

**INDEPENDENT EXAMINATIONS COMMITTEE
GENERAL LEGAL COUNCIL
PROFESSIONAL LAW PART I/ POST CALL COURSE
EXAMINATION (MAIN)
LAW OF EVIDENCE
18 JUNE, 2021**

Time Allowed: Three (3) hours

10:00 a.m. – 1:00

p.m.

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 material.
 4. Do not write your name 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:

On 7 March 2021, the Plaintiffs issued a Writ of Summons against the Defendant for the following reliefs: (1) Declaration of Title to the parcel of land lying and located at plot 55/4 North Kaneshie Estates, Accra; (2) Recovery of Possession of the said Parcel of Land; (3) Perpetual Injunction restraining the Defendant, his agents, assigns, servants or any other persons claiming through him from having anything to do with the aforementioned parcel of land.

In their Statement of Claim, the Plaintiffs averred that the Disputed Land belonged to Auntie Mansa, their great grandmother. They maintained that in the year 1964 when the Dadeban Road was under construction, Auntie Mansa use to sell cooked food to workers engaged in the road construction. One of the workers, while having his lunch disclosed to Auntie Mansa that the Disputed Land was "no man's land" whereupon Auntie Mansa took immediate possession and invited Nana Kwame, a carpenter to join her in occupying the Disputed Land. In the year 1974, the State Housing Corporation notified Auntie Mansa of its title and threatened eviction. Auntie

Mansa then gave money to Nana Kwame to meet with the State Housing Corporation to regularise their occupation on the land on their joint behalf.

Auntie Mansa has since died and the Plaintiffs currently reside on the Disputed Land with their families. Having discovered that Nana Kwame acquired title to the Disputed Land in his personal name only and anticipating the possibility of eviction by Wofa Yaw, the Defendant and nephew of Nana Kwame, the Plaintiffs commenced the instant suit. At the trial Wofa Yaw tendered in evidence a duly registered Deed of Grant from State Housing Company Limited to his Uncle.

In delivering Judgement in favour of the Defendant on 10 May 2021, Allotey JA, sitting as an Additional High Court Judge stated as follows:

“The law is trite that official documents are presumed valid until it is proven otherwise. This is a rebuttable presumption but until it is so proven otherwise, it shall remain so. Nana Kwame to the mind of this Honourable Court is very clever and smart and the law helps the diligent not the indolent. Obviously the Plaintiffs never took any steps to regularise their stay on the land. The Plaintiffs obviously forgot that a log in a river for a thousand years never changes into a crocodile. The fact remains that the Plaintiffs failed to take any steps to have their occupation of the land regularised and turned into a lease, which Nana Kwame quickly took advantage of and he cannot be faulted for that. A very fundamental rule of evidence is that when a court is faced with two sets of evidence, documentary and oral, the court would lean favourably towards the documentary evidence especially if it was authentic as held in *Duah v Yarkwa* [1993/4] GLR 217.”

The Plaintiffs, obviously dejected seek your legal opinion on their best chance at an Appeal against the Decision of Allotey J. With the appropriate statutes and case law provide the Plaintiffs with the best way forward.

[25 Marks]

Question 2

On 7 August 2018, Mr Abotsi, the Plaintiff /Respondent /Respondent commenced the instant suit against the Defendant/ Appellant/ Appellant, the Supreme Bank Ghana Limited for the following reliefs: (1) Recovery of the sum of Gh¢1 million; (2) Accrued interest on the aforesaid sum from 20 May 2016 to date of final payment and (c) Damages for emotional distress.

In his Statement of Claim, the Respondent averred that on 2 January 2016, he travelled to Germany to conclude a sale transaction of his mansion to the Malian Embassy stationed in Germany. The Malian Embassy paid the purchase price of €200,000.00 through its Bank in Germany whereupon the sum was directly transferred to Mr Abotsi's Cedi account held with the Appellant's branch at Abeka Lapaz in Accra, Ghana. The Respondent further averred in his Statement of Claim that upon the successful transfer of the purchase price, the Appellant acknowledged receipt of the funds and produced a Statement to his account numbered SBGL 220/1000/841 which confirmed a credit balance of Gh¢1,000,000.00. The Respondent was therefore shocked when while having lunch with his girlfriend at the Cloisters Hotel, his Visa Card linked to his Bank Account was returned as declined. Consequently, his girlfriend paid for the lunch and broke off the relationship with him calling him a "no good fellow". The break up has caused him a lot of heartache, distress and embarrassment.

At the trial, the Respondent tendered the following Exhibits: (A) His title deeds to the property located in Germany which he sold to the Malian Embassy; (B) The Deed of Transfer confirming the sale of the property to the Malian Embassy; (C) An official receipt issued by the Respondent to the Malian Embassy following the successful sale of the property and (D) a statement from the Appellant confirming that the purchase price upon conversion into Ghana Cedis was credited in the sum of Gh¢1,000,000.00 to the Respondent's Bank Account. The Appellant also tendered in evidence the following documents: (1) A statement confirming that the purchase price upon conversion into Ghana Cedis was credited in favour of the Respondent in the sum of Gh¢1,000,000.00; (2) handwritten ledger entries indicating withdraws of the entire Gh¢1,000,000.00 by the Respondent and (3) CCTV footage at various ATMs of the Appellant depicting a man who bore close

resemblance with the Respondent and making withdrawals on the various dates indicated in the handwritten ledger.

Oheneba JSC in delivering the lead judgement at the Supreme Court stated:

“The trial court was faced with these competing stories. The plaintiff needed only to satisfy the court that indeed he had money in his account. And clearly exhibits A through D established that. Thus in the absence of other credible evidence to the contrary, the courts below would be justified in accepting and relying on it. At that point the burden of persuasion shifted to the defendant who now has to satisfy the court that the entries in their ledger book exhibits 2 represent the true state of the plaintiff’s accounts with them. The court’s below were not satisfied the defendant had succeeded in leading evidence that would lead them to reject the plaintiff’s version. There was sufficient and credible evidence adduced by the plaintiff, supported by documentary evidence to satisfy the court. This court should not disturb those findings”.

Identify and critically analyse the evidential issues arising from the above set of facts using the applicable statutes and case law.

[25 Marks]

Question 3

The Plaintiff, the Chief of Anyinase commenced the instant suit against the Defendant having sworn the Great Oath of Ashanti that he never compelled the Defendant, the Chief of Aburaso to swear an oath of allegiance to the Anyinase stool. He sought a declaration that it was rather customary for the Aburaso Chief to swear his oath of allegiance to the Anyinase Stool. The defendant on the other hand swore that the Plaintiff indeed compelled him to swear the oath to the Anyinase Stool contrary to the custom whereby the Aburaso Chief swore rather to the Golden Stool. The High Court granted the Plaintiff’s declaration. In delivering the Ruling, the Court stated thus:

“A party whose pleadings raise an issue essential to the success of the case assumed the burden of proving such issue. The burden only shifted to the defendant when the

plaintiff had adduced evidence to establish the case. This case is however different. I have judicial knowledge of the Golden Stool. I am a Ga born but bred in Kumasi. This case is different. The burden rather rests on the Defendant to prove that he was compelled by the Plaintiff to swear the oath to the Anyinase Stool. Having failed to discharge that burden, I have no choice than to deliver judgement in favour of the Plaintiff. This is what Judges with Judicial Discretion do. I am empowered to take Notice and act accordingly.”

Critically analyse the Ruling of the Court.

[25 Marks]

Question 4

Upon the death of Wofa Yaw intestate, the Head of Family took action in the High Court against the widow of the deceased for a declaration that the family was entitled to inherit a third of the Estate of the deceased and that the Defendant execute a Vesting Assent of the said share of the estate in favour of the Plaintiff. After entering Appearance, the Defendant applied to dismiss the action on the ground of *res judicata* in that the Family had litigated the matter against the Plaintiff and lost in the High Court, Cape Coast and on appeal to the Court of Appeal and the Supreme Court.

Dade J, the trial judge dismissed the Application on the ground that the instant suit was different from the previous suit in that the previous judgements dealt with the issue whether the property was a joint or family property whereas the instant action concerned the distribution of the Estate. Those judgements did not therefore operate as estoppel *per rem judicatam*. Besides the reliefs sought in the previous actions and the instant action were distinct. In his Ruling he also stated that:

“Competent jurisdiction is an essential condition of every valid *res judicata*, which means that in order that a judicial decision relied upon, whether as a bar, or as a foundation of an action, may conclusively bind the parties, or (in cases of *in rem* decisions) the world, it must appear that the judicial tribunal pronouncing the decision had jurisdiction over the cause or matter and over the parties, sufficient to warrant it in so doing”.

The Defendant is dissatisfied with the Ruling and intends to Appeal to the Court of Appeal. Write an opinion to the Defendant on the Ruling of the Court.

[25 Marks]

Question 5

On Independence Day Kofi and Kwame had lunch at the Old Timers Spot in Adabraka where Kofi confided in Kwame that their friend Yaw was responsible for the charred and decapitated body abandoned at the Tesano Apenkwa overpass. The Tesano Command had announced on Peace FM that anyone with information to aid the Police unravel the crime would be compensated with the sum of Gh¢10,000. Immediately after the meal, Kwame went straight to the Tesano Police Station and reported to Inspector Koti that Kofi informed him that Yaw was responsible for the body discovered at the Tesano Apenkwa overpass. Kwame has since aided Inspector Koti in the arrest of Yaw.

Whilst in custody at the Tesano Police Station, Yaw confessed to Elder Tito, a lay "Man of God" that he participated in the murder of Kwabena Ampofo, the multimillionaire and Industrialist who resided off the Spintex Road in Accra. Yaw asked Elder Tito to pray for him as he has regretted his sinful conduct. Yaw voluntarily narrated to Elder Tito how together with his co-conspirators, they were able to lure Kwabena Ampofo out of his residence to the Tesano Apenkwa Overpass under the guise of engaging him in a business transaction and thereby murdering him in the process.

The Police have the cooperation of Elder Tito to testify on behalf of the Prosecution for the conviction of Yaw of the crime of murder. Meanwhile Barrister Fofie has agreed to engage in a plea bargain with the Prosecution by which he would disclose all information he acquired from Yaw in the course of his instructions and preparation of a defence. Yaw is awaiting trial.

Borisco the Drunk has just consulted you. He claims to be the personal representative of Yaw and seeks to restrain both Elder Tito and Barrister Fofie from disclosing any information they acquired in the course of their meeting with Yaw. With your knowledge of the relevant statutory provisions and case law advise him. **[25 Marks]**

Question 6

Paa Kow and Mama Linda were lovers. On 7 March 2020, while watching the evening news on TV3, a local television station in Accra, Paa Kow confided in Mama Linda that his best friend Paulus was the gang leader in the armed robbery at the Kasoa branch of the Super Mall. Paa Kow promised Mama Linda a lavish holiday destination in Dubai as soon as he received his share of the booty as promised by Paulus insofar as he kept mute about the latter's involvement in the robbery. There has always been no love lost between Paulus and Mama Linda. Mama Linda therefore went straight to the Ghana Police Service stationed at Kasoa and informed DSP Azugah all she heard from Paa Kow concerning the robbery. She also led DSP Azugah to arrest Paulus in his hideout at Teshie and assisted in identifying the hidden booty located behind a tombstone in Awudome Cemetery.

At the trial of Paulus on the charge of robbery only, Mama Linda testified for the Prosecution. On an Application for Submission of No Case, His Lordship Justice Mends acquitted and discharged Paulus stating that:

"The testimony of the witness is prejudice against fair trial based on hearsay matters. The witness did not have personal knowledge of the matters she said. Under those circumstances I can do no more than echo the submissions of learned counsel for the accused that the matter being hearsay it cannot form the basis of my judicial decision".

- a. Critically evaluate the statement by Justice Mends regarding the admissibility of the testimony of Mama Linda.
- b. Meanwhile Paulus, acquitted and discharged of the crime of robbery has consulted you to advise him on his chances in seeking damages for defamation against Mama Linda in the High Court, General Jurisdiction Division, Accra. With the aid of decided cases and your knowledge of the relevant statutes provide him with a legal opinion on the admissibility of the testimony of Mama Linda that Paulus robbed the Bank.

[25 Marks]