

THE INDEPENDENT EXAMINATION COMMITTEE
GENERAL LEGAL COUNCIL

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PROFESSIONAL LAW COURSE
REFERRAL EXAMINATION 2018/2019 ACADEMIC YEAR

DATE: WEDNESDAY, 10TH APRIL 2019
SUBJECT: LAW OF EVIDENCE
TIME ALLOWED: THREE (3) HOURS 10:00am – 1:00pm

INSTRUCTIONS TO CANDIDATES:

1. Read the instructions **very carefully** before beginning your answers.
2. **ANSWER FOUR QUESTIONS. QUESTIONS ONE (1), TWO (2), THREE (3) AND FOUR (4) ARE COMPULSORY.**
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

In a case where the plaintiff sues for a declaration that she is the wife of the deceased and therefore entitled to benefit as a wife under the intestate estate of the deceased, the learned trial Judge after receiving all the evidence delivered judgment as follows:

“Though no customary rites were performed to finalize their relationship, other pieces of evidence like the attendance of funerals and other festivities in their hometown as man and wife and the manifestation of this by the express

declaration by the deceased to the effect that he was married to the defendant on official records is enough evidence to support a finding that there existed a valid customary law marriage between the deceased and the plaintiff.”

Evaluate this judgment in light of Section 31 of the Evidence Act 1975, Act 323.

(25 marks)

QUESTION TWO

Following a spate of incidents in which several cars parked on the campus of New Horizon University were broken into and laptop computers and mobile phones stolen, the police squad investigating the crimes set up several video cameras on the campus. The police then parked cars with laptops and mobile phones conspicuously on the seats in front of these cameras.

Kofi Babone and his friend Jack Toronto were caught on tape breaking into these cars.

They were arrested and placed into a police cell that the police had through some contrivance convinced them were secured. Unknown to them there was a recording device in the cell. It picked up the conversation between Kofi Babone and Jack Toronto admitting to the crimes.

At their trial, their lawyer objects to the video recording of the two breaking into the vehicles on the ground that his clients were enticed into committing the crime and therefore it will be unfair to admit same. He also objects to the reception in evidence of the recording in the cell on the ground that they were obtained by deceptions and trickery, were therefore illegal and inadmissible.

If you were the trial judge how would you rule on the objections? Support your ruling with decided cases.

(25 marks)

QUESTION THREE

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 **D** 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.

In a claim for declaration of title to land, the plaintiff is being led in court [25 marks]

QUESTION FOUR

Mr Mensah died testate leaving behind a wife, Rebecca, and two children, Papa and Tranquillity. 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 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.

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.

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.

[25 marks]