

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

PROFESSIONAL LAW PART II EXAMINATION 2014/2015

**LAW OF ADVOCACY AND LEGAL ETHICS**

THURSDAY 11<sup>TH</sup> JUNE 2015

TIME ALLOWED: THREE (3) HOURS - 10:00a.m. to 1:00p.m.

**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 for legible 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 instructions may result in the rejection and cancellation of your answer paper.
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**QUESTION ONE**

Nana was full of smiles as he read about himself in the several newspapers, which reported his victory in a case in which an official of the Electricity Company of Ghana sued the company for damages for malicious prosecution. In that case the company's official was charged with fraud in respect of electricity bills the official had collected on behalf of the company. The company lost the fraud case against the official and the official immediately sued the company for damages. During cross-examination, Nana concentrated on one item in the official's accounts and cross-examined as follows:

Nana : In January 2014 you had collected 1,000 Ghana cedis for ECG, is that correct?

Witness: Yes

Nana: In March 2014 you had accounted for 200 Ghana cedis? After hesitation,

Witness: Yes.

Nana then yelled; "what became of the 800 Ghana cedis, did you put it in your pocket?"

And when the witness was quiet it was obvious that Nana had won the day for the company.

Nana recalled his not too impressive High School grades with which he could not gain entry into the Faculty of Law, which admitted the very few, whose grades maneuvered into the excellent range. Since he was descended from a wealthy family, his mother agreed to sponsor his study of law abroad where entry requirements are quite liberal owing to the higher number of universities (public and private), which provide opportunities for studying law.

Nana graduated from the Faculty of Law, University of Toronto and proceeded smoothly into the Osgood Hall Law School. He was subsequently enrolled by the Law Society of Upper Canada to practice in the Superior Courts in Ontario. He remembered his early days in the Great Lakes and St Lawrence Law firm where he completed his internship and pupillage after which he was admitted as an associate of the firm. Nana was well known in Canada because of his very active participation in discussions on legal issues in the media especially on Niagara FM.

In his fifth year of practice in Canada he took up the case of an English Professor who sued the Coca Cola company for damages for injury he suffered resulting from his having drunk a contaminated coca cola drink. The suit was settled after the Professor authorized Nana to settle it. The company paid the sum of \$1,000,000.00 into Nana's account in full settlement of the matter. Nana issued a cheque of \$500,000.00 which he handed over to the Professor arguing that the remaining \$500,000 represented his fees for conducting and eventually settling the case.

The Professor petitioned the Law Society of Upper Canada. Fearing that disciplinary action may be taken against him he packed bag and baggage and returned to Ghana. His absence notwithstanding, the Law Society of Upper Canada, which has the powers of a court of competent jurisdiction, proceeded to hear the charges of fraud and dishonesty leveled against Nana. After several notices were published in the newspapers in Canada of the hearing dates and Nana failed to appear, the Disciplinary Committee of the Law Society of Upper Canada convicted him accordingly. He was then debarred from practicing in Canada on the ground that he did not act honestly with his client for which reason he was not a person of good character.

Having returned to Ghana, he was advised by his classmate Mawuli Azu Esq, to apply to the Ghana School of Law to be enrolled for the Post Call Law Course. He was subsequently enrolled into the Ghana Bar on the 6<sup>th</sup> of October 2011 after passing the Ghana School of Law examinations with distinction. After completing all the legal requirements, he accepted his father's appointment to serve as Executive Chairman in his company; WADADA CONSULTANCY SERVICES. Whilst working as Executive Chairman of his father's company, Nana received clients in his office, at the offices of WADADA CONSULTANCY SERVICES where he took their instructions and attended court for them.

As time passed, he met a few friends who offered to assist him. His friend Dominic Azuntaba, a surveyor proposed to do business with him and offered to share fees 50/50 for all sums of money paid to Nana for professional services rendered by Nana as a

result of business brought by Dominic to Nana. His good old friend Adongo Addo, also promised to promote his law practice. To begin with Nana submitted to his friend Addo a personal profile (to be) which was published in the Business and Financial Times (B&FT) and in which Nana was described as "the client's choice of a versatile and result oriented lawyer."

One afternoon, a middle-aged gentleman (Nana Osei Bonsu) walked into Nana's office with his file. The case had to do with a Will, the validity of which Nana Osei Bonsu was contesting in court. The man informed Nana that his former lawyers were not actively pursuing the matter on his behalf because the validity of the Will depended on the testimony of two lawyers who witnessed the Will. He believed that his former lawyers were not actively pursuing his interest because the matter involved lawyers although the lawyers were not parties to the action and are not executors of the Will. The law office of the lawyers who witnessed the Will (Canaan Law Office) was conducting the case on behalf of the party contending that the Will was valid.

On his first day of court attendance, he took out an objection on the ground that it was unethical for Kuntu Boadu Esq, a lawyer from Canaan Law Office, the firm of lawyers some of whose lawyers will be testifying on behalf of the party contending that the Will is valid, to represent that party. The Judge overruled the objection. This upset Nana so much that he reacted as follows:

"You are wholly favouring the Canaan Law Office. Are you a Judge or you are a partner of Canaan Law Office? I do not expect any justice from you. No wonder there is a general perception, and I agree with it, that the judiciary is corrupt. You have overruled my objection because you are in collusion with Canaan Law Office. You are not a fair Judge at all. I will certainly have your decision quashed".

That case was just one of the cases he dealt with in the beginning of his practice in Ghana. "After these struggles", Nana conceitedly says to himself "my cross-examination has made the headlines of all the newspapers in town." He has recovered well from the initial setbacks he suffered when he restarted his career in Ghana. He has practiced in all of the courts in Ghana. With this confidence, he says to himself tomorrow he will file a motion to strike out the case brought against him by Kwaku & Associates seeking to enforce an undertaking his law firm; NANA & CO made to the following effect:

"I undertake to pay your proper fees and disbursements in connection with the preparation and execution of the proposed loan agreement between your client Chin Yu Lee and my client Kwasi Basabasa whether the matter proceeds to completion or not."

His argument is simple; Kwaku & Associates have no cause of action against him. Their client could not advance the loan to his client. Nana is adamant although Afrifa Nsiah Esq of Kwaku & Associates has informed him that he has information, which confirms that he was debarred in Canada and threatens to bring it to the attention of the

Disciplinary Committee of the General Legal Council for action to be taken against him. Nana contends that this information is now useless since he has been duly enrolled into the Ghana Bar and can only be debarred if he is convicted of an offence involving dishonesty in Ghana. Under section 2 of the Legal Profession Act, 1960 (Act 32), he argues, it is clearly provided that every person name is entered on the Roll is entitled to practice as a lawyer, whether as a barrister or solicitor or both. In any case, the case in court has to do with an undertaking his law firm provided to another law firm but not his conduct in Canada. Nana's logic is certainly unimpeachable and we cannot but agree with him that he has demonstrated that he is a true master of the law.

Identify and discuss the eight 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.

[28 MARKS]

## QUESTION TWO

Imperial Cleaners Ltd used an electronically powered machine called a hydro-extractor in their laundry business. When the power was switched on the extractor revolved at high velocity. It was stopped by stepping on a foot brake, which combined with an interlocking device to bring the extractor to a rest. Following a fault, which made the footbrake inoperative, Vanderpuji, an employee of the company responsible for operating the machine had to use a sack to stop the extractor. On one occasion, when he was trying to stop the machine with a cocoa sack, the rolling basket threw him down and he thereby sustained very serious injuries. Vanderpuji was rushed to the New Life Hospital where he was admitted for six months.

The doctors diagnosed his injuries to be compound fracture of his leg and arm, contusion of the head and abrasions all around the body. After his discharge from the hospital, Vanderpuji attended the hospital weekly as an outpatient for review. He has not been to work since the accident and he has lost his part time job with Hongkong Industries Ltd. Vanderpuji now walks with the aid of a stick and suffers occasional loss of memory. Imperial Cleaners has repudiated liability for Vanderpuji's injuries on the grounds that Vanderpuji sustained his injuries by using unauthorized means to stop the machine.

Based on the strict chronological presentations of evidence, frame not more than 24 non leading questions you would ask Vanderpuji, your client in evidence-in-chief to enable him present the key elements which establishes or supports his case in court.

[14 MARKS]

### QUESTION THREE

Psychologists have identified a number of factors and motivational circumstances that either facilitate or inhibit communications. Discuss the factors that facilitate as well as inhibit lawyer-client interpersonal communication during the interview process.

[14 MARKS]

### QUESTION FOUR

It is the duty of a solicitor not to act for the opponent of his former client in any case in which his knowledge of the affairs of his former client will give him an undue advantage, and it is immaterial in this connection whether the solicitor was discharged by the former client or ceased to act for him voluntarily" McRuer C.J in Sinclair v Ridout & Moran.

Discuss.

[14 MARKS]

### QUESTION FIVE

Discuss the role of the following in Advocacy:

- a. Limiting the testimony of a witness in cross-examination
- b. The Dogmatic Client
- c. Dangers of non-verbal communication
- d. Quality of Honesty for a lawyer

[14 MARKS]

### QUESTION SIX

Discuss the scope of Rule 9(1) of L.I. 613 and Sect 16A of Act 32 indicating what constitutes "conviction" used in the provisions. Are there any other procedures specified in the law by which disciplinary action could be taken against a lawyer enrolled in Ghana.

[14 MARKS]