

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 104: TRIAL ADVOCACY

THURSDAY 1ST DECEMBER, 2016

DURATION: 3 HOURS

Instructions to Candidates

- (a) This paper contains **Four printed pages** including the cover page, with a total of **Six questions**
- (b) Candidates **MUST** answer **FIVE** questions
- (c) **Question ONE** is compulsory and carries **20 marks**
- (d) **All other questions** carry **10 marks each**
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required

PLEASE TURN OVER

QUESTION ONE

On 6/06/2015, John started operating a mobile money shop offering services for deposit and withdrawal of funds to his customers. On 10/06/2015 a customer came to deposit money at his shop. After tendering the sum of Kshs.1,000 to John for him to deposit the money in his account, the hawk-eyed customer closely watched John entering the Personal Identification Number (PIN) to his mobile money operating account and noted it somewhere.

As soon as John finished the deposit transaction, the customer snatched his mobile phone, ran to a waiting vehicle and sped off. Aware of the risks involved, John ran to his friend in a nearby shop and using his friend's mobile phone, called a customer care representative (CCR) for Yates Telecoms, the mobile service provider.

John reported the incident to the customer care representative and requested for all transactions on his mobile money account to be blocked. However, the customer care representative told John that he has to state the name of the customer who sped off with his phone. John did not know the name of the customer since he sped off before he could take down his details. The CCR declined to block John's account.

In the meantime, the rogue customer withdrew all the funds from John's account. Neither John's mobile phone nor the customer were traced again. John has instituted a suit in court against Yates Telecoms for negligence on its part claiming the sum of Kshs.300,000/- which was withdrawn from his account, general damages and costs of the suit.

You were recently hired as an Associate in the Litigation Department of Hardknocks Associates, the firm representing John in the matter.

- (a) Prepare a case theory for John's case. (16 marks)
- (b) Draft four (4) questions, excluding questions as to John's identity you will ask him during examination-in-chief at the hearing. (4 marks)

QUESTION TWO

Julius, an Advocate of the High Court was meant to attend court in a particular matter. Unfortunately he forgot completely about it as he had left his ²⁹bag at the office. At 10 a.m. he was called by his client who wanted to know whether the matter was proceeding and if indeed he would be attending court.

Not wanting to lose out on the brief, he quickly borrowed a coat and a tie from a colleague. The coat did not fit very well and was quite flowery. As he arrived at the court, he was out of breath and could not tell whether his matter had been addressed or not. He moved to the advocate's bench and enquired whether the matter had been called out from a colleague. Even before he could get an answer, the court clerk read out his case and he stood up and without even allowing the advocate for the other party who was senior to him to speak mumbled out some incomprehensible sentences. The magistrate noticing that the advocate was frustrated was gracious enough to allow the parties to take another date.

Focusing on the conduct of Julius, address the court etiquette concerns that arise for a practicing advocate. (10 marks)

QUESTION THREE

You have received a brief from Keith about the arrest of his brother Steve, a prominent politician who has been charged with hate speech. The particulars of the charge is that on 20th July 2016, at a public rally in Makadara, Steve uttered the following words

"People who support the opposition in this country are fools and ought to be taught a lesson. If you meet them, you know what needs to be done."

These words were intended to incite to violence among the members of the public.

The prosecution has indicated that it will call five (5) witnesses, among them three (3) individuals who were present during the rally where these words were allegedly uttered. It also intends to present an audio recording of the utterances in court.

Identify and discuss the key stages in the trial highlighting the legal basis of each stage and the techniques you will employ. (10 marks)

QUESTION FOUR

You are newly admitted to the Bar and have been employed at an established advocates' firm in Nairobi in the Civil Litigation Department. On your second day at work, you are approached by a client, Paul Adams, who is the Managing Director of Specifix, a trading entity with business interest in Information Technology and which supplies vast connectivity services to clients across the East African Region. Paul indicates to you that his firm entered into a contract with a consortium of East African Companies to supply internet data connectivity to them under a complex set of terms. Each of the companies would pay for the data usage at the end of the month. A formula in the contract would help determine how each company in the consortium would be liable to pay. He refers to a clause that allows parties to resolve arising conflicts either by arbitration or through litigation. He tells you that Porbal, one of the companies in the consortium registered in Uganda has not been paying as per the arrangement and despite demands from Specifix, it had only received a very small portion of what it is owed by Porbal for the last six months.

- (a) Explain the key skills you will have to employ to ensure that your client's case is effectively canvassed in the various stages of this dispute. (4 marks)
- (b) What places would you consider as possible avenues for canvassing your client's case where the skills of trial advocacy would come into play? (3 marks)
- (c) Briefly discuss the formal sources of law that must guide you to employ the relevant advocacy skills on the matter. (3 marks)

QUESTION FIVE

On 6/07/2016 at around 10.30 p.m., a robber wearing a mask entered Madu Convenience Store armed with a pistol and an AK47 rifle and ordered everyone to lie face down on the floor. He proceeded to the cash register, stole all the money in it and then disappeared into the night.

The cashier called the police to report the incident and gave a description of the suspect. One hour after the incident, the police arrested Danny, who was walking back to his house after escorting his girlfriend Briana. Danny is charged in court with the offence of robbery with violence on the basis that he fits the description of the suspect as given by the cashier.

- (a) Draft an appropriate opening statement for the DPP. (5 marks)
- (b) Draft an appropriate opening statement for the Defence. (5 marks)

QUESTION SIX

Jones entered into an Asset Financing Agreement with Dubis Financiers Ltd (DFL) for the purchase of some old buses which he intended to repair and put to commercial use. DFL agreed to lend him Kshs.10,000,000 for his project and disbursed Kshs.5,000,000 immediately to his loan account.

After one month, Jones asked DFL to disburse the balance of Kshs.5,000,000 but DFL declined on the basis that Jones had not provided an account of how he had spent the Kshs.5,000,000 disbursed to him earlier. In addition, DFL has demanded that Jones commences repayment of Kshs.5,000,000 failing which it would auction the buses he had purchased. The buses are parked at a garage where they are being repaired.

The asset Financing Agreement has a dispute resolution clause which provides that any dispute that may arise between the parties will be referred to a sole Arbitrator who will be chosen by the parties and the Arbitrator's decision will be final.

Jones had not read the fine print of the Agreement and does not understand why he cannot take DFL to court immediately.

- (a) Explain to Jones five (5) positive attributes of arbitration in the circumstances. (5 marks)
- (b) Citing relevant statutory provisions, advise Jones on how the subject matter of the arbitration proceedings would be preserved. (5 marks)

END