



CHARTERED INSTITUTE OF BANKERS, GHANA

ASSOCIATESHIP EXAMINATION

LEVEL II

LAW RELATING TO BANKING

APRIL 2024

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.**
- 4. Where questions are subdivided, the marks for the subdivisions are shown in brackets at the end of the question.**
- 5. No aids such as calculators, books, dictionaries, papers or mathematical sets are permitted in this examination.**
- 6. Time allowed: THREE HOURS**
- 7. 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.**
- 8. DO NOT WRITE YOUR NAME ON THE ANSWER BOOK.**
- 9. DO NOT OPEN THIS QUESTION PAPER UNTIL YOU HAVE BEEN INSTRUCTED TO DO SO.**

SECTION A – ANSWER ALL QUESTIONS

(EACH QUESTION CARRIES THREE MARKS. TOTAL MARKS IS 60.)

1. Section 8(3) of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) stipulates two (2) types of licences that the Bank of Ghana could issue to an applicant. State the two (2) types of licences.
2. A Bank or a Specialised Deposit-Taking Institution is required to display at the Head Office, Branches and Agencies of that Bank or Specialised Deposit-Taking Institution, copies of its licence for the information of the public [Section 24(2) of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)]. What is the penalty for a breach of Section 24(2) of Act 930?
3. Section 35(1) of the Banks and Specialised Deposit-Taking Institutions Act 2016 (Act 930) provides conditions precedent to a Bank declaring and paying to its Shareholders, interim and final Dividends on its Shares. State three (3) of the conditions precedent.
4. In August 2017, the Bank of Ghana entered into a ‘Purchase and Assumption’ Agreement with the then GCB Bank Ltd (now GCB Bank Plc), following the revocation of the licences of the UT Bank Ltd and Unibank Ghana Ltd. This was done to ensure depositors did not lose their deposits. What is a ‘Purchase and Assumption’ Agreement as explained under Section 156 of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)?
5. Lord Denning MR, with whom Diplock and Harman LJJ concurred, has, in his judgment in the English Court of Appeal case of *United Dominion Trust Ltd v Kirkwood (1966)*

6. **2 QB 431**, outlined three (3) Characteristics of Banking Business which have become generally accepted in all Common Law countries, including Ghana, as the key hallmarks of banking business. State the three (3) Characteristics outlined in that case.
7. Briefly explain two (2) situations under which a Bank can successfully argue that disclosure of its customer`s confidential information is in its best interest.
8. The Banker/Customer contract may be terminated by Operation of Law. Briefly state three (3) conditions under which this may occur.
9. Justice Kumchacha, your customer, visits you in your office today with his 16 year-old son, John Kumchacha. He tells you that he was visiting the USA and may be away for a month and that he wants to execute a Power of Attorney in favour of his son, John Kumchacha as donee to run his account during his absence. Briefly explain whether or not John Kumchacha can be appointed donee of the Power of Attorney.
10. Akosua Smart, your customer, has granted a Power of Attorney to Kofi Brokeman to operate her account on her behalf. Today, you have been informed by Akosua Smart`s sister that Akosua Smart is suffering from schizophrenia, a mental condition, and has been admitted to the mental hospital. What action will you take regarding the Power of Attorney?
11. In the Law of Agency, what is the difference between a General Agent and a Special Agent?
12. Briefly state two (2) differences between a Trading Partnership and a Non-Trading Partnership.

13. What is the nature of the Liability of a firm as outlined under Section 16 of the Incorporated Private Partnership Act, 1962 (Act 152)?
14. Briefly state the three (3) modes of Winding Up a firm as provided under Section 44 of the Incorporated Private Partnership Act, 1962 (Act 152).
15. Briefly explain Pre-Incorporation Contracts in Company Law.
16. Briefly explain two (2) key differences between Shareholders and Debenture holders of a Limited Liability Company.
17. Alfred Quaye, an intern at your branch, brings you a Cheque crossed 'Not Negotiable' and asks you to explain the significance of that type of Crossing to him as he was seeing that for the first time. What explanation will you provide?
18. What is the legal significance of the 'Account Payee' Crossing on a Cheque?
19. Endorsements serve two (2) main purposes in Cheque Operations. Briefly explain the two (2) purposes or functions of Endorsements.
20. In **Saunders v Anglia Building Society (1970) UKHL 5**, the Court outlined the categories of persons who can take advantage of the plea of "**non est factum**" to avoid liability under a contract. What is "**non est factum**"? Who can successfully plead "**non est factum**" to vitiate a contract?
21. State and briefly explain the parties to a Life Policy.

SECTION B (TOTAL: 40 MARKS)

ANSWER ANY TWO QUESTIONS FROM THIS SECTION

QUESTION 1

Your customer, Kwame Kumchacha, is an importer of second-hand shoes from China. He is illiterate but has made a fortune out of the business which he has operated for several years. Kwame Kumchacha operates a Sole Proprietorship Account styled Kumchacha Enterprise. The account of the Sole Proprietorship is at the Spintex Road Branch of your Bank. Today, you received a letter from Ebitto Chambers, a law firm, claiming they had been instructed by Kwame Kumchacha to sue your Bank for losses of GHS 2.5 million incurred by him following the negligent advice given to him by the Manager of your Spintex Road Branch, Serwaa Broni. The law firm explained that the Branch Manager advised Kwame Kumchacha to buy a house at Dzorwulu which was put up for sale by Kofi Brokeman, who also banked with the same Spintex Road Branch of your Bank. Kofi Brokeman had overdrawn his account by GHS 800,000 and the Head Office has been putting pressure on Serwaa Broni to ensure the position was regularised. In giving the advice, Serwaa Broni, the Branch Manager, assured Mr. Kumchacha that the price of the house was good and that if the customer bought it, she would get the Bank to lease it for the use by the Dzorwulu Branch Manager. Based on this assurance by the Branch Manager, Kwame Kumchacha invested GHS 2.0 million of his working capital in the purchase of the house. The payment was made directly into the bank account of Kofi Brokeman at the Spintex Road Branch. When Mr Kumchacha approached the Bank with an offer for a leasehold interest by the Bank in the property, the Bank said it did not need the property. The property has now become unsaleable due to the general economic hardships in the country, and Mr Kumchacha now has his working capital tied up. The letter from the law firm concluded that if the Bank did not respond in 10 days, they had their client`s instruction to sue the Bank for the negligent advice of Serwaa Broni. What are the legal issues for the Bank in this case? Is the Bank liable for Mr. Kumchacha`s losses?

(20 Marks)

QUESTION 2

- a. Section 35(2) of the Incorporated Private Partnership Act, 1962 (Act 152) provides the rules that will apply to Partners in a Partnership in the absence of a Contrary Agreement.

Mention the rules that apply in the absence of Contrary Agreement. **(15 Marks)**

- b. Differentiate between a General Resolution and a Special Resolution in relation to meetings of shareholders of Limited Liability Companies. **(5 Marks)**

[Total = 20 Marks]

QUESTION 3

Hakuna Matata is a customer of your Branch and trades under the name Hakuna Matata Enterprise, a Sole Proprietorship. He telephoned you the Manager on February 2nd 2024 to inform you that he has drawn cheque number 000031 for GHS 50,000 payable to Halcyon Days Company Limited. The cheque was said to be dated 5th February 2024. He asked you not to pay the cheque upon presentation. The telephone conversation was subsequently confirmed by a written instruction. You programmed your system accordingly to ensure that the cheque was not paid. On 6th February 2024, cheque number 000013 drawn by Hakuna Matata was presented through clearing. The cheque bore all the information identical to those on the stopped cheque except for the cheque number which was 000013 and not 000031 given in the countermand. Since there were enough covering funds, the cheque was paid, reducing the balance on the account to GHS 51,000. Later the same day, cheque number 000014 drawn for GHS 100,000 by Hakuna Matata on the business account and payable to Modern Day Fashions was returned unpaid for insufficient funds. Hakuna Matata is threatening to sue you for paying cheque number 000013 which he had stopped and as a result wrongfully returning cheque number 000014, which should have been paid. He asks that you write to Modern Day Fashions to explain the bank`s error so that his credit can be restored.

What is the Bank`s position on this? **(20 Marks)**

QUESTION 4

Differentiate between the following **pairs of terms** relating to Land and Buildings as Security for Banker`s Advances:

- a. Freehold Interest and a Leasehold Interest in Land **(5 Marks)**
- b. Abusa and Abunu Systems under Customary Tenancy in Land **(5 Marks)**
- c. Joint Tenancy and Tenancy in Common under Co-Ownership of Land **(5 Marks)**
- d. A Second Mortgage and a Sub-Mortgage of Land and Buildings **(5 Marks)**

[Total = 20 Marks]