

THE BOARD OF LEGAL EDUCATION
GHANA SCHOOL OF LAW
PROFESSIONAL LAW PART II EXAMINATION
FRIDAY, 15TH JUNE 2007

LAW OF ADVOCACY AND LEGAL ETHICS

TIME ALLOWED: THREE (3) HOURS

9:30am to 12:30pm

INSTRUCTIONS TO CANDIDATES

1. Read the instructions very carefully before beginning your answers.
2. Answer **QUESTION ONE (1)**, which is compulsory, and **THREE** other questions
3. Credit will be given to eligible handwriting, clarity of expression and orderly presentation of material.
4. Do not write your name on the answer book. Write only seat or index number.
5. Adhere strictly to the instructions on the front cover of your answer book. Non-compliance with any of the instruction may result in the rejection and cancellation of your answer paper.

QUESTION ONE

Lying from West to East between latitude 4.5 and 6.5 to the western bulge of the question mark continent is a small country with a population of approximately twenty million people. Blessed with several minerals and natural resources, this country became the first, south of the Sahara, to attain political autonomy. Its post independence name, Ghana, was carefully chosen to follow the footsteps of the ancient Ghana Empire which was also endowed with mineral resources.

It is to this prestigious country that Marie-Louisa was born to the Addington family of Ussher Town. Marie-Louisa studied History for her first degree at the University of East Wood. She was full of praise for the BIG SIX who were instrumental in the fight for independence for her beloved country. They became her role model. Her History lessons revealed to her that five out of the big six were lawyers. She determined against all odds to follow their footsteps in consolidating democracy in the country.

Law School's admissions were tough in the country as the demand was greater than the supply. Determined as Marie-Louisa was, she managed to pass the Law School Entrance Examinations and went through a gruesome four year legal training after which she was called to the Bar in October 2002. She was immediately posted to the Attorney General's Department where she completed her six month pupillage and National Service and was issued a Solicitors' Licence by the General Legal Council. She later decided to go into private legal practice. She applied for and was admitted as an associate of Nyame-Tease Law Firm, set up by Nii Okaija, one of the big six. His son, Gohoho who currently manages the firm studied Law at the Oxford University and Lincoln's Inn before being admitted to the Ghana Bar in 1996.

Marie-Louisa's reputation among her peers suddenly shot high, firstly, because of her enrollment as a lawyer and secondly, because of the law firm where she was working as an associate. She tried to impress her friends by inviting them and paying for lunch and dinners at prestigious restaurants in the capital. However her allowance from Nyame-

Tease Law Firm could no longer support her monthly expenditure. After two years of legal practice with Nyame-Tease Law Firm, Marie-Louisa resigned to struggle her way through life. Luck, however, came her way when her uncle, Anyars, invited her to join him in his chambers at Maamobi. Marie-Louisa seized the opportunity but after six months' practicing with her uncle, she could not cope with the power load shedding introduced by the Electricity Company. Her uncle had no generator and the firm bore the brunt of the load shedding because of its location. She, therefore, resigned from her uncle's chambers. Marie-Louisa's father had left a property for her at Airport Residential Area where power was more stable and the atmosphere conducive for legal practice. She ejected the tenants who were there and in August 2005 she decided to set up her own legal firm. To cut down cost she decided against her own principles to use the main building for her residence and the outhouse located about 10 metres away for her Chambers. She named the firm Afrakoma Law Consult. The name 'Afrakoma' was a combination of the first letters from the initials / names of the big six, her father who was an accountant and her fiancé, an architect by profession.

Her beloved country, Ghana, was soon to turn 50 years on 6th March 2007. It was going to be a big celebration. As part of the arrangements, the Ghana @ 50 Secretariat set up a website on the internet displaying the resources the nation was endowed with of as well as its culture, traditions, politics and history. Professionals were invited to support the website by advertising there. Marie-Louisa paid for a space on the website set aside for professionals and had displayed the firm's profile, practice areas, location address and telephone numbers. It, therefore, became possible for investors wishing to invest in Ghana to easily locate a lawyer like Marie-Louisa for information and instructions for legal work.

Sem International Limited, investors from South Africa, contacted Marie-Louisa through the internet and requested an urgent legal assistance to recover a debt due and owing to it by a Ghanaian company, Philippina Enterprises Limited. Marie-Louisa informed Sem International Ltd. that the approved scale of fees was 10% of the value of the total claim of US\$250,000. Sem International wanted Marie-Louisa to devote all her time and attention to the case and complete it with a minimum of delay so agreed with Marie-Louisa to pay her 20% of the total claim. To show their good faith they deposited 15% out of the claim by way of legal fees. The demand letter Marie-Louisa sent to Philippina Enterprises Limited did not yield any positive results. Sem International Ltd. therefore instructed Marie-Louisa to sue the company together with the three directors who had signed personal guarantees to be responsible for the debt if there should be a default by Philippina Enterprises Limited. It was when the names of the directors were brought that Marie-Louisa spotted the name of Gohoho, the son of one of the Big Six who had taken her on in his firm as an associate and inspired her in her early years of practice. She explained her predicament to the Managing Director of Sem International Limited and refused to issue the writ against her former boss, Gohoho, and the other directors. She was, therefore, compelled to return the 15% deposit paid by Sem International Limited less all legitimate expenses and her fees based on quantum meruit.

Sem International Limited were not happy at the refusal of Marie-Louisa to sue her colleague lawyer but with no choice in the matter took their brief away. Marie-Louisa, no doubt, was one of the few lawyers who benefited from the Ghana @ 50 website. More international clients and investors flocked into her firm for legal consultations. One such client was Ali Baba PLC who informed Marie-Louisa that they and four other mining companies in Ghana had been refused licence to operate in the country although they had paid for their prospecting Licence five years in advance. The other names were given as De-Souza Limited, Abariga Limited, Sem International Limited and Anima Limited. Ali Baba PLC told Marie-Louisa that the situation was quite urgent and that they had lost a total of US\$5,000,000 and for everyday that the licence was not released they would continue to lose money. They wanted a claim for damages for the loss and an order for the issuance of the licence. Marie-Louisa requested to meet the directors of the other companies but when after two days they did not turn up, she issued a writ in the names of Ali Baba PLC and the other four companies.

The case started and the Managing director of Ali Baba PLC brought copies of the agreement between the mining companies and the Ministry of Mines and receipts evidencing payment for the licence. Marie-Louisa, however, at the trial could not trace the documents and so did not tender them. The court, therefore, dismissed the claim of Ali Baba PLC & Co. but awarded only nominal damages of US\$10,000 each. This money was promptly paid by the Ministry of Mines to Marie-Louisa's Clients' Account at the cedi equivalent at an exchange rate determined by the Ministry of Mines. The Managing Director of Ali Baba PLC refused to accept the cedi equivalent because the rate of exchange was lower than the prevailing rate but the Ministry of Mines insisted that the value was the same. In the midst of the disagreement, Marie-Louisa wrote to Ali Baba PLC attaching the cheques in the cedi equivalent in the names of all the companies and an undertaking to recover the difference in exchange rate from the Ministry of Mines within a week. It has been eight weeks now and Marie-Louisa has not been able to fulfill her undertaking to send Ali Baba PLC & Co. the difference. The five companies have sent a petition to the General Legal Council against Marie-Louisa for various complaints including instituting an action in court without their consent and failure to honour her word.

Discuss the issues raised in this problem with particular reference to the Code of Ethics of the Ghana Bar Association and the relevant legislation affecting the legal profession in Ghana.

QUESTION TWO

At the close of every cross-examination, it is mandatory for Counsel for the witness to ask the witness questions. Discuss the purpose for the introduction of this form of examination and its role in Advocacy.

QUESTION THREE

"It is said that in addition to the absolute obligation not to disclose secrets, there is a general principle that a solicitor who has acted in a particular matter, whether before or after litigation has commenced cannot act for the opposite party in the same matter under

any circumstances" per Cozens-Hardy in *Rakusen v. Ellis Munday & Clarke* [1911- 13] All ER 813 at 814

With the aid of decided cases and relevant laws affecting the legal profession in Ghana, discuss the truth or otherwise of the quotation.

QUESTION FOUR

In the midst of a shark-infested sea, off the 'Ivory Coast' country-side is a congested boat load of people, sailing to "Axim". Fleeing from a devastating war and starvation. After sailing half-way, and about 100 more miles to sail, the boat's overload was becoming a danger to all aboard. To save the boat from sinking into the deep and dangerous sea, it must be decongested by a half of its passengers.

On board the boat are: 2 priests, 2 children, 1 carpenter, 1 gardener, 3 HIV patients, 2 homosexual-spiritualists, 2 people from each of the three ethnic groups in the north, south, east and 3 from the west, 2 lawyers, 1 nurse, 2 teachers, 1 judge, 2 ADR experts, 40% females, 2 social workers, 1 psychologist, 1 journalist, 2 physicians, 3 soldiers, 2 police officers, 1 Professor, 2 traditional rulers and 10 elderly people.

The only way to save the boat from sinking is by decongesting its load by half. In the mist of the fear and tension of an imminent danger, the passengers split into 2, relatively equal groups: one group wanted the boat to sink with all aboard, while the other group wanted a random process of elimination. However, after much debate both groups agreed to "negotiate their differences and position."

You have been appointed by your group in the boat to negotiate for them – as and ADR expert.

- a) Identify the interest behind the respective position of the disputing parties.
- b) Generate four plausible options towards the resolution of the conflict.
- c) State two reasons why you think Alternative Dispute Resolution should be institutionalized in the justice delivery system.
- d) State two critical roles of a Mediator.

QUESTION FIVE

How far is it true that leading questions are the most important questioning technique known in advocacy.

QUESTION SIX

"A barrister cannot pick or choose his clients. He is bound to accept a brief for any man who comes before the courts. No matter how great a rascal the man may be the barrister must defend him to the end. He must accept the brief and do all he honourably can on behalf of his client. I say 'all he honourably can' because his client is not only client. He has a duty to the court which is paramount."

What are the barrister's duty to the court?