

THE INDEPENDENT EXAMINATIONS BOARD

GHANA SCHOOL OF LAW

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NEW PROFESSIONAL LAW COURSE, ACADEMIC YEAR 2016/2017

LAW OF EVIDENCE

DATE: FRIDAY 2 JUNE 2017

TIME: 10.00AM – 1.00PM; TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS TO CANDIDATES:

1. Read the instructions very carefully before writing down your answers.
 2. Answer any **FOUR (4) QUESTIONS**. Answer all parts of each question.
 3. Answer All Questions in the Answer Booklet
 4. Please indicate your Index Number Only on the Answer Booklet
 5. Do Not Write or Sign Your Name anywhere on the Answer Booklet
 6. Credit will be given for legible handwriting, clarity of expression and orderly presentation of answers.
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Question 1

On 10th June 1995, a 207 Benz Bus of the Metro Mass Transport Limited 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 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 has 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.

- (a) What is legal professional privilege?
- (b) Can a claim for legal professional privilege by the Company be sustained? Give reasons for your answers.

[25 Marks]

Question 2

"It matters not how you get it, if you steal it even, it would be admissible" per Crompton J. in *R. v. Leatham* (1861) 8 Cox C.C. 498 at p. 501.

How far does this statement represent the attitude of the Courts to the admissibility of evidence illegally or unfairly obtained?

[25 Marks]

Question 3

Kofi is being prosecuted for assaulting Ama, who had identified Kofi to the police in a nearby street shortly after the attack. At his trial, Kofi claims that he has been wrongly identified. Ama has a recent conviction for assault.

- (a) Ama identifies Kofi in court as the person who attacked her. May she also give evidence of her previous identification of Kofi in the street?

- (b) The prosecution called Kwaku, a police officer. He wishes to refresh his memory about various incidents recorded in the notebook of Kwesi, another police officer about reports of assaults by Kofi on other persons over a three months period. Will Kwaku be permitted to do so?
- (c) Kofi tells his attorney that Ama is an alcoholic and that he can produce a witness, Esi, who will support this by saying that she saw Ama drinking "Alomo bitters" in Easy Drinking Bar on the evening when Ama alleged she was assaulted by Kofi, but at a time before that attack took place. In cross-examination, Ama denied being an alcoholic and says that she had nothing to drink that evening. Further, she denies having visited a man that evening. Can Kofi's counsel call evidence to rebut these denials?
- (d) Should Kofi's counsel put Ama's previous conviction to her? If he does so, and Ama denies it, what is likely to happen?

[25 Marks]

Question 4

Galamsey was employed by ABC Ltd., a company engaged in the manufacture of meat pies. His hands got caught in the mincing machine for which he suffered severe injuries. He sued ABC Ltd. for damages. When the company learnt of the incident, it obtained a report from an independent safety expert in accordance with its usual practice when accidents occur on its premises. Copies of this report were sent to the Board of Directors and to the company's legal department. Galamsey wrote a letter to Krokrokoo, his lawyer, setting out his account of the accident in which he admitted that he had not complied with the safety regulations when operating the machine because he was "chatting up the cleaning lady" at the time. Jezebel, Krokrokoo's secretary, photocopied this letter and gave it to Masima, her boyfriend, who is a director of ABC Ltd. Galamsey wishes to obtain a copy of the safety expert's report. He suspects that his employers may have obtained a copy of his letter to Krokrokoo and is afraid they may use it at the trial.

- (a) Advise Galamsey as to how he can obtain the report;
- (b) State how Galamsey would prevent the use of his letter at the trial, pointing out the likely obstacles in achieving this objective.

[25 Marks]

Question 5

Asobilla is charged with rape before the Manso Nkwanta Magistrate's Court. The facts were that after attending a birthday party, Asobilla offered a 'lift' to Mariam which she accepted. On the way to Mariam's house at Maadjom, and upon reaching a dark alley, Mariam alleges that Asobilla suddenly pounced on her and had intercourse with her in the car. Asobilla vehemently denies the allegation and claims that at all material times that he was in the car with Mariam, he was on the phone with his wife Suuk.

- i) What evidence will sustain the charge that is proffered?
- ii) Discuss whether Suuk is a competent and compellable witness for Asobilla?
- iii) What comments do you have to make on the initiation process?

[25 Marks]

Question 6

COMMENT on the following DICTA in the light of the Evidence Act, (NRCD 323, of 1975):-

- (a) "It used to be the law that neither a conviction nor an acquittal in a criminal action was admissible in a subsequent civil action, arising from the same facts. But the law now admits such evidence."
- (b) "Once evidence is shown to be relevant, it is admissible. I know of no exceptions."

[25 Marks]