

QUESTION 1.

Abronnye is the name of a town in the Tano North District of the Brong-Ahafo Region where the matrilineal system of inheritance is practised. Kwaa Baah is a native of Abronnye likewise his father, but his grandmother was originally from Burkina Faso. She was of the Moshie Tribe. She was brought to Abronnye by her husband, also a Moshie, when the husband came to work as a farm hand on the farm of the Head of the Royal Family of Abronnye about sixty (60) years ago. Kwaa Baah's mother was then a toddler of about three years old when her parents came to Abronnye. When Kwaa Baah's mother came of age, she got married to Kwaa Baah's father who hails from Abronnye and Kwaa Baah was born.

Kwaa Baah and his mother and siblings remained in the royal household of Abronnye and associated themselves closely with the royal family. Consequently most people in Abronnye, knew Kwaa Baah as a member of the royal family. Providence did not deal unkindly with Kwaa Baah. He succeeded in life and became one of the affluent and most influential young men in the town. The Stool of Abronnye became vacant in 2005. There was no queenmother at the time as she predeceased the chief two months earlier. With his influence and riches, Kwaa Baah convinced the kingmakers, without a queenmother, to enstool him as the chief of the town. The Abronnye Stool is the Benkum Division of the Paramount Stool of Bubra.

A true royal of the Stool called Yaw Barimah, strongly objected to the nomination, selection and enstoolment of Kwaa Baah as the chief of the town but the kingmakers ignored him, as he did not have the financial wherewithal like Kwaa Baah, to influence them. Kwaa Baah, after his enstoolment, was paraded before the Omanhene of Bubra to swear the oath of allegiance as the next Benkumhene of the traditional area.

Yaw Barimah, who is aggrieved by the enstoolment of Kwaa Baah as the Chief of Abronnye and the Benkumhene of Bubra has consulted your law firm. As a lawyer who has been assigned the brief;

- (a) Advise Yaw Barimah regarding his rights, where to pursue the matter and the final forum the case may ultimately go.
- (b) Also, what is the definition of a Chief as defined under Article 277 of the Constitution, 1992?

Q.1. [MARKING SCHEME]

(i) The Abronnye Stool is rooted in the matrilineal system of inheritance so only royals from the female line could ascend the Stool. Kwaa Baah, whose mother and grandmother are from the Moshie tribe in Burkina Faso, is not from the female line of the royal family. Though his father is a native, that alone does not qualify him to be on the Stool. Again, his long association with the Stool is not a qualifying criterion. As a result, he cannot succeed to the vacant Stool. It was therefore wrong for the kingmakers to enstool him as chief of the town.

(5 marks)

(ii) Yaw Barimah has the right to object to the enstoolment of Kwaa Baah as the chief of the town. He can therefore bring an action before the Judicial Committee of the Bubra Traditional Council, which is empowered under the law to hear and determine causes and matters in relation to chieftaincy within the traditional area. He can seek reliefs for: (i) a declaration that the enstoolment of Kwaa Baah as chief of Abronnye by the kingmakers in the absence of the input of a queenmother is wrongful and therefore void; (ii) a declaration that Kwaa Baah is not a royal therefore his nomination, selection and enstoolment as the chief of Abronnye were all null and void; (iii) An order restraining Kwaa Baah from parading himself as Chief of Abronnye and Benkumhene of Bubra Traditional Area; (iv) An order restraining the kingmakers of Abronnye from recognising Kwaa Baah as the Chief of Abronnye and Benkumhene of Bubra Traditional Area.

{See section 29 (1) & (2) of the Chieftaincy Act, 2008 [Act 749]; Republic v Regional House of Chiefs; Ex-parte Aduhene [1994-95] GBR 903}

(10 marks)

(iii) Thirdly, an appeal lies as of right from any decision of the Judicial Committee of the Traditional Council to the Judicial Committee of the Brong-Ahafo Regional House of Chiefs. Further appeal lies to the Judicial Committee of the National House of Chiefs from the Judicial Committee of the Regional House of Chiefs, also as of right. If not satisfied with the decision of the National House of Chiefs, a final appeal lies to the Supreme Court with the leave of the National House of Chiefs, or of the Supreme Court. {See article 274 (3) (c) of Constitution, 1992 and the Chieftaincy Act, [Act 759], section 27 (1) (b); article 273 (1) of the Constitution and section 23 (1) of Act 759; Sandema - Nab v Asangalisa [1996-97] SCGLR 302; Imbeah v Ababio [2000] SCGLR 259}

(10 marks)

(iv) A chief is defined under article 277 of the Constitution 1992 as; "a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queenmother in accordance with the relevant customary law and usage".

Conclusion: Kwaa Baah, not hailing from the appropriate family and lineage of the Abronnye Royal House; his nomination, selection and enstoolment as the chief of Abronnye was not valid and therefore null and void.

(10 marks)

(v) Presentation, language and ability to cite statute and case law -

(5 marks)

A police constable who was returning from night patrol duties in the early hours of the day around 5.00 am, heard shouts of; "kill him, kill him" coming from the direction of the town's lorry park. He went closer to where the noise was coming from and saw a sizeable crowd of people trying to lynch a young man accused of stealing from one of the kiosks at the lorry station. Some of the people in the crowd were holding sticks while others were holding stones and pieces of sandcrete blocks. The young man was lying on the ground. He was helpless and bleeding profusely from the mouth and nostrils. Someone was holding a lorry tyre shouting; "let's burn him to death".

The policeman who was holding an AK 47 assault rifle, shouted at the crowd to disperse for him to escort the alleged thief to the police station but they refused and continued to hit the man with stones and sticks. He fired a warning shot to disperse the crowd but this infuriated them and they charged at the policeman. He was hit on the forehead with a big stone and he started bleeding. He fired a second warning shot but the crowd still surged forward with some shouting; "kill him too, they are all corrupt". Some of the people tried to disarm him so he fired the third time and one person was hit on the neck. The person hit with the bullet fell down and died instantly. The crowd then started running helter-skelter for dear life. The constable has been charged with murder.

Has he a defence? Explain your answer.

Q. 2. {MARKING SCHEME}

1. Introduction - identification of key issues, namely;

(i) Meaning of murder: - *Murder is the intentional killing of another person by any unlawful harm. The ingredients that must be proved are; a. someone is dead; b. that he died as a result of harm; c. that the harm was unlawful; d. that the harm was caused by the accused and, e. that the harm was caused intentionally.* (5 marks)

(ii) Whether the killing amounted to murder. Was there intent on the part of the policeman to kill? Was the killing justified or unlawful under the circumstances; Have all the ingredients of murder been established?: - *From the facts, though the deceased died as a result of the harm caused to him when he was hit by the bullet fired by the accused, the accused did not intend to kill him. The harm was not unlawful as the accused is empowered under section 37 of Act 29/60 to do what he did. This section reads: "for the prevention of, or for the defence of himself or any other person against any crime, or for the suppression or dispersion of a riotous or unlawful assembly, a person may justify any force or harm which is reasonably necessary extending in case of extreme necessity, even to killing".* By the provisions of this section of the Act, the law permits a person to take necessary and reasonable steps to defend himself or another against an unlawful attack, even to the point of killing. No one is permitted to take the law into his own hands. When the alleged thief was caught stealing, he should have been handed over to the police for the law to take its course. The crowd was not permitted to mete out instant justice to him. The accused was justified to do what he did when the crowd defied his orders and tried to lynch him too. The key question is; what would an ordinary person have done in

response to the threat faced when the crowd surged forward to attack the accused? (15 marks)

2. Discussion: Defences in murder charges

- (i) Did accused have a defence?
- (ii) If accused has a defence, what type of defence
- (iii) If no defence, why not
- (iv) Ability to support answer with statutory and/or case law

Some of the defences in murder charges are: justifiable harm; lawful authority to inflict the harm; necessity for the prevention or defence against crime; self-defence and the defence of another's person; defence of property; involuntary intoxication, necessity and defence of accident. In this particular case, the accused has a defence. It is one of self-defence and defence against another's person. (5 marks)

The life of the accused and that of the alleged thief were in danger. If accused had not acted the way he did, both himself and the alleged thief would have been lynched. In applying the reasonable man's test in the context of self-defence and the defence of another's person, the courts examine the reasonableness of the action from the perspective of a person facing the sort of attack which the accused faced. The accused, a policeman who wanted to enforce the law, his action could not be said to be unreasonable under the circumstances. His failure to have acted in the way he did could have led to the death of the young man being lynched and himself. He was therefore defending the young man and himself from being killed. (10 marks)

3. General presentation, language and ability to cite statute and case law - (5 marks)

- a. Section 47 of Act 29/60
- b. Section 37 of Act 29/60
- c. State v Ampomah [1960] GLR 262

QUESTION 3.

Article 18 (1) of the 1992 Constitution provides: *"Every person has the right to own property either alone or in association with others"*.

Ten members of a club known as "Freedom and Justice Club", encroached on land belonging to a public school. They collectively erected a wooden structure on the land in which they were residing. When the school authorities noticed their presence, they warned them to vacate the land but they defied the warning. The school served written notice on them to remove their structure and vacate the land within seven days or risk their structure being demolished. The encroachers invoked the original jurisdiction of the Supreme Court under Articles 2 (1) (b) and 130 (1) (a) of the 1992 Constitution for: (a) a declaration that the action of the school in trying to demolish their structures and evict them from the land constituted an infringement of their fundamental right to own property under article 18 (1) of the 1992 Constitution; and (b) an order to restrain the school from evicting them from their home.

- (i) What are the constitutional implications of their action?
- (ii) Will they succeed in the Supreme Court, or in any other court and why?

Q. 3. {MARKING SCHEME}

1. Identification of key issues, namely;

(i) When can a person invoke the original jurisdiction of the Supreme Court as provided under the Constitution, 1992? – Article 2 (1) and 130 (1) of the Constitution, 1992, vests in all citizens of the country and any person or persons, the capacity to invoke the original jurisdiction of the Supreme Court by bringing an action for; “a declaration that an enactment or anything contained in or done, under the authority of that or any other enactment, or any act or omission of any person, is inconsistent with, or in contravention of a provision of this Constitution”. Article 130 (1) defines the exclusive original jurisdiction of the Constitution as follows: “Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in – (a) all matters relating to the enforcement or interpretation of this Constitution; and (b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or persons by law or under this Constitution”. This article makes it clear that by the provisions of article 33 of the Constitution, matters or disputes that border on the Fundamental Human Rights and Freedoms of individuals or persons are to be determined by the High Court.

(10 marks)

(ii) Claim based on alleged infringement of their human rights: The claim of the encroachers is grounded on an alleged infringement of their fundamental human rights by the school authorities, under article 18 (1). It has nothing to do with the interpretation or enforcement of the Constitution.

(5 marks)

- (iii) What the Constitution says on human right claims: - The Constitution says if the claim is one that borders on an infringement of one's Fundamental Human Rights, then the appropriate forum is the High Court not the Supreme Court. {Articles 33 and 130 (1)} The original jurisdiction of the Supreme Court was therefore wrongly invoked by the encroachers (5 marks)

2. Discussion:

- (i) Meaning of provision under article 18 (1): - Article 18 (1) of the Constitution, 1992 provides: "Every person has the right to own property either alone or in association with others". Acquisition of property or properties follows the law. Having a right to own property does not mean that one can encroach on and occupy any land at all, irrespective of who owns that land and then claim it as one's property. Acquisition of property and for that matter, land, entails series of legal processes. It constitutes the tort of trespass to land for anyone to enter the land of another without the owner's consent and/or authority and refuse to leave when ordered to do so. The occupation by the encroachers of the school's land without authority was unlawful. The school can therefore evict them from the land without infringing any law. (10 marks)
- (ii) Whether plaintiffs could succeed if action commenced in the right forum: - While the encroachers' action is bound to fail in the Supreme Court for want of jurisdiction, it cannot succeed either even if commenced in the right forum because they have no right to be protected. Their conduct in unilaterally occupying another person's land without authority is not warranted in law. Such conducts tend to breed chaos in society and must not be countenanced or entertained in any way. Their best description is one of squatters and they are not protected under the law when it comes to possession or ownership of the land in question (5 marks).

3. Presentation: Language, arrangement, ability to cite statute, provisions of the Constitution and case law - **(5 marks)**
(Articles 2; 18 (1); 33 and 130 (1) of the 1992 Constitution. ABBASS & Ors v A.M.A. & Anor [2008-2009] 1 GLR 245

QUESTION 4.

When Kwasi Mantukwa was a child of about twelve (12) years old, he left his father's household and went into self-imposed exile to places he only knew. Though he is of the patrilineal system of inheritance, he stayed away from his father for over thirty (30) years in sojourn. He returned to his father's hometown only when he heard of his death. After the burial and funeral celebration of his father, he decided to stay home to engage in farming since his late father had plenty of farmland. While cultivating a portion of one of his late father's farmlands, the boundaries of which he did not know properly or well, he trespassed onto a portion of Agya Fori's land, which shares common boundary with the farmland of Kwasi Mantukwa's late father. When Agya Fori warned Kwasi Mantukwa of his trespassory acts and prevailed on him to desist from entering that portion again after harvesting maize he had cultivated on that portion, Kwasi Mantukwa laid adverse claim to the entire land of Agya Fori. Almost all the farmers in the area who shared boundaries one way or the other with Aya Fori and Kwasi Mantukwa's father, advised Kwasi Mantukwa to desist from his claims since the land he was claiming belonged to Agya Fori. He didn't budge and continued with his trespassory acts by cutting down twenty (20) matured cocoa trees belonging to Agya Fori, which were bearing pods at the time and planted in their stead maize and yams. The value of one matured cocoa tree at that time as assessed by the Land Valuation Board was GHc30.00. He again destroyed a cassava farm belonging to Agya Fori. Agya Fori decided to take legal action against Kwasi Mantukwa for his tortuous acts.

What reliefs are available to Agya Fori? (Explain your answer)

Q. 4. {MARKING SCHEME}

Introduction: Identification of the question

The facts conveyed in the question suggest without doubt that Kwasi Mantukwa did not know the boundaries of his late father's land with that of Agya Firi and did in fact trespass onto the land of Agya Firi. He did not only trespass, he has again laid adverse claim to the whole of Agya Firi's land and even went to the extent of destroying his valuable cocoa trees and cassava farm. This being the case, Agya Firi can seek the following reliefs:

- a. Declaration of title to the whole land in contention: - This would make the court determine the ownership question once and for all between the parties. A declaration of title is normally sought when two contending parties lay different or adverse ownership claims to an identifiable property, including land. **(10 marks)**
- b. Damages for trespass: - The law is clear that trespass is actionable per se. So long as there is ample evidence to support the fact that Kwasi Mantukwa did encroach on Agya Firi's land and refused to vacate same when he was ordered to do so, his conduct constituted trespass and what follows is the award of damages. Agya Firi is therefore entitled to damages for trespass. Aside of the nominal damages that Agya Firi is entitled to as a matter of course, he can also ask for substantial damages. Substantial damages are awarded when actual damage has been caused as with the cutting down of the coca trees and destruction of the cassava farm. He can even pray for exemplary damages as was decided by the Supreme Court in the case of *Ayisi v Asibey III & Others* [1964] GLR 695. **(15 marks)**
- c. Special damages for the recovery of the value of the thirty (30) pod-bearing cocoa trees and the cassava that were destroyed - Since there was no dispute as to the value of a pod-bearing cocoa tree and the fact that Kwasi Mantukwa did destroy 30 of such trees, Agya Firi was entitled to demand for the payment of the actual value of the destroyed

- cocoa trees and cassava. The amount to be awarded is determinable and must be proved. (5 marks)
- d. Recovery of possession: - Another important relief Agya Fori can seek is an order for recovery of possession. That is; to take back into his possession all the lands Kwasi Mantukwa has trespassed unto. Recovery of possession shall not be granted where a party has not expressly asked for it or indicated in any manner that he was seeking such a relief. (5 marks)
- e. Perpetual Injunction: - The relief of perpetual injunction is sought to restrain the losing party from any further interference in the disputed land after the court's decision. This is a powerful relief. The consequences of its breach are grave since they constitute contempt, which is punishable by imprisonment and/or a fine. (5 marks)

QUESTION 5.

A driver of a 207 Benz bus loaded with goods ignored a police signal to stop at a security check-point. Thinking that the police were in pursuit, the driver of the Benz bus called Efo Kwakuvi, drove at top speed, which was excessive under the circumstances, to avoid arrest. He defied warnings by passengers in the bus to reduce his speed. In the circumstances, the left front tyre of his vehicle fell into a big pot-hole. He lost control of the steering-wheel and his vehicle veered into the opposite lane of the two-way traffic. The bus collided with an on-coming taxi-cab with three passengers on board. The taxi-cab was damaged beyond economic repairs. Passengers on the bus were lucky to escape any serious injuries.

One of the passengers on board the taxi-cab who was the Manager of a Rural Bank in the area with two wives and five children, died on the spot. The other two passengers suffered grievous bodily injuries. One of them was a peasant farmer while the other was a fitting mechanic. The driver of the taxi-cab, who happened to be the owner of the taxi, miraculously escaped death. He, however, sustained slight injuries and lost three of his front teeth in the process. He was hospitalised for two weeks for the treatment of his injuries. The peasant farmer became paralysed as a result of injury to his spine after spending about three months in hospital while the mechanic, who also spent about two months in hospital, lost one of his fore-limbs (precisely his right arm). Both of them became incapacitated and could no more pursue or practice their vocations.

1. What are some of the reliefs that are open to the driver/owner of the taxi-cab and against whom?
2. (a) Can the personal representative/wives of the deceased Bank Manager seek redress in court?
(b) If yes, who would be culpable and what reliefs would they be entitled to?
3. What reliefs are available to the other injured passengers; i.e. the peasant farmer and the mechanic and against whom?

Q. 5. {MARKING SCHEME}

1. Introduction: Ability to identify the type of tort under which action falls -
The conduct of the bus driver in driving at top speed after he had ignored signals by the police to stop with the intention of escaping from arrest, led to the collision between his bus and the taxi-cab in the lane of the taxi-cab. This conduct constituted the tort of negligence on his part. As a driver plying the road, he owes a duty of care to other road users, namely; other drivers plying the road with him, passengers on his bus and passengers in other vehicles plying the road and pedestrians who cross or walk alongside the road. Any breach of this duty attracts damages for the tort of negligence.

(5 marks)

2. The driver of the taxi-cab, who is also the owner of the taxi, could claim the following reliefs: *i. Damages for the injuries sustained as a result of the negligent driving of the bus driver. This will include damages for pain and suffering; ii. Replacement cost of the taxi-cab which was damaged beyond economic repairs. This will be the cost of the taxi-cab as at the date of the accident; iii. Damages for loss of earnings from the operation of the taxi-cab - This involves the loss of daily revenue from the commercial activities of the taxi-cab for a period to be determined by the court; iv. Recovery of expenses made on medication and transport to and from the hospital.*

All these reliefs are to be claimed against the bus driver and the owner of the bus if it happens that the driver is not the owner. This is because the owner is vicariously liable with his driver, who was his servant or agent at the time he was in control of the bus **(10 marks)**

3. (a) *The personal representatives and/or wives of the deceased bank manager have a cause of action against the driver and owner of the bus because the manager, on whom they depended, died as a result of the negligent driving of the driver who was the servant or agent of the owner. The owner was vicariously liable.* **(5 marks)**

(b) The reliefs they are entitled to are: Damages for: (i) loss of expectation of life or life expectancy; (ii) loss of dependency; (iii) pain and suffering; (iv) medical expenses incurred, including other expenses made towards the burial of the deceased. The loss of dependency is calculated according to the formula used in the Ghanaian case of *Mensah v Amakom Sawmills* (1962) 1 GLR 373, which relied on the English case of *Davies v Powell Duffryn Associated Collieries Ltd* (1942) 1 All ER 657, where Lord Wright explained the method of measuring damages in such actions. **(7 marks)**

(c) Like the taxi driver, the peasant farmer and the mechanic would be entitled to damages for injuries sustained as a result of the negligent driving of the bus driver and this will include damages for pain and suffering, loss of future earnings from their trade or vocation, expenses incurred during medication and refund of transportation costs to and from the hospital. The claims would be against the driver and owner of the bus since the owner is vicariously liable with his driver who owed a duty of care to the passengers in the taxi-cab. **(8 marks)**

4. Presentation, language and ability to cite case law - **(5 marks)**

QUESTION 6.

During the African Nations Cup held in Ghana in the year 2008, a hotel in Takoradi by name Sikape Hotel, received reservation orders from a Ghanaian Company by name Abrabo Tourist and Tours Limited, acting as agents of a supporters' group in La Cote d'Ivoire for fifty (50) double-room reservation for a period of fifteen (15) days beginning from the opening date of the tournament. The hotel already had thirty-five (35) rooms made up of thirty (30) double rooms and five (5) single rooms, so management decided to expand the facilities by the construction of twenty (20) more double rooms and five (5) extra single rooms to cater for the group. The rate per night of each double room as agreed between the hotel management and the supporters group from La Cote d'Ivoire was GHc80.00.

The hotel entered into a contract with Bobrapa Constructions Limited (a building construction firm in Takoradi), for the construction of the twenty-five (25) extra rooms and the renovation of the entire hotel to host the 50-man supporters' group from La Cote d'Ivoire. The Bobrapa Construction Company was represented by its Managing Director Mr Koo Hia throughout the period of negotiations and execution of the contract between it and the hotel. It was he who signed the contract documents for an on behalf of the company.

The contractor charged GHc200,000.00 for the job and promised to complete it four clear weeks before the opening of the tournament on condition that the hotel paid eighty per centum (80%) of the contract sum, which was GHc160,000.00, upon the execution of the contract. The hotel duly paid the 80% contract sum as agreed on the very day the agreement was executed. The money was received on behalf of the company by its Managing Director Koo Hia.

On receipt of the amount, Koo Hia travelled to Accra and purchased a brand new Honda CR4 (4x4) vehicle for himself and a Tata Indigo Saloon car for his wife. For about two (2) months, Koo Hia left town and was nowhere to be found. The Contractor was not able to construct even a single room as agreed. The hotel could not therefore host the supporters' group from La

Cote d'Ivoire as agreed. The group was forced to re-locate in Cape Coast so the hotel lost all its investments plus profits it would have derived or made from the contract between it and the supporters' group. The Hotel decided to drag the construction firm to court for its losses.

- A. Has the Hotel any cause of action against Bobrapa Company Limited? If no, explain and if yes, what reliefs are available to it?
- B. What about the Managing Director of the company Koo Hia?

Q. 6. {MARKING SCHEME}

A. Introduction: Identification of the issues involved –

The transaction between the Hotel and the construction firm Bobrapa Company Limited was one of contract. The failure of the construction firm, represented by its Managing Director Koo Hia, to perform its part of the contract after the Hotel had paid the 80% value of the contract sum as agreed between them constituted breach of contract. (5 marks)

The reliefs available to the Hotel are: i. damages for breach of contract – taking into consideration loss of earnings and anticipated profits and loss of goodwill; ii. refund of the advance payment of 80% of the contract sum made to the construction firm through its M.D. plus interest on the said sum and Costs of the action. (5 marks)

B. *The answer in respect of (b) is No and Yes. On the principle of Salomon v Salomon [1897] AC 22, the Hotel has no cause of action against the Managing Director Koo Hia since the construction firm is a limited liability company with a legal personality. All actions against the company must therefore be instituted against the Bobrapa Company qua a company. (10 marks)*

The Hotel can only apply to have the veil of incorporation lifted for it to sue the Managing Director personally, in addition to the company, if it is established that the company was a sham registered by Koo Hia to perpetrate fraud on others. Other examples where the corporate veil could be lifted are; where it is established that the company has carried on business for more than six months without any member, where the company has carried on business for more than four weeks when the number of directors is less than two with Koo Hia as the only director and where the company has breached the minimum capital requirement thus making its operations ineffective. If investigations by the hotel reveal the existence of any of the above, plus others that can compel the lifting of the veil of incorporation, then Koo Hia could find himself in trouble.

(15 marks)

Presentation – Language, arrangement and ability to cite case law.

(2014/15)

Few cases in point: - (i) Salomon v Salomon [1897] A. C. 22, [1895-99] All E
R Rep. 33; Appenteng & Others v Bank of West Africa Ltd & Others [1961]
GLR 199; (ii) Owusu v R. N. Thorne Ltd & Another [1966] GLR 90.

QUESTION 7.

Katawere's daughter, who was a Senior High School (SHS) student and seventeen years of age, was impregnated by her English tutor called Joe Pasasco. As a result of the pregnancy, the girl could not write her final SHS examinations as she had to drop out of school. Teacher Joe denied responsibility for the pregnancy and rained insults on Katawere and his daughter for lying against him, when Katawere confronted him on the matter. Teacher Joe arrogantly threw a challenge for a DNA test to determine the paternity of the child after its birth, despite the fact that the baby was an exact photo-copy of him. The test revealed that Teacher Joe was the father of the child.

After this revelation, Teacher Joe, for the first time, admitted having had an affair with the girl only once, contrary to the girl's claim that the teacher had abused her on more than four occasions but warned her not to inform anybody about it, else she would die. She described the various places where Teacher Joe took her to ravish her.

- (a) Identify the civil remedies available to Katawere against Teacher Joe Pasasco, if any and how they are to be determined.
- (b) Does Katawere's daughter personally have any remedies against Teacher Joe and why?
- (c) Can there be an action in seduction when a man's wife is seduced by another man? If yes, who qualifies to be the plaintiff? Can the courts make an order for such a seduced wife to go back to her deserted husband and why?

Q. 7. {MARKING SCHEME}

Introduction – The conduct of Teacher Joe Pasasco amounted to Seduction under Customary Law. It is seduction when a girl or female under the care of her parents is seduced to leave her parents' home whereby the parents lose her services. **(5 marks)**

(a) Katawere can sue Teacher Joe and claim damages for seduction. The damages may be assessed on the basis of: Katawere's injured feelings; loss of services of her daughter; Teacher Joe's provocative conduct in denying responsibility for the pregnancy and imputing unchastity on the part of his daughter. He can also claim special damages for financial losses like school fees expended on her aborted education, expenses incurred on the daughter during and after pregnancy on pre- and post-natal care, etc.

(10 marks)

*(b) Katawere's daughter has no personal claim against Teacher Joe Pasasco. Seductions of this type are intended to compensate parents for the loss of services rendered by their daughters as a result of their being made to leave their parents custody. **(5 marks)***

*(c) Yes; an action for seduction can lie where a man seduces another man's wife to leave him and cohabit with the seducer. It is the man whose wife has been seduced who qualifies to sue the one who seduced the wife as a plaintiff. His claim is one of damages for seduction. This is because by the seduction, he has lost the services of his wife both sexually and in the rendering of services in the marital home. **(10 marks)***

*The courts have refused to make orders for such a seduced wife to go back or return to her deserted husband. The courts are of the view that such orders would be repugnant to public policy and also tantamount to encouraging forcible marriages. A seduced wife cannot therefore be compelled to go back to her deserted husband. **(5 marks)***

Presentation: Language and ability to cite case law - **(5 marks)**

Cases in point: 1. Asante v Sarpong [1963] 2 GLR 359; 2. Kombat v Lambim [1989-90] 1 GLR 324

Cases to be considered: i. Anthony v University College of Cape Coast [1973] 1 GLR 299; ii. Addo Kuffour v Democrat Newspaper (Suit No. AD 1/2005 - Unreported Judgment of the High Court (Fast Track Div.) dated 28th July 2005); iii. Eddie Annan v Egbert Faibille & 2 Others (Suit No. FTD 11/2003 - Unreported judgment of the High Court (Fast Track Div.) dated 13th July 2005); etc.

QUESTION 8.

Honourable Joe Manu was the Member of Parliament for Fankyenebra Constituency and the Minister for Lands and Forestry. Some unknown chain-saw operators entered a forest reserve in his constituency and felled timber without licence or authority. While police investigations were going on to unearth the culprits, the Okro Mouth Newspaper whose editor is Kwesi Makaamaka, published an article to the effect that it was the Honourable Minister for Lands and Forestry and the M.P. for the area who was responsible for the illegal felling of the timber. He was described in the publication as a thief and a fraudster.

The Honourable Minister and (M. P.), in a re-joinder, refuted the allegation and warned the newspaper and its editor plus the reporter who authored the article, to retract the story and to apologise to him. He again demanded that the reporter and the editor should desist from making any further false allegations against him in the said papers or elsewhere. The newspaper defied the warning and published further that it had evidence to support the allegation and this time, placed a portrait of the Honourable Minister beside the publication on its front-page with the banner headline: **"Minister in Shady Timber Deals"**.

It happened that the story was a fabrication without any foundation whatsoever. Rather, the publication was made out of malice to spite the Honourable Minister. This was as a result of a disciplinary action the Minister took against the reporter some years back when the reporter was working under the Minister in another organisation before he decided to enter into politics.

- a. Has any tort been committed by any person or body? If yes, what tort has been committed and by whom?
- b. Has the Honourable Minister any civil remedy? If yes, what is/are his remedies in court?

Q. 8. {MARKING SCHEME}

Introduction – Yes; a tort has been committed. The conduct of the reporter of the Okro Mouth Newspaper, the Okro Mouth Newspaper itself and its editor in publishing the false story against the Honourable Minister amounted to the tort of Defamation. It is defamation to make a false written or oral statement that damages another's reputation. In other words; defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person. The Newspaper as a publication and its editor and reporter have therefore committed the tort of defamation, and in this sense, libel – (See Winfield – 'Textbook on the Law of Torts'; Kofi Kumado – 'Introduction to the Law of Torts in Ghana').

(15 marks)

Defamation consists of the twin torts of libel and slander. When the publication is written or made in graphic form, it is libel but when it is oral or spoken only, it is slander.

(5 marks)

The Honourable Minister and Member of Parliament (MP) can sue the Okro Mouth Newspaper, the reporter who authored the story and the Editor of the Newspaper to claim damages for libel. He can pray that the damages be substantial or aggravated for the intransigence of the Newspaper and its editor in defying his warnings to desist from the publication and by continuing with the publication the second time, worsening the situation by placing his photograph beside the second publication. He can again ask for exemplary or punitive damages to make an example of the defendants for continuously publishing a story they well knew to be false. He can also pray for an injunction to restrain the editor of the Newspaper from publishing the same or similar false statements in future editions of the newspaper.

(15 marks)

Presentation – Language, arrangement and ability to cite case law -

(5 marks)