

**INDEPENDENT EXAMINATIONS COMMITTEE
GENERAL LEGAL COUNCIL
PROFESSIONAL LAW PART II
EXAMINATION (MAIN)
ADVOCACY AND ETHICS
20 JULY, 2022**

Time Allowed: Three (3) hours

12:00 noon – 3:00 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.

QUESTION 1

Kwame, a customer of Amber Bank obtained a loan of GHC 100,000.00 from the Bank in May 2015. Kwame mortgaged his residential property as collateral for the due repayment of the loan. Kwame defaulted in his payments and the Bank, in 2017, after several written demands instituted an action in the High Court for the recovery of the outstanding balance of the loan inclusive of interest and for the judicial sale of the property.

Upon service of the writ of summons Kwame consulted Kofi a retired court official to recommend a lawyer for him. Kofi happened to be working part-time as a clerk in the chambers of Lawyer Bartels so he promptly recommended Lawyer Bartels to Kwame. Kofi then gave Kwame's contact details to Lawyer Bartels and he promptly called Kwame and managed to persuade him to use his services. Kofi was very pleased when Kwame agreed to engage Lawyer Bartels, because Kofi had an understanding with Lawyer Bartels for payment of commission on any income that Lawyer Bartels earned from clients introduced by Kofi.

Kwame was a novice to litigation and relied heavily on Kofi for support and guidance. He therefore insisted on having Kofi in all his meetings with Lawyer Bartels. At the first client conference with Lawyer Bartels, Kwame wholly admitted the Bank's claim and instructed lawyer Bartels to seek an amicable resolution of the matter with the Bank and to urge for restructuring of the debt to enable him pay and save his property. Kofi however directed Lawyer Bartels not to have the matter amicably resolved but rather to deny the claims and contest the action, because he would use his relationships from his days as a court official to ensure that the Judge gives a favourable judgment. Kwame was indecisive so Lawyer Bartels followed Kofi's direction and filed a Statement of Defence in which he pleaded fraud and illegality against the Bank.

Subsequently, the Court set down the issues for trial. Lawyer Bartels failed to attend court on several occasions despite service of several hearing notices on him. This greatly embarrassed Kwame who found himself fumbling every time the Court asked of his lawyer's whereabouts. When Kwame complained, lawyer Bartels said that his absence was part of a strategy to let the proceedings drag so the Bank would abandon the suit out of frustration. He assured Kwame that it was a legitimate strategy to strenuously defend his client's interest and that it had worked on several occasions in other cases he handled. Unknown to Kwame, Lawyer Bartels had paid Kofi a generous commission and this made Lawyer Bartels very confident of successful outcome.

The court eventually heard the case in July 2021, in Lawyer Bartels' absence and delivered judgment in favour of the Bank. Lawyer Bartels applied to set aside the judgment, but the court refused his application. Lawyer Bartels appealed to the Court of Appeal and the Supreme Court, but it was to no avail. The Bank proceeded to enforce the judgment, and with the debt having increased substantially, there was still an outstanding balance to be paid even after selling Kwame's mortgaged residential property. The outstanding balance was GHC25,000 being punitive costs awarded by the trial court among others for Kwame's allegation of fraud and illegality without probable grounds.

When all efforts to recover the costs from Kwame failed, the Bank decided to pursue Lawyer Bartels for the costs. Lawyer Bartels protested that he was not a party to the case so the Bank should go after Kwame against whom the order for costs was made, but the Bank persisted. Lawyer Bartels frantically called Kwame to pay the costs, but Kwame banged the phone after shouting "it serves you right!"

Homeless and penniless, Kwame petitioned the Disciplinary Committee of the General Legal Council to disbar Lawyer Bartels without a hearing because the trial court's judgment had already established beyond reasonable doubt that Lawyer Bartels had knowingly pleaded fraud without any basis. Kwame also wants Lawyer Bartels to be compelled to reimburse him for the value of his residential property.

With reference to the relevant legislation affecting the Legal Profession and any applicable case law, identify a maximum of eight (8) ethical issues arising from the above matter.

(28 marks)

QUESTION 2

Dufie is a businesswoman who sells commodities such as rice, cooking oil and other domestic products. She usually sources her goods from Nayorm Ventures Ltd (NVL). She would usually place an order for goods and then using the invoice issued to her by NVL, she would instruct her bank, Big Money Bank to transfer funds from her account to NVL.

On 7th March 2022 (3) Dufie received a fresh consignment of goods from NVL with a value of \$35,000 USD. Dufie had undertaken to pay NVL within 3 days of receiving the goods, so she promptly instructed Big Money Bank to transfer \$35,000 USD to NVL's account with the Rich People's Bank. There was a condition in Dufie's contract with NVL which required Dufie to pay \$1000 interest for every day that she failed to pay NVL for the goods supplied. The standard time for the transfer of funds was within 24 hours so Dufie was confident that payment would be made on time as had always been the case.

Strangely, as of 1st June 2022, Big Money Bank had failed to make the transfer even though the sum of \$35,000 USD had been debited from Dufie's account. Despite frantic verbal and written demands Big Money failed to explain the whereabouts of Dufie's money. Eventually, Dufie was compelled to take a loan from the Loan Shark Bank at a very high interest rate to enable her pay off NVL and cut her losses. Dufie has approached you with all her documents and wants you to sue Big Money Bank for the recovery of the \$35,000 USD, special damages for the interest accruing on the loan that she took from the Loan Shark Bank, reimbursement of her legal fees and expenses and interest at the commercial bank lending

rate on all sums to be recovered from Big Money Bank up to the date of final payment.

Draft a maximum of twenty-four (24) questions that you would ask Dufie, to prepare her Witness Statement.

(14 marks)

QUESTION 3

Describe with reasons, no more than five (5) techniques you would adopt to cast doubt on the expertise of an expert witness during cross-examination.

(14 marks)

QUESTION 4

There are possible uses and drawbacks to the different types of questioning that an advocate must consider and use for effective communication. Explain this statement with reference to a **maximum** of five (5) questioning techniques.

(14 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**.

With reference to **at least three (3) 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.

(14 marks)

QUESTION 6

With the aid of decided cases indicate the main object of Re-Examination. Show circumstances under which Re-Examination is mandatory and indicate limitations, if any, of Re-Examination.

(14 marks)

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