

THE INDEPENDENT EXAMINATION BOARD
GHANA SCHOOL OF LAW
SUPPLEMENTARY EXAMINATION
PROFESSIONAL LAW COURSE PART II EXAMINATION
ADVOCACY AND LEGAL ETHICS
24 NOVEMBER, 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** (1), which is compulsory, and **THREE** other questions.
 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 accompanying your Answer Booklet.
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QUESTION ONE

The Babadondiwe's family is a well-known one in Navrongo. It is housed in the popular "Adda Palace" located in centre of the town. All the four children of Pe Babadondiwe, who was the chief of Navrongo in the early 1930s, were distinguished and wealthy lawyers in their own right. Their presence in town is usually evidenced by a fleet of the latest cars on Sunday choking the parking lot of the catholic cathedral attending mass service. The celebration of the annual Fao festival in December was another big event altogether.

It was into this prestigious family that Magaratus was born on 6th January 1980. Right from his infancy the legal world was no strange place to him. Unlike other children in his days, he had at

an early age the opportunity of accompanying his father and uncles, at one point in time or the other, on their court rounds carrying their books or their wigs and gown. At the tender age he acquired sufficient court vocabulary and knows what it means for parties to a contract be "at cross-purposes".

With this favorable background, Magaratus decided to read law at the University of Ywono. He was greatly supported by his father and uncles. The latest textbooks and journals were readily put at his disposal, as well as the provision of ample pocket money to make his stay on campus comfortable. He was thus serious with academic work and subsequently graduated with a first class in the Bachelor of Laws degree from the University.

He was on the strength of this performance admitted to law school to pursue his professional and practical course. Though he was not as studious as he was in his university days, he was finally called to the bar. After 6 months of pupillage at SPARTACUS @ LAW, his father's law firm, he was issued with a solicitor's licence by the General Legal Council. Following this, his name and area of specialization were advertised in Hedley Byrne Directory, a world wide legal directory headquartered in Kampala, Uganda.

Magaratus engaged the services of Adjoa Mansa to work for him as court clerk and secretary. Adjoa Mansa felt so proud working in an office of a lawyer and often dressed to office like a lawyer. Magaratus trusted Adjoa Mansa so much that he left the keys to his offices with her. Adjoa Mansa was smart and often interviewed clients who flocked to the chambers about their private and personal lives. On one occasion Adjoa Mansa proposed love to a male client of the firm whose divorce case was being handled by the office. She further made additional income by leaking information in the files of some of the firm's clients to third parties and on a few occasions had smuggled the office official stamp out of the office to stamp indentures prepared by officials of the Lands Department.

Lawyer Taragus, a senior colleague at the Bar one day asked Magaratus to hold his brief that morning in a matter at the Osu Magistrate Court because he had another matter clashing with the Osu case at the Court of Appeal. Apart from the clash, Lawyer Taragus had to instruct Magaratus

because he had no juniors and his practice was a one-man show. Moreover the magistrate had indicated his displeasure at the frequent delays at the request of Lawyer Taragus. On the said date Magaratus was again at his best and managed to secure an interlocutory judgment in favour of the client, Nana Joker.¹ So impressed was Taragus that two days later he telephoned Magaratus to continue the remaining aspect of the case on the assessment of damages in court for him. He agreed to pay him ten percent of the claim as his legal fees. At the next adjourned date Magaratus appeared on behalf of Nana Joker and successfully completed the case.

Nana Joker, impressed at Magaratus unprecedented performance, first made him a special adviser to his company, Ponctus Birds Limited. He also referred his eldest son, Baturi, to him to write a reference to enable him be admitted into the Ghana Army. The requirements given were that the person writing the reference should be a lawyer among others and the applicant must have a first degree from a recognized university. Magaratus recalled meeting Baturi several times during his undergraduate days on the University campus but when Baturi came to Magaratus' office, he confided in him that he only came to Campus to perch like a bird with his friend to study for his professional Marketing examinations. He further told Magaratus that he had a friend at the Registry of the University who had been able to procure a transcript for him to meet the minimum requirement. He therefore only ~~needed the reference to add to his documents and present to the Admissions Office of the~~ Ghana Army. Magaratus, not willing to jeopardise the future of Baturi and to keep the healthy client- solicitor relationship with Nana Joker, wrote an inspiring reference for Baturi highlighting his academic brilliance and character during his undergraduate course on the university campus.

Delicious Meals Limited, a reputable company in the city of Accra had supplied food items to a lot of companies and customers in Accra but the recovery of their money had been a major problem to them. Delicious Meals Limited therefore retained the services of Magaratus to recover money from 80 of their customers. Magaratus was able to recover a substantial sum from 50 customers and paid the monies into his Firm's bank account. The cedi at the time was depreciating fast so Magaratus invested about 75% of the money recovered for Delicious Meals Limited in a 90-day

treasury bills to enable him (Magaratus) earn some interest on the money recovered. It was the intention of Magaratus that if he had a good return on the investment from his Firm's account, he would reduce his legal fees substantially for Delicious Meals Limited.

Lawyer Magaratus became so popular and attracted many clients to the firm. One of such clients was Mr. Mintah, an employee of the Ministry of Youth and Sports. Mr. Mintah was arraigned before an Accra High Court for defilement. As a defence lawyer, Magaratus was convinced on the facts and the existing law that there was no basis for the charge, as the victim's age could not be established by the prosecution. At trial the prosecution had no evidence as to the age of the victim and only relied on the body mass and height of the victim. However, Magaratus who was given the original birth certificate of the victim failed to tender it in evidence. The certificate indicated that the victim was 19 years at the time of the sexual act. In any case, Magaratus client was convicted and sent to prison. Surprised at the decision at the High Court, Magaratus appealed immediately to the Court of Appeal. Some few hours after the appeal was filed, representatives of all press houses sought audience with Lawyer Magaratus in his office and sought his opinion on the judgment as well as the merits of the appeal. The interview caught banner headlines in almost all the print media. Other press houses had live telephone interviews with Magaratus who contended that the judge was wrong and biased and that the Court of Appeal would no doubt reverse the findings of the trial court.

The Ghana Bar Association was not happy at the comments made by Magaratus in the media and has petitioned the General Legal Council to instruct the Judicial Secretary to strike out Magaratus's name from the Roll of Lawyers in the country without holding a disciplinary enquiry.

Identify and discuss the ethical 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

Discuss the main aims of examination-in-chief and explain the techniques that may be employed by a barrister to realise these aims.

[14 marks]

QUESTION THREE

Discuss the significance and or role of the following in Advocacy:

- a) Evasive witness
- b) Legal Document
- c) Quality of language
- d) Tenacity

[14 marks]

QUESTION FOUR

Preconceptions may be a very subtle tool to the court and, when appropriately deployed, can aid in a sound resolution of contentious claims between parties. In a reasoned answer, evaluate the place of preconceptions in Advocacy, its effects and dangers and how we may be able to deal with preconceptions.

[14 marks]

QUESTION FIVE

Evaluate the significance of the following in Advocacy:

- a) Story telling
- b) Close address
- c) Practice and industry
- d) Amateur client

[14 marks]

QUESTION SIX

Evaluate the claim that Advocacy is primarily about an advocate's verbal and written persuasive prowess and has very little or nothing to do with non-verbal communication.

[14 marks]

QUESTION SEVEN

"The ability to listen is central to the role of advocacy. Discuss the role of the various kinds of listening skills in Advocacy."

[14 marks]

QUESTION EIGHT

"Successful cross-examination is founded on the three fold techniques of confrontation, probing and insinuation". Discuss the role of these techniques in advocacy.

[14 marks]