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END-OF- SECOND SEMESTER EXAMINATIONS: 2016/2017

FACULTY OF LAW

LAW 104: Constitutional Law II

Saturday 24th June, 2017

TIME ALLOWED: 2 ½ HOURS

LEVEL 100 & 200

STUDENT ID No.....

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INSTRUCTIONS

There are a total of six (6) questions. Candidates are to answer three (3) questions only.

Question One (1) is compulsory and must be answered by all students.

Answer Sheets will be provided. Each answer must begin on a fresh page.

Any extra answer sheet should be properly tied to the original answer sheet.

Marks will be awarded for good presentation, clarity in legal arguments and proper use of Legal Authorities.

Please write legibly

Candidates are allowed 10 minutes to preview the questions before the start of the examination

DO NOT TURN OVER THIS PAGE UNTIL YOU HAVE BEEN TOLD TO DO SO BY THE INVIGILATOR.

Examiners: Ernest Kusi & Dennis Adjei Dwomoh

Good Luck

QUESTION 1

On 23rd December, 2000 Prof Johnson Akwamu, the leader of **Global Democratic Alliance Party**, (GDAP) and President of the Republic of Ghana appointed Mr. Francis Yeboah as the Minister for Pensions and Social Welfare, a position which Mr. Yeboah held from January, 2001 to December, 2004. On 1st January, 2005, the Electoral Commission of Ghana declared the candidate of the People's Redemption Party (PRP), Dr. Ben Dziwornu as the President elect following the presidential elections held on 7th December, 2004. In view of various allegations of corruption being levelled against Mr. Francis Yeboah, the Justice Opong Manu Commission of Inquiry was set up to investigate the said allegations. In its report dated 2nd May, 2005 Mr. Francis Yeboah was adjudged or otherwise declared by the Justice Opong Manu Commission to have acquired assets unlawfully while holding public office. On the 30th of May, 2005 the President issued a White Paper on the Report of the Commission of Enquiry. Mr. Francis Yeboah did not take any steps to appeal the adverse findings made against him by the Commission.

On 7th December 2008, Mr. Francis Yeboah and Mr. Simon Frazer stood as candidates for the position of Member of Parliament for the Asunafo South Constituency. Mr. Francis Yeboah was duly elected and sworn in as the Member of Parliament for the Asunafo South Constituency on January 28th, 2009. Subsequently, Mr. Simon Frazer challenged the election of Mr. Francis Yeboah, by filing a writ of summons at the High Court seeking the following reliefs:

- a) A declaration that upon a true and proper interpretation of Articles 94(2) (d), (4), (5) of the Constitution of Ghana, 1992 Mr. Francis Yeboah is not qualified to be a Member of Parliament for the Asunafo South Constituency;
- b) An injunction to restrain Mr. Francis Yeboah from entering and taking his seat as a Member of Parliament for as long as he continues to be so disqualified.
- c) Any other relief which the Honourable Court may deem fit.

With the aid of decided cases and other relevant authorities, discuss the issues in the above-mentioned case.

QUESTION 2

On 26th March, 2015 **Togbe Nyamivi Nyahie II**, the Odikro of Sri Traditional Area in the Volta Region of Ghana, commenced an action at the High Court, Koforidua against **Mr. Samuel Ahiabile** claiming the following reliefs:

- a) **A declaration of title and recovery of possession of all that piece or parcel of land situate lying and being at a place commonly known and called Ayensuako and bounded as follows: on the north by Kwa-Baa, Kobina Dadzie, Okuta and Ayensuako**

Stream; on the East by Kojo Ahoro, Kwa Otuo, Kwaku Bu; on the West by Ayensu River and on the South by River Densu.

- b) General damages.
- c) Perpetual injunction restraining the defendant, his agents and assigns from interfering with the plaintiff's peaceful enjoyment of the land.

The defendant, **Mr. Samuel Ahiable**, in his defence denied the title of the plaintiff and averred that the land in dispute was acquired by his ancestors in 1923. In the course of the proceedings, the defendant, **Mr. Samuel Ahiable** applied to set aside the Writ of Summons on the grounds that the plaintiff, **Togbe Nyamivi Nyaha II** did not have the capacity to institute the action, which said application was vehemently opposed by the plaintiff.

After hearing the application, the learned trial judge proceeded to dismiss same and held that on the basis of the processes filed by the parties, the court was satisfied that the Plaintiff had capacity to commence the action. At the close of the trial, the trial judge entered judgment in favour of the Plaintiff. The defendant, **Mr. Samuel Ahiable**, has appealed the said judgment on the sole ground that the learned trial judge lacked jurisdiction to have heard and determined the suit as the same entailed a cause or matter affecting chieftaincy.

Togbe Nyamivi Nyaha II has consulted you for advice. With the aid of decided cases and other relevant authorities, discuss the possible arguments that could be made against the appeal mounted by Mr. Samuel Ahiable.

QUESTION 3

On 5th June, 2010 Mr. Michael Saha entered into a contract with Grace Rice Limited, a limited liability company that deals in the sale and distribution of rice, to purchase fifty bags of rice. Michael Saha proceeded to pay the purchase price of Sixty-Thousand Ghana Cedis (¢60,000.00) for the delivery of the rice to his storage room by 30th June, 2010. However several requests notwithstanding, Grace Rice Limited has failed, refused and/or neglected to deliver the rice as agreed. Mr. Michael Saha has applied for an order of mandamus to compel Grace Rice Limited to deliver the rice as agreed.

Advise Mr. Michael Saha. Your advice must reflect the relevant case law.

QUESTION 4

In commemoration of its 50th Anniversary celebration, the Ghana School of Law has invited you to speak on the topic, "Ghana's current nationality law is unnecessarily complicated." **With the aid of decided cases, critically evaluate the above-mentioned contention, taking account the relevant laws regulating the acquisition of nationality in Ghana.**

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QUESTION 5

“There is no denying the fact that in many ways than one, Ghana will never be the same after the PNDC years, whether measured from the point of view of the level of violence or the scale of intimidation to which the citizenry at large were subjected or the extent to which the regime sought to destabilise established authority and settled procedures and institutions.” Per Prof. C.E.K Kumado

Critically discuss the extent to which the indemnity clauses in the Transitional Provisions in the Constitution of Ghana, 1992 oust the powers of the court and other bodies under the Constitution of Ghana, 1992.

QUESTION 6

Dr. Horst Schumann, was born in Ghana on the 6th of March 1984 in James Town, Accra. His father is a German missionary who had a right of abode to live in Ghana while his mother was born in a Trans Volta Togoland which is now part of Ghana. Dr. Horst is in the employ of the government as a medical officer and has a birth certificate which indicates he is a citizen of Ghana.

Dr. Horst is also a major supporter of the opposition party and has mounted platforms to campaign for a change in government. He has criticized how the government is running the affairs of the country, especially the health sector. He sees himself as a Ghanaian with a German heritage. He speaks 4 local languages and did all his education in Ghana.

On or about 25th August 2008, Dr. Horst went to North Korea for missionary work. While there he was arrested by the North Korean authorities for spying for the German Government and also stealing their nuclear codes. The authorities also alleged that it was contrary to the laws of North Korea for him to preach about Jesus Christ. Two days before he was sent to court he escaped from lawful custody and eventually arrived back in Ghana.

The North Korean government has requested the Government of Ghana to surrender Dr. Horst to face trial. North Korea gives major donor support to Ghana. The Government of Ghana has been warned by the Government of Germany not to take any of such steps and that at worst they should send him to Germany if Ghana feels threatened by the conduct of North Korea. Dr. Horst is unperturbed about this brouhaha and claims that he cannot be taken out of this country as he has a lot of lawyer friends who will come to his aid and is also a Ghanaian

Dr. Horst has instructed by ALDENT LEGAL to advise him of his rights under law relating to his extradition to North Korea. You are a paralegal in this law firm and have been directed by the partners of the firm to prepare a legal memo on these set of facts.