

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 104: TRIAL ADVOCACY

THURSDAY 19TH NOVEMBER, 2015

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates MUST attempt FOUR questions
- (b) **QUESTIONS ONE AND TWO ARE COMPULSORY**
- (c) All questions carry 15 marks each
- (d) Marks shall be lost for illegibility

PLEASE TURN OVER

1. "Cross-examination is hard. It is frequently dramatic, often exciting and in many ways it defines our adversarial system of justice. Cross-examination is the ultimate challenge for the trial lawyer... A poor cross examination... can be truly disastrous. The witnesses can range from un co-operative to hostile, and you constantly run the risk of actually adding weight or sympathy to the other side's case. Moreover, most cross examinations will inevitably be perceived by the trier of fact as a contest between the lawyer and witness. You can seldom afford to appear to lose."

In other words, cross examination is inherently risky. The witness may argue with you. The witness may fill in the gaps left in the direct testimony. The witness may make you look bad. You may make yourself look bad. And whatever good you accomplish may be subject to immediate cure on re-direct examination.

None of these problems can be avoided entirely, but they can be minimized." *Lubert, Steven; Modern Trial Advocacy, Law School Edition (2004)*

- (a) Discuss the rules that an advocate must adhere to in order to minimize the problems and perils of cross-examination and execute it effectively. **(10 marks)**
- (b) Give an outline of the critical rules or warnings regarding what an advocate must not do in re-examination. **(5 marks)**

2. "Of course there's a search for truth going on in a trial, but it is 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)

3. Tabu has been having a land dispute with his brother Bravo since the death of their father. The protracted dispute led the village elders to mediate between the two brothers on several occasions.

Unknown to them, Tabu was not satisfied with the outcome of the mediation and still remained bitter with his brother.

One evening while leaving his local club after a couple of drinks Tabu bumped into his brother. A war of words ensued and Tabu attacked his brother with a big stone from the road-side and left him for dead. Bravo died after getting to the hospital.

Tabu has approached you to represent him in the matter.

- (a) Against the above facts discuss any five basic UN Principles on the role of lawyers. **(5 marks)**

(b) Explain your critical duties to the court in the circumstances. (5 marks)

(c) Explain your professional duties to your client under the circumstances. (5 marks)

4. Your client Mr. Bob Awendo walked into Goldes jewelry shop one morning. He had been shopping around for an engagement ring and he was very excited about his plans to propose to his fiancée.

No sooner had he walked into the shop than a smartly dressed gentleman walked in and also began looking at the beautiful rings on the display. The next thing Bob heard was a gunshot followed by orders for everyone to lie down. He noticed that the smart gentleman was part of the gang. The robbery took barely 5 minutes and the robbers left the shop.

In the midst of the confusion, Bob managed to leave the shop only to be arrested outside the parking bay. The 'askari' at the door identified him as part of the gang. Bob's pleas about having nothing to do with the robbery, fell on deaf ears. He has been charged with robbery with violence and his family has hired you to represent Bob.

(a) Prepare your opening statement for trial. (7 marks)

(b) Outline and discuss ten elements and/or ingredients of an opening statement. (8 marks)

5. Jane bought a parcel of land in Kitengela from Kamau on 10.104 at a consideration of Kshs.150,000. To complete the transaction, the parties got into a sale agreement prepared by Mashamba Advocates. Upon the execution of the agreement, the funds were transferred to Kamau's bank and the title deed was handed over to Jane.

Two years down the road, Jane decided to sell the land so as to get fees to pursue her Masters degree. It is at this point that trouble began. She visits the lands office and discovers that she had been conned. The land was actually registered into the name of Abdalla. She has sued Kamau for the refund of her money.

Acting as Jane's lawyer, you have prepared for the trial. Set out:

- (i) five good facts
- (ii) five bad facts
- (iii) a theme
- (iv) a theory for your case. (15 marks)

6. Onyango is married with two children, the marriage does not seem to be working. The wife Judy ran away from the matrimonial home six months ago with the kids. She immediately filed suit in the Children's Court where she obtained orders that Onyango should maintain the children at Kshs.200,000 per month. During the trial, Onyango had filed an affidavit of means in Court wherein he swore that he had a net income of only Kshs.100,000 since he was amongst other things servicing a mortgage for the matrimonial home at Kshs.50,000.

Judy has instructed you to file for divorce and a suit to distribute the matrimonial property.

During ell-examination OnyaWgo surprisingly states in his evidence that he pays Kshs.100,000 per month while Judy pays nothing and that she is not entitled to a share of the matrimonial property.

Assuming you are cross-examining Onyango:

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| (i) | What is the statutory foundation for impeachment? | (5 marks) |
| (ii) | Give at least three (3) ways in which you can impeach Onyango's evidence. | (5 marks) |
| (iii) | What are the steps/elements of impeachment that you would invoke? | (5 marks) |
7. After a long 3 year murder trial where you were representing either the DPP or accused, you have been asked to prepare a closing statement for:
- | | |
|-----------------|------------|
| (a) The DPP | (7½ marks) |
| (b) The Accused | (7½ marks) |
- Ensure that in your submissions you bring out at least five key elements or ingredients of a good closing statement.
8. Ms Kuwachana has filed a divorce petition against her husband of ten years Mr. Kulewa on the ground of cruelty. In the particulars of cruelty she alleges that the husband is extremely violent, abusive and that he has threatened to throw her out of the matrimonial home.
- She **4** report incidents to the local police station. She obtained an OB number before procuring medical report which show severe blunt object inflicted soft tissue injuries all over her body.
- You have been instructed by Mr. Kulewa to defend the petition.
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| (i) | What are the five key rules of cross examination? | (5 marks) |
| (ii) | Draft at least ten questions in cross examination around the cruelty allegations. | (10 marks) |
9. (a) What is the statutory foundation for contempt proceedings in Kenya? (5 marks)
- (b) What are the powers vested in the Supreme Court Judges to deal with contempt of court? (5 marks)
- (c) Give the steps you would adopt in handling an exhibit in court during trial to ensure that it is admitted without any objections being raised by your opponent. (5 marks)
10. (a) As a trained trial advocate, give ten trial techniques that you should invoke in court so that you always win your cases. (5 marks)
- (b) What do you understand by appellate advocacy? (5 marks)
- (c) Give five differences between trial advocacy and appellate advocacy. (5 marks)