

THE BOARD OF LEGAL EDUCATION
GHANA SCHOOL OF LAW
PROFESSIONAL LAW COURSE – PART I
CIVIL PROCEDURE EXAMINATIONS (2009-2010)
THURSDAY 10TH JUNE 2010

INSTRUCTIONS TO CANDIDATES – Please read the following instructions and the questions very carefully before beginning your answers:

- (i) The time allowed for this examination is THREE (3) hours.
- (ii) QUESTION 1 IS COMPULSORY.
- (iii) Answer THREE (3) questions in all, i.e. Question 1 and any TWO (2) other questions.
- (iv) Write your seat or index number on your answer booklet and on each loose paper used for your answers.
- (v) Do not write your name on or anywhere in your answer booklet.
- (vi) Adhere strictly to all instructions on the front cover of your answer booklet.
- (vii) Please write legibly and express yourself in precise, clear language. You may lose marks for illegible writing and imprecise language.

QUESTION 1

Lablands Holdings, Inc. has informed the law firm where you work as a Junior Associate, that on 9th June 2010, it received at its official address in Toronto, through DHL courier services, an envelope which contained just the following documents:

(i)
IN THE SUPERIOR COURTS OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
ACCRA, A. D. 2010

SUIT NO: GSL 10/6/10

CLASSPETER LABORATORIES LIMITED
Accra

Plaintiff

Versus

LABLANDS HOLDINGS, INC.
5000 East Loop North, Suite 2200
Toronto, Ontario, CANADA

1st Defendant

LABLANDS (NIGERIA) LIMITED
35 Abeokuta Drive, Lagos, NIGERIA

2nd Defendant

NOTICE OF WRIT OF SUMMONS TO BE SERVED OUTSIDE THE JURISDICTION
PURSUANT TO LEAVE GRANTED BY HIS LORDSHIP JOSEPH BOATENG
ON 26TH MAY 2010

TO:

LABLANDS HOLDINGS, INC.
5000 East Loop North, Suite 2200
Toronto, Ontario, CANADA

And

LABLANDS (NIGERIA) LIMITED
35 Abeokuta Drive, Lagos, NIGERIA

TAKE NOTICE that CLASSPETER LABORATORIES LIMITED, Accra, Ghana has begun an action against you, in the High Court of Justice in Ghana by a Writ of Summons dated the 19th day of May 2010, which Writ of Summons is indorsed as follows:

The Plaintiff-Company claims against the Defendants, jointly and severally, the sum of \$1,500,000 as damages for breach of contract occasioned by the Defendants' supply of defective laboratory reagents to the Plaintiff-Company.

And you are required within 8 days after receipt of this notice, inclusive of the day of receipt, to cause an appearance to be entered for you in the High Court to the said action, and in default of your so doing the Court may proceed therein and judgment may be given in your absence.

You may enter an appearance in person or by a lawyer either by handing in appropriate forms, duly completed, at the registry of the Court or by sending them to that office by post.

If you enter an appearance, then, unless a summons for judgment is served on you in the meantime, you must also serve a defence on the plaintiff or the lawyer for the plaintiff (as the case may be) within 14 days after the last day of the time limited for entering an appearance, otherwise judgment may be entered against you.

Dated in Accra the 28th day of May 2010

Adolphus Mensah Classpeter
On behalf of the Plaintiff-Company

And

(ii)
IN THE SUPERIOR COURTS OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
ACCRA, A. D. 2010

SUIT NO: GSL 10/6/10

CLASSPETER LABORATORIES LIMITED
Accra

Plaintiff

Versus

LABLANDS HOLDINGS, INC.
5000 East Loop North, Suite 2200
Toronto, Ontario, CANADA

1st Defendant

LABLANDS (NIGERIA) LIMITED
35 Abeokuta Drive, Lagos, NIGERIA

2nd Defendant

ORDER FOR LEAVE TO SERVE NOTICE
OF WRIT OF SUMMONS
OUTSIDE THE JURISDICTION

UPON READING the affidavit of Dr. Adolphus Mensah Classpeter, filed on 22nd May 2010 in support of a Motion Ex Parte also dated 22nd May 2010, for leave to serve Notice of the Writ of Summons filed on 19th May 2010 on the Defendants outside the jurisdiction;

AND UPON HEARING Dr. Adolphus Mensah Classpeter, a medical doctor and the Managing Director of the Plaintiff;

IT IS HEREBY ORDERED that the Plaintiff be entitled to leave to serve Notice of the Writ of Summons on the Defendants at their addresses endorsed on the Writ of Summons, and that the Defendants are entitled to cause appearance to be entered for them within 8 days after receipt of the Notice, inclusive of the day of receipt.

GIVEN UNDER MY HAND AND THE SEAL
OF THE HIGH COURT OF JUSTICE, ACCRA,
THIS 26TH DAY OF MAY, 2010

(SGD.)
MRS. PENELOPE QUAYE
REGISTRAR

According to your instructions, on 7th June 2010, the 2nd Defendant, a wholly-owned subsidiary of the 1st Defendant, received also through DHL courier services, an envelope containing (i) a copy of the Writ of Summons filed in Ghana on 19th May 2010, (ii) a Statement of Claim filed on 20th May 2010 and (iii) a copy of the Court's 26th May 2010 Order. The details of the Plaintiff, indorsed on the Writ of Summons and Statement of Claim, are the same as that set out on the above Notice of Writ and Court Order. The Writ of Summons and Statement of Claim were also signed on behalf of the Plaintiff by its Managing Director, Dr. Adolphus Mensah Classpeter, a medical doctor.

Your law firm has been instructed to represent the Defendants.

- (a) Write a memorandum of law to your senior in chambers, explaining what documents should be prepared for filing on behalf of the Defendants. (20 marks)
- (b) Draft the recommended documents. (20 marks)

QUESTION 2

With the aid of decided cases and relevant statutes, write notes on the following:

- (a) What is an Appeal? (5 marks)
- (b) Who can appeal? (5 marks)
- (c) On what grounds and under which circumstances would an appellate court allow fresh evidence to be adduced? (5 marks)
- (d) Distinguish between interlocutory orders/judgments and final orders/judgments and explain why this distinction is relevant to appeals. (15 marks)

QUESTION 3

- (a) Order 11 rule 7(1) of the High Court (Civil Procedure) Rules, 2004 (CI 47) states, in part, as follows: "... every pleading shall contain only a statement in a summary form of the material facts on which the party pleading relies for the claim or defence, but not the evidence by which those facts are to be proved and the statement shall be as brief as the nature of the case admits." Discuss this provision. (20 Marks)
- (b) Set out and explain the rules that govern applications for the renewal of Writs of Summons. (10 marks)

QUESTION 4

"The purpose of Order 4 rule 5(1) and (2) of CI 47 is to prevent an action from being defeated simply by the joinder of unnecessary parties or by leaving out relevant parties. The provision is also designed to save, rather than destroy, and to cure that which is capable of cure." What are the grounds upon which a court will exercise its powers under the said provision? (30 Marks)

QUESTION 5

- (a) "Order 81 of CI 47 has rendered obsolete, the long-held distinction between a fundamental defect in proceedings and a mere irregularity." Discuss this statement. (20 Marks)
- (b) Outline and discuss the rules under which a person, who is not a party to a probate action, may be brought into the action. (10 Marks)

QUESTION 6

In *Davies v. Eli Lilly & Co* [1987] 1 WLR 428, Sir John Donaldson MR said: "In plain language, litigation... is conducted 'cards face up on the table'. Some people... regard this as incomprehensible. 'Why', they ask, 'should I be expected to provide my opponent with the means of defeating me?' The answer, of course, is that litigation is not a war or even a game. It is designed to do real justice between opposing parties and, if the court does not have all the relevant information, it cannot achieve this object." This dictum finds statutory expression in Order 21 rules 1 and 2 of CI 47, which requires that parties engage in what is commonly referred to as 'Automatic & Mutual Discovery' of documents. Discuss these rules. (30 Marks)