

THE INDEPENDENT EXAMINATION BOARD

GHANA SCHOOL OF LAW

FINAL EXAMINATION JUNE 2016

TITLE OF COURSE: PROFESSIONAL LAW PART II & POST-CALL LAW

TITLE OF PAPER: INTERPRETATION OF DEEDS AND STATUTES

MONDAY 13<sup>TH</sup> JUNE 2016

TIME ALLOWED: THREE (3) HOURS

10:00am – 1:00pm

INSTRUCTIONS TO CANDIDATES:

1. Read the instructions very carefully before beginning your answers.
  2. Answer **QUESTION ONE**, which is compulsory, and any other **THREE (3) QUESTIONS**.
  3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of answers.
  4. Do not write or sign your name on the answer booklet. Only write your index number.
  5. Adhere strictly to the instructions accompanying your Answer Booklet.
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**QUESTION ONE**

It was provided by section 77 of the Ghana Immigration Act, 2009 (Act 090) as follows:

“It shall be unlawful for any person ...in any manner whatsoever to prepay the transportation or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners into Ghana ... to perform labour or service of any kind in Ghana.”

In June 2009 the Salvation Prophetic Church of Ghana (SPC) paid the way for the Prophet Bruce Wilson of Iceland to come to Ghana to serve as pastor of its Abokobi Congregation. Prophet Wilson commenced his work as a pastor immediately upon arrival. Whereupon the Attorney-General of Ghana filed suit at the High Court for a declaration that the SPC acted in violation of the law, and to seek the immediate deportation of Rev. Smith from Ghana. However, the SPC maintained that, properly construed, section 77 of Act 090 did not apply to Christian Ministers.

In its judgment, the High Court purportedly relying on Parliamentary Committee reports and statements made during parliamentary debates by the Minister of State who introduced the Bill for Act 090, all of which explicitly noted that the **proposed law was only aimed at manual workers and not "brain toilers"**, as well as claims that Ghana was a dominantly "**Christian Nation**", held, *inter alia*, that the statute ought to be interpreted to fit its "**purpose**" or "**spirit**" and consequently that an exception ought to be made for Christian Minister. The judgment of the High Court was affirmed on appeal to the Court of Appeal. Aggrieved by this decision, the Attorney-General duly filed a further appeal at the Supreme Court on the ground that the courts below erroneously interpreted Act 090 to except **Christian Ministers**; and, particularly, that the court erred in relying on statements made in **parliamentary committee reports and during parliamentary debates of the bill**. Counsel for the SPC insisted however that the decision was **proper in all respects** and invited the Court to dismiss the appeal as frivolous.

You are a Justice of the Supreme Court and a member the Panel that sat on this appeal. Write your reasoned opinion, citing relevant authorities.

[40 marks]

## QUESTION TWO

Nana Kofi Ensah, the chief of Kotwi litigated with his overlord, Nana Kuntunku, the chief of Daasen and a Divisional Chief over a parcel of land at Kotwi. The people from Kotwi have been in possession of the land, the subject matter of dispute, for centuries. The Daasen Divisional

Council at its recent meeting, presided over by Nana Kuntunku, invited Nana Kofi Ensah to their meeting. At the meeting, he was asked whether he was the one litigating with his Divisional Chief over a parcel of land at Twabidi Circuit Court and he responded in the affirmative. He was pronounced destooled by the Divisional Council composed of Nana Kuntunku and seventy members of the Council.

The people of Kotwi had a meeting and dissatisfied with the destoolment of their chief have decided to challenge the destoolment which they claim to be illegal .

Nana Kuntunku has unilaterally enstooled his son who does not hail from the appropriate family and lineage of Kotwi .He has since given ultimatum to Nana Kofi Ensah to hand over the stool properties in his custody to his son. Nana Kuntunku has reported the conduct of Nana Kofi Ensah to the police for failing to deliver the stool properties to his son after his destoolment. Nana Kofi Ensah was arraigned before the Circuit Court for stealing and the facts were that the stool properties were given to him on his enstoolment and upon his destoolment he has failed to deliver them. Nana Kofi Ensah was convicted and sentenced to one year in prison by the Circuit Court.

Discuss all the legal issues involved and the rights available to Nana Kofi Ensah.

[20 marks]

### QUESTION THREE

Section 40 of the Odokrom Divorce Act, 1950 (Act 5000) inter alia gave the high Court jurisdiction to order maintenance by either parent in favour of a child who is over 21 years of age but who was:

“... unable by reason of illness, disability or other cause to withdraw himself from parental charge or provide himself with the necessaries of life.”

AB and ZB were married at Accra on June 1980. There is only one child of the marriage, Yaa Yaa (YY) born in March 1982

In May 2005, Mrs. ZB filed a petition in the High Court for the dissolution of her marriage with AB and an order for the maintenance of YY, the only child of the marriage, by AB. YY, aged 23 years, was at that time a professional law student at the Ghana School of Law, Makola, having already successfully completed her first degree (LLB) at the University of Ghana with flying colours. Mr. AB did not protest the dissolution of the marriage <sup>b'cos</sup> of their daughter YY, principally on the ground that: (a) YY, having already obtained a first degree in law from University of Ghana, could not be properly said to be "unable" to withdraw herself from parental choice and that the post graduate professional law course she was pursuing at the Ghana School of Law could not by any stretch of imagination fall into the category of "necessities of life" within the meaning of section 40 of Act 5000; and the phrase "other cause" which appears in the expression " by reason of illness, disability or other cause" akin to illness, disability, so that maintenance could not be ordered for a child who was old enough to work but unable to provide for herself because she was pursuing a post graduate law course at the Law School.

You are counsel for YY in the instant case. Please draft your written submission to the High Court in opposition to the arguments advanced by counsel for Mr. AB. Please cite relevant authorities in support of your submissions.

[20 marks]

#### QUESTION FOUR

It is provided by section 34(1) and (2) of the Transitional Provisions to the 1992 Constitution as follows:

- 34 (1) No member of the Provisional National Defence Council, Provisional National Defence Council Secretary, or other appointees of the Provisional National Defence Council shall be held liable either jointly or severally, for any act or omission during the administration of the Provisional National Defence Council.

- (2) It is not lawful for any court or tribunal to entertain any action or take any decision or make any order or grant any remedy or relief in any proceedings instituted against the Government of Ghana or any person acting under the authority of the Government of Ghana whether before or after the coming into force of this Constitution or against any person or persons acting in concert or individually to assist or bring about the change or individually to assist or bring about the change in Government which took place on the twenty-fourth day of February 1996, on the thirteenth day of January, 1972, on the fourth day of June 1979 and on the thirty-first day of December 1981 in respect of any act or omission relating to, or consequent upon.
- (a) The overthrow of the government in power before the formation of the National Liberation Council, the National Redemption Council, the Supreme Military Council, /the Armed Forces Revolutionary Council and the Provisional Council; or
- (b) The suspension or abrogation of the Constitutions of 1960, 1969 and 1979; or
- (c) The establishment of the National Liberation Council, National Redemption Council, the Supreme Military Council which took office on the ninth day of October 1975, the Supreme Military Council established on the fifth day of July 1978, the Armed Forces Revolutionary Council, or the Provisional National Defence Council; or
- (d) The establishment of this Constitution”.

On 5<sup>th</sup> January 1982, that is barely five days after the *coup d'état* which overthrew the 1979 Constitution and the Government of the Third Republic and indeed also ushered in the 31<sup>st</sup> December Revolution of the Provisional National Defence Council (PNDC), Major Kosi Alonzo, an

officer of the Ghana Army, who was immediately after the coup appointed PNDC Liaison officer in charge of the Rapid Development Unit (RDU) at the PNDC headquarters, was instructed by his superiors to proceed to Ebo Valley, a plush residential suburb of Accra, to effect the arrest of Kojo Dagarti, Esq. Dagarti was a prominent Accra barrister who was alleged to have made some seriously uncomplimentary remarks about the 31<sup>st</sup> December Revolution in conversation with some lawyer colleagues at the bar common Room in the High Court Building, Accra. A team of 50 soldiers, armed to the teeth and led by Major Alonzo himself, immediately proceeded to Ebo Valley to effect the arrest of the reportedly too-known lawyer who mercifully did little to resist the arrest and had consequently been rewarded with only some slight beatings with the butts of the AK47 rifles carried by some of the soldiers as well as a few "gentleman" slaps.

However on their way back to the PNDC headquarters, Major Alonzo directed his team to raid the home of his long time rival Kofi Von Adjei otherwise known as KVA (now a very successful business tycoon) at Madomoheko, another suburb of Accra. Several years ago, precisely in 1975, KVA had not only painfully snatched from Major Alonzo his childhood sweetheart, the beautiful Yaa Nayako, who Alonzo had really wanted to marry but had also heartlessly dumped the lady after a short affair of some 22 months. Yaa was seriously traumatised by this event and soon thereafter committed suicide. In the course of the raid of KVA's residence, the soldiers severely assaulted KVA as well as the members of his household; demolished parts of his building and destroyed domestic items and properties then valued at over USD 20, 000. Major Alonzo also personally raped Efua Von Adjei (wife of KVA) several times over and took away cash in the sum of over USD 10,000 which he found in KVA's special safe. Efua Von Adjei suffered a major depression following these events and was hospitalised for well over a year for stress and other anxiety related ailments. KVA was also so distressed or "broke" after the raid on his home and quietly retired to his holy village with his family to lick his wounds and to do some farming.

In February 2002, following a petition sent to the office of the Attorney-General by KVA, Major Alonzo was arrested and subsequently arraigned before the High Court, Accra on charges of (i) rape (arising out of his sexual act with Efua Von Adjei on 5th January 1982); (ii) stealing (arising out of his dishonesty taking away cash in the sum of USD 10,000 from KVA's safe) and (iii) causing damage to KVA's house and other properties.

In the course of the hearing, counsel for Major Alonzo raised an objection to the proceedings against Alonzo on the grounds that: first, since the event complained of occurred during the administration of the PNDC when Major Alonzo was undoubtedly a PNDC appointee, he was not liable for any of the acts complained of on account of the provision of section 31(1) of the Transitional Provisions to the 1992 Constitution. Counsel contended that in its plain meaning, the clear and unambiguous provision of section 34(1) barred any court from holding a PNDC appointee like Major Alonzo liable for "any act or omission" of his during the PNDC era. In the view of counsel "any act" means any act, lawful or unlawful. Secondly, counsel for Major Alonzo maintained that the acts complained of in the suit were in any case "acts" clearly "consequent upon" the coup of 31<sup>st</sup> December 1981 within the meaning of the provisions of section 34(2) of the Transitional Provisions because the events complained of occurred as part of events or happenings which were related to or followed as a consequence of the 31<sup>st</sup> December coup. In response, the prosecution maintained that on a proper interpretation, section 34(1) and 34(2) could not by any stretch of imagination be held to bar suit against Major Alonzo or absolve him of liability for his acts or omissions during the raid on KVA's home on 5<sup>th</sup> January 1982.

Whereupon the Learned high Court judge stated a case for the determination by the Supreme Court as to the true meaning and scope of section 34(1) and (2) of the Transitional Provisions and as to whether these provisions can properly operate to bar the action against Major Alonzo and absolve him from liability in all the circumstances of the instant case.

You are a Justice of the Supreme Court and a member of the panel sitting on this referral. Please write out your reasoned decision, citing relevant authorities.

[20 marks]

## QUESTION FIVE

It is provided by section 4 of the Illiterates Protection Ordinance, Cap 262 (1951REV) that

"4 Every person writing a letter or other document for or at the request of an illiterate person whether gratuitously or for a reward, shall –

- (1) Clearly and *correctly read over and explain such letter or document or cause the same to be read over and explained to the illiterate person;*
- (2) Cause the illiterate person to write his signature or make a mark at the foot of the letter or other document or to touch the pen with which the mark is made at the foot of the letter or other document.
- (3) Clearly write his full name and address on the letter or other document as writer thereof; and
- (4) State on the letter or other document the nature and amount of the reward, if any, charged or taken or to be charged or taken by him for writing the said letter or other document, and shall give a receipt for the same and keep a counterfoil thereof to be produced at the request of any of the officers named in section 6.

In January 2009, Alhaji Osman, an illiterate but rich business tycoon, took a firm decision to sell one of his plush residential houses in Accra ("Osman's Den") in order to raise further funds in support of his latest Printing house project located at Teshie, Accra and informed his property agents accordingly. Ebow, a Principal Lecturer in Clinical Psychology at the Ghana Medical School, expressed interest in the property and immediately commenced negotiations with Alhaji and his agents towards the purchase of the house. Eventually, the parties (Alhaji and Ebow) agreed on a sale price of GHS100, 000 and thereupon instructed Evans, Alhaji's chief property agent with severally years of experience in real estate transfer, to prepare the deed of sale. The contents of the deed of sale prepared by Evans (not a lawyer) were carefully explained to Alhaji Osman in the

presence of Ebow and three other witnesses and he evidently clearly understood all the terms of sale before he executed the document. Ebow also signed the document. Evans was paid GHS2,000 for preparing the document. There was however no jurat on the document nor did he state on the document the nature and amount of the reward. Two weeks later, and before Ebow could enter into possession, John Bosco, a very good friend of Alhaji had wind of the sale of Alhaji's Osman Den and immediately approached Alhaji with an offer of GHS200,000 for the real property. Alhaji immediately drove to Ebow's office, with the GHS200,000 he was paid for the purchase of the house in his booth, and informed him that he was no longer interested to transfer his property to him and invited Ebow to take back his GH100,000. Ebow however refused to take back the money and informed Alhaji in very clear language that as far as he was concerned, the deed was completed and over.

After several unsuccessful attempts to enter into possession of the property, Ebow instructed his lawyers to file a suit against Alhaji for, inter alia, (i) a declaration of title of the residential property and (ii) an order for possession. The suit was however fiercely contested by Alhaji. He has insisted that the purported sale as represented by the deed of sale was null and void, and clearly had no probative value as it was prepared in clear breach of section 4(3) and (4) of Cap 262 in the absence of a jurat indicating, inter alia, the full name or address of the writer of the document etc.

You are counsel for Ebow in the instant suit. Write out your submissions in response to Alhaji's claims respecting the scope and effect of section 4 of Cap 262, citing relevant authorities.

[20 marks]