

THE INDEPENDENT EXAMINATION BOARD
GHANA SCHOOL OF LAW
NEW PROFESSIONAL LAW COURSE, JUNE, 2016
ADVOCACY AND LEGAL ETHICS
THURSDAY, 2 JUNE 2016

TIME ALLOWED: THREE (3) HOURS

10:00am – 1:00pm

INSTRUCTIONS TO CANDIDATES:

1. Read the instructions very carefully before beginning your answers.
 2. Answer question **ONE**, which is compulsory, and **THREE (3)** others.
 3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of answers.
 4. Do not write or sign your name on the answer booklet. Only write your index number.
 5. Adhere strictly to the instructions on the front cover of your Answer Booklet.
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QUESTION ONE

Dr. Akron Barro graduated with his Bachelor of Laws degree with a first class at the Law Faculty of the University of Ghana. The faculty immediately retained him as a teaching assistant where he earned the high praise of the Dean, senior lecturers and students of the faculty as a hardworking and very intelligent young man. He applied to the Ghana School of Law where after passing the entrance examinations, was enrolled for his Bar course. After two years of intensive studies, Dr. Akron Barro passed all the twelve papers in the professional law course with distinction in 2010. He, however, applied to the General Legal Council to defer his enrolment that year because of a World Bank contract he had won outside the country. This application was granted.

During his student days, however, Dr. Akron Barro was very well known for patronising a joint just outside campus known as the LUSCIOUS TEMPTATIONS where he would regularly get drunk to stupor resulting in the bar owner, Mr. Asempa, having to organise a wheelbarrow to have him carried to his room in Commonwealth Hall.

On one Monday morning in 2008, Dr. Akron Barro failed to show up for his jurisprudence tutorials which was quite unusual and there was no message from him or anyone sent by him to explain his absence from the class. This behaviour left the students and Prof Adaagye very baffled. The mystery absence was explained when an angry Mr. Asempa who stormed the law faculty in the company of two policemen. They came looking for Dr. Barro who they alleged had on the previous Friday evening, visited the LUSCIOUS TEMPTATIONS where he had some shots of whiskey. He then lured Mr. Asempa's fifteen year old daughter who was so fond of him into the washroom and carnally took advantage of her. The Dean and other members of the faculty were shocked that Dr. Barro as a law lecturer could sink to such a low moral character in his social life on campus.

Dr. Barro completed his World Bank assignment and returned to the country after two years. Because relationships between him and the Dean had deteriorated, he applied to be a lecturer in jurisprudence at Capital University College, a private University accredited by the National Accreditation Board to run a faculty of law. Dr. Barro became the toast of the students in this new faculty because of his exceptional teaching abilities and human relationship especially with the students. Joe Doug Jones, his classmate and close pal during his professional course was enrolled at the Bar in 2010 and after completing his pupillage and after two years working experience, set up his own law firm, CANAAN LAW OFFICE at the Vienna City, an emerging residential and commercial hub. Dr. Barro was given an office in the legal firm where after lectures at the Capital University College went to meet clients of the firm and prepared Letters of Administration, Wills and land conveyances.

Because of the increase in the volume of work at the firm, Dr. Barro advised Joe Doug Jones to take on four pupils and train them to assist the firm. After the enrolment ceremony in October 2015, Dr. Barro invited Edna, Anku, Mercy and Abdel, four of his hardworking former students to the firm to be interviewed by the Managing Partner, Joe Doug Jones. All four were successful and were admitted to start their pupillage at Canaan Law Office on 1st November 2015.

Reading court judgments and preparing case briefs for his lectures became the pastime of Dr. Barro at the Capital University College. He became increasingly interested in case law analysis and so being in academia and someone with a flair for research, Dr. Barro concluded that his contribution to the case law jurisprudence on the bench will be of immense benefit to the justice delivery system. He, therefore, applied to the General Legal Council to reactivate his enrolment which was placed on hold in 2010 citing his excellent performance in the 12 subjects during the professional law course and his rich experience in academia as positives for the legal profession. To his utter dismay, the General Legal Council turned down his request to be enrolled to the Bar and advised him to concentrate on his lectures at the University.

The new pupils brought vim and fame to Canaan Law Office because of their pedigrees and work output and soon the firm became known all over the city. One Mr. Ahmed who heard of the fame of the firm was so impressed at their performance that he (Mr. Ahmed) went to his lawyers at TEE JAY LAW FIRM and retrieved from them a very lucrative commercial brief against Microsoft

pending in court. He handed over the brief to Canaan Law Office and instructed them to take over the conduct of the case.

On receipt of the brief, Joe Doug Jones charged the approved fee of five hundred thousand United States Dollars (\$500,000.00) for the conduct of such cases. Mr. Ahmed paid a deposit of three hundred thousand United States Dollars (\$300,000.00) with the promise to settle the difference upon conclusion of the case. The case was at the pre-trial stage in the Commercial Court and so Joe Doug Jones immediately filed a notice of change of Solicitors and appeared in court at the next hearing to continue with the case.

After three pre-trial meetings, the matter was settled. Terms of settlement was filed and adopted by the pre-trial judge as consent judgment. By the terms of settlement, Microsoft agreed to pay Mr. Ahmed ten million United States Dollars (\$10,000,000.00) as compensation and an additional sum of one million United States Dollars (\$1,000,000.00) as legal costs. The amount was paid by direct transfer into the account of Mr. Ahmed. That same day, Mr. Ahmed met Joe Doug Jones and thanked him for a great work done on that matter and promised him that in view of the costs of \$1,000,000.00 paid by Microsoft, he was prepared to add another \$400,000.00 to the fees originally charged by Canaan Law Office. Joe Doug Jones immediately agreed and accepted the additional \$400,000.00 legal fees from Mr Ahmed. He, however, insisted that the total \$1,000,000.00 payment of the legal costs by Microsoft should come to him and that it belonged to the lawyers who conducted the case.

Mr. Ahmed rejected the request by Canaan Law Office to pay them the total sum of \$1,000,000.00 and informed Joe Doug Jones that the costs belonged to him because he had fully paid the approved legal fees plus an additional sum to the firm. Joe Doug Jones immediately wrote a letter dated 11th April 2016 to Mr. Ahmed saying to him the following, among other things:

“You are the most ungrateful and disgusting character I have dealt with as a client. But for me, you would still have been living in a static equilibrium of abject poverty. Your sudden rise to social prominence resulted from my hard work and profound knowledge of the legal principles governing your case. To hell with your money, we will meet in court.”

Two days later, Mr. Ahmed received a writ issued by Canaan Law Office dated the 13th day of April, 2016 against him claiming the sum of \$1,000,000.00 as additional legal fees awarded by the Commercial Court.

Immediately Mr. Ahmed received the writ and to punish Canaan Law Office, he petitioned the General Legal Council to direct the Judicial Secretary to strike off the names of Joe Doug Jones and Dr. Barro from the roll of lawyers without the holding of a disciplinary enquiry for overcharging and in the case of Dr. Barro for drunkenness and defilement while training and lecturing at the faculty of law of a prime university in the country.

Identify and discuss the eight issues raised in this problem with particular reference to the Code of Ethics of the Ghana Bar Association and the relevant legislation affecting the legal profession in Ghana.

[28 MARKS]

QUESTION TWO

After the dismissal of his client's case in court, a lawyer granted a lengthy interview to a newspaper reporter which included the following statements:

"This decision is a mockery of justice. It stinks to the high heavens. It says it is okay to break the law and you are immune so long as someone above you said to do it. My client and I are wondering what is the point of appealing and continuing this charade of the Courts in this country which are warped in favour of protecting the Police?"

Is there anything ethically wrong with the above?

[14 MARKS]

QUESTION THREE

"The true [qualities] of the Advocate cannot be learned by experience or taught by rules; it is a gift from the Gods"-Sir Patrick Hastings K.C.

Discuss

[14 MARKS]

QUESTION FOUR

"But in Cross-examination, every question that does not advance your case injures it. If you have not a definite object to attain, dismiss the witness without a word". Do you agree?

[14 MARKS]

QUESTION FIVE

"By far the most important questioning technique known in advocacy is the leading question and once that has been employed, all the so called other techniques are useless and superfluous."
Discuss.

[14 MARKS]

QUESTION SIX

Wiseway Cleaners Ltd used an electronically powered machine called a hydro-extractor in their laundry business. When the power was switched on, the extractor revolved at high velocity. It was stopped by stepping on a foot brake, which combined with an interlocking device to bring the extractor to a rest. Following a fault, which made the footbrake inoperative, Joe Ekem, an employee of the company responsible for operating the machine had to use a sack to stop the extractor. On one occasion, when he was trying to stop the machine with a cocoa sack, the rolling basket threw him down and thereby sustained very serious injuries. Joe Ekem was rushed to the SOS Hospital where he was admitted for six months.

The doctors diagnosed his injuries to be compound fracture of his leg and arm, contusion of the head and abrasions all around the body. After his discharge from the hospital, Joe Ekem attended the hospital weekly as an outpatient for review. He has not been to work since the accident and he has lost his part time job with Accra Industries Ltd. Joe Ekem now walks with the aid of a stick and suffers occasional loss of memory. Wiseway Cleaners Limited has repudiated liability for Joe Ekem's injuries on the grounds that Joe Ekem sustained his injuries by using unauthorised means to stop the machine.

You are Counsel for Joe Ekem, the plaintiff in this matter pending before the High Court. Draft a witness Statement for your client to use in court as his evidence in chief.

[14 MARKS]

QUESTION SEVEN

"The fiduciary relationship between a lawyer and his client forbids a lawyer from using any confidential information obtained by him for the benefit of himself or a third person or to the disadvantage of his client" *Per Callaghan A.C.J. in Szarfer v Chodos* [54]2 O.R. 663 at 676.

[14 MARKS]