

HACKMAN

THE BOARD OF LEGAL EDUCATION
GHANA SCHOOL OF LAW

PROFESSIONAL LAW PART II EXAMINATION

THURSDAY 13TH JUNE 2013

LAW OF ADVOCACY AND LEGAL ETHICS

TIME ALLOWED: THREE (3) HOURS - 10:00AM to 1:00pm

INSTRUCTIONS TO CANDIDATES

1. Read the instructions very carefully before beginning your answers.
2. Answer **QUESTION ONE (1)**, which is compulsory, and **THREE** other questions
3. Credit will be given to eligible handwriting, clarity of expression and orderly presentation of material.
4. Do not write your name on the answer book. Write only seat or index number.
5. Adhere strictly to the instructions on the front cover of your answer book. Non-compliance with any of the instruction may result in the rejection and cancellation of your answer paper.

QUESTION ONE

Rhodaine was the last child of Alhaji Muntaka a wealthy timber merchant. Although he had four sons namely Larry, Lionel, Louis and Lenny, Rhodaine was his pride and joy having had her when he was well over 60 years. His wife Memuna died shortly after childbirth due to a myriad of complications. Alhaji Muntaka ensured that Rhodaine lacked for nothing as a child sometimes to the consternation of his four sons. They also idolized their sister and kept her away from their rambunctious male friends who often came over to their house. Rhodaine had her secondary education at a private boarding school in Switzerland run by Catholic nuns and obtained her first degree from the University of Tag Yang in Human Resource Management and Psychology. Soon it was time to return home to assist her father in his business.

Upon her return she was made the Head of Human Resource in Dubik Timber Merchants, her father's business. She was in charge of a labour workforce of over 500 and had supervisory authority over all the twelve concessions her father owned all over the country. Having studied the labour laws of another country was one thing and acquainting herself with the Ghanaian legislation was another. When the local currency took a nose-dive and inflation hit an all-time low, Dubik Timber Merchants was hit with a spate of agitations on the labour front for better working conditions and salaries. Rhodaine did her best to resolve these and get the workers to go back to work whilst she and management tried to address these concerns. After the

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successful resolution of these labour disputes in consultation with the external solicitors of the company, Rhodaine decided that the study of law would be an added advantage to her professional qualification. Such a professional qualification would mean the payment of whopping amounts to the external solicitors by way of retainer fees would cease.

Rhodaine applied to the Faculty of Law of the University of Tassah and successfully passed the entrance examinations. Having lived all her life under the shadow of her brothers and the protective wing of her overly indulgent father, it felt good to be on her own. Independence tasted good and was an exhilarating experience for her. She had the freedom to choose who she could be friends with, what she could wear, when she could sleep etc without any instructions from anyone. Having grown up amongst four brothers, Rhodaine found it easier to make friends with her male classmates rather than members of her own sex. She was very fond of their class prefect Kutu and could often be found in his company. Indeed so close were they that they were nicknamed "MTN-everywhere you go" by their mates.

Soon their platonic relationship blossomed into an amorous one and for the first time in her life Rhodaine found herself in love. It was a very giddy and exhilarating experience for her but she loved every moment spent with Kutu. When she mustered courage to tell her brothers about her boyfriend Kutu, they insisted on seeing him in order to decide whether to give their approval or not. The boys hit it off the very first time they met Kutu. However it took Alhaji Muntaka some time to get used to the fact that his baby girl was now all grown up. The years in the faculty quickly passed away and all too soon it was time to write their final examinations. Burning the midnight candle at both ends, Rhodaine and Kutu graduated with first and second class honours respectively. Their entry subsequently into the Thompson Law School was uneventful as they both excelled in their entrance examination and gained admission. The next four years in the law school took a toll on Rhodaine's relationship with Kutu. Kutu participated and had won the position of president of the SRC during the recent elections despite Rhodaine's pleas not to get involved in student politics.

Rosemary another classmate was his vice and most often than not the two were involved in endless "crisis" meetings to better the lot of the student body. Kutu had very little time for Rhodaine and try as they did; they were unable to restore their once close and intimate relationship. The next thing Rhodaine realized was that Kutu had now become enamored of Rosemary and refused to return all her calls and text messages to him. It was very painful and humiliating for Rhodaine but there was nothing she could do about it. Rhodaine channeled her energies into studying hard despite the pain and heartache. Eventually this paid off when on 6th October 2008, she graduated top of her class and was called to the Bar. Her father held a grand dinner party for her in honour of her achievements at the plush Movenpick Ambassador hotel. In attendance and churning out groovy music was her all-time favourite band, the Pussycat Dolls. Rhodaine and her friends had a lot of fun that night.

Her father had arranged for her to undertake her six months pupillage at Ann-Marie Chambers one of the top three law firms in the country. Rhodaine had excellent communication skills and

got on very well with all the members of staff. She endeared herself to the matronly office administrator ^{Adina Nobel} Madam Serwaa and the ageing senior law clerk, Man-T such that they taught her all she needed to know within a short period of time. In the course of her pupillage, Madam Serwaa, a client of the firm preferred Rhodoline to other lawyers in the firm and went to court with her on numerous occasions where Rhodoline exhibited her finest skill of advocacy to the admiration of other lawyers and litigants present.

Sometime in early 2002 Madam Serwaa had purchased a piece of land at Ngleshie-Amanfro from the Asigbetsey family and had documents of conveyance executed in her favour. When she commenced the process to register her title in the land, she realized that the indentures had not been signed by the Asigbetsey's family lawyer. Upon inquiry she was told by the officer at the Lands Commission that they could not process her documents until the indentures had been signed by a lawyer. The Asigbetsey family insisted that since their former lawyer was deceased, they would have to ask their new lawyer to prepare fresh indentures for her. However this would cost her two thousand cedis. Madam Serwaa reported this incident to Rhodoline who incensed by this daylight robbery, offered to sign the indentures for Madam Serwaa and instructed Man-T to stamp the back page of the said documents with the office stamp. Madam Serwaa was very grateful for this kind gesture and promised Rhodoline to give her one of her handsome sons to marry.

Krampah was Rhodoline's Pupil Master. He was very impressed at the speed and alacrity with which Rhodoline was catching up with the legal work of the office. In view of her Human Resource background he often asked her to write opinions for him whenever he had very thorny issues relating to labour and other agitations. During her period of pupillage, it came to the attention of Krampah that Rhodoline had studied ADR at the law school and was well versed in mediating disputes. Krampah referred a claim for wrongful termination under settlement to Rhodoline to handle on behalf of the firm. The Shegelele Company had terminated Princess Naa Tsoo's appointment for authorizing payment of a cheque to a customer far in excess of her limit as a deputy manager. Later when it came to the attention of the bank that Princess Naa Tsoo had a written authority from her boss to pay the money, the bank offered to settle the case by paying Princess Naa Tsoo one year's salary plus compensation for embarrassment suffered by her even though under her contract the bank could terminate her appointment at any time and for any reason by giving her one month's notice. Rhodoline had studied industrial law in Law school and had read a case where a court ordered two years' salary for wrongful dismissal of a worker. Rhodoline was certain the firm could recover two years salary for Princess Naa Tsoo and so advised the firm to take the matter to court and claim more money for Princess Naa Tsoo. The suit took two years in court and judgment was delivered against Princess Naa Tsoo on the grounds that under her contract with her employers, the bank could terminate her appointment at any time and for any reason by giving her one month's notice.

All too soon Rhodoline's pupillage was over and it was time to take a decision on whether to return to her father's company or to remain in private practice. Rhodoline chose to do the latter

but pending the appointment and handing over to a suitable replacement for her position in Dubik Timber Merchants, she decided to hold on till the end of the year. After a number of unsuccessful interviews, Rhodaine finally got the right candidate to take up her former position of Human Resources Manager.

A year after completing her pupillage, Rhodaine set up her chambers, Lex-Rhodaine & Associates in Kuku Hill, Osu. She employed the services of a secretary and messenger and also took on Gaga and Atupare as pupils and also applied to the General Legal Council for the registration of her chambers.

Her elder brother Larry, who was into software development, designed a website for her firm where she placed her profile and achievements, cases won in court and the areas of the law she is known as an expert and legal giant. She also set up a facebook account for her law firm where she placed pictures of where the office was situated as well as services offered by the firm.

Having practised for barely a year Rhodaine realized the need to have a good and knowledgeable law clerk. After a lot of negotiation she managed to poach Man-T from Ann-Marie chambers offering him a very enticing salary package and working conditions. It was Man-T who guided her to draft her pleadings and all other relevant agreements during her pupillage.

Rhodaine soon became popular and many clients heard about the reputation of the chambers and brought their cases for professional advice. The six-member firm became busy practitioners and appeared on a daily basis in almost all the courts. Rhodaine was aware Justice Amekugee was a strict judge and did not play with his time when he fixed cases for hearing. Rhodaine had a case before Justice Amekugee but had also been served to appear in the motions court in the commercial court the same day in a juicy brief on behalf of one of the reputable banks in the country. Rhodaine decided to rush to the commercial court first, complete her motion and dash over to Justice Amekugee's court. Unfortunately by the time she arrived, her case had been called and struck off from the cause list. Rhodaine's client was angry and without uttering a word to her left the premises of the court murmuring "she will see".

Soon the time was ripe for the country to hold a general election. Rhodaine was not interested in politics but loved to represent politicians in court. After the general election, the Cee Cee Cee Party filed a petition before the Supreme Court claiming that Candidate Mandela declared by the electoral officers to have won the presidential elections did not in actual fact win the elections. Rhodaine was picked as one of the consortium of lawyers representing candidate Mandela and was given additional responsibility to be their spokesperson. After each court hearing, Rhodaine appeared fully robed before all the TV cameras and other journalists from the media houses and granted interviews to them on how her client's witnesses fared in the witness box and how in her view the case was going in her client's favour. The interviews granted by Rhodaine were continuously carried as banner headlines in all the print media.

The Obiri-Yeboah family whose case was dismissed before Justice Amekugee has lodged a complaint against Rhodaine with the Disciplinary Committee of the General Legal Council to instruct the Judicial Secretary to strike off Rhodaine's name from the role of lawyers without holding an enquiry.

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 ✓

Communication skills is one of the key qualities that lawyers must exhibit. A lawyer who fails to listen attentively will find himself missing out on instructions which clients may pass onto him. Discuss the role that the various listening skills play in Advocacy.

[14 MARKS]

QUESTION THREE ✓

"However emotionally overheated one may be, members of the Legal Fraternity have a duty to conform to the time-honoured practice of comporting themselves always with decorum and dignity. This must be reflected in the Language they employ which should be of measured elegance and sobriety". Per Francois JSC in *Odonkor v Amartei* (No 2).

Discuss

[14 MARKS]

QUESTION FOUR

"Cross-examination, though very powerful is also a very dangerous engine"

Discuss.

[14 MARKS]

QUESTION FIVE ✓

Examine the role of the following in advocacy:

- a. Clients' Friend

- b. Quality of Language
- c. Confrontation
- d. The Evasive witness

[14 MARKS]

QUESTION SIX

a. What is the purpose of questioning in Advocacy? Below is a question from a lawyer to his client;

"You were going to buy a Banker's draft for yourself you told us, if you remember, now can you remember, after all this time, how much you were to buy it for, I mean how much was the Banker's draft to be for? Now prior to your going to get the money orders or to cash or buy them, you told us that a friend of yours, I think you said he was a friend, asked you to buy one for him. Now do you remember the name of this friend or have you forgotten after all this long time that has elapsed? Now this Banker's draft that you wanted him to get, or rather that he wanted you to get, how much was it for, do you remember that, just say if you can't remember."

- b. What is wrong with this question?
- c. Re-draft this question to conform to proper communication skills by lawyers.

[14 MARKS]