

THE BOARD OF LEGAL EDUCATION

GHANA SCHOOL OF LAW

PROFESSIONAL LAW PART I EXAMINATIONS

LAW OF EVIDENCE

MONDAY, 21ST JUNE, 2010

Time Allowed: (3) Hours 9.30:00 am – 12:30 pm

INSTRUCTIONS TO CANDIDATES

1. Read the instructions very carefully before beginning your answers.
 2. Answer ANY FOUR (4) QUESTIONS. ALL ANSWERS CARRY EQUAL MARKS.
 3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of material.
 4. Do not write your names on the answer booklet. Write only your seat or index number.
 5. Adhere strictly to the instructions on the front cover of your Answer Booklet.
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Question 1

Johnson, a native of Kokote, was charged with dishonestly receiving stolen items from his friend Babone. The facts as narrated by the prosecution were that whilst conducting investigations, they found some of the items stolen by Babone in Johnson's house. Even though Johnson claimed that he did not know that the items were stolen, the prosecution showed that the items had been secreted away in such unlikely places in his house. Quoting section 148(1) of the Criminal Code which provides that:

"Where a person is charged with dishonest receiving and is proved to have had in his possession or under his control, anything which is reasonably suspected of having been stolen or unlawfully obtained and he does not give an account, to the satisfaction of the Court, as to how he came by it the

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property may be presumed to have been stolen or unlawfully obtained and the accused may be presumed guilty of dishonest receiving in the absence of evidence to the contrary”:

The prosecution argued that the onus of proof was on the accused to convince the court of his innocence. In his judgment Apus J said among others that:

“In a criminal trial, the burden of proof always rests and remains on the prosecution to prove the guilt of the accused beyond reasonable doubt. No onus (burden) rests on the accused to convince the court of the truth of any explanation he gives and I do not know of any law to the contrary”.

Considering the statements from both the Prosecution and Apus J, identify and discuss all the relevant evidential issues.

Question 2

Kabonya, the appellant was convicted of the murder of one of his step-daughters. The facts were that Yaa Donkor, the wife of the appellant and mother of the deceased, travelled to her hometown Badu to attend the funeral of her late uncle. The appellant promised to follow her with the children after securing financial loan. Four days later, the appellant did not follow his wife to Badu but travelled to another village, Yaw Pokukrom. The appellant took with him two children, his two year old son and the deceased. After spending the greater part of the evening in the village, the appellant slashed his step-daughter several times with his cutlass and left her dead on the foot-path. Afterwards the appellant went to a nearby cottage and confessed to them that he had killed his child on the footpath. The appellant was charged and convicted of murder. On appeal, counsel for the appellant, on the main, argued that by failing to call medical expert to prove the cause of death, the

prosecution failed to discharge the burden cast upon it. As he puts it "the requirement for an expert in the circumstances to prove the cause of death of the deceased is not merely desirable but mandatory and essential".

As Counsel for the prosecution submit an appropriate response to Counsel's arguments supporting your submission with relevant authorities.

Question 3

The Komenda Police suspected that Awumbila and Laapo were dealing in drugs. Without a warrant they broke into a house occupied by the two men solely in order to look for evidence while Awumbila and Laapo were away. The police discovered a quantity of cocaine in their room. As a result of their discovery, Awumbila and Laapo were arrested several days later and taken to the police station for questioning. The police placed them together in a cell in which a listening device had been secretly installed which recorded their conversation. At one stage, Awumbila was overheard saying to Laapo: "One thing's for sure, they can never prove we didn't have the stuff for our own use". Laapo replied: "I wish I'd made as much out of it as you. I'd be in Paris by now'. They then heard the sound of two men laughing in front of the cells. Nothing further of significance was overheard.

As counsel for the two accused, advice them on the admissibility of the recording

Question 4

(a)

The Appellant, Major Naabu was tried summarily by a disciplinary service tribunal and was convicted on two counts of fraudulently misapplication of property contrary to section 52(1)(a) of the Armed Forces Act, 1962 (Act 105). He was convicted also on one count of unauthorized use of vehicle of the Armed Forces contrary to section 50(a) of the same Act. Appellant was sentenced to dismissal with disgrace from the Armed Forces in May 1973. Appellant upon petition to the Head of State received a

letter in July 1974 informing him that he had been reinstated with effect from the date of his dismissal. On 16 November 1974, the appellant was re-arrested and put before the General Court Martial for conduct prejudicial to good order and discipline contrary to section 54(1) of the Armed Forces Act. The facts supporting this charge were essentially the same as were used in the earlier service trial.

The appellant consider this 'second trial' as unlawful and has consulted you, advise him.

OR

(b)

In a murder trial of Atomo, the prosecution alleged that the accused has stabbed his wife Lady Sylvia to death with an okapi knife at her home at Awoshie at 1.15 am on November 10, 2009. Testifying for the prosecution, Araba (PW1), a six year old house-help of the deceased said that on that day, she was on the veranda in front of the house when the deceased bleeding with her throat slit opened and gasping for breath said: "Araba, look at what Master has done to me. Get me a doctor". On his part, PW2, an uncle of the accused who has just been released from a psychiatric hospital where he has been undergoing mental treatment said among others that on November 10, 2009 the accused had come to his house at Lavender Hill, about 10 kilometres from Awoshie at about 2.30 am and left money for the upkeep of his child and that before the accused got back into the taxi which was waiting for him, he had said in Twi, 'makum Aggie' (I have killed Aggie). Prior to testifying and before taking the oath, the Presiding Judge enquired from PW2 his belief in God and what to him is the essence of the oath to which he replied "I know God and in fact I shared an apartment with him recently. I am swearing this oath to remind God that I have not forgotten about him". Defence counsel has objected to the evidence of both PW1 and 2 on grounds that they are not competent witnesses.

With reference to appropriate authorities, identify and discuss the relevant evidential issues.

Question 5

In June 2008, a commuter bus belonging to the Abrewa Bus Company (ABC) was involved in a road traffic accident at Nyamckye. Several passengers including Tampulin were injured. In conformity with its routine administrative practice, ABC'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 by the engineers. The company was required by the Road Traffic Act [2005] Act 615 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

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attention of the company to possible mechanical defects that might have caused or contributed to the accident. The report was completed in November 2009.

In January 2010, the solicitors of Tampulin wrote to ABC demanding compensation for the injuries sustained by their client. Subsequently, ABC, anticipating litigation sent the report to their lawyers, Pongona and Co, for legal advice. Not satisfied with the response of ABC's lawyers, Tampulin through his lawyers Quagraine and Co, instituted action against the company claiming general damages. Prior to the trial, counsel for Tampulin sought discovery of the report of the accident in accordance with Order 22 of the High Court (Civil) Procedure Rules. ABC through their lawyers have objected to the production of the report on the ground that it was prepared for the purpose of litigation and therefore privileged.

As a junior associate of Quagraine and Co, you have been requested by your Senior Partner to submit a legal opinion on the claim of privilege by Pongona and Co.

Question 6

The Electoral Commission of Ghana has published a notice indicating that it had decided to hold elections on 20th March 2010 for the purpose of electing Regional Representatives to the Council of State. The election is to be held under Constitutional Instrument (CI) 1. The Instrument stipulates that the election should be carried out by an Electoral College established in each of the regions and including two representatives nominated by each District Assembly in the region. Upon receipt of the notification, the Independent Patriotic Congress Party (IPCP), the biggest opposition party has invoked the original jurisdiction of the Supreme Court under article 2 of the 1992 Constitution, seeking a declaration that the notice issued by the Electoral Commission, was an act inconsistent with and in contravention of the Constitution and therefore a nullity. In support of its case the Plaintiff in its statement of case contends that the District Assemblies contemplated under article 242 of the 1992 Constitution were not at the time of the publication of the notice properly constituted. In support of this claim, the plaintiff avers that the Minister of Local Government had written letters dismissing all District Chief executives while Regional Ministers in their respective regions had written to revoke the appointments of all government appointees to the District Assemblies. The Defendant Commission has denied the existence of such letters as claimed by the plaintiffs and put the plaintiffs to strict proof of the allegations. The defendant contends that at the very least, for the plaintiff to discharge the burden cast upon it, it must produce the said letters. The plaintiff on its part has invited the court to exercise its inherent jurisdiction and take cognizance of the political culture in Ghana where appointees of previous administrations are sacked immediately after a change of government. Agreeing with counsel for the Plaintiff, Ampaw JSC said:

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I agree with Counsel for the plaintiff. The Court cannot be more ignorant than the community within which it operates. This Court must take judicial notice of the usual occurrence where new governments replace all appointees of previous government upon election victory. We cannot therefore feign ignorance. I therefore take judicial notice of the existence of such letter..."

As Counsel for the Electoral Commission, identify and discuss the relevant evidential issues.

Question 7

Kuntu and Blankson have been arrested under the Ghana Narcotics Control Act, 2010, Act 900. Chapter V of the said Act make provisions for *inter alia*, conferring on appropriate officers powers of entry, search and arrest of persons suspected of dealing in narcotics. Section 50 of the Act provides that when any officer duly authorized under the Act was about to search any person, he should, if such person so required, take such person to a magistrate without delay for such search or seizure to be conducted. At the trial, Counsel for both Kuntu and Blankson have objected to the admissibility of 'goods' purportedly seized from the accused persons on the ground that the said searches and seizures were effected contrary to section 50 of Act 900. Opposing the application, the Prosecution contends that admissibility or otherwise of any evidence is determined by its relevance and that strict application of section 50 of Act 900 would make it impossible for the Police to fight the drug menace in Ghana.

As the Presiding Judge, you are to rule on this issue. Support your ruling with relevant and appropriate legal authorities.

Question 8

Miss Dabo, a susu collector operated two savings accounts with the Mumuadu Rural Bank. In June 2009, Miss Dabo dissatisfied with a Statement of Account provided to her on one of her savings accounts, requested for reconciliation of her accounts. According to Miss Dabo the reconciliation exercised showed that deposits recorded in her savings account's passbook did not reflect in the bank statement. Upon several meetings between Miss Dabo and the bank, they could not resolve the issue among themselves. Miss Dabo therefore in November 2009 issued a writ with Suit No. BFS/3/09 claiming *inter alia* against the defendant bank an order directed at the bank to reconcile the passbook entries with her bank statement to reflect the true state of the amounts deposited in her savings accounts which the defendant had failed to capture in her savings accounts passbook. The defendant bank entered appearance to the writ but failed to file a defence. In February 2010, the trial court

entered a judgment in default of defence against the defendant on all the reliefs claimed by Miss Dabo. Before she could go into execution of the judgment, Miss Dabo died and was substituted by Miss Dakorah. On March 2010, Miss Dakorah filed an entry of judgment and proceeded to attach the properties of the defendant bank. On April 13, 2010 the defendant had the execution set aside on the grounds that the judgment was only an order directed at the defendant to reconcile accounts. The court ordered the defendant to comply with the judgment by reconciling the accounts which the defendant obliged. Miss Dakorah dissatisfied with the reconciliation report filed a motion for the appointment of a court expert under Order 26 of the High Court (Civil) Procedure Rules (CI 47). The court refused the application on the ground that the defendant has satisfied the order of the court and that the court was *functus officio*. Miss Dakorah still dissatisfied with the refusal of her application issued a writ with Suit No RPC 107/2010 asking for the payment by the defendant bank of the sum of GH¢50,000.00 with interest and cost being monies deposited by Miss Dabo in her savings account.

As the legal officer of the defendant bank, you have been asked to submit a legal opinion opposing the issuance of the second writ.

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