

4

THE BOARD OF LEGAL EDUCATION
GHANA SCHOOL OF LAW

PROFESSIONAL LAW COURSE, 1ST YEAR

2005/2006

LAW OF EVIDENCE

2 JUNE 2006

TIME ALLOWED: THREE HOURS - 9:30a.m TO 12:30p.m.

INSTRUCTIONS TO CANDIDATES

1. Please read these instructions very carefully before beginning your answers.
2. Answer Any TWO Questions ONLY from each SECTION
3. Use A SEPARATE Answer Booklet for each Section.
4. Credit will be given to legible handwriting, clarity of expression and orderly presentation of material.
5. Do not write your name on your answer booklet, but do put your seat number
6. Adhere strictly to the instructions on the front cover of your Answer Booklet.

SECTION A

Answer any Two (2) Questions only from this Section. Use a separate Answer Booklet for your answers.

QUESTION 1

On 10th June 1995, a 207 Benz Bus of the Metro Mass Transport Ltd. was involved in a road accident at Weija. Several passengers were injured. In conformity with its routine administrative practice, the Company's engineers went to the scene of the accident to conduct investigations into the cause of the accident. Some of the passengers and the driver and his mate were interviewed.

The Company was required by law to prepare and submit a report on any accident involving any of their buses to the Ministry of Transport. Additionally, the report was to draw the attention of the Company to possible mechanical

253

defects that might have caused or contributed to the accident. The report was completed in November 1995.

In January, 1997, solicitors acting for and on behalf of Abe, one of the passengers, alleging negligence on the part of the driver of the bus, wrote to the Company demanding compensation for the injuries sustained by their client. The company anticipating litigation sent the report to their solicitors for legal advice. The Company upon the advice of their solicitors denied that their driver was negligent and refused to pay any compensation.

Not satisfied with the response of the Company's solicitors, Abe instituted an action against the Company for general damages. They have sought discovery of the report of the accident under Order 21 of the High Court (Civil Procedure) Rules, C.I. 47. The Company have in their reply objected to the production of the report on the grounds that it was prepared for the purpose of seeking legal advice and it is therefore protected by legal professional privilege.

Discuss the merits of the claim of professional privilege by the Company.

QUESTION 2

Discuss the correctness or otherwise of the following rulings by Momodou J in a criminal trial:

(1) "I reject the evidence of DW2. This is a person just released from a psychiatric hospital. His appearance in my court clearly shows the state of his mind. When asked of the essence of swearing an oath with the cross, he replied that he was doing that in order to die with Christ on the cross. I reject his evidence, his impeccable English and clear answers notwithstanding".

(2) "Yes, I uphold counsel's submission that PW2, a 5 year old son of the accused is not competent to testify. This matter is a serious matter and even though Jesus said we should allow the children to come to him, he did not say they should come to court".

254

(3) PW 5, the second wife of the accused testified:

(a) that when the accused came home at about 12 midnight, he told her "Now I can have my peace and have you alone. That man of God boyfriend of yours is by now on his way to join his maker".

(b) that she saw fresh red stains that looked like blood on her husband's (accused's) clothing but the accused refused to explain when she asked him".

JUDGE: "I reject both parts of the evidence of PW 5 on grounds of competence and marital privilege".

QUESTION 3

Comment on this dictum by Aduro J in R v Apewosika [2009] SCGLR 100 at 105:

"In determining any issue in a judicial enquiry, public interest requires that the parties should be free to produce to the court all the material upon which they base their claim. Once evidence is shown to be relevant, it is admissible. I know of no exceptions".

SECTION B

Answer any two (2) questions ONLY from this Section. Use a SEPARATE ANSWER BOOKLET for your answers.

Question 4

The police suspected that Kwame Krah and Kwasi Nsiah were dealing in drugs. Without a search warrant, they broke into a house at East Legon, Accra, occupied by Kwame Krah and Kwasi Nsiah, solely in order to look for evidence. Kwame Krah and Kwasi Nsiah were away to their respective villages. The police discovered a quantity of cocaine and £30,000 (thirty thousand pounds

255

sterling) in their apartment. As a result of the discovery, Krah and Nsiah were arrested several days later and taken to the police station for questioning. Both men refused to answer any questions until they had received legal advice. When their lawyer, Austin Smart arrived, he advised them to remain silent and they accordingly continued to refuse to answer any police questions. The police later placed them together in a cell in which a listening device had been secretly installed which recorded all their conversation. At one stage, Kwame Krah was overheard saying to Kwasi Nsiah:

"One thing for sure, they can never prove the stuff belongs to any of us". Kwasi Nsiah replied: "I wish I had made as much out of it as you. I would be in London by now."

Then came the sound of two men laughing. Nothing further of significance was overheard.

Discuss the evidential issues that arise.

Question 5

- (a) What is *estoppel per rem judicatam*?
How does it operate in (i) Civil and (ii) Criminal proceedings?
- (b) What is a Dying Declaration and how does it differ from *Res gestae*?

Question 6

David is charged with raping Ellen in his flat after meeting her for the first time earlier in the evening in a drinking bar. Ellen says that she left David's flat shortly after she had been raped, and that when she arrived at her mother's house, where she lived, she told her mother that she had been raped. Her mother died before she could make a statement to the police or be interviewed by them. David's defence is that Ellen consented to the sexual intercourse. He says he met her in that public house at about 9.00 p.m. He had never seen her before, but she came up to him and said:

"You look the sort man I could end up in bed with. Why don't we go to your place?"

David wishes to call Albert, who was drinking in the same public house (drinking bar) earlier that evening. Albert says that Ellen, whom he knew only by sight, had approached him and said: "I wouldn't mind a night with you. Let's go to your place". Albert says, he made an excuse and left the public house alone. David also wishes to call Gerald, who says he had sex with Ellen at her invitation after meeting her for the first time in a different public house (drinking bar) a week before the alleged rape by David.

Discuss the Evidential matters arising. To what extent, if at all, would your advice be different if during cross-examination Counsel for David put it to Ellen that she consented, and in reply she, for the first time, volunteered the information that she was a virgin before being raped by David?