

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 104: TRIAL ADVOCACY

FRIDAY 22ND JULY, 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer **Question ONE** and **ANY OTHER THREE (3) questions**
- (b) All questions carry **15 marks** each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. "Of course there's a search for truth going on in a trial, but it's not the main objective. Watching and listening to the witnesses, the factfinder is bound to be on the lookout for the liar. But trials often end up – usually end up, indeed – without any liars being unmasked. What the factfinders normally have to do is decide which parts of the evidence they prefer. An advocate's job is to lead his or her fact finder to a *preference* and thus to an *opinion*."

Keith Evans, The Golden Rules of Advocacy, p.51

Do you agree with this proposition? In this context, discuss the role of a trial advocate in court and indicate aspects of the psychology of advocacy that are critical in trial advocacy.

(15 marks)

2. "The success or failure of a trial advocate depends to a large extent on what witnesses say and how they say it. The lawyer who cannot control these two variables is as dangerous as a driver who cannot control his car." *Anonymous*

Critically discuss the ways in which a trial lawyer can control the testimony presented by witnesses in court.

(15 marks)

3. Section 300 of the Criminal Procedure Code provides that the advocate for the prosecution shall open the case against the accused person, and shall call witnesses and advance evidence in support of the charge.

Outline the elements of a prosecution opening statement in a criminal trial and explain whether the defence enjoys a similar right. If so, at what stage would the defence counsel make an opening statement?

(15 marks)

4. Present an analysis of the law and practice relating to the use of skeleton arguments and written submissions in civil and criminal proceedings in Kenya, noting to highlight the merits and demerits of their use.

(15 marks)

5. Distinguish between preliminary objections and trial objections and discuss the law and practice relating to both in Kenya.

(15 marks)

6. "It is essential for the maintenance of the rule of law and good order that the authority and dignity of our courts are upheld at all times. This court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors."

Refrigerator & Kitchen Utensils Limited vs Gulabeh and Popatal & Others (Court of Appeal, Civil Application No. 39 of 1990, Nairobi)

Discuss the law and practice relating to contempt of court in Kenya, indicating the standard of proof required and the penalties available against a contemnor.

(15 marks)