

THE INDEPENDENT EXAMINATION BOARD

GHANA SCHOOL OF LAW

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PROFESSIONAL LAW EXAMINATION, ACADEMIC YEAR 2016/2017

ADVOCACY AND ETHICS

DATE: MONDAY 29 MAY 2017

TIME: 10:00am – 1:00pm; ALLOWED: THREE (3) HOURS

INSTRUCTIONS TO CANDIDATES:

1. Read the instructions very carefully before writing down your answers.
2. The total marks in the written Advocacy & Ethics paper is 70.
3. Answer **Question 1** which is compulsory and any **TWO (2) OTHER QUESTIONS**. Answer all parts of each question.
4. Answer All Questions in the Answer Booklet.
5. Please indicate your **Index Number ONLY** on the Answer Booklet
6. Do **NOT** Write or sign Your Name anywhere on the Answer Booklet
7. Credit will be given for legible handwriting, clarity of expression and orderly presentation of answers.

QUESTION 1 - COMPULSORY

Hilary-Rhodam was the last child of Sheik Mahama a wealthy timber merchant. Although he had four sons namely Larry, Lionel, Louis and Lenny, Hilary-Rhodam was his pride and joy having had her when he was well over 55 years. His wife Salamatu died shortly after childbirth due to a myriad of complications. Sheik Mahama ensured that Hilary-Rhodam 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. Hilary-Rhodam had her secondary education at a private boarding school in Italy run by Catholic nuns and obtained her first degree from the University of Saint Peters 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 Dubai 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, Dubai Timber Merchants was hit with a spate of agitations on the labour front for better working conditions and salaries. Hilary-Rhodam 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 successful resolution of these labour disputes in consultation with the external solicitors of the company, Hilary-Rhodam 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.

Hilary-Rhodam applied to the Faculty of Law of the University of Loma Linda 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, Hilary-Rhodam 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 Keteku 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 Hilary-Rhodam found herself in love. It was a very giddy and exhilarating experience for her but she loved every moment spent with Keteku. When she mustered courage to tell her brothers about her boyfriend Keteku, 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 Keteku. However it took Sheik Mahama 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, Hilary-Rhodam and Keteku 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 Hilary-Rhodam's relationship with Keteku. Keteku participated and had won the position of president of the SRC during the recent elections despite Hilary-Rhodam'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. Keteku had very little time for Hilary-Rhodam and try as they did; they were unable to restore their once close and intimate relationship. The next thing Hilary-Rhodam realized was that Keteku 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 Hilary-Rhodam but there was nothing she could do about it. Hilary-Rhodam 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 Kempinski Gold Coast Hotel. In attendance and churning out groovy music was her all-time favourite band, the Pussycat Dolls. Hilary-Rhodam 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. Hilary-Rhodam had excellent communication skills and got on very well with all the members of staff. She endeared herself to the matronly office administrator Madam Beauty and the ageing senior law clerk, Abbey-Law such that they taught her all she needed to know within a short period of time. In the course of her pupillage, Madam Maame Bee, a client of the firm preferred Hilary-Rhodam to other lawyers in the firm and went to court with her on numerous occasions where Hilary-Rhodam exhibited her finest skill of advocacy to the admiration of other lawyers and litigants present.

Sometime in early 2002 Madam Maame Bee had purchased a piece of land at Budumburam from the Quist 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 Quist'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 Quist 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 Maame Bee reported this incident to Hilary-Rhodam who incensed by this daylight robbery, offered to sign the indentures for Madam Maame Bee and instructed Abbey-Law to stamp the back page of the said documents with the office stamp. Madam Maame Bee was very grateful for this kind gesture and promised Hilary-Rhodam to give her one of her handsome sons to marry.

Lynes was Hilary-Rhodam's Pupil Master. He was very impressed at the speed and alacrity with which Hilary-Rhodam 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 Lynes that Hilary-Rhodam had studied ADR at the law school and was well versed in mediating disputes. Lynes referred a claim for wrongful termination under settlement to Hilary-Rhodam to handle on behalf of the firm. The Samsung Company had terminated Princess Tsotsoo'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 Tsotsoo had a written authority from her boss to pay the money, the bank offered to settle the case by paying Princess Tsotsoo 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. Hilary-Rhodam 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. Hilary-Rhodam was certain the firm could recover two years salary for Princess Tsotsoo and so advised the firm to take the matter to court and claim

more money for Princess Tsotsoo. The suit took two years in court and judgment was delivered against Princess Tsotsoo 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 Hilary-Rhodam'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. Hilary-Rhodam chose to do the latter but pending the appointment and handing over to a suitable replacement for her position in Dubai Timber Merchants, she decided to hold on till the end of the year. After a number of unsuccessful interviews, Hilary-Rhodam finally got the right candidate to take up her former position of Human Resources Manager.

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

Her elder brother Lawrence, 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 Hilary-Rhodam realized the need to have a good and knowledgeable law clerk. After a lot of negotiation she managed to poach Abbey-Law from Ann-Marie chambers offering him a very enticing salary package and working conditions. It was Abbey-Law who guided her to draft her pleadings and all other relevant agreements during her pupillage.

Hilary-Rhodam 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. Hilary-Rhodam was aware Justice Amicus was a strict judge and did not play with his time when he fixed cases for hearing. Hilary-Rhodam had a case before Justice Amicus 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. Hilary-Rhodam decided to rush to the commercial court first, complete her motion and dash over to Justice Amicus's court. Unfortunately by the time she arrived, her case had been called and struck off from the cause list. Hilary-Rhodam'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. Hilary-Rhodam 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. Hilary-Rhodam 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, Hilary-Rhodam 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 Hilary-Rhodam were continuously carried as banner headlines in all the print media.

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

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

[40 MARKS]

Question 2

Examine the role of a closing speech in Advocacy.

[15 marks]

Question 3

Below is a Solicitor's letter to his client:-

Dear Madam,

RE: JUDGMENT APPLICABLE AND ENFORCEABLE BY YOU

We act as your Solicitors. You will recollect that in the course of the last viva voce testimony in your case, you asked permission to sally out of the courtroom to be directed to the most proximate outlet to purchase some cosmetibles. In your absence, the Lordship found as a fact that the indictable offence of larceny as alleged against you have been proven but declined to record a conviction. The Lordship ordered that you enter into a recognisance in the sum of Gh¢5,000 with one surety to be justified to be of good behaviour for a period of not less than twelve calendar months, together with a number of special conditions pertaining to psychiatric treatment. You are fully appreciative of the seriousness of this matter and the legal repercussions which would ensue should you fail to comply with the above mentioned order. In the circumstances, you should be extremely grateful to have incurred such a penalty. We thank you for your instructions.

Yours faithfully,

SGD.....

Your Solicitor

- a. Outline the key principles of communication for lawyers and in each case, explain with reference to the letter above, whether or not these have been met?
- b. Redraft the letter to conform to the principles of effective communication for Lawyers.

[15 Marks]

Question 4

What are the four-fold duties of a lawyer? In apportioning these duties, the public should have been given prominence in the same way as the other duties. Regrettably, the obligation to the public is often downplayed because stakeholders do not really see what there is in the public arena to hold Lawyers accountable for.

State your view(s) with reasons generally and in particular as to whether you agree that the lawyer's duty to the public is insignificant?

[15 Marks]