

**THE BOARD OF LEGAL EDUCATION**  
**GHANA SCHOOL OF LAW, ACCRA**  
**PROFESSIONAL LAW PART II EXAMINATIONS 2006/2007**  
**CONVEYANCING AND DRAFTING**

**WEDNESDAY, 20<sup>TH</sup> JUNE 2007**

TIME ALLOWED: Three (3) 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 ANY FOUR (4) Questions. All questions carry equal marks.
3. Do **not** write your name on your Answer Book, but do put your Index/Seat Number on it and on each sheet of loose paper used.
4. Please write legibly. You may lose marks for illegible writing. Bonus marks will be awarded for logical presentation of arguments and neat layout of instruments and documents.

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**QUESTION 1**

- (a) State and discuss the six (6) characteristics of a will under the Wills Act, 1971 (Act 360).
- (b) Dorothy Boafo is the owner of a block of four flats at Community 6, Tema in the Greater-Accra Region of the Republic of Ghana, known as "Kaiser Flats". She has just inherited a house at Adukrom-Akwapim in the Eastern Region of the Republic of Ghana and has decided to move there for a change of environment. Prior to leaving for Adukrom, Dorothy entered into various arrangements for the occupation of the flats in her absence.

She lets Flat **A** out to Raymond Nuamah, her caretaker, a carpenter by profession. He is expected to carry out repairs to the flats as and when they occur. Raymond does not pay any money to her. However, at the end of every month Dorothy deducts five hundred thousand cedis (¢500,000.00) from his salary. Dorothy also keeps a key to Raymond's flat, primarily to inspect the state of the flat on some weekends when Raymond is away to his hometown, Tikobo No. 1, for funerals.

Flat **B** is given to Anane, Dorothy's son, who after having lost his job, has been jilted by his girlfriend. He has become quite depressed and stays indoors most of the time, listening to loud reggae music. Raymond has been instructed to keep an eye on him and to make sure that he serves him with meals regularly. Raymond was therefore given a key to be able to enter Anane's flat and clean the place periodically in addition to serving him with meals.

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She agrees in writing ("This Licence Agreement") to give Flat C to Mr. and Mrs. James Appiah-Berko for a period of five years, commencing from 1<sup>st</sup> January 2006. They are to pay one million cedis per month. She lets them sign this document before they enter into occupation. The couple have paid two years' rent advance to her.

After a period of six months' stay at Adukrom, Dorothy realises that the weather at Adukrom is quite salubrious and so decides to relocate there permanently. She therefore sold the entire block of flats to Mr. Oswald Kennedy of Progeny Ventures Limited, a real estate company. Mr. Kennedy wishes to evict all the occupants and redevelop the flats. The occupants are very much aggrieved and have put up a fierce resistance to Mr. Kennedy's efforts to evict them.

As a junior in the law firm of Acquah-Sampson & Associates, Accra, your senior has requested you to take down instructions and advise Mr. Kennedy.

#### QUESTION 2

- (a) With the aid of decided cases, discuss the circumstances under which a conveyance may be set aside or modified by the courts.
- (b) With reference to the Lands Commission Act, 1994, (Act 483) state and discuss four (4) of the functions of the Lands Commission. Indicate whether in your view the Commission has been effective in implementing its mandate. Give reasons for your answer.

#### QUESTION 3

- (a) State and discuss, any four (4) of the essential differences between a power of attorney and a power of appointment.
- (b) Mr. Thomas Oforu is the owner of House Number H2/1, Orange Street, North Kaneshie, Accra in the Greater-Accra Region of the Republic of Ghana. He has agreed to lease his property to Mr. Richard Dwamena of P.O. Box AN 7792, Accra-North. The lease is for thirty years. The parties herein have agreed that the rent should be one million cedis a month, payable half yearly in advance. The date of execution of the lease is 20<sup>th</sup> June 2007. However, the lease is to take effect from July 1, 2007. The parties agree on these matters:
  - (i) Either party may terminate the lease at the end of 10 years after giving 6 months' notice in writing to the other of his intention to do so.
  - (ii) The lessee shall have the option to renew the lease for a further term of 10 years provided he gives the lessor 6 months' notice prior to the end of the current term of his intention to do so and is prepared to pay

- (iii) The lease shall contain express covenants for insurance, repair and quiet enjoyment in the usual form.
- (iv) If the premises leased are destroyed or become unfit for carrying out the purpose for which they have been leased through causes not attributable to the negligence of the lessee, there shall be abatement or suspension of rent, as appropriate.
- (v) The lessor reserves the right of re-entry on to the leased premises in the case of non-payment of the rent reserved or the breach of any express or implied covenant by the lessee.

**Draft** the lease omitting the testimonium clause, schedule and attestation clauses.

#### QUESTION 4

- (a) State and discuss the differences and similarities between easements and profits.
- (b) Christopher Odonkor of Mataheko, Accra in the Greater-Accra Region of the Republic of Ghana is interested in acquiring a parcel of land at Ada in the Greater-Accra Region of the Republic of Ghana. He has been negotiating for the purchase of the land from Ms. Aku Bensah of House No. C.5, Pawpaw Street, Dansoman, Accra. An investigation conducted by the purchaser disclosed that the land belonged to the Tettey family of Ada. However, it was leased to her on 1<sup>st</sup> January 2000 by Nii Tettey IV with the consent and concurrence of some of the principal members of the family for a period of fifty years.

At the end of the successful negotiations the vendor agreed to sell the land to Christopher for the sum of two hundred and fifty million cedis. Christopher has paid this amount in full. The parties hereto executed the deed of transfer on 1<sup>st</sup> April 2006.

The land is bounded on the North by a proposed road measuring 70 feet and on the East by land belonging to the Tettey family of Ada-Accra and measuring 90 feet and on the South by land belonging to the Nikoitse We family measuring 85 feet and on the West by a proposed road measuring 75 feet and containing an approximate area of 0.18 acre more or less.

**Draft** the appropriate instrument omitting the testimonium and attestation clauses.

### QUESTION 5

- (a) In **Barclays Bank v O'Brien**, [1992] 3 WLR 593, a defence of undue influence was upheld against the mortgagee. State and discuss the circumstances under which a mortgagor may successfully raise this defence against a mortgagee.
- (b) "The customary law principle that, when in consideration of crop-sharing, a landowner gives his virgin forest land to a stranger to cultivate using his own resources then an abusa tenancy is created is not inflexible".

Discuss this statement with the aid of decided cases.

### QUESTION 6

- (a) "I must consider this as a trust for the infant; for I very well see, if a trustee, on the refusal to renew, might have a lease to himself, few trustees would be renewed to *cestui que* use ... This may seem hard, that the trustee is the only person of all mankind who might not have the lease: but it is very proper that rule should be strictly pursued, and not in the least relaxed ...". Per Lord Chancellor, **Keech v Sandford** (1726), Sel Cas t King 61.

State four (4) of the duties of a trustee and discuss whether or not in your view these duties are reasonable.

- (b) On 1<sup>st</sup> January 2007, Kenneth Sarpong mortgaged his property known as "Ranna Plaza" at Batsonaa in the Greater-Accra Region of the Republic of Ghana to the Spintex Road branch of the Standard Chartered Bank, to secure the repayment of a loan of ₵300 million cedis he took from the Bank to expand his business. Kenneth bought the property from Richard Duah on 31<sup>st</sup> March 2000 at a cost of ₵500 million cedis and the conveyance evidencing this transaction was registered at the Lands Commission Office, Accra as No. LR 367/02 on 1<sup>st</sup> September 2002.

Kenneth agreed to repay the loan at a compound interest of 25 per cent per annum by annual instalments over a five-year period commencing from 1<sup>st</sup> March 2007.

Draft the mortgage instrument between the two parties herein, omitting the repayment schedule.

### QUESTION 7

- (a) "Possession in law is possession in fact". Discuss this statement and with the aid of decided cases show the various ways in which a landowner can prove his claim to a piece of land.

- (b) You are a newly engaged solicitor of the law Firm, Sam Okudzeto and Associates, Sena Chambers, an Accra based law Firm. Your senior has asked a client, Belinda Adjei, to consult you for assistance in drafting her will.

She wants her business partners, Kofi Nti and Opoku Afriyie to be the executors of her will. She gives all her personal items to her first born daughter Naa Adjeley Adjei, who is also to take the residue of her estate.

Their house, "ADCO LODGE" situate at Osu-Otublohum, Accra in the Greater-Accra Region of the Republic of Ghana, which she jointly owns with her husband, should be given to her husband Kingsley Adjei absolutely. Her land at Frafraha, Accra should be given to her husband. Her sister, Patricia Owusu is to take her VW Bora with registration No. GT 2468 Y.

She further directs that the Women's Fellowship of the Presbyterian Church of the Resurrection, Accra is to be given 10 million cedis from her savings account held with the Zenith Bank Limited, Accra Main Branch. An amount of one hundred million cedis in her current account held with Stanbic Bank, Ridge Branch, Accra should be given to her husband.

Belinda is literate but unfortunately is now blind. **Draft** the will for her.

#### QUESTION 8

- (a) Ms. Naana Oye Twumasi is the occupier of a flat at Asoredanho-Dansoman, a suburb of Accra, which she had rented from Sundace Limited, Accra. The lease is for fifteen (15) years commencing from 1<sup>st</sup> January 2004. She is one of the leading gender activists in the country and so is often away from home organizing seminars, workshops etc. to sensitize members of the general public on gender issues.

Recently, she arrived back home over the weekend to find to her shock and dismay that the landlord had entered her flat, changed the locks and stuck up a notice on the front door. Her personal effects had been removed and packed in a shed near the flat.

The notice said that the lessor-company had taken peaceable re-possession of the flat as a result of a breach of a covenant in the lease by Naana Oye. It went on to say that she no longer had a lease. The lessor-company indicated its intention of leasing the flat to a "more responsible" tenant.

Naana Oye is fuming with rage and has come to you for advice since as a gender activist she is dependent on donor funding for her expenses and cannot go back to her donor partners in the middle of the year for additional funds to rent another accommodation. Advise her.

- (b) Ms. Ekua Asante claims to be the owner of a plot of land at Sokode-Gbogame, near Ho in the Volta Region of the Republic of Ghana which she bought from the Mensah family of Sokode-Gbogame in January 1990. The conveyance from the Mensah family made on 1<sup>st</sup> January 1990 was among many documents which Ekua lost when her house was burgled on June 4<sup>th</sup> 2006.

Ms. Ekua Asante built a house on the land in 1995 and has been living in it with her children and some staff members of Save the Trokosi Children Foundation ever since without any disturbance.

The house is numbered 16/3/OB and is situated at Dibimadibi Street, Sokode-Gbogame. The land measures 120 feet on the east and west and 150 feet on the north and south.

**Draft** the appropriate instrument for Ms. Ekua Asante declaring her ownership of the land with the house thereon and the loss of the Deed of Conveyance covering the land.