

THE INDEPENDENT EXAMINATION BOARD

GHANA SCHOOL OF LAW

NEW PROFESSIONAL LAW COURSE

FINAL EXAMINATION 2016

LAW OF EVIDENCE

MONDAY 6 JUNE 2016

TIME ALLOWED: THREE (3) HOURS

10:00am – 1:00pm

INSTRUCTIONS TO CANDIDATES:

1. Read the instructions very carefully before beginning your answers.
2. Answer any **FOUR (4) 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.

QUESTION ONE

A was the owner of a large farm divided by a river into two identifiable parts, L (for the larger area) and S (for the smaller area). He also had a cottage on the land.

Early in 1957, A mortgaged the L portion of the land to one Habib for a loan to develop his farms. The mortgage deed **exhibit 1** was executed in favour of Habib while the principal and interest on the loan were to be repaid by 31st January 1958.

In April 1957, A, mortgaged all his properties to B (the plaintiff herein) that is areas L, S and the cottage. The mortgage deed is **Exhibit Y** by whose terms the loan was to be repaid by 31st January 1968. B was unaware that farm L was already encumbered.

In May 1957, A by a deed exhibit 2 again mortgaged farm S to Kofi Mensah for another Loan to be repaid by 5th December 1957.

When Habib threatened to sell farm L, B was for the first time informed of the prior mortgage on farm L, and subsequent mortgage of S. By an oral agreement B paid off both Habib and Kofi Mensah and took possession of their mortgage deeds thus becoming an equitable assignee.

All the deeds gave the Mortgagee power to sell after one month's notice of intention to sell had expired after date due for repayment. B without waiting for the due maturity dates of exhibits 1 (Farm L) and Y (all the property) instructed an auctioneer who issued demand notices on 5th January 1958. On 24th February 1968 a sale under the power of sale vested in B by exhibit Y took place but was nullified.

On 28th March, 1968 a second sale was held at which both farms L and S as well as the cottage were bought. Seven years later B sought to have the sale set aside as illegal and invalid. The Purchasers at the sale were joined as co-defendants at their own request.

The Court held that where a sale is illegal, then the sale is void *ab initio* and no title passes. Where the sale is irregular, it is voidable at the instance of a debtor if he can prove the alleged irregularity has caused him substantial injury. An act is illegal when it is expressly forbidden by the law of the land.

From the fact narrative above, distinguish between an irregular sale and an illegal sale. What are the respective consequences that flow from each of these? Identify the respective burdens that B as plaintiff and A and the Purchasers as defendants had to meet. In your view was there a satisfactory reason to justify the refusal to set aside the sale? Give your reasons.

[25 marks]

QUESTION TWO

The Plaintiff alleged that he had purchased from the defendant the disputed house at the agreed price of forty thousand Ghana Cedis (GHC 40,000) hence he sued for, inter alia, an order of possession. He relied on a receipt, Exhibit A, signed by both parties. The defendant denied the

plaintiff's claim alleging that he had rather entered into a forty thousand Ghana cedi (GHC 40,000) loan transaction with the plaintiff and that he had used the disputed property as security for the loan. The defendant further pleaded that before signing the receipt, he realized that the document evidencing the transaction was a purchase agreement and not a loan transaction. He nevertheless signed the receipt upon assurances given by the agent that the terms of the agreement would not be enforced since he and the plaintiff had been good friends.

After a full trial, the court found that the transaction entered into between the parties was a loan transaction and not a purchase agreement and therefore entered judgment for the defendant. Dissatisfied with the trial court's decision, the plaintiff appealed. The Court of Appeal reversed the decision of the trial court.

Exhibit A was not tendered to prove the Plaintiff's title to the disputed property but as evidence of payment for the purchase of defendant's property. The defendant objected to the tendering of exhibit A on the grounds that it was not registered under the Land Registry Act 1962 but the trial judge overruled the objection. The Court of Appeal agreed with the conclusion of the trial court on the outcome of the objection.

With your knowledge of the provisions of the Evidence Act, NRC 323, were both courts right in overruling the defendant on his objection? What factors must a court consider in admitting or rejecting a document? State your views.

Also, given the facts of the case, comment on the outcome of the appeal to the Court of Appeal.

[25 marks]

QUESTION THREE

A dispute has arisen between the family of **Ntow** and **Bater** over ownership of a 500 acre land in the village of **Abe-ase**. The **Ntow** family sued. It is the evidence of **Mr Nkansah**, head of family of the **Ntow** family, that their ancestors migrated from **Brong Ahafo** and founded this 500 acre land, about 300 acres of which they have reduced to their possession. They have other settler farmers on this land who have been paying yearly tolls to them in recognition of their ownership of this disputed land.

The head of the **Bater** family did not testify but evidence was given by **Osafo**, who appeared to be in his late nineties for the **Bater** family. His evidence was that they purchased the disputed land from the ancestors of the **Ntow** family and have been on this land since the purchase, some 100 years back. He gave evidence of large settlements on this land by other families who had their grant from them. He mentioned schools, a clinic, community centre, all built on land granted by his family in recent times. The next witness for the **Bater** family, **Uncle Attah** corroborated the evidence of **Osafo** in every material particular. His cross examination began and the trial was adjourned for continuation the following day. **Uncle Attah** on the following day came to court alright but refused to be cross examined because the wife who was from the **Ntow** family has threatened to divorce him if he did not dissociate himself from the trial.

In the judgment of the trial court, the judge said:

"I have examined the evidence of Uncle Attah, and I am of the view his evidence is full of lies. Corroboration is a legal requirement in a case like this and Uncle Attah's evidence cannot be corroborative of Osafo's evidence which, in any case, I find credible. Worse still for the Bater people, their head of family did not testify? From the foregoing I give judgment to the Ntow family declaring them owners of the 500 acres land".

Discuss the evidential issues in this case *viz-a-viz* the judgment of the court.

fred

[25 marks]

QUESTION FOUR

Mr Mensah died testate leaving behind a wife, Rebecca, and two children, Papa and Tranquility. Papa was so troublesome Mr Mensah decided not to provide for him in his will. Not believing that his father would take him out of his will Papa accused his brother and mother of forgery. He sued the sole executor of the will claiming a declaration that the signature on the will was a forgery. By this he believed the properties will fall into intestacy. Believing that he needed a copy of the will for use by his lawyer, he broke through his mother's window and took her copy of the will, the copy given her by the deceased husband. He tendered this in court. During the trial a handwriting expert was called to testify as to the signature on the will and to verify whether it

67, 112
- Relevance
- Pleas
- Reason
- Disputed report

Part of law & civil case

was that of their deceased father. The expert concluded in his report that the signature was not that of the deceased. At the end of trial, the judge found that the signature on the will was that of the deceased rejecting the opinion of the handwriting expert. He found again that the plaintiff who challenged the will had not convinced him, on the balance of probabilities, that the will was a forgery. The trial judge concluded that the will was valid.

↓ Relevance & Pleas
↓ Reason
↓ Disputed report

Pick out the matters of evidential value and discuss within the context of this case.

[25 marks]

QUESTION FIVE

In a claim for declaration of title to land, the plaintiff is being led in chief by his counsel:

Q. How old are you?

A. I will be 70 by June 2016.

Q. You said you have a document evidencing the sale to your great grandfather.

A. Yes my Lord.

Q. What is the date of the document?

A. 1944.

Q. What do you want to do with this document?

A. I want to tender it?

Counsel for the defendant: My Lord I object. It is a photocopy.

By court: Objection upheld. It is only an original of a document that is admissible in court.

Q. Look at this map, where did you get this from?

A. From the survey department.

Q when was that?

A. I had it long ago when I was in the University.

Relevance

1944

Q. What is the importance of this to the case before us?

A. The area in dispute is within this map.

Q. What do you want to do with the map?

A. I wish to tender it.

Counsel for the defendant: I object on grounds that it is not authentic and irrelevant.

Court: Objection upheld. That it is coming from the survey department does not make it authentic or relevant. Mind you, I have the power to exclude any evidence I don't like.

Examine the decisions of the trial judge within the context of the rules of evidence.

Relevance & Admissibility & Exclusion
R v Birmingham
R v Wilson
Sect 82,
DDP v Pabane ✓
[25 marks]

QUESTION SIX

In an argument between Professor Amartey and Dr. Simpson, the learned Professor shouted at the medical doctor thus: "You are an unmarried woman of loose morals. You simply refuse to see the difference between the vulnerable and a weakling on the one hand and on the other hand one who refuses to take chances that fall in her path by grabbing a man at opportune moments. With all these numerous graduate women around, who told you that you will brighten your chances of grabbing a husband when you grow old?" Dr. Simpson replied that everybody in their community knew that she was married to the engineer with whom she had been co-habiting for the past seven years even though he was yet to meet her parents to discuss marriage issues with them. She therefore took offence that the Professor described her as he did. She sued the professor for damages for slander. Judgment was entered in favour of the Professor. In his judgment, the trial judge stated: "The Professor's statement was right. It was in fact an understatement which should not have moved the Doctor to come to court to waste her own time and the time of the court. In my view, the fact that a woman lives with a man for thirty years or more does not make her the man's wife when the proper thing has not been done. The medical doctor admitted that she is thirty five years old and is yet to be married. I take judicial notice of the fact that if a woman reaches thirty years and over and is not married, she can only be a

R vs Mervin 6
Common with Simpson in P & O Bank etc
Bilton 1
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9(2)
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woman of loose morals because if she were not of loose morals, what has she been doing all these years without getting herself a definite husband?"

In the light of decided cases and statutory provisions governing judicial notice and presumptions, discuss the propriety or otherwise of the ruling of the judge.

[25 marks]