

**THE BOARD OF LEGAL EDUCATION
GHANA SCHOOL OF LAW
PROFESSIONAL LAW COURSE – PART I
CIVIL PROCEDURE EXAMINATIONS (2010-2011)
TUESDAY 7TH JUNE 2011**

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 FOUR (4) questions in all, i.e. Question 1 (in Section A) and any THREE (3) other questions from Section B AND Section C. NOTE: You cannot answer more than TWO (2) questions from either Section B or Section C; you must answer at least ONE (1) question from each of those sections.
- (iv) Use a separate Answer Booklet for each Section, and clearly write the Section on the front cover of each Booklet.
- (v) Write your seat or index number on your Answer Booklets and on each Loose Sheet used for your answers. Remember to attach the Loose Sheet(s) to the correct Answer Booklet.
- (vi) Do not write your name on or anywhere in your Answer Booklets.
- (vii) Adhere strictly to all instructions on the front cover of your Answer Booklets.
- (viii) Please write legibly and express yourself in precise, clear language. You may lose marks for illegible writing and imprecise language.

SECTION A

✓ **QUESTION 1**

With the aid of the relevant provisions of the High Court (Civil Procedure) Rules, 2004 (CI 47), and decided cases, if any, answer all of the following questions:

- (i) (a) When is a person said to have “intermeddled” in the estate of a deceased person, and what are the consequences? (4 marks)
(b) What is a Writ of Possession? Under what circumstances and for what purposes, is it issued? (4 marks)
- (ii) (a) What are the conditions precedent to enforcing or executing a judgment obtained against the State? (4 marks)
(b) What is meant by the phrase “The Rule Against Departure”? (4 marks)
- (iii) What are the consequences of a party to an action failing to comply with the Rules or orders made by the court under the Rules, for discovery, or production of documents for inspection? (8 marks)

(iv) Under what circumstances is a defendant permitted to file Conditional Appearance to a Writ of Summons? (8 marks)

(v) If the traverse of allegations of facts that have been pleaded in a Statement of Claim is required to be specific, what is the use or function of a General Traverse in a Statement of Defence? Is a General Traverse sufficient to deny a plaintiff's claim? (8 marks)

(Total: 40 marks)

SECTION B

QUESTION 2 *Plt*

Kofi Abrokwa is a "by-day" mason who lives at Ashanti New Town, Kumasi, in the Ashanti Region. His house number is O.I. 26. On 12th March 2009 Kofi was on his way back home from work. When he got to Kejetia, Kumasi, he was crossing a road at the zebra crossing when a Mercedes Benz 207 bus with registration number WR 1957 G, knocked him down.

The driver of the bus was over-speeding, and failed to stop when Kofi and other pedestrians were crossing the road. Abrokwa sustained serious injuries as a result of the accident.

The Medical Report on Kofi showed that he suffered a contusion of his forehead, his left shoulder was dislocated, and his left tibia, fibula and right sternum were fractured.

Abrokwa incurred expenses including the cost of X-ray at GH¢20.00, drugs at GH¢150.00 and surgical fees of GH¢300.00. He purchased two crutches at a cost of GH¢30.00. Kofi also obtained a Police Report at the cost of GH¢5.00. The cost of procuring the Medical Report was GH¢50.00.

Kofi was on admission in the hospital for one month, and he spent further period of two months recuperating at home, during which time he could not work. He still walks with a limp. Before the accident, Kofi's daily wage as a hired mason was GH¢3.00.

According to the Police Report, one Ekow Hayford of House Number E.S. 144, Essikado, Sekondi, Western Region, is the owner of the Benz bus. His driver at the time of the accident was John Quaison, of House No. H.V. 234, Harbour View, Takoradi, Western Region.

Kofi has engaged your services as a lawyer, to institute action in the High Court for the appropriate reliefs.

(i) Complete the attached blank Writ of Summons for filing. ✓

(ii) Draft the Statement of the Claim. ✓

(20 marks)

QUESTION 3

Asempaneye Rural Bank Limited with its registered office at G24, Goaso in the Brong Ahafo Region, has engaged you as their lawyer to institute an action in court to recover a debt of GH¢25,000.00 owed to it by Odum Ye Hard Sawmills Limited of 18 Nyamedua Street, Tepa, Ashanti, a saw mill. The debt arose out of a loan granted to the sawmill in June 2007, which was to be repaid within 2 years, with interest at 18% per annum. The bank and the company signed a Loan Agreement on 5th June 2007. The Managing Director and sole

shareholder of the sawmill, Peter Nestor-Cofie, wrote to the bank on 7th June 2007 (the day the loan was disbursed), acknowledging receipt of the funds in the company's bank account.

The company failed to pay the debt when it became due. The bank's solicitor, Charles Prempeh Pabi, wrote to the sawmill on 8th June 2009 to demand payment in full, else it would take legal action to recover the debt with interest. Peter Nestor-Cofie wrote to the bank on 30th July 2009, citing difficulties that the company was facing for the inability to pay on time, and pleading for three more months within which to pay. On 1st August 2009, the bank wrote to agree to this request.

The saw mill has however failed to pay the debt, and after several failed negotiations, the bank instructed you to institute action on its behalf to recover the debt owed. You have issued and served the Writ of Summons and the Statement of Claim. The company has entered appearance through its lawyer Issiffu Mohammed of Top Law Consult, Accra.

(i) What process will you resort to, in order to ensure that the bank obtains judgment as expeditiously as possible, and why?

(ii) Draft the relevant processes to obtain the judgment.

(20 marks)

QUESTION 4

Upon the death of Kwabena Mensah, his widow (Mrs. Mary Mensah) and the eldest child (Jude Mensah) applied for letters of administration in respect of the estate of the deceased. The properties listed in the inventory of the estate included a house, situate at Akyem Manso, the home town of the deceased, in the Eastern Region. The customary successor of the deceased, Opanin Kwesi Mempeasem, filed a caveat and on being served with the warning, filed an affidavit of interest claiming the house as family property.

(i) What would be your next move as the lawyer for widow and children? Please draft the relevant process.

(ii) What arguments would you put up against a concubine (Mercy Anka-Matete) who applies to join the application on the ground that she wants the interest of her child (Kwabena Mensah, Jnr.) with the deceased in the estate protected?

(20 marks)

SECTION C

QUESTION 5

Abbot Bank granted a loan facility of GH¢500,000.00 to Yakpo Haulage Ltd. to be paid within 24 months. Yakpo Ltd used the loan to acquire ten heavy duty trucks to cart cocoa or behalf of a Cocoa Marketing Company. Out of the loan Yakpo Ltd was able to put up an office building at the Airport area in Accra called "Yakpo House".

Yakpo Ltd defaulted in repaying the loan, and consequently Abbot Bank has obtained judgment against it for the recovery of the sum of GH¢500,000.00 together with interest. At the time of the judgment all the ten trucks acquired by Yakpo were in very good condition due to a good maintenance regime of the company.

Mr. James Yakpo the Managing Director of Yakpo Ltd personally owns a house at Atomic Hills, Accra, where he resides with his family. His wife, Mrs Vera Yakpo, who deals in textiles, has just acquired two new BMW latest models out of her business for herself and her only daughter Ama Yakpo.

In enforcing the judgment against Yakpo Ltd, bailiffs have attached Mr. James Yakpo's Airport Hills house, and the two BMW saloon cars belonging to Mrs. Vera Yakpo and the daughter.

- (i) The Yakpo family has consulted you. Describe in detail the procedure involved in the action you will take on their behalf.
 - (ii) If Abbot Bank had consulted you to enforce the judgment, what step(s) or process(es) would you have taken on its behalf?
 - (iii) What is a Reserved Price and how is it determined?
- (20 marks)

QUESTION 6

Opanin Kwadwo Asamoah, head of the Menkomenam family of Osino in the Eastern Region, issued a writ against Akosua Mansa and Tawia Amofa for declaration of title to a family land situate at Osino. During the pendency of the case, Opanin Asamoah died and Egya Yaw Nimo was appointed the head of family. Upon assuming that traditional office Egya Yaw Nimo has consulted you about the case.

The processes filed shows that the Writ was issued at the High Court, Kumasi. It also became evident that the two defendants are only tenant farmers on the land and their landlord is one Opanin Kwesi Safo, also of Osino.

- (i) Briefly describe the steps you would take for and on behalf of Egya Yaw Nimo.
 - (ii) What will you do about the death of Opanin Kwadwo Asamoah?
 - (iii) Draft the process that you need to file to ensure that the dispute is determined between the real parties.
- (20 marks)

QUESTION 7

- (i) What is an appeal?
- (ii) How are appeals conferred on appellate courts?
- (iii) Under what circumstances can a court entertain an application for Review under Order 42 of CI 47 of 2004?
- (iv) Tom Brooke lost an action he brought against Hans Swanzy for a claim in detinue in the High Court, Accra. Tom Brooke intends to appeal against the final decision of the High Court and has consulted you to prosecute the appeal. In which court will the appeal be filed and within which period?
- (v) If the decision against Tom Brooke was an interlocutory order by the Circuit Court, what steps would you have taken in order to appeal?

(20 marks)