

**INDEPENDENT EXAMINATIONS COMMITTEE**  
**GENERAL LEGAL COUNCIL**  
**PROFESSIONAL LAW PART II/ POST CALL COURSE**  
**EXAMINATION (MAIN AND SUPPLEMENTARY)**  
**INTERPRETATION OF DEEDS AND STATUTES**

**16 MARCH, 2022**

Time Allowed: Three (3) hours

10:00 a.m. – 1:00 p.m.

**INSTRUCTIONS TO CANDIDATES**

1. Read the instructions very carefully before beginning your answers.
  2. Answer **ANY FOUR (4) QUESTIONS**.
  3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of material.
  4. Do not write your name on the Answer booklet. Write only your seat or Index number.
  5. Adhere strictly to the instructions on the front cover of your Answer Booklet.
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**QUESTION 1**

Linguistic canons or maxims are considered as important internal aids to statutory interpretation. They are considered as servants to judges who may use them where appropriate. **Explain any three (3) of the following linguistic canons indicating their significance or importance in statutory interpretation:**

- a. *Ut res magis valeat quam pereat*
- b. *Ejusdem generis rule*

c. *Noscitur a sociis* rule

d. *Expressio unius est exclusio alterius* rule

(25 Marks)

## QUESTION 2

Nii Bortey, 90, a wealthy cocoa farmer was married to Naa Adoley, a 22 year old beauty under Ga customary law. After 2 years of conjugal bliss, the marriage was dissolved under custom in 2018 on grounds of adultery by Naa Adoley. In 2017, Nii Bortey made his last Will in which he devised under Clause 2 all his self-acquired properties to "Naa Adoley my soul mate and angel as the sole beneficiary". The residuary clause of the Will also provides as follows: "That anything I shall die possessed of and not herein devised shall be vested in my lover Naa Adodo without any contrary intention whatsoever". Upon the death and burial of Nii Bortey in January 2020, Naa Adoley, relying on both Clause 2 and the residuary Clause of the said Will is claiming that there being no codicil or revocation of the Will, she continues to be both the legal and beneficial as well as equitable beneficiary of the bequests made by her lovely late husband in his Will. Some of the surviving children of Nii Bortey are of the view that Naa Adoley is not entitled to the bequests in Clause 2 and is not the same as Naa Adodo mentioned in the residuary clause of the Will. Naa Adoley after consulting a lawyer is fortified in her belief that Section 38 of the Matrimonial Causes Act does not apply to a customary marriage dissolved in accordance with custom and not under the Matrimonial Causes Act, Act 367. Which provides that:

"Section 38 A gift or an appointment in favour of one spouse in the Will of the other shall be invalidated if the marriage has been terminated under this Act by divorce or annulment, unless the Will contains an express provision to the contrary."

**Identify and discuss the relevant issues**

(25 Marks)

### QUESTION 3

On 6<sup>th</sup> September 2016, the Plaintiff in his capacity as a private citizen and a legal practitioner, pursuant to Article 2 of the Constitution 1992, commenced an action against the Defendant, the Attorney -General seeking the determination of the following issues:

- a. Whether or not on a true and proper interpretation of Article 14(3) of the Constitution 1992, Saturdays, Sundays and Public holidays, any time during a civil unrest and any other day that the courts in Ghana cannot sit would be counted in reckoning the 48 hours within which a person arrested or detained on suspicion of committing a crime or in execution of a Court Order ought to be brought before a court;
- b. Whether or not the inaccessibility of courts on Saturdays, Sundays, Public holidays etc in respect of a person arrested or detained constitutes breach of article 14(3) of the Constitution 1992;
- c. Whether or not on a true and proper interpretation of article 14(3) of the Constitution 1992 the courts ought to be made accessible on Saturdays, Sundays and Public holidays or any other day or time that the courts are ordinarily unable to do business

In arguing his case, the Plaintiff contended that although the Constitution does not expressly stipulate the mode for calculation of the 48 hours, looking at the intention and the spirit of the Constitution, as well as the jurisprudence of the Supreme Court, every day of the calendar must be taken into account in counting the said 48 hours. The Attorney-General in response argued that though Article 14(3) of the Constitution guarantees the right to personal liberty of every person it provides exceptions under which such rights could be curtailed and that a declaration to the effect that an arrested person is to be brought before a court regardless of what day or time of the day the 48 hours of arrest expires would be unreasonable in the face of

practical realities. The Attorney-General invited the Court to apply the Modern Purposive Approach to ascertain the true purpose of the provision, since applying a literal meaning of 48 hours will lead to absurdity because the existing state of affairs in the Ghanaian context is such that, there are certain times and days which fall outside the ordinary days and times.

**With reference to the core values of constitutional interpretation and the decisions of the Supreme Court, write a reasoned response to the arguments of the parties.**

**(25 Marks)**

#### **QUESTION 4**

In the case of *Abusua Bank Ghana Ltd v Okraku and 12 others*, the 1<sup>st</sup> Defendant, hereinafter the Applicant, applied to the Court to strike out the Plaintiff's (Respondent) suit on the grounds that:

- a. The suit against the Applicant has been commenced in breach of the statutory preconditions regulating the manner for commencing legal proceedings to enforce Director's liabilities to corporate institutions;
- b. The suit against the Applicant has been commenced in violation of the statutory preconditions for joining purported Respondent's cause of action against the Applicant and with the purported Respondent's cause of action against the other defendants in the suit.

In his argument, Counsel for the Applicant contended that the Respondent's suit in substance charges the Applicant with criminal or fraudulent conduct. According to Counsel, this brings the suit within the ambit of Section 137 of the Banks and Specialised Deposit Taking Institutions Act, Act 930 which provides:

**“Section 137: Where a receiver has sufficient reason to believe that shareholders, directors, officers, attorneys, accountants**

**and other professionals have engaged or are engaging in criminal or fraudulent activity in relation to the business of a bank or a specialized deposit taking institution, the receiver shall:**

- i. Notify the Bank of Ghana immediately and
- ii. Institute a civil action to claim damages and restitution

Counsel for Applicant urges the court to adopt the view that actions arising from the criminal or fraudulent conduct of officers of a company under receivership can only be instituted by a receiver, upon the performance of certain conditions precedent: namely first notify the Bank of Ghana immediately and secondly institute a civil action to claim damages. That, the first step of notifying Bank of Ghana should precede and escalate into the second. On his part, counsel for however insists that the word '**and**' as used in section 137 suggests concomitance, that is, the notification of the Bank of Ghana and the institution of the action occurring together and not necessarily one before the other.

**As the trial judge, you are to rule on this matter with reference to the internal rules of statutory interpretation**

**(25 Marks)**

#### **QUESTION 5**

Nana Kwabena Poku, a majority shareholder in Admax Company Limited invested one million Ghana Cedis in the Company and has eighty percent shares in it. Each of the five other shareholders has four percent shares in the Company. The Company is owing its creditors an amount of two million Ghana Cedis . The numerous creditors to the Company have been harassing Nana Kwabena Poku for payment of the materials they supplied to the Company. The Company is insolvent

and Nana Kwabena Poku has petitioned the High Court, Accra for the official winding up of the Company under the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) on the basis that the Company is unable to pay its debts. Section 84 of Act 1015 under which the petition was filed provides thus:

" (1) The following persons may present a petition to the Court for the official winding -up of the company only on grounds specified in paragraphs (c), (d), and (e) of subsection (2):

(a) The Registrar, (b) a creditor of the company, (c) a member of a Company with shares or contributory of the company, or (d) the Attorney - General.

(2) The Court may order the official winding-up of a company on a petition presented where;

(a) the company

(i) does not commence the business which the company is authorised by the constitution of the company to carry on, or

(ii) suspends business for a year within a year after the incorporation of the company;

(b) the company does not have members;

(c) the business or objects of the company are unlawful;

(d) the company is operated for an illegal purpose;

(e) the business being carried by the company is not authorised by the

constitution of the company;

(f) the company is unable to pay the debts of the company; or

(g) the Court is of the opinion that it is just and equitable that the company should be wound up."

One of the shareholders has challenged the action by Nana Kwabena Poku filed before the High Court as being misconceived. Write an opinion as a judge by discussing the respective positions by the parties.

**(25 Marks)**

#### **QUESTION 6**

On 6<sup>th</sup> of September 2016 the Plaintiff in his capacity as a private citizen and a legal practitioner, pursuant to Article 2 of the Constitution 1992, commenced an action against the Defendant, the Attorney General seeking the determination of the following issues:

- d. Whether or not on a true and proper interpretation of Article 14(3) of the Constitution 1992, Saturdays, Sundays and Public holidays, any time during a civil unrest and any other day that the courts in Ghana cannot sit would be counted in reckoning the 48 hours within which a person arrested or detained on suspicion of committing a crime or in execution of a Court Order ought to be brought before a court;
- e. Whether or not the inaccessibility of courts on Saturdays, Sundays, Public holidays etc in respect of a person arrested or detained constitutes breach of article 14(3) of the Constitution 1992;

- f. Whether or not on a true and proper interpretation of article 14(3) of the Constitution 1992 the courts ought to be made accessible on Saturdays, Sundays and Public holidays or any other day or time that the courts are ordinarily unable to do business

The said article 14(3) provides as follows:

In arguing his case, the Plaintiff contended that although the Constitution does not expressly stipulate the mode for calculation of the 48 hours, looking at the intention and the spirit of the Constitution, as well as the jurisprudence of the Supreme Court, every day of the calendar must be taken into account in counting apart from week days the said 48 hours. The Attorney General in response argued that though Article 14(3) of the Constitution guarantees the right to personal liberty of every person but provides exceptions under which such rights could be curtailed and that a declaration to the effect that an arrested person is to be brought before a court regardless of what day or time of the day the 48 hours of arrest expires would be unreasonable in the face of practical realities. The Attorney General invited the Court to apply the Modern Purposive Approach to ascertain the true purpose of the provision, since applying a literal meaning of 48 hours will lead to absurdity because the existing state of affairs in the Ghanaian context is such that, there are certain times and days which fall outside the ordinary days and times.

With reference to the core values of constitutional interpretation, write a reasoned response to the arguments of the parties.

**(25 Marks)**