

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 104: TRIAL ADVOCACY

THURSDAY 30TH JULY, 2015

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates should answer **FOUR** questions
- (b) **Question one is compulsory**
- (c) All questions carry 15 marks each
- (d) Marks may be lost for illegibility

PLEASE TURN OVER

1. You are an advocate in the firm of Mandela & Co. Advocates of Fare Acres, Nairobi. You have been approached by Mrs. Holmes of Udaku Estate, Karen area on behalf of residents claiming that:

"Music Loud Limited" is operating a bar and discotheque which is emitting loud noises and vibrations through playing of loud music during all hours of the night.

Further instructions indicate that the surrounding area is a residential area and the noise is severally affecting the residents, among them school going children. The loud and offensive music is played every evening and usually runs into the early hours of the morning (5.00 a.m.)

Your research reveals that this behavior by the company offends Section 102 of the Environmental Management & Coordination Act (EMCA) as well as Regulation 3 and 8 of the Environmental Management and Coordination (Noise and Excessive Vibration Pollution) Control Regulations, 2009.

Music Loud Limited have adamantly told the residents that the purpose of the music is to entertain their customers.

However, your clients have insisted that the music pollutes the environment and has caused them sleepless nights and reduced productivity for them the following day.

You also learnt of several attempts to seek redress from the Government agencies concerned namely: National Environmental and Management Agency (NEMA), Nairobi County Government and the Kenya Police.

The above agencies have failed to take any action while Music Loud Limited continues with the offensive business. In fact, Music Loud Limited argues that they have a business to run, they are licensed to do so by the Government and NEMA, and they see nothing wrong in entertaining their revellers.

Music Loud Limited unequivocally admits to playing loud music.

The matter has come up for hearing for the first time and you are counsel for the residents.

Prepare an Opening Statement introducing your client's case.

(15 marks)

2. Mr. John Manson stands accused of murdering his girlfriend June on the night of 14th January, 2008 at 1.00 a.m. Mr. Manson was arrested 60 kilometers away from the scene of crime while on his way to a neighbouring country.

The prosecution is presenting the testimony of an eye witness who is an ex-girlfriend to June as well as a report of DNA samples from the Government Chemist, post-mortem examination report, a multi-coloured blood stained sweater allegedly belonging to the deceased, a torn white underpants, hair strand and blood stained finger nails.

The investigating officer testifies that these exhibits related to the murder of June.

The investigating officer testifies that June was last seen alive with Mr. Manson, on the evening of 14th January, 2008 by June's ex-boyfriend who had been tracking them all day. The officer further states that the ex-boyfriend's tracking of June and Manson was triggered by information from June to the ex-boyfriend to the effect that Mr. Mason had been threatening her.

In his statement of defence, Mr. Manson claims that he was not involved in the murder and was not present at the scene of murder. Mr. Manson further states that the police had adjudged him guilty before arraigning him in court; that the evidence before court is incomplete, false and questionable; that the eye witness is fabricating evidence because of hatred and jealousy following the loss of his former girlfriend, June; and that if indeed the offence was committed at night, then nobody could have had a clear vision to see the offender.

- (a) As the prosecutor, prepare your closing argument. (7½ marks)
(b) As the defence lawyer, prepare your closing argument. (7½ marks)

3. Richard Reddy is a rider with Chapo Pizza Company in Nairobi. He delivers Pizza on a 250cc motorbike to different residences in shifts of 8 hours. On 3rd September, 2014 while going to deliver Pizza to a residence, he ran into the back of a moving company truck that had been parked at the side of the road without warning triangles. The back of the truck is a dull grey colour and it had no reflectors. An inspection report from the Inspector of Motor Vehicles shows that the truck's rear parking lights were not functional.

Richard Reddy fractured his right arm in the crash and was in hospital for two weeks. His statement to the police investigator says that he was riding at 30 km/h. A secret electronic device inserted in the motorbike by his employer to monitor speed shows, however, that he was riding at 70km/h. His file with his employer's Human Resources Department shows he had been warned against riding at

dangerous speeds. A few minutes before the crash he had sent a text message to his wife saying, "Honey, sorry all week I have been coming home after 9 p.m. Today I will do all I can to be there by 8.45 p.m." The text was sent at 8.30 p.m.

Richard Reddy has instructed your law firm to file a suit for damages against the owners of the truck company for the injuries he sustained.

- (a) Outline the strong points for Reddy's case against the truck owners. **(5 marks)**
 - (b) Explain what points stand to weaken Reddy's case against that of the truck company. **(3 marks)**
 - (c) Draw a theme for your client (Reddy's) case. **(2 marks)**
 - (d) Explain how you will deal with the weak points in Reddy's case in (b) above. **(3 marks)**
 - (e) What is a case theory? **(2 marks)**
4. Your client is aggrieved by what the client considers to be infringement of trademark by some traders. Your instructions are to immediately file suit seeking (an) appropriate remedy/remedies.
- Having concluded your client/witness interviews and conducted extensive research and documentation, you are now ready to undertake the requisite case analysis as part of the pre-trial preparation.
- Present a comprehensive report setting out all the pre-trial considerations that a lawyer must have in mind in conducting case analysis. **(15 marks)**
5. At the conclusion of the hearing of a Judicial Review Case, the Judge directs counsel to present their closing arguments by way of written submissions.
- (a) As counsel for the Applicant, present your closing argument. **(7½ marks)**
 - (b) As counsel for the Respondent, present your closing argument. **(7½ marks)**
6. For one to be appointed as a Senior Counsel under the Advocates Act, they have to be of irreproachable professional conduct and have rendered exemplary service to the legal and public service in Kenya.
- (a) Discuss in what ways an Advocate displays professional conduct and can render exemplary service to the legal profession and to the public. **(10 marks)**
 - (b) Outline the bodies and institutions established under Kenya law to ensure a coordinated, efficient and effective way of administering justice in the Republic of Kenya. **(5 marks)**