

Nana Gyankomah Sekyi
THE BOARD OF LEGAL EDUCATION
GHANA SCHOOL OF LAW

PROFESSIONAL LAW PART II EXAMINATION

TUESDAY, 15TH JUNE 2010

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 to the western bulge of Africa 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 Anne-Marie was born to the Naa Aduoley family of Jamila Town. Anne-Marie studied History for her first degree at the University of Nastasha. 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 Anne-Marie 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 months' pupillage and National Service and was issued with 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 Marcellinus Law Firm, set up by Addo Akufo-Addo, one of the big six. His son, Junior Rene who currently manages the firm studied Law at the Oxford University and Lincoln's Inn before being admitted to the Ghana Bar in 1996.

Anne-Marie'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 Marcellinus Law Firm could no longer support her monthly expenditure. After two years of legal practice with Marcellinus Law Firm, Anne-Marie resigned to struggle her way through life. Luck, however, came her way when her uncle, Paschal, invited her to join him in his chambers at Maamobi. Anne-Marie 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. Anne-Marie'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 2006 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 Bentsiwa Law Consult. The name 'Bentsiwa' 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 54 years on 6th March 2011. It was going to be a big celebration. As part of the arrangements, the Ghana @ 54 Secretariat set up a website on the internet displaying the resources the nation was endowed with as well as its culture, traditions, politics and history. Professionals were invited to support the website by advertising there. Anne-Marie 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 Anne-Marie for information and instructions for legal work.

Lawyer Ayenini, a good friend of Anne-Marie's father one day asked Anne-Marie to hold his brief in a matter he was handling at the Osu Magistrate Court, since he had another matter in the Court of Appeal at the same time. It was a debt recovery case, which Lawyer Ayenini had to instruct Anne-Marie because he had no juniors and his practice was a one-man show. Moreover, the magistrate had indicated his displeasure at the frequent delays at the request of Lawyer Ayenini. On the said date Anne-Marie was at her best and managed to secure an interlocutory judgment in favour of Lady Mamle. So impressed was she that two days later, she telephoned Anne-Marie to continue the remaining issues in the case on the assessment of damages in court for her. She agreed to compensate her very well for her excellent court room display. At the next adjourned date Anne-Marie appeared on behalf of Lady Mamle and successfully completed the case.

Lady Mamle, impressed at Anne-Marie's performance, first made her the chair of the board of Directors of her company, J Mercer & Daughters Homes Limited. She also referred her eldest son, Kofi Kontoh, to her to write a reference to enable him be admitted into the Ghana Army. The requirements given were that the person writing the reference

should be a lawyer among others and the applicant must have a first degree from a recognized university. Anne-Marie recalled meeting Kofi Kontoh several times during her undergraduate days on the University campus but when Kofi Kontoh came to Anne-Marie's office, he confided in her that he only came to Campus to perch like a bird with his friend to study for his professional Marketing examinations. He further told Anne-Marie that he had a friend at the Registry of the University who had been able to procure a transcript for him to meet the minimum requirement. He, therefore, only needed the reference to add to his documents and present to the Admissions Office of the Ghana Army. Anne-Marie not willing to jeopardize the future of Kofi Kontoh and to keep the healthy client – solicitor relationship with "lady Mamle, wrote an inspiring reference for Kofi Kontoh highlighting on his academic brilliance and character during his undergraduate course on the university campus.

The Attorney General's Department became seriously understaffed at the beginning of the 2008 legal year prompting the Attorney General to pass an Executive Instrument EI 28 of 2008 to hire private legal practitioners as public prosecutors. Anne-Marie happens to be one of the lawyers hired. She was assigned a case of Republic vs. Kwadade, a high profile case involving a lawyer who served as a Minister of State in the former KAY Government. Kwadade was arraigned before the Fast Track High Court for causing financial loss to the State. He engaged the services of Lawyer Aseye Afi to represent him. The prosecution started with their witnesses. Though the main case against Lawyer Kwadade was that he acted recklessly in some contracts he approved for payment, the prosecution came across a due diligence report on one of the contracts which if tendered would inure to the benefit of the accused. Every lawyer is trained to win his case by a combination of tactics, skills and legal ingenuity. To win her case Anne-Marie put aside the due diligence report. Judgment was eventually delivered in the case and lawyer Kwadade was found guilty, convicted and sentenced to four years' imprisonment with hard labour.

Counsel for Kwadade, Aseye Afi, surprised at the decision of the Fast Track High Court appealed immediately to the Court of Appeal. Some few hours after the appeal was filed, representatives of all the press houses sought audience with lawyer Aseye Afi in her office and sought her opinion on the judgment as well as the merit of the appeal. The interview caught banner headlines in almost all the print media. Other press houses had live telephone interviews with Aseye Afi who contended that the judge was wrong and that the Appeal Court will no doubt reverse the findings of the trial court.

Lawyer Kwadade was, however, taken to Gwendolyn Maximum Security Prisons where after serving two years, he was granted amnesty by the President on the occasion of the 52nd independence day of the country. Lawyer Kwadade has decided not to enter politics again and has renovated one of the properties he acquired whilst a minister into an office for his legal firm, Kwadade, Kwegyiba & Kalimba Consult to launch chapter 2 of his legal practice. Justice Duffu, a sworn enemy of lawyer Kwadade who was refused some contracts during Kwadade's term as minister has heard about the attempt by Kwadade to practice Law again and has petitioned the General Legal Council to disbar Lawyer Kwadade on account of his conviction.

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.
[28 MARKS]

QUESTION TWO

Below is a Solicitor's letter to his client:-

Dear Madam,

RE: JUDGMENT APPLICABLE AND ENFORCEABLE BY YOU

We act as your Solicitors. You will recollect that in the course of the last viva voce testimony in your case, you asked permission to sally out of the courtroom to be directed to the most proximate outlet to purchase some comestibles. In your absence, the Lordship found as a fact that the indictable offence of larceny as alleged against you have been proven but declined to record a conviction. The Lordship ordered that you enter into a recognisance in the sum of Ghs5,000 with one surety to be justified to be of good behaviour for a period of not less than twelve calendar months, together with a number of special conditions pertaining to psychiatric treatment. You are fully appreciative of the seriousness of this matter and the legal repercussions which would ensue should you fail to comply with the above mentioned order. In the circumstances, you should be extremely grateful to have incurred such a penalty. We thank you for your instructions.

Yours faithfully,

Your Solicitor

- a. With your knowledge of the principles of communication for Lawyers, discuss briefly what is wrong with this letter.
- b. Redraft the letter to conform to the principles of effective communication for Lawyers.

[14 MARKS]

QUESTION THREE

During the procession of the General Legal Council into the yard to commence proceedings to admit new lawyers to the Bar in 2006, Daada Panyinsem, one of the candidates for enrollment collapsed under the stress, heat and excitement popularly known among students as 'Operation Go Bar neurosis'. Daada Panyinsem was rushed to the City Clinic in the nearby Makola market complex where he was treated and regained consciousness. Daada Panyinsem later found his Wig and Gown with the nurse, grabbed it and headed towards the venue of the enrollment. Unfortunately, by the time Daada Panyinsem arrived, the ceremony was over and some members of the Council had left

with the exception of the Chair and two others. Daada Panyinsem in the company of his family approached the chair, explained what had happened and pleaded with her to enroll him otherwise his local village will lose the opportunity to have the first Lawyer ever in its history. The Chair obliged the request, invited the other two members of the Council present, the Director of Legal Education and some of the lecturers to the office of the Director of Legal Education where a small but impressive ceremony was held to admit Daada Panyinsem to the Bar after which he took the undertaking, received his certificate and signed the enrollment book. Asonaba, a lecturer of the school expressed his disgust and opposition to the private ceremony in the Director's office and has threatened to go to Court to declare Daada Panyinsem's enrollment null and void. Asonaba has approached you to represent him. Advise him.

[14 MARKS]

QUESTION FOUR

The caution is before you lead a witness to tell his story you must have a purpose in mind. What is this purpose and indicate what strategies or techniques could be employed by Barristers to effectively achieve their aim.

[14 MARKS]

QUESTION FIVE

What do you understand to be the role of the following in Advocacy:

- a. Tenacity
- b. Client's Friend
- c. Confrontation
- d. Expert Witness

[14 MARKS]

QUESTION SIX

What are the four-fold duties of a lawyer? In apportioning these duties, the public should have been given prominence in the same way as the other duties. Regrettably the obligation to the public is often downplayed because stakeholders do not really see what there is in the public arena to hold Lawyers accountable for. Do you agree that the lawyer's duty to the public is insignificant?

[14 MARKS]