



**CHARTERED INSTITUTE OF BANKERS, GHANA**  
**ASSOCIATESHIP EXAMINATION**  
**LEVEL III**  
**PRACTICE OF BANKING – LAW & PRACTICE**  
**APRIL 2023**

**N.B.**

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

## **SECTION A – ANSWER THREE (3) QUESTIONS**

### **QUESTION 1 MULTIPLE CHOICE – ANSWER ALL QUESTIONS**

1. Joachimson V Swiss Banking Corporation held that one of the terms of the banker customer contract is the bank's duty to notify customer before closing customer's account. Which case made a decision regarding the duration of the notice?
  - a. Joachimson V Swiss Banking Corporation
  - b. Prosperity V Lloyds
  - c. Foley V Hill
  - d. Commissioner of Taxation V English Scottish and Australian Bank
  - e. None of the above
2. A bankers' lien is said to be an implied pledge. What is an "implied pledge"?
  - a. A lien that confers the power of sale on the lien holder
  - b. A specific lien
  - c. A lien that does not confer the power of sale
  - d. The bank must apply to the court for the sale of item over which lien is held
  - e. None of the above
3. Which of the following is a necessary condition for the bank to exercise its right of set off?
  - a. Accounts held in the same right
  - b. One of the accounts is a contingent liability
  - c. One of the accounts is not yet due
  - d. There is agreement to the contrary
  - e. None of the above
4. Under the Credit Reporting Act, there are situations where the bank is not required to obtain a customer's consent before presenting a report to a Credit Reference Bureau. Which of the following applies?
  - a. There is no such provision
  - b. Customer has missed one instalment payment
  - c. Customer is indebted to the bank and has been given 30 days' notice that the information would be provided to a reference bureau
  - d. Customer is indebted to the bank and has been given 28 days' notice that the information would be provided to a reference bureau
  - e. None of the above
5. In UK, banks have to seek permission from a customer before answering a status enquiry. The position under the banking act is different. According to the Banks and Specialized Deposit-Taking Institutions Act, 2016 Act 930 under what conditions may a bank respond to a status enquiry from another bank?
  - a. Status enquiry must be in respect of a bank customer
  - b. The information requested should be of general nature
  - c. The purpose of the information should be to assess the credit worthiness of a customer
  - d. (a), (b) and (c)
  - e. Ghana's position is the same as the UK
6. A bank may close a customer's account "under operation of law". Which of the following is applicable to cases in which the bank must close an account "under operation of law"?
  - a. Death of a customer
  - b. Mental incapacity of a customer

- c. Insolvency of a customer
  - d. (a) & (b)
  - e. (a), (b) & (c)
7. In the purchase of investment on a customer's behalf which of the following relationship is applicable.
- a. Trustee, beneficiary
  - b. Lender, borrower
  - c. Pledger, Pledgee
  - d. Principal, Agent
  - e. Mortgagor, Mortgagee
8. Under the bank's service of safe custody, a customer may sue a bank for vicarious liability in the event that his property is lost. What is vicarious liability?
- a. Liability of an employer for the negligence of an employee appointed to take charge of a particular activity
  - b. Liability of an employee for negligence
  - c. A liability that has been outstanding for more than a year
  - d. (a) & (b)
  - e. None of the above
9. Banks sometimes provide indemnities by way of bonds and guarantees to contract awarding agencies in respect of their customers. What are such "indemnities"? They are
- a. Primary liabilities
  - b. Secondary liabilities
  - c. Tertiary liabilities
  - d. Letters of comfort
  - e. None of the above
10. Third party mandates and ordinary powers of attorney perform the same function. Which of the following captures the difference between the two.
- a. A third party mandate must be obtained from the court, a power of attorney from a Commissioner of oaths
  - b. A third party mandate may be effected by mere "authority note. This is not the case with Power of Attorney
  - c. A third party mandate must be embossed, a Power of Attorney does not need to be embossed.
  - d. A Power of Attorney is obtained by the Principal making an application to court. A third party mandate is obtained by filling a third party mandate form
  - e. None of the above.
11. The "survivorship clause" is an important clause so far as joint accounts is concerned. What is the survivorship clause?
- a. The clause that states that the balance on the account would devolve on the estate of a deceased joint account holder
  - b. The survivor renounces all his rights in the event that one joint account holder dies
  - c. Any debit on the account may be claimed from the estate of a deceased joint account holder
  - d. (a) & (c)
  - e. None of the above.

12. A partner as regards a partnership is a:
  - a. General agent
  - b. Special agent
  - c. Universal agent
  - d. Del credere agent?
  - e. None of the above
13. Unregistered clubs and associations have a separate legal identity than that of its members. True or false?
  - a. True
  - b. False
14. James Mensah dies intestate (without having a written Will) on 1<sup>st</sup> April 2023. Which of the following is required to deal with the account?
  - a. Next of kin
  - b. Executors of the estate of James Mensah
  - c. Trustee in Bankruptcy
  - d. Liquidator
  - e. None of the above
15. What is an ordinary resolution of a company?
  - a. 75% majority voting
  - b. Simple majority of 51% voting
  - c. By 80% majority voting
  - d. By 20 % voting for the resolution
  - e. None of the above
16. The minimum number of directors of a private limited liability company is:
  - a. 1
  - b. 2
  - c. 5
  - d. 10
  - e. None of the above
17. What are the conditions that a paying bank needs to satisfy in order to benefit from protection from a claim of conversion under the Bills of Exchange Act 1961 Act 55 when paying an order cheque? Payment –
  - a. In good faith and without negligence
  - b. In good faith and in the ordinary course of business
  - c. In the ordinary course of business and in due course
  - d. For a customer in good faith.
  - e. All of the above
18. Which section of the Bills of Exchange Act provides protection for a paying bank that pays a crossed cheque?
  - a. Section 58
  - b. Section 81
  - c. Section 79
  - d. Section 59
  - e. None of the above
19. Two methods of transfer of funds between accounts at different banks is the direct credit and direct debit. What is the essential difference between the two?

- a. A direct debit is initiated by the receiver of funds, a direct credit by the payer of funds
  - b. A direct debit is initiated by the paying bank, a direct credit by the issuing bank
  - c. They are more or less the same thing
  - d. A direct debit is a paper transaction, a direct credit an electronic one.
  - e. None of the above
20. A customer instructs his bankers to transfer funds amounting to GHC5000 on the first April 2023. The Bank delays and transfers the funds on the 10<sup>th</sup> of April. What claim may a customer bring against the bank?
- a. Conversion
  - b. Breach of contract
  - c. Detinue
  - d. (a) and (b)
  - e. None of the above.

**[TOTAL: 20 Marks]**

## QUESTION TWO

One of your customers, Kweku Baiden took a loan from your bank and has defaulted. Your operations officer who is a student of the Chartered Institute of Bankers, Ghana informs you that Kweku Baiden happens to have the following in his possession and suggests that the bank can exercise its right of lien over these items.

1. Land Certificate in safe custody – title holder Kweku Baiden
2. Shares in the name of Kweku Baiden in trust for Mary Baiden
3. Dividend warrant of GHC 1,000 in the name of Kweku Baiden
4. Returned cheque of GHC 3,000 sent for collection account Kweku Baiden

Required:

- (a) What is a Bankers Lien? **[2 Marks]**
- (b) How does a Bankers Lien Differ from an Ordinary Lien? **[3 Marks]**
- (c) How does a Bankers Lien differ from a Pledge? **[3 Marks]**
- (d) Which of the above items would be attached? Kindly indicate why or not they would be attached. **[12 Marks]**

**[TOTAL: 20 Marks]**

## QUESTION THREE

Mary Mintah, your prime customer is deceased on the 7<sup>th</sup> of March and you receive notification of this on the 20<sup>th</sup> of March. At the time of her demise the account was being operated under a power of attorney granted to her nephew John Mintah aged 17, who was staying with her.

On the 8<sup>th</sup> of April in your absence John presented a cheque to the branch amounting to GHC 50,000 which was paid leaving a balance of GHC 1,000.00. When you ask your teller she explains that since John was a signatory to the account he has every right to withdraw the funds. Besides she thinks it was to help in the funeral arrangements.

Later Jacob Mends, Mary Mintah's son has come together with three other siblings brandishing Letters of Administration in your face claiming that the balance should be paid to them.

- (a) Who is a personal representative of a deceased customer? **[4 Marks]**
- (b) When a customer dies testate having appointed an Executor, what legal document would the Executor have to obtain that gives the Executor authority to administer the deceased estate? **[2 Marks]**
- (c) In the case of (b) what if the deceased Testator failed to appoint an Executor, what legal document would the relevant persons have to obtain from the court that gives them the authority to administer the estate of the deceased. **[2 Marks]**
- (d) Discuss the above scenario stating the bank's position. **[12 Marks]**

**[TOTAL: 20 Marks]**

#### **QUESTION FOUR**

Your customer Jimmy Moore has operated an account with you for the past ten years. Over the past year however you observe that Jimmy Moore has developed the habit of issuing cheques and countermanding payment of the cheques. You aware from reliable sources that he is indebted to a host of creditors who are on his neck. You also note that he is engaged in petty trading and buys goods on credit and pays back when he is able to sell. You recently had a meeting with him during which he explodes in anger and threatens to close his account with you.

Two days later a cheque of GHC 15,500 issued by Jimmy is presented through clearing by another bank against a balance of GHC 15,300.00 standing to the credit of his account. Your Operations Manager, on the basis that Jimmy was following up with his threat, proceeded to close the account, transferring the balance of GHC 200 to commissions and fees.

Later a credit of GHC 15,000 was received in favour of Jimmy being proceeds of Treasury Bills he had invested in. That same day the bank received a cheque through clearing drawn by Jimmy which your operations manager returned with the reason "Account Closed".

Jimmy is now at your banking premises today fuming with rage and threatening to proceed to court for redress.

- (a) Mention the five circumstances that would lead to the determination of the banker customer contract. **[5 Marks]**
- (b) The banker customer relationship has been said to continue notwithstanding the determination of the banker customer contract. Do you agree? Explain supporting your answer with relevant legal authority **[5 Marks]**
- (c) Discuss the bank's position in the scenario above clearly explaining the legal principles underlying your argument. **[10 Marks]**

**[TOTAL:20 Marks]**

## SECTION B - ANSWER TWO (2) QUESTIONS

### QUESTION 5 – MULTIPLE CHOICE – ANSWER ALL QUESTIONS

1. James Mensah provides his personal landed property as security for a Partnership Customer AB & Co. What type of security is the bank taking?
  - a. Direct security
  - b. Third party security
  - c. Real security
  - d. (a) and (c)
  - e. None of the above
2. The bank holds an account in the name of Roy Jones and it is offered as security shares registered in the name of Mrs. Jones. Who will be required to sign the bank's charge form?
  - a. Roy Jones
  - b. Mrs Jones
  - c. Jones family
  - d. Mr. and Mrs. Roy Jones
  - e. None of the above
3. Technically a legal mortgage is different from a charge. What is the difference between a legal mortgage and a charge?
  - a. In the case of a charge ownership is transferred to the chargee lender which is not the case with a legal mortgage
  - b. A charge is an encumbrance on the asset charged whilst with a legal mortgage, title would have to pass to the mortgagee.
  - c. There is no difference between the two
  - d. A legal mortgage is a direct security whilst a charge is a third party security
  - e. None of the above
4. If a guarantee is to be given by James, John and Philip is it valid when James and Philip have signed it, and John is unavoidably called abroad before he can sign?
  - a. No
  - b. Yes
5. In the course of the interview for a prospective guarantor to sign a guarantee, the prospective guarantor says 'I am pleased that James is starting up his own business after he was made redundant, and I was only too pleased to guarantee his account to help him set up in business.' You (the bank) know that the money is being lent to pay for a world cruise, not to set up a business. What action, if any, would you take?
  - a. Do nothing. A guarantee is not a contract *uberimae fidei*
  - b. Advise the proposed guarantor to take independent legal advice
  - c. Ask the prospective guarantor to confirm from James the purpose of the guarantee
  - d. Correct the misapprehension
  - e. None of the above.
6. Which of the following is an advantage of taking a “joint and several guarantee”?
  - a. A lender can exercise a right of set off over any credit balance in the personal account of a guarantor
  - b. A lender can enforce payment against the estate of a deceased guarantor

- c. A lender can enforce payment if even the guarantee is invalid due to one person not signing
  - d. (a) and (b) only
  - e. Only (a), (b) & (c)
7. A simple deposit of a life policy with the intention to charge it as security will create a valid equitable mortgage:
- a. When the account to be secured and the beneficiary are different
  - b. When the beneficiary and the account holder are the same person and the borrowing limit is GHC 20,000.
  - c. As in (b) but for a loan of GHC 14,000.
  - d. A simple deposit with the required intention will always create valid equitable mortgage.
  - e. None of the above
8. What is the effect of stating the wrong age of a life assured in an insurance contract?
- a. No effect
  - b. May void the policy
  - c. May affect the amount payable under the policy
  - d. (b) and (c)
  - e. None of the above
9. What are the rules relating to priority of assignments of insurance policy given to more than one lender?
- a. In a case there exists more than one, assignment priority is determined by the date of receipt of notice from the insurance company
  - b. Legal assignments have priority over equitable assignments so long as the legal assignment was taken without notice of the earlier assignment.
  - c. Legal assignments will always have priority over equitable assignment no matter the circumstances.
  - d. Equitable assignments will always have priority over legal assignments.
  - e. (a) & (b)
10. Which of the following is an equitable mortgage of quoted shares?
- a. Bank holds the certificate and a signed undated stock transfer form.
  - b. The shares are registered in the name of the bank's nominee company.
  - c. The certificate is deposited without any written charge by the registered owner to secure his overdraft of facility of GHS20,000.
  - d. The bank holds a certificate in the name of x and the borrowing is in the name of Y (no written authority is held).
  - e. None of the above
11. In taking a legal charge over shares, it is important sending a stop notice to the company. What is the purpose of the Stop Notice?
- a. It is to inform the company to give the bank a period of notice before the company goes ahead to register any dealings in the shares offered as security.
  - b. It is to notify the company that the bank is taking a legal mortgage over the shares
  - c. It is just a formality
  - d. (a) & (b)
  - e. None of the above



12. With a legal charge over registered stocks and shares, if the bank is aware of a previous equitable interest then this cannot be overcome by the legal charge. Which case established the rules relating to priority of mortgages over shares?
  - a. Foley V Hill
  - b. Higgins V Beauchamp
  - c. Coleman V London County and Westminster Bank
  - d. Bossman V Barclays Bank
  - e. None of the above
13. In Ghana, security over “dematerialized” shares under the Central Securities Depository is termed as
  - a. An assignment
  - b. A pledge
  - c. A mortgage
  - d. A fixed charge
  - e. None of the above
14. The Borrowers and Lenders Act 2020 requires that a lender who has appointed a Receiver under the terms of the security or on application to the court register the appointment within a period of how many days?
  - a. 10 days
  - b. 28 days
  - c. 15 days
  - d. 45 days
  - e. 30 days
15. One disadvantage of taking a floating charge over inventory is that there may be a reservation of title clause under the sales agreement between the supplier and the company. What is the “reservation of title clause”?
  - a. It is a clause in a sales document between a supplier and the company that states that title would remain with the seller until the seller has been paid
  - b. It is a clause in a bank’s security charge form that states that title to the goods supplied to the company will lie with the bank
  - c. It is a clause in a charge form that enables the bank to take security over inventory purchased by the company.
  - d. It is a clause that states that once possession of goods supplied has passed to the company reservation of title in the seller will no longer apply
  - e. None of the above
16. What document does the bank hold if it has a legal mortgage of registered land?
  - a. Indenture
  - b. Sales contract
  - c. Land certificate
  - d. Charge certificate
  - e. None of the above
17. The Mortgages Act states that a legal mortgage of land shall be an encumbrance on the owner’s right to the land and will not operate as follows:
  - a. Transfer possession of the property to the bank
  - b. Transfer title to the mortgagee
  - c. Require registration

- d. Require to be in writing
  - e. None of the above.
18. Who are the parties to a pledge of goods?
- a. Pledger, pledgee, custodian of goods
  - b. Pledger, warehouse, Collateral Registry
  - c. Ports Authority, Pledger, Pledgee
  - d. Collateral Registry, Ports Authority, Pledgee
  - e. None of the above
19. Which of the following clauses would you find in a “Letter of Pledge” by which goods are pledged to a lender as security?
- a. Agreement to deliver goods to bank or agent
  - b. Continuing security
  - c. Power of sale in the event of default
  - d. Undertaking to insure
  - e. All of the above
20. In respect of assignment of debt what is the key requirement to determine an assignee’s priority?
- a. Date of execution of legal assignment
  - b. Date of receipt of application for loan facility against which assignment is secured
  - c. Date of receipt of notice to party liable on the assignment.
  - d. Date of dispatch of notice from assignee to party liable on assignment
  - e. None of the above

### QUESTION SIX

- (a) A guarantee is not a contract “uberimae fidei”. Explain with decided cases [6 Marks]
- (b) What two key duties does a bank owe to a guarantor under a guarantee? [4 Marks]
- (c) A guarantor may bring a claim of undue influence against a bank. What is a claim of “undue influence” ? [4 Marks]
- (d) How may a bank protect itself against a claim of undue influence? [6 Marks]

[TOTAL: 20 Marks]

### QUESTION SEVEN

Your valued customer recently came to you a few months ago requesting for a personal loan of GHC 30,000.00 secured by an equitable assignment of his life endowment policy which has two years to run. He presented you a copy of the endowment policy with the excuse that he lost the original when he was moving house. After executing the assignment, you failed to notify the insurance company of your bank’s interest in the policy. At the end of the term, he had defaulted in six installment payments leaving an outstanding indebtedness to the bank of GHC 15,000 including interest.

In an attempt to realize the policy by presenting the executed assignment to the insurance company, the bank is informed that Paul has taken a loan from the company of GHC 20,000 and is also indebted to another bank which took a legal assignment over the policy a year ago to the tune of GHC 10,000.00. You are livid with rage putting the blame on your Operations Manager who dealt with the transaction.

(a) What is an “Endowment Policy”? **[3 Marks]**

(b) What is the difference between a “Whole Life Assurance Policy” and an “Endowment Policy”? **[4 Marks]**

(c) Outline the procedure you would adopt in taking an equitable assignment of a Life Endowment Policy. **[8 Marks]**

Your Operations Manager argues with you that since your assignment is first in time it should have priority ahead of the loan from the insurance company and the bank. What is your view? Support your answer with clear legal principles including relevant decided cases.

**[5 Marks]**

**[TOTAL: 20 Marks]**