

INDEPENDENT EXAMINATIONS COMMITTEE
GENERAL LEGAL COUNCIL
PROFESSIONAL LAW PART II
EXAMINATION (MAIN AND SUPPLEMENTARY)
ADVOCACY AND LEGAL ETHICS

18 MARCH, 2022

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

After his secondary education in 2005, Dextrous Bangfudem travelled to London. Whilst there he improved his education by taking and passing several online courses. He later enrolled as a student in Lincoln's Inn, England. By the year 2015, he had passed all the prescribed examination papers and was called to the English Bar that same year. He practiced in England until he returned to Ghana in June 2018.

On his return, he found office space in the Asylum Down area in Accra which he rented and started to furnish. He placed an order with Kpogas Furniture

Limited for the supply of furniture to furnish the office. The cost of the furniture, as per the pro forma invoice issued by Kpogas Furniture to Mr. Bangfudem was two hundred thousand Ghana cedis (GHS200,000.00). The furniture was delivered in Mr. Bangfudem's absence because he had travelled to Nandom to visit his parents who had relocated home from Accra. It was received by a gentleman who was always around him on his arrival from the United Kingdom and who he intended to employ as a clerk.

On his return, he was dissatisfied with the furniture which had been delivered at his office. He said that the furniture did not meet his expectations. He therefore called Kpogas Furniture and directed that the furniture be removed from his office and returned to the Kpogas Furniture warehouse. Kpogas Furniture refused. They insisted that the furniture was top quality furniture and that it was exactly the same furniture that was identified by Mr. Bangfudem and agreed upon. Kpogas Furniture therefore demanded payment of the full value of the furniture in terms of the invoice.

Mr. Bangfudem refused to pay and Kpogas Furniture sued him for recovery of the sum of GHS200,000.00. As he was still setting up his office Mr. Bangfudem approached his secondary school class mate, lawyer Nsiah Asare to represent him whilst he awaited approval of his application to license his firm and also his practicing certificate. Before delivering a defence, his lawyer, Nsiah Asare Esq. after filing his appearance, served on Kpogas Furniture notice to admit that no objection was raised at the time the furniture was delivered. Kpogas Furniture Limited did not respond to the notice. Lawyer, Nsiah Asare Esq. followed his notice up with an application for an order directed at Kpogas Furniture to respond to the notice. This was resisted by Junior Timbile Esq., lawyer for Kpogas Furniture on the ground that the notice was premature. The court dismissed Nsiah Asare's application. Junior Timbile Esq. therefore applied for judgment in default of defence against Mr. Bangfudem on notice to Nsiah Asare Esq.

The application for default judgment against Mr. Bangfudem, was fixed for hearing on October 25, 2018. When the case was called, lawyer Nsiah Asare Esq. informed the court that he had earlier filed an application for extension of time to enable him file Mr. Bangfudem's defence and which was fixed for

hearing the following week November 1, 2018. The court therefore adjourned the hearing of the application for default judgment to November 1 2018 to abide the hearing of Mr. Bangfudem's application for extension of time to file the defence. On the return date of the application for extension of time to file Mr. Bangfudem's defence, his lawyer Nsiah Asare Esq did not attend court and Mr. Bangfudem could not explain to the court as to the whereabouts of his lawyer. He informed the Court that his lawyer had assured him that he would be in court. In any case, the motion for extension of time was not on the court's docket.

Junior Timbile Esq. informed the Court that he had not been served with any application for extension of time. A quick enquiry from the Registrar of the Court, who was summoned by the Court and questioned as to whether Mr. Nsiah Asare had filed a motion for extension of time confirmed that no such motion had been filed. The Court however decided that by reason of Mr. Bangfudem's presence in court, his willingness to contest the case on its merits, was evident. The Court therefore adjourned the application for default judgment once again to November 14, 2018 and ordered that Mr. Bangfudem file his defence by the next adjourned date. Mr. Nsiah-Asare failed to file the defence. When the case was called on November 14, 2018 therefore, the court granted the application for default judgment against Mr. Bangfudem.

Mr. Bangfudem called Mr. Nsiah Asare immediately after the proceedings and informed him that the Court had granted the application for default judgment against him. In the afternoon of the same day, Nsiah Asare Esq filed an application to set aside the default judgment but his application was refused by the Court. The court having dismissed his application, Nsiah Asare Esq remarked as follows;

“The Court has sanctified dishonesty and given it a stamp of approval, no wonder there is little confidence in the judicial system these days. It is for reasons such as this that we have wiser men upstairs. Let's see what the three wise men upstairs will say about this perverse decision.”

Mr. Nsiah Asare stormed out of the courtroom and the following day handed a notice of appeal to Mr. Bangfudem to file. When Mr. Bangfudem arrived at the registry of the Court to file his notice of appeal, bailiffs of the Court seized his Mercedes Benz saloon car pursuant to a writ fieri facias issued at the instance of Kpogas Furniture for purposes of executing the judgment. At the hearing of the application for reserved price, Mr. Nsiah Asare argued that the attachment was wrong on the ground that a recent Supreme Court authority had held that it was wrong to carry out execution in the court premises especially against lawyers because it interfered with the due administration of justice. The Court adjourned to enable Mr. Nsiah Asare produce the authority.

On the next adjourned date, the authority produced by Mr. Nsiah Asare only showed that the judgment creditor is required to serve entry of judgment before proceeding with execution. The result was that the application for reserved price was granted. Outside the courtroom, Mr. Nsiah Asare engaged his colleague Junior Timbile and explained to him that as Mr. Bangfudem was a colleague lawyer, he (Mr. Nsiah Asare) had decided to assist for which reason he should persuade his client to accept GHS50,000.00 in full and final satisfaction of the judgment debt. At a meeting, Junior Timbile agreed to persuade his client [Kpogas Furniture] to accept GHS50,000.00 Ghana Cedis plus an additional GHS20,000.00 representing their lawyer's fees. Kpogas Furniture accepted the amount after Mr. Nsiah Asare argued that since Mr. Bangfudem had not used the furniture and Kpogas Furniture could actually resell the furniture, it was prudent to accept the offer because he could easily drag the process by filing an application for stay of proceedings. He also argued that in the event that his pending appeal succeeds and he is allowed to file a defence, it may well be that Kpogas will lose the matter on its merits. Having accepted the offer, Kpogas Furniture insisted that the GHS50,000 and the lawyer's fees be paid within within two weeks. Mr. Nsiah Asare undertook to ensure that Mr. Bangfudem paid the money as demanded by Kpogas Furniture and added that Mr. Timbile as a colleague could count on his assurance that the money will be paid at all costs. Having reached agreement, Mr. Bangfudem's vehicle was released to him but he failed to pay the money.

Junior Timbile wrote to Mr. Nsiah Asare to remind him that Mr. Bangfudem had failed to pay up but Mr. Nsiah Asare ignored the letter. Mr. Bangfudem's vehicle was therefore sold at a public auction. As if this was not enough, Mr. Bangfudem received a letter from the General Legal Council informing him that his applications for a license for his law firm and also to practice had been refused.

Mr. Bangfudem protested and wrote back to the General Legal Council and informed the Council that as a person who has qualified to practice as a lawyer in the United Kingdom which has an analogous system of law as Ghana, he did not need to satisfy any further requirements before he could practice in Ghana. The General Legal Council responded in another letter to him saying that qualification to practice abroad is not sufficient to justify a license from the General Legal Council for one's law firm and also to practice in Ghana. Mr. Bangfudem has become desperate and has therefore come to see you for advice. Please identify and discuss the eight (8) ethical issues arising from this particular problem by reference to the relevant authorities, statutory provisions and the Ghana Bar Association Code of Ethics and advise Mr. Bangfudem accordingly.

(40 Marks)

Question 2

"What American Law schools often do not teach...are the basic skills of advocacy: how to prepare a case, how to examine a witness, how to argue before a jury, how to write a brief and how to argue before appellate judges...For whatever reasons, it remains true that an honors graduate of an elite law school can enter upon the practice of law without the slightest inkling of what it takes to be a successful advocate." Alan Dershowitz Letters to A Young Lawyer. If then the skills of advocacy are not taught, how does the young lawyer know and acquire or cultivate these skills?

(20 Marks)

Question 3

“The final cause of speech is to get an idea as exactly as possible out of one mind into another. Its formal cause therefore is such choice of words as will achieve this end...” G.M. Young, quoted in the Complete Plain Words by Sir Ernest Gowers. In what way does this statement reflect the necessary skills required by lawyers to obtain relevant information from their clients or witnesses and by what techniques can a lawyer obtain such information?

(20 Marks)

Question 4

“If on the other hand, ... you are afraid of revealing what you feel, your body and voice will betray you, no matter how much you attempt to manipulate them.” *Effective Speaking* British Columbia Skills Materials. With examples, explain how a person’s body movements may communicate meaning to the lawyer in the course of conferencing with his client.

(20 Marks)

Question 5

“I think that as officers of the Court, barristers must know that they owe a duty to the Court and the public not to undermine the integrity of the court and bring administration of justice into disrepute. While barristers are duty-bound to zealously protect the interests of their clients, there are ethical boundaries which must not be crossed.” Per Ackaah-Boafo J in Suit No; CR/70/2019, dated the 12th day of July 2019 in the case of Republic v Richard Hlormador, Ex parte Abdul Aziz Abdullah. By reference to at least three rules in the Legal Profession (Professional Conduct and Etiquette) Rules, 2020 (L.I. 2423) and the Ghana Bar Code of Ethics demonstrate to what extent you agree or disagree with this dictum.

(20 Marks)

Question 6

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 28th 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 6th 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 5th 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.

(20 Marks)