

THE BOARD OF LEGAL EDUCATION

GHANA SCHOOL OF LAW

PROFESSIONAL LAW COURSE, PART II

LAW OF INTERPRETATION

JUNE 9, 2014

TIME ALLOWED: THREE HOURS 10.00 a.m. TO 1.00 p.m.

INSTRUCTIONS TO CANDIDATES

1. Please read these instructions very carefully before beginning your answers.
2. Answer Any Four (4) Questions ONLY.
3. Credit will be given to legible handwriting, clarity of expression and orderly presentation of material.
4. Do not write your name on your answer booklet, but do put your Index number.
5. Adhere strictly to the instructions on the front cover of your Answer Booklet

Question One

Kwame Nyameasem, a wealthy Akyem cocoa farmer (deceased) spent his entire life at Sefwi Poano. Nyameasem was a devout member of My True Beloved Christ Church and also keen supporter of Proud Angels Football Club, a crack Third Division club in the area. At every cocoa season Nyameasem provides financial support to all social clubs within the Bawdie area and more particularly sponsors Proud Angels Football with Five Thousand Ghana Cedis annually from 2000 to 2015. Nyameasem died in October 2016.

By Clause 3 of his last Will and testament executed in 2012, Nyameasem provided as follows:

“I devise and bequeath unconditionally an amount of Five Hundred Thousand Ghana Cedis to that my darling Third Division club Proud Angels Football Club”. In 2014, the Club gained promotion to the Premier Division and changed its name to Proud Angels Sporting Club”.

Following the death of Nyameasem in October 2016 and the reading of his last Will, the founder of Proud Angels Sporting Club, now a Premiership side, claimed the bequest of the amount in Clause 3 of the Will claiming that notwithstanding the Club's current status, the testator intended to bequeath the amount to the Club. This was opposed by the executors of Nyameasem who claimed that the said devise was express and clear and was specifically made to “that my darling Third Division club Proud Angels Football and not Proud Angels Sporting Club, a Premier Division Club in the Sefwi Poano area. At

the hearing, an attempt by counsel for the club to lead evidence to show the history of the club and the existing relationship between the club and the late Nyameasem was vehemently objected to by counsel for the executors who insisted that the Will speaks for itself.

**The Presiding Judge has requested for a written submission to enable him rule on this matter. As Counsel for Proud Angels Sporting Club, identify the appropriate issues and write your submission in answer to the views of the opposing counsel.**

### Question Two

Article 36 of the Ghanaian Football Federation (GFF) constitution specifically provides:

- (i) A dispute between a member of the Federation and any player or a coach shall, and without any exception, be settled at the local or regional level. A party aggrieved by the decision of that body may appeal to the national Disciplinary Committee, with the leave of the local or regional body.
- (ii) A party still not satisfied with the ruling of the national Disciplinary Committee may seek a review of the decision of the National Discipline Committee at the Executive Review Board of the Association
- (iii) For the avoidance of doubt members shall refrain from sending cases within the Federation to any external body for adjudication, investigation or settlement without the prior approval of the Executive Review Board of the Federation.

In November 2013, the Oaks Club was found liable for dismissing the team's coach contrary to the constitution and regulations of the Federation. The team was asked to pay as compensation an amount of 80,000 Ghana Cedis within 14 days. Soon after the decision, the supporters of the Club denounced the federation and called on the Club's management to seek justice in the courts of law. In January 2014, the management of the club, succumbing to the demands of its supporters filed a Writ at the High Court for an order to set aside the decision of the regional body on the grounds that the body exceeded its power and that the decision was too harsh and against the weight of evidence.

On service of the writ and the statement of claim, counsel for the Federation entered a conditional appearance and has applied to move the court to set aside the writ of summons on the grounds that the constitution of the Federation provides for the exhaustive grievance resolution mechanism and that the writ sins against Article 36(iii) of the Constitution.

In their affidavit in opposition, the plaintiff club among others contended that (i) the said grievance resolution procedure in Article 36 of the Constitution of the Federation does not and

cannot oust the jurisdiction of the courts; (ii) that witnesses of the plaintiff were denied proper hearing; and (iii) there are precedents of suits brought by defendant against recalcitrant members of the Federation.

**As a presiding judge, and with reference to relevant cases and authorities, write a considered ruling.**

### **Question Three**

Lawyer Adom, a renowned Constitutional law and Television panelist married his fairy tale lover Sweetie in December 1990. The marriage ceremony which was described by the National People's Weekly as the marriage fit for the gods, was attended not only by family members of the couple but also learned friends, including Araba, Esq. a junior at lawyer Adom's Chambers. Indeed Araba, Esq. was requested to pray prior to the cutting of the wedding cake. After 15 years of conjugal bliss and within which Lawyer Adom acquired lot of properties, Lawyer Adom made a will in March 2010 in which he provided in Clause 6 as follows:

"I give and devise to my very sweet and loving wife, the apple of my eye, and the strings of my heart my two storey building more particularly described as "Araba Cottage". After the execution of the Will, the marriage broke down beyond reconciliation on grounds of infidelity on the part of Sweetie. In 2011, the marriage was dissolved by order of the High Court. After the dissolution of the marriage, Lawyer Adom married Araba, Esq. his junior counsel, as he puts it, to cement their professional bond. Lawyer died in October 2013 after a short illness unable to effect any changes in his Will dated March 2010. Upon the grant of probate to the executors of Lawyer Adom, Sweetie submitted a claim for the two storey building ("Araba Cottage") on the ground that she was and remained the lawful wife of the testator at the time the last Will and testament of the deceased was executed and without a doubt the reference to 'my loving wife' was referable to her. Counsel for Araba, Esq. vehemently resisted the claim of Sweetie, in a writ filed at the Drobonso High Court. Referring to the neutrality of the word 'loving wife' as found in Clause 6 of the Will, Counsel contended that Araba, Esq. was entitled to "Araba Cottage" as she was the 'wife' intended by the testator.

**As a judicial intern, you have been asked to write a reasoned opinion on the issue for the judge's consideration.**

### **Question Four**

In the case of *Akufo-Addo et al v John Mahama et al* (2012 Presidential Election Petition, SC 29 August 2013), Counsel for the Petitioners, among others, called for the nullification of results contained in all Statement of Polls not signed by the officers of

the Electoral Commission as provided for in Article 49 of the 1992 Constitution which provides as follows:

"49(3) The Presiding officer, the candidates or their representatives....shall then sign a declaration stating –

- (a) The polling station, and
- (b) The number of votes cast in favour of each candidate..."

Supporting his claim Counsel for the Petitioners referred the court to recent decisions of the Supreme Court namely, **Faroe Atlantic; Martin Amidu v Isofoton; Martin Amidu v Woyome** where the Court unanimously construed the word 'shall' as found in Article 181(2) in the Constitution as mandatory and declared as null and void a contract agreement signed between the parties without Parliamentary approval.

The said Article 181(2) of the 1992 Constitution provides as follows:

"An agreement entered into under clause (1) of this article shall be laid before Parliament and shall not come into operation unless it is approved by a resolution of Parliament".

Rejecting the submission of Counsel for the Petitioners, Baffoe-Bonnie JSC at page 529 of the decision stated as follows:

"This court's attention has been drawn to the recent decisions of this court, cases of where the court strictly interpreted SHALL (emphasis mine) in Article 181 of the Constitution and concluded that failure to secure parliamentary approval for a loan is fatal as provided by the Constitution...But a critical look at the wording of articles 181 will show clearly that there are differences in the wording...The agreement shall be laid in parliament and unless carried by resolution of parliament shall not come into effect. This is not the same as article 49 where no consequences are provided for failure to sign. To strictly interpret the word "shall" to mean mandatory and therefore its violation should lead to annulment of votes regularly cast, would lead to a serious absurdity. I am here persuaded by the modern purposive approach to interpretation where the intent rather than the bare words as used influence interpretation..."

**With reference to recent cases and your understanding of the purposive approach to interpretation, do you agree with His Lordship Baffoe-Bonnie and if not why?**

#### **Question Five**

1. Kwasi Mensa is a native of Agroyesum and an employee of SIDALCO Group of Companies. The Company has instituted a second tier Pension Scheme under the Pension Authority Act of Ghana, 2010 (Act 9000) for its employees. The specimen

scheme prepared by the Company's solicitors in accordance with the provisions of the Act, were to be completed by each employee in triplicate. On the death of Kwasi Mensa, the insurance company managing the Fund paid lump sums of money to the Company to be held in trust for Kwasi Mensa's "descendants" and "relations". A major clause in the scheme defined 'relation' as 'any spouse, ancestor or descendant of the member'. Upon application by Adowa, an 18 year old daughter of Mensa outside marriage, for her share of the benefits, Mrs. Mensa and her two children 'born with Kwasi Mensa and in wedlock' challenged the legitimacy of Adowa her eligibility to share in the benefits of Kwasi Mensa. Counsel for Adowa is contending that the word 'descendant' should be given its ordinary and a meaning socially acceptable to bestow benefits on all persons brought forth by Kwasi Mensa. Counsel urged the court to construe the word coupled with the presumption that Parliament intended to follow and respect the customary practices as regards lineages in a multicultural society, such as Ghana. Opposing the application, counsel for Mrs. Mensa and her children argued forcefully that the word 'descendant' in an instrument such as a Will or instrument drafted by a lawyer, must be given its technical and restricted legal meaning and that such words in legal documents descriptive of blood relationship must be taken *prima facie* to indicate those who fall within that description through legitimate link.

**With reference to the basic rules of interpretation of documents and appropriate authorities, write a reasoned ruling on the matter.**

#### **Question Six**

The Ghana Armed Forces Council concerned with loitering of servicemen during normal working hours during a state of emergency and in pursuance to section 8 of the Armed Forces Act 1990 Act 106 made the following Regulations:

"1(a) A person or soldier found within the vicinity of the Service Headquarters and other command centres within the hours of 8 am to 12 noon contrary to this Regulation shall be guilty of an offence punishable with a dismissal and or an imprisonment not exceeding three years".

Considering the difficulty in publishing the new Regulations, the Armed Forces Command managed to disseminate the Regulations to Regional Commanders who were ordered to as much as practicable "bring to the attention of any person or soldier found" in the areas aforesaid".

Apamga, a Colonel of the Ghana Armed Forces, who has just returned to Ghana after three years peacekeeping mission in Somalia, and his friend Blefo, a teacher of the

Armed Forces Garrison School were found walking around the vicinity contrary to the Regulations. At the service trial, counsel for Blefo argued that upon strict interpretation of the said Regulations, the phrase 'any person' shall be referable to only servicemen and women regulated under the Armed Forces Act and therefore the charge was a nullity.

On his part, Colonel Apamga challenged the validity of the Regulations on the ground that it was an unknown law. He further argued that the use of the word 'soldier' in the Regulations showed the intention of the draftsman to exclude officers from the application of the Regulations. Furthermore, by the use of the word 'soldier' it is clear that the ambit of the mischief to be cured by the Regulations was to eradicate loitering and maintain discipline within junior ranks. Counsel therefore called on the tribunal to consider the word 'soldier' as used in the Regulations in its strict technical sense as referring to 'men' and not 'officers'.

**Discuss and respond to the issues raised in this case.**

#### **Question Seven**

The Asante Akyemman University College, a public chartered university, established by the Asante Akyemman University College Act, 1978, (Act 179), is mandated to provide tertiary education in a liberal setting with emphasis on science and technology for Ghanaians. Section 16(1) of the Act, which deals with the powers of the University Board states as follows:

- (1) Subject to the provisions of this Act, the Board shall have the power to do or provide for any act or in relation to the University which the Board consider necessary or expedient in its capacity as the governing body of the University.
- (2) The conferment of particular powers on the University Board by other provisions of this Act shall not be taken to limit the generality of this section.

Section 24(1) of the Act which deals with the funds of the University provides that:

"24(1) The funds of the University include:

- (a) Subvention from the Government of Ghana
- (b) Money that accrue to the University in the performance of its functions, consisting of:
  - (i) Fees paid by students duly registered by the University

- (ii) Fees charged and dues in respect of services rendered by it or through the University
- (iii) Proceeds from the sale of publications of the University
- (iv) Grants, subscriptions, rents and royalties
- (c) Interest from investments
- (d) Endowments, donations and
- (e) Moneys from any other sources approved by the Board"

The University Board has approved the rehabilitation of roads of the University which also link adjoining neighbourhoods and used as a by-pass by the public. The Board has imposed a payment of tolls on the use of the roads within the University in order to generate funds to maintain the roads and repay a bank loan facility used to rehabilitate the roads. The Board considers the toll as part of fees and charges in respect of services rendered by or through the University. Aggrieved by this decision and relying on the provisions of Article 174(1) and (2) of the 1992 Constitution, Kwame Patapaa, a student of the University has instituted an action at the Supreme Court for a declaration that the said toll, being a form of a tax is in contravention of the said constitutional provision. The said article provides that:

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- (1) No taxation shall be imposed otherwise than by or under the authority of an Act of Parliament
- (2) Where an Act enacted in accordance with clause (1) of this Article, confers power on any person or authority to waive or vary a tax imposed by that Act, the exercise of power of waiver or variation in favour of any person or authority shall be subject to the prior approval of Parliament by resolution.

**As a judicial intern, you have been asked to write an opinion for the Supreme Court panel as to the applicable rules of interpretation to resolve this matter.**

#### **Question Eight**

The applicant, Pratt has invoked the original jurisdiction of the Supreme Court as provided in Article 130(1) of the 1992 Constitution testing the constitutionality or otherwise of an act of the President. The President of the Republic, as well as the Vice President, has been invited by the President of the United States to join him in a business and exploratory trip to the International Space Station. At this space station, the guest rooms and temporary offices are well equipped with modern ICT better than the facilities in Ghana. These include direct satellite link up with Cabinet, satellite video conferencing facilities, very efficient and reliable facsimile, internet and SMS facilities. While aboard the spacecraft, the President, ably supported by his Vice, entered into an International Frequency Exchange Treaty with his US counterpart. The negotiation

sessions as well as the signing ceremony were all beamed live to members of Cabinet in Ghana. Thereafter and prior to the return of the President and his Vice, the Treaty was submitted to Parliament electronically for ratification, since there was an urgent requirement for the Treaty to become effective prior to the return to earth of the two Presidents. Mr. Pratt exercising his constitutional right under article 2 of the 1992 Constitution, filed a motion to restrain Parliament from proceeding to ratify the agreement on the grounds that since the President and the Vice President are both out of the jurisdiction, they cannot exercise the powers they purported to exercise and that the action infringes article 60(11) of the Constitution which provides as follows:

"60(11) Where the President or the Vice President are both unable to perform the functions of the President, the Speaker of Parliament shall perform those functions until the President or the Vice President is able to perform those functions or a new President assumes office, as the case may be".

The applicant in support of his case cited *Asare v AG [2003-2004] SCGLR 823* where the Supreme Court per Kludze JSC said among others that:

"...The words of the Constitution make it clear that 'unable to perform the functions of his office' is a genus of which absent from Ghana is one of the species or subsets...Unless we interpret unable to perform the functions of the President in article 60(11) by accepting absence from Ghana as one of the reasons for the inability, as in article 60(8), we may be faced with an absurdity".

Opposing the application, the Attorney-General has among others urged the Supreme Court to consider the level of technological advancement in the construction of the said article 60(11) specifically with regards to the words 'unable' and 'absence from Ghana'. He strongly urged the court to depart from the decision of *Asare* considering the technological advancement in Ghana since the promulgation of the 1992 Constitution.

As an intern of Bambam JSC, you have been asked by His Lordship to submit a legal opinion for his consideration prior to ruling on the matter.