Corporation.**
 - Woods *v.* Martins Bank.
 - Ladbroke *v.* Todd.
 - Box *v.* Midland Bank.
- vi. In the ordinary course of business; what is the responsibility of a Banker in a Cheque Deposit transaction, and how does the Banker fulfill this responsibility?
- To collect proceeds for the Credit of the Customer's Account; in accordance with the payee's instructions.
 - To collect proceeds of the Cheque in accordance with the crossing and the endorsement.
 - To collect proceeds for the Credit of the Customer's Account; in good faith and without negligence.
 - "a" and "b" above.
 - "b" and "c" above.**
- vii. What informed the choice of response above?
- If crossed, in accordance with s. 79 BEAct 55 & protection provided in s. 81 BEAct55.**
 - The Banker and Customer Relationship and s. 22 BEAct 55.
 - If uncrossed, in accordance with s. 80 BEAct 55 & s. 81 BEAct55.
 - "b" and "c" above.
 - None of the above.
- viii. Today, your Operations Manager shows you a cheque in a Cheque Deposit transaction of last Friday, and tells you they aren't able to trace it to the Customer account to be debited. How will you deal with the situation?
- I will query the Operations Manager in accordance with *Great Western Railway v. London & County Banking Co.*;
 - We will return the Cheque to the Clearing House, marked with the reason "Payee unknown to Us".
 - The Branch must bear the loss re *MacMillan & Arthur*.
 - If payee is not our Customer, then we shall look for an endorsement which should have created an "endorsee"; and therefore, our Customer. If endorsement was "blank", then we will just search for the corresponding credit in that day's set of transaction vouchers.**
 - Estoppel applies in accordance with *Greenwood v. Martins Bank*.

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- ix. In the Banker and Customer Relationship (BCR), it is said that there is no definitive definition of a Customer, but some very instructive Court statements have suggested that, a Customer is one who:
- picks money from the Western Union counter in accordance with *Great Western Railway v. London & County Banking Co*
 - has some sort of an account with the Bank in accordance with *Great Western Railway v. London & County Banking Co.*; and for whom the Banker accepts instructions to open an account; and receives a deposit to be credited to it, as was upheld in *Ladbroke v Todd & Wood v Martin's Bank Ltd [1959]*, or one in contemplation, with a Banker.**
 - None of the above
 - "a" and "b" above.
 - "b", and "c" above.
- x. What is the legal term used to describe making proceeds of a Cheque available to someone other than the rightful owner?
- Estoppel, e.g. in *Greenwood v. Martins Bank.*
 - When Commission is charged to Drawer's account.
 - Wrongful Debit to the Customer's account.
 - Wrongful discharge.
 - Conversion, e.g., cheque payable to an LLC received for a Director's personal account, in breach of s. 81 BEAct 55**
- xi. Which right in the BCR does an operation of law preclude?
- The Customer's first Common Law Right of Appropriation of Payments**
 - Right to report a forgery on the account.
 - The Rule in *Claytons' case.*
 - Right to disclose information to the Banker.
 - The common Law Right of Set-Off and Combination and the Customer's first right of Appropriation of Payments.
- xii. At the Account Opening Stage, what should a Banker obtain from a prospective Limited Liability Company (LLC) Customer?
- Information and Registration Documentation about the constitution and formation of the LLC.
 - Information and confirmation documents of the natural persons therein;
 - Board Resolution, and Registration documents including Regulations and Certificate of Incorporation.
 - All the above.**
 - "a" and "c" only.

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- xiii. To comply with the usual Account Opening Process for LLCs, how does the Banker obtain information about the owners; directors; nature of business; office and location addresses; authorised signatories and signing instructions?
- a. From the LLC's Constitution and Sole Proprietorship documents.

b. The LLCs Regulations and Board Resolution respectively.

- c. The LLCs, Cheque Books and Statement of Accounts.
d. The Limited Liability Partnership Agreement.
e. All of the above.
- xiv. Negotiation of a cheque involves an endorsement. Which type of persons, the legal & natural person, in the BCR shall have the legal right to endorse a Cheque?
- a. Sole Proprietorship.
b. Limited Liability Company & Limited Liability Partnership.
c. The Directors.
d. All of the above.

e. None of the above

- xv. A Cheque payable to "bearer" gets negotiated. Assuming it is not crossed "Account payee only"; what shall the Paying Banker do with the Cheque, if the endorsement was forged?

a. The "forged endorsement" does, in itself, not prevent a "holder in due course" under the circumstances, so the Banker shall be discharged on payment. The Banker shall not have a legal obligation to determine the authority of the endorser in the endorsement, in accordance with s. 58 BEAct55.

- b. The Banker doesn't have to pay because of the "forged endorsement".
c. The forged endorsement shall absolve the Drawer from liability.
d. "b" and "c".
e. All the above.
- xvi. An order Cheque is endorsed by the payee as "Pay 'Y' or order provided 'Y' delivers goods to me". Subsequently, "Y" negotiates the cheque to "Z", having endorsed same in "blank". "Y" did not fulfill the obligation. Which of the following statements is true?
- a. "Z" could have been a *holder in due course*, only if "Y" delivers the goods.
b. The cheque is an unconditional order!
c. None of the above

d. .Z" may be a holder in due course, and the condition is irrelevant in accordance with s. 31 BEAct 55.

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- xvii. Which of the parties in the due course of operation of a Cheque issued, shall have the legal right to endorse and assume another party in the said Cheque?
- The Drawer who endorses and becomes a payee.
 - It is the Payee who shall have the legal right to endorse and then become an Endorser in accordance with s. 53(2) BEAct 55.**
 - Cheques crossed “Not Negotiable” by the Endorser.
 - Cheques endorsed “Account Payee only”, by the Drawee.
 - All the above.
- xviii. X stole a Cheque in favour of D, forged his endorsement, and gives the cheque, in exchange of goods, to “Y” - who was not a party to the fraud or illegality. What is “Y” in the operation of the Cheque?
- Holder for Value.
 - Bearer and holder in due course.
 - Wrongful possessor.
 - An endorsee.
 - Holder in due Course in accordance with s. 27(3) BEAct 55.**
- xix. In the working of the Power of Attorney (PA), a number of factors terminate the agency. Which of these fall in line?
- When the Principal revokes the PA; assumes the stated responsibility(ies), with or without notice; complete performance; the lapse of time; or the agent walks out.**
 - All the factors that determine the BCR at the instance of the agent.
 - When the PA is executed under seal.
 - When the Customer’s signature seems to have been forged.
 - “b” and “c”.
- xx. Albert, and wife Alice, Yeboah have a Joint Account with your Branch. Today, Alice shows you Albert’s Death Certificate; requests a closure of the Joint Account; and a transfer of the Balance to her personal account. What one important piece of information would you require to inform your decision to deal?
- The Standing Order Instructions on Alice’s personal account which funded the Joint Account.
 - Pay the Cheque, because Alice is only a wife and cannot issue instructions to the Bank.
 - Either party can “stop” payment of a cheque, so close the account.
 - The effectiveness of a Survivorship Clause in the Mandate.**
 - “a”, “b” and “c” above.

QUESTION TWO – Banker’s function to collect proceeds of Cheques - Collecting Banker and the Customer.

In *United Dominion Trust (UDT) v. Kirkwood* (1966), it was held that the Banker also has a function to collect proceeds of a cheque for the credit of the Customer’s Account, wherewith, in performing this function, a Collecting Banker becomes a holder, who would receive payment for the Customer’s Account by presenting the said cheque to the Paying Banker for payment. Such transaction is usually dubbed, the **Cheque Deposit!!!**

By **s. 81 BEAct 55**, the Collecting Banker is under strict liability to perform the above function and obtain protection if, it does same for a Customer; in good faith and without negligence. Others include, in accordance with the endorsement and to the crossing, if any; especially if it contains words prohibiting transfer; and then, according to the rules of the Bankers’ Clearing House.

Required: Indicating, with appropriate authority, explain the following:

1. **For a Customer**, i.e., who will be a Customer in a Cheque Deposit? **(6 Marks)**
2. **In Good Faith**, i.e., what constitutes “good faith”? **(2 Marks)**
3. **Without Negligence**, what are the legal principles\tests for negligence? **(12 Marks)**

Examiner’s Requirement

Required: Indicating, with appropriate authority, explain the following:

1. **For a Customer**, i.e., who will be a Customer in a Cheque Deposit? **(6 Marks)**

The Customer in the Cheque Deposit Transaction

- shall be the **payee** – **s. 5 BEAct** of 1961; or
- **endorsee**; and therefore a “holder in due course” (HNDC) in the Cheque through an endorsement;
 - with due regards to **s. 32(1) BEAct** of 1961
 - but in accordance with **s. 32(4) BEAct** of 1961;
 - in line with **s. 27 BEAct** of 1961;
- That no such endorsement by a legal person shall suffice or be valid.
- That any deviation in the above would constitute “conversion”.

The Candidate, bearing in mind that the, “without negligence” test could date back as far as when the Account was opened for the Customer, is expected to:

- demonstrate understanding of “Who the Customer is”, into such judicial decisions:
 - the Mathews v. William Brown & Co (1894)
 - the Great Western Railway v. London and County Banking Co. [1901]
 - Demon Malawi Ltd v New Building Society (1991)
 - Ladbroke v Todd[1914];
 - Commissioner for Taxes v English, Scottish and Australian Bank [1920] and
 - Wood v Martin’s Bank Ltd [1959]

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- That the said Customer had been subjected to the Banker's strict Account Opening Procedures for obtaining and establishing the:
 - *Identity & verification of respective documents;*
 - *Character & appropriate introduction and references*
 - *Integrity* of the said Customer;
- That the Banker shall collect proceeds of such cheque in accordance with:
 - the **Endorsement**, if any; and
 - the **Crossing**, if any, but shall cross same for itself "for Collection" through the Bankers' Clearing House.

2. In Good Faith, i.e., what constitutes "good faith"? (2 Marks)

The Candidate is expected to know and state that:

- the Banker is deemed by Law to act in good faith at all times in accordance with **s. 90 BEAct 55**:
"A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not."; and
- no Banker\employee is paid to do things negligently, even though the BEAct provides for "things done negligently or not".

2. Without Negligence, what are the legal principles\tests for negligence? (12 Marks)

The Candidate is expected to demonstrate understanding of the Collecting Banker's (CB) function and responsibilities in "collecting proceeds of Cheques"; and to make submissions including that the CB shall collect proceeds of Cheques in accordance with the:

- **Endorsement** and legal implications for the legal person, bearing in mind, the Customer and the CB's protection; as provided for by **ss. 30 & 32 BEAct 55**;
- The **Crossing** in line with **s. 76; s.79 & s. 80 BEAct 55** and obtaining proceeds from the Paying Banker;
- The Banker's Clearing Rules, re the Clearing Cycle which shall determine the "Value Date" for the proceeds;
- Others include:
 - collecting proceeds of a cheque for a **party other than for the account of the named payee**, and having same endorsed by the said payee. Of course, these would be avoided if the CB deals appropriately in accordance with the Endorsement(s).
 - **fiduciary relations between the parties**, and failing to enquire and to obtain a satisfactory response, in suspicious and unusual situations:
 - Ref: the case of a Director or employee who pays a company **cheque** into a personal or their own account, as in EB Savory & Co. v. Lloyds Bank (1913);
 - The case of a **cheque drawn in favour of an Agency** in Marques of Bute v. Barclays Bank (1954);
 - For **cheques payable to a Company** as in AL Underwood v. Bank of Liverpool (1924); and
 - A **cheque issued in favour of a partnership**, as in Baker v. Barclays Bank (1955).

QUESTION THREE – Common Law Rights in the BCR & Implications of operation of Law

2 Common Law rights sit in the Banker and Customer Relations (BCR), to guide the operational needs of both parties.

- There is the Common Law:
 - Right of Appropriation of Payments, with strict obligations on the **Customer**; and
 - Right of Set-Off & Combination for the **Banker**, also with strict obligations for compliance.
- The Customer has a first right of Appropriation of payments; and
 - the Banker follows to assume this right when the Customer does not exercise same; and
 - this second right activates the Bankers' Common Law Right of Set-off & Combination.
- If both parties, refuse to exercise this right, the operation of law in Clayton's case takes over, with very serious consequences for the Banker. Of course, not in cases of lending and Securities for Bankers' Advances in the standard Bank Charge Forms. Thanks to the "Continuing Security" clause in the Charge Forms.

Besides the rights of both parties to exercise this right in the BCR, certain events arise to exclude the Customer's Common Law Right, and at the same time, bring up the Banker's right to exercise the Bankers' Common Law Right of Set-off of Account Balances, ahead of operation of law.

Required:

- a) What such events are likely to affect the Customer to such an extent of losing this Right and what are the likely implications for the Banker in the BCR? **(8 Marks)**

Examiner's Requirement

The Candidate was expected to state the factors that determine\terminate the BCR, and including:

- Notice of Death of the Customer, re **s. 74 BEAct 55**;
- Notice of Mental Incapacity;
- Receipt of a Court Order, re Garnishee Summons\Order and an Injunction;
- Notice of Insolvency, bankruptcy of a natural person(s) and liquidation of the legal person;
- Etc.
- That these come with implications including:
 - That they preclude the Customer's Common Law Right of Appropriation of Payments,
 - That they revoke the Banker's authority to pay;
 - That they make way for the Banker to exercise the right of Appropriation and the Candidate must:
 - ❖ state how the Banker will do so and
 - ❖ indicate what other legal responsibilities arise for the Banker; such as
 - ❖ **stopping** the Customer's Account(s) to prevent the operation of law in Clayton's case for overdrawn balances; and
 - for an automatic Banker's Right of Set-Off and Combination of accounts.

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- If the Banker does not then, the rule in Clayton’s case would go against the Banker; where:
 - Credit transactions would match debit transactions in order of time, i.e., “**first in first out**”; and this has historically affected Bankers when Customer Account held debit balances, in cases of unsecured lending.
 - Albeit, in secured lending, the Standard Bank Charge Forms provides protection in the “Continuing Security” clause which was upheld in Westminster Bank v. Condon (1940).
- b) What is meant by appropriation of payments and what are the likely implications of this right on the Banker? (6 Marks)

Examiner’s Requirement

- The Candidate is expected to demonstrate understanding of this Common Law Right, and taking advantage of the explanation in the question, to show:
 - **when** the Customer may exercises this right;
 - **how** the Customer shall do so;
 - the effect of the Customer’s action on the Banker, such as
 - ❖ that the Customer may exercise this right, even if the account is overdrawn;
 - ❖ that, even when the Customer doesn’t, the Banker shall exercise this right, but in the interest of the Customer; and
 - ❖ that if the Banker doesn’t exercise same, then
 - ❖ the operation of the rule of law in Clayton’s case shall apply, and credit transactions shall extinguish debit transactions in order of time, in cases of unsecured lending.
- c) This morning, your Assistant shows you a cheque drawn by your cousin, Hilda Acquah for GHs150.00 against a credit balance of GHs130.00, and wants your authority to dishonour payment. You accessed the Customer file and noted the following:

Root Capital Bank, Avenue Central Branch. Account Number: 1-013132-019							
Date	Details	Value Date	Debit	Credit	Balance		
20-Oct-19	Balance B\Fwd	20-Oct			250.00		
21-Oct-19	Cash Deposit	21-Oct		50.00	300.00		
22-Oct-19	Debit 23-Sep. a\c1-015152-019.	22-Oct	150.00		150.00		
22-Oct-19	Cheque Withdrawal	22-Oct	200.00		(50.00)		
25-Oct-19	Cash Deposit	25-Oct		180.00	130.00		

- That a Debit of GHs150.00 for 23-Sep. had been applied on the account on 22-Oct, and perhaps on the blind side of the Customer;
- You authorised payment and same resulted in an overdrawn position of GHs20.00.

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Required:

Just before you left the Office for lunch, your assistant walked in, and asked:

“Why did you authorise payment of your cousin’s cheque withdrawal transaction when all was clear that same will create an overdrawn position?” **(6 Marks).**

Examiner’s Requirement

- The Candidate must show:
 - when the account balance turned debit;
 - what transaction resulted in a debit balance;
 - that in the above account, it was the GHs150.00 of 23Sep debit transaction for account #1-015152-019, which would be a very wrongful debit, if that were the case.
 - that the above notwithstanding, the Customer’s cheque should be paid because of the Customer’s first right of appropriation of payment;
 - that even with the overdrawn balance of GHs50.00 and the GHs180.00 Credit transaction; having the GHs150.00 Cheque follow immediately, is an indication that the Customer was in total ownership of the Account, in light of the right of appropriation of payments;
 - that When a Paying Banker receives a Customer instruction to pay, the Banker must honour the Customer’s instruction bearing in mind that the Customer has the first right of appropriation to make any payment to settle any debt, but any such right to appropriate must take place in the ordinary course of business (the Customer’s way of using the account) and at the time of payment.

QUESTION FOUR

This morning, you walked into the Office, as the Branch Manager, and heard a Customer’s voice unusually louder and walking into the conference room; you find your RM and Madam Hannah Adjei, an SME Customer with the Customer’s Statement of Account for September 2019.

Root Capital Bank, Avenue Central Branch. Account Number: 1-015152-019							
Date	Details	Value Date	Debit	Credit	Balance		
01-Sep-19	Balance B\Fwd	01-Sep					250.00
02-Sep-19	Cash Deposit	02-Sep		50.00			300.00
02-Sep-19	Cheque Deposit.	04-Sep		150.00			450.00
02-Sep-19	Cheque Withdrawal	02-Sep	400.00				150.00
16-Sep-19	Cash Deposit	16-Sep		150.00			250.00
19-Sep-19	Cash Deposit	19-Sep		150.00			400.00
24-Sep-19	Cheque Withdrawal	24-Sep	200.00				200.00
24-Sep-19	Cash Deposit	24-Sep		180.00			380.00
25-Sep-19	Cash Deposit	25-Sep		180.00			560.00
27-Sep-19	Cash Deposit	27-Sep		180.00			740.00
30-Sep-19	Cash Deposit	30-Sep		180.00			920.00
30-Sep-19	Cash Deposit	30-Sep		180.00			1,100.00
30-Sep-19	Debit Interest	30-Sep	6.50				1,093.50

You invited, to your Office; the RM who tells you:

- That **Madam Hannah Adjei, is making an unnecessary claim** about a Debit Interest Charge on Account when the Account Balance has been in Credit throughout the month.
- That the RM adds that the Interest Charge was not raised by the RM - it was the computer which debited the Customer’s Account.

You printed a copy of the Statement of Account and you noted the following:

- That a Cheque for GHs400.00 was paid against **uncleared effects** during the month;
- That the RM does not understand the **features of transactions** on Account;
- That the RM does not understand the constituents of the **Banking Balance** on the Statement of Account.

Required:

a) You have therefore decided to have a discussion session with your Staff along the following:

- What is a Transaction? **(4 Marks)**
- What are the elements in any given transaction? **(6 Marks).**

b) Bearing in mind the constituents of the Banking Balance on the Customer’s Account and various types of transactions:

- State the various constituents and their meaning. **(6 Marks).**
- What caused the Debit Interest Charge on the Account? **(4 Marks).**

Examiner's Requirement

a) The "Transaction" defined

i. What is a Transaction?

(4 Marks)

The Candidate must state that a "Transaction is a business dealing between 2 or more people, *time bound*".

- In the Banking business, the transaction shall be a record of movement of funds from one person to another (or from one Account to another account), which shall always be "time bound"; and any such record shall be made in accordance with Accounting Rules;
- The Bankers' function of "*Accepting Deposits*", results in a Credit transaction:
 - For example, proceeds of a Cheque Deposit shall be available as a "Value Dated" Credit transaction, based on the Bankers' Clearing House Rules and Clearing Cycle; where the proceeds shall be received in the future;
 - The function for "*Honouring the Customer's instructions to pay*" would involve a debit transaction for the Customer's Account;

ii. Elements in a given Transaction

What are the elements in any given transaction?

(6 Marks).

Examiner's Requirement

The Candidate must state the elements of a transaction including:

- the 2 dates;
- Remitter (source account to be debited);
- Beneficiary (destination account to be credited);
- An amount;
- Underlying need for the transaction;
- Reference\transaction ID, etc.;
- The 2 dates are the:
 - "Transaction Date" as date for processing the "transaction"; and the
 - "Value Date" which, based on the underlying need, shall determine when the funds in the transaction must become cleared and therefore, available to the beneficiary. The "Value Date" is an element of the future, as in the Clearing Cycle, Forward Exchange Contracts, Fixed Deposit Receipts which will mature sometime in future.
- In the Banking business, a transaction is always recorded in accordance with Accounting Rules; and therefore, there is no such thing as a transaction with a date before today in any Banking transaction!!

b) **Constituents of the Banking Balance**

Bearing in mind the constituents of the Banking Balance on the Customer's Account and various types of transactions:

- i. State the various constituents and their meaning. (6 Marks).

Examiner's Requirement

- **Cleared funds and agreed Overdraft Limit (C)**; in Joachimson v. Swiss Bank Corporation, the Paying Banker was said to have a duty to pay the Customer's cheque against sufficient Cleared funds or agreed overdraft limits; Cleared funds are available as "Cash" and/or non-Cash transfer of funds from one account to another;
- **Uncleared Effects (UE)**; where, by the ruling in United Dominion Trust v. Kirkwood(1966); the Collecting Banker shall collect proceeds of cheques "value dated", and in accordance with the Bankers' Clearing House Rules; and are available in Cheque Deposit transactions involving the Bankers' Clearing House Rules.
- **Book\Accounting Balance (BB)** as the aggregate of the above, in accordance with Accounting rules, where:
 - a Credit transaction:
 - adds to and/or increases a Credit balance; and
 - reduces and/or decreases a Debit Balance;
 - a Debit transaction represents:
 - a decrease to a Credit Balance; and
 - an increase in a Debit\overdrawn Balance on ONLY the Current Account.
 -
- Mathematically, "**C + UE = BB**."
- In cases of no uncleared effects, **C shall always be equal to BB**.

- ii. What caused the **Debit Interest Charge** on the Account? (4 Marks).

The Debit Interest charge arose as a result of paying the cheque for GHGs400.00 on 02Sep. against sufficient cleared funds of GHs300.00 and GHs100.00 out of the uncleared effect fund of GHs150.00 in the cheque Deposit of GHGs150.00 of 02Sep. and value dated 04Sep.; mathematically represented as follows:

Cheque for GHs400.00 paid:	GHs400.00
Cleared Balance:	(GHs300.00)
Add: GHs100.00 out of the GHs150.00 in Cheque Deposit value dated 04Sep., and therefore an UE of:	(GHs100.00)

GHs100.00 represents *payment against Uncleared Effects* out of the GHs150.00 and same resulted in the Debit Interest Charge on account.

SECTION B

QUESTION FIVE – Life Insurance Policies-Types & Parties, Insurable Interest & Keyman Insurance.

As Executive Director\Retail, you call that 3 years ago, the CEO of Wiafe Chemists Limited (WCL), a small but growing Pharmaceutical Company, and long standing Customer of your Kokonsa Branch of the Zenith Bank, sought your advice about whether they could insure the life of their Chief Chemist; on whom the success of the Company largely depended. You advised that the WCL could and they did.

Today, the CEO calls to your office and informs you that the Chief Chemist has resigned and asks about the status of their overdraft facility limit of GHs25,000.00 covered by a Legal Assignment of the GHs55,000.00 Life Policy over the life of the Chief Chemist.

Your records show that the WCL took a Keyman Insurance over the Life of Kwame Antwi, their Chief Chemist in April 2016, and charged same to your Bank as Security for Bankers Advances in a Legal Assignment in June 2016.

Required:

- a) What is a Life Policy as Security for Bankers' Advances and what types are usually available to the Bank as Security? (4 Marks).
- b) Stating the parties in a Life Policy and their roles, identify these in the scenario above, especially the WCL who assigned a Life Policy to your Bank. (5 Marks).
- c) What is a "Keyman" Life Policy; and why was WCL able to engage in such a Life Policy over the life of the Chief Chemist? (5 Marks).
- d) Will the resignation of the Chief Chemist change the status\position of the Security to cause the Bank to request for another facility? (6 Marks).

Examiner's Requirement

a) Life Policy defined

1. A life policy is:
 - **"A contract by which:**
 - *an "insurer",* on receipt of a request
 - from a *proposer,* and
 - in consideration of a certain *premium,* either in gross sum, or by annual payment,
 - to insure or cover the risk of loss in another (person or property) – the *"insured";*
 - "undertakes to pay to the person for whose benefit the insurance is made" – *the "beneficiary";*
 - a certain sum of money or annuity – a *"capital value"*
 - *at maturity; where "maturity" means:*
 - on the *death of the person whose life is insured* – the *"insured";* or
 - *at the "end of a stated number of years"*
 - *whichever occurs earlier.*

2. Types of Policies available to Bankers.

- Life Endowment Policy;
- Keyman Policy;
- Whole Life Policy;
- Term of Life Policy.

2.1. Candidates were expected to define and state the features of the above policies with regards to:

- Type of policy;
- Insurable Interest, where applicable;
- Maturity element; and
- The ultimate benefit.

2.1.1. **Life Endowment Policy**, benefit is available at “death” or “lapse of time”; whichever occurs earlier;

2.1.2. **Keyman Policy**, where benefit is available at the point of non-existence of the Key person s “*insured*”, i.e., at “death”; “incapacity” or “resignation”; whichever occurs earlier; with an element of Insurable Interest exists;

2.1.3. **Whole Life Policy**, where the life assured must die to make monies available to a named beneficiary\assignee for proceeds;

2.1.4. **Term of Life Policy**, where benefit arises only at the death of the life assured **within** the stated term of the Policy.

2.2. Adding any of the following exclusive features would be very rewarding.

2.2.1. That the **Life Endowment Policy** provides for proposer; life insured and beneficiary as one and the same person; which makes funds available:

- during the tenor as **surrender value**; and
- **capital value**” for the:
 - **proposer** when maturity arises at “lapse of term”;
 - **beneficiary** at “death”, when the proposer and life insured are one and the same person.

2.2.2. That the **Whole Life & Term of Life** Policies make funds available only at “death” of the insured; and

2.2.3. That the **Keyman Policy** involves an element of Insurable Interest, where the proposer and beneficiary are one and the same person.

b) **Parties in a Life Policy**

Candidates were expected to make submissions as follows, with regards to the scenario (WCL):

1. An insurance policy shall always have the following parties:

- A **proposer**, who submits a proposal to the Insurer, and will necessarily pay the premiums; WCL is the proposer;

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- An **insurer** who shall, with payable premium, insure the *insured*; and at “maturity”, pay the beneficiary(ies); shall always be the Insurance Company;
 - A life **insured**, who shall be contingent to the policy in accordance with the elements of Insurable Interest as necessary; and the Chief Chemist is the life insured; and
 - the named **beneficiary** or named **beneficiaries**, here is the **WCL**.
2. Candidates will be adequately rewarded with submissions including:
- 2.1. That Insurable Interest and several arrangements of the parties make way for the several types of Policies as follows:
- 2.1.1. **Proposer**; *insured* and **beneficiary**, as one and the same person (in an Endowment Policy);
- 2.1.2. *Proposer* and **insured** as one and the same person; with **another person** as the **beneficiary**; as in the Endowment; Whole Life and Term of Life Policies;
- 2.1.3. **Proposer** and *beneficiary*, as one and the same person, with **another person** as the **life insured**; as in a Keyman Policy.

c) Keyman Insurance defined

The Examiner required a definition along the following lines:

- 1.1. This is an insurance policy available to businesses to compensate that business for financial losses that would arise from the “death” or “extended incapacity” of an important member of the business.
- 1.1.1. Keyman Insurance is said to lack the benefit of a legal definition, and generally sits as a standard life insurance policy, used for business succession, and:
- covers a term which does not extend beyond the period of the key person’s usefulness to the business; and
 - a value not exceeding the worth\value of the said key person(s), as the subject and amount of one’s Insurable Interest.
- 1.1.2. Key person policies are usually owned by the business and the aim is to compensate the business for losses incurred with the loss of a key income generator and to facilitate business continuity.
- 1.2. The Keyman Insurance Policy arises where a **business proposes** insurance with the **insurer** over the **life of another party**, where the proposer has an **Insurable Interest** in the life insured. In this instance, the WCL shall be the **proposer** and **beneficiary**.
- 1.2.1. In effect the WCL could arrange such a Policy over the life of the Chief Chemist as a Key Person and “insured”, whose existence shall be a critical success factor, and which success would be impaired, following the non-existence of the Chief Chemist in the WCL.
- 1.2.2. The WCL therefore had an Insurable Interest in the life of the Chief Chemist in accordance with **Hebdon v. West (1863)**

1.2.3. The WCL, as the beneficiary and could assign the proceeds to the Banker as Security without the consent of the life insured.

d) Resignation of the Chief Chemist.

Candidates may make submissions such as:

1. Resignation means that the Chief Chemist would not exist in the WCL anymore:
 - 1.1. and does not make the Policy invalid, because its validity is significantly tied to existence of the Insurable Interest;
 - 1.2. which existed, and needs to apply only, at the time the Policy was originally taken; as provided for in **Dalby v. India & London Life As Co. (1854)**.
2. The Bank's Security and the Insurance Policy will remain valid; and the Bank may not require another Security; because
3. The Policy would, have matured for payment of the Capital value; in which case;
4. The proceeds shall be available to the Bank in accordance with the Legal Assignment issued in favour o the Bank.

QUESTION SIX – Multiple Choice questions – Securities or Bankers' Advances

1. Which of the following is most valuable as Security for Bankers' Advances, all other things being equal?
 - a) Quoted shares
 - b) Shares in blue chip Companies – quoted or unquoted.
 - c) "b"(and "d" above). PLEASE IGNORE "d"**
 - d) Unquoted shares
 - e) Guarantees from limited liability companies by guarantees.

2. Why do Bankers shy away from shares in a private limited liability company (LLC) as Security for Bankers' Advances?
 - a) The Shares are registered in the name of the company and its directors; and shareholding usually determines "director qualification" in accordance with s. 183(2) Companies Act 179 of 1963; and by Regulations, the company may have a lien over unpaid shares.**
 - b) The Banker does not trust the management of the LLC.
 - c) The.
 - d) The Share Certificate is deposited without any written charge.
 - e) "a" and "c".

3. What makes Bankers prefer listed Shares as Security for Bankers' Advances?
 - a) Because they are listed.
 - b) Easy to value and to sell.**
 - c) Takes priority over prior equities.
 - d) None of the above.
 - e) "a" and "c".

4. In a Life Endowment Policy as Security for Bankers' Advances, which value is of most concern to a Banker seeking to execute a Legal Assignment?
 - a) The Capital value.
 - b) The Nominal value & total premiums paid so far.
 - c) "a" and "b" above.
 - d) The older the policy, the higher the SV.
 - e) The Surrender Value (SV), which increases with payment of premiums over time**

5. Available as Security for Bankers Advances is an assignment over a Life Endowment Policy for GHs62,000.00; and the Customer has presented a 25-year old 30 years policy and another 5-year old 30 years policy. Which of these, both for GHs62.000.00, shall be preferable for execution?
 - a) None of the above.
 - b) The 5-year old 30 years policy.
 - c) When the beneficiary and the account holder are one and the same person.
 - d) The 25-year old 30 years policy.**
 - e) A simple deposit with the required intention will always create a valid equitable mortgage.

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6. What would have informed your preference, and to what extent does it provide preference?
- The “age” of the policy indicates consistency in premium payments;
 - The “Surrender Value”, which turns increases in value, as the policy gets older and closer to end of term.

c) “a” and “b” above.

- Total amount of premiums paid so far and the “Surrender Value” less charges.
- The Capital Value of GHs55,000.00.

7. Which type of Life Policy would likely be of no use\benefit at maturity?

a) The Term of Life Policy which matures only by death of the life insured within the insured term; or shall expire if the life insured survives the insured term. It works much the same way as a Motor Vehicle Insurance Policy which matures with an accident occurring within the insured term; or expires for renewal at the lapse of the insured term.

- The Life Endowment Policy which matures at “death” or “lapse of the term;” whichever occurs earlier.
- The Whole Life Policy with a good Surrender Value.
- The Workman Compensation Policy.
- The Keyman Insurance Policy.

8. When the proceeds of a Life Policy which matured last week reached your Branch for the credit of the Mr Cyprian Opoku-Mensah’s account, your Operations Manager insists the account should have been stopped on maturity since the Customer should be dead. What should your Operations Manager know?

- That; depending on the type of Life Policy, maturity arises at “death of the insured” or “lapse of time” whichever occurs earlier.

b) That the Policy must be an Endowment Life Policy in which the proposer\life insured and beneficiary may be\are one and the same person, and same shall, by default, mature at “death” or “lapse of the term”; whichever occurs earlier. In this case, “lapse of term” has occurred earlier.

- That Life Policies with a proposer\life insured; and a named beneficiary other than the proposer\life insured mature only at “death of the life insured”.
- All of the above.
- “a” and “c” only.

9. The Banker has, in the Standard Bank Charge Form, a Floating Charge over the assets of Yemosons Limited and which was registered at the Companies’ Registry on 31August2016. This morning, you received a notification regarding a Legal Mortgage created in August2019 covering ultra-modern premises to provide a double production capacity, in favour of the Root Capital Finance House. What is the Bankers’ position?

- The Banker’s registered Floating Charge, in the Standard Bank Charge Form, in accordance with s. 107(4)(f) as provided for in s. 87(4) Companies Act 179 of 1963, shall have priority because of the “prohibition” Clause.
- The Banker’s Floating Charge shall have priority because it was created first.
- The Root Capital Finance House cannot deny knowledge of the Banker’s registered Floating Charge in accordance with s. 107(4)(f) as provided for in s. 87(4) Companies Act 179.
- The Root Capital Finance House shall have priority because of its Legal Mortgage.

e) “a” and “c” above

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10. In the execution of Mortgages and Assignments as Security for Bankers' Advances, the Banker has a choice, where the borrower "creates a transfer of interest" or "provides an intention to create a transfer of interest". Which of the following comment(s) is\are true?
- a) A Charge over property that "creates a transfer of interest" is termed "Legal" in a Mortgage or Assignment.
 - b) A Charge that "provides an intention to create a transfer of interest" is an "Equitable" Mortgage or Assignment.
 - c) Typically, the Banker prefers a "Legal" to an "Equitable" Mortgage or Assignment.
 - d) "a"; "b" and "c" above.**
 - e) None of the above.

Use the scenario below to answer questions "11" to "15"

"In a typical Security for Bankers' Advances, your cousin and Customer, Hannah Tetteh, tells you her husband's Banker has insisted that she has to sign a "Freewill" clause in a Security to cover her husband's application for a Consumer Loan. She added that, she doesn't understand the need for such a request and seeks an explanation of the concerns of that Banker.

Knowing that she is the Director\Retail at the Zinger Savings & Loans Limited; she tells you that her husband cannot push her to do anything against her will; and that the Bank shouldn't force her to sign a "freewill" clause against her will."

11. What type of Security for Bankers' Advances comes to mind?
- a) The Collateral Security.
 - b) Equitable mortgage of the company's undertaking or factory.
 - c) A Guarantee, as an undertaking, by one person to become collaterally liable to a Banker for the default of that Banker's Customer, as a Principal Debtor, to repay a borrowing on demand.**
 - d) A Pledge over the property in the Consumer Loan.
 - e) None of the above.
12. What considerations should you be mindful of to facilitate the discussions?
- a) That the Guarantee is a contract which is "not of utmost good faith", and non-disclosure by the Banker of any material fact would not make the Security voidable; and that there is a legal requirement that, as a wife of the Principal Debtor, she needs to understand the nature and effects of the document, but her husband's Banker does not owe her a duty to explain the nature and effects of the document, because she is not a Customer of that Bank.**
 - b) That if her husband is unable to repay the Consumer Loan, her Company would be called upon, by the Banker to repay the outstanding balance of the loan.
 - c) That she can sue the Banker if she decides not to repay the outstanding balance.
 - d) All the above.
 - e) None of the above.

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13. What other considerations would you need to bring to bear in your interaction with her?

a) That her husband cannot push her to do anything against her will

b) “c” and “d” below.

c) That under such circumstances, the Banker would, to enable her to obtain a good understanding of the nature and effects of the said Security for Bankers’ Advances, expect that she seeks independent legal advice; which would come with an attestation that same has been, explained to her; understood by her; and she had signed at her own freewill.

d) That as the Director\Retail at the Zinger Savings & Loans Limited, she is expected to have knowledge about the workings of such contractual documents; and that she had a right to avail herself of the opportunity for an independent legal advice, or if otherwise, then she must indicate, by signing a “freewill” clause, that she understands the nature and effects of the Security; and wouldn’t require independent legal advice,

e) None of the above.

14. With the foregoing, will she need to sign a “Freewill” clause?

a) No!!!

b) The Bank shouldn’t force her to sign a “freewill” clause against her will.

c) The husband is a gentleman and will not ill-inform her.

d) None of the above.

e) Yes, being the Director\Retail at the Zinger Savings & Loans Limited who is expected to have knowledge about the workings of such contractual documents, is the very reason, she has to sign a “freewill” clause; with the Banker or an independent legal adviser.

15. If in the midst of all the above, she remains obstinate because of her situation in life and business, what will you advise she does?

a) She should tell her husband, she is unable to proceed with the Security arrangements.

b) She should seek independent legal advice, perhaps from her colleagues in the Legal Unit of the Zinger Savings & Loans Limited.

c) That, by her status in life and business, signing a “freewill” clause shall be the best and most suitable arrangement in this type of Security for Bankers’ Advances.

d) All the above.

e) None of the above.

16. What is the difference in the legal interests in land?

a) The leasehold arises out of a freehold; and it is the holder of a “freehold” interest who may create a “leasehold” interest for a term of years.

b) The “freehold” is an interest in perpetuity, but the “leasehold” is for a term of years.

c) “a” and “b” above.

d) One is better than the other; and the “freehold” should be equitable.

e) “b” and “c” above.

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17. In the matter of types of properties available in Securities for Bankers' Advances, comprising Land; Life Policy; Stocks & Shares. Which of the following statement(s) is\are true?

a) A Freehold, the fee simple absolute in possession interest\feature in Land, is always preferred to\more suitable than the leasehold interest, all other things being equal!

- b) Usually, an Equitable Mortgage or Assignment would carry a Clause to the effect that, the said property has been lodged under a contract of bailment.
- c) An Endowment Life Policy brings money to the Banker, ahead of maturity at death, unlike the other types of life policies.
- d) "b" and "c" above!
- e) All of the above.

18. The Continuing Security Clause in a typical Standard Bank Charge form serves to protect the Banker against an operation of Law in the Banker and Customer Relationship. Which operation of law is this?

a) The Bankers' Duty of Secrecy,

b) The Rule in Clayton's case because of the Common Law Right of Appropriation of payments.

- c) The factors that determine\terminate the Banker and Customer Relationship.
- d) The doctrine of subrogation.
- e) Contributory negligence.

19. Land Title documents give an indication about the features of the land or landed property they cover. Which of the following is\are true?

a) Leasehold properties have Land Title documents.

b) The Land Certificate evidences registered title over that piece or part of the earth.

c) Title Deeds provide good title for freehold properties.

d) Title Deeds governed by the Mortgages Decree 1972 represent unregistered title in land.

e) "b" and "d" above.

20. In a Security for Bankers' Advances in a loan request for GHs80,000.00, the Customer presented 2 sets of Land Title Certificates over a GHs55,000.00 freehold land; and a GHs150,000.00 and 99-year leasehold (unexpired term of 9 years). Given the features of land or landed property, which of the following is\are true?

a) Leasehold properties have Land Title documents & Title Deeds provide good title for freehold properties.

b) The Land Certificate evidences registered title over that piece or part of the earth; and much as the Banker prefers the freehold land; a GHs55,000.00 cannot be said to be suitable for a GHs80,000.00 loan.

c) The GHs150,000.00 leasehold property has very good value and unexpired term (as good as a freehold), and sits preferable to the GHs55,000.00 freehold.

d) "b" and "c" above.

e) All the above.

QUESTION SEVEN– Debenture: Effectiveness as Security and Priorities

Three years ago, your Customer, the North Sea Bubble Company (NSBC) gave your Branch a debenture incorporating a Fixed Charge over all fixed assets and a Floating Charge over all other property and assets.

Last Friday, your Bank was surprised to note a commercial gazette that the OmniBank Limited has registered a Legal Mortgage on land and landed property, given to them by the NSBC, with the Companies' Registry.

Your enquiries have revealed that the mortgage was on a residential property recently purchased by the NSBC for a new Executive Member.

Required:

- a) Stating what types of Debentures may be available to the Banker as Security for Bankers' Advances; define a Debenture; and indicate how Bankers ensure effectiveness of this type of Security. **(8 Marks).**
- b) Briefly describe the legal position, re priority, of your Bank in the Debenture regarding the supposed residential property. **(4 Marks).**
- c) Which one important element in a Debenture will effectively protect your Bank under the circumstances? **(4 Marks).**
- d) What other type of Security for Bankers' Advances will be useful to your Branch in addition to the above type of Security your Branch took 3 years ago? **(4 marks).**

Examiner's Requirement

- a) The Debenture defined:
 - 1. By s. 80(2) of the Companies Code Act 179 of 1963, "A debenture is a written acknowledgment of indebtedness by the company setting out the terms and conditions of the loan."; and
 - 1.1. by s. 80(1) "A company may raise loan capital by the issue of a debenture or of a series of debentures or of debenture stock."
 - 1.2. s. 80(3) also provides that "All debentures of the same series shall rank *pari passu* in all respects, notwithstanding that they may be issued on different dates."
 - 1.3. Debentures may be issued and secured in one of 3 ways in accordance with **s. 86 (2)** Companies Code Act 179 of 1963, as:
 - 1.3.1. a "**fixed**" charge on certain company assets; or
 - 1.3.2. a "**floating**" charge over the whole or a specified part of the company's undertaking and assets (present and future) in accordance with **s. 87(1).or** by
 - 1.3.3. **both** "fixed" charge on a certain property and "floating" charge over other assets owned by the company.

2. To ensure Effective Security.

2.1. Banker's ensure effective Security for Bankers' Advances by taking:

2.1.1. A Debenture incorporating both the "fixed" and "floating" charges;

2.1.2. In the Bank Standard Security Form, incorporating several protective clauses including the:

- All Monies; Continuing Security;
- Repayment on Demand; Additional Security;
- Conclusive Evidence; Succession; and others are:
- Power of Sale;
- Appointment of a Receiver, in accordance with **s. 88(2)** Companies Code Act 179 of 1963; ahead of a Judicial appointment of a Receiver as prescribed in **s. 88(1)** Companies Code Act 179 of 1963;
- Insurance and repair;

2.1.3. The Floating Charge shall include a "prohibition clause" to protect the "present and future" status; and

2.2. Same must be registered in accordance with the: **Companies Registry**, in the Debenture by **s. 107(1)**;

- i. **Land Title Registry** by **s. 73 LTRAct** for "Mortgagee's consent to transfer";
- ii. **Collateral Securities Registry** by **s. 26(1)(g)**; as provided for in **s. 25 Borrowers & Lenders Act 773 of 2008** and **s. 107(4)(f)**, for "Registration of particulars of Charges".

b) **Priority established**

1. By **s. 87(4)** of the Companies Code, a fixed charge shall:

- 1.1. have priority over a floating affecting that property, **UNLESS** the terms on which the floating charge was granted;
- 1.2. **PROHIBITED** the LLC *from granting any later charge having priority over the floating charge*;
- 1.3. and the person in whose favour such later charge was granted **had actual notice of that prohibition** at the time when the charge was granted to him.

2. The OmniBank shall have priority if:

- 2.1. The Debenture was executed in the Bank Standard Form of Charges which would certainly provide a clause prohibiting creation of other charge without the Bank's consent in accordance with the "prohibition clause"; as provided for in **s. 87(4)(f)**
- 2.2. Same has been registered in accordance with **s. 107 (4)(f) of the Companies Code Act 179**.
- 2.3. As actual notice to the world in accordance with **s. 87(4) of the Companies Code Act 179**

c) **One important element of Protection** of the Debenture

This important element is REGISTRATION of the Debenture by **s. 107(1)**;

- i. **Land Title Registry** by **s. 73 LTRAct** for "Mortgagee's consent to transfer";
- ii. **Collateral Securities Registry** by **s. 26(1)(g)**; as provided for in **s. 25 Borrowers & Lenders Act 773 of 2008** and **s. 107(4)(f)**, for "Registration of particulars of Charges".

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d) **Other useful types of Security** for Bankers' Advances.

For an LLC, these shall be one of the following:

- i. Directors' Joint & Several Liability Guarantee; which may or not be supported by some other property such as "Stocks & Shares"; Life Policy over the lives of the individual Director(s); and
- ii. Keyman Insurance to cover the existence\life of key persons.