

THE BOARD OF LEGAL EDUCATION
GHANA SCHOOL OF LAW

PROFESSIONAL LAW PART II EXAMINATION

FRIDAY, 10TH JUNE 2011

ALTERNATIVE DISPUTE RESOLUTION

TIME ALLOWED: THREE (3) HOURS - 11:00am to 2:00pm

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 instructions may result in the rejection and cancellation of your answer paper.
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QUESTION ONE

The Alternative Dispute Resolution Act, 2010 was meant to rationalize and radically reform the law on this subject. However, in the form that the law has been passed, it attempts to cover too much ground. To that extent, it is a regressive piece of legislation in that its principal purpose is defeated. Discuss.

[28 MARKS]

QUESTION TWO

The Amakom District Assembly runs a large City park which they hire out to the town folk for funerals, durbars, picnics and other social functions. The Agyeman-Dua family booked and paid for a section of the park generally thought to be the best and well located. On a Saturday morning at 6 am, four members of the Agyeman-Dua family were detailed to weed and clear that section of the park in readiness for a big family reunion and grand Akwaaba

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celebration for Akwasi Obronni, a member of their family who had lived in the United States for over 30 years and returning home in grand style for a short visit. Akwasi Obronni will be accompanied by his American wife, their three Children and two other tourists.

After two hours of manual work, the family members who did the clearing, left for home to organize a few other things and came back around 12 noon with a truck load of Chairs, tables and Canopies only to find to their surprise and annoyance, the park taken up by 30 members of a rival family, the Obiri-Yeboah family. The Obiri-Yeboahs had fixed canopies, chairs, tables, public address and sound system for a funeral of a rich industrious and benevolent member of their family. They were expecting a fairly large crowd of important sympathizers from Accra.

In their anger and surprise they approached Mr Obiri-Yeboah and Agyeman-Dua jnr said: '...Excuse me sir! We have already set up this section of the park. I think you are mistaken! Can you please leave our space, and maybe go to the next section...' Mr. Obiri-Yeboah replied that he had paid and reserved section 14 of the park, and was surprised that somebody had cleaned it before they got there. He states that he has the right to be there. Agyeman-Dua jnr replied that his group did pay and reserved section 12, adding that Mr. Obiri-Yeboah was in the wrong section. In the midst of the confusion, Agyeman-Dua jnr and Obiri-Yeboah jnr went to the City park's mini office to ascertain the true location of sections 12 and 14.

They returned about 10 minutes later without any luck. The Offices were closed. Both insist that the other party should leave the disputed section.

You have been appointed a Mediator to assist the parties resolve their differences:

Identify the position of the parties.

- a. Identify the position of the parties
- b. Identify the interest behind the position of the parties.
- c. Generate five possible options to resolve the conflict
- d. State two critical roles of a mediator.

[24 MARKS]

Mr. Cromwell went to the Accra office of his company to complain of the incident and while there a bailiff appeared in the company of Naana with an Absconding Warrant. He was taken to the High Court, Accra, where he was granted bail.

It may be noted that at the time Mr. Cromwell was pulled out of the aircraft by the police at Naana's instigation, there was no absconding Warrant for his arrest. The arrest was therefore illegal. Apparently Naana had sought police assistance to detain Mr. Cromwell while the court proceedings for Absconding Warrant were in progress. Mr. Cromwell later sued the police for damages for wrongful arrest and false imprisonment and the police settled the claim.

In spite of her rather vengeful character and predisposition to violence, Naana nevertheless has had a successful and lucrative professional practice and was the wealthier of the two spouses. The couple owned two houses at the Airport Residential Area of Accra which they rented out for substantial rent paid in U.S. Dollars. They also owned a house at Dzorwulu at No. 2121 Wahala Street which was used as the matrimonial home. The house was exquisitely furnished and contained the latest domestic gadgets one would expect to find in any upper middle class home in the U.S.A. or Canada. They all lived there in the days of bliss gone by until Mr. Cromwell moved out and into his present place at L110/68 Mmoborowa Street at Dansoman. In addition, they owned a Mercedes Benz 500 sports car, a BMW-IS, a Nissan Maxima and a Jaguar XJX. They also had a 200-acre pineapple farm near Nsawam.

Mr. Cromwell has come to see you about a divorce. He says he is no longer interested in the marriage and as he puts it, *I want a quick end to this life in Hell and I also need any daughter, Adorable.* For both parties, this was their first marriage.

DRAFT THE NECESSARY PAPERS FOR THE DIVORCE AT THE HIGH COURT, ACCRA

QUESTION 2

In *BADU V BOAKYE* [1975] 1 GLR 283 AT P.290, Osei Hwere, J. (as he then was), wrote *inter alia*,*where a man lives with a woman not as a real wife but only as a concubine with the consent of the woman's parents that association cannot be translated into a valid customary marriage because the man and the woman are reputed to live as man and wife. Even though the defendant freely described the plaintiff as his wife and he also described their association as marriage this was no more than another euphemism for concubine and concubinage respectively.*

Critically examine these remarks in the light of the facts of this case.

QUESTION 3

Write your comments on the following:

- (a) "I cannot see by what stretch of legal ingenuity a parent should be saddled with the son's irresponsibility" – Edusei J. in *ADDAE v ASANTE* [1972] 2 GLR 288 AT 291. (12 marks)
- (b) The Customary Marriage and Divorce (Registration) Law 1985, PNDCL 112 (as amended by PNDCL 263) as it relates to the registration of customary divorces only. (13 marks)

QUESTION 4

- (a) Kwabla Kwasitsu and Dela Larsey were married in the Registrar General's office in 1990. Kwabla is an accountant with a financial institution while Dela teaches at the local Junior Secondary School (JSS). They have three children – Kwaku, 8 years; Kwami, 6 years and Afi, 3 years.

Kwabla and Dela bought a plot of land at Kasoa for ₵20 million in 1995. Kwabla took a loan of ₵80 million and Dela took ₵50 million to purchase a house at Adenta where they currently reside. Kwabla has a Honda Accord while Dela drives a Tico.

Soon after the birth of Afi, Kwabla started coming home very late. He frequently refused to eat meals prepared by Dela. He became irritable and started yelling at Dela and the children at the least provocation. On one occasion he even beat up Dela when she sought to find out why he was behaving that way. Things got out of hand when he stopped giving Dela house-keeping money altogether.

Dela complained of Kwabla's conduct to her family and Kwabla's and a family meeting was called. All went well for two weeks after the family meeting but then things started deteriorating again. One day when Dela returned from work, she found a note on the dining table from Kwabla to the effect that he had found someone, *I really love and I am moving in with her. I hope you will also find your true love with somebody else. Good Luck!*

Advise Dela

(16 marks)

- (b) Desertion has been defined as *the unjustifiable withdrawal from cohabitation without the consent of the other spouse and with the intention of remaining separated permanently.*

Discuss

(9 marks)

QUESTION FIVE

Kofi and Ama were friends for a couple of years. When Ama became pregnant, Kofi sent some drinks to the parents of Ama but Ama unfortunately had a miscarriage.

Kofi met Ayeele at a disco, fell in love with her and decided to marry her. He consulted his friend, the Rev. Kuntu Blankson of the Church of the Blessed Triumphant who performed the marriage ceremony in his church. Rev. Blankson is not a marriage officer, neither is the church registered, but banns were published three times.

Two years later, Kofi went on a course in Canada and was pleasantly surprised to find that his former girlfriend, Daavi was living just two blocks away from him. They renewed their amorous relationship and Daavi moved in to live with him. They returned to Ghana together and eventually Daavi succeeded in persuading Kofi to take her to the Accra Metropolitan Assembly (A.M.A.) office for marriage.

Ayeele had been living in London, England, for the past nine months. She got to know about the impending marriage and flew in to Accra on the day of the intended wedding and went straight to the wedding place.

Kofi, sweating profusely in his wedding suit, dashed from the A.M.A. office and desperately comes to you for your advice.

Please, advise Kofi.

QUESTION SIX

Discuss the main features of the law relating to adoption under the laws of Ghana.

QUESTION SEVEN

Even in this sometimes more reckless than brave new world, important... functions are most effectively fulfilled by marriage and the family, consistently with modern pragmatism as well as our diverse culture, our political philosophy and universal human needs.

Discuss