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THE BOARD OF LEGAL EDUCATION
GHANA SCHOOL OF LAW

PROFESSIONAL LAW EXAMINATIONS PART I
2005/2006 ACADEMIC YEAR

CIVIL PROCEDURE

TUESDAY 30 MAY 2006

TIME ALLOWED: Three Hours - 9.30 a.m. to 12.30 p.m.

INSTRUCTIONS TO CANDIDATES

1. Read these instructions very carefully before beginning your answers.
2. Answer Four Questions only.
3. Do not write your name on your answer book, but write your seat number.

QUESTION ONE

"The provision for a overriding objective of adjudication in Order 1 rule 1(2) of the High Court (Civil Procedure) Rules 2004 (CI 47) is a major reform." Discuss.

QUESTION TWO

The plaintiff issued a writ of summons accompanied by the statement of claim below against the defendants.

"IN THE HIGH COURT OF JUSTICE
ACCRA - A. D. 2006

MERCY FINANCIAL SERVICES LIMITED
22 Airport Hills, Accra

SUIT NO. 882/2006

PLAINTIFF

VERSUS

1. CLEARWATER LIMITED
13 Reginald Culverts,
West Cantonments, Accra.
2. JANE BANSAH

DEFENDANTS

- House No C22/34, Russia, Accra
3. MAIGA TOURE
42 East Cantonments Road, Accra
 4. AKOSUA MEDOR
E34, West Adabraka, Accra
 5. YAW EKAR
22 Susu Lane, Okaishie, Accra
-

STATEMENT OF CLAIM

1. The plaintiff is a financial service provider, registered under the laws of Ghana. The 1st defendant is a limited liability company incorporated and operating in Ghana as a manufacturer of potable water. The 4th defendant is the managing director, and the 2nd, 3rd and 5th defendants are directors of the 1st defendant
2. By a loan agreement dat
3. ed 11 September 2003 between the plaintiff and the defendants, the plaintiff granted to the 1st defendant a loan in the sum of ₵300,000,000 to augment its working capital to be repaid on or before 10 September 2005 with interest at 16% per annum to the date of repayment. In paragraph 4 of the agreement the 2nd, 3rd, 4th and 5th defendants guaranteed the repayment of the loan an interest.
4. As at 30 June 2004 the total amount outstanding on the loan and interest was ₵230,000,000, which the defendants have failed to repay despite repeated demands by the plaintiff.
5. Wherefore the plaintiff claims against the defendants jointly and severally for:
 - (a) recovery of the sum of ₵230,000,000 being as at 30 June 2004, the outstanding balance of the loan granted to the 1st defendant by the plaintiff and guaranteed by the 2nd, 3rd, 4th and 5th defendants.
 - (b) interest at 16% on (a) above from 1 July 2004 to the date of final payment.

DATED AT ACCRA THIS 11TH DAY OF APRIL 2006.

Kofi Lawman
KOFI LAWMAN & CO
SOLICITORS FOR THE PLAINTIFFS

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TO:
THE REGISTRAR
HIGH COURT
ACCRA
AND TO THE DEFENDANTS"

At a meeting of the board of directors of the 1st defendant company, the 2nd, 3rd and 5th defendants accused the 4th defendant of misappropriating the loan and instructed Wagus & Co of 15 Floor, Abakom Towers, Accra, a law firm, to enter appearance for them only. The 1st and 4th defendants have failed to enter appearance although the time for doing so has elapsed:

Prepare the necessary papers on behalf of the plaintiff.

QUESTION THREE

Identify briefly the procedural issues arising from the letter below from Salamatu Mango.

"My dear law student

I have been married to Alhaji Suleman Oldage for the past 10 years. He has two sons by his previous marriage namely, Christian Oldage and John Oldage. John is 48 years old. He is a watch repairer resident at 12 Rue de Sobukwen, Abidjan, Cote d'Ivoire. Christian teaches at the Brilliant Nursery Institute at Dansoman and lives at 14 Akokofoto, Dansoman, Accra. He will be 21 years old in July 2006. These boys are very bad boys. They have taken advantage of the condition of their father and to rob him of everything. My husband and I had forgiven them for their previous misdeeds but their recent acts must not be overlooked.

You see, my husband is 95 years old and suffers from senility and mental decay. We now live in Accra and he attends the hospital as an outpatient. To confess, Alhaji cannot care for himself or his affairs.

Alhaji owns a large tract of land that he bought from the Joka stool. I have the conveyance with me. The land lies across the boundary between the Central Region and the Western Region. These two boys took advantage of their father's condition and dissipated his properties. John sold four plots of the land on the Central Region side to Superoil Petrogas Ltd, a company incorporated in Ghana and engaged in the retail of petroleum products. Its registered office is No 15, Market Avenue Koforidua. The company is building a petrol station thereon. The bogus deed of indenture recites John as the owner of the land. As if that were not enough Christian also leased 108 plots on the Western Region side to Money-Quick Financial Services Ltd of No 46 Law School Road Accra, which is constructing a golf course thereon. Again these boys formed Poh Transport Ltd, a car hire company of which they are the directors and shareholders. John forged a transfer of Alhaji's only car, an Opel saloon car registered as GS 144 Z to the company. They have painted the name of the

KOKU NTASESE

1ST DEFENDANT

WILLIE PEE

2ND DEFENDANT

(By Counterclaim)

STATEMENT OF DEFENCE AND COUNTERCLAIM

1. The defendants admit paragraphs 1, 2 and 3 of the Statement of Claim.
2. Paragraph 4 is admitted save the allegation that the goods were worth ₵400 million and that items of furniture were stored in the back-yard and exposed to the weather.
3. Paragraph 5 is admitted.
4. Paragraph 6 is admitted save the averment that the learned judge also ruled that the plaintiff was entitled to bring a separate action for damage to his property.
5. Paragraphs 7 and 8 are admitted.
6. Paragraphs 9 and 10 are denied and the defendants say that the award in paragraph 6 covered all losses suffered.
7. The defendants say that the plaintiff is estopped by the judgment of the High Court, Accra in suit No. 102/76 entitled *Koku Ntasese v Kofi Donkor*.
8. The defendants aver further and in the alternative that the action is statute-barred.

COUNTERCLAIM

9. The plaintiffs to the counterclaim aver that the premises in issue were let to the 1st defendant to the counterclaim.
10. The 1st defendant to the counterclaim has now sublet or otherwise parted with possession to the 2nd defendant to the counterclaim herein the said premises without the knowledge and consent of the plaintiffs to the counterclaim.
11. Wherefore the plaintiffs to the counterclaim claim against the defendants to the counterclaim herein jointly or severally an order of (a) recovery of possession and (b) damages for trespass.
12. Save as herein above expressly admitted the defendants deny each and every allegation contained in the Statement of Claim as if same were set out in extenso and denied seriatim.

DATED AT ACCRA THIS 21ST DAY OF JANUARY 2004.

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SOLICITORS FOR THE DEFENDANT
TO THE ORIGINAL ACTION

TO:

THE REGISTRAR
HIGH COURT
ACCRA

AND TO:

THE ABOVE NAMED 2ND DEFENDANT TO THE COUNTERCLAIM, WILLIE
PEE, NO 2 YIYIWA STREET, ACCRA

NOTICE OF COUNTERCLAIM

To the within-named Willie Pee, No 2 Yiyiwa Street, Accra.

Take notice that if you do not appear to the within counterclaim of the within-named Kofi Donkor within eight days from the service of this defence and counterclaim upon you, you will be liable to have judgment against you in your absence.

Appearance either personally or by solicitor is to be entered at the Registry of the court of the issue of the writ at the High Court, Accra.

QUESTION SEVEN

Discuss the document below:

"WRIT OF SUMMONS
(Order 2 rule 3(1))

IN THE HIGH/CIRCUIT COURT OF JUSTICE

BETWEEN

*Name of plaintiff

Plaintiff

AND

**Name of defendant
Defendant

To

AN ACTION having been commenced against you by the issue of this writ by above-named plaintiff

YOU ARE HEREBY COMMANDED that within EIGHT DAYS after service of this writ on you inclusive of the day of service you do cause an appearance to be entered for you.

AND TAKE NOTICE that in default of your so doing judgment may be given in your absence without further notice to YOU.

Dated this day of (month) (year)

Chief justice of Ghana

*State name place of residence or business address of plaintiff if known (not P.O. Box number)

**State name place of residence or business address of defendant (not P.O. Box number)

NB: This writ is to be served within twelve calendar months from the date of issue unless it is renewed within six calendar months from the date of renewal.

The defendant may appear hereto by filing a notice of appearance either personally or by a lawyer in Form 5 at the Registry of the Court of issue of the writ at A defendant appearing personally may, if he desires, give notice of appearance by post.

STATEMENT OF CLAIM

The Plaintiff's claim is for:

This writ was issued by

whose address for service is

Agent for

Address Number and date of lawyer's current licence.

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