

**COUNCIL OF LEGAL EDUCATION**

**NIGERIAN LAW SCHOOL**

**BAR FINAL EXAMINATIONS**

**CIVIL LITIGATION**

**THURSDAY, AUGUST 11, 2011**

**TIME: 3 HOURS**

**INSTRUCTIONS:**      *FULL ANSWERS ON [WWW.ISOCHUKWU.COM](http://WWW.ISOCHUKWU.COM)*

THIS PAPER IS DIVIDED INTO 2 SECTIONS AND ANSWER BOOKLETS ARE PROVIDED.

QUESTIONS 1 AND 4 ARE COMPULSORY. ONE OTHER QUESTION FROM EACH SECTION SHOULD BE ATTEMPTED.

QUESTIONS FROM EACH SECTION SHOULD BE ANSWERED ON A SEPARATE ANSWER BOOKLET.

WRITE YOUR EXAMINATION NUMBER ON EACH ANSWER BOOKLET.

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**SECTION 1**

**QUESTION 1 (COMPULSORY)**

Mr. Ben Ajuwa is the owner of a vacant plot of land at No. 1 Ajasa Street, Lagos. He has been unable to develop the land due to lack of funds. He therefore contacted Mr. Tobi Silas a renown estate developer and entered into a development lease agreement with him. The agreement contains the following clauses amongst others:

4. The Lessor, shall provide the developer with a valid document of title to the land within seven days of execution of this agreement and the Developer shall commence construction work on the land within 14 days of receiving the title document from the Lesser.

10. Any dispute arising from this agreement shall be referred to arbitration in accordance with the Arbitration and Conciliation Act LFN, 2004.

On the day of the agreement was executed, Mr. Ajuwa handed over to Mr. Tobi Silas his purchase receipt in respect of the land but till date Mr. Silas had refused to start construction work on the land contending it does not qualify as valid document of title as stipulated by **Clause 4** of the agreement.

Mr. Silas now resides at NO. 2 Wusa Street, FCT, Abuja.

Mr. Ajuwa has now instructed you to commence an action in Court against Mr. Silas for a binding interpretation of Clause 4 of the agreement. He informed you that there is no other fact in dispute between the parties.

- a. What is the best process or form to commence an action in this case and why?
- b. Draft the process with which you will commence the action (without any supporting document).
- c. List the documents/forms to be file along with the process you drafted in (b) above.
- d. Assuming Mr. Silas intends to challenge the facts contained in the process filed by Mr. Ajuwa in this case, what step must Mr. Silas take and what is the legal consequence of not taking such step?
- e. Assuming Mr. Silas is served with the originating processes, he still wants the matter to be referred to arbitration, what step must be taken?
- f. Assuming Mr. Silas' failure to commence construction was due to the refusal of his Bank, Star Bank Plc, to provide him with funds on the ground that a purchase receipt does not quality as a valid document of title and Mr. Silas intends to proceed against the Bank in the same action commenced against him by Mr. Ajuwa.

Draft the application to be filed on behalf of Mr. Silas for this purpose (without any supporting document).

## **QUESTION 2**

On 11<sup>th</sup> May 2011, Mr. Obla Sunday, a legal practitioner called to the Nigerian Bar in 2006, was at the Chief magistrate Court Ebute-Meta, Lagos to defend a client in a criminal matter in charge No. CR/20/2011. The Court shares the same fence with a nearby police station. As he was driving towards the Court premises, the car engine suddenly went off in-front of the police station. As he was trying to start the engine, two police men suddenly came over from the police station. He later got to know their names as Sgt. Ukpong Emmanuel and Insp. Samson Mustapha. They asked him to move the car from the front of the police station. His plea to them that the car suddenly developed an engine fault fell on deaf ears, He pleaded that they should assist him to push the car and that he was on his way to the court.

Out of annoyance, they dragged Mr. Obla Sunday out of the car. While Sgt. Ukpong gave him a slap and tore his shirt, Insp. Mustapha beat him and took his mobile phones. The beating attracted the attention of Court officials and attendants. Insp. Mustapha continued to shout on Mr. Obla Sunday that he being a legal practitioner does not mean he cannot be disciplined, he threatened to shoot him.

Other colleagues came to the rescue of Obla Sunday and took him to a nearby clinic for treatment. When he was examined, he had broken nose from the beating. Mr. Obla Sunday has decided to enforce in Court his fundamental rights to dignity of human person and claim damages.

- a. **Draft** the application.
- b. After the service of the application, the Police Respondents intend to raise a preliminary objection on the ground that since the Inspector General of Police (IGP) was made a party, the action

- ought to have been commenced at the Federal High Court.  
Comment on the validity of the objection.
- c. What is the proper procedure for raising the preliminary objection?
  - d. How will the court treat the preliminary objection?
  - e. What possible orders will the Court make at the hearing of the application?
  - f. Assuming that in the application for the enforcement of fundamental rights, the Applicant attaches a photocopy of the medical report from a government hospital and the Respondents object to the photocopy, what will be your response?
  - g. Although duly served with the application, Counsel to the Respondent did not file a respondent unit 2 weeks after. Within what time was counsel expected to file a response?
  - h. Assuming Counsel to the Respondent was wasting time in filing the response, what step(s) would he take to regularize the position?
  - i. Comment on the conduct of the Respondents' Counsel in failing to file a response and simply appearing in Court to orally admit the claim of the Applicant in open Court.

### **QUESTION 3**

After pleadings were settled in a matter involving Musa Yaro and Chief Balogun in Suit no. 1234/CHC/2011, Forms 17 and 18 were taken and issued for pre-trial Conference. On 20<sup>th</sup> July 2010, the date slated for the Conference, the Defendant was absent and was not represented. The pre-trial Conference Judge adjourned the Conference to 30<sup>th</sup> July, 2010.

On 30<sup>th</sup> July 2010, the Defendant again was absent and was not represented.

- a. What possible sanction(s) could the Court have made against the defaulting defendant?
- b. Assuming that judgment was entered on 30<sup>th</sup> July, 2010 against the Defendant, State the step(s) the Defendant must take to set aside the judgment.  
Order 25 (1) of the Lagos High Court Civil Procedure Rules provided as follows:
  - i. Within 14 days after close of pleadings, the claimant shall apply for the issuance of a Pre-Trial Conference Notice as in Form 17. Counsel to the Claimant applied for the issuance of a Pre-Trial Conference Notice through his firm's letter head with Form 17 attached. The Defense Counsel raised an objection stating that the application was invalid since it was not done by way of motion on Notice.
- c. Assuming you were the judge, write a Ruling on this objection.

## **SECTION 2**

PLEASE USE ANOTHER BOOKLET FOR THIS SECTION

QUESTION 4 IS COMPULSORY. ONE OTHER QUESTION FROM THIS SECTION SHOULD BE ATTEMPTED.

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### **QUESTION 4**

C.C. Uji is the Solicitor managing the residential property of Chief Benson located at No. 4 Ring Road Lagos made up of six (6) bedroom duplex. C.C. Uji rented a 4 bedroom duplex to James Peters for N9million per annum on 1<sup>st</sup> January 2007. James paid rent for two years and since then has not paid again. Sometime in February 2011 C.C. Uji was notified by other tenants in the property that James Peters has turned his apartment into a party house where loud music boomed from giant speakers every night to the annoyance of other tenants and the

neighborhood. This attitude coupled with the fact that James Peters is in arrears of rent irked C.C. Uji who issued him a six months quit notice served on James on 26 June 2011 to expire on 31 December 2011. The notice was served by the Secretary to C.C. Uji Law firm who after several attempts to serve James personal failed, decided to paste the notice on the entrance to James Peter's apartment.

Answer the following questions.

- a) What other notice is C.C. Uji required to issue before he can commence proceedings to eject James from the premises.  
**Draft the notice.**
- b) Assuming during trial at the Lagos Magistrate Court, James Peters raised the following objections to the Jurisdiction of the Court, write a short legal opinion on the objection.
  - (i) That C.C. Uji did not get a written authority from Chief Ojo Benson before issuing the quit notice.
  - (ii) That the claim of the claimant is for total of N18million and as such the court lacked Jurisdiction to hear the suit.
  - (iii) That the service of the quit notice was defective and invalid not having been served by a bailiff of court personally on James Peters.
- c) Assuming C.C. Uji has a power of Attorney executed in his favour by Chief Ojo Benson to manage the property, recover possession from tenants and other incident matters, who will be the proper parties in the suit against James Peters to recover possession. Draft the parties heading on the plaint.
- d) Chief Ojo Benson pays C.C. annually a fixed amount for managing his property including handling cases in court. Examine the ethical consideration in C.C. Uji's mode of remuneration.
- e) Assuming that based on a petition to the police, an IPO in the Police station had investigated the report of nuisance by the loud speakers of the defendant and written a report, how

would the plaintiff's lawyer be able to tender the IPO's report in the Magistrate Court?

### **QUESTION 5**

1. John Ali is a businessman and a major dealer/distributor of WAMPCO cement, with his shop located at Plot 10 Garki Abuja. He transacts business as John Ali & Sons". On 16<sup>th</sup> February 2009, he entered into a contract to supply 5000 bags of cement to Hopeday Construction Ltd, at its Abuja office. The registered office of the company is at Victoria Island Lagos. The cement bags were needed for the purpose of executing a contract of construction of staff quarters of the NNPC, Abuja.

Hopeday construction Ltd has defaulted in the payment of the contract sum of N10million. After several demand letters, Mr. John Ali has instructed your law firm to sue Hopeday construction Ltd in the High Court, FTC Abuja, for the N10million with interest.

Answer the following with authorities.

- a) (i) Prepare a checklist of at least 8 matters that you will consider as Counsel to the plaintiff, before filing this suit in your client's behalf.
- (ii) Assuming that the originating processes were served on the defendant at its Abuja office, what would be your response, if any, as the defendants' Counsel? What steps would you take in Court on this issue?
- b) Assuming that the defendant's counsel raise an objection in the course of the suit that the present court is not the proper venue for this action, "it involves the operation of companies and Allied Matters Act 2004. The suit should be struck out. It is only properly brought in the Federal High Court".
  - (i) What would be your answer as the plaintiff's counsel
  - (ii) At what time and how could an objection of this nature be properly raised?

- c) Assuming that 3 months have elapsed since the defendant was served with the originating processes in the suit. The plaintiff has now brought a motion on notice for judgment in default of defense. As defendant's Counsel you have instruction of your client to file a statement of defense out of time.
  - (i) Prepare an application to facilitate your instructions (without an address).
- d) Assuming the 2 motions (i.e. the one by the plaintiff for default judgment and the other by the defendant for extension of time) were scheduled for hearing on the same day, which of the motions would be given precedence by the Court? State your reasons.

### **QUESTION 6**

Recently, the Federal Government announced the appointment of one Justice of the Supreme Court and a Judge of a State High Court from the South East Geo-political zone. Both Judges were appointed by the President of the Federal Republic of Nigeria on the recommendation of the Chief Justice of Nigeria and the appointments were duly confirmed by a judiciary Committee set up by a President fiat for that purpose.

Aggrieved by the procedural irregularities, the Nigerian Bar association has threatened to institute an action against the federal Government for a declaration that the appointment of the Justice of the Supreme Court and a Judge of the High Court were unconstitutional.

Answer the following questions.

- (i) Do you think that the NBA has a good case? State your reasons for your answer.
- (ii) In which Court should the action be commenced and why?
- (iii) Assuming the matter is commenced at the High Court of Lagos State and the Court finds that it lacks jurisdiction and that it is

- the Federal High Court which has jurisdiction, what should NBA do?
- (iv) Would your answer to (iii) above be different assuming that the matter is wrongly commenced at the Federal High Court and it finds that it is the State High Court that has jurisdiction? Give reason(s) for your answer.
- (v) Assuming the action is to be commenced at the Federal High Court Abuja, **Draft** the followings:
- (a) The heading
  - (b) The parties
  - (c) The reliefs

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**COUNCIL OF LEGAL EDUCATION  
NIGERIAN LAW SCHOOL  
AUGUST 2011  
BAR PART II EXAMINATION  
CIVIL LITIGATION  
MARKING SCHEME**

**SECTION 1**

**Question 1**

(a) The best process to commence this action is originating summons. This is because the action is for interpretation of a document and facts are not in dispute. See National Bank v Alakija (2mks)

(b) ..

IN THE HIGH COURT OF LAGOS STATE  
IN THE LAGOS JUDICIAL DIVISION  
HOLDEN AT LAGOS

Suit No.LD/.....

BETWEEN

MR. BEN AJUWA ..... CLAIMANT

AND

MR. TOBI SILAS ..... DEFENDANT

(2MKS)

**ORIGINATING SUMMONS**

LET Mr. Tobi Silas of No 2 Wuse Street, FCT Abuja within 42 days of service of this summons inclusive of the day of such service cause appearance to be entered for him to this summons which is issued upon the application of the claimant for the determination of the following question:

Whether the purchase receipt in respect of the land situate at No. 1 Ajasa Street, Lagos qualifies as a valid document of title in accordance