

**THE BOARD OF LEGAL EDUCATION**  
**GHANA SCHOOL OF LAW**  
**PROFESSIONAL PART I EXAMINATIONS**  
**CIVIL PROCEDURE EXAMINATIONS (2013-2014)**

**JUNE 10, 2014**

**TIME ALLOWED: 3 HOURS 30 MINUTES 10:00 a.m. TO 1:30 p.m.**

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

**(i) QUESTION 1 IS COMPULSORY.**

**(ii) Answer FOUR (4) questions in all, i.e. Question 1(Section A) and ANY THREE (3) other questions from either Section B or 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.**

**(iii) Use a separate Answer Booklet for each Section and clearly write the Section on the front cover of each Booklet.**

**(iv) 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.**

**(v) Do not write your name on or anywhere in your Answer Booklets.**

**(vi) Adhere strictly to all instructions on the front cover of your Answer Booklets.**

**(vii) 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 decided cases, if any, and the High Court Civil Procedure Rules, 2004 (C.I. 47) and decided cases, answer **ALL** the following questions:-

- (i) (a) Under Order 66 R13, what is the order of priority of grant of Letters of Administration when a person dies intestate? (5 marks). *Spouse, Children, Parents, Family*
- (b) What is Administration Action under Order 66 of C.I. 47? How is it different from Probate Action? (5 marks). *- Deals with administration of property of deceased, 2) Validity / otherwise of will*
- (ii) (a) A Defendant in answer to the Statement of Claim must serve his Statement of Defence on the Plaintiff. Briefly state the options open to a Defendant in the process of preparing his Statement of Defence. (5 marks). *- Deny, Admit*
- (b) A Reply may be served by the Plaintiff in answer to the statement of defence but in many cases it is unnecessary to serve a Reply. In which cases or instances would the Plaintiff find it necessary to serve a Reply? (5 marks). *Answer to S.O.D, Further clarifications*
- (iii) (a) Briefly state what a defendant who has been served with an application for summary judgment do if he intends to defend the action in its entirety? (5 marks). *Defendant to set aside summary judgment with supporting affidavits*
- (b) What powers are vested in an Appellate Court in hearing Civil Appeals? (5 marks) *Original orders, etc.*
- (iv) a. Order 4 Rule 5(1) of the Civil Procedure Rules, C.I. 47 of 2004 states as follows:
- "No proceedings shall be defeated by reason of mis-joinder or non-joinder of questions in dispute so far as they affect the rights and interests of the persons who are parties to the proceedings". Discuss. (5 marks).
- (b) Describe the procedure to be adopted by an Execution Creditor from the time of attachment of an immovable property by
- Force sale with market price reserved*

writ of *fi fa* to the time of sale under the Rules of Court and the Auction Sales Act, 1989, PNDCL 230. (5 marks)

(Total: 40 marks)

## SECTION B

### QUESTION 2

- a. Yaw Manu commenced a Mortgage action against Joe Pata in the High Court, Accra. The writ and statement of claim was served on Joe Pata on 3<sup>rd</sup> January 2014. A search conducted at the Registry of the court on the 20<sup>th</sup> January 2014 indicated that Joe Pata had defaulted in entering Appearance. Counsel for Yaw Manu then applied to the court by Motion Ex-parte for judgment. The court on the 25<sup>th</sup> January 2014 entered default judgment against Joe Pata.

Joe Pata is aggrieved and has come to consult you. **What will you do for him and why?** (5 marks)

- b. Under what main ground will a judgment entered in default of pleadings be set aside by the court? (5 marks).
- c. What remedy has a defendant who fails to attend the trial of a suit and as a result judgment is entered against him under him under Order 36 Rule 2 of C.I. 47? (5 marks)
- d. Under what grounds can a party apply for summary judgment under Order 14 of C.I. 47? (5 marks).

[20 marks]

### QUESTION 3

- (a) On the 20<sup>th</sup> March 2014, Kofi Nimo obtained judgment in the High Court, Accra for the recovery of possession of a parcel of land occupied by five (5) artisans. Kofi Nimo has engaged you to enforce the judgment.

**What step(s) will you take to enforce the judgment?**

(5 marks)

(b) What is Stakeholders Interpleader? (5 marks)

(c) What remedy has a judgment-debtor whose property is attached and sold at an auction conducted contrary to the Civil Procedure Rules? (5 marks) *within*

(d) Briefly describe a Garnishee proceeding. (5 marks).

[20 marks)

#### QUESTION 4

(a) On the 5<sup>th</sup> January 2014, a Circuit Court in Accra dismissed Ama Kumi's application for the interim preservation of vehicle No. GM 3452 T, the subject-matter of an action she has commenced against James Bobor. Aggrieved by the ruling of the court, Ama has engaged you to appeal against the ruling.

**What steps will you take to ensure that the appeal is filed?** (5 marks).

(b) Tom Brown issues a writ and statement of claim against Yaw Broni, who entered Appearance and filed a statement of defence on 4<sup>th</sup> March 2014. Tom Brown filed a Reply on the 10<sup>th</sup> March 2014. On the 26<sup>th</sup> of March 2014, Tom Brown was served with a process titled Amended Statement of Defence which was filed on the 25<sup>th</sup> March 2014.

As the Lawyer for Tom Brown what will you do concerning the process served on your client and why? (5 marks)

(c) Who is an Intermeddler in a Probate or Administration matter? What are the sanctions for a person found guilty of intermeddling in an estate? (5 marks)

(d) Probate of the Will of Yaw Oppong (deceased) has been granted to Sam Prah. Tony Wusu who claims an interest in the estate of Yaw Oppong has engaged you as Lawyer to initiate an action in the High Court, Accra for the revocation of the Probate granted.

What step(s) will you take before issuing the writ of summons? (5 marks)

[20 marks)

## SECTION C

### QUESTION 5

Opanin Kwame Bosompem is a cocoa farmer. He farms on a piece or parcel of land at Kunsu Wiowso in Ashanti on Kunsu stool land bounded by the properties of Amma Nyame, Kofi Manu, Akosua Nyanta and the Kunsu stream. He is the Head of his family which owns the land. Whilst attending a funeral at Effiduasi near Koforidua, the capital of Eastern Region of Ghana, he was informed that a timber firm, Kasimu Timbers and Sawmills Limited had felled timber in his farm without his consent, thereby causing considerable damage to his cocoa farm and some foodstuffs including cassava, yams and plantains. The cocoa destroyed was assessed at GH¢500.00 and the cassava, yams and plantains at GH¢6,000.00, GH¢600 and GH¢350 respectively.

Angered at the trespass, Opanin Kwame Bosompem has engaged a lawyer at Koforidua and instructed him to issue a writ of summons at the Koforidua High Court.

- (i) If you were the lawyer, what advice would you give Opanin Bosompem?
- (ii) Draft a statement of claim for the action.

[20 marks]

**QUESTION 6**

**IN THE HIGH COURT OF JUSTICE  
HO/VOLTA REGION**

**SUIT NO. C1/25/14**

**HARRIET AGBOZO  
of House No. 47,  
Ho ESTATES  
HO**

**--- --- PLAINTIFF**

**VRS**

**KWAMIVI AMEVOR  
HOUSE NO. PLOT 13B  
KETA**

**--- --- DEFENDANT**

**STATEMENT OF CLAIM**

1. The Plaintiff is a market woman at the Ho central Market and lives at Ho in the Volta Region.
2. The Defendant is a carpenter and lives at Keta in the Volta Region.
3. On 3<sup>rd</sup> January 2013, the Plaintiff gave a loan of GH¢3,000.00 to the Defendant to be paid within one month.
4. However, to date the Defendant has failed to repay the loan despite repeated demands and in spite of various promises to do so.
5. Wherefore the Plaintiff claims against the Defendant as follows:
  - (i) Recovery of the sum of GH¢ 3,000 the Plaintiff paid to the Defendant as loan on 3<sup>rd</sup> January 2013 payable within one month but which the Defendant has, to date, failed to pay despite repeated demands.
  - (ii) Interest on the said amount from 2<sup>nd</sup> February 2013 at the prevailing commercial bank rate till the date of final full payment.

GEORGE ANYAKU  
(SGD) SOLICITOR FOR PLAINTIFF

THE REGISTRAR  
HIGH COURT  
HO, VOLTA REGION

DATED AT MAWULI CHAMBERS, HOUSE NO.14 NUTIFAFA  
STREET, HO THIS 14<sup>TH</sup> DAY OF MARCH 2014

AND COPY FOR SERVICE ON THE DEFENDANT HEREIN.

As junior counsel in the law office of George Anyaku he has referred a brief containing the statement of claim above which was issued on 15<sup>th</sup> March 2014, to deal with. The brief includes a search conducted at the Registry of the Court on 2<sup>nd</sup> June 2014 indicating that the writ of summons and the accompanying statement of claim were served on the Defendant on 22<sup>nd</sup> March 2014 but that the Defendant had neither entered appearance nor filed a defence.

- (i) What would you do? Give reasons
- (ii) **Draft** the process.

[20 marks]

#### QUESTION 7

- (i) What is the essence of a caveat in probate or letters of administration?
- (ii) Upon the death intestate of John Abrokwa, who hails from Abura Dunkwa in the Central Region on 20<sup>th</sup> June, 2013, his nephew and customary successor Kwesi Amoah of House No. A.D. 27, Abura Dunkwa solely applied for Letters of Administration in the Cape Coast High Court in respect of the deceased's estate. John Abrokwa was survived by a widow Mrs. Mary Abrokwa of House No.A.B 25, Abom Wells Road, Cape Coast and four children by the deceased, all being minors.  
As a lawyer draft an Affidavit of Interest for a caveat for Mrs Abrokwa.

[20 marks]