

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 104: TRIAL ADVOCACY

FRIDAY 2ND AUGUST, 2013

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should attempt **FOUR** questions
- (b) Answer **questions one and two** and **any other two questions**
- (c) All questions carry 15 marks each
- (d) Marks may be lost for illegibility

PLEASE TURN OVER

1. (a) Discuss the concept of Opening Statements in trial advocacy, noting to indicate the utility of a case theme and a case theory in the construction of such statements. (8 marks)

(b) You are a professor working in the office of the Director of Public Prosecutions. The Director sends a file to your office and upon perusal of the same, you are satisfied that the information in the file (including the five witness statements) discloses an offence under section 295 as read together with section 296(2) of the Penal Code (Cap. 63, Laws of Kenya).

Assuming the material in the file discloses the existence of all the criteria set out under the said section 296(2), set out an outline of the opening statement you will make at the commencement of the trial. (7 marks)

2. In conducting pre-trial case analysis, a trial lawyer must consider various factors in order to ensure that the story presented to court complies with both substantive and procedural rules relevant to the case at hand.

Giving specific examples, explain the meaning and value of the following considerations in pre-trial advocacy.

- (i) Good facts/Bad facts
- (ii) Who did or omitted to do what?
- (iii) Where did it happen?
- (iv) When did it happen?
- (v) Pleadings
- (vi) Elements of the case
- (vii) Issues
- (viii) Evidence

(15 marks)

3. (a) "The closing speech is the reason advocates exist."
Ian Morley: The Devils Advocate, p. 181

Justify the above statement and set out the key ingredients of a good closing argument. (8 marks)

- (b) An accused person has been convicted of the offence of theft contrary to section 275 of the Penal Code (Cap. 63, Laws of Kenya).

- (i) As defence counsel, present a statement in mitigation. (4 marks)
- (ii) As the prosecutor, respond to the mitigation. (3 marks)

4. "Most trials are won on the strength of your case-in-chief, not on the weaknesses of the other side's case" (Thomas A Mauet & Les A MacCrimmon: Fundamentals of Trial Techniques). In light of this quotation consider:

a) The purpose of examination-in-chief. **(5 marks)**

b) The techniques that a good examiner-in-chief uses with illustrations to support the above quotation. **(10Marks)**

5. "Cross examination is inherently risky, the witness may argue with you. The witness may fill in gaps that were left out in examination-in-chief. The witness may make you look bad. You may make yourself look bad. None of these can be entirely avoided but they may be minimized."

a) Provide five reasons for cross-examination. **(5 marks)**

b) Consider the above quotation and discuss how a good trial advocate may mitigate the pitfalls inherent in cross-examination. **(10 marks)**

6. "I have no intention of complying with this ridiculous order; you will get the money, over my dead body!" These are the words of a Defendant whom you have judgement against.

Discuss how you will proceed to realize a judgement for liquidated damages for your client, bearing in mind the procedures for contempt of court in Kenya. **(15 marks)**
