INTRODUCTORY BACKGROUND:

A person who opens an account (with a financial institution) enters into a contractual relationship with such a bank. The precise terms of this contract depend upon the type of account. Traditionally, account opening with a bank could be in the form of **Current, Savings** and **Fixed Deposit** account. However, by extension, other variant (types) of accounts could also be opened and operated with the form of "hybrid" features of the traditional types of account. Further, due to high technological invention and innovation, modern types of electronic accounts (i.e Plastic card accounts) (eg WUMT, MasterCard, VisaCard, etc) are in use today.

The specific various terms and conditions applicable to the contract will depend upon the rules established to govern the operation of the account. For example, when an account is operated by a plastic card, a personal identification number (PIN) and a written terms of the contract will be contained in the Conditions of Use, generally given to the customer (perhaps contained in a pamphlet) when the account is opened, or whenever the conditions change.

(Note that Bankcard, Mastercard and Visacard are all brand names of credit cards. Bankcards are issued by the major banks themselves while the Mastercard and Visacard organisations operate on a franchise basis. For an annual fee, and subject to membership rules, those organisations allow banks to use the brand names).

The Banking regulation requires that banks are expected to provide all customers with the terms and conditions, in writing, which apply to their contract, regardless of the type of account they have. The code requires banks to make full *disclosure* to customers of all terms and conditions which apply to each contract for a banking service. These written terms and conditions should be provided before or as soon as practicable after, the banking service has been provided. Among other things, the terms and conditions must contain details of all fees and charges that apply, the method by which interest is calculated, and repayment details of loans by the bank. Any variations to the terms and conditions must be either advertised in the media, or directly communicated to the customer. In the event of the introduction of a new fee or charge, the bank must give the customer written notice of the change thirty days before it is to take place.

Therefore, the basic contractual relationship between the bank and customer is one of ***debtor*** and ***creditor***. In one form, the customer by depositing money into an account is legally loaning the money to the bank. There are **two elements** in this basic relationship. The customer has no say about the

way the bank uses the funds, and should the bank fail and be unable to meet its obligations, the customer is an unsecured creditor.

However, on the contrary, the "debtor – creditor" nature of banker – customer relationship could also result from the bank (creditor) lending money to the customer (debtor). In this instance, the appraisal criteria relating to the 5 C's of credit should be well understood applied. These criteria are as follows: **Character, Capacity, Capital, Collateral** and **Conditions**.

ETHICAL CONDUCT & STANDARD OF BANKERS IN BANKER – CUSTOMER RELATIONSHIP:

Consequent upon the contractual relationship which exists between a customer and a Bank, a banker is under obligation to uphold the following standards:

1. Must thoroughly know and understand the type of customer with which the Bank enters banking relationship. I.e KYC and KYCB principles must be upheld at all times.
2. Maintain highest level of **integrity**, which should be devoid of all forms of dubious or doubtful behaviours.
3. Must keep all data supplied by the customer, or all such information as may be processed during the course of the contract, in strict confidence at all times.
4. Ensure the **protection** of both the customers' and Bank's interests. Both interests must be kept within the purview of the laid down policies and procedures of the bank.
5. Safeguard the assets (especially funds, etc) of the Bank.
6. Conduct due diligence in all transactions that is being processed.
7. Must uphold relevant laws that govern banking and money laundering regulations at all times.
8. Must avoid all acts that could engender "conflict of interest" between his bank's business and his personal life's ambitions.

KNOW YOUR CUSTOMER (KYC) PRINCIPLE:

In view of the incidence of reported criminal transactions in banks and other financial institutions emanating from both within and outside the country and consequently the need for the banks to avoid being used by criminal elements, the CBN had issued circulars to all banks emphasizing the need to have proper knowledge of their customers before establishing business relationships with them. The latest **Know Your Customer Manual (KYC)** which was issued to banks and other financial institutions required banks to:
(i) obtain **sufficient identification evidence and verifying them** before establishing business relationship;

(ii) take reasonable steps to update information on their customers from meetings/discussion and communication with customers and make same available to the Money Laundering Compliance Officer or even the regulatory authority; and
(iii) view identification evidence obtained at the outset against inherent risk in the business or service desired.

Obtaining sufficient information and making use of them enables a bank to:

- avoid being used to launder the proceeds of crime
- minimize the risk of being used for illicit activities.
- be protected against fraud, as well as reputation and financial risks.
- recognize suspicious activities.

Further, in the interest of transparency in financial transactions, banks should determine the true identity of all the customers requiring their services in accordance with CBN circular Ref BSD/DO/CIR/V.1/01/24 of 28/11/2001. Regulatory reports comments will, among others, highlight cases where:

- accounts are kept in anonymous or obviously fictitious names;
- proof of incorporation of corporate bodies are not verified with the Companies Affairs Commission (CAC);
- the identity and authority of any person purporting to act on behalf of any customer is not verified;
- information on the true identity of the persons on whose behalf an account is opened or transaction is conducted is not obtained;
- records are not maintained for a minimum period of 10 years after cessation of any relationship with any customer;
- the sources of funds of any politically exposed person are not investigated before the person is accepted as a customer; special attention is not paid to complex and unusually large transactions through recording in writing and examination; there are weaknesses in the application of effective customer identification procedures and on-going monitoring standards for telephone and electronic banking customers;
- the bank fails to undertake regular reviews of existing records of customers especially when there is a material change in the conduct of the account.

Finally, the issue of **personal location report** and **Business Location report** should be taken seriously. The policy of the bank expressly discourages allowing **contract staff** to conduct Location report. It is to be done by permanent member of staff. The policy reinforces the need for the **Account Officer** to physically verify the address of the customer with which the Bank conducts banking relationship. Under no condition should an *address location report* be written for which the physical confirmation /

verification of the address is not done. In the event of any "negative occurrence" on customer's account / transaction, if the address location of the concerned customer is subsequently discovered to be non-existent or false (which will make the customer not to be traceable) then the Account officer is usually held liable.

THE CUSTOMER'S OBLIGATIONS IN "CHECKING" ACCOUNT:

The customer, for example, must be careful in drawing his cheque. If the bank is misled into paying a cheque where the customer has not fulfilled their obligations, then the bank may debit the account and the loss will fall on the customer. So, for example, where a customer filled in only the numbers for the amount to be paid and left the writing blank so that it was easy for another person to 'raise' the cheque from a small amount to a large amount, the bank would be able to debit the account of the customer. The obligation to take care extends only to the circumstances surrounding the immediate drawing of the cheque. There is no obligation to take special care of the chequebook.

The second major obligation of the customer is to notify the bank of known forgeries. In one example, a man learned that his wife was forging his name on cheques, but did not notify the bank after she promised that she would not do it again. She did forge his name on further cheques. He was held liable for the amounts; since the bank would have taken precautionary measures had it known about the forgery. This duty extends only to known forgeries. There is no contractual duty to discover forgeries, even if this could be done simply by reading the periodic statement.

Finally, the customer, by law (on Dud cheque regulations), is under obligation **not to draw cheque on unfunded account**. This is a crime with applicable consequences. Bank's customers must be educated on the implication of **dud cheque**.

THE CONCEPT OF CONFIDENTIALITY IN BANKER-CUSTOMER RELATIONSHIP:

The issue of confidentiality is an essential feature of the concept of Bank-Customer relationship / service.

The obligations of confidentiality in relation to banking law emanates from the common law. The leading case in this area was **Tournier v National Provincial and Union Bank of England**. The bank had released information related to the plaintiff's debt to the bank to his employers, and

this subsequently led to his dismissal. The Court of Appeal confirmed that it is an implied term of the banker/customer contract that **the banker has a duty of secrecy**. {Remember the popular "oath of secrecy" that is usually executed at the time of every banker's employment documentation.

In the circumstances of the case under reference, it was found that the bank had breached its duty, and the court found for the plaintiff.

However, it was further stated that confidentiality may be breached:

i) Where disclosure is made under compulsion of law;

ii) ii) Where there is a duty to the public to disclose.

iii) iii) Where the interests of the bank requires disclosure.

iv) iv) Where the disclosure is made by the express or implied consent of the customer.

Therefore, the primary rule in banking law is that all information relating to the state of a customers account, or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account is confidential, only subject to the four Tournier exceptions

THE LEGAL NATURE OF THE BANKER- CUSTOMER RELATIONSHIP IN THE E-BANKING ERA AND THE ATTENDANT IMPLICATION

A. INTRODUCTION

Recent developments notably internet banking has never like before stretched well established banking rules, traditions, conventions, theories and practices to its very limit. Unless a con-temporal definition of established banking concepts are offered to meet the demands of a new era, the existing rules are bound to give way sooner or later. Support for such a redefinition could be found in the Court of Appeal decision in United Dominion Trust V. Kirkwood 1966 1 ALL.E.R 968.

This paper is an attempt to redefine basic banking concepts such as Banker, Customer, duties and liabilities and cloaked the Banker-Customer relationship with an appropriate toga in the E-banking era.

Internet banking or E-banking is a by product of our internet era.

E-banking itself deserves a definition. A starting point will be to define Internet itself. The internet is rightly described as a Network of Networks connecting millions of computers. By extension Internet Banking is Banking effected via the internet using electronic methods and procedure.

It is a more sophisticated form of banking than computer banking which was first introduced into Nigeria in the late 80's by SOCIETE GENERALE BANK LTD. SGBN. The essential feature being its REAL TIME ONLINE Nature which makes it possible for banking activities to be initiated and completed via the internet within seconds between parties thousand of kilometers apart who has never met before. Such a possibility was not foreseen by the common law, the lex mercatoria and by our legislature when drafting our BANK'S AND OTHER FINANCIAL INSTITUTIONS ACT (as amended) hereinafter called the BOFIA and allied legislations, such as the Money Laundering Act. Our law makers must be excused when viewed against the fact that the present possibility of E-banking was not even foreseen 10 years ago.

The questions that need appropriate answers in the E-banking era include but not limited to:, **Who is a Banker**?, **who is a Customer**?, **Of what nature is the Banker-Customer?, and when will the requirement of writing be said to have been satisfied in the E-Banking era? What rights survive against the Banker in the wake of E-Banking? What right survived against the Customer in the wake of E-Banking.**

B. "BANKER" REDEFINED

That the Banker-Customer relationship is the core relationship in the Banking arena does not need over-emphasizing. A starting point in a paper of this nature is to define who a Banker is.

Hart, in his law of Banking 4th Edition described a banker/bank as *"a person or company carrying on business of receiving monies and collecting drafts for customers subject to the obligation of honouring cheques drawn upon them by customers from time to time to the extent of the amount available on their current account"*

Further, **Pagets** law of Banking 8th edition relying on principle laid down by the Court Appeal in England in the case of Dominion Trust Ltd v. Kirkwood op. cit. submitted that *"A banker or bank is a corporation or persons (or group of persons) who accepts monies on current accounts, pays cheques drawn upon such accounts on demand and collects cheques for Customers."*

Lord Denning in the Dominion Trust Case acknowledge that "there are 2 characteristics usually found in bankers today".

(i) They accept money from and collect cheques for their customers and place this to their customers credit.

(ii) They honour cheques or orders drawn on them by their customers when presented for payment and debit the account accordingly.

That these criteria are not to be the sole criteria for defining a banker for all time and season was aptly stressed by the Court Appeal. The Court Appeal implies and rightly too that the definition of banker being offered then was in_the light of prevailing practices and therefore may need to be amended in the_future. **Now it is submitted is the time and season for a new definition.**

It appears it is still not difficult to recognize a Banker when we see one. A Banker basically accept money on deposits from Customers and honour cheques issued by those Customers when they are in credit or they have an overdraft facility enough to meet the amount started in the cheque.

Today's Bankers unarguably did far more than accepting deposits and honouring cheques. ***Our task here is not per see to define a banker by what he does but to ascertain who exactly will be regarded as a Banker, first within the Nigeria Jurisprudence and secondly in the E-banking context.***

Irrespective of what one does, it is clear the Nigerian BOFIA do not regard you as a banker unless and until you are:

i. a duly incorporated entity
ii. holding a valid banking licence issued under BOFIA..

See S.1 of Banks and other Financial Institutions Act 1991 (as amended).

Therefore, as far as the Nigerian situation is concerned individual cannot be a Banker, and this is exactly the position adopted by **Ademola CJN in R. V. Akwule & ORS 1963 1 ALL WLR 193** when he said and I quote:

"It is clear that a bank can operate in Nigeria only by a company or body corporate".

To continue to hold such a view in the E-Banking era with GLOBAL coverage will certainly spell disaster for the Nigeria Tax Authorities and the Nigeria based Consumers of E-Banking Services offered by Bankers operating from an offshore base who are neither incorporated entities nor holders of a Valid banking licence under BOFIA.

It is important that a Banker in the E-Banking Era should be defined according to his **activities** and not just according to his **structure**. It should not matter whether such a person is an individual or a partnership or a incorporated company. Any person regarded by his law of domicile as a Banker should be regarded as such by the Nigerian law, even though going strictly by our BOFIA, such do not qualify.

It needs be noted that the word "bank" and "banker" are usually used interchangeably to mean the same thing. This is in order and raises no alarm in many jurisdictions such as Switzerland and the United States where an individual can carry on banking activities. In the Nigerian context, however care need be exercised given the existence of **Sections 16 and 22 of the Chartered Institute of Bankers of Nigerian Act** which clearly includes a person registered or entitled to be registered under the Act in any of the categories of memberships in its definition of a banker.

In Nigeria it is therefore not uncommon to find employees of banks being described as bankers though they do not carry on banking activities. And as such, the word "**bank" and "bankers" should not be used interchangeably within the Nigerian context because they do not mean the same thing.**

It is, therefore, submitted that a banker/bank in the E-Banking Era is recognized and should be recognized not by his structure but by his activities. The definition of a bank/banker will still have to be constantly reviewed in line with contemporal events. The sole criterion for deciding who a banker is used to be acceptance of deposit and honouring of customers of cheques but there now exists a plethora of cases where a "Banker-Customer" relationship was inferred by the court despite the absence of the elements of money deposit and cheques honouring.

C. "Bank Customer" Redefined

The definition of a who a "Customer" is, within the Banker-Customer relationship looks so commonplace on the surface given the popular use of the word "customer" in human interactions. **It suggests a habitual course of dealings and that is exactly what it means in ordinary parlance and that is what it used to mean in Banking parlance before the case of Commissioner of Taxation v. English, Scottish & Australian Bank (1920) AC 683 at 687.**

In Contemporal Banking parlance, evidence of repetitive habitual course of dealings is not required before one can earn the appellation of a Customer.
A single one-off transaction now suffice to make one a Customer

within the Banker-Customer relationship contrary to the holdings of the Court in the Commissioner of Taxation case. A repetitive course of dealing however is not totally irrelevant in deciding who a Customer is. It actually removes every doubt as to who a "Bank Customer" is within the Customer-Banker relationship.

It need be stressed, what one seeks to define here is the term **Customer** within the Customer-Banker relationship. It is not uncommon to see Banks like other juristic persons engage in everyday transactions which makes it appropriate for us to refer to those other persons they transact with as customers e.g the person who habitually buys unserviceable vehicles from the Bank. **In Matthews v. Brown & Co. 1894 6 CJ, it** was held the existence of a series of transactions unrelated to banking business notwithstanding, the Plaintiff is not a customer of the Bank, it is not these type of customers that are contemplated in this context.

The term "Customer" as central as it is surprisingly was nowhere defined in the BOFIA. Recourse has to be made to Allied Statutes and the Common law. **Section 2 of the Bills of Exchange Act No.20 1964 defines a Customer as a person whether incorporated or not who has some sort of account with a bank".**

This position was affirmed in **Great Western Railway Co. v. London and Country Banking Co. 1901 AC 414 per Lord Davey,** A man who had for some years been in the habit of getting a crossed cheque exchanged for cash from the bank where he had no account was held not to be a Customer of that bank.

As earlier pointed out, by the decisions of the Court in **Matthew .and Great Western Railway cases coupled with the Bills of Exchange Act** one must need have a repetitive course of dealing with the Bank and must have an account of some sort before one can be regarded as a Customer of the Bank.

A change was heralded in by the Privy Council in 1920 in the case of **Commissioners of Taxations v. English, Scottish and Australian Bank op. cit** where their Lordships rightly and commonsensically held that "a man whose only connection with the bank at the material time was the payment in of a single cheque for collection is a Customer of the bank in the following words:

> "the word 'customer' signifies a relationship in which duration is not of the essence. A person whose money had been accepted by the bank on the footing that they would honour cheques up to the amount

> standing to his credit is a customer to the bank in view of the statute irrespective of whether his connection is of a short or long standing…."

This sound reasoning was affirmed and adopted by Ademola J. as he then was in **Ademiluyi v. AFRICAN CONTINENTAL BANK LTD. (1964) NCLR 10.**

See also the case of **LADBROKE & CO. v. TODD (1914) COMM. Case 256**

The decision of the court **in Wood v. Martins Bank Ltd (1959) 1 Q. B.55 is** worthy of note. The case seems to suggest that a banker-customer relationship ensued the moment the bank accepts instruction from a person intending to open an account though account has not actually been opened.

It is necessary to arrive at a consensus in the wake of E-Banking and a Competitive Banking Environment as to who a Bank Customer is. ***To hold that a person is not a Customer until he habitually relates banking activities with a bank cannot be accepted in the E-Banking era.***

It is respectfully submitted that one-off isolated banking transaction, indeed makes you a Customer and that was the exact point established by the **Privy Council in Commissioner of Taxations v. Eng. Scottish and Australian Bank** (Supra).

Furthermore, it can no longer hold that one must have opened an account before being regarded as a Customer given the plethora of products and services being offered the public by the new generation banks with the insistence that one does not need to have an account. e.g Nowadays, banks do advertise that you do not need to open an account before utilizing, their credit card service. Western Union Funds Transfer Services being offered by most banks do not require opening a bank account. It is therefore submitted that a person without opening an account with a bank or without any repetitive course of dealings with a bank can qualify and must be accepted as a Customer of the Bank in the E-Banking era. That this is the correct position under the Nigerian Law is clearly affirmed by the recent case of Union Bank Nig. Plc v. Integrated Timber & Plywood Products Ltd (2002) 12 NWLR 99 at P.110 where Ba'aba JCA endorsed the definition of a bank customer offered by the Court in New Nigerian Bank Ltd v. Boarding Odiase (1993) 8 NWLR (Pt 310) 235 at 243 where the Court defined a bank customer in the following words.

> "Generally a customer is someone who has an account with a bank or without having an account the relationship of banker and customer exists. In the latter case some money transaction must connect banker and customer but must arise from the nature of a contract".

Furthermore, in the E-Banking situation, it is submitted that a person becomes a Bank Customer, the moment he access a bank website, which was placed on the web for whoever will access the web offering banking services and click on the "Accept" portion displayed on the bank web. In situations where the Statute of Frauds requires that the Customer-Banker agreement be in writing and signature of the customer endorsed on the written contract as is usually required when completing the Account Opening Mandate Forms prepared by Banks. It is suggested and **in fact now accepted that the requirement of writing in fulfilled if it is shown that the contract is "recorded" either on a computer, on a audio tape and that the signature requirement is duly satisfied where the person sought to be made liable has applied his signature to the contract as recorded by a process or has authenticated such.**

This is the progressive path to adopt in the E-Banking situation. Great caution therefore is called for in the E-Banking situation because of the possibility of creating a Customer-Banker relationship with persons thousands of kilometers away, whom one has never met and who are domiciled in jurisdictions with entirely different legal system making one's banking activities becoming legally relevant in foreign jurisdictions.

The definition of who a Customer is within the Banking-Customer relationship is by no means settled for all time and season given the ever increasing aggressive posture of new generation banks **when it comes to products generation and marketing.** Nowadays it is not strange to open an account with a Bank without even depositing a kobo. It is called Zero-balance Account; your guess is as good on mine as to what will be the exact position in law of the relationship between a Bank and a person for whom a Bank has accepted to open an account for and in fact given an account number without even depositing in a kobo?

Is such a person a Customer of the banker in the E-Banking era?

Having done an appraisal of the two key words in the Banker-Customer relationship, this paper will now proceed to examine the Legal Nature of the Banker-Customer relationship contemporarily in the wake of E-Banking.

C. What exactly is meant by the nature of a thing has to be explained before any other thing. The University English dictionary defines "nature" as the inherent or essential qualities of anything

Traditionally and historically, the legal nature i.e the inherent essential quality without which the Customer-Banker relationship cannot exist is the contractual nature of the relationship.. In other words the relationship only

ensued by contract with all the attendant implications i.e offer, acceptance, intent to create legal relationship and consideration.

All other relationship capable of ensuing between the Customer and Banker are considered secondary and never the essence of the relationship, In the sense that they all proceeds and are only capable of ensuing from the Banker-Customer relationship only when both Banker and Customer had contractually tied up their relationship.

The other relationships such as Mortgagor/Morgagee, Bailor/Bailee, Debtor/Creditor, Principal/Agent, Trustee/beneficiary can only flows from the Banker-Customer Contract for unless it is first proven such a contract. Exist, none of these other relationships which are themselves contractual but of a specialized nature will be able to stand.

It is submitted therefore that the legal nature of the Banker-Customer relationship is primarily and generally contractual. To hold otherwise will manifest absurdity, as done in the case of Foley v. Hill (1848) 2HLC2 28 where the Court held the nature of the Banker-Customer relationship to be primarily that of debtor/creditor in spite of the Plaintiff Contention that the relationship was not one of debtor/creditor relationship but that of Trustee/Cestui que trust. Surprisingly in the same case Lord Cottenham rightly postulated that money when paid into a bank ceases to be the money of the principal, it is then the money of the bank who is bound when asked for it, to return an equivalent by paying a sum similar to that deposited with him. The money paid into a bank is money known by the principal to be placed under the control of the banker. It is known to deal with it as his own, he makes what profit of it he can, which profit he retains to himself paying back only the principal according to the custom of the banker".

It is simply that the depositor deposits his money with the bank and the bank also agrees with the Customer that such deposits will be paid over to the customer or his order on request and on such other terms as agreed. It is of the very essence of the contract that the money deposited with the Banker ceases to be the Customers money but the Banker to do with as the bank wishes. It is only either when the Customer makes a demand for such money and the Bank cannot honours the demand or when a demand made by the Bank on the Customer who had enjoyed on overdrawn account remained unsatisfied after the expiration of the demand notice that the Customer-Banker relationship assumes a Creditor/Debtor relationship with its attendant implication.

A contract to deposit money and be repaid with interest on demand is nothing but a contract and remains a contract as long as parties kept to the terms. It is respectfully submitted that A contract of loan does not

automatically creates a debtor/creditor relationship, such ensues only after terms are breached.

Fortunately the Nigerian Courts in the earlier cases of National Bank v. Maja and Ors 1967 A.L.R Comm. 327 and National Bank v. Fasoro has tacitly demonstrated their willingness to discard the common law debtor-creditor position and instead held it as contractual. The creditor/debtor relationship cannot therefore be ascribed as the legal nature of the Banker-Customer relationship because such a relationship may be avoided throughout the tenure of the Banker-Customer relationship no matter how long as long as money is not borrowed or lent.

In the same vein, we will run into a constraint if one is to describe the legal nature of the Banker-Customer relationship as that of Bailor/Bailee because it is the essence of the contract of Bailment that the same item e.g the exact N10 coin deposited with the Bank for safe custody must be returned to the Customer at the expiration of the contract. To ask banks to return the exact coin/note deposited by customer will certainly defeat the essence of the Banker/Customer contract. The essence of the contract is that the banks should be free to trade with the money, thereby make profit out of which they pay interest to the customer on agreed terms. To insist bank should return the exact notes with the numbers deposited therefore defeats the essence of banking business and as such the customer-banker relationship cannot be said to be primarily Bailor/bailee in nature. Again it is possible for the Bailor/Bailee to be avoided by the Banker/Customer throughout the tenure of their relationship.

Again, the legal nature of the Banker/Customer relationship can never be described as mortgage/mortgagee relationship because not until the customer secure a loan advances with his property (real or intangibles) that such a relationship ensued. It is trite, there are many who has been in relation with the Bank as Customer for decades and who never mortgaged their property to secure an advance and therefore the legal nature of the Banker/Customer relationship cannot be described as mortgager/mortgagee.

Furthermore, to describe the legal nature of the relationship as Principal/Agent is also to encounter a brick wall because the Bank will not primarily be your agent unless it is instructed to carry out an instruction on your behalf e.g to collect bills due to you from third parties and pay bills issued by you in favour of 3rd parties.

Many have related with Banks as Customers for ages and the relationship has never assumed the Principal/Agent relationship because they only deposit money and withdraws moneys deposited with the Banks.

The relationship in the least is also capable of assuming a trustee/beneficiary relationship with its attendant strict implication but, unless and until the bank acts as a trustee of customer e.g to act as executor of wills, a banker cannot be said to be a trustee of the customer. To hold otherwise will make nonsense of the banking business, it means the bank will have to be guided in investing money deposited with it, it means the high duty of care impose on fiduciaries will be imposed on the bank, it means the banker will have to account for every secret profit and also disclose to the Customer her interest in every transaction.

Lastly, but not the least, because of the amorphous nature of the Banker-Customer relationship, it is capable of assuming so many forms during the tenure of the relationship that one cannot placed a lid on the relationships that could possibly emerge secondarily from the Banker-Customer relationship.

Having restated the contractual nature of the Banker-Customer relationship, it needs now be shown how this has been affected/or impacted in the wake of E- Banking, the questions need be asked whether the contractual legal nature of Customer Banker relationship has changed with the emergence of E-Banking. The frank answer is that the legal nature remains the same i.e contractual. What has changed however is the mode of arriving at such contracts. It needs no belaboring that such contract are now entered into electronically devoid of papers with physical signatures endorsed on them, with parties millions of kilometer apart and the contract initiated, concluded and sometimes performed within minutes.

Electronic contracts engendered by the E-Banking era however presents us with new challenges because electronic contracts do not always fit the traditional framework that structures general contract law because as earlier explained above, electronic contracts may never appear on a piece of paper, may involve instantaneous transactions, may involve minimal or no negotiation or interaction and may involve no human interaction at all.

The truth dear friends is, far from the concept of gentle business persons meeting together to negotiate with caution, electronic contracts are swift inhuman affairs. This is how in this writer opinion E-Banking has affected the legal nature of the Banker-Customer relationship.

D. ATTENDANT IMPLICATIONS OF THE CUSTOMER-BANKER RELATIONSHIP IN THE E-BANKING ERA

Having settled the question of who a Banker and his Customer is, in the E-Banking Era together with the legal nature of the relationship, this paper will

proceed to examine the attendant implication of the Customer-Banker relationship in the e-Banking era.

Even the uninitiated can easily guess what and what will be the attendant implication when it is decided that a father-child relationship exist between a man and a son.

The implication of Customer-Banker relationship sincerely speaking are not too difficult to ascertain in the pre-E/Banking era, the same however cannot be said for the E-Banking era. It is mere wishful thinking to assume that the foundation of Banking Practices has been affected by E/Banking, the structure built on it remains unaffected.

When we talk about implications, we are in essence talking about the series of rights, duties and privileges engendered by the new banking revolution.

As earlier pointed out the foundation has been affected so most of the structure created on the foundation. Many questions now beg for intelligent response. The definition of who a Banker and his Customer are having been affected by E-Banking revolution and the mode of contraction having become electronic, is it still safe to say the Banker duties remains the same to its Customer, who as shown above, need not have open an account of some sort, who needs not have offered consideration by paying in some money hitherto necessary to activate an account with the emergence of the possibility of opening a Zero=Balance Account? Again are we still to pretend that the Customer rights are not affected with the promulgation of far reaching legislations like the recent United States Patriot Act which goes over and above the Money Laundering Regulations and which in essence strips the Banker-Customer relationship naked destroying the age-long Confidential nature of the Banker-Customer relationship.

In cataloguing Customers rights however within the Banker-Customer context, we must not insist on only those rights which impose correlative duties on the Banker or else a grossly incomplete picture will emerge, therefore Customers rights in this context must necessarily include those rights that cannot be said to impose a duty on the Banker in a strict legal sense.

No one will doubt the following enumerated rights accrueing to the Customer but will a Customer bother to sue the Banker for breach of any of these obligations? For instance:

(a) The right to have the Bank display her business hours;

(b) The right to be attended to if one enters the bank before the expiration of business hours;

(c) The right to make enquires and be promptly and truthfully answered

(d) The right to have the Bank display interests rates for various Deposits from, time to time as required by Central Bank

(e) The right to be paid interest for delays in crediting customers account after receipt of such credit advice/deposit.

It might be necessary to jurisprudentially looks at the issue of rights and duties. Claims, liberties, powers and immunities are subsumed under the term "rights" in ordinary speech but in this context rights mean claims. The use of the word claims clearly implies reference to another person against whom the claim exists, that other person is said to be under a duty.

Usually the party benefiting by the pattern of conduct is able to bring an action to recover compensation for its non-observance or he may be able to avail himself of more indirect consequences and as other times he can do nothing if he chooses to waive his right.

A claim and duties are therefore jural correlatives i.e a claim in the Customer implies the presence of a duty in the Banker.

A claim is therefore simply a sign that some person ought to behave in certain.

The Banker-Customer relationship has always implied a claim-duty relationship and the essence of, this segment of this paper is to argue whether the "Claim-duty" structure has been affected by the E-Banking revolution.

In other words, are the parties still expected to be behaved in the certain usual way, the impact or E-Banking notwithstanding? It might be also necessary to attempt cataloguing rights accruing to parties within the Banker-Customer relationship before arguing for the retention or abrogation of same on the Customer's side, the right to be notified of changes in interest rates on advances, the right to have his Statement of Accounts promptly and correctly printed and sent; the right to be given correct balances on request; the right to have his cheques stopped before payment; the right to be promptly informed of the fate of his Bills or cheques sent for clearing; the right to withdraw his last kobo on a Current Account; the right to give standing instruction to the banker which must be followed; if legal and expedient, the right to be informed before closure or

dormancy of his account; the right to be issued a cheque book, and the right to have his affairs with the bank kept confidential.

On the contrary, the banker rights need be enumerated. To this effect, the question as to whether the Banker will sue or should sue if the customer breaches any of these duties, could be analyzed with the following scenarios:

i. To ensure safe custody of cheque book and passbooks,

ii. To take care in writing out a cheque leave no space unutilized;

iii. Not to issue a cheque without adequate balance,

iv. To inform bankers of loss of demand draft, fixed deposit, cheque book, cheque leaves/leaf, key of deposit lockers;

v. Not to sign blank cheque/s and not leave their specimen signature either on passbook or on cheque;

vi. Not to introduce any person who is not personally known to them for the purpose of opening account,

vii. Bankers' right to charge a penalty for returned cheques,

viii. To maintain the agreed minimum balance or be penalized for by payment of interest;

ix. The Bankers' right to a lien on customers credit balances, asset and title documents;

x. The bankers right to set-off/consolidate Customers accounts and use the credit balance on a customer account to off-set a debit balance on another account in the same right without recourse to the customer;

xi. The right to sell a property over which the customer has created a legal mortgage in favour of the Bank without recourse to court.

Having jurisprudentially posited that whenever the relationship between a banker and an entity is rightly labeled as a Customer-Banker relationship, correlative rights and duties emerge from that classification.

Furthermore having also settled that not all duties imposed on a Banker automatically confers a justifiable right on the Customer and vice versa, we now turn to address the implication of such classification in the E-Banking era. When we talk about implications, we are in this context essentially

talking about the right and duties engendered by the Customer-Banker relationship in the E-Banking era.

This papers seeks to examine how far should we and how reasonable will it be to continue to hold the Banks to perform certain historical duties in a new era._ It also seeks to examine the need or otherwise for the frontier of the Banker-Customer duties and rights to be extended to accommodate the novel situations foistered on the Customer-Banker relationship by Internet Banking.

CHALLENGES TO CUSTOMER BANKER RELATIONSHIP:

Overview: For large companies, protecting their clients and their assets is a huge responsibility. Whether actually a victim, most individuals see themselves as potential prey to any number of electronic crimes, from an account take-over to credit card fraud or identity theft. All of these threats put financial services organizations at a disadvantage. Customers are wary, unsure of online transactions – especially when financials are involved. And that's made customer confidence, or the lack thereof, one of the biggest issues financial services organizations face today. Customers need to be confident that they are doing business with authentic entities.

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N.B:
This paper was presented to a group of staff of a Bank's branch at Kaduna in December 2007 during the bank's **Knowledge Sharing Session (KSS).**