

THE INDEPENDENT EXAMINATION COMMITTEE

GENERAL LEGAL COUNCIL

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PROFESSIONAL LAW COURSE

FINAL EXAMINATION 2017/2018 ACADEMIC YEAR

DATE: THURSDAY, 25 OCTOBER 2018
SUBJECT: LAW OF ADVOCACY AND LEGAL ETHICS
TIME ALLOWED: THREE (3) HOURS 10:00am – 1:00pm

INSTRUCTIONS TO CANDIDATES:

1. Read the instructions **very carefully** before beginning your answers.
2. Answer **QUESTION ONE** which is **COMPULSORY** and any **THREE (3)** other questions.
3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of answers.
4. **DO NOT** write or sign your name on the Answer Booklet. **Only write your index number.**
5. Adhere strictly to the instructions on the front cover of your Answer Booklet.

This Question Paper **MUST NOT BE REMOVED** from the Examination Hall

QUESTION ONE

The practice of law has been the dream profession of Anne-Marie. She had admired the way lawyers dressed in a suit and sometimes wig and gown and had aspired from childhood to be one. What attracted Anne-Marie the most was the way lawyers were able to assemble words together as quickly as the rapid firing of a machine gun when on their feet in court. Anne-Marie therefore took her academic work seriously from her secondary school days through to the university and later, the Law School.

Apart from her ambition and commitment to be a lawyer, Anne-Marie received much encouragement from her uncle Makafui Vulevu II, the paramount chief of Kwabe Traditional Area. Most of the assistance from Nana came in the form of books, provisions and air tickets abroad. In October 2004, Anne-Marie did her six months pupillage at the Cropper Law Firm and after her pupillage, following a recommendation

from Lawyer Poku, the head of Cropper Law firm, Anne-Marie was issued with a Solicitor's Licence to practise law in Ghana. Anne-Marie practised law successfully with Cropper Law firm until 2014 when she resigned and joined a law firm which her late father had founded with his childhood friend, classmate and partner, Mr P. Amegavi. To ensure that the memory of her late father was kept alive, Anne-Marie decided to name the chambers, 'K. Nkwanta, P. Amegavi & A. Nkwanta Law Consult', a combination of the names of her late father, her dad's childhood friend and herself. These names were displayed boldly on the brass name plate of the firm which is situated in the heart of the city of Accra.

During the 2016 annual conference of the Ghana Bar Association, Anne-Marie was accused of engaging in full time private legal practice as well as being a minister of religion. Evidence was led by some members of the Bar to show that Anne-Marie is the head pastor of the Christo Asafo All Souls International Worship Centre. In addition to pastoral counseling, she performed other pastoral functions at weddings, funerals as well as preaching during weekdays when courts were in session. Anne-Marie also featured every Sunday morning as a preacher on the local Tabanacle FM radio station and hosted at the same radio station at lunchtime on Thursdays, the popular, "You and the Law" programme.

When questioned about the allegations, Anne-Marie stated that she had been called by God into the full time pastoral ministry but God in his infinite love and mercy, had also called her into the legal profession and blessed her with two professions. After a heated debate on the issue, members of the Bar invited the president of the Bar Association to rule on whether Anne-Marie could be a full time reverend minister and a practising lawyer at the same time.

The Bar president ruled against Anne-Marie and gave her the option to choose one of the professions but Anne-Marie disagreed and even challenged the authority of the Bar president to rule on the matter.

Forever Fast Foods Limited, a reputable company in the city of Accra had supplied food items to hundreds of companies and customers in Accra but the recovery of their money had been a major problem to them. Forever Fast Foods Limited therefore retained the services of Anne-Marie to recover money from 80 of their customers. Anne-Marie was able to recover a substantial sum from 50 customers and paid the monies into her firm's bank account. The cedi at the time was depreciating fast so Anne-Marie invested about 75% of the money recovered for Forever Fast Foods Limited in 90-day treasury bills to enable her (Anne-Marie) earn some interest on the money recovered. It was the intention of Anne-Marie that if she had a good return on the investment from her firm's account, she would reduce her legal fees substantially for Forever Fast Foods Limited.

Anne-Marie soon attracted several clients to her law firm. Opanyin Tindana was one such litigant who had read about Anne-Marie in the Crusading Exodus newsletter and therefore called at her offices to instruct her in relation to a claim against Lawyer Poku. Opanyin Tindana's grievance was that he gave an insurance case with all the case

documents to Lawyer Poku but the case was negligently handled by him - exhibits were not tendered and relevant potential witnesses were not called to give evidence which lead to the case being lost. Opanyin Tindana therefore wanted a writ issued for negligence for damages against Lawyer Poku. Anne-Marie explained to Opanyin Tindana her predicament in suing Lawyer Poku, the lawyer who trained her. When the two could not see eye to eye, Anne-Marie returned Opanyin Tindana's documents to him and advised him to look for another lawyer. This advice did not go down well with Opanyin Tindana. He wrote a stinker to Anne-Marie and copied the letter to the print media accusing her of bias, incompetence, stupidity and conduct unbecoming of a lawyer.

After challenges Anne-Marie received from her professional colleagues at the Ghana Bar Association conference, Anne-Marie decided to leave private practice and pastoral work altogether. She then went to work at the Ministry of Interior. Whilst there, Naa Adoley, one of her former classmates at secondary school was arrested by the police for Defrauding by False Pretences and arraigned before the Accra Circuit Court. Anne-Marie appeared in Court to ask for bail but her oral application was refused by the trial judge and Naa Adoley was remanded in custody. Anne-Marie made a formal application to the High Court for bail on behalf of Naa Adoley. The case was argued by Anne-Marie in the absence of a representative of the Attorney-General's Department and bail was granted to Naa Adoley. The Attorney-General, displeased at the grant of bail, applied to the Court to set aside the bail on the grounds that the A-G's lawyer who argued the application was incompetent to apply for bail and secondly, the A-G's Department was not served.

During the hearing of the application by the Principal State Attorney, Anne-Marie raised an objection against the court hearing in dealing with the Attorney-General's application because the Principal State Attorney, Mr Osmosis, had not been issued with a Solicitor's Licence by the General Legal Council for that year and was therefore incompetent to appear in court to argue the application. The learned trial judge, Mr Justice Bimbobasa, after hearing lengthy arguments from the two lawyers and taking account of authorities cited from the Supreme Court, ruled that Mr Osmosis was incompetent to appear in court because of his failure to apply for and be issued with a Solicitor's Licence.

In January 2017, Opanyin Tindana went on a business trip to Malaysia, where, glancing through the local Daily Mail Tribune, he saw a list of names of persons who had been convicted of drug trafficking since the country attained independence. Amongst the names Opanyin Tindana saw was that of Anne-Marie Nkwanta who the Daily Mail Tribune revealed was arrested, tried, convicted and sentenced to a month's imprisonment and a fine of US\$2,000 in 2008. Opanyin Tindana brought back a copy of the newspaper and a certified true copy of the conviction to Ghana and wrote to the Disciplinary Committee of the General Legal Council informing them about the conviction of Anne-Marie Nkwanta, and seeking an order for her law practice to be closed down. Anne Marie however argued that the rule of natural justice required that any person accused of a crime should be given a hearing.

Identify and discuss the eight (8) 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

Evaluate the claim that advocacy is primarily about an advocate's verbal and written persuasive prowess and it has very little or nothing to do with non verbal communication.

[14 MARKS]

QUESTION THREE

"In fact, it is the golden rule of advocacy that the advocate should on every occasion retain perfect control of his temper, no matter how difficult the witness or how often opposing counsel interrupts, or how frequently the court rules against him. Juries are apt to regard an advocate who has lost his temper as one who is covering a weak case with bluster - and our most successful advocates have been those who have preserved an urbane and unruffled demeanour in the most trying circumstances." Harris (2010)
Discuss

[14 MARKS]

QUESTION FOUR

You represent a client injured in a vehicle accident. To recover damages, you will have to tell a story to prove at a bare minimum that the tortfeasor was negligent. The story would have to be built on admissible evidence. It cannot be based on false or perjured

testimony. The facts of your client's story was that when the Monday morning traffic slowed down at the Gold House traffic light intersection to allow a Fire Tender Truck to pass, she was hit from the rear by the driver of the other vehicle.

- a) What questions will you ask on behalf of your client in presenting a persuasive story to the court?
- b) Using the answers to your questions, draft a persuasive opening address to the court explaining your client's case against the tortfeasor and how your client's car was hit in the rear causing personal injury and damage to your client's vehicle and.

[14 MARKS]

QUESTION FIVE

Discuss the main aims of examination-in-chief and explain the techniques that may be employed by a barrister to realise the aims.

[14 MARKS]

QUESTION SIX

What is meant by witness control in cross-examination and what questioning techniques are best employed to achieve an advocate's objectives?

[14 MARKS]

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