

**THE INDEPENDENT EXAMINATIONS COMMITTEE**  
**GENERAL LEGAL COUNCIL**

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**SUPPLEMENTARY EXAMINATIONS - JANUARY 2020**

**DATE:** 28<sup>TH</sup> JANUARY 2020  
**SUBJECT:** ADVOCACY & LEGAL ETHICS  
**TIME ALLOWED:** THREE (3) HOURS 10:00am – 1:00pm

**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 for legible handwriting, clarity of expression and orderly presentation of answers.
  4. **Do not** write or sign your name on the Answer Booklet. **Only write your index number.**
  5. Adhere strictly to the instructions on the front cover of your Answer Booklet.
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**QUESTION 1**

Lying from West to East between latitude 4.5 and 6.5 to the western bulge of the question mark continent is a small country with a population of approximately twenty million people. Blessed with several minerals and natural resources, this country became the first, south of the Sahara, to attain political autonomy. Its post-independence name, Ghana, was carefully chosen to follow the footsteps of the ancient Ghana Empire which was also endowed with mineral resources.

It is to this prestigious country that Rebecca was born to the Mpere-Nkansah family of Ussher Town. Rebecca studied History for her first degree at the University of East Wood. She was full of praise for the BIG SIX who were instrumental in the fight for independence for her beloved country. They became her role model. Her History lessons revealed to her that five out of the big six were lawyers. She determined against all odds to follow their footsteps in consolidating democracy in the country.

Law School's admissions were tough in the country as the demand was greater than the supply. Determined as Rebecca was, she managed to pass the Law School Entrance Examinations and went through a gruesome four-year legal training after which she was called to the Bar in October 2010. She was immediately posted to the Attorney General's Department where she completed her six-month pupillage and National Service and was issued a Solicitors' licence by the General Legal Council. She later went into private legal practice. She applied for and was admitted as an associate of Nyame-Tease Law Firm, set up by Nii Kpakpo, one of the big six. His son, Jerry who currently manages the firm studied



Law at the Oxford University and Lincoln's Inn before being admitted to the Ghana Bar in 2000.

Rebecca Nkansah's reputation among her peers suddenly shot high, firstly, because of her enrolment as a lawyer and secondly, because of the law firm where she was working as an associate. She tried to impress her friends by inviting them and paying for lunch and dinners at prestigious restaurants in the capital. However, her allowance from Nyame-Tease Law Firm could no longer support her monthly expenditure. After two years of legal practice with Nyame-Tease Law Firm, Rebecca Nkansah resigned to struggle her way through life. Luck, however, came her way when her uncle, Osman, invited her to join him in his chambers at Maamobi. Rebecca seized the opportunity but after six months' practising with her uncle, she could not cope with the power outage and load shedding introduced by the Electricity Company. Her uncle had no generator and the firm bore the brunt of the load shedding because of its location. She, therefore, resigned from her uncle's chambers. Rebecca Nkansah's father had left a three-storey property for her at Airport Residential Area where power was more stable and the atmosphere conducive for legal practice. She ejected the tenants who were there and in August 2012 she set up her own legal firm. To cut down cost and also make additional income, she decided against her own principles to use the 1<sup>st</sup> floor for her residence, the 2<sup>nd</sup> floor for her Chambers and rented the third floor to Medex, a popular medical laboratory she and her husband had bought shares. She named the firm Ronag-JM Law Consult. The name 'Ronag-JM Law Consult' was a combination of the first letters from the initials of her own name, her uncle Osman, a lawyer, Nii Adams, her late beloved dad, a renowned medical laboratory technician, Georgina, her mother who was an accountant and two of her children, Joel and Maud aged six and three respectively. This, she hoped, will keep the memory of her family alive.

Her beloved country, Ghana, was to turn 60 years on 6<sup>th</sup> March 2017. It was going to be a big celebration. As part of the arrangements, the Ghana @ 60 Secretariat set up a website on the internet displaying the resources the nation was endowed with as well as its culture, traditions, politics and history. Professionals were invited to support the website by advertising there. The General Legal Council had given approval for lawyers and legal firms to have websites and place their firm's profile. Rebecca paid for a space on the Ghana @ 60 website set aside for professionals and had displayed the firm's profile, practice areas, cases she had won, pleadings and submissions of cases she was currently handling, location address and telephone numbers. It, therefore, became possible for investors wishing to invest in Ghana to easily locate a lawyer like Rebecca Nkansah for information and instructions for legal work.

Edem International Limited, investors from South Africa, contacted Rebecca through the internet and requested an urgent legal assistance to recover a debt due and owing to it by a Ghanaian company, Makola Enterprises Limited. Rebecca informed Edem International Ltd. that the approved scale of fees was 10% of the value of the total claim of US\$250,000. Edem International wanted Rebecca to devote all her time and attention to the case and complete it with a minimum of delay so they agreed with Rebecca to pay her 20% of the total claim. To show their good faith they deposited 15% out of the claim by way of legal fees. The demand letter Rebecca sent to Makola Enterprises Limited did not yield any positive results. Edem International Ltd. therefore instructed Rebecca Nkansah to sue the company together with the three directors who had signed personal guarantees to be responsible for the debt if there should be a default by Makola Enterprises Limited. It was when the names of the directors were brought that Rebecca Nkansah spotted the name of Jerry, the son of one of the Big Six who had taken her on in his firm as an associate and inspired her in her early years of practice. Rebecca was afraid suing Jerry will make her unpopular at the Bar and so



refused to issue the writ against her former boss, Jerry, and the other directors. She was, therefore, compelled to return the 15% deposit paid by Edem International Limited less all legitimate expenses and her fees based on quantum meruit.

Edem International Limited were not happy with Rebecca's refusal to sue her colleague lawyer but with no choice in the matter they took their brief away. Rebecca Nkansah, no doubt, was one of the few lawyers who benefited from the Ghana @ 60 website. More international clients and investors flocked into her firm for legal consultations. One such client was Baba Jamal PLC who informed Rebecca that they and four other mining companies in Ghana had been refused licence to operate in the country although they had paid for their prospecting Licence five years in advance. The other names were given as De-Souza Limited, Sackey Limited, Edem International Limited and Anima Limited. Baba Jamal PLC told Rebecca Nkansah that the situation was quite urgent and that they had lost a total of US\$5,000,000 and for everyday that the licence was not released they would continue to lose money. They wanted a claim for damages for the loss and an order for the issuance of the licence. Rebecca requested to meet the directors of the other companies but when after two days they did not turn up, she issued a writ in the names of Baba Jamal PLC and the other four companies.

The case started and the Managing director of Baba Jamal PLC brought copies of the agreement between the mining companies and the Ministry of Mines and receipts evidencing payment for the licence. Rebecca Nkansah, however, at the trial could not trace the documents and so did not tender them. The court, therefore, dismissed the claim of Baba Jamal PLC & Co. but awarded only nominal damages of US\$10,000 each. This money was promptly paid by the Ministry of Mines to Rebecca Nkansah's Clients' Account at the Cedi equivalent at an exchange rate determined by the Ministry of Mines. The Managing Director of Baba Jamal PLC refused to accept the Cedi equivalent because the rate of exchange was lower than the prevailing rate, but the Ministry of Mines insisted that the value was the same. In the midst of the disagreement, Rebecca wrote to Baba Jamal PLC attaching the cheques in the Cedi equivalent in the names of all the companies. The five companies have sent a petition to the General Legal Council against Rebecca Nkansah to strike out her name without holding a disciplinary inquiry for various complaints including instituting an action in court without their consent.

**Discuss the issues raised in this problem with particular reference to the Code of Ethics of the Ghana Bar Association and the relevant legislation affecting the legal profession in Ghana.**

**[28 MARKS]**

## **QUESTION 2**

"But in cross-examination, every question that does not advance your case injures it. If you have not a definite object to attain, dismiss the witness without a word". Do you agree?

**[14 MARKS]**

## **QUESTION 3**

*"Lawyers, just like judges and magistrates should endeavour at all times (especially in all their pleadings and processes filed before the courts and in their viva voce submissions in court) to use words advisedly and use words that are very decent and appropriate as the circumstances demand. A lawyer can still make his point very forcefully with the best of*



meanings without the use of offensive, intemperate, clumsy and insulting language". Per Dotse J.S.C.

Examine the role language plays in Advocacy.

[14 MARKS]

#### QUESTION 4

Discuss the main principles for effective Communication for Lawyers.

[14 MARKS]

#### QUESTION 5

Delali Cleaners Ltd used an electronically powered machine called a hydro-extractor in their laundry business. When the power was switched on the extractor revolved at high velocity. It was stopped by stepping on a foot brake, which combined with an interlocking device to bring the extractor to a rest. Following a fault, which made the footbrake inoperative, Adabayeri, an employee of the company responsible for operating the machine had to use a sack to stop the extractor. On one occasion, when he was trying to stop the machine with a cocoa sack, the rolling basket threw him down and thereby sustained very serious injuries. Adabayeri was rushed to the Save our Souls Hospital where he was admitted for six months.

The doctors diagnosed his injuries to be compound fracture of his leg and arm, contusion of the head and abrasions all around the body. After his discharge from the hospital, Adabayeri attended the hospital weekly as an outpatient for review. He has not been to work since the accident, and he has lost his part time job with Haikins Industries Ltd. Adabayeri now walks with the aid of a stick and suffers occasional loss of memory. Delali Cleaners has repudiated liability for Adabayeri's injuries on the grounds that Adabayeri sustained his injuries by using unauthorised means to stop the machine.

Based on the strict chronological presentations of evidence, frame not more than **15** non leading questions you would ask Adabayeri, your client, in evidence-in-chief to enable him present the key elements that will establish or support his case's court.

[14 MARKS]

#### QUESTION 6

Section 2 (c) of the Legal Profession Act 1960, Act 32 provides that *"Every person whose name is entered on the roll to be kept under this part shall when acting as a lawyer, be subject to all such liabilities as attached by law to a solicitor"*.

Discuss any liabilities attached to a Solicitor known to you with particular reference to decided cases and relevant rules affecting the Legal Profession in Ghana.

[14 MARKS]