

---

**JOINT ACCOUNT CONTRACT: ISSUES, LAW AND CHALLENGES\***
**Abstract:**

*One of the most important yardsticks for determining the existence of a banker-customer relationship is the maintenance of an account. There are various types of account a customer can open and maintain.<sup>1</sup> However, the type and nature of account opened and maintained by a customer gives rise to a number of legal issues and implications. Joint account is a special account which bears the names of more than one customer. There are a number of legal incidences or consequences that may arise from the contractual relationship of a banker and the joint account operators. These legal incidences range from the drawing rights, obligations and liability of the operators to the joinder or otherwise of joint account operators in legal proceedings, as well as the legal right of a survivor of the joint account holders; if one or more of the operators are deceased. The legal position and rights as well as the obligations of the survivor of joint account operators if the other is deceased is what is called the doctrine of joint account survivorship. The labyrinth of jurisprudential complexities created by case law and statues on the legal position of a joint account survivor are evidently numerous. This paper is an inquiry or a critical appraisal of the legal position, rights, and liabilities of a joint account survivor as well as a critique of the judicial mechanisms for ascertaining the legal position of a joint account contract.*

**Keywords:** Joint Account, Account Holder, Bank, Money

**1. Joint Accounts: Nature and Legal Effects**

A joint account arises when two or more customers maintain or operate an account in their joint names.<sup>2</sup> Although, a joint account is opened in the same way a normal account is opened, a joint account is legally referred to as a special account because of the peculiarities in its operation. Since the relationship between a bank and its customer is contractual, a joint account raises the presumption of a joint contract between bank and the customers while the bank is liable to both or all the parties jointly with regards to the account. This presupposes that the bank cannot operate or deal with the account except at the request or instruction of both or all the customers. In *Macdonald v Tacquah Gold Mines Co.*,<sup>3</sup> Bowen L.J opined inter alia: ‘...where money is due on a covenant made with two persons jointly by which it is to be paid to such two jointly, no one of those two has any right to that money without the other...’<sup>4</sup> Similarly, in *Jackson v White & Midland Bank Ltd*<sup>5</sup> the defendant bank was held liable for honouring a forged cheque with signature of one out of the two joint account operators.

Consequently, the contractual nature of a joint account raises a number of legal issues, positions and effects. Apparently, in the absence of any contrary agreement, the parties to a joint account have equal drawing rights, which must be exercised jointly by combining their names in each drawing unless they

---

\*By **Olabanjo O. AYENAKIN LLB, LLM, BL** Lecturer 1, Department of Business Administration and Management, The Federal Polytechnic, Ado Ekiti. EMAIL ADDRESS: bayenakin@gmail.com. TELEPHONE NUMBER: 08033823545, 08035622287; and

\***Temidayo AKINDEJOYE LLB, LLM, BL** Lecturer III Department of Business Administration and Management, The Federal Polytechnic, Ado Ekiti

<sup>1</sup> K. I. Igweike, *Law of Banking and Negotiable Instruments*, Africana First Publishers Ltd, Onitsha, 1991.

<sup>2</sup> B A Abegunde & W A Adebayo, ‘Opening of Bank Account and Types of Customers’, *Contemporary Issues in Law of Banking and Negotiable Instruments in Nigeria*, (Ado Ekiti: PETOA Publishers, 2007) 45

<sup>3</sup> (1884) 13 Q.B.D 535

<sup>4</sup> (Supra) at p.539

<sup>5</sup> (1967) 1 Lloyd’s Report 68

authorise one or more of them to do so. In *Husband v Davis*<sup>6</sup> it was held inter alia that a bank who opens a joint account with a number of customers; owes the customers to the account jointly. In other words, unless otherwise expressly agreed; the joint account owner or operators can only draw from the account by using cheques signed by all of them. It must be noted that depending on the express mandate given to the banker, one of the joint account operator can singly draw from the account; not only for the benefit of all the joint account operators but for the benefit of one of the account owners. In other words, where the customers specifically express their mandate they are estopped from denying against the banker that the drawing made by one of them was devoid of their consent<sup>7</sup>

The second legal effect of a joint account contract is that the joint account owners must necessarily sue or be sued jointly in any legal proceeding by the account holders or against them. By implication, any suit against the bank on the account must be brought by the parties together. Also, because the obligation in a joint account is a joint one; the bank is not discharged by payment to one of the joint account owners. Therefore, where money was paid into a joint account, the bank is not discharged from liability by payment to one of the owners without the consent, permission and authority of the other. The credit balance in a joint account belongs to all the account owners jointly; therefore, such balance cannot be used to set-off a debt by one of the account owners. A corollary to this is the fact that a joint account with a bank cannot be attached under a garnishee order in respect of a debt owed by one of the account operators.<sup>8</sup>

## **2. Joint Account Survivorship: Issues and Law**

The single most important legal issue arising from a joint account is the issue of joint ownership. In other words; once a joint account is opened and operated the rights, obligations and liabilities arising from the account are joint. However, a case of complexity may arise where one of the joint account holders is deceased or dead; therefore raising the question whether the surviving account holder is automatically entitled personally to the balance in the account. This is what is technically referred to as the doctrine of joint account survivorship. Generally, under the doctrine of joint account survivorship; whoever survives of the joint account owner is presumed in law to have the benefit of the account. This presupposes that the legal and equitable title to the balance in the account accrues to the survivor beneficially. Similarly, if the account is overdrawn, the survivor is liable for the whole debt, unless the bank has already established several liabilities. This doctrine received judicial attention and acceptance in *Russel v. Scott*<sup>9</sup> where Starke, J. held inter alia: ‘A person who deposits money in a bank on a joint account vests the right to the debt or chose in action in the persons in whose names it is deposited, and it carries with it the legal right to title by survivorship...’<sup>10</sup>

This presumption is not however sacrosanct and this may be displaced by evidence that the joint account holders intended otherwise. There is no rigid rule for ascertaining the intention of the joint account holders. Thus, the various judicial pronouncements on this doctrine show that the courts determine this intention from the circumstances of individual case. In *Marshall v. Crutwell*<sup>11</sup>, a husband whose health was failing, changed his bank account from his own name to the joint names of himself and his wife with a directive to the banker to honour cheques drawn either by himself or his wife. He paid some

---

<sup>6</sup> (1851) 10 CB 645

<sup>7</sup> See Re: Bishop, National Provincial Bank Ltd V. Bishop(1965) 1Chan. Div. 450

<sup>8</sup> K I Igweike, *Law of Banking and Negotiable Instruments* (Onitsha: Africana First Publishers Ltd, 1991) P. 103  
<sup>9</sup> (1936)55 CLR 440

<sup>10</sup> Supra at p.448

<sup>11</sup> (1875) LR 20 EXQ. 328

amount into the account and cheques were drawn by his wife and the proceeds were applied for household expenses. After the husband's death, the wife claimed the balance in the account. The court held that by changing the account into the joint names of the husband and wife, the husband never intended that the balance should be for the wife solely, but merely a convenient way of managing the husband's affair and consequently, she would not be entitled to the money standing to the credit of the joint account after the husband's death.

The rationale for the decision in *Marshall v. Crutwell*<sup>12</sup> is that where an account (a joint account) is opened and operated for a specific purpose- for example, to enable the household to be managed by the wife during the husband's illness; the circumstance obviously raise a presumption that the balance in the account is not intended personally for the surviving account holder. The decision in Marshall's case is not absolutely infallible in that there is no judicial mechanism to ascertain the intention of the husband. Although, one test, the courts have always used; is to take into consideration the whole circumstances of the case. However, a husband who had an intention while opening an account may subsequently change same. If this happens, there is no reason why the court should not give effect to such a change. The case was however distinguished in *Re Harrison*<sup>13</sup> where a husband who opened an account in his name and that of his wife died. After the death of the husband, there was found among his documents an envelope endorsed with the wife's initials and containing the deposit receipt and a document wherein he wrote: 'I would like this paid away at once, if possible as under.' This was followed by a list of names and same amounts written against them. The court held that the money standing to the credit of the accounts belonged to the wife as survivor and that the document did not raise any presumption that the husband regarded the deposit as his own property.

The case of *Re Bishop, National Provincial Bank Ltd v. Bishop*<sup>14</sup> is worthy of examination at this juncture. A husband and a wife opened an account to which they both contributed equally out of their personal resources. The account was not opened for any specific purpose; withdrawals were made by both spouses for their separate purposes. At times, payments were made in the respective names of the spouses without a corresponding payment by the other. The account had no specific pattern of payment or withdrawal. The husband died. The trustees in the husband's will sued to determine the extent of the wife's beneficial interest in the account. The court having considered the previous judicial position on the doctrine of joint account survivorship held that on the death of the husband, the money standing in the joint account accrued beneficially to the wife. The court observed thus: 'on the facts of this case, not only do I find nothing to indicate that joint account was opened for some limited or specific purpose, or to preclude either spouse drawing money for the purpose of an investment in his or her own name.....'<sup>15</sup>

Thus, from the various judicial pronouncements highlighted so far, it is evident that Purpose Theory is crucial to the determination of the intention of joint account holders in order to ascertain whether the surviving account holder takes the balance in the account beneficially or not.<sup>16</sup>

---

<sup>12</sup> supra

<sup>13</sup> (1920) 90 LJ Ch. 186

<sup>14</sup> (1965) 1 All ER 249

<sup>15</sup> (1965) 1 Ch.D. 450 at p. 464

<sup>16</sup> A Adeniji *The Law and Practice of Banking in Nigeria*, (Ibadan: University Press, 1986) 55

### **3. Legal Implications of Partnership Accounts, Executors Accounts and Limited Liability Companies Accounts**

Partnership accounts, executors and limited liability companies account are variant of joint account and they have different legal implications as well as raise different legal issues complexities.<sup>17</sup> A partnership account is account opened in the bank by two or more persons who jointly operate a business or who for whatever reason come together for the purpose of operating a joint account. Often, partnership relationships are predicated on partnership agreement and such partnership agreement defines the rights, powers; duties and obligations of the partners in relation to the account. By Section 5 and 6 of the English Partnership Act 1890 as applicable to Nigeria; each partner in a firm is an agent of the firm for the purpose of the firm's business.<sup>18</sup>

Apparently from the foregoing, the fact that a partner operates an account in the name of the firm; raises a presumption that the account is that of the partnership and that same is a joint account. Although, this does not mean that any account opened and operated by one of the partner in his own name is for the partnership.<sup>19</sup> Similarly, where a partnership firm operates an account with a bank and the account is opened in the name of the firm with either of the partners having a right to draw cheques on the account; it is not the duty of the bank to query any transfer or withdrawal into the account. In the same vein, none of the partners can competently maintain an action against the bank for any withdrawal from the account which accords with the mandate given by the firm to the bank.

Furthermore, the English Partnership Act provides that notwithstanding the dissolution of a partnership; the authority of a partner to bind the firm continues inasmuch as such authorities are exercised to complete the transactions that began and have not been concluded during the dissolution.<sup>20</sup> Thus, the consequence of such events as the death or bankruptcy of a partner in relation to a partnership account is that unless the partnership agreement expressly provides; the mandate of a partner to deal with the partnership account continues even after the death or bankruptcy of a partner. Thus, the bank is protected and safe in dealing with a surviving partner if the activities of the surviving partner can be shown to be steps towards winding up the partnership. Upon the death of an account holder; the executors of the estate of the deceased may be appointed by the will of the deceased. Where such executors maintain the account of the deceased; such account is usually treated and regarded as the account of the deceased estate and it is a joint account. The management of the executors' account often give rise to some legal complexities which are very fluid. Where one of the executors who operate an executors' account uses the estates as a security to procure loan and subsequently mismanages the fund, the bank will not be able to proceed against the estates. This is because the loan to the sole executor will not be treated as a credit to the estate of the deceased but a credit to the sole executor.

The doctrine of ultra vires has far reaching implications in banker-customer relationship and this often raise labyrinth of legal issues, challenges and difficulties. In lending money to limited liability companies; banks should make vivid recourse to the articles and memorandum of the company. The complexities raised by accounts of limited liability companies is not limited to the opening of such accounts but it traverses issues like drawing right to such account and collateral or security required in lending to such companies.

---

<sup>17</sup> Alliance Bank v. Kearsely (1871) LR 6, CP 433

<sup>18</sup> Re Bourne, Bourne v. Bourne (1906) 2 Ch. D 427

<sup>19</sup> Blackhouse v. Charlton (1878) 8 Ch. D 444

<sup>20</sup> Re Young (1885) 28 Ch. D 705

The articles of association and memorandum usually have clauses or provisions regulating the power of the company to borrow, the amount that could be borrowed, purpose of borrowing and decisions on borrowing; to mention just a few. If the directors borrow for purposes other than that specified in the article; such indulgence may be declared ultra vires.<sup>21</sup> Worthy of note is the provisions of the article and memorandum of association of a company on the mandate of opening a bank account. Any account opened or operated contrary to the provisions of the article of association may give rise to serious implication for the company.

#### **4. Conclusion**

It is apparent that a joint account creates a joint contract not only between the joint account holders but with the bank. The legal and jurisprudential implication of a joint account is that both the credit balance and the debit in the account are to be borne by the account holders jointly. Similarly, the joint account operators are jointly the competent parties to sue and be sued in any legal proceedings. The labyrinth of jurisprudential realities created by the death of a deceased operator seems to have been settled that in the absence of any indication that a joint account operator opens and maintains the joint account for a specific purpose, the surviving account holder takes whatever balance left in the account beneficially.

---

<sup>21</sup> L Afolabi *Law and Practice of Banking* (Ibadan: Heinemann Education Books Plc, 1999),