



CHARTERED INSTITUTE OF BANKERS, GHANA
ASSOCIATESHIP EXAMINATION
LEVEL II
LAW RELATING TO BANKING
APRIL 2023

N.B.

- 1. Read carefully the instructions on the cover of the answer book.**
- 2. Answer ALL questions in Section A and any TWO in Section B.**
- 3. Section A carries 60 marks and Section B, 40 marks. Where questions are subdivided, the marks for the subdivisions are shown in brackets at the end of the question.**
- 4. No aids such as calculators, books, dictionaries, papers or mathematical sets are permitted in this examination.**
- 5. Time allowed: THREE HOURS.**
- 6. Candidates must ensure that they answer questions in the appropriate answer book and NOT on loose sheets which are supplementary sheets. Such answers will not be marked.**
- 7. DO NOT WRITE YOUR NAME ON THE ANSWER BOOK.**
- 8. DO NOT OPEN THIS QUESTION PAPER UNTIL YOU HAVE BEEN INSTRUCTED TO DO SO.**

SECTION A

ANSWER ALL QUESTIONS UNDER THIS SECTION

1. The Banks and Specialized Deposit-Taking Institutions Act, 2016 (Act 930) defines deposit-taking business under sections 4(5) and 156. How does the Act define deposit-taking business?
2. The Banks and Specialized Deposit-Taking Institutions Act, 2016 (Act 930), under section 16, provides for the revocation of a licence issued to a bank or specialized deposit-taking institution. State six conditions that may cause the revocation of the license of a Bank or a Specialized Deposit-Taking Institution.
3. Briefly explain the principles established in the English Court of Appeal in the case of **Joachimson v Swiss Bank Corporation**.
4. The contract of bailment puts bailees into two distinct groups. Briefly explain the main two categories of bailee.
5. The English Court of Appeal outlined some of the implied terms in the seminal case of **Joachimson v Swiss Bank Corporation**. Briefly state **three** of the implied terms of the Banker/Customer contract stated in the case of **Joachimson v Swiss Bank Corporation**.
6. The Rule in **Clayton`s Case (Devaynes v Noble (1814-23) All ER Rep 1)** works against the interest of the Bank under certain circumstances when a current account is not broken/stopped. Briefly explain three of these circumstances.

7. Briefly explain the differences between a Particular Lien and a General Lien.
8. State three circumstances under which the Banker/Customer contract is terminated by the operation of law.
9. Mention three conditions that must exist for an agency of necessity to be established.
10. Section 3 of the Incorporated Private Partnership Act, 1962 (Act 152) excludes certain organizations from being registered as Partnership under the Act. State any **three** of these excluded organizations.
11. What are the main features of a Company Limited by Guarantee?
12. What is the Rule in Turquand`s Case as established in the case of **Royal Bank of Scotland v Turquand**? State **one** limitation of the Rule in Turquand`s Case.
13. Sections 33(6) and 33(7) of the Companies Act 2019 (Act 992) stipulate how a member of a company ceases to be a member. State the means by which the shareholder of a company with shares and a member of a Company Limited by Guarantee ceases to be a member of the company.
14. Differentiate between the terms **preference shares** and **equity shares** as used in the Companies Act 2019 (Act 992).

15. The holder of a cheque is a payee or endorsee who is in possession of the cheque or the bearer thereof. The Bills of Exchange Act, 1961 (Act 55) mentions three types of holders one of which is 'holder in due course'. Briefly outline the conditions that make one the holder in due course of a cheque.
16. The Bills of Exchange Act 1961 (Act 55), section 81, provides protection for the collecting banker who collects the proceeds of a cheque for the wrong person and is sued by the true owner of the cheque. To benefit from this statutory protection, the banker must prove, among others, that he collected the cheque 'without negligence'. The collecting banker generally fails the 'without negligence' test in three broad areas. With the aid of decided cases, state these three broad areas.
17. Section 47 of the Lands Act, 2020 (Act 1036) imposes restrictions on the transfer of land by a spouse. What are these restrictions?
18. Briefly distinguish between a contract of guarantee and a contract of indemnity.
19. Life Policies provide good security for Bankers` advances when the Bank follows the right legal processes in perfecting the security. State and briefly explain three main types of Life Policy available to the lending banker.
20. Mr. Bachinawih Bavuror is a Director of Bachinawih Company Ltd, a private company limited by shares. The company`s constitution makes a minimum shareholding of 10,000 a necessary condition for the retention of one`s directorship in the company. Mr. Bavuror, who holds 10,000 shares in the company, wants to mortgage the shares to your bank for an overdraft facility.

State **four** difficulties the bank might face in executing a legal mortgage over the shares.

(Total: 60 Marks)

SECTION B

**ANSWER ANY TWO QUESTIONS FROM THIS SECTION (ALL QUESTIONS CARRY
EQUAL MARKS)**

Question One

The Lambusie Branch of ADES BANK LTD holds an account in the name of the Lambusie Cotton Ginneries Ltd (LCG Ltd). The mandate on the account required that the signatures of any two of the four Directors of the company could constitute enough authorization for the bank to honour cheques drawn on the account. Between 15th February 2020 and 18th May 2020, the Lambusie Branch honoured 30 cheques drawn on the account with a total value of GHS 47,412.40. The signatures on those cheques compared favourably with those you hold in your records. In the employ of LCG Ltd was one Kofi Brokeman, who was a messenger attached to the Finance Department. Kofi Brokeman`s duties included going to the bank to cash and deposit cheques and collecting bank statements and cheque books. The proceeds of all 30 cheques were paid to Kofi Brokeman. A week ago, LCG Ltd wrote a letter to your branch at Lambusie disputing the debits and asking for reimbursement of the proceeds of GHS47,412.40 as those debits were without the authority of the signatories to the account. The Manager of the branch, Jacob Okromouth, in his response to the letter, did not deny paying those cheques and insisted that if the signatures were forgeries, then it was the complainant who failed in its duty of care to refrain from drawing cheques in such a manner that facilitated fraud and forgery. The branch Manager contended that LCG Ltd had been negligent in failing to scrutinize its monthly statements and informing the Bank in a timely manner of the forgeries. In any case, concluded Jacob Okromouth, the signatures on those 30 cheques were so similar to those of the authorized signatories on the account that they had not been negligent by mistaking them to be those of the authorized signatories of the Directors of LCG Ltd. Aggrieved by the response of the Branch, LCG Ltd has instructed its Lawyers, AZANTILOW CHAMBERS, to write to the Head Office of the ADES Bank, where you are the Legal Officer in charge of Branch Operations. The Lawyers of LCG Ltd have given you a week within which to reimburse their clients or face them in Court. Using statute and case law, explain if the ADES Bank has any defences if the case goes to full trial?

(20 Marks)

Question Two

- a. What is the tort of conversion and how does it arise in the collection of cheques? **(5 Marks)**
- b. With the aid of statute and case law, briefly explain the statutory defence available to the collecting banker confronted with a case for conversion. **(15 Marks)**
- [Total = 20 Marks]**

Question Three

- a. What is Bankers` Opinion/ Status Enquiry? **(3 Marks)**
- b. What are the risks a bank faces in responding to status enquiries? **(12 Marks)**
- c. With the aid of decided cases, explain how a bank can avoid the dangers inherent in responding to Bankers` Opinion. **(5 Marks)**
- [Total = 20 Marks]**

Question Four

- a. Using examples, explain the concept of insurable interest in Life Insurance. **(5 Marks)**
- b. Sugarcandy Company Ltd has taken a 20-year Life Endowment Policy on the life of John Gawaka, its Chief Operating Officer, who is very vital in the operations of the company. The company presents the policy to Gloryland Bank Plc for a loan.
- i. How will the bank take an effective assignment over the Life Policy? **(10 Marks)**
- ii. If John Gawaka resigns from Sugarcandy Company Ltd, will the policy still be valid? Explain your answer. **(5 Marks)**
- [Total = 20 Marks]**