A CONSPECTUS OF THE LAW ON DUD CHEQUES[1].

Introduction

On a very basic level, it is not unreasonable to expect that business relationships are forged and transactions executed with the aim of making profit. Usually too, such profits or monies realized are accessed in the form of liquid or real cash or via negotiable instruments** such as cheques and the like. Moreover, in our present age, the use of cheques is not limited to business transactions but encompasses a host of other varied scenarios where money is to move from person to person.

As matter of convention, a cheque is received in satisfaction of an outstanding financial obligation with the underlying full or substantial belief by the recipient or payee that the issuer or drawer possesses enough cash or balance in his account to defray the amount endorsed on the cheque and that same will be honoured once presented to the issuer's Bank. It is on this basis that the recipient of a cheque would usually not seek for any further guarantee before proceeding to the issuer's Bank to cash or withdraw the amount stated there in.

However, in most instances the cheque issued to the enthusiastic recipient is turned down by the issuer's Bank for varying reasons including the reason that the issuer does not have enough money in his account to pay the amount stated on the cheque, hence the cheque becoming a ***'dud or bounced cheque'***. This article seeks to bring to the fore the position of the law on the issuing of such cheques. As a necessary corollary to this objective, the accruing civil and criminal liability for issuing such cheques would be evaluated with other relevant ancillary issues relevant to the proposed discourse.

What is a Cheque?

The Black's Law Dictionary[2] defines a cheque as a draft signed by the maker or drawer, drawn on a bank, payable on demand and unlimited in negotiability.

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[2] Bryan A. Garner , Black's Law Dictionary (9th edn., Thomson Reuters 2009)

More elaborately, a cheque is an unconditional order in writing addressed by an account holder (an owner and user of an account, also known as the drawer) to a bank (the bank that created, manages and administers the account and issued the cheque booklet also known as the drawee) signed by the "drawer", requiring the banker (the drawee) to pay on demand a sum certain in money or to the order of a specified person or bearer (also known as the payee)[3] As a predominantly used negotiable instrument[4], a cheque is defined also in Section 73 of the Bills of Exchange Act[5] as a bill of exchange drawn on a banker payable on demand.

With unmistakable precision, the Supreme Court in ***Bolanle Abeke v The State***[6]; per Niki Tobi JSC defined a cheque as *"a written order to a bank to pay a certain sum of money from one's bank account to oneself or to another person. It is for all intents and purposes an instrument for payment. It metamorphoses into physical cash on due presentation at the bank and that makes it legal tender."*

More importantly, a dud cheque (also called a bad or bounced cheque) is defined by the Black's Law Dictionary[7] as a cheque that is not honoured because the account either contains insufficient funds or does not exist. In other words a dud cheque is a cheque that cannot be paid because the person who wrote is has no money or not enough money in their bank account.[8]

[3] *Onyekachi Umah Esq,* 'Bounced or Dud Cheque and its legal Consequence in Nigeria' (learn Nigeria laws, 5 March 2016) <https://learnnigerianlaws.com/index.php/criminal-law/8-bounced-or-dud-cheque-and-its-legal-consequence> accessed 5 September 2018.

[4] A negotiable instrument is a signed document that promises a sum of payment to a specified person or the assignee. The payee, who is the person receiving the payment, must be named or otherwise indicated on the instrument. A negotiable instrument is a transferable, signed document that promises to pay the bearer a sum of money at a future date or on demand. *Definition of negotiable instrument* <https://www.investopedia.com/terms/n/negotiable-instrument.asp> accessed 5 September 2018

[5] CAP B8 LFN 2004

[6] ***(2007) 9 NWLR (Pt.1040) 411 S.C., 3 S.C. (PT 11) 105***

[7] Bryan A. Garner; *Supra*

[8] *Definition of dud Cheque* < http://lexicon.ft.com/Term?term=dud-cheque > accessed 5 September 2018

Applicable laws:

The primal legislations relating to cheques generally and the issuance of dud cheques in particular include; The Bills of Exchange Act[9], The Dishonored Cheques (Offences) Act[10] and The Economic and Financial Crimes Commission (Establishment) Act[11]

Liability for Issuing Dud Cheques

The issuance of cheques roll into active interaction a web of legally created obligations and rights between the account holder or drawer, the bank or drawee and the recipient of the cheque or Payee. Consequently, our Apex court has stated in no uncertain terms that there exist legal inferences that arise once a cheque is issued. In the words of the Court;*"the issuance of a cheque has certain connotations in law. A cheque issued by a drawer and accepted by the drawee serves two purposes. One is that of documenting the particular transaction. The other is that, it is a medium of payment, the issuance of which has far reaching implications in law."*[12]

In the light of the implications that invariably arise when a cheque is issued, the law expectantly imposes both civil and criminal liability for the issuance of dud cheques. This is understandably so because indeed Cheques are not and should not be issued for the fun of it[13]. In fact, on a macroeconomic scale, incidences of the issuance of dud Cheques are known to have a negative ripple effect on the financial sector of the economy. This has led to the Central Bank of Nigeria (CBN) coming up with various initiatives to halt its continued prevalence.

[9] CAP B8 LFN 2004
[10] CAP D11 LFN 2004
[11] The EFCC Act is relevant to this discourse on dud cheques only to the extent that the Commission is by law mandated to investigate all financial crimes including the issuance of dud cheques *see* ***Section 5(1)(b) of the Act***
[12] ***Abeke v State*** *(Supra).*
[13] ***ABRAHAM v. FRN*** *(2018) LPELR-44136(CA)*

Criminal Liability for Issuing Dud Cheques

Issuing dud cheques is a criminal offence by virtue of the Dishonoured Cheques (Offences) Act; ***Fajemirokun v Commercial Bank Nigeria Ltd***[14]. The Act makes it an offence for any person anywhere in Nigeria to induce the delivery of any property or to purport to settle a lawful obligation by means of a cheque which when presented within a reasonable time[15] is dishonoured on the grounds that no funds or insufficient funds were standing to the credit of the drawer of the cheque[16].

Particularly, Section 1(1)(a) and (b) of the rather concise Act provide that;

> *Any person who-*
> *(a) obtains or induces the delivery of anything capable of being stolen either to himself or to any other person; or*
> *(b) obtains credit for himself or any other person, by means of a cheque that, when presented for payment not later than three months after the date of the cheque, is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn, shall be guilty of an offence...*

Affirming the above, the Supreme Court has stated emphatically thus; "In the first place issuance of Dud Cheque is a criminal offence under Section 1 of the Dishonored Cheques (Offences) Act CAP D 11 Laws of the Federation of Nigeria 2004..."[17]

The Act stipulates a penalty of two years imprisonment for convicted individuals without an option of fine and a fine of not less N5,000 for corporate bodies upon conviction for the offence.

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[14] ***(2009) LPELR-1231(SC)***
[15] The Act limits this 'reasonable time' to a duration of not later than three months after the date on the cheque by the provision of Section 1(1) b
[16] See the preamble to the Act
[17] ***Fajemirokun v Commercial Bank Nigeria Ltd*** *(Supra)*.

Furthermore, Section 2 of the Act provides for the lifting of the corporate veil where the accused is a corporate body. It provides that:

> 2. *Where any offence under this Act by a body corporate is proved to have been committed with the consent of or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer, servant or agent of the body corporate (or any person purporting to act in any such capacity), he, as well as the body corporate, shall be deemed to be guilty of the offence and may be proceeded against and punished in the same manner as an individual.*

More so, in the decided cases of ***Bolanle Abeke vs. The State***[18] and ***Ayub-khan vs. The State***[19] the Court stated the ingredients of the offence of issuance of dud cheque as follows;

(a) that accused obtained credit by herself

(b) that the cheque was presented within three months of the date thereon: and

(c) that on presentation the cheque was dishonoured on the ground that there was no sufficient funds or insufficient funds standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn.

As to the burden or onus of proof in a trial for the offence under consideration that is the offence of issuing dud cheques, the law remains unchanged and trite. Consequently, an accused person or defendant is presumed innocent and the burden of proof of the criminal allegation rests squarely on the prosecution. The prosecution is therefore laden with the burden of establishing the guilt of the accused person beyond reasonable doubt in compliance with Section 35 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).[20] The prosecution will readily achieve this result by ensuring that all the necessary and vital ingredients of the charge or charges are proved by evidence"[21].

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[18] *Supra*

[19] *(1991) 2 NWLR (Pt. 172) 127 at 143*

[20] Per Oyewole JCA in ***Okon v. State*** *(2017) LPELR-42639(CA)* See also ***Alake vs State*** *(1991) 7 NWLR (PT 205) 567 at 591*

[21] See also ***Ogundiyan vs. The State*** *(1991) 4 SCNJ 44*, ***Alor vs The State*** *(1997) 4 NWLR (pt 501),* ***Esangbedo vs The State*** *(1989) NWLR (pt 113) 57*. Per Kutigi JSC in ***Yongo vs. C.O.P****. (1992) 4 SCNJ 113;*

On the fundamental issue of jurisdiction, by the express provision of Section 3(1) of the Act, the offence of issuance of dud cheques is triable summarily by the High Court of the State where the offence was committed.

Available Defences to an accused person on trial for issuing dud cheques

It is unarguably expected that an accused person is entitled to respond to the charges brought against him in a Court of law. The Constitutionally guaranteed right to fair hearing emphasizes this much as seen in Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Flowing there from, Section 1(3) of the Dishonored Cheques (Offences) Act provides to the effect that an accused person will not be guilty of an offence under the section if he proves to the satisfaction of the Court that at the time he issued the cheque he had reasonable grounds for believing and did in fact believe that it would be honoured if presented for payment within the period of not later than 3 months from the date of issuing the cheque.

Additionally, apart from the defence expressly stated by the Act, the accused person is at liberty to raise other probable defences in response to the charge against him. In respect of any further defences canvassed by the accused person, the law is settled that a Court of Law is duty bound to consider the defence put forward by the accused person no matter how weak or stupid it might be; ***Emenegor v State*** [22]

[22] *(2010) ALL NWLR (Pt. 511) 884 at 933. Akpabio vs The State (1994) 7 NWLR (pt 359) 671* where it was held: "In criminal trials, the Court is bound to consider not only those defenses specifically raised by the accused but also all such evidence and defenses which favorably avail him.

Civil Liability for Issuing Dud Cheques

Apart from the criminal liability that arises from the issuing of a dud cheque, the law also renders the drawer of such a cheque liable to civil action at the instance of the bearer or payee of such a cheque.

Section 47(2) of the Bills of Exchange Act provides for this by stating unequivocally as follows;

> *Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and endorsers accrues to the holder.*

Section 55 (1)(a) of the Bills of Exchange Act lends further credence to this point of law by providing as follows;

> *The drawer of a bill by drawing it -*
> *(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or an endorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;*

By the obvious implication of Section 55, the drawer and endorsers of a bill are jointly and severally responsible to the holder or payee for its due acceptance and payment[23]. If the cheque is dishonoured, the holder may enforce payment from the drawer or issuer, or an endorser, or the acceptor, or all or any of them at his option[24].

As a necessary corollary to Sections 47 and 55 of the Act, Section 57 provides for the measure of damages that may be recovered by 'the holder of the cheque[25] from any party liable on the bill' (in part) which according to the Section includes; (a) The amount of the bill. (b) Interest thereon from the time of presentation for payment if the bill is payable on demand and from the maturity

[23] ***Rouquette v Overmann*** *(1875) L.R. 10 Q.B 525 at p 537*

[24] Chalmers on Bills of Exchange 12th Edition by Barry Chedlow, London, Stevens and Sons ltd. 1952 page 173

[25] The Section reads 'Bill' instead of 'cheque' expressly, but it is important to note that a cheque is a bill of exchange under section 2(1) Bills of Exchange Act. This also applies to Section 55 of the Act earlier mentioned.

of the bill in any other case. (c) The expense of noting or when protest is necessary and the protest has been extended, the expenses of protest.

Despite the express provisions of the law in respect of the civil liability of a person issuing a dud cheque, there is an obvious dearth of decided cases in this realm of the law. This seems to be the predominant occurrence due to the preference by business partners to maintain an amicable business relationship and prevent the long tension ridden experience of litigation which most often than not breaks down such peaceful relations.

Wrongful Dishonour of Issued Cheques.

A rather distasteful scenario often occurs where an account holder or drawer has sufficient amount in his account and all other requirements to a cheque are present without a countermand order[26] on the basis of which with full confidence he issues a cheque only for same to be turned down by his bank. This amounts to a wrongful dishonour[27]

The total import of a wrongful dishonour of issued cheques can only be fully appraised against the underpinning of the legal position regarding the bank-customer relationship. It is the law in this regard that the relationship between a banker and his customer is contractual in nature. It is that of a debtor and creditor or principal and agent[28]

The law in this regard has been consistently restated without controversy to the effect that; the legal relationship between a bank and a customer based on contract is that of creditor and debtor, or principal and agent. The creditor/principal being the customer and debtor/agent being the bank. The contractual relationship imposes a duty of care on the bank, the breach of which will impose on the bank a liability for negligence. The role of bankers and their predominant business is the receipt of monies on current or deposit account and the payment of cheques drawn by as well as the collection of cheques paid by a customer. The receipt of money from and on account of its

[26] A Countermand is simply defined as an order to the contrary of a previous one. More importantly, Section 75 Bills of Exchange Act any cheque drawn on the bank can be countermanded by the person who issued it. In such a case the bank has authority to dishonour the cheque.

[27] Section 47(1) Bills of Exchange Act provides for dishonour by non-payment while Section 43 provides for dishonour by non-acceptance

[28] ***Yesufu v A.C.B*** *(1981) 1 SC 74*

customer by a bank constitutes the banker, the debtor of the customer and the banker undertakes to pay only part of the money thus due from him to the customer against written orders of the customer. The relationship is equally that of principal and agent so that a cheque drawn on the banker by the customer represents the order of the principal to his agent to pay out of the principal's money in his hands, the amount stated on the cheque to the payee endorsed on the cheque[29].

It is against this backdrop of the extant legal relationship between the banker and customer that the law regards the banker as being duty bound to honour and pay cheques drawn on it by the customer as long as it has in its account at the material time, sufficient and available funds for the purpose. Therefore, when there is sufficient and available fund in customer's account and a cheque is presented but payment is refused, the holder is entitled to treat the cheque as dishonoured[30]

Refusal to honour the cheque in this instance amounts to a breach of contract for which the banker is liable in damages for breach of contract, libel or defamation, negligence or wrongful dishonour of Cheque[31]

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[29] See ***Afribank (Nig.) Plc v. A.I. Investment Ltd*** *(2002) 7 NWLR (Pt. 765) 40. (2003) FWLR (Pt. 141) 1841****, Access Bank Plc v. Maryland Finance Company and Consultancy Service*** *(2005) All FWLR (Pt. 251) 305, (2005) 3 NWLR (Pt. 913) 460;* ***Balogun v. N.B.N****. (1978) 3 SC 155*

[30] A host of authorities have made this point a rather undisturbed position of the law; In ***Allied Bank (Nig.) Limited Vs. Akubueze*** (1997) 6 NWLR (Pt 509) 374; (1997) 6 SCNJ 166 the Supreme Court held, inter-alia, that a bank is bound to honour cheque issued by its customer if the customer has enough funds to satisfy the amount payable on the cheque in respect of the relevant account and that refusal to honour the cheque will amount to a breach of contract which would render the banker liable in damages. In the same vein, in ***Union Bank of Nigeria Limited Vs. Nwoye*** (1996) 3 NWLR (Pt 435) 135, the Supreme Court held that the liability of a banker to its customer arises in contract when a banker refuses to pay a customer's cheque when the customer holds in his account an amount equivalent to that endorsed on the cheque. See also ***Union Bank Of Nigeria Plc. v. Chimaeze*** LOR (11/4/2014) SC ***Jigna Farms Ltd v. Ubn Plc*** (2016) LPELR-40231(CA), ***Standard Trust Bank Ltd v. Anumnu*** (2008) 14 NWLR (106) 125, 150-151 and ***Uba v. Union Bank Plc*** (1995) 7 NWLR (405) 72, 8

The relationship between the banker and his customer is that of debtor and creditor. In other words, money deposited with a banker by his customer in the ordinary way, is money lent to the banker with a superadded obligation on the part of the banker to honour the customer's cheque so long as there are assets of his in the banker's hands. See Pott & ors. v. Clegg 16 M & W 321 (153 E.R. 1212) and Marzetti v. Williams 109 E.R. 842 stated in ***Allied Bank Ltd v Akubueze*** (Supra)

[31] see ***Hirat Aderisola Balogun v National Bank Nig Ltd*** (1978) All N.L.R 63., ***Citibank v. Ikediashi*** (2014) LPELR-22447, ***Osawaye v. National Bank*** (1974) NCLR 474 and ***Allied Bank of Nig. Ltd. v. Akubueze*** (1997) LPELR-429 (SC);

It is fundamental that for the bank to the liable for wrongful dishonour of a cheque, the customer must of necessity have sufficient amount in his account to cover the value of the cheque issued by him to be drawn on his account with the Bank. Therefore, the Bank will not be liable for the dishonouring of a Customer's Cheque where the Customer does not have enough funds to cover the amount as endorsed on the Cheque issued by him[32]

Conversely, when a customer presents a cheque in excess of his account balance with the bank and the bank pays the cheque, the presentation of the cheque has been held to amount to a request for an overdraft. In ***A.C.B Ltd v Egbunike***[33] the Court of Appeal cited with approval and applied the above stated principle as enunciated in the English case of ***Cuthbert v Roberts Lubbock & Co.***[34] where Cozens-Hardy M.R. said;

If a customer draws a cheque for a sum in excess of the amount standing to the credit of his current account, it is really a request for loan and if the cheque is honoured, the customer has borrowed money'

In an action by the customer against his banker for breach of contract arising from the wrongful dishonour of a cheque, as earlier stated, the customer would claim damages[35]

GTB v. Dieudonne (2017) LPELR-43559(CA); ***Dauda v Access Bank*** (2016) LPELR 41143(CA); ***A.C.B Ltd v Dike*** (Supra). In ***African Nig Plc V A. I. Investment Ltd*** (*Supra),* the court stated inter alia that *'Where a banker wrongfully dishonours a customer's cheque the successful plaintiff is entitled to damages arising from the breach of contract and general damages for libel'.* Also in ***S.T.B. Ltd. v. Anumnu*** (2008) 14 NWLR (106) 125, 150-151; the Court of Appeal stated that; *a claim could be made in the alternative contemplating an action for breach of contract and libel.*

[32] See the relevant dictum of GEORGEWILL, J.C.A. in ***GTB v. Dieudonne*** (2017) LPELR-43559(CA)

[33] (1988) 4 NWLR pt 88 p 350 at p 365

[34] (1909) 2 Ch. 226 at 233

[35] What then is damages generally? Damages are money claimed by or ordered to be paid to, a person as compensation for loss or injury. In other words, damages are the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong. General damages are damages that the law presumes follow, from the type of wrong complained of and do not need to be specifically claimed. While special damages are damages that are alleged to have been sustained in the circumstances of a particular wrong. When it is general damages, it relates to the monetary award for injuries or loss which is incalculable in exact monetary valuesuch as pain and suffering, shortened life expectancy, harmful effect on the Plaintiffs reputation. This relates to the injury to the proper feelings of dignity and pride of the Plaintiff. See: Lord Delvin in ***Rookes v. Barnard*** (1964) 2 W.L.R. 269; ***Oshinjirin & Ors. v. Alhaji Elias & Ors.*** (1970) All NLR 158. General damages therefore is such that the Court awards in the circumstance of a case in the absence of any yardstick with which to access the award except of course by presuming the ordinary expectations of a reasonable man. See: ***Lar v. Stirling Astaldi Ltd.*** (1977) 11/12 (SC.) 53; ***Yalaju-Amoye v. Associated Registered Engineering Contractors Ltd. & Ors (A.R.E.C.)*** (1990) NWLR (Pt. 145) 422; (1990) 5 SC. 157. To be awardable, special damages must be specifically

When accessing the measure of damages to be awarded, the rule in ***Hadley v Baxendale***[36] is usually not applied to cases of breach of contract by bankers to its customer as a cheque is a bill of exchange under section 2(1) Bills of Exchange Act.

Rather, the measure of damages to be awarded as provided for in section 57 of the Bills of Exchange Act for wrongful dishonour of cheques shall be deemed to be liquidated damages which include: (a) The amount of the bill. (b) Interest thereon from the time of presentation for payment if the bill is payable on demand and from the maturity of the bill in any other case. (c) The expense of noting or when protest is necessary and the protest has been extended, the expenses of protest. The damages permissible here is therefore not in the measure of ordinary general damages but liquidated damages[37]

Without prejudice to the foregoing, as aptly stated by the court of Appeal in ***S.T.B Ltd v Anumnu.***[38] In recent times and in majority of cases the courts have not only exercised their discretion in actions for breach of contract by a banker to its customer in favour of awarding

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claimed and proved. See Black's Law Dictionary, Ninth edition, pages 445, 446 and 448; ***Shell Petroleum Development Co. (Nig.) Ltd. Vs. Teibo & Ors.*** (1996) 4 NWLR (Pt.445) 657 at 680; ***Iyere Vs Bendel Feed & Flour Mills Ltd*** (2008) 18 NWLR (Pt.1119) 300; (2008) 12 SCM (Pt.1) 66 at 96; UNION BANK OF NIGERIA PLC. V. CHIMAEZE (Supra) See the dictum of Onyemenam J.C.A in ***Duada v Access Bank*** (2016) LPELR 41143 (CA) pp 47 -50 Paras E –A.

[36] 1854 9 Exchequer 341; the rule in ***Hadley v Baxendale*** is that the party in breach of contract is only liable in damages in the amount which flows directly and naturally from his failure to keep his own part of the contract provided such damages could reasonably have been within the contemplation of the parties at the time when the contract was made - ***Salami v Savannah Bank*** (1990) 2 NWLR (PT 130) 127 (CA).)

[37] A liquidated damage is a debt or either specific sum of money usually due and payable and its amount must be already ascertained or capable of being ascertained as a matter of arithmetic without any other or further investigation. Whenever the amount to which a plaintiff is entitled can be ascertained by calculation or fixed by any scale of charges or other positive data it is said to be liquidated or made clear. Again where the parties to a contract as part of the agreement between them fix the amount payable on the default of one of them or in the event of breach by way of damages such sum is classified as liquidated damages. It is in the nature of a genuine pre estimate of the damage which would arise from a breach of the contract so long as the agreement is not obnoxious as to constitute a penalty and it is payable by the party in default. The term is also applied to sums expressly made payable as liquidated damages under a statute. ***Maja V Samouris*** 2002 7 NWLR pt 765 pg 78 ***Iwueke V I. B. C.*** 2005 17 NWLR pt 955 pg 447 ***Befareen Pharm. Ltd V African Int. bank Ltd*** 2005 17 NWLR pt 954 pg 230 . The dichotomy of special and general damages which is not applicable to cases of breach of contract also extends to cases of dishonoured cheques. ***MPMC v. Adewunmi*** (1972) 1 ALL NLR (Pt. 2) 433, ***Swiss Nigeria Wood Industires Ltd. v. Bogo*** (1970) 1 ALL NLR 443 (1970) 6 NSCC 235; (1971) 1 UILR 337, ***Maiden Electronics Works Ltd. v. A-G., Federation*** (1974) 1 S.C. 53; (1974) 1 ALL NLR 79; (1974) 1 NMLR 225. ***Union Bank of Nigeria v. Scpok Nigeria Ltd.*** (1998) 12 NWLR (Pt. 578) 439, ***UBA Ltd. v. Ademuyiwa*** (1999) 11 NWLR (PT. 628) 570." Per Adekeye JCA in ***S.T.B. Ltd. v. Anumnu*** (Supra)

[38] *Supra*

substantial damages, but they are also now awarded "at large" "within reason" of any such sum as they consider in the circumstance of the breach of contract or dishonour of cheque warrant although there is no proof of actual loss[39].

Furthermore, in this class of cases, the Apex Court has drawn a distinction between traders or trading customers[40] and non -trading customers. As regards trading customers or customers in business, the law presumes injury to them without proof of actual damage and they are entitled to substantial damages although they neither pleaded nor proved actual damage. This is because of the of the damage deemed to be necessarily done to their credit, and/or reputation in business, by the unjustified action of the bankers; per se the act could imply, unjustifiably, insolvency or dishonesty on the part of the person engaged in business; ***Wilson v. United Counties Bank Ltd***.[41] cited with approval in ***Allied bank Nig Ltd v. Akubueze***[42] where the dictum of Lord Birkenhead, L.C. was quoted thus; "The ratio decidendi in such cases is that the refusal to meet the cheque, under such circumstances, is so obviously injurious to the credit of a trader that the latter can recover, without allegation of special damage, reasonable compensation for the injury done to his credit."

Conversely, a person who is not a trader or engaged in business is only entitled to nominal damages for the wrongful dishonour of his cheque. He is not entitled to recover substantial damages for such wrongful dishonour of his cheque, unless the damages which he suffered is alleged and proved as special damages[43].

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[39] See particularly ***Salami v Savannah Bank Nigeria limited*** (Supra)., ***Union Bank of Nigeria Plc v. Scpok Nigeria Ltd*** (1998) 12 NWLR (Pt. 578) 439; ***U.B.A. Ltd v. Ademuyiwa*** (1999) 11 NWLR (Pt. 628) 570

[40] In ***Hirat Balogun v. The National Bank of Nigeria Ltd.*** (*Supra*) the Supreme Court gave preference to the expression '*persons engaged in business*' rather than adopt a restrictive interpretation of the word 'traders' and saw no reason why the rule should not extend to estate agents, auctioneers, solicitors in practice, stockbrokers and possibly all class of commercial agents.

[41] (1920) A.C. 102 at 112 H.L

[42] *(Supra)*

[43] According to the Supreme Court in ***Hirat Balogun v. The National Bank of Nigeria Ltd. (Supra)*** ; this statement of the law is better understood when it is remembered that in an action for breach of contract, as this is, damages are not at large and a plaintiff must always plead and prove his actual loss otherwise he is entitled to nominal damages only. Two exceptions to this general rule are known. One is an action for breach of promise to marry and the other where a trader who is in funds at his bank has cheque dishonoured wrongfully. See ***Gibbons v. Westminster Bank Ltd*** (1939) 2 K.B. 882 at 888.

Moreso, the case of ***Marzetti v. Williams***[44] has been repeatedly held as good law by the Supreme Court on the issue of the quantum of damages to be awarded to an aggrieved customer for the wrongful dishonour of cheques issued by him. In ***Allied Bank Nig Ltd v Akubueze***[45] the Supreme Court per E. O. Ogwuegbu JSC while referring to the case and giving a concise statement of the law stated thus:

In Marzetti' s case (supra) , a trader sued his bankers for wrongful dishonour of cheque although there was no evidence to show that the plaintiff sustained any injury from the banker's mistake. Lord Tenterden C.J. remarked:-

"I cannot forbear to observe that it is a discredit to a person and therefore injurious in fact, to have a draft refused payment for a small sum, for it shows that the bankers had very little confidence in the customer. It is an act particularly calculated to be injurious to a person in trade."

That case, therefore, puts it beyond doubt that where a banker without justification dishonours his customer's cheque, he is liable to the customer in damages for injury to his credit and if the customer is also "in trade" at the time of such dishonour, then damages for such injury will be at large and a judge or jury may within reason award substantial damages although there is no evidence from such a customer of any actual damage suffered by him. In the case of a non-trader, the converse is the law i.e., that in an action by a "non-trader" for wrongful dishonour of his cheque by his bankers, only nominal damages should be awarded unless the non-trader pleaded and proved actual damage in which case substantial damages may be awarded. See ***Gibbons v. Westminster Bank Ltd.*** *(1939) 2 K.B. 882 at 888 .*

Furthermore, in a civil action for wrongful dishonour of cheques, the burden of proof lies on the plaintiff who alleges to show that at the time the cheque was presented he had sufficient funds in his account. Thereafter the burden shifts to the Bank to show that there was a legal impediment to justify the dishonour of the cheque[46]

[44] 109 E.R. 842
[45] (Supra)
[46] ***A.C.B Ltd v Dike*** (*Supra*).

In giving the rationale for the award of substantial damages in this class of cases, the Court has stated that damages awarded in this class of claims is aggravated not only for the inconvenience caused the claimant but injury done to his reputation, credit, loss incurred following the wrongful dishonour of his cheque and for his overall anguish as well. The object of the award made the customer in these cases is to put him, as far as possible, in the position he would have been but for the negligence of the bank in dishonouring his cheque; ***Agbanelo v. Union Bank of Nigeria***[47]

Legal implication of Cheques marked and returned - 'Drawer's attention required'

In other instances, rather than outrightly refuse to honor a cheque, bankers adopt the practice of marking the cheque with the words *'Drawer's attention required'* or a phrase of similar import. This practice is not without its legal implications as the Courts have pronounced on it. In this regard, the law as observable through a host of judicial authorities regards such markings or indications as defamatory if the customer has sufficient funds in his account.

The Court of Appeal has sustained this position of the law by stating that "the words *'refer to drawer'* when endorsed on a cheque presented for payment amounts to a statement by the bank that *"we are not paying, go back to the drawer and ask why or else go back to the drawer and ask him to pay"*. Equally, the phrase; *'Drawer attention required'* connotes non availability of funds in the customer's account which will equally be wrongful and defamatory to return a cheque so marked if the customer has adequate funds in his account. Similarly, 'Drawer confirmation required' means let the customer confirm if he is ready to take an extra debit or

[47] (2000) 4 SC (Pt 1) 233 at 245. The measure of damages in an action against a banker for breach of contract to honour a cheque that has been drawn by a customer against his account would depend on the status or station in life of the customer. If the customer is able to prove that by reason of the said breach he has suffered considerable damages to his reputation and generally to his business he will be entitled to substantial damages; ***Access Bank Plc v. M.F.C.C.S.*** (2005) All FWLR (Pt. 251) 305, (2005) 3 NWLR (Pt. 913) 463.

indebtedness in his account. It may signify that the level of his debit balance can no longer be tolerated[48].

The Court has also maintained that there is no distinguishing between the phrases; *'Drawer confirmation required'*, *'drawer attention required'*, and *'refer to drawer'* as they all mean the same thing in banking operations and are warnings to dishonouring a cheque. A cheque is returned unpaid after being so marked. The connotation to a third party is that there is no fund or sufficient fund in the account to accommodate the dishonoured cheque[49].

In the earlier Supreme Court case of ***Hirat Balogun v. The National Bank of Nigeria Ltd.*** the court appreciated (though as a 'moot point') that the endorsement *"refer to drawer"* (RID) upon a dishonoured cheque could be considered defamatory of a customer and it further carries the imputation that the customer is dishonest and untrustworthy[50].

Still sustaining this point of the law, the Court of Appeal in the much later case of ***A.C.B. Ltd v. Dike***[51] while referring to and following the precedent established in ***Hirat Balogun's Case***[52] and ***Allied Bank (Nig) Ltd v Akubueze***[53] regarded as libellous of the Appellant Bank to have endorsed the words *'refer to drawer'* on the cheques drawn by the respondent (a customer) and held that the respondent was entitled to damages.

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[48] ***A.C.B. Ltd v. Dike*** (2000) 5 NWLR (Pt. 656) 441 ***STANDARD TRUST BANK LTD V. ANUMNU*** (2008) 14 NWLR (106) 125, 150-151 and ***UBA V. UNION BANK PLC*** (1995) 7 NWLR (405) 72 see the dictum of Joseph Ekanem JCA in ***JIGNA FARMS LTD v. UBN PLC*** (2016) LPELR-40231(CA)

[49] ***JIGNA FARMS LTD v. UBN PLC*** *(Supra)*

[50] The Court stated as follows PER C. IDIGBE JSC; Although, apparently, a moot point, there is, however, authority for the view that the endorsement "RID" or "refer to drawer" upon a dishonoured cheque is defamatory of a customer; that view was certainly taken by Grantham J. In the case of ***Szek Vs. Lloyds Bank Ltd***. (unreported) but referred to (1) in 1098 Journal of Institute of Bankers P .123 and (2) at Pp.113 and 113 of Lord Chorley: Law of Banking Op. Cit. and (3) at P.56 note 65 of Gatley on Libel & Slander Op. Cit. That also was the view of the trail judge in ***Pyke Vs. Hiberman Bank*** (1905) I.R.195; and in ***Milward Vs. Lloyds Bank*** unreported 1924- Wright J. expressed the opinion, albeit, obiter that the endorsement "RIA", which means "return to the acceptor", on a Bill of Exchange could be defamatory. The imputation in these circumstances from either the very act of wrongful dishonour of the cheque where the customer has enough funds to meet the amount on the cheque, or, the endorsement "RID" thereon is, indeed, clear and it is that the customer is dishonest and untrustworthy. Can anything affect her credit or reputation, as a "person in business", and/or a solicitor in practice, more seriously?

[51] *Supra*

[52] *Supra*

[53] *Supra*

Quite elaborately the Court stated without equivocation that; 'None of the meanings of the Statement *'refer to drawer'* paint a very good picture of a man in business. The words do not inspire confidence in people who do business with the drawer of a cheque so endorsed. Consequently, the endorsement of *'refer to drawer'* on a cheque is libellous and attracts damages without proof of actual loss and particularly so if the endorsement is made by a Bank which unjustifiably places the drawer of the cheque in a position whereby the words could be used on him'[54].

Conclusion

This article has explored the subject of issuing dud Cheques with heavy reliance on case law and statutory provisions. Furthermore, the ancillary issues of the wrongful dishonour of cheques as well as the marking and returning of Cheques with the phrase *'Drawer's attention required'* or such other phrases of similar import have been discussed also.

In summary, it is a criminal offence to issue dud Cheques. Also, the recipient of such a cheque can sue the issuer or drawer of the cheque for damages which according to the law is calculated to include the amount on the cheque. Furthermore, as stated in the body of this work, a Bank is under an obligation to honor its customer's cheques when there is sufficient funds in the later's account with the Bank. Where a Bank wrongfully dishonours a customer's cheque, the customer is entitled to sue the Bank for damages for breach of contract, libel, negligence or wrongful dishonour of cheque.

[54] *Supra*