

PRACTICE OF BANKING 1

LAW AND PRACTICE

APRIL 2025

EXAMINERS REPORT

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Introduction: General Observations

There was a general improvement in performance for this sitting. Candidates who failed did so as a result of lack of preparation.

2. Comments on Candidates' Performance

2. I. Summary Statistics of the Performance per the format in the table below.

TOTAL NO.	Q. NO.	NO. ATTEMPTED EACH QUESTION	% ATTEMPTED EACH QUESTION	PASS	FAIL	% PASS	% FAIL	TOTAL
20								
	Q1	21	70%	17	4	81%	19%	100%
	Q2	20	67%	16	4	80%	20%	100%
	Q3	6	20%	0	6	0%	100%	100%
	Q4	17	57%	5	12	29%	71%	100%
	Q5	21	70%	18	3	86%	14%	100%
	Q6	4	13%	1	3	25%	75%	100%
	Q7	17	57%	10	7	59%	41%	100%

3. General Problems Identified

Questions 3, 4 and 6 were poorly handled. This evidences lack of knowledge in the specific areas. Much paucity of knowledge was exhibited especially in the question, 3, personal representatives, question 4 on crossed cheques. And question 6, on a bank's duty of disclosure in respect of guarantees.

4. Specific Comments on each question

Question 1 (Pass rate – 81%)

Multiple choice across all areas of the syllabus. Performance was excellent.

Question 2 (Pass rate – 80%)

Wrongful return of customer's cheque. (a) and (b) part was well handled. Candidates however were unable to explain effectively the legal import of the wrongful return of customer's cheque. Those who are it right gave general explanation s without supporting their assertion with any case at all.

Question 3 (Pass rate – 0%)

Out of the six candidates who answered this question, none of had over 50 marks. The principles regarding dealing with personal representatives is a straightforward and uncomplicated matter. However the explanations that came up were not convincing enough.

Question 4 (Pass rate – 29%)

Performance here was quite dismal considering that the law relating to cheques is a popular topic. Many could not define what a special crossing is. Most candidates could also provide a good answer to question (d) on the legal protection afforded to a paying bank that pays a crossed cheque. Many were quoting section 58 of the Bills of Exchange Act which deals with payment of a cheque over the counter. The appropriate section is section 79 of the Bills of Exchange Act.

Question 5 (Pass rate – 86%)

Multiple choice question that cuts across the syllabus. Excellent performance returned here

Question 6 (Pass rate – 25%)

A question of the duties of bankers including the duty of disclosure of information to a prospective guarantor. A few had the concepts right and quoted relevant cases. The greater part of candidates just messed the whole question up.

Question 7 (Pass rate – 59%)

This question related to the considerations that are key in taking a legal mortgage over leasehold property and the procedure for taking the mortgage. Above average performance here.

5. Conclusion

Candidates should endeavor to exhaust the syllabus in order not to be found wanting when an area they have not read features in an examination.

Section A

Question 1 – Multiple Choice – 1 Mark each, total Marks 20 Marks

1. Section 18 of the BSDTI Act 2016 Act 960 provides for banks and specialized deposit taking institutions to undertake a number of permissible activities. Which of the following are included?
 - a. **Direct Insurance business**
 - b. Mortgage lending business
 - c. Purchase and sale of foreign currency on own account or for the account of customers
 - d. (b) & (c)
2. Which of the following is not a deposit taking business under the Bank and Specialized Deposit-taking institutions Act? An institution that:
 - a. Granting loans
 - b. **Issuing letters of credit**
 - c. Making payment on behalf of customers
 - d. Accepting deposits from the general public
3. The following is a copy of the accounts of ABC & Co.

ABC & Co Ledger -					
Date	Particulars	DR	CR	Balance	
1-Jan	BF			(3000.00)	Overdrawn
5-Jan			2,000.00	(1000.00)	Overdrawn
7-Jan		1,500.00		(2500.00)	Overdrawn
15-Jan			1,000.00	(1,500.00)	Overdrawn

- To what extent is B's estate Liable if the bank received notice of death on 8th January 2024 and the bank failed to stop the account?
- a. GHC 1,000
 - b. GHC 2,000
 - c. **GHC 1,500**
 - d. GHC 2,500
4. Which of the following determined that one month's notice would not be adequate notice for a company customer with sophisticated transactions
 - a. Foley V Hill
 - b. **Prosperity V Lloyds Bank**
 - c. Joachimson V Barclays Bank
 - d. Peters V Roberts
 5. What is the difference between an ordinary lien and a pledge
 - a. **A pledge is consensual whilst a lien is not**
 - b. With a pledge possession remains with the borrower and with lien it remains with the lender
 - c. A lien is consensual whilst pledge is not
 - d. A pledge must be registered whilst a lien needs not be registered
 6. Two months ago, you noticed a difference in your customer's signature and you telephoned to report to him and he gives you the go ahead to pay. You warned him subsequently on three different occasions. Now you have received a letter from his solicitors to the effect that you

have paid cheques on which his signature was forged amounting to GHC 42,000. Which of the following defences would avail the bank?

- a. Subrogation
 - b. Laches
 - c. **Estoppel**
 - d. Contributory negligence
7. The bankers lien is inapplicable in which of the following instances
- a. Shares
 - b. Bonds
 - c. Dividend warrant
 - d. **Indenture in safe custody**
8. Which of the following is not a right of a borrower under the Borrowers and Lenders Act
- a. Right to borrow
 - b. Right not to discriminated against
 - c. **Right to determine when to pay a credit facility granted**
 - d. Right to be provided with a loan statement
9. A garnishee order nisi means
- a. An absolute order to pay money to the court
 - b. An injunction on the account
 - c. **An order to show cause as to why the garnishee order should not apply**
 - d. An order to transfer money to the judgement creditor
10. Under what condition will a garnishee order become absolute?
- a. Two weeks after the garnishee order nisi has been served on the bank, the court makes the order absolute
 - b. **When at the hearing to show cause, the garnishee bank has no objection to the garnishee order nisi and the judge makes the order absolute**
 - c. When the court makes the garnishee order nisi
 - d. One month after the garnishee order has been made
 - e. When the court orders the judgement debtor to provide additional security for the amount owed.
11. Which of the following claims may be brought against a bank by a safe custody depositor when the item is lost whilst in the hands of the bank?
- a. Constructive trust
 - b. Breach of trust
 - c. **Negligence**
 - d. Libel
12. Which of the following is not a duty of the bank in the delivery of electronic payment services
- a. **Duty to reward customer for the service**
 - b. Duty to notify customer of service downtime
 - c. Duty of secrecy
 - d. Duty to notify customer of fraud

13. John Martins and Edison Maison have a joint account with you. You have received notice of Edison's passing today when the balance on the account stands at GHC 78,500 DR. What action should you take?
- Transfer the account to dormant
 - Stop the account and pass subsequent transactions through a new account in the name of John Martins and claim against the Head of Family of Edison Maison (deceased).
 - Stop the account and pass subsequent transactions through a new account in the name of John Martins and claim against the estate of Edison Maison. (deceased).**
 - Stop the account and pass subsequent transactions through a new account in the name of John Martins and claim against the Head of Family of Edison Maison.
14. Under the Incorporated Private Partnership Act 1962 Act 152, the maximum number of partners is:
- 50
 - 25
 - 15
 - 20**
15. Solicitors are required by the law to open two different types of account, a General Account and a Client Account. What is the purpose of a Client Account?
- To keep monies belonging to clients of the solicitor**
 - To keep fees paid by the client of the solicitor
 - To keep transport allowances paid by the client
 - (a), (b) & (c)
16. The legal implication of a company limited by guarantee is
- Member's liability is unlimited
 - Contributor's liability limited to amount of the contributor has agreed to contribute to the assets of the company in the event of insolvency**
 - The company is not prohibited from engaging in profit-making business
 - Members have no limits on their liability
17. The following captures the definition of a private company limited by shares
- A company that has a maximum of 60 members
 - A company which has the power to invite the general public to subscribe to their shares
 - A company that has a minimum of two members
 - A company that places restriction on subscription of shares by persons who are not members.**
18. Martha, the payee of a cheque endorsed the cheque and added the words "Pay John Elison for the account of Peter Elison". What type of endorsement is this?
- Conditional endorsement
 - Endorsement in blank
 - Special endorsement
 - Restrictive endorsement.**

19. A paying bank is protected from claims of conversion under the Bills of Exchange Act when it pays a ***crossed*** cheque
- a. **In good faith and without negligence**
 - b. In good faith and in the ordinary course of business
 - c. In good faith and with prudence
 - d. In the ordinary course of business and without negligence
20. John Peterson issued a cheque in favor of Peter Simpson in payment for a sports jacket. Peter Simpson endorsed the cheque and gave the cheque to his sister Alice as a birthday present. Alice is a
- a. Holder in due course
 - b. **Holder for value**
 - c. Mere holder
 - d. Wrongful possessor.

Question 2

- a) Mention five (5) grounds on which basis a bank would be legally justified in returning a cheque duly issued by its customer? [5 Marks]

5 points @ 1 Mark each

Insufficient funds

Postdated cheque

Stale cheque

Amount in words and figures differ

Crossed unopen cheque

Alteration

Forgery

Banker Customer contract determined

Death

Mental incapacity

Insolvency

Garnishee order

Other court order e.g. injunction

- b) Joachimson Bank held that the terms of the Banker Customer Contract are largely implied by customs and usages of bankers. Mention five (5) implied terms of the Banker Customer contract [5 Marks]

5 points @ 1 Mark each

The bank undertakes to receive money and to collect bills for its customer's account.

The proceeds so received are not to be held in trust for the customer, but the bank borrows the proceeds and undertakes to repay them.

The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours.

It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days,

it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice.

The customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery.

I think it is necessarily a term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept. Whether he must demand it in writing it is not necessary now to determine.

- c) Discuss the legal implications of the bank's error. (In your discussion disregard the bank's liability to Richmond Ekuban). [10 Marks]

Introduction – 2 Marks

Area of the law –

banks duty to keep an accurate record of its business with its customer,

banks duty to obey its customer's duly authorized instructions

the implications of breach of such duties

Issues – 2 Marks

Whether or not the bank is liable for breach of duty to maintain an accurate record

Whether or not the bank is liable for a breach of duty to obey the duly authorized instructions of its customer.

Rules of Law – 3 Marks

Duty to maintain an accurate record –

United Overseas Bank V Jiwani,

Tai Hing Cotton Mill V Lui Chong Hing Bank

Duty to obey customer's duly authorized instructions

Joachimson V Swiss Banking Corporation

Breach of duty to pay (wrongful dishonour) – legal implications

Customer may sue the bank for either

Breach of contract or;

Libel

Jayson V Midland Bank

Application – 2 Marks

The bank has wrongfully returned customer's cheque in error and would therefore be liable for the above claims brought by the customer.

Conclusion 1 Mark

The bank should render an unqualified apology to the customer and ask him to represent. The bank could also contact the payee of the check and explain matters to him. This would help to reduce any potential liability

TOTAL MARKS

[20 Marks]

Question 3

Introduction - 2 Mark

This question concerns the authority of an Executor to deal with the estate of the deceased.

Issue – 2 Marks

Whether or not the executor is clothed with authority to deal with the deceased account including safe custody items

Rules of Law – 6 Marks

Under the Administration of estate Act 1961 the estate of a deceased devolves on administrators upon the death of the deceased.

Executors however do not have power to dispose off the estate unless they have obtained probate from the court.

In applying for probate, they have to prove the Will by attaching an original of the will to the application for grant of probate

They must also indicate the assets of the estate and the full value of the estate.

Application/Procedure – 8 Marks

We must confirm the identity of the Executor.

A letter of introduction from solicitors would give the bank some comfort as to his integrity.

Now the practice is for customer to bring an order from the court for disclosure of the information. This would be difficult in this case because the will is in safe custody and it is needed to make an application for probate.

The BSDTI Act nonetheless makes it an exception to disclose information to personal representatives.

If the bank is comfortable with the standing of the lawyer and especially where it is the lawyer that drafted the Will, the bank would be ready to go along without a court order. If it does so, it must let the Executor execute an indemnity in favor of the bank.

The bank may release the will against an indemnity from the Executor

The bank can ask the Executor to come along with a valuer to value the ornaments.

In the case of the share certificate, the bank can extract a list for the customer who may obtain the price of the share from publications of the Ghana Stock Exchange

A photocopy of the land documents may also be made for valuation purposes.

Accounts

With respect to the accounts, the accounts that will be directly affected by the passing of Marigold are:

Marigold Mensah – current account

Marigold and Esther Dadzie, Joint Account

The bank may exercise its right of set off by virtue of the joint and several liability clause and

put a freeze on the remaining balance.

In the case of the other accounts, there needs only be a change of signatory.

Conclusion 2 Marks

Where the Executor is successful in his application for probate, the balance on the Marigold Mensah account may be released to him.

TOTAL MARKS

[20 Marks]

Question 4

Anthony Amo your valued customer issued a crossed cheque drawn on your bank BNG Bank Plc, s in favor of one Milly Cudjoe a customer of your competitors NNB Bank Plc. Milly Cudjoe inadvertently misplaced the cheque which was then found by her sister, Martha who skillfully forged her endorsement and credited the cheque to her account at the Burma Camp Branch of your NNB Bank Plc. The cheque was presented through clearing and was paid by your bank. Milly now discovers that the cheque has been paid and has sued your bank as well as the paying bank for conversion.

- a) What is a crossed cheque? [3 Marks]
- b) What is the difference between a general crossing and a special crossing? [4 Marks]
- c) What are the legal implications of a cheque being crossed generally? [3 Marks]
- d) Discuss NNB Bank's position in terms of the protection afforded to a paying bank that pays a crossed cheque. [10 Marks]

TOTAL MARKS

[20 Marks]

- a) What is a crossed cheque? [3 Marks]

A crossed cheque is a cheque that bears across its face two parallel transverse lines either with or without the words & Co or either with or without the words "not negotiable"

- b) What is the difference between a general crossing and a special crossing? [4 Marks]

A general crossing is a crossing consisting of two parallel transverse lines either with or without the words not negotiable or & co which nothing further added

A cheque that is crossed generally can be paid into any account at any bank

The special crossing is the crossing which bears across the face of the cheque the name of a bank

The cheque must be paid into an account at the bank named in the crossing

- c) What are the legal implications of a cheque being crossed generally? [3 Marks]
A crossed cheque cannot be paid over the counter and must be paid into an account
- d) Discuss NNB Bank's position in terms of the protection afforded to a paying bank that pays a crossed cheque. [10 Marks]

The Bills of Exchange Act section 79 protects a paying bank that pays a crossed cheque in good faith and without negligence and in accordance with the crossing.

It protects the paying bank against a claim of conversion by the true owner of the cheque.

There is no evidence of lack of good faith or negligence in the facts.

The bank should therefore benefit from the protection provided by section 79 of the Bills of Exchange Act

TOTAL MARKS

[20 Marks]

Section B – Answer 2 Questions only

Question 5 Multiple Choice – Answer all questions

1. In lending to minors, it is preferable taking an indemnity rather than a mere guarantee. The following encapsulates the differences between an indemnity and guarantee
 - a. **Guarantee is a secondary liability whilst indemnity is a primary liability**

- b. Indemnity is a secondary liability whilst guarantee is a primary liability
 - c. Guarantee needs not be in writing, but an indemnity has to be in writing.
 - d. b & c
- 2. Which type of security is the doctrine of uberrimae fidei critical
 - a. Land
 - b. Guarantees
 - c. **Insurance policies**
 - d. Corporate securities
- 3. The additional security clause means the security
 - a. Is substitute security to an existing security and replaces it
 - b. **Is additional and not in substitute to an existing security**
 - c. Would call for additional security in the future
 - d. Is taken in case of need
- 4. Guarantees of subsidiaries in a group for each other's borrowing is termed as:
 - a. Multiple guarantees
 - b. **Cross guarantees**
 - c. Inter guarantees
 - d. Multiparty guarantees
- 5. Under a guarantee, a guarantor is entitled to
 - a. Inspect the debtor's bank statement
 - b. Be informed of the balance of the debtor's account
 - c. Be able to see any cheques issued by the debtor
 - d. **Make repayment at any time**
- 6. How may a company have a lien over its issued shares?
 - a. Where members have fully paid for their shares
 - b. **Where there is an unpaid liability in the shares members are holding**
 - c. When it makes a rights issue
 - d. When it makes a bonus issue
- 7. Minimum share qualification represents
 - a. The minimum shares a director must have before he can become board chairman
 - b. **The minimum number of shares a director needs to have to become a director of the company**
 - c. It is required before one can be appointed an executive director of a company
 - d. The minimum shares one must have before being invited to an interview for consideration of appointment as a CEO of the company
- 8. What is the difference between a term policy and an endowment policy?
 - a. **With term policy nothing is paid where the assured is still alive at the end of the term. With endowment something is paid even where the assured survives the term of the policy**
 - b. With term policy something is paid where the assured is still alive at the end of the term. With endowment something nothing is paid where the assured survives the term of the policy

- c. The beneficiary of a term policy is the relatives of the life assured. The beneficiary of an endowment policy are a class of persons such as aged.
 - d. They are essentially the same thing.
9. In which of the following is there no insurable interest?
- a. Employer and employee
 - b. Judge and litigant
 - c. **Resident and neighbour**
 - d. Father and Son
10. James made a life policy on his life for the benefit of his child Amos. Who is the life assured?
- a. Amos
 - b. Amos' wife
 - c. **James**
 - d. Jaems and Amos
11. What is the importance of the "Age Admitted" Clause in Insurance contract?
- a. It has no role to play in the insurance contract
 - b. It is used by the insurance company to assess its risk
 - c. No further evidence of age would be required when the policy matures
 - d. **B & c**
12. Your manager tells you it is more advantageous for a bank to take legal charge over listed shares rather than unlisted shares. What is the difference between listed shares and unlisted shares?
- a. They are the same only one has the details listed on a sheet.
 - b. Unlisted shares are traded on an organized stock exchange whilst listed shares are not
 - c. Listed shares are shares issued by a private company whilst unlisted shares are issued by a public company.
 - d. **None of the above**
13. Which of the following would you not find in a bank debenture form
- a. Negative pledge
 - b. Nature of charge
 - c. **Conflict of interest**
 - d. Continuing security
14. The negative pledge clause means
- a. The borrower is prohibited from borrowing from any other lender
 - b. **The borrower is prohibited from granting another lender a security over the assets subject to the security which ranks equally or higher than the lender's security**
 - c. A pledge not to dispose off the business
 - d. None of the above

15. What is a floating charge?
 - a. **A charge that covers a general class of a company's assets and is not tied to any one particular asset**
 - b. A charge that has a floating rate of interest
 - c. A charge that is unsecured
 - d. A charge over a specific asset
16. Which of the following is a requirement for the borrower under a trust receipt
 - a. To insure the goods against loss or damages
 - b. To sell the goods only to authorized buyers
 - c. To deposit the sale proceeds into a separate account
 - d. **All of the above**
17. What happens to the original contract on the assignment of debt
 - a. **It remains in force**
 - b. It is terminated
 - c. It is amended
 - d. It is novated
18. Customer who wishes to provide his unregistered landed property a security? Which one is relevant?
 - a. Land title certificate
 - b. **Deed of conveyance of property to Customer**
 - c. Search Certificate from Lands Commission.
 - d. None of the above
19. What are "overriding interests" in land?
 - a. Interests in land that must be registered.
 - b. Interests in land that cannot be enforced unless notified to a purchaser of land
 - c. Interests that are conferred by the state.
 - d. **Interest that are enforceable whether registered or not.**
20. What is the meaning of the "Crystallization clause" in a Debenture?
 - a. The security taken is fixed charge
 - b. **It spells out conditions under which a floating charge ceases to be floating and becomes a fixed charge.**
 - c. It prohibits the customer from offering the security to another financial institution.
 - d. The security being given is a third party security

Question 6

You have granted an overdraft facility to your customers with the business name Geomantric Enterprise against a charge over the business's assets. In addition, you have taken a personal guarantee from a valued customer who happens to be a close friend of the Proprietor of the business Gina Minnow.

Later, Geomantric defaults in payment of the facility and you commenced steps to enforce the security including the guarantee. Unknown to John Thompson, Gina had given a third-party mandate to her husband to operate the account on her behalf. You also later got to know that her husband is a discharged bankrupt. In addition, the loan facility was used to pay off an already expired facility. The bank official had also given the guarantee form to Gina to procure the signature of John Thompson. John Thompson has indicated that he is empowered by the law to avoid any liability on the guarantee on the basis of the bank breach of its duty to inform him about the facts indicated above and misrepresentation on the part of the bank.

Discuss the bank's position indicating what should have been done to avoid the guarantor's claim.

[20 Marks]

Introduction – 2 Marks

Area of law

The duty of a bank to a guarantor

Bank's duty of secrecy

Issues – 4 Marks

Whether or not the bank would be liable for not disclosing the fact that there was a third-party mandate on the account.

Whether or not the bank has a duty of disclosure beyond disclosing the extent of the guarantor's liability.

Rules of Law – 8 Marks

It has been held that a guarantee contract is not a contract *uberimae fidei* and the bank has not duty to disclose information about its customer to a prospective guarantor. *Hamilton V Watson*

In **Cooper V National Provincial Bank 1945**, where the principal debtor's account (a sole proprietorship farm) was operated by her husband who was an undischarged bankrupt, under a third-party mandate given by the principal debtor, the court declined to set the guarantee aside. The court held that it was within the category of what the guarantor could naturally expect in the contract between bank and customer. The guarantor is required to make his own enquiries.

The only information the bank may disclose is the extent of liability

Bank of Ghana also enjoins banks to advise prospective guarantors to obtain independent legal advice.

It is up to the guarantor to obtain information about the guarantor on his own.

The bank also has to bear in mind its duty of secrecy to its customer

Application – 4 Marks

In line with *Hamilton v Watson*, the what transpires is not information that a prospective guarantor would not naturally expect to occur between the bank and the principal debtor.

The bank is not liable for misrepresentation. It is the customer's duty to obtain information on his own.

Conclusion – 2 Marks

The bank is not liable for non-disclosure nor for misrepresentation.

Question 7

Your customers Bonsu and Co Ltd has been granted an overdraft facility of GHC 1,000,000.00 secured by a legal mortgage over registered leasehold property in the name of John Bonsu, CEO of the company with a value of GHC 2,400,000 as at 31st December 2023 with five years to run.

- a) Outline two differences between registered land and unregistered land [4 Marks]
 - b) Discuss three (3) risk considerations a bank must have in mind when taking a legal mortgage over registered leasehold land. [6 Marks]
 - c) Outline the steps you would follow in taking a legal mortgage over registered land. [10 Marks]
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- a) Outline two differences between registered land and unregistered land regimes in Ghana [4 Marks]

Registered land regime entails registration of title to land whilst unregistered land entails registration of instruments in land.

Title to land is evidenced by the land title certificate under registered land. In the case of unregistered land it is evidenced by the indenture or title deed.

- b) Discuss three (3) risk considerations a bank must have in mind when taking a legal mortgage over registered leasehold land. [6 Marks]
- Value diminishes over time

Consent of the lessor may be required before a security can be taken over the property

The lessee may breach a term of the lease and have the lease forfeited.

- c) Outline the steps you would follow in taking a legal mortgage over registered land. [10 Marks]

1 Mark for each point

Extra marks for depth of discussion

Obtain the land title certificate

Examine the terms of the leasehold

Obtain consent from the lessor when required

Establish the current value of the lease

Ensure that consent of the lessor has either been obtained or is not required.

Search the land title register to establish ownership

Execute mortgage

Register at collateral registry and land title registry of the lands commission

Obtain charge certificate from the Land title registry