

FOR THE LOVE OF CHRIST JESUS; THE BEGINNING AND THE END.

ESSENTIALS IN LAW OF BANKING AND NEGOTIABLE INSTRUMENTS

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KINDLY NOTE:

1. All you need is to understand the principles, then back it up with one or two popular case(s) therefore this note presents the discussion on this subject area in a succinct and straight-to-the-point manner, identifying the essential authorities.
2. My language and referencing are informal and abbreviations were used in this work. E.g. HC means High Court, CoA means, Court of Appeal, CFRN means, Constitution of the Federal Republic of Nigeria, etc. I apologize.
3. If viewing the notes on your laptop, press Ctrl + F (Ctrl key and Key F at the same time) to find a specific word/phrase. If viewing from a mobile device, select the “search” option from your browser’s tool menu.
4. The next update of the note shall be released on April, 2020.
5. For advanced legal research on any area of law kindly visit vitesolutions.com.ng.

Thank you and hope you find the notes helpful.

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DEFINITION OF A BANK.

:: There is no all-encompassing definition of a bank. However, it is necessary to embark upon the herculean task of defining a bank considering the various statutory rights, duties and obligations attached to a bank. for example the obligation to be duly registered and licenced to carry out banking operation imposed by **Section 2** of the BOFIA.

:: By **Section 2 of the Bills of Exchange Act 1990** it is a body of persons incorporated or not who carry on the business of banking (a similar definition is provided under **Section 2 of the Evidence Act**).¹

:: **Section 43 of the Banking Act**: defines a bank as any person who carries on banking business. It goes further to define banking business as the business of receiving monies... granting loans... acceptance of credits, bills, cheques, purchase and sale of securities... and others as the minister may designate... Same definition of banking business is provided under **Section 66 of the Banks and Other Financial Institutions Act**.

:: In *UDT V Kirkwood*, the court noted that a bank accepts money, honours cheques, and keeps accounts. **Lord Denning** noted that he who does not do these is not a banker².

:: **Dr Hart**: defines it as a person or company carrying on the business of receiving monies and honouring cheques for customers. A Similar definition was given by **Sir John Paget**³.

:: **Horace White**: notes that a bank is a manufacturer of credit.

:: **Wordweb dictionary** defines it as a financial institution which collects deposits and channels it towards lending activities.

:: **Harry G Brown** notes that essentially, a bank acts as an intermediary between the surplus spenders (depositors) and deficit spenders (borrowers). Also noted that it is a departmental store of financing.

There are a thousand and one definitions of a bank. However, we can observe that the combined interpretation of the various definitions of a bank would reveal that:

1. Essentially, a bank receives deposits, grants loans and honours cheques.

With the evolution of commerce and the facilitative effect of technology and communication, banks also:

¹ This definition fails to define “banking business”. Also, a bank must be incorporated and licenced to operate in Nigeria- **Section 2 BOFIA**.

² This definition seems restrictive to the functions of commercial banks.

³ This definition focuses on the commercial bank.

2. Deal in shares, debentures, treasury bills, bonds and other kinds of investments.
3. Deal in negotiable instruments like bill of exchange, promissory notes and so on- *Woods V Martins Bank*.
4. Provide financial advice to customers⁴.
5. Buy and sell foreign exchange.
6. Act as agents of their customer in nearly all financial transactions like periodic subscriptions, bill payment, online shopping, and so on. This has been facilitated by the use of credit cards, debit cards, ATM cards, Mobile banking, Quickteller and so on.
7. Banks perform other functions which the CBN governor may direct.

The court has noted in *Banbury V Bank of Montreal* that the limits of a bank's business cannot be laid down as a matter of law⁵. An all-encompassing definition may be impossible.

DISTINGUISHING A BANK FROM OTHER SIMILAR ENDEAVOURS

MONEYLENDING: A moneylender is someone who lends money at an interest. Unlike a money lender, a bank diversifies into various commercial spheres. The **Moneylenders Act** does not apply to a banker- *Ojikutu V Agbomagbe Bank Ltd*, as in this case, the banker was not obliged to obey the 15 percent interest ceiling imposed by **Section 13** of the Money Lender's Act because he was not engaged in "moneylending" but banking.

A SAVINGS ORGANIZATION: Savings organization collects money from its members/customers for saving. Although a bank does same, it diversifies into other various fields. In *AG Federation V Umoh Ekpa*, the appellant was charged for operating banking business without a valid licence. The court held that he merely collected money from market women and deposited same into the bank. He was a daily collector and not a banker. The appellant's charge for operating without a valid banking licence was quashed.

INSURANCE BUSINESS. Is not the same as banking business. Just like "banking" there is no widely accepted definition of insurance-*Medical Defence Union V Department of Trade*. In *Prudential Insurance Co V Inland Revenue Commissioners*, it was seen as an agreement to pay a sum of money upon the happening of an uncertain event after the payment of consideration (called premium). A contract whereby the insurer agrees to indemnify the insured against loss upon the happening of an event after the payment of consideration called premium.-*Charles Chime V United Nigeria*. From the definition of a bank above, they do not really seek to guard against an uncertain occurrence or risk. Moreover, they are regulated by different Statutes.

⁴ As was evident in *Hedley Byrne V Heller and Partners Co*.

⁵ In practice however, it should be noted that the CBN Act, BOFIA and other enactments limit banking business in Nigeria to some extent.

BAILMENT: Bailment involves where the bailor gives the Bailee his property for a particular purpose (usually for temporary keeping) on the understanding that it shall be returned once the purpose has been fulfilled. The Bailee should keep the property in good conditions. A bailor is generally precluded from dealing with the property bailed. A bank on the other hand can deal with the cash deposited through lending, acquisition of properties and other transactions. Provided it can pay the customer on demand.

:: To qualify as a bank, “banking” has to form a substantial part of the business⁶.

In conclusion, Lord Denning once remarked that it is easier to identify a bank than to define it.

BRIEF HISTORY.

:: Ancient civilisations like Babylon made loans from their temple’s treasuries as early as 2000 BC.

:: The Early Goldsmiths of 17th century took deposits of gold and coins from individuals and merchants for safekeeping as private storage was fraught with uncertainties. The depositor was given a claim slip which he would be required to supply when he wishes to collect his gold coins back. Subsequently, the goldsmiths began to lend the coins in their possession provided the holder of a claim slip was paid on demand.

The Nigerian position.

:: With the advent of the British in Nigeria and the growth of commercial activities... The **Bank of British West Africa** (renamed First Bank) was established in 1894 to serve the needs of the British Colonial Government.

:: In 1912, the **West African Currency Board** was established to issue and distribute currency within the region of West Africa. Then followed **Barclays Bank** (now Union Bank) in 1917. The first indigenous bank; The **Industrial and Commercial Bank** was established in 1929.

:: Following the Clamour for a people-oriented indigenous bank, various indigenous banks like; **Agbonmagbe bank, Standard Bank, African Continental Bank, Afro-Seas Credit Bank** etc sprang up in the late 40s and early 50s. However, many of these banks failed due to lack of regulation, dishonesty, inadequate record keeping and unprofessionalism.

:: The failure of these banks had dire consequences on their Nigerian customers and the Nigerian economy. Hence, the **Banking Ordinance** was enacted in 1952. It mandated that a bank’s nominal capital must not be less than £25,000 of which not less than £12,500 (N25,000) is paid up. In the case of a foreign company E100,000 (N200,000).

⁶ Which is the business of receiving deposit and providing loans.

These values have been increased overtime by the subsequent decrees like the **Banking Ordinance of 1958 and the Banking Decree of 1969.**

:: In **1958, the Central Bank of Nigeria Ordinance** was passed. This established the CBN to better carry out the functions of the WACB and more.

:: In 1991, **the Banks and Other Financial Institutions Decree was enacted.** It mandated that a bank must be properly incorporated and licenced to carry on banking activities.

:: In 1998 **Section 1 of the NDIC Act⁷** established the Nigerian Deposit Insurance Corporation. The NDIC aims to protect customers (depositors) and enhance bank stability by administering the **Insurance Deposit Scheme. The IDS** is a risk control mechanism which mandates all banks and deposit taking institutions to insure their deposits with the NDIC-**Section 15 NDIC Act.** The premiums/monies so insured shall be used to resuscitate a failing bank or settle depositors of a failed bank.

:: The **Universal Banking System was introduced on the 1st of Jan 2000** which sought to widen the range of services which a bank can offer. Hitherto, banks were classified based on the range of banking services they offered. For example Commercial, Merchant, Agricultural Bank, Mortgage bank, Micro-finance Bank, etc. with the introduction of the UBE, a single bank can offer commercial, mortgage, agricultural, merchant and other services all at once.

:: In 2005 the CBN mandated that banks must attain a minimum capital of N25,000,000,000. Many banks failed due to their inability to meet up with the N25,000,000,000 requirement.

:: Over time, various issues and developments have arisen in the banking sector... At present, the Nigerian banking system consists of the CBN, the NDIC, the Federal Ministry of Finance and the banking sector regulated by the various Acts. In 2006, NDIC Act was enacted and in 2007 CBN Act was enacted as revisions of the previously existing statutes.

BANKER AND CUSTOMER RELATIONSHIP.

DEFINITION OF A BANKER AND CUSTOMER.

Who Is A Banker?

:: The layman defines a banker as a person that works in a bank. This is **CERTAINLY NOT** the legal position.

:: In ***Akanle V Reginam***, the court noted that “banker” refers to the company licenced to carry on banking business. The conviction of the manager for granting illegal loans

⁷ now 2006.

was quashed on the ground that the banker rather than the manager ought to have been sued since the banker customer relationship was that of debtor-creditor.

:: **Section 2 Bills of Exchange Act 1954** defines a banker as a body of persons whether incorporated or not who carry on the business of banking. This definition is faulty as **Section 2** of the Banks and Other Financial Institutions Act makes it a condition precedent for persons carrying on banking business to be incorporated.

:: **By Section 2 of the Evidence Act**, a person, partnership or company carrying on the business of banking. Similar definition given by **Section 41(1) of the Banking Decree**.

:: A banking business has been defined in **Section 66 BOFIA** as the business of receiving monies... granting loans... acceptance of credits, bills, cheques, purchase and sale of securities... others as the minister may designate.

Therefore, a banker refers to a company that has been incorporated and licensed to carry on banking business. E.g. Stanbic IBTC, GTB, UBA and so on.

Who Is A Customer?

:: In ordinary terms, he is regarded as a person buying the goods or employing the services of another. It is however important to know the strict legal meaning of a customer in order to decipher whom the bank legally owes a duty.

:: In ***Ladbroke and Co V Todd***, the court held that to qualify as a customer, one must have an account with the bank. Same position was followed in ***Commissioners of Taxation V English Scottish and Australian Bank***, where it was held that duration was irrelevant provided there was an account with the bank. In ***Woods V Martins Bank***, the court noted that a finalised agreement to open an account could suffice notwithstanding that no actual deposit has been made. In ***Robinson V Midland Bank***, where A opened an account in B's name. The court held that the banker-customer relationship was between A and the bank notwithstanding that the account was opened in B's name since the bank only knew A. In ***Great Western Railway Company V London and County Banking Co***, one Huggins had been cashing cheques over the counter at the defendant bank for almost 20 years. The court held that since Huggins had no account with the bank, he was not a customer. Similarly, in ***Ademiluyi and Lamuye V ACB***, A and B (prominent members of a ruling party; NCNC) opened an account with ACB. ACB believed that the account was opened on behalf of NCNC whom they regarded as their customer. "A" sought to cash money from the account but NCNC countermanded the cheque. The court held that the countermand by NCNC was ineffective because the banker-customer relationship existed only between ACBank and AandB who were the account holders.

A SHIFT IN POSITION: The cases of ***Hedley Byrne Co V Heller and Partners*** and ***Agbonmagbe Bank V CFAO Ltd*** the courts drawing from the decision of ***Donoghue V***