



**NATIONAL OPEN UNIVERSITY OF NIGERIA**

**SCHOOL OF POSTGRADUATE STUDIES**

**FACULTY OF LAW**

**COURSE CODE: CLL815**

**COURSE TITLE: LAW OF BANKING AND NEGOTIABLE  
INSTRUMENTS I**



## **NATIONAL OPEN UNIVERSITY OF NIGERIA**

**Headquarters**  
**Plot 91, Cadastral Zone,**  
**University Village,**  
**Nnamdi Azikiwe Expressway,**  
**JABI - ABUJA**  
**URL: [www.nou.edu.ng](http://www.nou.edu.ng)**

**Lagos Office**  
**14/16 Ahmadu Bello Way**  
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## COURSE INFORMATION

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## **COURSE TEAM**

Course Developers/Writers: Dr Monday O. Oseghale and  
Dr. F.O. Olumese

Course Editor: Dr Ernest O. Ugbejeh

Programme Leader: Dr Ernest O. Ugbejeh

Programme Coordinator: F.O. ONAMSON, PhD

TABLE OF CONTENTS	PAGE
Introduction	
Course Learning Outcomes	
Working through this course	
Course Materials	
Study Units	
Textbooks and Reference	
Assessment	
Tutor Marked Assignment	
Final Examination and Grading	
Course Score Distribution	
Course Overview/Presentation	
How to get the most from this course.	
Tutors and Tutorials.	
Summary	

# **CLL815 – LAW OF BANKING AND NEGOTIABLE INSTRUMENTS I**

## **COURSE GUIDE**

### **INTRODUCTION**

Pre-Banking business in Nigeria before [1892]; History/Evolution and Nature of Banking business in Nigeria; Concepts of Bank, Banker and Banking Business; Types, Functions and Structures of Banking Business in Nigeria; Banker and Customer Relationship, Bankers Duties to Customers and Banker's Protection; Customer's Duties to the Banker; The Paying and Collecting Banker; Conversion and Forgeries, Securities for Advances and Bankers Commercial Credit; Banks and Other Financial Institutions business Regulatory Framework; Concept and Types of Negotiable and Quasi-Negotiable Instruments; Types, Features / Elements, Acceptance, Delivery, Drawing, Endorsement, Holder in due course; Presentation, Dishonor, Discharge and the Law regulating the Bills of Exchange and Promissory Notes and the Governing law; Inchoate Bills; the Law of Bankruptcy; Concept and History / Evolution of E-Banking; Types and Features of E-Banking; Benefits of E-Banking; Problems and Challenges of E-Banking; Regulatory Framework, Reforms / Supervisory change of Management of E-Banking and Recommendations for movement towards sustainable development, promulgation / repeal / review of regulatory framework, Training and retraining of staff, Public Enlightenment and Sensitization of Bankers and Customers towards Internet Communication Technology [ICT], Conversions of Investments to Returns and tailoring existing management guidelines / Framework along Domestic jurisdiction of E-Banking etc.

Prior to 1892, there was no banking business in Nigeria until the South Africans established a branch of the Banking Corporation in Lagos in the year 1892 and this, marked the beginning of banking business in Nigeria. Earlier than the advent of money was Trade by Barter as the medium of exchange and which difficulties triggered the advent of money without which there would not have been banking business. So, the advent of money is a milestone in the history / evolution of banking business in Nigeria while the ever-increasing technological advancement and desire for a cashless society following the huge benefits, has further triggered the advent of E-Banking. It is important to mention that earlier than 1952, there were no banking regulations and thus, bank customers and investors were swindled till the promulgation of the Bills of Exchange Acts of 1917 and re-enacted in 1964, 1990 and of now 2004; then the Nigerian Industrial Development Bank [NIDB] of 1959 meant to issue the first Federal Government public loans, shares and stocks, then

the Treasury Bill Ordinance No. 11 of 1959 that was repealed as the Treasury Bill of 1960 by the Barbeck Committee Report of 1960, the Banking Amendment Act [CAP 19] of 1962 etc. Nigerian Deposit Insurance Corporation Decree [NDICD] of 1990 and re-enacted as Decree No. 5 of 1997 now; Nigerian Deposit Insurance Corporation Act CapN102 LFN.2004; Banking Ordinance of 1952 which was quickly followed by the Central Bank Act of 1959; the Banks and Other Financial Institutions Decree No. 25 of 1991 now Act 2004; Nigerian Import-Export Bank Decree No. 38 of 1991 [NEXIM] etc. However, due to the advancement in technology and increased banking activities, banking regulations have evolved by amendments, repeals / reviews or outright promulgation of new regulations that will continue to evolve due to contemporary changes in banking business even though that, where the laws are still relevant, they are retained for academic exercise purposes. The modules on E-Banking and a few others are restructured to suit contemporary changes having not been put into cognizance.

## **WORKING THROUGH THIS COURSE**

To complete this course, you are advised to read the study units, recommended books, relevant cases and other materials provided by NOUN. Each unit contains a Self-Assessment Exercise, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course there is a final examination. The course should take you about 13 weeks to complete. You will find all the components of the course listed below. You need to make out time for each unit in order to complete the course successfully and on time.

## **COURSE MATERIALS**

The major components of the course are.

- a) Course guide.
- b) Study Units.
- c) Textbooks
- d) Assignment file/Seminar Paper
- e) Presentation schedule.

## MODULES AND STUDY UNITS

The discussion in this course is broken down to eight (8) study units that are broadly divided into six (6) modules as follows –

<b>MODULE 1</b>	<b>THE PRE-BANKING BUSINESS ERA IN NIGERIA</b>
Unit 1	The Concept of Pre-Banking and Trade by Barter in Nigeria
<b>MODULE 2</b>	<b>HISTORY / EVOLUTION AND THE NATURE OF BANKING BUSINESS IN NIGERIA</b>
Unit 1	History / Evolution and the Nature of Banking Business in Nigeria
<b>MODULE 3</b>	<b>THE CONCEPT OF A BANK, BANKER, AND BANKING BUSINESS</b>
Unit 1	The Concept of ‘Bank,’ ‘Banker’ and ‘Banking Business’ in Nigeria
Unit 2	Concept of the word “Customer” and the Features / Nature of Banker Customer Relationship
<b>MODULE 4</b>	<b>DUTIES OF A BANKER TO A CUSTOMER AND THE RIGHTS / DEFENCES OF A BANKER</b>
Unit 1	Rights and Obligations in a banker-customer relationship
<b>MODULE 5</b>	<b>NATURE, TYPES, FUNCTIONS AND STRUCTURE OF THE BANKING SYSTEM IN NIGERIA</b>
Unit 1	Types, Functions and Structure of Banking in Nigeria
Unit 2	OTHER SPECIALIZED BANKS
<b>MODULE 6</b>	<b>INTRODUCTIN OF UNIVERSAL BANKING SYSTEM [UBS] 2000</b>
Unit 1	Universal Banking System [UBS], 2000

All these Units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for



each. We suggest that the Modules be studied one after the other, since they are linked by a common theme. You will gain more from them if you have first carried out work on the law of contract. You will then have a clearer picture into which to paint these topics. Subsequent units are written on the assumption that you have completed previous Units.

Each study unit consists of one week's work and includes specific Learning Outcomes, directions for study, reading materials and Self-Assessment Exercises (*SAE*). Together, these exercises will assist you in achieving the stated Learning Outcomes of the individual units and of the course.

## **REFERENCES / FURTHER READING**

References and further reading materials are provided at the end of each study unit. The need to consult these materials cannot be overemphasized to deepen and broaden understanding of the issues at stake. You should read them where so directed before attempting the exercise.

## **ASSESSMENT**

There are two aspects of the assessment of this course, the Tutor Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge acquired during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. The work that you submit to your tutor for assessment will count for 30% of your total score

## **SELF-ASSESSMENT EXERCISES**

Self-assessment questions are raised at the end of each module to measure the level of successful engagement with the legal issues covered. The answers in the body of the main text are distilled and put up at the end of the course material. This will enable you to understand and apply legal principles to practical situations in resolving legal matters in the field of marine insurance law.

## **FINAL EXAMINATION AND GRADING**

The duration of the final examination for this course is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self-assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit and taking the examination to revise the entire course. You may find it useful to review yourself assessment exercises and tutor marked assignments before the examination.

## COURSE SCORE DISTRIBUTION

The following table lays out how the actual course marking is broken down.

Assessment	Marks
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments. Best three marks of the four counts at 30% of course marks.
Final examination	70% of overall course score
Total	100% of course score.

## Course Overview and Presentation Schedule

Module / Unit	Title of Work	Weeks Activity	Assessment (End of Unit)
<b>MODULE 1</b>	<b>THE PRE-BANKING BUSINESS ERA IN NIGERIA</b>		
Unit 1	The Concept of Pre-Banking and Trade by Barter in Nigeria	1	Assignment 1
<b>MODULE 2</b>	<b>HISTORY / EVOLUTION AND THE NATURE OF BANKING BUSINESS IN NIGERIA</b>		

Unit 1	History / Evolution and the Nature of Banking Business in Nigeria	2	Assignment 4
<b>MODULE 3</b>	<b>THE CONCEPT OF A BANK, BANKER, AND BANKING BUSINESS</b>		
Unit 1	The Concept of 'Bank,' 'Banker' and 'Banking Business' in Nigeria	3	Assignment 9
Unit 2	Concept of the word "Customer" and the Features / Nature of Banker Customer Relationship	4	
<b>MODULE 4</b>	<b>DUTIES OF A BANKER TO A CUSTOMER AND THE RIGHTS / DEFENCES OF A BANKER</b>		
Unit 1	Rights and Obligations in a banker-customer relationship	5	
<b>MODULE 5</b>	<b>NATURE, TYPES, FUNCTINS AND STRUCTURE OF THE BANKING SYSTEM IN NIGERIA</b>		
Unit 1	Types, Functions and Structure of Banking in Nigeria	6	
Unit 2	OTHER SPECIALIZED BANKS	7	Assignment 12
Unit 3	Universal Banking System [UBS], 2000	8	

### **HOW TO GET THE MOST FROM THE COURSE.**

It is very important that the discussion on this course is participatory. Therefore, you will benefit from taking part in all the facilitation classes. It is equally important that you take steps to consult the references for further reading in each Unit. The effusive references to provisions of the relevant laws in the course guide is to enable you to become very familiar with the law.

## **TUTORS AND TUTORIALS**

There are 12 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of the tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group. Your tutor will mark and comment on your assignments. Keep a close watch on your progress and on any difficulties you might encounter. Your tutor may help you during the course. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutor and returned to you as soon as possible.

Please do not hesitate to contact your tutor by telephone or e-mail if:

- You do not understand any part of the study units or the assigned readings.
- You have difficulty with the self-assessment exercises.
- You have a question or a problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

## **TABLE OF CONTENT**

Module / Unit	Page
<b>MODULE 1 HISTORY / EVOLUTION AND THE NATURE OF BANKING BUSINESS IN NIGERIA</b>	
• Unit 1 The Pre-Banking Business Era in Nigeria	14
• Unit 1 History / Evolution and the Nature of Banking Business in Nigeria	17
<b>MODULE 2 THE CONCEPT OF A BANK, BANKER, AND BANKING BUSINESS</b>	
• Unit 1 The Concept of 'Bank,' 'Banker' and 'Banking Business' in Nigeria	20
• Unit 2 Concept of the word "Customer" and the Features / Nature of Banker Customer Relationship	28
• Unit 3 Rights and Obligations in a banker-customer relationship	35
<b>MODULE 3 NATURE, TYPES, FUNCTIONS AND STRUCTURE OF THE BANKING SYSTEM IN NIGERIA</b>	
• Unit 1 Types, Functions and Structure of Banking in Nigeria	42
• Unit 2 Other Specialised Banks in Nigeria	53
• Unit 3 Universal Banking System [UBS], 2000	57

## MODULE 1 – THE HISTORY/EVOLUTION AND THE NATURE OF BANKING BUSINESS IN NIGERIA

### **Unit 1: The Pre-Banking Business Era in Nigeria**

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 The Pre-Banking Business Era in Nigeria
  - 1.3.1 Trade by Barter in Nigeria
- 1.4 Summary
- 1.5 References/Further Readings/Web Sources
- 1.6 Self-Assessment Exercises and Feedback

#### **1.1 Introduction**

This module discusses the pre-banking era, before the concept of trade by barter, the advent of early / traditional money and the difficulties that followed before the banking business.

#### **1.2 Learning Outcome**

At the end of this class, you should be able to know the pre-banking era in Nigeria as before 1892, the concept of trade by barter, its challenges and their relationship to the banking business in Nigeria.

#### **1.3 The Pre-Banking Business Era in Nigeria**

The pre-banking era is a phase in history of Nigerian banking business that cannot be treated with a hand wave because of the intrigues in trade by barter before the advent of money and subsequently, the era of banking business. This is so because the sole medium of exchange before the advent of money was ‘Trade by Barter’ whereas, the advent of money triggered banking business in Nigeria.

##### **1.3.1 Concept of Trade by Barter**

Trade by Barter is the exchange of goods for goods and services for services. This was the sole medium of exchange before the advent of money in the olden days. Trade by barter was very cumbersome because of the difficulties encountered in the exchange of goods for goods and services for services by the fact that:

- (a) It was difficult to meet a person who needed some particular goods for another's goods or services and *vis-a-vis*.
- (b) The smarter trader outwitted other traders in terms of exchange. For instance, is where a smart buyer convinced a seller to exchange a cow for just two goats.
- (c) Moving around by a sellers to get buyers was also cumbersome
- (d) Losses were incurred over perishable goods, especially where a buyer could quickly not be reached etc.

Following the difficulties stated above, it is clear that 'Trade by Barter' had its demerits which obviously triggered the need for a medium of exchange (Money). This subsequently led to the advent of early / traditional monies like; cowries, elephant tusks, feathers of very important birds (peacocks & parrots), coral beads, seashells, mirror, spirits etc. This early / traditional money also had its difficulties as it lacked the features of contemporary money which include:

- (a) Not being scarce
- (b) Not durable
- (c) Not divisible
- (d) Not portable
- (e) Not generally accepted etc.

Buying and selling through trade by barter had its difficulties. This triggered the need for early / traditional monies as the medium of exchange but that too, had its difficulties which also led to the switch to contemporary monies that include paper and coin monies that are in use today. In Nigeria for instance, Naira and kobo and other bills of exchange (cheques, postal orders, promissory notes etc), now serve as medium of exchange and consequently, the desire for banking business.

#### **SELF-ASSESSMENT EXERCISES 1**

- (a) Is money a necessity in buying and selling?
- (b) What was the medium of exchange before the advent of money?
- (c) The need for money as a medium of exchange was by necessity. Briefly discuss
- (d) Does the advent of contemporary money actually solve the difficulties encountered in the use of early / traditional money?

## 1.4 Summary

The pre-banking era was earlier than 1882 and that, trade by barter was the initial medium of exchange. However, the difficulties led to the invention of early / traditional money which lacked the features of modern money that include not being scarce, not legal tender, not durable, not portable, not from valuable ornaments etc.

## 1.5 Learning Outcome

- 1) Ekemini Udim, Principles of Garnishee Proceedings in Nigeria, Princeton & Associate Ltd. Lagos.
- 2) Emeka Chianu, Law of Banking. Texts: Cases; Comments, New System Press Ltd. 1995
- 3) Goldface – Irokalibe I . J., Law of Banking in Nigeria. Malthouse Law Book 2013.
- 4) Holden J.M; “History of Negotiable Instruments in English Law”[1<sup>st</sup> Ed.], Althone, London. 1955
- 5) Igweke K.I; “Law of Banking and Negotiable Instruments” African Publisher Ltd. Rev. Ed. 2008
- 6) Olusegun Yerokun, casebook on Law of Banking (comments & cases) Nigeria Revenue Project Publications, 2015.
- 7) Omotayo G; “A Dictionary of Finance” West Bourme, England: West Bourme Business School, 2007

## 1.6 Answers to Self-Assessment Exercises 1

- a. Yes, it is because, it eases the difficulties of trade by barter for goods and services for services.
- b. Trade by barter was the medium of exchange by the exchange of goods for goods and services for services.
- c. The need for money as a medium of exchange was necessitated by the difficulties of trade by barter which include that:
- i. It was difficult to meet a person who needed goods for services and not the other way round.
  - ii. The smarter trader outwitted the slow trader in terms of exchange. For instance, where a buyer convinces and exchanges a cow for two goats with a seller.
  - iii. Movement around by sellers to get buyers was cumbersome.
  - iv. Losses were incurred where a buyer could not be quickly reached especially if perishable goods were involved etc.
- d. Yes, it did ameliorate all difficulties encountered from the use of early / traditional money despite its own difficulties too.



## MODULE 1 – THE HISTORY/EVOLUTION AND THE NATURE OF BANKING BUSINESS IN NIGERIA

### **Unit 2: History/Evolution and the Nature of Banking Business in Nigeria**

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 History/Evolution of Banking Business in Nigeria
- 2.4 Summary
- 2.5 References/Further Reading/Web Sources
- 2.6 Answers to Self-Assessment Exercises

#### **2.1 Introduction**

The first foreign and indigenous banks before the proliferation of other banking businesses in Nigeria. State the reason for increased commercial banking business in Nigeria soon after 1945; mention five reasons why the commercial banks that emerged thereafter in Nigeria still swindled their customers and investors etc.

#### **2.2 Learning Outcome**

At the end of this class, you should be able to precisely discuss / state the history / evolution of Banking business in Nigeria, when, how and where banking business started in Nigeria.

#### **2.3 History / Evolution of Banking Business**

Banking business started in the year 1892 in Nigeria because earlier than 1892, banking business was alien to Nigeria until the African Banking Corporation of South Africa established a branch in Lagos and later reorganized as the Bank of British West African [BBWA], having been acquired in 1893 by Elder Dempster and later renamed the Bank of West Africa [BWA]. However, [BWA] was later merged with the Chase Manhattan Bank in 1894 and renamed the Standard Bank of Nigeria which is today known as the First Bank of Nigeria. In the year 1912, Nigeria's Colonial master, Britain, established the West African Currency Bank (WACB) in Nigeria and her other West Africa colonies just to meet her increased commercial and economic needs. The bank did not only have its headquarters in

Britain but had Whites only as Board members, used the British Pound Sterling currency which was printed and minted in Britain. However, by 1917 Barclays Bank was established in Lagos but later transformed into the current Union Bank of Nigeria. Whereas, other banks that emerged include:

- The Industrial and Commercial Bank of Nigeria, 1929;
- The Nigerian Mercantile Bank, 1931;
- The National Bank of Nigeria, 1933
- Agbonmagbe Bank in 1945.

However, after the Second World War in 1945, there was increased Post war economic activities which led to the emergence of more Commercial banks in Nigeria and a few amongst which include:

- The African Continental Bank, 1947
- The Nigerian Trust Bank, 1951
- Mainland Bank, 1952

In 1954, there was regional autonomy which led to States being involved in banking business and this made the federating States to individually own or jointly operate with foreign partners in banking business in Nigeria. This development in the banking sector had problems of dishonesty, inefficiency, inadequate paid capital, keen competition from foreigners and the lack of banking business regulations etc. This also made customers and investors lose confidence in the banking sector in Nigeria. This obviously triggered the need for regulatory measures. The first being the Bills of Exchange Decree of 1917 before the Banking Ordinance of 1952 which was later repealed as Banking Ordinance [CAP. 19] of 1958 and then, the Central Bank Act of 1959, the Nigerian Industrial Development Bank [NIDB] of 1959 that was meant to issue the first public and Federal Government loans, shares and stocks.

Thereafter, emerged the Treasury Bill Ordinance No. 11 of 1959 which was repealed to the Treasury Bill of 1960 by Barbeck Committee Report of 1960, the Banking Amendment Act [CAP 19] of 1962 etc. Swindling however continued due to the lacunae in these statutes but later strengthened by the Central Bank [CBN] Act of 1959 which for instance, empowered the CBN to control Nigeria's monetary policy. However, in the 60s, more banks sprang up especially by the promulgation of the Company Decree No. 51 of 1968 which made it

mandatory for companies and banks to be registered and incorporated but doubled in the 70s through the 80s and 90s, following the oil boom such that, the number of banks in Nigeria rose to at least, 126. The Banks and Other Financial Institutions Decree [BOFID] of 1991 emerged amongst others; to provide safety to depositors, limit bank risks, preserve bank liquidity, ensure solvency, build customers and investors' confidence, ensure effective State control of banking activities etc.

By 1995, the Nigerian Investment Promotions Commission Decree No. 3 of 1997; No. 37 of 1998 and No. 41 of 1999 had been promulgated and quickly followed by the Universal Banking System (UBS) of year 2000 that was meant to regulate all purposes of banking business and to offer a wide range of banking services like under writing of debts and equities, trading in financial instruments, wholesale and retail banking activities on shares, bonds, debentures etc. It is clear that banking business was introduced in Nigeria by South Africa but later consolidated and owned mainly by the British before partnerships and the total indigenization of banking business in Nigeria.<sup>1</sup> The increased British post war economic activities triggered the proliferation of commercial banks in Nigeria especially for their economic benefits and worse still, it was not regulated. However, the promulgation of statutes helped to minimize the swindling of customers and investors even though a lot is still desired in the area of regulations.

### **SELF-ASSESSMENT EXERCISE 2**

- a) State the year banking business was introduced into Nigeria
- b) Clearly affirm those who introduced the African Banking Corporation in Nigeria
- c) Name the first bank in Nigeria
- d) Name the first indigenous bank in Nigeria
- e) State the first type of currency in use before the Naira and Kobo and the reason why
- f) State the reason for increased commercial banking business in Nigeria soon after 1945
- g) Mention at least two commercial banks that emerged thereafter in Nigeria
- h) Mention what increased the proliferation of banking business in Nigeria after 1945
- i) State why despite the increased number of banking business, customers and investors were being swindled
- j) What did the Central Bank of Nigeria Act cure in the banking business sector?

<sup>1</sup> Igweike K.I; "Law of Banking and Negotiable Instruments" African Publishers Ltd. Rev. Ed. 2008, p. 1

## 2.4 Summary

Banking business in Nigeria, started in 1892, that the South African Banking Corporation was the first bank established in Nigeria and situate in Lagos before its takeover by Elder Dempster. The proliferation of banking business after 1945 was triggered by the increased British Post World War II economic activities and the desire to meet their economic needs. It is also clear that the emergence of banking regulations was to forestall swindling of bank customers and investors. It is true that the Bank of West Africa [BWA] was later merged with Chase Manhattan Bank in 1894 and renamed the Standard Bank of Nigeria which is today known as the First Bank of Nigeria. You also now know that the first banking regulation is the Bills of Exchange Decree of 1917 before the Banking Ordinance of 1952 which was later repealed as the Banking Ordinance [CAP. 19] of 1958. Whereas the Central Bank Act of 1959 helped to control Nigeria's monetary policy.

## 2.5 References/Further Reading/Web Sources

- 1) Igweike K.I; "Law of Banking and Negotiable Instruments" African Publishers Ltd.  
Rev. Ed. 2008

## 2.6 Answers to Self-Assessment Exercises 2

- 1893
- South Africa first introduced banking activities in Nigeria by her establishment a branch of the African Banking Corporation in Lagos which name evolved to become First Bank of Nigeria
- First Bank of Nigeria (Former Standard Bank of Nigeria)
- National Bank of Nigeria founded in 1933
- British Pound Sterling because the British was Nigeria's Colonial master, the currency was printed and minted in Britain and had only Whites as its Board members in Britain.
- The reason for increased commercial banking business in Nigeria soon after 1945 was the Post Second World War and increase economic activities.
- 1945 marked the end of the 2<sup>nd</sup> World War when the British increased the economic activities in Nigeria and so, desired more secured economic activities.
- The Industrial and Commercial Bank of Nigeria, 1929 & The Nigerian Mercantile Bank, 1931
- There were no banking business regulations then until the Banking Ord. of 1952 and others.
- It helped control Nigeria's monetary policy.

## MODULE 2 THE CONCEPT OF A BANK, BANKER AND BANKING BUSINESS

### Unit 1: The Concept of 'Bank,' 'Banker' and 'Banking Business' in Nigeria

1.1 Introduction

1.2 Learning Outcomes

#### 1.3 The Concept of 'Bank,' 'Banker' and 'Banking Business' in Nigeria

1.3.1 Statutory Concepts of the words; Bank, Banker, and Banking Business

1.3.2 Conflicts in Concepts of the words; Bank, Banker & Banking Business

1.4 Summary

1.5 References/Further Reading/Web Sources

1.6 Answers to Self-Assessment Exercises 3

#### 1.1 Introduction

This module concerns the presumed concepts of the words; 'Bank', 'Banker' and 'Banking Business' as shortly deduced not from the statutes but judicial pronouncements as will be seen in the main content of this class study. This class will also discuss what banking business without due license, could infer from the statutes but not facts, the class will also discuss the obvious conflicts in the different concepts for the words; 'bank', 'bankers' and 'banking business' in Nigeria.

#### 1.2 Learning Outcome

At the end of this class, you should be able to define the words bank, banker and banking business even though limited by statute but not by facts (judicial precedence) and discern the conflicts in the concepts.

#### 1.3 The Concept of 'Bank,' 'Banker' and 'Banking Business' in Nigeria

##### 1.3.1 Statutory Concepts of the words; Bank, Banker, and Banking Business

The words bank, banker and banking business are statutorily defined thus:

- 1) **S. 2 (1) of the Evidence Act, 2011** says '**Bank**' and '**Banker**' mean; "Any person, persons, partnership or company carrying on the business of bankers that includes any Savings bank established under the Federal Savings Bank Act, 1990

and any banking company incorporated under any Charter hereafter granted, or under any Act hereafter passed relating to such incorporation.”

- 2) **Section 2<sup>2</sup>(1) of Bill of Exchange Act did not specifically define a ‘Bank’** but says **a Banker includes** A body of persons whether incorporated or not who carry on the business of banking.”
- 3) The **Banking Act (CAP 19) of 1962** says; “A Bank is any person who carries on Banking business” and **Section 3 (1) of the same Act** as repealed says; “**No banking business** shall be transacted in Nigeria **EXCEPT** by a company which is in possession of a valid license which shall be granted by the Minister after consultation with the Central bank, authorizing it to carry on banking business in Nigeria.”
- 4) Whereas, **Section 61 of Banks and Other Financial Institutions Decree (BOFID), 1991** now Section 66 of the Banks and other Financial Intuition Act<sup>3</sup>, says; “**Bank**” means; “A Bank licensed under this Decree” and also says **Banking Business<sup>4</sup>** is; “The business of receiving money on current account from the general public, of paying and collecting cheques drawn by / paid in by customers and making advances to customers.”
- 5) **Section 2 (1) of Banking Decree, 1969** provides; “No person shall carry on any banking business in Nigeria **EXCEPT** a company duly incorporated in Nigeria and holds a valid banking license issued under this Decree.”

### **1.3.2 Conflicts in Concepts of the words; Bank, Banker & Banking Business**

It is clear that there is a conflict / ambiguity/ interception in the concepts of a “Bank”; “Banker” and “Banking business” as all words seem synonymous and interchangeably used and but clearly specific in the ordinary usage by Court pronouncements in the

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<sup>2</sup> Section 2 Cap.B8 LFN.2004.

<sup>3</sup> Cap B.3 LFN 2004

<sup>44</sup> Section 66 BOFIA

cases of **Akwule & 10 Ors v. the Queen<sup>5</sup>** and **Copland V. Davies<sup>6</sup>** if contrasted with the provisions of **S. 2 (1) of the Bills of Exchange Act, 1990** which says: “Banker” includes a body of persons whether incorporated or not who carry on the business of banking.” However, the purpose of statutory regulations for the banking business is to forestall fraud by regulating banking activities in Nigeria and not to foreclose people from daily savings business meant to keep body and soul as expressed by the Court in the case of **AG FED v. EKPA<sup>7</sup>** who operates daily collection outfit called ‘Global Savings Syndicate’ that collects money daily from market women and other members of the public which he saved in the Mercantile Bank of Nigeria Ltd, Calabar in trust for his customers and to be paid an agreed amount as commission for his services on the return of the savings.

Ekpa advertised his business through handbills, radio announcements but was charged to court for operating a banking business without a valid license and claimed to have contravened **Section 41 of the Banking Decree of 1969** which provides that; “Banking business is receiving monies from outside sources as deposits irrespective of the payment of interest or purchase of bills, cheques or sales of securities on account of others or incurring of the obligation to acquire claims in respect of loans prior to their maturity or the assumption of guaranties and other warranties for others or effecting transfers and clearing of such other transactions as the Commissioner may on the recommendation of the Central Bank and by order, published in the Federal Gazette designate as banking business”. The provisions of **Section 61 of BOFID, 1991** explains that - A bank must be incorporated (registered) and licensed to carry on banking business especially if the different concepts and Court decisions are critically examined as in the cases of **Akwule & 10 Ors V. The Queen<sup>8</sup>** and **Attorney General of the Federation V. Ekpa<sup>9</sup>**.

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<sup>5</sup> Sections 2 (1) of the Evidence Act, 2011; b Section 2 (1) of Bills of Exchange Act of 2004; Section 61 of Banks and Other Financial Institutions Act 2004 ; Banking Act (Cap 19) of 1962 and Section 2 (1) of Banking Decree of 1969

<sup>6</sup> 1871 – 72, H.L. 358

<sup>7</sup> FRC/PH/25c/75 of 1976

<sup>8</sup> (1962) FSC. 325

<sup>9</sup> FHC/PH/25/75

A bank worker, however, becomes a banker in the (ordinary sense) but not the statutory sense as decided in the case of **COPLAND v. DAVIES**<sup>10</sup> where the employee breaches the trust of the customers by defrauding them of monies entrusted to the bank in the course of carrying on banking business on behalf of his employer (Bank). Hence, Lord Hatherley L. C; said: “It is not disputed that a bank staff was a banker in the ordinary literal sense of the word simply by receiving peoples’ money and giving them receipts not as for transfers of property or for anything of that kind but for receipts of money, acknowledging the receipt of money and issuing of pass-books, cheque books and dealing with them in the ordinary way of a banker. We would add that even if an employee of a bank could for any purpose be regarded as a banker within the meaning of section 2 (1) of the Bills of Exchange Act<sup>11</sup>, it was meant to be used in the ordinary sense because a breach of trust was committed in relation to monies which were already the property of the bank i.e. monies entrusted to the bank employee in the ordinary sense and not in any other capacity” that involves:

- 1) The acceptance of deposits from customers
- 2) The provision of loans
- 3) Payment of cheques collected or drawn or paid in by customers.

The question now is – does it mean that – once money is lodged with another, the person who accepts the lodged money will be deemed to be operating banking business? Is there any exception to the concept of banking business in Section 61 of BOFIA, 1991 that connotes corporate bodies must be registered and licensed as compared to the case of **A.G Federation v. Ekpa**<sup>12</sup> where Justice Akanbi reiterates that: “Global Savings Syndicate” is not a bank even though he made daily collections through his agents and employees from market women and a few other persons. The aim of the Banking Act and other regulations is to prevent the establishment of financial institutions like Commercial Banks, Acceptance Houses, Discount Houses and others at which normal banking business may be transacted from operating banking business without a valid license. It is not to prevent people from making little savings which it appears to me is the idea behind the establishment of the Global

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<sup>10</sup> (1871) HL.358

<sup>11</sup> Cap B3 LFN. 2004

<sup>12</sup> supra



Savings Syndicate run by the accused person in the case of Ekpa.” Compare and contrast Ekpa’s case with the following statutory provisions below:

- 1) Section 41 of the Banking Decree, 1969 provides that; “Banking Business is the business of receiving monies from outside sources as deposits irrespective of the payment of interest or the granting of loans and acceptance of credits or the purchase of bills and cheques or sales of securities for account of others or the incurring of the obligation to acquire claims in respect of loans prior to their maturity or the assumption of guarantees and other warranties for other or the effecting of transfers and clearing and such other transactions as the Commissioner may, on the recommendation of the Central Bank, by order published in the Federal Gazette designate as Banking Business.”
- 2) Section 2 (1) of the Evidence Act that says; “Bank and Banker means any person, persons, partnership or company carrying on the business of bankers and includes: any Savings Bank established under the Federal Savings Bank Act and any banking company incorporated under any charter hereafter granted or under any act hereafter passed relating to such incorporation.”
- 3) Section 66 of BOFIA<sup>13</sup>, which provides that; “Bank means a bank licensed under this Decree.” While Section 2 (1) of Banks and Other Financial Institutions Decree [BOFID] 1991 now BOFIA says that; “No person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking license issued under this Decree” notwithstanding the provisions of Section 2 (1) of the Bills of Exchange Act 1990 that provides; “Banker includes a body of persons whether incorporated or not who carry on the business of banking” as contemplated within the above provisions but especially BOFIA, 1011. So, small saving schemes do not come within the meaning or concept of a bank, banker and banking business even though the scope of banking is often determined by the established fact of debtor / creditor relationship which must be contractual in nature as decided in **WOODS V. MARTINS BANK LTD & ORS**<sup>14</sup> where Justice Salmon reiterates; “In my judgment, the limits of a banker’s business cannot be laid down as a matter of

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<sup>13</sup> Cap BB LFN.2004

<sup>14</sup> [1959] 1 Q.B.55

law. The nature of such a business must in each case be matter of facts...” This was however first decided in **FOLEY v. HILL**<sup>15</sup> before **EKPA**’s case.

### **SELF ASSESSMENT EXERCISES 3**

- 1) Is there any clear concept for the words; ‘bank’, ‘banker’ and ‘banking business’?
- 2) Is carrying out daily collection of money from members of the public for saving like Ekpa, an act that constitutes banking business without due license.
- 3) Is a banker’s business laid down as a matter of facts or limits of the law?

#### **1.4 Summary**

There is no clear statutory concept of the words; ‘Bank’, ‘Banker’ and ‘Banking Business’ but rather judicial pronouncements. You also now know that there are conflicts in the concepts of these words as inferred and interchangeably used in the statutes against the judicial pronouncements; that the purpose for statutory regulations in the banking business in Nigeria is to forestall fraud and not to foreclose people from the business of daily savings meant to keep body and soul as expressed in the case of **A.G FED. V. EKPA**<sup>16</sup> which contrasts the provisions of Section 2 (1) of the Bills of Exchange Act <sup>17</sup>that provides; “A Banker includes a body of persons whether incorporated or not who carry on the business of banking.” You also find that, a bank worker (banker) can become a bank in the ordinary literary sense where the banker breaches the trust of the customers and investors by defrauding them of monies entrusted to the bank in the course of carrying on banking business on behalf of his employer (Bank) as decided in the case of **COPLAND v. DAVIES**<sup>18</sup> and that – a bank must however be incorporated (registered) and licensed to carry on banking business especially if the different concepts and Court decisions are critically examined as in **A.G Fed v. Ekpa (Supra) and Akwule & 10 Ors v. Queen.**<sup>19</sup>

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<sup>15</sup> [1848] 2 HL, 28

<sup>16</sup> FRC/ PH/25/C75/1976 at 206, 207

<sup>17</sup> Cap B8 LFN. 2004

<sup>18</sup> 1871-74, 5. H.L.358 at 375

<sup>19</sup> supra

- a) There is no clearly known concept of the words bank, banker and banking business except by judicial pronouncements where contrasted with the different conflicting statutory concepts of these words as provided by Section 41 of the Banking Decree, 1969; S. 2 (1) of the Evidence Act, Section 66 of Banks and Other Financial Institutions Decree (BOFIA), etc.
- b) The aim of banking regulations and other Acts is not to prevent people from making little savings which it appears to me is the idea behind the establishment of the Global Savings Syndicate run by the accused person in the case of Ekpa but to stop people from swindling. The aim of the Banking Act and other regulations is also to prevent the establishment of financial institutions like Commercial Banks, Acceptance Houses, Discount Houses and others at which normal banking business may be transacted from operating banking business without a valid license. It is not to prevent people from making little savings which it appears to me is the idea behind the establishment of the Global Savings Syndicate run by the accused person in the case of Ekpa.
- c) It is clear that there is conflict / ambiguity/ interception in the concepts of a ‘Bank’; ‘Banker’ and ‘Banking business’ as all words seem synonymous and interchangeably used but clearly specific in the ordinary usage from Court pronouncements in the cases of **AKWULE & 10 ORS v. THE QUEEN<sup>1</sup> and COPLAND v. DAVIES<sup>1</sup>** if contrasted with the provisions of S. 2 (1) of the Bills of Exchange Act, 2004 which says: “Banker” includes a body of persons whether incorporated or not who carry on the business of banking.” However, where the word Banker is said to include a body of persons whether incorporated or not who carry on the business of banking as contemplated within the provisions BOFID, 1991, the nature of such a business must in each case be matter of facts...” This was however, first decided in **FOLEY v. HILL<sup>1</sup> before EKPA’s case.**

### 1.6 Answers to Self-Assessment Exercises 3

1) Banks and Other Financial Institutions Act Cap B8 LFN 2004

### 1.5 References/Further Readings/Web Sources

**Unit 2: Concept of the word “Customer” and the Features / Nature of Banker Customer Relationship**

2.1. Introduction

2.2. Learning Outcomes

2.3. Main Contents

2.3.1 Who is a ‘Customer’?

2.3.2 The Nature of Banker Customer Relationship

2.3.3 Features of a Contract

2.3.4 Indemnity, Conditions and Warranties

2.4. Summary

2.5. References/Further Reading/Web Sources

2.6. Answers to Self-Assessment Exercises and Feedback

**2.1 Introduction**

This unit explains who a bank customer is, what the features / natures of banker customer relationship are like. If contractual or otherwise and how the contract can be terminated especially where a condition becomes a fundamental term for an offeror to revoke a contract. It will also discuss the duties and defences of a bank to a customer and *vis-à-vis*.

**2.2 Learning Outcome**

At the end of this unit, you should know who a bank customer is, banker customer relationship and the nature of banker customer relationship.

**2.3 Concept of the word “Customer” and the Features / Nature of Banker Customer Relationship**

**2.3.1 Who is a customer?**

There is no known statutory concept of who a customer is except by judicial pronouncements on (Advise; contractual relationship or irrespective of having opened

an account; account duration not of essence & if the customer intends to or has opened an account). Hence by decided cases, a customer is the following:

A person the bank agrees to advise as decided in **WOODS v. DAVIES BANK LTD**<sup>20</sup> from the moment the bank agrees to advise a person even though the person had not opened an account with such a bank. Hence, in this case where the Plaintiff had no business experience but went to the defendant bank for advice on how and where to invest his money and the branch Manager advised him to invest in a private company that banked with his branch where the customer lost his money through negligence of the bank that allowed the defendant to over withdraw till it became bankrupt and consequently, defrauded the customer.

A person who has a contractual relationship with the bank as decided in **New Nigeria Bank Ltd v. Odiase**<sup>21</sup> where the Court held that Odiase was a customer irrespective of having opened an account with the bank or not so long as a contractual relationship has been established. Odiase [the respondent] was a Mining Engineering student being sponsored in Turkey by his anty one Mrs. Obasuyi who through the Appellant bank applied to the Central Bank for foreign exchange to pay the respondent's school fees but the Appellant bank diverted the use of the money for a stranger. Odiase was regarded "A Customer" irrespective of his having an account with the bank or not.

A person who has an account with the bank irrespective of the duration as in the case of **Commissioner for Taxation v. English Scottish & Australian Bank**<sup>22</sup> where Lord Duredin reiterates: "A customer signifies someone who has an account with the bank but the relationship is not one of which duration is of essence."

A person who has or intends to open an account with a bank even though he has not done so. See the case of **Great Western Railway Corporation v. London & County Banking Corporation Ltd.**<sup>23</sup> where an action to recover monies withdrawn by Huggins through a fraudulently acquired cheque failed even though Huggins was convicted but the issue inter-alia is - whether Huggins was a customer? The court held

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<sup>20</sup> supra

<sup>21</sup> [1993] 8 N.W.L.R. Pt. 310, 235

<sup>22</sup> [1920] A.C. 683, 687

<sup>23</sup> [1901] A.C, 414, 420-421

that Huggins was not a customer, but the position today is that: “A person is a customer to a bank immediately he opens or intends to open an account” irrespective of duration as was held in **Commissioner for Taxation v. English Scottish & Australian Bank (supra)**.<sup>24</sup>

### 2.3.2 The Nature of Banker-Customer Relationship

Banker customer relationship is basically that of a **debtor and creditor** but must be **contractual** either by **implication or as expressly** stated by the parties. It was first decided as a debtor and creditor relationship in **FOLEY v. HILL**.<sup>25</sup> Also see the case of **YUSUF v. COOPERATIVE BANK LTD**<sup>26</sup> where the court held that: “The relationship between a banker and its customer is that of a debtor and creditor the very moment the banker agrees to accept a person as its customer”.

The nature of banker customer relationship is actually that of a simple contract, not put in a single, comprehensive and formal document but a partly written and implied agreement (contract) from trade practices and judicial decisions earlier shown above. However, a bank is under obligation to pay its customer the amount standing to his credit in his current account and savings accounts when the customer makes a demand for payment and the banker fails to meet the demand where the customer is in credit. This act calls for action to recover the amount demanded for, from the date of the failure, to date of effective payment. Whereas the account of the customer may at times not be in credit and he obtains an overdraft or loan from his bankers and so, becomes the debtor while the banker becomes the creditor as decided in the cases of **Ya’ u v. Bank Of The North Ltd**,<sup>27</sup> **Midland Bank v. Conway Corporation**<sup>28</sup> & **Ashubiojo v. A.C.B.**<sup>29</sup>

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<sup>24</sup> [1920] A.C. 683, 687

<sup>25</sup> [1848] 2 H.O.L. 28

<sup>26</sup> (1991) SC. 144

<sup>27</sup> [1994] 1 NWLR Pt. 321 at 461, 470 G-H

<sup>28</sup> [1965] 1 W.L.R 1165

<sup>29</sup> [1966] 2 ALL N.L.R. at 203

### 2.3.3 Features of a Contract

The features of a contract include offer, acceptance and consideration as discussed below:

#### 1) Offer

This is an expression of willingness to contract made with the intention that it shall become binding as soon as the person to whom the offer was addressed, accepts it, as stated in the case of **AGOMA v. GUINNESS NIGERIA LTD.**<sup>30</sup> Generally, an offer is deemed to have taken effect from the time it is communicated to the offeree and where an offer is made through the post, it is deemed to have been made at the time and place it was posted. But can be terminated by (revocation, rejection, death, failure to meet condition precedent & the lapse of time) as followings:

- (a) **Revocation** occurs where an offeror revokes his offer which can however not be operational if by post, as decided in **BYME v. TEIN HOVEN**<sup>31</sup>
- (b) **Rejection** by who the offer is made to which automatically terminates the contract as in **U.B.A LTD v. TEJUMOLA & SONS LTD.**<sup>32</sup>
- (c) **Death of a party** especially the offeror, invalidates a contract except where the personal representative answers to the obligation that the offer remains valid and enforceable as decided in **KENNEDY v. THOMASSEN.**<sup>33</sup>
- (d) **Failure to meet condition precedent** (conditions subject to which an offer is made) and for instance, where an offeror insures a government property without government approval, terminates the offer as decided in **Irukwu & Ors v. Trinity Mills Insurance Brokers.**<sup>34</sup>
- (e) **Lapse of time** invalidates contracts because time is of essence in any contract as in the case of **NGILLARI v. NATIONAL INSURANCE COMPANY OF NIGERIA [N.I.C.O.N]**<sup>35</sup>

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<sup>30</sup> [1995] 2 N.W.L.R. Pt. 380, 672, 690 at Para G.

<sup>31</sup> [1880] 5 C.P.D. 344; 42 L.T. 371.

<sup>32</sup> [1988] 2 N.W.L.R. Pt 79 at 662

<sup>33</sup> [1929] 1 CH. 426

<sup>34</sup> [1997] 12 N.W.L.R. Pt. 531 at 113, 129, Para. F at P. 135 at Para. G-H

<sup>35</sup> [1998] 8 N.W.L.R. Pt. 560, 1. Of 14 at Para. G

## 2) Acceptance

This is a final and unqualified expression of assent to the terms of an offer or contract which must be **absolute BUT MAY BE oral, written or by conduct** e.g part performance of an offeror's condition like the part payment of a total rent to a landlord or caretaker of a property. See **NGILLARI v. NATIONAL INSURANCE COMPANY OF NIGERIA [NICON]**<sup>36</sup>. However, acceptance can be invalid by (**\*conditionality, \*if by a stranger, \*if a counteroffer & \*cross offer**) and discussed as followings:

- (a) Acceptance **is conditional** i.e made subject to condition precedent (occurrence of an event) as in the cases of **UBA v. TEJUMOLA & SONS LTD**<sup>37</sup> where the Court decided that; "subject to Contract" was regarded as still in the negotiation stage and so, provisional and invalid.
- (b) If acceptance **is by a stranger** and for instance, where a non-offeree is not entitled to accept an offer, the acceptance becomes invalid as decided in **BOULTON v. JONES**.<sup>38</sup>
- (c) If acceptance is a **Counteroffer** (not whole) but partial i.e subject to conditions as in **NGILLARI V. N.I.C.O.N**<sup>39</sup>
- (d) If acceptance is a **Cross offer** connotes two offers of similar terms or conditions by two offerors that cross in transit **EXCEPT** there is a consensus ad idem to make the acceptance of one out of the two offers accepted before the offeree, the acceptance becomes invalid as decided in **TINN v. HOFMAN & CO**<sup>40</sup>

**3) Consideration** is some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. For instance, a promise to indemnify risks against loses that may arise there from a transaction.

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<sup>36</sup> supra

<sup>37</sup> supra

<sup>38</sup> [1957] 2 H. & N 564

<sup>39</sup><sup>39</sup> supra

<sup>40</sup> [1873] 29 L.T.271



### 2.3.4 Indemnity, Conditions and Warranties

- 1) **Under Common law**, no law invalidates indemnity even where the promise has not been fulfilled or is partly fulfilled except where so expressly stated as in the decided case of **NGILLARI and IRUKWU**<sup>41</sup>.
  
- 2) **For Statutory intervention**, condition precedent settles the ambiguity for consideration in a valid contract either in part or fully, by the provisions of **S. 50 of the Insurance Act**<sup>42</sup> which says: “The receipt of an insurance premium shall be condition precedent to consideration in a valid contract and there shall be no cover in respect of the risk, unless the premium is paid in advance”

Generally, the terms of a contract may be with a **condition, warranty** or a **fundamental term** (utmost good) which entitles an offeror to avoid or revoke a contract whenever there is a breach of the terms to enable the offeror claim for damages insofar as the subject is legal and has insurable interest as decided in the case of **CARLILL v. CABOLIC SMOKE BALL CO.**<sup>43</sup> However, it is trite law that parties to a contract must have capacity to contract and the full intention to create a legal relationship between them as it was in the case of **NWANGWU v. NZEKWU & ORS**<sup>44</sup>

#### SELF-ASSESSMENT EXERCISES 4

- (a) Who is a Bank Customer?
- (b) What are the features of the contractual relationship between a banker and customer?
- (c) What is the effect of warranty or condition precedent on a valid contract?

### 2.4 Summary

A bank customer is determined not only by contractual relationship but that of a debtor creditor or by the bank merely advising the customer or the customer merely intends or has

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<sup>41</sup> Supra

<sup>42</sup> Cap. 117 LFN. 2004

<sup>43</sup> [1893] 1 Q.B. 256

<sup>44</sup> Supra

even opened an account irrespective of the time duration. You should also now know that once there is offer, acceptance and consideration from both the banker and customer, a contract is already established as these are same features of a regular legal contract. Generally, you should also now know that the terms of a contract may be with a **condition, warranty** or a **fundamental term** (utmost good) which entitles an offeror to avoid or revoke a contract whenever there is a breach of the terms. This is to enable the offeror claim for damages insofar as the subject is legal and has insurable interest as decided in the case of **CARLILL v. CABOLIC SMOKE BALL CO.**<sup>45</sup> However, you also now know that statutory intervention or condition precedent settles the ambiguity for consideration in a valid contract either in part or fully as provided by **S. 50 of the Insurance Act** which says: “The receipt of premium shall be condition precedent to consideration in a valid contract and there shall be no cover in respect of the risk, unless the premium is paid in advance.” Hence, it is trite law that parties to a contract must have capacity to contract and the full intention to create a legal relationship between them as it was stated in the case of **NWANGWU v. NZEKWU & ORS**<sup>46</sup>

## 2.5 References/Further Reading/Web Sources

- 1) Goldface-Irokalibe, I.J. Law of Banking in Nigeria

## 2.6 Self-Assessment Exercises and Feedback

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(a) A Bank Customer is anyone who has not only a contractual relationship with a bank but he becomes a customer the instance he is being advised by the bank, he merely intends or has even opened a account etc.

(b) The features of a valid legal contract include offer, acceptance and consideration which subsist in a banker customer relationship

(c) The effects of warranty or condition precedent hence, the acceptance of premium shall be condition precedent to consideration in a valid contract and there shall be no cover in respect of the risk, unless the premium is paid fully in advance. By this, it is trite law that parties to a contract must have capacity to contract and the full intention to create a legal relationship between them as it were in the case of **NWANGWU v. NZEKWU & ORS**.

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<sup>45</sup> Supra

<sup>46</sup> Supra

## MODULE 2 THE CONCEPT OF A BANK, BANKER AND BANKING BUSINESS

### **Unit 3: Rights and Obligations in a banker-customer relationship**

#### 3.1 Introduction

#### 3.2 Learning Outcomes

#### 3.3 Rights and Obligations in a Banker-Customer Relationship

##### 3.3.1 Duties of a customer

##### 3.3.2 Banker's rights and defences

##### 3.3.3 Duties of a customer to the banker

##### 3.3.4 Rights and defences of a customer

#### 3.4 Summary

#### 3.5 References/Further Reading/Web Sources

#### 3.6 Answers to Self-Assessment Exercises 4

### **3.1 Introduction**

This module discusses the duties of a banker to a customer and the rights / defences that avail the banker in the course of carrying out his duties to a customer, the circumstances where a banker may be sued and the defences may not avail him, the nature of the damages to claim against the banker and instances where the basic duties of a banker to a customer may be violated and yet not an offence. Also, are monies paid by mistake into a customer's account or client's money.

### **3.2 Learning Outcome**

At the end of this unit, you should be able to

- (a) explain what the duties of a banker to a customer are and the banker's rights / defences against the customer and vis-à-vis.
- (b) know when and under what circumstances the basic duties of a banker to a customer can be violated and the banker will not be in the offensive, and the nominal, substantial or special damages that may be claimed by customer against a banker.

### **3.3 Rights and Obligations in a Banker-Customer Relationship**

#### **3.3.1 Duties of a banker to a customer**

The duties of a banker to a customer include the followings:

**1) Duty to honor bank customer's cheques:**

It is the duty of the bank to repay fully the monies deposited by a customer upon demand but where the customer fails to do this, the bank may not be liable as decided in **JOACHIMSON v. SWISS BANK CORPORATION**<sup>47</sup> where Lord Atkin reiterates that: "...it is necessarily a term of such contract that a banker is not liable to pay the customer the full amount of his balance, until he demands payment from the bank at the branch which the current account is kept" However, a bank customer whose account is in credit and his cheque is dishonored, can sue the banker (bank) for damages / breach of contract and not the endorsee (staff). The damages can be nominal, substantial or special like libel which needs proof as decided in **OKAFOR v. UNION BANK OF NIGERIA**<sup>48</sup> aside the claim for repayment.

**2) Duty to keep customer's account secret except:**

- (a) Where there is the duty to disclose to the public such secret/confidential information/record.
- (b) Where disclosure is made express or implied by customers consent
- (c) Where disclosure is for the benefit of the bank
- (d) Where disclosure is by compulsion e.g by subpoena from a court which must be served on the banker before anyone may be allowed to inspect banker's ledger.  
See **Tournier v. National Provincial & Union Bank of England Ltd.**<sup>49</sup>

**3) Duty to keep customer's account secret.**

**4) Duty to notify customer of its intention to close customer's account.**

**5) Duty to present to customers' Bills for acceptance and payment as decided in **African Continental Bank Ltd v. Yusuf****<sup>50</sup>

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<sup>47</sup> [1921] 3 K.B. 110

<sup>48</sup> [1981] 1-3 CCHCJ [1983] LIBEL

<sup>49</sup> [1924] 1 K.B. 461 section 24 of the EFCC Act empower EFCC to freeze account of customer of a Bank

<sup>50</sup> [1978] 2 S.C. 93, 101

- 6) Duty to notify customer of the dishonor of his bill as in the case of **African Continental Bank Ltd v. Yusuf**.<sup>51</sup>
- 7) Duty to indemnify customer for unauthorized withdrawal from his account as decided in the case of **Nigerian Advertising Service Ltd v. United Bank for Africa Ltd**.<sup>52</sup>

### 3.3.2 Banker's Rights / Defences:

The followings rights / defences avail a banker against wrongful dishonor of customer's cheque:

- 1) Rights to charge interest on loans or overdrafts and others. Interest is; "A compensation paid by the borrower to the lender for deprivation of the use of his money" while overdraft is; "Monies drawn by a bank's customer in advance of regularly expected payment into a given account usually a salary account" Note that - banks are not charitable organizations and so, must collect interest from customers for all monies borrowed or taken in advance. The case of **Aforka v. African Continental Bank Ltd**<sup>53</sup> on the collection of interest is relevant. Also is the case of **Yourell v. Hibernian Bank**<sup>54</sup> is relevant for implied agreement to charge interest on loans. The case of **Bower v. Turner**<sup>55</sup> for interest on overdrafts as well as the universal grounds of banking customs and practices in regard to compound interest on yearly or half yearly basis. However, where interest is fixed, it cannot then be unilaterally altered by the banker alone as decided in **Union Bank of Nigeria v. Prof. Albert O. Ozigi**<sup>56</sup> but where the borrower does not protest on the receipt of a statement of account showing the fixed rate by the bank it is deemed to be an acceptance. This was the decision in the case of **Barclays Bank D.C.O. v. Hassan**<sup>57</sup> or where a customer overdraws his account.

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<sup>51</sup> Supra

<sup>52</sup> [1965] CCHCCJ 84.

<sup>53</sup> [1994] 3 NWLR Pt. 331, 217

<sup>54</sup> [1918] A.C. 372

<sup>55</sup> [1863] 32 L.J Ch. 540, 544

<sup>56</sup> [1991] 2 NWLR Pt. 176, 677

<sup>57</sup> [1961] ALL N. L. R. 836, 839

- 2) A banker has a right where a customer has overdrawn his account especially where there are no sufficient funds to meet his request or withdrawal except if it is an overdraft as decided in the case of **Cuthbert v. Roberts Lubback & Co.**<sup>58</sup>
- 3) Banker's right of lien over customers' properties/securities in their possession where customers fail to fulfill their obligations of indebtedness to the bank as decided in the cases of **Alabi v. Standard Bank of Nigeria Ltd.**<sup>59</sup> and the **British & French Bank V. Owodunmi.**<sup>60</sup> However, this right does not apply to monies paid into customer's account under a mistake of facts as in the case of monies paid in to set-off the liability of a customer to a corporate body as decided in the case of **Ogundeji v. International Bank of West Africa & Ors.**<sup>61</sup>
- 4) Money mistakenly paid into wrong account as decided in **Standard Bank of Nigeria Ltd v. A.G Federation.**<sup>62</sup>
- 5) Restraint by Court to freeze or suspend an account in the interest of peace especially if a Court order has been served to that effect. See **International Bank for West Africa v. Kennedy Transport Nigeria Ltd.**<sup>63</sup>
- 6) Compliance with Presidential directive to freeze an account. Failure to comply will amount to a criminal offence as well as no action can succeed in this regards against such a bank Manager. See **Effiwatt v. Barclays Bank D.C.O. Nigeria Ltd & Ors**<sup>64</sup>
- 7) Defence in denial of some facts relating to drawings, endorsing, accepting, presenting notice of dishonor or taking noting as the case may be. See **Comptoir Commercial Industrial (Afrique) Nigeria Ltd v. Akinkugbe & Ors.**<sup>65</sup>

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<sup>58</sup> [1909] 2 Ch. 226

<sup>59</sup> [1974] 4 ECCLR; 574, 575

<sup>60</sup> [1956] 1 F.S.C. 4, 5-6

<sup>61</sup> [1993] 2 NWLR Pt. 278, 690

<sup>62</sup> [1971] ANLR 388

<sup>63</sup> [1993] 7 NWLR Pt. 304, 238

<sup>64</sup> [1970] ANLR 360

<sup>65</sup> [1976] 6 U.I.L.R. Pt. III; 368

- 8) Defence of insufficient funds can avail a banker against a customer whose account is not in funds because he cannot maintain an action for breach of contract or defamation. See **Ademiluyi v. African Continental Bank Ltd.**<sup>66</sup>
  
- 9) Where there is inconsistency with a client's fiduciary obligation which arises when a customer operates a Trust account that for instance, where withdrawals that are inconsistent with the client's fiduciary obligation ought to be monitored by the banker. See **Fulani v. Bank Of British West Africa.**<sup>67</sup>
  
- 10) Receipt of the news of customer's death or his mental infirmity terminates banker-customer relationship. i.e customer's account can be closed on this ground. This is a notorious fact but depending on the available facts or circumstances.

### 3.3.3 Duties of Customers to Bankers:

- 1) Duty not to facilitate fraud by taking reasonable care in drawing cheques or other bank instruments as decided in **Salawu v. Union Bank of Nigeria Ltd**<sup>68</sup>.
  
- 2) Duty to follow proper banking procedures like paying monies into an account through the cashier being the proper channel as decided in **Bisi Salawu v. Union Bank of Nigeria Ltd**<sup>69</sup>.
  
- 3) Duty to disclose forgery to banker as decided in **Nigerian Advertising Service Ltd. v. United Bank For Africa Ltd**<sup>70</sup>; **Greenwood v. Martins Bank Ltd.**<sup>71</sup> and **Brown v. Westminster Bank Ltd**<sup>72</sup>.
  
- 4) Duty to pay or credit accounts properly as decided in **Standard Bank Of Nigeria Ltd v. A.G Leventis**<sup>73</sup>.

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<sup>66</sup> [1964] N.C.L.R. 10

<sup>67</sup> [1953] 14 WACA, 292

<sup>68</sup> (1986) 4 NWLR 9PT. 38) 701.

<sup>69</sup> Supra

<sup>70</sup> (1965) LL.R. 84

<sup>71</sup> (1932) K. B. 371

<sup>72</sup> (1964) 2 LLOYDS 187.

<sup>73</sup> (1964) ALL NLR. 388.

- 5) Duty to object to errors in accounts promptly as decided in **Aforka v. African Continental Bank Ltd**<sup>74</sup>.

### 3.3.4 Rights / Defences of Customers

- 1) The right to withdraw monies credited into customer's account. This is however defendant on the circumstances of each case as decided in **Prince & Ors v. Oriental Bank Corporation**<sup>75</sup> where judgment was awarded to plaintiff based on the fact that delay was due to negligence of bank even though the branches were different. Where they were same bank but if action is on breach of contract, the branches would not be treated as same. See **Woodland v. Fear**<sup>76</sup> where other branches were held to be same and so, liable as the action was on cumulative negligence. This brings in agency where the principal is vicariously liable for negligence.
- 2) The right not to have customers account debited on the account of forged signature. See **United Bank for Africa Ltd v. Savannah Bank of Nigeria Ltd**<sup>77</sup>.
- 3) The right to keep separate and distinct accounts as decided in **British & French Bank V. Opaleye**<sup>78</sup> and **Bala Angyu v. Malami & Ors**<sup>79</sup>.
- 4) The right to have customers account credited with the face value of cheques paid into his account for collection as decided in **New Nigeria Bank Ltd v. Odiase**<sup>80</sup>.
- 5) The right to be given reasonable notice before closing customers account etc as decided in **Bank of Credit & Commerce International Nigeria Ltd & Ors v. Stephen Industries Ltd & Ors**<sup>81</sup>.

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<sup>74</sup> (1994) 3 NWLR (pt 331) 217

<sup>75</sup> (1878) 3 App. CAS. 325

<sup>76</sup> (1857) 26 L. J. O. B. 202

<sup>77</sup> (1979) 10- 12 CCHCI. 255

<sup>78</sup> (1962) 1 All NLR. 26

<sup>79</sup> Unreport CA/K 102/91 of 12 December, 1991.

<sup>80</sup> (1993) 8 NWLR (pt. 310) 235.

<sup>81</sup> (1992) 3 NWLR (pt. 232) 772.



#### **SELF-ASSESSMENT EXERCISES 4**

- (a) Is there any precise statutory concept for the words; bank, banker and banking business?
- (b) Do the differently supposed statutory concepts of the word 'bank' imply criminality of the actions of Ekpa, the Global Syndicate Investor?
- (c) Critically examine Banker and Customer Relationship?
- (d) Enumerate at least, three duties of a Customer to a Banker supporting your answer with judicial precedence where necessary.
- (e) Does a bank merely advising a person make such a person transit into a bank customer?
- (f) Do statutory intervention avail bankers in defence of wrongful discharge of their duties to a customer?

#### **3.4 Summary**

The duties of a banker to a customer are not only to honour a customer's cheque but the duty to also notify the customer of closing his account, pay a customer the value of his cheques presented but can at the same time be dishonoured by the banker for fraud, wrongful endorsement, if on loan or overdraft, if inadequate funds but not swap clients' money for another charge.

#### **3.5 References/Further Reading/Web Sources**

- 1) Igweike, Law of Banking in Nigeria
- 2) Goldface Law of Banking in Nigeria

- (a) No precise statutory concept of the words; ‘bank’, ‘banker’ and ‘banking business’ aside mere descriptions / explanations of the terms for its limited purpose and for facts from judicial pronouncements in decided cases.
- (b) Small saving schemes do not come within the meaning / different concepts of not only the word ‘bank’ but even the word ‘banker’ and ‘banking business’ even though the scope of banking is often determined by the established fact of debtor / creditor relationship which must be contractual in nature as decided in the case of **WOODS v. MARTINS BANK LTD & ORS**<sup>1</sup> where justice Salmon reiterates that; “...in my judgment, the limits of a banker’s business cannot be laid down as a matter of law. The nature of such a business must in each case be matter of facts...” as even first decided in the case of **FOLEY v. HILL**<sup>1</sup> before KPA’s case.
- (c) Banker customer relationship is basically that of a debtor and creditor relationship but must be contractual either by implication / as expressly stated by both parties as in the case of **YUSUF v. COOPERATIVE BANK LTD**<sup>1</sup> where the court held that; “...the banker customer relationship is that of a debtor creditor the very moment the banker agrees to accept a person as its customer.” However, from decided cases, the contract is simple, implied and partly written but not necessarily in a single, comprehensive and formal document. Although, a customer’s account may at times not be in credit and he obtains a loan or overdraft from his banker so, the customer (creditor) automatically becomes the debtor and the banker, the creditor as seen in **YA’U v. BANK OF THE NORTH LTD.**
- (d) The duties of a customer to a banker include
- i. Not to facilitate fraud by taking reasonable care in drawing cheques or other bank instruments as decided in **SALAWU v. UNION BANK OF NIGERIA LTD**<sup>1</sup>.
  - ii. To follow proper banking procedures like paying monies into an account through the cashier being the proper channel as decided in **BISI SALAWU v. UNION BANK OF NIGERIA LTD**<sup>1</sup>.
  - iii. To disclose forgery to banker as decided in these cases; **NIGERIAN ADVERTISING SERVICE LTD. v. UNITED BANK FOR AFRICA LTD; GREENWOOD v. MARTINS BANK LTD. and in BROWN v. WESTMINSTER BANK LTD.**
- (e) Yes. Looking at the case of **WOODS v. MARTINS BANK LTD & ORS** where from the moment the bank agrees to advise a person even though the person had not opened an account with such a bank. Hence, in this case where the Plaintiff had no business experience but went to the defendant bank for advice on how and where to invest his money and the branch Manager advised him to invest in a private company that banked with his branch. The customer lost his money through negligence of the bank that allowed the defendant to over withdraw till it became bankrupt and consequently, defrauded the customer for which the bank was held liable as the defendant was regarded as a customer.
- (f) Yes, it does and for instance, where there is inconsistency with a client’s fiduciary obligation which arises when a customer operates a Trust account as was held in **FULANI v. BANK OF BRITISH WEST AFRICA**. Also, in circumstances where a banker must comply with Presidential directive to freeze an account and failure to comply will amount to a criminal offence whereas, no action can succeed in this regard against such a bank banker as decided in **EFFIWATT v. BARCLAYS BANK D.C.O. NIGERIA**

## MODULE 3 NATURE, TYPES, FUNCTIONS AND STRUCTURE OF THE BANKING SYSTEM IN NIGERIA

### Unit 1: Types, Functions and Structure of Banking in Nigeria

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Main Contents
  - 1.3.1 Nature of banking business in Nigeria
  - 1.3.2 Types and Structure of Nigerian Banks Carrying on Banking Business
- 1.4 Summary
- 1.5 References/Further Reading/Web Sources
- 1.6 Self-Assessment Exercises and Feedback

#### 1.1 Introduction

This module discusses the nature, types, functions and structure of banking in Nigeria. Also, the topic of maintenance of reserve funds was discussed.

#### 1.2 Learning Outcome

At the end of this Unit, you should be able to:

- (a) Know what the types and structure of banking is in Nigeria.
- (b) Identify the subsequent regulations that regulate banking business
- (c) State how the regulations helped cushion the financial insecurity bank customers and investors experienced
- (d) State / discuss the functions of Central and Commercial banks etc.

#### 1.3 Types, Functions and Structure of Banking in Nigeria

##### 1.3.1 Nature of Banking Business in Nigeria

Banking business in Nigeria was unguided prior to the Banking Ord. of 1952 and especially between 1945 and 1952 with the proliferation of banks in Nigeria that swindled their customers and investors such that, these customers and investors lost confidence in the Nigerian banking business. However, soon after, emerged the Banking Ord. of 1958 that was used alongside the Central Bank Act of 1959 and

thereafter, came other extant Nigerian Banking regulations that now help to cushion the financial insecurity of all customers and investors. Whereas, prior to the Banking Ordinance of 1952, there was barely any indigenous statute regulating banking practice in Nigeria even though repealed in 1958 and used alongside with the Central Bank Act of 1958. However, the Banking Ordinance was later replaced by the Banking Act of 1969 and further repealed by the Banks and Other Financial Institutions Decree (BOFID) of 1991 now BOFIA.

For specific reasons, BOFIA regulates banking activities in Nigeria such that it grants the Central Bank Governor the power to grant, revoke and vary licenses to investors which drastically reduces swindling of customers. This led to the current emergence of many Commercial and Micro Finance Banks in Nigeria but other statutes regulating banking businesses include:

- 1) The Central Bank Act, 1958
- 2) The Central Bank Act of 1990 that prescribes the stamping of all bills / fixing duty stamps appropriately on paid bills
- 3) Bank (Freezing of Account) Act of 1990 that empowers the President to freeze any account on fraudulent basis
- 4) Bills of Exchange Act, 1990 that regulates the activities of parties like liabilities in drawing, use, delivery and acceptance of bills
- 5) Dishonoured Cheques Offences Act, 1990 which makes it a criminal offence for a cheque drawer to settle debts with dud cheques
- 6) The Evidence Act, 1990 now Evidence Act, 2011
- 7) Money Lenders Act, 2004
- 8) Exchange Control Act, 1990 etc that ultimately, reduced the swindling of customers and other bank investors now Exchange Control Act, 2004.
- 9) Banks and Other Financial Institution Act [BOFIA]], 2007
- 10) Banks and other Financial Institution Act, 2004

### **1.3.2 Types and Structure of Nigerian Banks Carrying on Banking Business**

They include the following:

- Central Bank of Nigeria [CBN]
- Commercial Banks

- Merchant Banks
- Development Banks
- National Agricultural and Co-operative Bank [NACB]
- The Federal Mortgage Bank
- \Other Specialized Banks

1) Central Bank of Nigeria [CBN]

The nature, functions and structure of the Central Bank of Nigeria includes that, it is a Federal Government Bank that was established pursuant to the Central Bank Ordinance of 1958 but took effect in 1959.<sup>82</sup> However, with the Central Bank (Currency Conversion) Act of 1967 and its subsequent amendments by the Central Bank of Nigeria Decree No. 24 of 1991. Alongside the Banking Act of 1969, conferred so much power of supervision, examination, monetary management and more prudent banking standards on the Central Bank of Nigeria. The CBN maintains a corporate status with perpetual succession and power to acquire and dispose of moveable and immovable properties, possesses a seal and powers to sue and be sued. It issues the Nigeria's currency. The very first issue was in 1959 to replace the British Pound Sterling of the West African Currency Bank [WACB] before 1965 of the existing currency but exchanged in 1968 during the Nigerian Civil war to curtail Biafran secession, before the 1973 Naira and kobo that replaced the pound sterling earlier in operation. The structure includes a head office in Abuja with the Governor of the Central Bank at the helm of affairs with zonal centers in Bauchi, Enugu, Ibadan and Kano but with branches in each State capital respectively headed by a Controller / Currency Center Officer / Zonal Controller and Branch Controllers.

The CBN operates a unit-banking with these branches not as separate entities and its Functions include:

- (a) It is a Federal Government owned bank of any nation
- (b) It is a Bankers Bank because it keeps the capital reserve of all other banks in a nation

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<sup>82</sup> CBN BRIEFS No. 93/02 CBN Research Development Report at Pp. 1 -2, it is now Central Bank of Nigeria (Establishment) Act, Cap. C4 LFN. 2004. See section 1. CBN Act

- (c) It prints, mints and issues the country's currency
- (d) It regulates monetary policy through its supply and withdrawal of money from the public
- (e) It executes monetary policies on behalf of the Government
- (f) It executes capital projects on behalf of the Government
- (g) It is a bank of last resort
- (h) It keeps special capital deposits on behalf of commercial banks
- (i) It enhances economic growth in a country through its monetary regulations
- (j) It keeps the country's gold and foreign reserves
- (k) It deals with foreign transactions on behalf of the Government
- (l) It manages Nigeria's external debts and reserves
- (m) It handles problems of ailing banks in the country
- (n) It is a financial adviser to the Federal government and other banks
- (o) It prepares and publishes annual reports on accounts of other banks not later than four months after the end of its financial year on their balance sheets profit and losses.

## 2) Commercial Banks

The nature, structure and functions of Commercial banks are generally banking institutions that create money by the acceptance of deposits from customers which they loan to out for interests but expected to be paid back to the creditor customer on demand. However, these banks are expected to restrict their commercial short term liquid loans to enable them mop up such payable credits to their customers on demand. Section 61 of Banks and Other Financial Institutions Act [BOFIA] further defines Commercial banks as any bank in Nigeria whose business includes the acceptance of deposits withdrawal by cheques.<sup>83</sup> The Structure of Commercial banks is that of a branch-banking system with a head branch against the unit-banking system where each branch operates as an independent organization whereas, its functions include:

- (a) They help customers keep their valuables safe and for instance are jewelries and certificates.
- (b) Give financial assistance to their customers through loans and overdrafts.

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<sup>83</sup> Halsburys Laws of England, 8<sup>th</sup> Ed. Vol. 3, Para. 30. See BOFIA Cap. B3 LFN. 2004.

- (c) Act as Executors and Trustees for their customers and for instance; is the administration of Wills and assets of dead customers.
- (d) Facilitate foreign trades through the issuing of travelers cheques and making foreign payments on behalf of their customers.
- (e) Acceptance of deposits and payment of cheques on demand by their customers.
- (f) Sell stocks and shares for customers.
- (g) Advise customers on investments etc.

### 3) Merchant Banks

The nature, structure and functions of Merchant banks includes to performs pure banking and merchandise business by accepting deposits, opening of accounts, management of investments portfolios and financing businesses for restricted number of their customers through loans, syndicates and issuing of bonds. It was first established in Lagos in the year 1961 by Phillips Hills of London and it is structured not to accept deposits but to arrange for large loans for their selected customers through issuing of bonds, undertaking prospective projects and arranging loan syndicates and so, do not have liabilities that arise from demands.

The functions of Merchant banks include:

- (a) To Finance Trade; real Estate; Agriculture; Industrial and Related activities like Capital Equipments.
- (b) To Issue and Deal in Shares; Debentures; Federal and State Stocks and Other Securities
- (c) To Take and Place Deposits; Deal in Money Market Instruments; Banker's Acceptance and Commercial Notes
- (d) To Arrange Syndicate Credits; Direct Loans and Over Drafts on short and Long terms
- (e) To Provide Trade Finance Services like Bills; Foreign Exchange Transactions and Letters of Credit.

#### 4) Development Banks

The nature, structure and functions of the Development banks include; they are group of banks that assist their clients in commercial, technical, managerial and other areas of capital projects for developmental purposes especially after the economic devastation that followed the II World War of 1945. The first Development bank in Nigeria was in 1946 but dissolved by the Federal Government and replaced with the Nigerian Development Board in 1949. However, the later was replaced with the six Regional Development boards spread out in the North-East, South-East, South-West, North-West, the Federal Capital Territory and the Colony of Lagos which all cumulated into the National Industrial Development Bank [NIDB] that respectively has branches in Bauchi, Aba, Akure, Kaduna, Abuja and Lagos. The structure has a chairman at the helm of affairs, then the Managing Director, three representatives of the Central Bank of Nigeria, one Federal Ministry of Finance Representative and six Executive Directors for each of the six headquarters.

Presently, the structure of the bank consists of the following banks:

- (a) The National Industrial Development bank [NIDB];
- (b) The National Agricultural and Co-operative Bank [NACB];
- (c) The Nigerian Bank for Commerce and Industry [NBCI];
- (d) The Federal Mortgage Bank of Nigeria [FMBN]
- (e) The Nigerian Export-Import Bank [NEXIM]

These banks grouped under the Development banks are not directly under the control of the Central Bank of Nigeria and so, they were not in any way affected by its monetary policy until recently that the CBN was granted the power to examine, appraise, understand and appreciate their significance because of the scope of their operations.<sup>84</sup> However, its functions include:

- (a) It is a Federal Government creation
- (b) It helps development specific sectors of the economy
- (c) It finances Corporations

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<sup>84</sup> Section 23 of BOFIA [Amendment] Decree No. 33 of 1998



5) National Industrial Development Bank [NIDB]

The nature, structure and functions of the National Industrial Development Bank [NIDB] is one of the Development banks and indeed the first of all Development banks following the restructuring of the Investment Company of Nigeria [ICON]. It obviously sets the pace for other development banks to follow. Hence, its resources are biggest and it is structured along 13 Departments (Administration; Accounts; Staff Training; Appraisal; Development & Promotions; Company Secretariat; Investment Supervision; Management Consultancy; Legal Department; Finance Department; Research Department; Internal Audit Department; Reception and preparation Department) with its [NIDB] Managing Directors comprising of a chairman, a Managing Director, 3 CBN representatives and 1 Federal Ministry of Finance; and the 9 Departmental Managers that each headed a department as Managers.

The functions of NIDB include:

- (a) Its primary aim is to encourage private investors
- (b) It handles banks accounts to ensure bank clients meet their debt payments
- (c) It Recruits Personnel and Administers the General Administration
- (d) It initiates and Promotes Development through Financial assistance
- (e) It Supervises Investments and the NDIB assisted projects
- (f) It Finances Reparation in terms of NDIB Investments
- (g) It Evaluates the Viability of Project Proposals
- (h) It Finances Research
- (i) It is Responsible for the Legal Approval of Projects etc.

6) National Agricultural and Co-operative Bank [NACB]

The nature, structure and functions of the National Agricultural and Co-operative Bank [NACB] include that it was established by Decree No. 28 of 1978 and is concerned with investment in the agricultural sector by giving loans to farmer organizations, individuals and co-operatives for investment in agriculture. its source of funds include the Central bank, International Financial Institutions, International Bank for Reconstruction and Development called the World Bank, the African

Development Bank [ADB], the European Investment bank and the International Fund for Agricultural Development [IFAD]. Its structure consist a Chairman; Managing Directors and Chief Executives Directors (Operations, Finance, Services & Projects); A Non-Executive Director as Representative of the Ministry of Agriculture, Natural Resources and Rural Development; three Non-Executive Directors that are Representatives of the Central Bank of Nigeria; Controllers of Administration, Finance, Projects, Investments and Operations and finally, the Legal Adviser. The banks Functions include:

- (a) Maintains Consultancy Services
- (b) Feasibility Study of Agricultural Projects
- (c) Direct Finance of viable Agriculture and Agro-Allied Agencies
- (d) Granting Loans to Prospective Farmers
- (e) Facilitates Agricultural Banks Management Policies
- (f) Constitutes Structure etc.

7) Federal Mortgage Banks of Nigeria [FMBN]

The nature, structure and functions of the Federal Mortgage Bank [FMBN] includes that it is a corporate organization that emerged from the Nigerian Building Society established in 1957 but repealed by Decree No. 7 of 1977 as the Federal Mortgage Bank [FMBN] with power to sue, be sued and perpetual succession and to provide long / short term loans to individuals and organizations. Its Source of fund includes: Equity and Loans; Deposits from Individuals, Mortgage Institutions / other persons; Borrowing from Other Banks and Financial Institutions and finally, from the 50% yearly Profits from its Reserve Funds and 25% of its Authorized Capital when it is Equal / Exceeds the Authorized Capital. Its Structure include: A Chairman; Managing Director; Director General for the Federal Ministries of Finance and Economic Development / their Representatives; Director General of the Federal Ministry of Housing, Urban Development and Environment; Chief Federal Lands Officer; Three Representatives of the Central Bank of Nigeria and for other persons who by character are experienced in housing, accountancy, law, finance / economics and in the opinion of the Minister, are suitable for appointments as board members. The functions of the bank include:

- (a) To mobilize Savings from the Public
- (b) To furnish advise to prospective clients
- (c) To provide long/short term loans to Estate Agents and Property Developers
- (d) To Encourage National Development through Mortgages
- (e) To Accept Deposits and Savings from Mortgage Institutions
- (f) To Control and Supervise Mortgage Institutions through the Executive Council and
- (g) To Approve of A Minister Charged with housing responsibilities at competitive interest rates in other to guarantee loans from private investment sources towards building developments and to issue securities like Debentures, Bills of Exchange, Promissory Notes etc.

8) Maintenance of Reserve Funds

The Maintenance of Reserve Funds was established by the 1952 Ordinance, and it requires each licensed bank to always maintain a cash reserve, as was necessary for adequate liquidity against its commitments, hold specified deposits and stabilized securities as may be prescribed from time to time by the CBN.

**SELF-ASSESSMENT EXERCISES 5**

- a. State one way by which the CBN controls other banks in Nigeria
- b. State what is common to all the financial institutions in Nigeria
- c. Aside the Maintenance Reserve Funds being a major source of fund to banks what other source is available?
- d. Why establish specialized banks?

## 1.4 Summary

There are different types of banks that exist in Nigeria. The CBN now controls all monetary policies in Nigeria; and only the CBN also prints and mints Nigeria's currency. The Bank of Industry and Commerce became more relevant and especially these banks are all now corporate organizations that can acquire properties, sue and be sued. The maintenance reserve fund is meant for liquidity of banks against their commitments to customers and their investors. Hence, securities are key issues in the success of any bank.

## 1.5 References/Further Reading/Web Sources

- 1) Ekemini Udim, Principles of Garnishee Proceedings in Nigeria, Princeton & Associate Ltd. Lagos.
- 2) Emeka Chianu, Law of Banking. Texts: Cases; Comments, New System Press Ltd. 1995
- 3) Goldface – Irokalibe I . J., Law of Banking in Nigeria. Malthouse Law Book 2013.
- 4) Holden J.M; “History of Negotiable Instruments in English Law”[1<sup>st</sup> Ed.], Althone, London. 1955
- 5) Igweke K.I; “Law of Banking and Negotiable Instruments” African Publisher Ltd. Rev. Ed. 2008, P. 1
- 6) Olusegun Yerokun, casebook on Law of Banking (comments & cases) Nigeria Revenue Project Publications, 2015.
- 7) Omotayo G; “A Dictionary of Finance” West Bourme, England: West Bourme Business School, 2007

## 1.6 Self-Assessment Exercises Exercise 5

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|----|---|
| a. | The CBN controls other bank through its maintenance reserve fund policy against banks commitments towards their customers and investors   |
| b. | Their corporate status by being registered under Corporate Affairs Corporation [CAC] as required by CAMA, acceptance of deposits from customers and other investors, sales of shares and stocks as well as debentures etc.  |
| c. | Other sources derive from borrowing from Other Banks and Financial Institutions   |
| d. | It is to meet with specialized development issues that are capital intensive and desire specialist attention as structured alongside the functions of the specialized banks. For instance, the Federal Mortgage Bank requires in its structure, three Representatives of the Central Bank of Nigeria and for other persons who by character are experienced in housing, accountancy, law, finance / economics and in the opinion of the Minister, are suitable for appointments as board members. |

## MODULE 3 NATURE, TYPES, FUNCTIONS AND STRUCTURE OF THE BANKING SYSTEM IN NIGERIA

### Unit 2: Other Specialised Banks in Nigeria

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 **Other Specialised Banks in Nigeria**
  - 2.3.1 Microfinance Banks
  - 2.3.2 Bank of Agriculture
  - 2.3.3 Community Banks
  - 2.3.4 Urban Development of Nigeria
- 2.4 Summary
- 2.5 References for Further Reading
- 2.6 Answers to Self-Assessment Exercises 6

#### 2.1 Introduction

In the previous unit we considered what could be considered usual or common forms of banks operating in Nigeria. In this unit, you will learn about specialised banks, in the sense that these are banks set up or established specifically to promote a given project or to focus on the development of a specific industrial sector.

#### 2.2 Learning Outcomes

In this Unit, you should be able to know the critical role banking business plays in the development of the economic sectors.

#### 2.3 Other Specialised Banks in Nigeria

##### 2.3.1 Micro Finance Banks

The Micro Finance Banks are also called microcredit banks that provide services to unemployed or low-income individuals / groups who otherwise would have no other access to financial services.<sup>85</sup> They are body corporate banks capable of suing and can be sued with perpetual seal for the purpose of acquiring, holding and disposing of properties and also provide credit needs of small borrowers that are unable to meet

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<sup>85</sup> Definition of Microfinance at: **Error! Hyperlink reference not valid.** (Last accessed on March 10, 2020)

onerous bank collateral requirements. They also provide deposits, loans, payments, money transfer and insurance services to the low-income earners in the society. They generate funds by borrowing from big banks, deposits from clients and accept equity investment which ownership stakes earn a share of the profits.

### **2.3.2 Peoples Bank of Nigeria now Bank of Agriculture (BOA)**

The nature, structure and functions of the Peoples Bank of Nigeria include its establishment in 1989 by Decree No. 22 of 1990 as a body corporate capable of suing and can be sued with perpetual succession and a common seal for the purpose of acquiring, holding and disposing of properties and as well provide credit needs of small borrowers that are unable to meet onerous collateral requirements. This bank has been merged with the Nigeria Agricultural Cooperative Bank to form Bank of Agriculture (BOA). The source of funds for the bank is from the Federal Government grants and loans; the Central Bank of Nigeria; Federal Government approved low interest sources; loans with low interest rates from other financial institutions etc. It is structured with a Chairman at the helm of affairs; followed by a Managing Director of the Bank itself and Four Other persons; A Representative each of the Economic Affairs Department of the Presidency, Governor of the Central Bank of Nigeria and the Minister of Finance and Economic Development. Its Functions include:

- (a) To provide credit needs for the less privileged like the artisans (mechanics, tailors, hairdressers, panel beaters etc) in the society
- (b) To increase the self-confidence of the less privileged at the grassroots
- (c) To accept savings from customers from small communities with small interests on such savings at repayment. Its Management Structure includes:

### **2.3.3 Community Banks [CMB]**

The nature, structure of the Community Bank [CMB] includes its establishment by the provisions of Section 1 (1) of Decree No. 46 of 1992 in 1990 which authorizes communities to establish Community banks. Its Management Structure includes a Chairman, Secretary usually appointed by the President and Commander in Chief of the Armed Forces of Nigeria; the Presidency itself and four Others; A Representative

each of the Federal Ministries of Finance, Directorate of Food, Roads and Rural Infrastructures [DRFRI] Its Purpose / functions include:

- (a) To promote rural development as the name depicts
- (b) To enhance rapid productive developmental activities
- (c) To boost the self-confidence of the members of such communities
- (d) To economically empower the small-scale producers
- (e) To encourage entrepreneurship for job employments
- (f) To appropriately promote and supervise the funds towards development as it were.
- (g) To accept deposits from customers
- (h) To maintain and operate different types of accounts for its customers
- (i) To invest its excess funds on suitable bank instruments
- (j) To create loan facilities for its customers etc.

#### **2.3.4 Urban Development Banks of Nigeria [UDBN]**

The Urban Development Bank of Nigeria [UDBN] was established by Decree No 51 of 1992 as a limited liability company in line with the provisions of Company and Allied Matters Act [CAMA] of 2010 towards speedy urbanization and equally empowered by the finance minister to source for funds within and beyond Nigerian shawls. Its Functions include:

- (a) To manage the Federal Government off- shore procured funds
- (b) To promote and supervise urban development.

#### **SELF-ASSESSMENT EXERCISE 6**

- a. State what function cuts across all the different types of banking business in Nigeria.
- b. State at least two the CBN mandatory requirements for banking business in Nigeria?
- c. In your opinion, do these other specialized banks meet the purpose for their establishment?

## 2.4 Summary

Banking business enhanced and cushioned economic activities of customers and investors just as the regulations checked the financial insecurity hitherto experienced by banks that swindled investors and customers. Hence, the other specialized banks mentioned above indeed, provide credit needs of small borrowers that are unable to meet onerous bank collateral requirements and hence the structures for these specialized banks to enable them function basically for purposes of loans and securities to small borrowers at different levels in other to meet with the purpose for their establishment mentioned above. For instance is Uda Micro Finance Bank of Nigeria, Ekpoma branch in Edo State to which at least a customer testified to immensely benefiting from with little or no stress especially on issue of security for loans.<sup>86</sup>

## 2.5 Answers to Self-Assessment Exercises 5

- a. It is the function of giving loans to their customers
- b. The CBN mandatorily requires each licensed bank in Nigeria to at all times maintain the minimum liquidity cash reserve not less than required by the prescribed minimum of 50% yearly Profits from its Reserve Funds and 25% of its Authorized Capital when it is Equal / Exceeds the Authorized Share Capital.
- c. Yes, they reasonably do by public notice from the testimonies of customers on their banking business activities.

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<sup>86</sup> Dr. (Mrs) F.O.Olumese with a Current Account in Uda Micro Finance Bank, Ekpoma, Edo – State, Nigeria.



## MODULE 3 NATURE, TYPES, FUNCTIONS AND STRUCTURE OF THE BANKING SYSTEM IN NIGERIA

### **Unit 3: Universal Banking System [UBS], 2000**

- 3.1 Introduction
- 3.2 Learning Outcomes
- 3.3 Universal Banking System
- 3.4 Summary
- 3.5 References/Further Reading/Web Sources
- 3.6 Answers to Self-Assessment Exercises 7

#### **3.1 Introduction**

The Universal Banking System [UBS], 2000 is responsible for the operational changes in Nigerian banking system. It led to the conversion of most existing banks in the industry into Commercial banks before being further enhanced by the Central Bank of Nigeria's embargo lift on licensing of upcoming banks. Henceforth it enables them perform the general functions of Commercial banks. However, the Nigerian banking system today, has increasingly become complex in structure, manpower requirements, ownership, and functions of banks in the banking sector.

#### **3.2 Learning Outcome**

At the end of this class, you should know that the introduction of Universal Banking System [UBS] of 2000, led to the changes in the operational structure and functions of the banking business in Nigeria and this resulted in the conversion of most existing banks in the industry, into Commercial banks. This was further enhanced by the Central Bank of Nigeria embargo lift on licensing of upcoming banks which enabled them perform the general functions of Commercial banks. However, the Nigerian banking system today has increasingly become complex in structure, manpower requirements, ownership and functions.

#### **3.3 Universal Banking System (UBS) 2000**

General Functions of Commercial Banks now includes the followings:

- (a) Duty to keep customers valuables safe as decided in **Leese V. Martins**.<sup>87</sup>
- (b) Duty to collect the face value of Bills of Exchange on behalf of the customer as decided in **African Continental Bank Ltd v. Yusuf**.<sup>88</sup>
- (c) Duty not to negligently advice customers on investments in order to avoid liability for damages etc as decided in **Woods v. Martins Bank Ltd**.<sup>89</sup>
- (d) Give financial assistance to their customers through loans and overdrafts and other securities
- (e) They act as Executors and Trustees for their customers and investors which for instance, include the administration of Wills and assets of dead customers.

#### **SELF-ASSESSMENT QUESTIONS 7**

- a) The UBS connotes what?
- b) Which other law enhanced the commercial banking activities in Nigeria
- c) Do the functions of Commercial banks significantly differ from its original function?

### **3.4 Summary**

The introduction of the Universal Banking System, 2000 into Nigerian banking system increased the scope of the functions of most banks and Commercial banks in Nigeria

### **3.5 References/Further Reading/Web Sources**

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**3.6 Answers to Self-Assessment Exercises 7**

a) UBS connotes more open banking activities for commercial banks because it led to the changes in the operational structure of banking business in Nigeria as it resulted in the conversion of most existing banks in the industry into Commercial banks.

b) The CBN embargo lift on licensing of upcoming banks to henceforth, enable them perform the general functions of Commercial banks also helped to enhance the operational functions and scope of commercial banks.

c) Yes because it expanded its scope and functions.