

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

**PROFESSIONAL LAW PART II EXAMINATION**

**MONDAY, 15<sup>TH</sup> JUNE 2009**

**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.
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**QUESTION ONE**

Fatimata was the only child and daughter of Nurudeen an oil magnate of the State of Azantilow. His wife died tragically due to complications suffered a week after childbirth. It was Mama Fumi, Fatimata's grandmother who was responsible for her upbringing. Shattered by the death of his beloved wife Nurudeen never remarried and enjoyed a close-knit relationship with her daughter.

Fatimata lacked for nothing. She attended all the Ivy League schools in Azantilow state from the elementary level right through to the prestigious Princeton University. Fatimata was fluent in German, French and Spanish. She played the piano with perfection and could give a rendition of Handel's Messiah that would bring tears to the eyes of even those who did not believe that there was a Higher Being who created heaven and earth.

Fatimata after adolescence with all its drawbacks had blossomed into a ravishing beauty and often played hostess at the lavish parties her father threw for his business partners and guests. Although Nurudeen regretted not having a son he groomed Fatimata in administrative skills to take over his business, Barack Holding Group Limited. One could imagine his shock when Fatimata told her father one day over dinner that she had enlisted to join the Azantilow Police Force. Nurudeen ranted and raved and threatened to disown her if she went ahead with this 'idiotic' mission of hers. Fatimata was not flustered. She had seen the image of the Police Service take a nose dive with the numerous instances of bribery and corruption. She saw herself as being on a mission to bring some sanity and professionalism to the Police Service.



Nurudeen then tried to be conciliatory and cajoled, pleaded and cried for Fatimata to have a change of mind. All these fell on deaf ears. Finally he threw his hands up in despair and grudgingly gave his consent and blessing. However he secretly nursed the hope that she would come to her senses after a while. At the end of the training Fatimata passed out with flying colours and was posted to the Gondar Police Station in faraway Fatou Region. Fatimata missed her father dearly but had to survive on the monthly phone calls that her meagre salary enabled her to make.

Having been exposed to Criminal Law and Criminal Procedure as part of her Police training, Fatimata developed an affinity for the law. She spent her lonely nights in Fatou after work reading law fiction stories such as Perry Mason and watching LA Law and other films on court room trials to satisfy this growing attraction to the law. Two years later Fatimata applied for and was granted study leave to read law at the Malcolm University. Nurudeen was ecstatic. At long last his 'idiotic' daughter had seen the light. Merciful God had heard his prayers.

He put all his financial resources at her disposal and made sure that he purchased every single textbook that was on her reading list. He ordered the current Azantilow Law Reports and the All England Reports on CD for her and also got her a customized version of the latest VW Touareg to enable her move about freely. Fatimata studied hard, completed her two year undergraduate degree and enrolled in the Azantilow School of Law. That was where Fatimata met Obuadabang. She had gone to the library one day to put finishing touches to her Family Law assignment. As she sat there trying to find the appropriate conclusion, there walked in this six foot tall, well built and sinfully handsome gentleman who murmured a muted hello to her and sat by her. She couldn't help but notice his long lean beautiful fingers. Fatimata fell in love right there and then and was in pleasantly surprised when he told her his name was Obuadabang and that they were in the same class.

Ignoring the dire warnings of her two bosom friends, Nana Ama and Akorfa that Obuadabang was only after her money, Fatimata and Obuadabang became inseparable. They sat together in class during lectures, they studied together in the library and often times came to school together and left together with Obuadabang driving Fatimata's car. The day after their final paper in the Professional Part 2 exams Obuadabang informed Fatimata that he was no longer interested in taking the relationship further and that he had only wanted a study mate to 'encourage' him finish his course. Fatimata was heartbroken but consoled herself with the fact that she passed the examinations with flying colours and was enrolled to the Bar in 2004.

She joined the prestigious law firm of Talata Chambers where she underwent six months statutory pupillage. After her certification of successful completion of pupillage, she applied for and was admitted to stay on as an Associate of the firm. She had learned from her lectures at the Law school to be humble and study the rudiments of procedure especially with the assistance of law clerks in the firms. Fatimata developed a good working relationship in that regard with Emmanuel, the firm's clerk. One of the firm's clients brought in a conveyance for the transfer of interest in land which the client said



was given to him by his father over five years ago. He wanted one of the lawyers of the firm to sign it to enable him register the land. Fatimata was the obvious choice of Emmanuel. She read through the document and after satisfying herself that everything appears appropriately done on the document, signed it for the client. Fatimata enjoyed every bit of her work at Talata chambers but she must move on in life. With pressure to take advantage of her father's wealth to get her own legal firm, she finally succumbed in 2008 when she left Talata Chambers and set up her own law firm - Lizzy Pearl Law Consult.

To Nurudeen in order to succeed in business 'image was everything'. The interior furnishing of the firm was carried out by Beeri Interior Décor with state of the art computers, telephones and other accessories. Nurudeen financed the purchase of 5 cars for the use of the firm. Nurudeen also directed many of his business colleagues and friends with legal problems to Lizzy Pearl Law Consult for advice. Fatimata was so appreciative of the role her father, Nurudeen has played in furnishing her firm and also referring businessmen to her firm that she decided to share part of the monthly total fees received by the firm with him. Nurudeen was wealthy and really did not need that money but the offer coming from a hard working daughter, he felt obliged to partake in the sharing.

On her first appearance in the Fast Track High Court after setting up her own firm, a criminal murder case was pending before the court but the accused had no counsel due to his poverty. Hearing from other lawyers that Fatimata was making it big at the Bar, the learned Trial Judge, His Lordship Nana Dr. Prof. Justice Diawuo assigned the murder case in open court to Fatimata. Fatimata thank the judge for the confidence reposed in her and requested for a copy of the bill of indictment and summary of evidence to study. The case was then adjourned for two weeks. On the next adjourned date Fatimata appeared in court and returned the brief to the learned judge with the explanation that she was too busy to take up the case for such criminals who cannot even raise money to pay for their lawyer's transportation. The Judge was disappointed but had no power to force Fatimata to represent the accused and so withdrew the brief from her.

Fatimata then left the Fast Track High Court for the Commercial Court where she had sued Vladimir Limited for an overdue facility granted the company by Millennium 2000 Complex Bank Limited. The legal firm of Atanga and Associates represents Vladimir limited at the Commercial Court. Just at the corridors of the court the Managing Director of Vladimir Limited, Teddy Yeh sought audience with Fatimata and pleaded with her to give his company more time to sort itself up. Fatimata was in a hurry so requested Teddy Yeh to meet him in her office that afternoon at 2pm. Teddy Yen was desperate so was seated in Fatimata's office by 1:30pm. The meeting took place during which Teddy Yen brought proposals for the payment of the debt to Fatimata. Fatimata with the consent of Teddy Yen made some amendments to the proposal brought and promised Teddy Yen that she will discuss it with the Bank management and get back to him.

Fatimata's father, Nurudeen suffered a mild stroke just after his 70<sup>th</sup> birthday and was advised by his doctors to take things easy. He feared his company might collapse so he



vested all powers of management in the Board of Directors and appointed Fatimata as the acting Executive Chairman of Barack Holding Group Limited. Fatimata discharged her role as Executive Chairman creditably for within six months the broad policy framework formulated by the Board and implemented by her saw the earnings of the company multiplying. Nurudeen had to thank his stars for without the knowledge of the law, his idol daughter would have no idea whatsoever to steer the affairs of the Company.

By January 2009, the workload for Fatimata had become too much that she was compelled to expand the firm by entering into partnership with Ndebugre a reputable lawyer enrolled in 1998 to manage the firm, do the solicitor work and train the young lawyers engaged by the firm. The expansion brought in Hamza and Okpoti, who were two years at the Bar as Associates in the firm. Two others, Blagodzi and Abdul-Rauf who were enrolled to the Bar in October 2008 also applied and were admitted as pupils to do their pupillage with the prestigious law firm. The reputation of the Pupils and Associates soon caught the eyes of the public. The firm represented Addison, one of the key Cocoa farmers from the Western Region in the suit against Jessica Gold Mining Company whose mining activities had damaged the environment including the Cocoa crops on the farm. The High Court gave default judgment in favour of Addison to recover the sum of Five Hundred Thousand Ghana Cedis from Jessica Gold. The mining company claiming they were not served with the court papers appealed to the Court of Appeal and brought a Stay of Execution of the Judgment. The Court of Appeal granted the Stay on terms and ordered Jessica to deposit half of the judgment Debt in Court within three days out of which One Hundred and Fifty Thousand Cedis should be paid to Addison. Jessica complied with the order and deposited the money within 48 hours but dissatisfied with the Order filed an Appeal to the Supreme Court and again brought a stay of execution of the order for the payment of One Hundred and Fifty Thousand Ghana Cedis to Addison. While the application was pending the Registrar of the High Court, Sekondi on the authority of a letter from Fatimata released the sum on One Hundred Thousand Ghana Cedis to Addison.

Jessica was so furious at the release of the money that they petitioned the General legal Council who after a disciplinary enquiry decided to suspend Fatimata from practising for one year. The Judicial Secretary had known Nurudeen very well so after four months he granted permission to Fatimata to resume her legal practice.

**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.**  
**[24 MARKS]**

## **QUESTION TWO**

In 1967, Flynn Development Limited acquired a large track of land and developed it as a mixture of residential housing and commercial development. The legal firm of WBF acted for Flynn throughout the various phases of the development. Part of the transaction



had to do with a mortgage of a shopping mall where at the request of Flynn and with the consent of Central Trust Company, the firm of WBF acted for both parties on investigation of title as well as the registration of the mortgage. Central Trust Company was the mortgagee and Flynn the mortgagor. There were problems which culminated in a suit by Central Trust Company against Flynn and a counter action by Flynn against Central Trust Company for damages for maladministration of the shopping mall. The mortgage of the shopping mall is an integral part of the actions which both of the parties have started. Flynn has engaged the services of the legal firm of WBF to represent them in the two actions against Central Trust Company. Can the firm of WBF act for Flynn?  
[12 MARKS]

### QUESTION THREE

The ability to listen effectively has been found to be central in Clients Interview. Discuss the role of the various kinds of listening skills in Advocacy.  
[12 MARKS]

### QUESTION FOUR

Counsel in cross-examination may come face to face with certain types of witnesses that the laws classify "special". Discuss the characteristics of any four of this type of witnesses and the ways in which a barrister may effectively deal with them under cross-examination  
[12 MARKS]

### QUESTION FIVE

What is the justification for the introduction of Judicial Case Management into the Ghanaian justice delivery system?  
[12 MARKS]

### QUESTION SIX

Discuss the extent of liability of lawyers for negligent acts committed by them in the course of their professional duty.  
[12 MARKS]