

THE BOARD OF LEGAL EDUCATION
GHANA SCHOOL OF LAW
PROFESSIONAL LAW COURSE- PART 1

CIVIL PROCEDURE SUPPLEMENTARY EXAMINATIONS (2012-2013)

28TH NOVEMBER 2013

INSTRUCTIONS TO CANDIDATES – Please read the 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

- (a) What is expected of a defendant who intends to file a statement of defence to defend an action consider upon service on him of a statement of claim? (10)
- (b) What are the functions of pleadings in civil proceedings? (10 marks).
- (c) On what basis may a court of law strike out pleadings and at what stage of the proceedings? (10 marks)
- (d) What is meant by proof of will in **common form** and **solemn form**? (10 marks)

(Total 40 marks)

SECTION B

QUESTION 2

(i) Kofi Marfo of H/No. B4, Bubuashie, Accra, engaged Kwadwo Manu of H/No. 2, Achimota, Accra to construct a house for him as the said Kwadwo Manu is well known in construction. After receiving part-payment of GHC90,000.00 from Kofi Marfo, since 21/10/2010, Kwadwo Manu has not done any work at the site of construction. Kofi Marfo is naturally aggrieved by the conduct of Kwadwo Manu.

He has instructed you to sue Kwadwo Manu for recovery of the part-payment paid to him and other ancillary reliefs which you as a lawyer is convinced could be claimed in the action.

Draft a simple statement of claim to be filed at the appropriate court on behalf of your client. (20 marks).

QUESTION 3

In Odgers, Pleadings and Practice [18th edition] at page 131, the learned authors state as follows:

“It is in the power of the party either to admit or to deny each allegation in his opponents’ pleading, as he thinks fit. If he decides to deny it, he must do so clearly and explicitly. Any equivocal or ambiguous phrase will be construed into an admission of it”.

With the aid of decided cases and the Civil Procedure Rules (CI 47) explain the above statement of law and the effect of a well drafted general traverse in a statement of defence. (20 marks)

QUESTION 4

- (a) With the aid of decided cases, if any, and the Civil Procedure Rules (CI 47) of 2004, distinguish Summary Judgment from Default Judgment [10 marks]

- (b) What is the purpose of a reply and at what stage is it filed in civil proceedings? [10 marks]

QUESTION 5

- (a) What should a defendant who intends to resist an application for summary judgment do to avoid summary judgment against him? [10 marks].
- (b) What is review under Order 42 of the Civil Procedure Rule (CI 47) and under what circumstances may a court grant an application for review [10 marks].

SECTION C

QUESTION 6

Kwadwo Boakye is a businessman operating under the business name of Kwadwo Boakye Enterprise at House No. B .G 74, Aboabo, a suburb of Tamale.

On the 5th of October 2012, he approached the Kantos Limited, dealers in electronic and electrical appliances, to be supplied with their goods on credit. He promised to pay the amount involved within 6 months from the date of supply.

Kantos Limited accordingly supplied the goods to Kwadwo Boakye who sent his driver to collect them from the wholesale of Kantos Limited at Adum, Kumasi.

The understanding was that the goods to the tune of GH¢55,000 were to be paid for at the office of Kantos Limited at Kejetia, Kumasi.

Upon failing to pay the amount, the Managing Director of Kantos Limited wrote a letter dated 6th July 2013 to demand the payment of the amount within one (1) week from the receipt of the same.

This prompted Kwadwo Boakye to execute a written undertaking dated 17th July 2013 promising to pay the same by instalments of GH¢30,000 at the end of August 2013, GH¢10,000 at the end of September 2013 and GH¢15,000 at the end of October 2013.

Having failed to make a single payment as promised, you were on 17th November 2013 approached as a lawyer by the Managing Director of Kantos Limited to institute the appropriate legal proceedings to recover the debt with other appropriate ancillary reliefs:

- i. What mode of action would you resort to and what document(s) would you serve Kwadwo Boakye with for him to know that action has been instituted against him?
- ii. Draft a Statement of Claim for such an action.

QUESTION 7

- i. What steps would you as a Plaintiff, take to ensure that a writ of summons, the notice of which is to be served out of the jurisdiction is issued and for the Defendant to be notified of the same.
- ii. Defendants who were served with a writ of summons and the following Statement of Claim failed to file a Statement of Defence two months after entering appearance per his Solicitor James Manu of Asempa Chambers, 125 Western Close, Takoradi, Western Region:

IN THE HIGH COURT OF JUSTICE
KUMASI/ASHANTI

SUIT NO

BETWEEN:

**JONATHAN BOATENG of House No. P49
PRABON, near SEWUA ASHANTI**

--- --- **PLAINTIFF**

VRS.

**1. JOANNA ASANTE
OF BOHYEN,
H/NO. B.16
BOHYEN, KUMASI**

--- --- **DEFENDANTS**

**2. KWABENA MENSAH
OF H/NO O.52
OBUASI**

STATEMENT OF CLAIM

1. The Plaintiff is a carpenter and lives at Prabon, near Sewua, Kumasi in the Ashanti Region.
2. The 1st Defendant is the owner of Nissan Urvan Bus with registration letters and number AS 9832 W and lives at Bohyen Kumasi in the Ashanti Region.
3. The 2nd Defendant is the driver of the 1st Defendant and lives at Obuasi in the Ashanti Region.
4. The Plaintiff states that on the 10th of August, 2009 at about 5.00am, he was travelling from Effiduase to Kumasi on board Nissan Bus Number AT 9832 T driven by the 2nd Defendant in the course of his employment.

5. On reaching a section of the road at Kwamo on the main Kumasi-Accra road, the 2nd Defendant drove vehicle Number AT 9832 T so fast and so negligently that he veered off the outer lane of the dual carriage road and hit the rear nearside portion of Mercedes Benz Tanker Truck with registration AS 1190 Z ahead of him which was branching to his nearside with its indicator signal on.
6. As a result of the accident, the Plaintiff sustained serious injuries and was rushed to the Komfo Anokye Teaching Hospital, Kumasi where he underwent surgery and treatment.
7. The Plaintiff was therefore admitted at the hospital from the 10/08/2009 and discharged on 31/08/2009.
8. The Plaintiff also attended hospital thereafter as an out patient.
9. The Plaintiff was admitted again at the hospital on 17/02/2012 for the removal of the implant and discharged on 11/03/2012 after treatment.
10. The Plaintiff also incurred expenses, damages and loss of income of GH¢300 a month due to the accident.

11. PARTICULARS OF NEGLIGENCE

- i. Driving too fast
- ii. Veering off his lane to hit the vehicle ahead of him
- iii. Failure to be on proper look out
- iv. Failure to drive, manoeuvre or control the vehicle to avoid the accident
- v. Failing to observe the road traffic regulations

12. PARTICULARS OF INJURIES

- i. Fracture of the neck of the femur
- ii. Segmental fractures of the distal and supracondylar region of the femur
- iii. Head injury
- iv. Injury to the thigh
- v. Injury to the pelvis
- vi. Injury to the hip joint
- vii. Multiple abrasion of the body

13. PARTICULARS OF SPECIAL DAMAGES

- | | | |
|-----|----------------|-----------|
| i. | Medical Report | GH¢200.00 |
| ii. | Police Report | GH¢50.00 |

iii.	Drugs (15 per week for 4 weeks)	GH¢60.00
iv.	Hospital fees	GH¢100.00
v.	Admission at KNUST hospital	GH¢300.00
vi.	Special Nourishment (GH¢5 for 1 month)	GH¢150.00
vii.	Second surgery	GH¢500.00
viii.	Transport GH(¢3 a day for 1 month)	GH¢90.00
ix.	Transport to Komfo Anokye Teaching Hospital	GH¢2400.00
x.	X-ray on 21 st July 2012	<u>GH¢10.00</u>
	TOTAL	<u>GH¢3,860.00</u>

14. Wherefore the Plaintiff claims against the Defendants jointly and severally as follows:

General and Special Damages for the injuries and damages sustained and incurred by the Plaintiff when on 10/8/2009 the 2nd Defendant drove vehicle No. AT 9832 T owned by the 1st Defendant in the course of his employment so fast, and so negligently that he hit the rear of Vehicle No. AS 1190 Z ahead of him as follows:

- i. General Damages
- ii. Special Damages of --- GH¢3,860.00

DATED AT 'NYAME ADOM' CHAMBERS, KUMASI THIS 7TH DAY OF AUGUST 2012

SOLICITOR FOR PLAINTIFF

THE REGISTRAR
HIGH COURT
KUMASI

AND TO THE DEFENDANT HEREIN

- iii. What would you do as Solicitor for the Plaintiff to secure judgment for the Plaintiff?
- iv. Draft the process.

QUESTION 8

- i. The Plaintiff, Opanin Kwasi Amoako has decided to sue the Defendants claiming that the cocoa farm in dispute is his family property. The Defendants are the Executors of the last will and testament of the late Yaw Asamoah.

In his said last will and testament, the deceased devised the said cocoa farm to his widows and children. Opanin Kwasi Amoako is the head of the deceased's family.

As Solicitor for Opanin Kwasi Amoako, draft the title of the suit to be instituted at the High Court, Kumasi.

- ii. Who can sign a writ of summons and the statement of claim in such a case and to whom will it be addressed or copied?
- iii. Draft the addressees involved if the writ was to be issued in the High Court, Kumasi.
- iv. When will an application for substituted service be granted?