

**THE BOARD OF LEGAL EDUCATION  
GHANA SCHOOL OF LAW**

PROFESSIONAL LAW PART II EXAMINATION

FRIDAY, 13<sup>TH</sup> JUNE 2008

**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**

Conflict is said to be an inevitable part of human existence. Many countries in the world have had their fair share of conflict with disastrous consequences in those places where it was not managed properly. Conflict, if handled well, could be a major engine of growth and development for communities. From the date of birth of Lester, the natural instinct to see to peaceful resolution of conflict in his native community of Wassingu has been his overriding passion. He hated excessive anger and intolerance, exhibited by people, which have the potential of exploding into uncontrollable conflict. His aim in life was to do something that will help society in this area.

Lester was orphaned at the tender age of eleven when his parents were attacked and killed in a tribal war between two families in Vishnu, a popular trading post used by his parents. By customary dictates, his uncle, Abednego was made his legal guardian. Abednego was a business magnate and the news editor of Tricia FM, a popular radio station in the capital city of Accra. Abednego had enrolled to read law on part time basis at the city campus of the University of Longinus. Abednego's wish for his young nephew was to move into other disciplines such as the sciences and to study hard so that the family could boast of a multitude of professionals across the disciplines. Abednego, therefore, took the initiative to work hard, combining serious studies in the law alongside his busy schedule at Tricia FM.

Parents do not always have their way with their children. The natural instinct to resolve conflict was so strong in Lester that the only logical profession to develop and further his natural talent was law. In the final year of Abednego's course at the Bagonluri School of law, Lester applied for and gained admission to the Faculty of Law at the University of

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Longinus. Abednego was responsible for the fees, tuition and other needs of Lester to make his study a success. By the time Lester had completed his first year in university, Abednego had also completed his final year, passed his exams and was privileged to be part of the crop of lawyers called post millennium lawyers to be enrolled in October 2001, by the first female Chief Justice of that country. Abednego applied to the Dufie law firm where he was admitted to do his pupillage. He successfully completed his pupillage and was issued with all relevant certificates after satisfying all the requirements of the General Legal Council.

In 2005, Abednego teamed up with two of his law school mates, Nortey Ocquaye and Ocquaye-Nortey to form the Abed O'connor chambers at the heart of the capital city. He decided to practice his two professions, law and journalism on full time basis and therefore, arranged his time to come in early to supervise his subordinates at Tricia FM before calling at the courts at 9am each day. Abednego also came in around midday to work and later in the evenings after chamber work when he hosted his 'learning the law' series, a popular programme which discussed cases listed before the courts for the day. Abednego always made sure that the cases handled by him in court were part of the cases discussed on the radio programme. During the discussions, Abednego was sometimes critical of judges who ruled against him in any of his cases.

Abednego's qualifications as a lawyer and commitment to Tricia FM soon caught the eyes of the shareholders and Directors of the FM station. The chairman of the board of Avril Media magnate Limited, the company that owns Tricia FM resigned over a minor disagreement with the shareholders. It came as no surprise when Abednego was appointed to the board immediately and unanimously approved as the new Chairman of the board. Abednego successfully combined his new position of chairman at Avril Media Magnate with the practice of the law to the admiration of his fans.

Abednego encouraged Lester to study harder so that after his enrollment, he could come and join his firm to lessen the load on him. Lester lived up to expectation and passed his final year examinations in July 2007 and was enrolled to Ghana Bar in October 2007. A great relief had come to Abednego so he immediately admitted Lester into Abed O'connor chambers to do his pupillage. Lester also completed his pupillage, was issued with his practicing certificate and started working as an Associate of Abed O'connor chambers.

The Government of Ghana in 1980 had compulsorily acquired ten acres of land at a prime residential location in the capital from the Nketsiaba family for the construction of a presidential palace. The head of the Nketsiaba family is one Torgbui Vifah and is supported in that role by eight principal elders, one of whom happened to be Abednego. At the time of the acquisition, Abednego was a teenager in school and had no information whatsoever about the acquisition procedure and the payment of compensation. Abednego's opinion was sought by the head of family and following the adage of new king new law, advised Torgbui Vifah to issue a writ in his name as first plaintiff and Abednego as second plaintiff. The defendant was the Attorney-General and the relief sought was an order to restrain the Government from constructing the palace on the land



on grounds of offending their ancestors. Abednego handed the case over to Lester to conduct for the plaintiffs in view of the fact that he was a party and will give evidence at the trial. Because of the experience Abednego had gained from the practice of the law and to make sure that his family did not lose the case, Abednego wrote down all the questions to be asked in examination in chief and cross examination for Lester to read to the court. Abednego also made sure he was present in the courtroom. He kept shuttling from his seat at the well of the court to the Bar to direct Lester when and how to raise objections and also the answers to give questions posed by the judge.

The Attorney-General then raised an objection to Abednego's presence as second plaintiff citing authorities to buttress the point that it was sufficient for the head of family to sue or be sued for and on behalf of a family. The learned trial judge Mr. Justice Tindana upheld the objection and struck out Abednego's name from the suit as second plaintiff. Though Abednego was initially not happy with the ruling, he later saw it as a good opportunity to take over the case personally and fight for the survival of his family. He became lead counsel in the suit but at an emergency meeting of the family and the lawyers, it was realized that proper investigations were not conducted before the action was instituted. It was then suggested that the action should be discontinued in the face of an imminent judgment against them. Abednego, however, refused to back out at that late stage and insisted on going ahead with the case. Unfortunately for the family, judgment was delivered against them and a punitive cost of Ten Thousand Ghana Cedis was awarded for such a frivolous litigation. Torgbui Vifah is now in a big dilemma because he cannot raise money to pay for the costs.

The pressure of private legal practice soon caught up with Abednego. He tendered in his resignation as chairman of the board as well as news editor of the Avril Media Magnate to devote full time attention to the practice of the law. The Attorney General served Torgbui Vifah with notice of judgment after trial and also wrote to Abednego giving him 7 days' deadline for his client to settle the costs. Abednego was furious with the letter from the Attorney-General and, in reply, accused the Attorney-General of incompetence, stomach politics and stupidity of the highest order.

Abednego later met a friend, Franco at Adigbo supermarket who in a chat complained to Abednego that the Attorney-General had failed to settle a breach of contract claim she had made against the Government. Abednego sent a demand letter on behalf of Franco to the Attorney-General. The letter was posted by ordinary mail and also had an error in the address so did not get to the Attorney-General but by some miracle, at the expiration of the deadline in the demand letter and before a suit could be filed in court, Franco received a letter from the Attorney-General offering to pay the sum of Twenty five thousand Ghana Cedis in full and final settlement of the claim. Franco gave the letter to Abednego to reply accepting the offer. The full sum was later paid by cheque to Abednego for and on behalf of Franco. Abednego immediately paid the money into Eurobank where he operates his personal account so that he can earn some interest before paying the total sum to Franco.



The Attorney-general has just received the letter written by Abednego to him in reply to his demanding the costs of Ten Thousand Ghana Cedis from Torgbui Vifah. Shocked at the contents, the Attorney-General has petitioned the General Legal Council to instruct the Judicial Secretary to strike Abednego's name from the roll of lawyers without holding a disciplinary enquiry.

**Identify and discuss the ethical issues raised in this problem, with particular reference to the Ethos and the Code of Ethics of the Ghana Bar Association and the relevant legislation affecting the legal profession in Ghana.**

### QUESTION TWO

There is a marked distinction between limiting the testimony and discrediting the testimony of a witness in cross examination. What is this distinction?

### QUESTION THREE

"But I think it of the utmost importance that the courts should not assist Barristers to recover their fees. If they do, the whole relationship between a Barrister and his professional client will be altered and a door will be opened which will lead to very important consequences as regards counsel." Per Lindley L.J. in *Re Le Brasseur & Oakley* [1896].

Does this quotation represent the current Ghanaian Law on suits brought against clients by lawyers?

### QUESTION FOUR

What is an Interview? Identify the category of difficult clients a Barrister may encounter during the interview process and discuss the strategy to deal effectively with them.

### QUESTION FIVE

What are the justifications for the introduction of Judicial case Management into the Ghanaian justice delivery system.

### QUESTION SIX

It is important for members of the public to view the role and functions of lawyers in a positive vein. If this eludes lawyers it will set the tone for a collision course which will not augur well for the profession. The duty therefore to the public must be guarded

jealously if the relationship with the public is to be preserved. What are the lawyers' duties to the public?