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Review Article

The Law of Banking and Its Implications on the Nigerian Economy

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Abstract

The banking sector is a vital component in the economic growth of any country in the world, and its operations are mostly governed by laws that are in place to ensure stability, accountability, and financial discipline in the sector. In this article, the law of banking and its impact on the Nigerian economy is reviewed. The article focused on the origin of modern banks and indigenous banks, the meaning and role of banks and bankers, and the legal relationship between banks and their customers. It also explored the legal framework governing banking operations in Nigeria, powers of the central bank over other financial institutions, measures of controlling financial malpractice, legal control of banking personnel, and reasons for insolvency in banking operations. The article analyzed reforms in the Nigerian banking system and their effects on the banking sector in Nigeria. It is found that effective implementation and observation of banking laws are critical in fostering transparency, preventing financial malpractices, and building trust in financial institutions. Effective regulatory policies are critical in addressing banking crises and ensuring sustainable economic development. It is evident that robust legal frameworks and proper regulatory oversight form an integral part of the growth of Nigeria's banking sector and economy at large. It recommends better enforcement of banking laws, raising awareness of banking laws among the public, and continued banking sector reforms to strengthen the financial system to support economic growth.

Keywords: Banking laws, economic growth, legal control, financial institutions, banks and bankers

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Introduction

The history of banking in Nigeria which makes up the banking industry in existence now can be traced to the colonial administration. The colonial administration did not adopt any existing local banking industry or any similar system to develop on it. This is because it was the advent of the colonialist that warranted increased importation of British silver coins to meet the growing trade relationship between England and west African coast. It was due to the increasing number of silver coin in large boxes in Lagos office of the initial sole shipping company, elder Dempster & co, that suggestions were made to establish a bank in Lagos. It was as a result of the interest of the British businessmen that the local agent of either Dempster & co approached some banks in British to open branches in Lagos. This step gave rise to the opening of branches banks in Lagos.

The nature of banking in Nigeria can be only properly understood when we are able to define who is a banker, customer and what constitute banking business. Unfortunately, both the bank and other Financial Institution Act (BOFIA) 2004 and the central bank of Nigeria the principal statutes governing banks in Nigeria have not defined what a bank is. However, by the implication of section 55 of the CBN' Act the definition of bank in the repealed Banking Act of 1990 still applies. Section 43, of the banking Act defines a bank as " any person who carries on banking business and including a commercial bank, and acceptance house, discount house, financial institution and merchant bank."

"Section 2 of the Bill of exchange Act 2004 defines bank which include a body of persons whether incorporated or not who carry on the business of banking. "Section 66 of BOFIA 2004 defines a commercial bank to mean" a bank whose business includes the acceptance of deposits, withdrawal by cheques" and merchant banks to mean bank whose business include receiving deposit on deposits account, provisions of finance consultancy and advisory services relating to corporate and investment matter, making or managing investment on behalf of any person"[1] Section 66 of BOFIA 2004 also defines banking business as " the business of receiving deposit on current account, saving account or other similar account paying or collecting cheques drawn by or paid in by customer, provision of finance for such other business as the governor may by other published in the federal Gazette, designate as banking business."

"The words bank or banker are used interchangeably to mean one and the same thing and are referred to as incorporated and licensed corporate body and not individual who works

[1] Trade Bank Plc Barilux V (Nig) Ltd 2000 13 NWLR PT 685 on definition of bank.

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in a bank[2]. There is no statutory definition of what customer is. The main requirement to become a banks customer is having an account irrespective of what form of account (whether saving, deposit or current) provided the account is in his name[3]. In additions one becomes a customer when he makes an offer to open an account and the bank accepts e.g acceptance of deposits. Unfortunately creates a binding and enforceable contract[4].

The laws regulating the establishment of Banks in Nigeria include principally the companies and Allied Matter Act, Cap C.20 LFN 2004; Banks and other financial institution Act, Cap B3 LFN 2004 and central Bank of Nigeria Cap C4 LFN 2004". Banks operating in Nigeria are corporate bodies. They must firstly be incorporated as a company under the CAMA by complying with the requirement in respect of registration of such a company[5]. Once is incorporated, it becomes a body corporate by the name contained in the memorandum of association to carry out business[6].

The objectives are to:

i. Examine the nature of bankers' and customers' relationships
ii. Examine the obligations of a banker
iii. To analyse the duties and obligations of a bank customer to is banker
iv. To examine the cheques and other instruments used
v. To examine major causes of insolvency in the Nigerian banking industry
vi. To examine the implications of the laws of banking on the Nigerian economy
vii. To proffer some recommendations necessary for the optimal implementation of the law of banks and its implications on the development of the Nigerian economy.

Nature of Banker and Customer Relationship

Revocation and Termination of Banker and Customer Relationship and its legal implications. The relationship between the banker and the customer is that of a creditor and debtor, and it is essentially contractual. Again, this relationship also manifests itself in various aspects like that of bailor -bailee, Agent - principal, mortgagor-mortgagee and trust - beneficiary. For instance, where a customer keeps his valuables in the bank vault for safekeeping, a contract of bailment arises. The banker becomes the bailor while the customer becomes the bailee.

In the same vein, where a customer pays cheque issued by a customer to a third party, the banker thereby becomes the agent of the customer who then becomes

[2] Akwule & 10 others V Reginom (1963). All NLR 193
[3] UBN PLC V ITPP Ltd (2000) 12 NWLR PT 680
[4] Ladbroke & Co. V. Todd (1914) 30 TLR 433
[5] Section 18 and 35 CAMA 2004 and also section 2(1) BOFIA.
[6] Section 37 and 38 (1) CAMA

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the principal in the transaction. Similarly, a customer may borrow from as banker by way of loan or overdraft, and this may be covered by a special agreement, such transaction may also be secured by the mortgage of a property and a mortgagor -mortgage of a property and mortgagor-mortgagee relationship develops.

It must be note that any failure to pay a customer's cheque by a banker when that is sufficient fund and the cheque has been validly drawn, would constitute breach of contractual obligation and may be actionable. Under this condition, there is a fiduciary relationship existing between the customer and the banker, and the responsibilities are strictly meant to be reciprocal on both parties whereas the bank' is expected to show due diligence and care in the handling of the customer's account.

The customer too is expected to be careful in drawing his cheque so as to give rooms to forgery of fraud[7]. In this case London Joint Stock Bank V Macmillan and Aurther a firm carelessly entrusted to their clerk the duty of filling cheque details and be thereby had the opportunity to change \$2 to \$120. It was held that it was the firm and not the bank that was liable in negligence.

Furthermore, the customer should duly notify the bank if he had course to suspect any fraud or foul play with respect to his cheque. This was the decision[8] in a case where the plaintiff discovered that his wife was forging his signature on cheque, he did not report to the bank. The wife later died. The plaintiff now sued the bank for refund of money collected by his wife by forgery while alive. It was held that he was not entitled and the bank was not liable.

A banker who owes the customer a duty of care to guard against possible negligent mis-statement. For example, where a bank manager negligently furnished wrong and mis-leading advice on investment or reference concerning a customer who consequently suffered a loss, the injured customer would be entitled to a right of action in tort of negligence. This principle was established in this case[9]

In 1986, when Trustee Saying Bank was preparing to go public and issues shares, some depositors objected and sought answers to the question as seen by LORD KITE, whether depositors in the customer savings. Does the bank have any interest in its

[7] (1918)
[8] The case between Green Wood V Martins Bank Ltd (1933)
[9] The case of Healey Byrne and Company Ltd V Hellers and Partners (1964)

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assets other than the right to receive interest?[10]

In the case between[11] Two parties, according to ACTON L.J, said: The bank undertakes to receive money and collects bills from its customers and lends out the money, but the proceeds are borrowed by the bank, and the bank undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account was kept, and during the ranking hours, it includes the promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch office, and such written orders may be outstanding for two or three days. It's a term of the contract that the bank will not cease to do business with the customer, except upon reasonable notice. The customer, on his part, may undertake to exercise reasonable care in executing his written orders so *as* not to mislead the bank or facilitate drawing.

The judge therefore identified the obligations and the rights of both sides of the relationship.

In another case[12] The Supreme Court per Bellow JSC (as he then was) opines as follows: "In law, the relationship between a banker and its customer is that of debtor/creditor. In this case, whichever party is the creditor (bank or customer) is entitled to sue if a demand for payment is made and not complied with. It has been borne in mind that it has been established that a banker is not a trustee for the customer[13]. It is on this footing that a banker has held not guilty of a branch of trustee in employing a person placed in its custody.

Let us now consider the application of the decision of a popular case[14] In that case, the bank deposit is a loan of money to the bank by the depositor. Once the bank has it (the deposit), it becomes the property of the bank to use it as it pleases.
The Supreme Court also ruled in this case[15] appears to attest to this position wherein Braiman J. said: "When a person has an account which is credited, the bank becomes debtor to the extent of the credit balance, and when he draws money from his account, he is paid with the money of the bank.

In other words, the customer's right to be paid the outstanding in his account and

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[10] The case of Rose V Lord Advocate and others, Truste Savings Centre Board and others V Vincent and other
[11] In the case of Joathinson V Swiss Bank Corporation (1912) kKb 110
[12] Case of Yesufu V African Continental Bank Ltd (2001) FWLR pat 39, page 1574 at 1590
[13] The cases between Pearce V Creswick Re head V Head (1893) 3 Chi. 426
[14] The case between Folley V Hills
[15] Joachinson V Swiss Bank Corporation Supra

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when this is denied him, his remedy is a claim for the repayment of the debts. It must be noted that the initial customer/banker contract lacks formality, and this means that the contract is made by oral rather than written agreement. And again, it must be noted that demand is a condition precedent that must be complied with before there could be a liability on the part of the bank[16]

Obligations of a Banker

On the part of the banker, there are the obligations to honour the cheques drawn by the customers to the amount standing on the balance or of the account. The banker is equally entitled to charge interest and commissions except where special arrangements have been made. It is entitled to debit the amount or account in charges, usually quarterly or half-yearly, from its own customers without special advice to the customers. A charge for an item, such as the stopping of a cheque or dishonour of a cheque, will usually be advised.

A bank must maintain strict secrecy about its customers, accounts, and affairs both while the account is open and even after it has been closed, subject to the relevant provisions of the law.

A banker must always follow its usual course of business when acting for its customers, who expect transactions to be dealt with in a consistent manner. A bank acquires general lies over its customer's negotiable instruments or documents which come into its possession unless an express contract has been made which would be inconsistent. A bank must give reasonable notice to its customers before closing their account, which they maintain in credit. However, overdrafts are payable on demand, unless there is an implied or actual agreement to the contrary.

A bank must repay the whole or part of the balance if and when there is a demand by the customers during banking hours, provided the demand is made at the branch where the amount is kept or at the bank where an alternative arrangement has been made, such as under credit open enhancement facilities or line of credit.

Duties and Obligations of a Bank Customer to His Banker

The bank customer is under an obligation to perform the following duties to their banker. They are as follows:
The customer is duly bound to exercise reasonable care when drawing his cheque to help prevent fraud or forgery, and so that the bank may not be misled[17]. This duty extends only to ordinary precautions, and the customer has no duty in the

[16] That of Ekpenyom V.R. (1963) NMLR 6
[17] London Joint Stock Bank Ltd V Macmillam and Aurthur Supra

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general course of his business to prevent fraud, service forgery, or cheques in deed[18,19], The court felt that the risk of forgery in banking services was such that the bank should either contract in express terms with customers or seek protection by statute.

Secondly, the customer must go to their banker when they require payment. It is not incumbent on the banker to seek out the customer. However, where an accredit account had been dormant for a long time, a bank will usually take steps to reactivate or re-establish a contract with the customer before making an internal entry transferring the funds to a contract account of the dominant balances.

As far as the customer is concerned, in those circumstances, the account is still open, and the statute of limitations is not running against him. And before demanding a cheque, the customer must ensure that their account is in funds or credit to meet. Alternatively, where his account is not in credit, he must make an arrangement to pay in money or for overdraft facilities to be available from his bank.

In the same vein, the customer must pay reasonable interests or commissions and other charges for banking services, and this is implied when he opens his account[118] The court seemingly discarded the debtor. Creditor relationship, while asserting that a bank loan by way of overdraft has created a special contractual relationship between the banker and the customer. The matter was exclusively approached from the standpoint of contract.

It must be noted that most of these cases have been passed on the decision FOLEY and HILL, and the principle of acceptance, emphasised in the decision[19]. Also[20] it was held that where the bankers lend money to their customers, no right of action accrues until the banker also makes notice or makes a demand.

Also, since the relationship may be said to be contractual, it may be affected or caught by the statutes of limitation[21]. In this case, the courts need to establish that the plaintiff's case was statute-barred since it was commenced six years after the cause of action accrued.

In that case Turner V National Provincial and Union Bank of England, Turner has, on a written agreement, to repay his overdraft with the bank by weekly instalments.

[18] National Bank of Nigeria PLC V Maja (Supa)
[19] Joachinson V. Swill Bank Corporation (Supra)
[20] Johnson of Merchant Bank Ltd V Odeka (1967) AFLR 32
[21] National Bank of Nigeira PLC V. Adewale Johnson (1962) 2 ANLR 24 AT 36

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The branch manager telephoned Turner's employer to know his address, and during the conversation, he disclosed that the account was overdrawn and that the agreement for repayment was not being honoured.

He also expressed the opinion that the plaintiff was tracing a cheque drawn by Turner to a bookmaker. As a result of the disclosure, Turner lost his job and successfully sued the bank for breach of an implied term that the bank should not disclose to a third party the statement or state of his account or any transactions relating to it. It was held that the bank was liable as it failed in its duty to the plaintiff to treat his account and affairs confidentially.

The Court of Appeal held that a bank's disclosure of its customers' affairs is only justifiable in four instances as follows:

(a) where the bank has a duty to the public to do so.
(b) where the bank is compelled by law to do so to prevent fraud or crime or to answer a question in a court.
(c) where the banks own interest requires disclosure.
(d) where the bank has the express or implied consent of its customers to do so.

Meanwhile, there are some exceptions to this general rule of confidentiality or secrecy. (i) To produce a banker's record pursuant to section 90 of the Evidence Act.

(ii) where customers are involved in fraud or crime
(iii) where the customer authorises a reference to his banker
(iv) Where against a third party or with their customer, such as collecting and suing for an overdraft.
(v) During wartime, the banker may disclose that one of its customers is trading with the enemy
(vi) Another situation where a banker may be justified to do so is where there are incessant drawings of cheques, the bank may disclose to the beneficiary of the bank cheque and the statement of account of the customer[22]

Where the bank's own interest requires disclosure, these exceptions will apply where a legal proceeding to enforce the payment of overdraft or where a guarantor asks to be told the extent to which their guarantee is being relied upon by the bank. It would seem, however, that the exceptions can also apply in a well-defined situation[23]. In this case, Sunderland V Barclay Bank, the bank dishonours

[22] Kehinde ogunniyi V First Bank of Nigeria PLC
[23] The case of Sunderland V. Barclay Bank (1938 AC. 12)

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the 'X' cheque and is also concerned with her gambling, and she did not want her account to become overdrawn. She complained to the bank by telephoning about the dishonoured cheque, and during the conversation, her husband interrupted to make his own protest. The bank then told him that his wife had previously drawn several cheques payable to bookmaker X. Therefore, he took action against the bank. It was held that the Dank was justified to make the disclosure because it was in the bank's interest and therefore, the bank would want to protect its own reputation, thereby bringing the case within the exception in Turner's case.

In the meantime, where the bank has express or implied terms of its customer's consent to do so, for example, where it supplies a reference for its customer or where it replies to its statutory enquiry about its customer from another bank[24]. In this case, the customer entered into an overdraft facility for the purpose of reorganising his business. The customer alleged that the bank had caused a breach of contract to grant him an overdraft and brought an action to recover the outstanding debts. The defendant also brought an action for a breach of contract, but the action/cases of both parties were consolidated. The bank was non-suited, and it could not establish its case, but made reference to the defendant's case. Yinka Ayoola J. (as he then was) held that this was a binding contract between the bank and defendant customer, and that the bank committed the breach of that contract when it stated that it would no longer approve the overdraft, contrary to prior agreement. This court subsequently awarded N1,000 wages against the bank. Note that the modern tendency is not to rely on the debtor-creditor as the basis of the relationship[25]. In this case it was held that the bank is a constructive Trustee of the customer's money.

Also[26] in another case it was held that a bank may hold as a constructive trustee where it either: -
(a) receives trust fund in such a way as to become actual or constructive notice that they were trust fund and that the transfer was a breach of the trust or
(b) knowingly participated in a dishonoured and fraudulent purposes of the trustees[27]

The above cases appear to have suggested that in certain circumstances, the banker could be as a constructive trustee of its customer's money. The principle of agency

[24] National Bank of Fashoro (1927) 304 SLR p 24
[25] The case of Selagor United Rubber Ltd V Cracdock No. 3 (1968 2 AER 107See the case of Selagor United Rubber Ltd V Cracdock No. 3 (1968 2 AER 107)
[26] Barnes V Addy (1874) A.C. 76
[27] Lipkin German V Carpnale Ltd, also LLioyd's Bank PLC (1989) Apple case 201 Karack Rubber Coy Ltd V. Burbune (1978)

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was till (supra). This appears to have been accepted in commercial activities[28] where it was held that the obvious implication of the service is that it was tendered on agency basis since the bank agreed with it a customer to accept rent from the tenant and pay over to the council the amount due in respect of rate. It Aas held that they had acted simply as banker and not as agent[29]

In this case, Lord Atkinson said: "as regards the drawing and payment of cheques, the relationship between the banker and customer is that of the principal and agent[30] In this case, the Nigerian Supreme Court having accepted as a fact that there was a banker/customer relationship between the defendant and appellant.

Went further to uphold the judgement of OA/IOLOLU J. to the effect that there was legal relationship of agent and principal between the defendant bank and the plaintiff bank, owing to a specific request to the defendant to clear certain good by virtue of a letter form the Plaintiff.

The learned trial judge held as follows:
I found sufficient evidence to substantial the special arrangement alleged by the plaintiff. I found as a fact that the defendant has acted on his own instruction and had cleared and stolen the goods for him".

Cheques and other Instruments Used
By the provision[31] of the Bill of Exchange Act, Cap35 Law of the Federation of Nigeria 1990 as (amended) a cheque is defined as a bill of Exchange drawn on the drawer or banker payable on demand[32]. In this case, a banker collects a cheque and pay it to those not entitled to the proceeds in the cheque are liable of the tort conversion and shall be liable accordingly[33]. Let us at this juncture examine what the Bill of Exchange means. The Bill of Exchange Act[34] defined a bill of Exchange as "an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to the order of a specified person or to the bearer". Therefore, any instrument which does not comply

[28] Milland Bank V Conway Ltd (1965) 2 AER
[29] Westminster Bank ltd V. Hilton (1943) TLR 124 AT 126
[30] Bank of West African Ltd V. Balogun (1970) 1 ANR page 50
[31] Section 73 of Bill of Exchange Act
[32] A.C.B. Ltd V Alao (1994) 4 NWLR page 59

[33] Trade Banker V Benilus Nig. Ltd (2003) Fine Art Societtes V Union Bank of London (1986) to 1887 17 QBD 7005
[34] Section 31 of the Bill of Exchange Act

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the above conditional order in addition to the payment of money is no a Bill of Exchange.

As a type of Bill of Exchange, a cheque is governed by all the rules relating to Bill of Exchange perse are much more uncommon nowadays except in international trade, cheques are perhaps the commonest type of financial instrument known today. Therefore, the popularity of cheque for payment within the country as opposed to bill of exchange arose from the relative simplicity of U.S usage it does not require presentment for acceptances and also' does not entail all the stringent rules and conditional ties that guide a Bill of Exchange that is not payable on demand, a cheque is a good as cash[35]. As an instrument, a cheque has the follow characteristics:

(a) A cheque as an unconditional order once it is made conditional is no longer a Bill of Exchange.[36]
(b) The order in the cheque must be unqualified in other words, an instrument expressed to be payable on a contingency, is not a bill. Therefore, the happening of the contingency cannot cure the defeats.
(c) The order must be in writing. This includes typing and printing.
(d) It must be addressed by one person to another
(e) The order must be signed by the person giving the order. Therefore, the word "signed" here is not defined under the Act. However, to be acceptable as a signature and what has been acceptable should be seen to be generally acceptable form of signing. Therefore, it appears that a merely producing signature would be sufficient[14, 8, 37]

This was case concerning a signature by using a publisher stamp. The court held that it could not amount to a signature.

(f) The time for payment is usually stated on the cheque.
(g) It must be fixed for determinable future time or date
(h) The order must be in respect of ascertainable sum.
(i) It must be to the order of a specified person. That is, the person must be ascertainable, one cannot pay a fractious person[38]

Mention must be made of negotiable instruments used in commercial and financial transaction to secure the payment of money. The handling over of such documents is often accepted as equivalent of payment because they are written documents representing money and are negotiable to another by delivery.

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[35] KARARA Marble company Ltd V Bolas (1970) 2 ANLR 89
[36] Re V Marcell Company (1885) Ch. Division 598
[37] Goodman V. Evans Ltd (1964) QBD 580
[38] The case of Trade Bank V Bernilus Nigeria Ltd (2003) FWLR pt. 162 page 871

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Negotiable instruments are also a type of chooses in action like copy right, patents shares, Trademarks, all of which are rights that can be enforced by action in a court. The characteristics of negotiable instrument are as follows:

(a) They are transferable by delivery and endorsement, and by mere delivery.
(b) Full legal title passes to the transferee who can sue in his own name for the right conferred by it.
(c) If the transferee takes the instrument in good faith and for value, then the title passes to the transferee free from equity. That is, not subject to any third-party rights. The transferee takes the instrument for value if he gives something of value which may be money, goods or services to the transferor as consideration for the transfer. However, if value is not given, the title will be subject to equity.

The followings are the type of negotiable instruments most common ones are: Bill of Exchange, cheques promissory notes. Others are: Bearer debenture, dividend warrants, traveler's cheques, bearer bonds. Bill of lading, Dock Warrants and railway receipts, postal order, money orders, share certificate, letter of credits and I.O.U. The last three instruments are not negotiable ones.

In a related development, a promissory note is governed by Law[39] A promissory note according to section 85(1) of Bill of Exchange Act, Cap 35, 1990 is defined "as unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to the "bearer". That is, a promissory note is a promise to pay a sum of money.

A promissory note and Bill of Exchange including cheque is that whereas there are only two parties in promissory; note, there are three parties to a Bill of Exchange. Let as quickly look at the issue of forted or unauthorized signature[40]. By way of definition "a forged signature is the absence of estoppels or ratification cannot pass any title to a bill. It is possible however for an unauthorized signature to be ratified upon the drawer's confirmation. A forged signature cannot be ratified, though can be estopped on the validity of such signature[41].

In this case, Greenwood V Mertina Bank Ltd a wife forged her Husband's signature to withdraw money from the account. The husband decided not to report to the bank.

[39] Sections 85 – 91 of Bill of Exchange Act, Cap 35, 1990
[40] Section 24 of Bill of Exchange Act

[41] Section 9(2) of the Act

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Later on, the wife refused to confess the forgery and she subsequently committed suicide and the husband later reported the forgery to the bank and also sued the bank for negligence; ft was held that the husband was estopped from denying his knowledge of the forgery. Therefore, the principle is "where a bank mistakenly pays a cheque bearing a forged signature of the drawer, the cheque cannot or must not be debited to the customer's account".

Major Causes of Insolvency in the Nigerian Banking Industry

The current harsh economic condition in the country is bringing about the importance of this concept "insolvency" as we frequently read of the appointments of receivers and liquidators due to debtors who are defaulting in their obligations. It is in this regards that the researcher is Keenly determined to discuss some major causes of insolvency in Nigeria banking industry. They are as follows:

a. **Incompetent Management:** This can lead to business failure as a result of lack of planning, implementation of plans where they exist, monitoring the plans where they are implemented, accountability, clear organization and delegation of responsibility. Any businessman who enjoys expensive living without watching the trend of his business on the times shown above will sooner or later find his business trumpeting into insolvency.

b. **Downturn In Economic Condition:** This shows the havoc change from "boom to doom" in the economic life of a nation, incorporated company, licenced banks private individuals. In a far year back when the oil born was at its pick, new business sprang up like mushrooms in cities and villages. Those who could not set up themselves industries become contractors. The government itself began the building of its new capital city (Abuja) and the creation of its steel industries, and jobs were available everywhere. But when the economy turned down from boom to doom there were the introduction of import licence scheme, Second-Tier.

c. **Rate of Inflation in the Country**

The situation discussed above became more compounded with inflation and high rate of interests. If Federal Government of Nigeria could be worst hit by borrowing over 8 billion dollars from the World Bank including interests, you could now see how it would have hit the businesses that obtained foreign loans and promised to pay in the same currency. Take for instance, a Loan of $2 million *In* 1984 when a dollar was equal to N0.75kobo which was the equivalent of N1.5 million sudden rose to over N600 million now.

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d. New Inventions or Technology

New inventions as good as they are, have been a source of disaster to many businesses, banks inclusive. A company dealing in hurricane lanterns may suddenly collapse on the introduction of electricity to its area of operation due to lack of patronage. Introduction of computer machines in nearly all the banks in the country nearly collapse some few banks that were bit delayed in using computer. Many of these banks, were forced to use computer when most of their customers were complaining of over delay at the counter. These are just few examples of businesses which have become innocent victims of new inventions.

e. Insider Abuse

This refers to the practice whereby insiders, notably senior bank official, directors, Board chairmen, abused their privileged position to obtain loans without due process and requisite collateral back-up. Such loans dubiously and illegally procured are usually irrecoverable due, largely to the among involved and the waivers attached to them. These senior officers often approve such loans for themselves and on their own terms. Insider abuse is a major source of bank fraud. It is an aspect of white-collar crime. This type of abuse spins around identity fraud and abuse of authorization. It is aggravated in recent times by the increasing wave of automation in banking payment processes particularly in banks with weak authentication procedures.

f. Types Of Bank Fraud

The types of bank fraud are but not limited to:

(a) ATM/card related fraud
(b) Web-Based or internet Banking fraud.
(c) Fraudulent transfer/withdrawal of Deposit
(d) Suppression of deposits or cheques
(e) Presentation of forged or stolen cheques
(f) Stealing of cash in local or foreign currencies either staff or outsiders
(g) Unauthorized credit
(h) Diversion of Bank charges (compressions and fees
(i) Fraudulent conversion of cheques.

In the same vein, the basic motivation, bank fraud can be also trace to:

(a) Unmet Financial
(b) An opportunity to commit fraud
(c) Economic justification or rationalization for fraudulent behavior.

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g. Negligence of Banks

Nigerian banks have been accused of contributory Negligence to the problems of some unfortunate business which have become victims of either receivership of liquidation. The banks have among other things been accused of:

(a) Preventing entrepreneurs from starting off strategic projects which in turn have forced the projects, to face cash flow problems from their inception.

(b) Unnecessary delays in providing essential services such as opening of letters of credit, mishandling of important documents etc which have caused a lot of damage to many projects. After loans have been granted, many banks have failed to monitor the project for which they have granted loans. Many do not even bother to obtain audited annual financial statements of the projects from where it could be seen how the projects were performing. Other important factors that cause insolvency in Nigeria banks are the major problems hindering or that have hindered, the location and localization of industry like accessibility to the business site, a thickly populated area many commercial activities in progress

Other major causes of bank insolvency are the embezzlement syndrome of some bank officials, managers and directors some lent out money to their customers without demanding for adequate collateral security but only concerned with what will be their kickback. Moreso, the collateral demanded, may not easily be converted to liquid cash. Political crises are another major cause of Nigerian banks insolvency. Again, unclear dichotomy/distinction between the business and the business owners is a major factor.

Some banks may be tempted to deep their lands into their cash reserves when the actual time to do that has not come, and any moment the time comes, they would be looking for Messiah to safe them. Closely related to this is the problem of low cash reserved ratio. If not of recent during the Saluda's shake up in the banking industry, most of the Nigerian banks did not deposit adequately enough cash ratio with the Central Bank of Nigeria. This resulted into many banks going distress like Commerce Bank, Community Banks, Peoples Banks etc.

Implications of the Laws of Banking on the Nigerian Economy

The basic laws regulating the banking sector of the economy are: the Central Bank of Nigeria Act No. 24 of 1991, the Banks and Other Financial Institutions Act No. 25 of 1991, and the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree. The Operational Synergy of these combinations, together with proper implementation and application of the provisions, would suffice to straighten and

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strengthen the Nigerian banking sector. It must be noted that part of the problem we had in the past was that we were doing these reforms in an ad hoc manner. The Central Bank of Nigeria left the direct instruments of the money policy, where you prescribe credit to this sector and interest rate to that one, to the indirect mechanism, which is market - driven. But then, in terms of the foreign exchange, they were doing it halfway. Half of it was market-determined, and the other half was controlled. Therefore, concerning the policy reformation now on the ground vis-à-vis the existing rules and regulations guiding the operation and management of the banking system in the country, the following implications are seen.

(1) Nigeria is the only country in the world that has not consolidated because our banks are too small when compared to other banks in emerging markets. Therefore, this policy reformation will make Nigerian banks consolidated[42]

(2) That the more will hopefully obliterate distress in the sector and restore customer confidence, indeed[43] It was said that the customer is the reason behind the CBN decision, "we want to see a banking system that does proper intermediation and not one that depends on trading and public sector funds because that is rent" It[44] complained that very few banks were providing credit or proper banking services to the vast majority of Nigerians, thereby stifling the economy.

(3) That the physical disability and challenge of Nigerian banks to play in the global market, as their capital bases were extremely weak, will be a thing of the past. For instance, right now, governments' foreign reserves are held by offshore banks because no focal bank can absorb it. Therefore, increased capitalization of banks would ultimately lead to improved access to offshore credits and businesses.

(4) That it would help rid the industry of charlatans and encourage better banking services. If you have bigger banks, you can do bigger business. Let us parry the examples of countries in far East Asia where the smallest bank in South Korea being capitalized to the tune of $200 million dollar, and even at N25 billion-naira, Nigerian banks are yet to meet the $200 million mark.

(5) Another implication is that it brings about the liberalization of the market and allows it function the way other currency markets operate in the world. As part of the overall reform, to make the entire market consistence, it will bring the foreign exchange market to be in conformity with the overall policy framework of moving to a market framework for the conduct of monetary and exchange rate policies and making it internally consistent so that we do not go

[42] JIM Ovia Managing director, Zenith Bank Plc Tell Magazine July 26, 2004 page 39
[43] Adim jibunoh, managing director Continental Trust Bank, Tell magazine July 26, 2004, pg 39
[44] Governor Central Bank of Nigeria Tell Magazine 2006 July 24 pg 42

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held way. That is why we find that for over twenty years; the parallel market was the one depreciation leaving a bring gap between the official and parallel market rates and the official market would then have to depreciate to narrow the gap.

(6) That this will increase our foreign exchange reserves. Take for example, by the end of this year we would probably have enough reserves to pay for more than three years of imparts. If we do not earn any more dollar, we have up to three years of reserve. And that is way Nigeria is accumulating reserves now just in case there is a shock tomorrow, we would be able to withstand it.

(7) Another implication is that there would be the collapse of the Forex Markets into one, and its implications for national production output, imports and exports, and on the living conditions, of the ordinary Nigerians. When this happens, the market begins to converge and many more players would be allowed to come into the market and many transactions that were illegitimate or ruled out would now being brought into the official window, so you no longer have a need to go to the Mallam on the street. The Bureaux de change would be allowed into the formal system, so they were no longer black markets. They can source Foreign Exchange from banks or CBN, so the Mallams on the streets realized that the business had been taken away from them: Those who want to buy dollars can now walk into the Bureau de charge and buy their dollars. Now some Mallams on the streets have started asking for licence to become bureaux de change.

(8) That the implication will bring about higher profitability level to banks. Many banks are likely to declare reduced profitability or losses at the end of the financial year. That is, every bank shall submit to the Central Bank of Nigeria not later than 28 days and after the last day of each month a statement showing the assets and liability of the bank, and an analysis of advances and other assets at its head office and branch offices in and outside Nigeria. Failure to keep these rules makes the bank liable to a fine of N5,000 for each day[45]. Already the financial performances of some banks have indicated this trend.

(9) That the implication is again to bring down interest rate to make banking more attractive to entrepreneur who require bank funds for business expansion. With may funds in their coffers, their cous may be less on deposit mobilization strategies, but more on lending so as to make many for the shareholders who had stake their funds.

(10) Another implication is seen in the regulatory cooperation among the regulators in the financial system of the economy. This includes the Central Bank of Nigeria, the security and Exchange Commissioner, the Nigeria Stock Exchange

[45] Section 25 of the Banks and other Financial Institution Act

and Nigerian Deposit Insurance Corporation.

Summary, Conclusion and Recommendations

Summary

The focus of the project is on "The Law of Banking and its implications on Nigerian Economy and for its development" However, the aims of this reach work is to know the extent to which the Law of Banking and it's implications on Nigerian Economy work on the development of Nigerian Economy respectively and the consequent effect of on the growth, progress and the development of our Nigerian economy.

Recommendations

The Banking industry in Nigeria if not recently with the revolution of Soludo after its establishment has been faced or generated a lot of crisis and fear to investors and creditors. The major reason behind this is the incessant distress and insolvency that had been the order of the day. To God be they glory, Professor Charles Soludo, a renowned economist of repute has to some extent assisted improve the state of Nigerian economy to a manageable status through his banking reforms.

With that at the back of our mind, the laws regulating banking industry in Nigeria, plus the reform policy of the Central Bank of Nigeria recently introduced and the considered possible implications of these laws and policies on Nigeria the researcher has to make the following suggestions vis-a-vis the sectional arrangements our banking laws[46].

According to the arrangement of the sections, sections 1 to 15 deal with the establishment and the requirement for banking, licence before operation. It is under this that the reform policy of raising the minimum capital base from initial capital to N25 billion which has been in operation since 1st January, 2006. According to the Governor of Central Bank, only banks that could meet up with this requirement that would be allowed to hold public funds or participate in foreign exchange bidding.

My recommendation on that is this, the Central Bank of Nigeria should not at all course relax its efforts to dare succumb to the demand, and yearnings of the bank management teams in relaxing the amount of the capital base, furthermore, to use the (N600 billion) six hundred billion naira gathered from capitalization for investment portfolio[47].

[46] The Central Bank of Nigeria Act No. 24 of 1991, BOFID No. 25 of 1991, and the Failed Bank (Recovery of Debts) and other financial malpractices Decree, 1991
[47] See Iyoha M.A. & Unugbro A.O. (2002) International Trade and Finance, issues in Foreign Exchange

Another suggestion seen in sections 30 to 38B[48]. These sections deal with the supervision of other banks by the CBN With specific reference to section 30 of the Act, that states that: "There shall be appointed by the governor of the CBN an officer to be known as the Director of Banking Supervision which shall examine periodically the books and affairs of each bank under confidential cover, have a right of access at all times to the books of accounts and vouchers of banks; and also have power to obtain information arid explanation from directors, officers, ana managers of banks on matters pertaining to the performance 01 his (Director of Banking supervision) duties.

Further still, it is suggested that there should be a prohibition of gratification to any banking officers and the responsibility and liability of the bank's directors[49] in the form of receipt of commission, gift or any form of gratification by staff of banks for themselves or their relation in any course of their lawful employment as bank workers. The fine of N10,000 is payable, 3 years imprisonment or both. When these were adhered to with all seriousness, it deserved better for the economy.

This is simply because this is the greater canker sore eating so deep into the Nigerian economy, and this has been the major concern of the federal government since the coming on board of President Olusegun Obasanjo, 1999 to date[50].

Coupled with the above suggestions, the offences and penalties specified in part III of the Decree[51] include where a director, manager, officer or employee of a bank knowingly, recklessly, negligently, willfully or otherwise grants or approves a loan or advance or a guarantee without adequate security or collateral where contrary to the accepted practices or the bank's regulations with no security or collateral where security is normally required or with a defective security or collateral shall be with all seriousness.

In the like manner, the Economic and Financial Crimes Commission (EFCC) must be co-opted as part of the laws that guide the operations of the banking industry in the country, particularly in the area of enforcement procedure at the various Acts[52]. The researcher is again suggesting a kind of Scandinavian approach by the realists in the philosophy of law that could better enhance the performance of banking industry.

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management in the Nigeria Economy, page 110
[48] BOFID No. 25 of 1991 LFN
[49] Section 43 to 46 of the BOFID, 1991
[50] Governor Central Bank of Nigeria 92004) Tell Magazine, July 26 page 38
[51] Section 19 to 26 of the BOFID 1991

[52] Governor Central Bank of Nigeria (2004) Tell Magazine, July 26 page 38

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This kind of approach is societal oriented where the realists viewed law in a sociological form so that law will only serve its purpose when its carries along the societal needs in any economic and social reforms[53].

Conclusion

In every country of the world, money is the medium of exchange nearly in everything". The purpose money serves makes it to be the root of all evils, for safe keeping, banks emerged, and for proper and adequate record keeping and transactional involvement both municipally and internationally. With all these bring about the need to regulate the business of money, hence the various laws to guide banking industry in Nigeria and other countries. In the presence of all these rules and regulation's there comes about the enhancement of a consolidated economy for better Nigeria. Therefore, to achieve all these, the recommendations and suggestions put in place if ii is implemented, the country in the nearest future will be an epitome of portfolio investment in the banking industry world over.

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