

THE KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION TO
THE ROLL OF ADVOCATES

TRIAL ADVOCACY - ATP 104

26TH NOVEMBER, 2014

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question **ONE**, and **THREE OTHER** Questions.
- (b) All questions carry fifteen (15) marks each.
- (c) Marks may be lost for illegibility.

PLEASE TURN OVER

1. A client walks into your office seeking legal representation. After introductions, she narrates her story as follows:-

Her husband was killed in a road traffic accident a while ago. He was driving a public service vehicle owned by their family's company. Her fifteen year old son who was a passenger in the vehicle sustained serious injuries and has just left hospital. The accident involved two other motor vehicles – one owned by the Ministry of Health and the other bore the inscription "New Life Gospel Church" on the door. She blames the careless driving of the two other motor vehicles for causing the accident.

- a) Formulate ten (10) questions you would put to her as part of your client interview. (5 Marks)
- b) Based on your client interview as well as research and documentation, prepare a comprehensive legal brief capturing the following aspects:
- (i) Parties to the case
 - (ii) Jurisdiction
 - (iii) Time of suing
 - (iv) Cause of action
 - (v) Pleadings
 - (vi) Evidence required

(10 Marks)

2. The following is a summary of the filings in a constitutional petition:

The petitioners argue that they have been tenants on land owned by the respondent for many years. In fact they are former employees of the respondent. They claim that the respondent has never paid their pension. They argue that their children go to nearby public schools and many of the petitioners work in the neighbouring Jua Kali workshops. They further state that the title to the parcel of land has a condition which prohibits the owner from setting up commercial structures on the land. They have nowhere to go.

The respondent is a large state corporation. It holds the title to the land in question and has never transferred or otherwise alienated the land. It knew all along that the petitioners were in occupation of the land. The corporation plans to construct high-end commercial buildings on the land. It has negotiated a deal with a foreign company and signed a development agreement with the company. In fact a 50% deposit of the consideration has been paid. The foreign company has on its parts "floated" shares to investors in its home country who have agreed to purchase part of the proposed buildings.

- a) As counsel for the petitioners, prepare your opening statement. (7½ Marks)
 - b) As counsel for the respondent, prepare your opening statement (7½ Marks)
3. You act for the plaintiff in a suit seeking damages for passing-off and a permanent injunction to stop the passing-off complained of.
 - a) Formulate fifteen (15) questions in examination-in-chief of the plaintiff. (7½ Marks)
 - b) Formulate fifteen (15) questions in examination-in-chief of an expert that you have called as a witness in the case. (7½ Marks)
4. a) State and explain the rationale of five (5) do's in cross-examination of witnesses. (5 Marks)
- b) State and explain the rationale of five (5) don'ts in cross-examination of witnesses. (5 Marks)
 - c) Based on your own hypothetical facts, formulate ten (10) questions to be used in impeaching a witness. (5 Marks)
5. a) You act for the accused person in a murder case and your client has put forward the defence of self-defence. Present your closing argument. (7½ Marks)
- b) You act for the defendant in a defamation suit where your client has taken the defence of fair comment. Present your closing argument. (7½ Marks)
6. You have convened the initial meeting of the parties to a dispute in your capacity as the mediator.
 - a) Present your opening remarks at that meeting. (5 Marks)
 - b) Your client has instructed you to file an application to strike out a suit on the ground of *res judicata*. Prepare your application and the supporting affidavit. (10 Marks)