

**INDEPENDENT EXAMINATIONS COMMITTEE  
GENERAL LEGAL COUNCIL  
PROFESSIONAL LAW PART II COURSE  
EXAMINATION (MAIN)  
ADVOCACY AND LEGAL ETHICS  
25 JUNE, 2021**

Time Allowed: Three (3) hours

10:00 a.m. – 1:00 p.m.

**INSTRUCTIONS TO CANDIDATES**

1. Read the instructions very carefully before beginning your answers.
  2. Answer **QUESTION 1 WHICH IS COMPULSORY AND ANY OTHER THREE (3) QUESTIONS.**
  3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of material.
  4. Do not write your name on the Answer booklet. Write only your seat or Index number.
  5. Adhere strictly to the instructions on the front cover of your Answer Booklet.
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**QUESTION 1**

Jacob Soung sat on the rooftop of his office building reflecting on the events of the 2020- 2021 legal year and contemplating his next move. In the ten (10)-year lifespan of his firm Soung & Soung, this was by far the most challenging year. First, was the banking crisis which wiped out the firm's largest clients in 2019. He managed to pick himself up and secured some good retainer clients in the hospitality and aviation industries but then came Covid 19 out of nowhere, which devastated the businesses of a significant number of those clients. He had to terminate all the retainer agreements because the clients had either wound up their businesses or could simply not afford to continue with the arrangement.

Covid-19 struck barely three months after he moved his practice into the plush Icon Towers at the Airport Residential Area. He had taken a loan from the Bank to pay for the 10-year lease of the new office space on the 8<sup>th</sup> floor of the Icon Towers. He now had to keep servicing that debt even though he was not generating the anticipated income. He had also had to let go of a number of his well trained and brilliant senior lawyers because



the firm could not generate enough income to pay their salaries and commissions. Times were hard and Jacob had to innovate to survive and sustain his practice.

Jacob decided to take on more pupils since they would be hungry enough for success to work long hours for little reward. He activated his head-hunting strategy and managed to attract four (4) outstanding newly enrolled lawyers to his firm for pupillage. His longest serving employee and indefatigable practice manager, Hajia Forreal duly forwarded the requisite letters for approval of the proposed pupillage of the four would-be pupils to the General Legal Council. Jacob referred to his team of pupils namely; Duaba Serwaa, Ajubeng Poloo, Araba Lawson and Kobby Kinatta as the fantastic 4. He also had two associates; Aaron Opata and Daniel Jaba who had been with the firm for 5 years, and Zenabu Braima who had just completed pupillage and was waiting to receive her solicitor's licence.

Jacob was approached by the candidate of the APC party to file an election petition in the Supreme Court against the purported election of the opposition TPT party's candidate, Nene Akrobeta as President, in the just ended elections. This was a big break for Jacob and he decided to devote his time and primary resources to the prosecution of the election petition. The publicity that the case would generate would definitely bring him some good clients and he also stood to earn reasonable compensation that would help with the firm's financial woes. Around the same time, his secondary school mate, Adotey Philips approached him about an encroachment on his land at Amasaman. Adotey was desperate to secure an injunction against the trespassers who were rapidly changing the character of his land. Jacob assigned the case to Daniel who proved himself by securing an order of interlocutory injunction for Adotey in two weeks.

The judge however decided to conduct an expeditious trial since the Defendants claimed that they had entered into a joint venture with foreign investors to develop a multi-million-dollar property on the land in dispute and stood to lose a lot of money if the determination of the matter delayed. Justice Ekuban made it clear that if the parties missed any of the dates that she was going to block for the trial, they would not be heard till the following year. Ekuban J, therefore cautioned all parties and their Counsel to be ready for the trial and to have standby junior lawyers to conduct the case in the event of any unexpected situation that disabled substantive Counsel from appearing in person. Trial was then scheduled to start on 3<sup>rd</sup> March 2021 and to continue each day till 8<sup>th</sup> March 2021. Daniel



prepared assiduously for the trial, diligently assisted by Zenabu and Duaba Serwaa.

Incidentally, the election petition hearing was also fixed for 3<sup>rd</sup> March 2021 and was to continue every day until concluded. On 29<sup>th</sup> February 2021, Jacob was served with a hearing notice to appear in the Court of Appeal in Cape Coast on 3<sup>rd</sup> March 2021 for the hearing of a criminal Appeal that he had filed for Kofi Diawuo who was currently serving a ten-year sentence for armed robbery. His client had a strong case on appeal and with his incarceration, time was of the essence in prosecuting the appeal. It was not feasible to adjourn any of the cases so Jacob decided that he would personally appear before the Supreme Court for the election petition hearing and send Aaron to Cape Coast while Daniel handles the trial for Adotey Philips.

Unfortunately, Daniel was suddenly taken ill on the morning of 3<sup>rd</sup> March 2021, just under an hour before the commencement of hearing. Zenabu managed to reach Jacob on phone before proceedings commenced in the Supreme Court. Zenabu was confident that she could handle the case because she had been involved in every stage of the pre-trial preparations. She persuaded Jacob to let her conduct the trial and having practically no option, Jacob instructed Zenabu to hold the fort by commencing the trial pending Daniel's recovery or Aaron's return from Cape Coast. Zenabu therefore announced herself as holding brief for Counsel for the Plaintiff when the case was called and subsequently proceeded to cross-examine the Defendant's 1<sup>st</sup> Witness with such dexterity that the witness had no option but to admit the truth of virtually every fact that she put to him.

Just as he was leaving the Court of Appeal in Cape Coast, Aaron was contacted by Hajia Forreal that one Yohann Hamburger, a longstanding and loyal client of Soung & Soung had been arrested on an absconding warrant issued in a matter pending before the Takoradi High Court. Apparently, Yohann had been picked up early that morning while attempting to board the 5am flight to Germany at the Kotoka International Airport. Yohann was being transported back to Takoradi and needed urgent legal representation to secure bail upon his estimated arrival by 2pm. Aaron quickly headed to Takoradi and just as he turned into the compound of the Takoradi Police Headquarters Yohann was brought in, handcuffed, sweating like a pregnant fish and looking forlorn.

The police were adamant that they would not grant Yohann bail because he was a foreigner with no family ties in Ghana. Aaron could tell that



Yohann might not make it through the night if he was detained in police cells so in the supreme interest of his client and with regard to Yohann's loyalty to the firm, Aaron decided to stand surety to secure bail for Yohann. As fate would have it, Aaron hailed from Takoradi and was able to provide proof of his residence to the police to facilitate the grant of bail. However, Aaron had to remain in Takoradi for the entire week because the conditions of the police recognizance bail, required him to accompany Yohann to report daily at the police station until the return date of the substantive case when the Court would further consider the bail conditions or whether to rescind the absconding warrant.

With the developments in Takoradi, Daniel still on admission at the hospital and the ongoing election petition hearing Jacob subsequently decided that Zenabu should continue with the trial while Daniel recuperates. Adotey Philips was so impressed with Zenabu's performance on the first day of trial that he did not complain. The trial proceeded swiftly and six weeks later the Honourable Justice Ekuban delivered judgment and granted all of Adotey Philip's reliefs. The Defendant being deeply aggrieved caused his lawyer to file an appeal to set aside the judgment because Zenabu was not qualified to practice as a lawyer when she participated in the proceedings at the trial.

Adotey Philips contested the Appeal claiming that the objection to Zenabu's capacity was baseless since she obtained the necessary approval before judgment was delivered. It was also contended on Adotey's behalf that some of the pleadings and the Plaintiff's Written Address had been signed by Zenabu's senior, Jacob who was qualified to practice at the time. However, the Defendant's appeal was allowed and a fresh trial was ordered. Devastated and incensed by the Court of Appeal's Judgment, Jacob vented on his Facebook page in the following words:

***"Arid technicism triumphed today and the cause of justice was perverted. A court of law is supposed to do substantial justice and not assist trespassers to evade accountability. This is a travesty of justice. We shall definitely appeal to the Supreme Court where we are confident the five wiser men and women will dispense true justice".***

As though things could not get worse, the election petition was dismissed as lacking merit and the candidate of the MDC Party has refused to pay Jacob's legal fees. In his exuberance to take on the case, Jacob did not sign a formal engagement letter with the client at the inception of the relationship. Jacob had sent a number of invoices for expenses and



deposit of legal fees which had been paid but when he sent his final invoice, the candidate of the MDC Party vehemently protested and said the fees was arbitrarily fixed and not negotiated so he would only pay 25% of the final invoiced amount of GHS 5million because that 25% was reasonable compensation for Jacob's services. Annoyed and feeling cheated, Jacob threatened to sue for his fees but the client called his bluff saying there was no agreement on fees.

As the saying goes, every cloud has a silver lining. Jacob's representation in the election petition garnered him a lot of admirers who regarded him as a formidable lawyer in spite of the dismissal of the petition. One such admirer was Manny Baafi who approached Jacob to conduct due diligence on a commercial property he intended to acquire. Jacob's preliminary due diligence revealed to his pleasant surprise that the seller of the property was one of his existing clients, Mrs. Sikadicious. Jacob disclosed his professional relationship with both parties but they insisted that he should advise them on the sale. After all, they only needed him to draft the Contract for the Sale of the property and the Deed of Assignment. Jacob thought about it carefully and agreed to proceed because he had made full disclosure and this was not a litigation matter. Manny Baafi and Mrs. Sikadicious were ecstatic because the two of them could split the legal fees and make some savings.

Impressed by Jacob's speed with the due diligence and preparation of the sale documents, Manny recommended Jacob's firm to Kweku Chainz, a real estate mogul friend of his. Kweku Chainz had just completed construction of a luxury apartment building and was looking for an astute lawyer to oversee the sale and rental of the apartment units. He did his independent due diligence on Jacob's firm and decided to consult him for advice. Jacob stood to make hundreds of thousands of US dollars in fees so he decided to assign more lawyers to Kweku Chainz's schedule to enable him deliver quick and accurate results. He therefore set up a team made up of himself, Aaron and Daniel. To motivate the associates, he signed an agreement with them to pay each of them 10% commission out of the total legal fees received. The agreement also provided that the commission or any accrued part of it would be paid to them even if they left the employment of the firm or paid to their lawful representatives in the unlikely event of their demise. Sadly, a week after completing work on Kweku Chainz's schedule, Daniel suffered a fatal asthma attack.

On the same day that Daniel passed away, Kweku Chainz transferred all the agreed legal fees into the account of Soung & Soung. Daniel and his young wife Orphelia were saving towards buying their first house before



the expiration of their residential tenancy agreement in three months. Daniel had told Orphelia that he was expecting a 10% commission for the work he had done on Kweku Chainz's property which would enable them buy a three-bedroom house before the tenancy expired. Orphelia was a teacher whose meagre salary could not cover the rent so she approached Jacob and made a desperate plea for her late husband's share of the legal fees due from Kweku Chainz's work. Jacob offered Orphelia GHS10,000 funeral donation from the firm but insisted that the agreement he signed with Daniel was not enforceable because he just found out that lawyers are prohibited from sharing legal fees with non-lawyers.

Orphelia complained to the Iron Lady, the host of the Nkosuo FM radio program, "You and the Law". Iron lady discussed Orphelia's grievance on her programme and a lot of listeners called to say that in their view Jacob is a heartless and dishonest lawyer. Jacob was contacted for his version of the story during the programme but he got so angry that he insulted Orphelia, calling her an ingrate and a whore who had driven her young husband to an early grave. He also told Iron Lady that she was not only incompetent but a foolish predator just carelessly destroying people's hard-earned reputation without conducting proper investigations.

Orphelia is deeply hurt and has filed a complaint with the General Legal Council alleging that Jacob is using dishonest means and intimidation to deprive her of what is rightfully due to Daniel's estate. She prayed the Council to help her recover the 10% commission and to disbar Jacob without a hearing for conduct unbecoming of a member of the esteemed legal profession.

Identify and discuss the eight (8) issues raised in this problem above with particular reference to the relevant legislation affecting the legal profession, the Ghana Bar Association Code of Ethics and any caselaw.

**[28 Marks]**

## **Question 2**

Ms. Betty Duah is a beautician and nail artist. After two years of operating her business in her house, she secured a loan facility to rent a shop for her business. On 28<sup>th</sup> February 2019, she entered into a Lease Agreement with Mr. Apronti for a shop in his commercial property known as Bloom House at Osu, Accra. The lease was for a term of 10 years commencing from 1st June 2019, at an agreed consideration of Twenty



Thousand Dollars (\$ 20,000). In addition, Betty was to pay a monthly service charge of One hundred dollars (\$100.00). Upon execution of the Lease Agreement, Betty paid the consideration of \$20,000.

The Lease agreement provided that the Lessor would grant her three (3) months within which to refurbish the leased premises to suit her business purposes. Thus, after paying the consideration, the Lessor was supposed to grant her access to the premises to carry out the refurbishment as provided in the lease. However, contrary his contractual obligation, the Lessor has till date not granted Betty access to the shop.

Consequently, in December 2019, Betty wrote to the Lessor to refund the consideration of USD 20,000 since the Lease agreement had been rendered abortive. In spite of several repeated verbal and written demands, the Lessor refused to refund her money. Eventually, on 6<sup>th</sup> June 2020, Betty's lawyers served the Lessor with notice of her intention to terminate the Lease and a final demand for the refund of the USD 20,000 that she advanced.

The Lessor replied on 5<sup>th</sup> July 2020 and said that he and his siblings had agreed to sell Bloom House and so he needed about three months to sell his interest in Bloom House and to use his share of the sale proceeds to refund Betty's \$20,000. He promised to refund the money within the three months' period without fail. Betty obliged the Lessor's request but after three months, he failed to refund Betty's money under the pretext that he had not been able to sell his interest in Bloom House. Betty could no longer indulge him so she commenced legal action to recover the \$20,000 together with interest and damages for the Lessor's breach of his obligation to grant her possession of the shop.

You are Counsel for Betty Duah, the Plaintiff in this matter pending before the High Court. Having regard to the principles and techniques for effective cross-examination, draft **twelve (12) key** questions that you would ask the Defendant to advance the Plaintiff's case. **[14 marks]**



### Question 3

The object of the successful interviewer is to eliminate or minimise the inhibitors of communication while enhancing the facilitators. With reference to three (3) inhibitors of communication, demonstrate how an interviewer may achieve a successful interview. [14 marks]

### Question 4

While leading her client to adduce evidence-in-chief, Eurydice asked the following questions:

1. Your name is Akofa is it not?
  2. You live at No. 5 Apapa Street do you not?
  3. You saw Harry wearing a black robe, didn't you?
  4. It was around 9pm on Sunday 9<sup>th</sup> June, wasn't it?
  5. It was raining heavily, wasn't it?
  6. Did you notice anything unusual or was it too dark to see?
  7. You said Harry was holding something, was it a knife or a gun?
  8. You said he approached, did he do so in a threatening manner?
  9. What happened next is res ipsa loquitur is it not?
  10. Harry contends in paragraph 5 of his Statement of Defence that he was not at the scene on 9<sup>th</sup> June, do you agree?
- a) Is there anything wrong with Eurydice's questions? [7 marks]
- b) Re-draft the questions that in your view, require amendment? [7 marks]

### Question 5

Discuss the significance of Language and Practice and Industry to an advocate's ability to adhere to the ethical duties of a lawyer. [14 marks]

### Question 6

"The most important thing in communication is to hear what isn't being said" Peter F Drucker. Discuss the significance of this statement for an advocate. [14 marks]