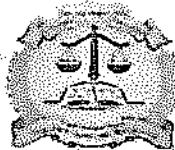


COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 104: TRIAL ADVOCACY

TUESDAY 29TH JUNE 2021

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **FOUR (4)** printed pages including the cover page, with a total of **Six (6)** questions.
- (b) Candidates **MUST** answer **FIVE (5)** 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

In the Affidavits filed in the Employment and Labour Relations Court in a labour dispute concerning unlawful termination, it has been averred that James was employed by ABC Milk Processing Company in the Sotik Milk Plant as an accountant on 30th March 2013 at a monthly salary of Kshs. 35,000. He was terminated from employment on 30th June 2019 on the grounds of misappropriating company funds and failure to properly account for funds under his custody.

Prior to his termination, he received a show cause notice which was dated 15th June 2019 which was hand-delivered to him on 19th June 2019. On the same day, he received a phone-call from the Nairobi head office requiring him to appear for a disciplinary hearing on 22nd June 2019. James alleged that this did not give him sufficient time to prepare for his defence as well as to travel to Nairobi for the hearing. He was therefore unable to attend the hearing.

James alleges that on account of the busy schedule at his work station, he was never able to proceed for his annual leave for two consecutive years.

Moreover, the company did not submit his statutory deductions for the last one year. He thus seeks: -

- Three months' salary in lieu of notice - Kshs. 105,000
- Twelve months' salary for wrongful termination - Kshs. 420,000
- General damages for infringement of his constitutional rights - Kshs. 1,500,000
- Cost of the suit

You are on record representing James.

- a) Draft the key questions you will ask during examination-in-chief when James takes to the stand. 7 marks)
- b) Explain the circumstances under which you will be allowed to ask leading questions during your examination-in-chief. (4 marks)
- c) Discuss whether leading questions would be appropriate when James is cross-examined by the opposing counsel. (5 marks)
- d) Examine the circumstances under which you will need to re-examine James after he has been cross-examined by the opposing counsel. (4 marks)

QUESTION TWO

Two years ago, you did your pupillage at XYZ firm of advocates in Nairobi. At the time, the firm specialised in conveyancing matters and had been retained by Peter and Paul to draft a Sale Agreement for them. As a pupil under the advocate who handled the brief, you sat in a number of meetings where Peter and Paul were in attendance.

At the time, Peter was selling a two-acre parcel of land in Karen to Paul. From the consultations, it emerged that Peter was interested in selling the parcel as he suspected it was located on a road reserve. He was therefore keen to get rid of it before the Kenya Urban Roads Authority (KURA) started repossessing the road reserves for construction of roads in the area. For his part, Paul was keen to use money he had irregularly acquired from the National Youth Service (NYS) before the government took measures to recover the money from his account.

You have moved from XYZ and opened your own firm. You have also been appointed to work for the Karen Stakeholders Association as a representative in the KURA Karen Roads Construction and Rehabilitation Projects. Paul has approached you to represent him in a dispute with Peter over the conveyancing of the Karen land. Paul tells you that he received a demand letter from XYZ alleging that he has failed to pay the final instalment of the proceeds to Peter even though he is already in possession

of the land. Paul however, argues that he has received information that the land lies on a road reserve and that KURA may repossess it soon.

From a conversation with a colleague at XYZ, you have also learnt that Peter had been informed by the firm that Paul's source of income was NYS money which has now been frozen by the Government in its efforts to recover the NYS money, which has led Peter to develop cold feet.

The parties intend to have the matter filed in court for adjudication.

- a) Explain four (4) reasons whether you will or will not accept Paul's brief. (4 marks)
- b) Elaborate on the duties owed by:-
(i) You to Paul as Paul's Advocate in this case.
(ii) The firm of XYZ as Peter's Advocates in this case. (3 marks)
(3 marks)

QUESTION THREE

The family of Shisia from Mumias has come to your chambers seeking advice and possible representation concerning a dispute between them and the Odongo's, their neighbours and in-laws.

They allege that Wanjala, Odongo's son, has been stealing their household items and livestock and selling them to other neighbours. They have complained to the local chief but nothing has been done. This has led to bad blood between the two families. In fact, a week ago, Wanjala was caught in the process of slaughtering one of Odongo's sheep and was thoroughly beaten by villagers. Now, Odongo claims that it is Eric, Shisia's first born son, who was the leader and is threatening retaliation. Two days ago, Shisia's grass thatched kitchen which is next to his house was burnt down at night. They suspect the Odongo's for being responsible for the arson. In fact, Alfonso, Odongo's second son, was seen buying petrol from the local petrol station earlier on the day the kitchen was burnt down.

- a) Explain to Shisia's family the various available avenues through which this dispute could be resolved highlighting the role you would play as their advocate should they engage you. (3 marks)
- b) Examine the sources of law that will guide the strategy you will adopt in advancing your would-be client's case in case the Shisia's family retain you to represent them in the legal proceedings that ensue. (7 marks)

QUESTION FOUR

You have been retained by Zablon to represent him in a dispute involving succession to his father's land. His father Patrick, died 20 years ago. He had five offspring's; Zablon the first born, Elfas, who predeceased him, John, Peter and Jane.

Elfas' Widow Anne had one son with Elfas but after Elfas's death and before her father in law died, she remarried and had two other offspring from the second marriage.

When Patrick was sick, John, Peter and Jane never visited him. Out of desperation, he transferred his land to Zablon. The transfer was registered just before he died. When Zablon's siblings heard of it, they sued Zablon and their father but never pursued the same after his death and the same was dismissed.

Last year, Zablon's siblings together with the late Elfas' wife ganged up and sued Zablon for a "share of their inheritance." The matter is coming up for hearing.

- a) You seek to make preliminary objections. Discuss any four grounds upon which such objections may be sustained. (4 marks)
- b) Examine the grounds upon which you would raise objections during the trial. (2 marks)
- c) Draft a brief opening statement that you will use during the commencement of the trial. (2 marks)
- d) Supposing the matter is heard to the end, explain why there is need to make closing arguments. (2 marks)

QUESTION FIVE

Bernard has been retained to represent Annette in a family matter concerning the custody of Peter whom Annette had with Bill before their marriage broke down leading to a legal separation.

Bernard has had a feeling that the Magistrate in the Children's Court has been biased in favour of Bill as they are from the same community. Bernard has written an opinion piece in one of the local dailies castigating judicial officers for the "emerging habit of ethnicizing family disputes to the detriment of innocent children." During the last appearance in Court, the magistrate had ordered Annette to release Peter to his father, Bill but this has not been done.

The matter is now listed for the main hearing. Bill, who was previously appearing in person has now retained Jennifer, a newly admitted advocate to represent him. There are two witnesses in court for Annette who is the Petitioner in the matter. Jane is Peter's class teacher, who in her witness statement has indicated that Peter's class performance had greatly improved in the last semester when he was staying with his mother. Agnes, Annette's house help has also been called as a witness to speak to the hospitable home environment provided.

After the court has settled down and the matter which is the first one on the cause list is called, Bernard immediately stands up and states, "we have Jane, the Petitioner's first witness ready to testify."

After the oath has been administered by the court clerk, Bernard proceeds to ask Jane to introduce herself and then examines her. As he asks her to respond to some questions, he walks around the court while Jane keeps her stare gazed on him throughout.

When Jane stands down, Bernard calls Agnes to the stand despite Jennifer's protest that this is improper. Before the magistrate rules on Jenifer's objection, Bernard quips, "I see at least young and pretty advocates are now joining the profession in their droves. I hope this will liven up the wheels of justice as the old system is a bit rusty on the edges." In light of these events:

- a) Explain the particular breaches of rules of etiquette and suggest the proper conduct by the parties. (5 marks)
- b) Discuss the issues of contempt of court that arise in the circumstances and the possible legal consequences for the objectionable conduct. (5 marks)

QUESTION SIX

"The very first time I cross-examined a witness, as a direct and immediate consequence of my cross-examination of that witness, my client went to jail. It took me a long while to realise that there is something which to reassure yourself about it. No matter (how badly you do in your cross-examination), it is the client who goes to jail." Irving Younger.

Do you agree with this statement? Analyse the common errors during cross examination of a witness in a criminal trial. (10 marks)

BEST PERFORMED



Officer	Initials
Checker	mmm
Data Entry	CV
1 st Verification	CV-1

86170



COUNCIL OF LEGAL EDUCATION
EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

UNIT CODE: **A T P I O 4** SUBJECT/UNIT Trial Advocacy.....

REGISTRATION NUMBER: [] DATE: 29th June 2021

INSTRUCTIONS TO CANDIDATES

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner <u>LAMDO</u>		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
2	10	u				
6	10	/				
4	10	/				
5	09	/				
1	10	/				
TOTAL MARKS	<u>58</u> -					

Write on both sides of the paper

Questions 2

Do not write in
either margin

a) Four reasons whether you will or will not accept

Paul's brief

This case raises issues pertaining to the duties of an lawyer advocate. First is the duty to avoid conflict of interest. This comes out in that I had previously worked on the subject matter of the dispute as a pupil at XYZ firm. To accept Paul's brief would conflict with the duty owed to Peter at the time of signing the agreement. In Kaplan King Woolen Mills v Kaplan & Fletcher Advocates, the court held that an advocate should not act where there is a conflict of interest.

Therefore, since the rules of professional ethics bind both practicing advocates and potential advocates, accepting Paul's brief would be acting in a matter where there is a conflict of interest.

The second reason why I will not accept Paul's brief arises from the duty of confidentiality. An advocate is required to keep confidential information acquired from the client confidential. In this case, I have confidential information about Peter which I have acquired from a former colleague at XYZ. I cannot therefore on the basis of possessing confidential information act in this matter.

The third thing to consider while making a determination on whether to accept Paul's brief is the cab rank rule. This rule requires advocates not to decline brief if the briefs are in the court the advocate practices. An advocate can decline brief if he/she does not have the expertise to handle it. In this case, I would decline the brief if I do not

have the competence and expertise to handle it.

The fourth reason why I may not accept Paul's brief is the fact that since as a pupil I sat in a number of meetings where Paul and Peter were in attendance, I might be called as a witness. If an advocate has a reasonable belief that he/she might be called as a witness, he should not act in the matter.

(b) Elaborate on the duties owed by:

(i) You to Paul

(ii) Duty to avoid conflict of interest - As an advocate, I am required not to act in a matter where there is a conflict of interest. The interest of Peter Paul in this case should not conflict with that of Peter who I had worked in a firm where he was a client.

(iii) Duty not to disclose confidential information - As Paul's advocate, I am required not to disclose confidential information. This includes information about his source of money.

(iv) Duty to zealously defend my client - I am required to zealously fight for the interest of my client and to uphold his interest above my personal interests.

(v) The firm of XYZ as Peter's advocates in this case

(vi) Duty not to disclose confidential information - The firm is bound not by the duty not to disclose

Write on both sides of the paper

Questions 2

Do not write in
either margin

information acquired from Peter.

(i) Duty to advise the client - the firm should advise Peter about the potential consequences of transacting with land to which he does not have good title.

(ii) Duty to defend the interests of the client.

As the advocates for Peter, XYZ are under a duty to zealously defend the interests of their client. This duty requires them to uphold the interests of their client.

(iii) Duty to act not to act where there is a possible conflict of interest.

In this case, XYZ firm owes Peter a duty to avoid acting where there is a conflict of interest. Since the firm prepared the contract agreement, acting for a party to the transaction may result to a conflict of interest.

Total Pts 250 / 100 Marks

Q1

Q2

Z

Cross-examination is the examination of a witness by the adverse party. In cross-examining a witness, the advocate tries to bring out facts that are favourable to his/her client's case. The statement by Irvin Younger is correct to extent that if an advocate is not tactful during cross-examination, his/her client may go to jail.

There are common errors that an advocate makes during the cross-examination of a witness during a Criminal trial. The errors are:

(i) Asking compound questions.

Compound questions are questions that are based on more than one fact. During cross-examination, an advocate is supposed to ask one fact questions. This ensures that the witness understands the questions put to them.

(ii) Badgering the witness

An advocate is not supposed to badger the witness during cross-examination. He/she should try to ensure that he/she is kind to the witness. This ensures that the witness cooperates.

(iii) Letting the witness take control

An advocate should take charge of the cross-examination. By letting the witness answer or provide information that had not been asked, the advocate is letting the witness take control.

(iv) Impeaching on favourable information

An advocate during cross-examination should only impeach on information that is unfavorable. Impeaching information that supports your case does not adverse

Write on both sides of the paper

Questions 6

Do not write in
either margin

your interest.

(i) Letting the witness to clarify on inconsistencies.

The opposing counsel should not let the witness clarify any inconsistencies arising from the testimony of the witness. This should be left to the Court.

(ii) Cross-examining when the witness has not done any damage to your case.

The opposing counsel should not cross-examine a witness where he/she is of the view that the witness' testimony has not done any damage to his/her case.

(iii) Asking scandalous and insulting questions.

The opposing counsel should be gentle with the witness. It is wrong for the counsel to ask scandalous questions.

(iv) Seeking help from the witness.

The opposing counsel should not seek help from the witness. Telling a witness, "I want you to help..." is wrong.

(v) A cross-examination should be a rail and not a siege.

One of the common errors advocates make is treating a cross-examination as a siege. The correct thing to do is for the advocate to ask the questions that he/she feels will advance his/her case and then to stop.

(vi) Leaving matters for the court to decide.

It is wrong for an advocate to say "I will let the court decide on that." An advocate is required to advance his/her case and to elicit facts that support his/her case and not to leave it to the determination of the court.

a) Preliminary objections

(i) Limitation of actions - A preliminary objection based on the limitation of action would be to the effect that the court cannot adjudicate on the matter ~~that~~ the right to sue cannot be exercised due to the limitation of actions. This would be where the time has passed and the claim is being brought outside the time provided for under the limitation of actions Act to bring the claim. In this case, after a period of 20 years has passed, in contract matters, the limitation of actions is 6 years. If the claimants are claiming that the transfer was not lawful, then a preliminary objection can be raised based on limitation of action.

(ii) Res judicata

A preliminary objection based on res judicata is premised on the fact that the matter being brought to court has already been before the court and has been determined. For res judicata to be raised, it has to be shown that the subject matter of the suit is the same, the parties are the same and the facts are similar in the two suits. In this case, since the first case against Zablon was dismissed, another suit on the same subject matter cannot be instituted.

(iii) Want of jurisdiction

A preliminary objection can be raised that the court before which the suit is instituted does not have jurisdiction to deal with the matter. As stated in Owners of Motor Vessel Lilwan 's' case, the court should not proceed in a matter where it does not have jurisdiction.

Write on both sides of the paper

Questions 4

Do not write in
either margin

(iv) Capacity to sue

A preliminary objection can be raised on the ground that the parties lack the capacity to institute the suit. Without the capacity to sue, they do not have the standing before the court.

(b) Grounds upon which you would raise objections during the trial.

(i) Admissibility of evidence.

An objection can be raised during trial on the ground that the evidence that is being adduced is not admissible. In this case, as for example, hearsay evidence would be inadmissible.

(ii) Leading questions

I would raise an objection if the advocate for the other party is asking leading questions in examination-in-chief and in re-examination. These are questions that suggest an answer.

(c) Opening statement

"My Lord, this is a case of [clear] witch hunt. This suit was brought with the sole aim of ensuring that the my client does not enjoy what is rightfully his. As the evidence will show, the plaintiffs in this case abandoned their father at his hour of need. My Lord, my client stood beside his father and nursed him until his death. My Lord, before his death, my client's

father rightfully & and legally transferred the said property to my client. The plaintiffs in fact brought a similar suit 20 years ago which was dismissed for want of prosecution. They are therefore barred from bringing another suit concerning the same subject matter. I will therefore be asking this Honourable court to dismiss the plaintiff's suit on the basis that it is time barred and that entertaining it would be re-litigating a matter that a competent court had dismissed.

(d) Need to make closing arguments

(i) Closing arguments point the court to the issues raised in trial, the evidence presented and why the court should hold in favour of one of the parties. They seek to persuade the court to hold in favour of a party.

(ii) A closing argument is a way of drawing the court's attention to the key evidence provided by the a party. This is the evidence that points and supports the case theme of the party making the closing argument.

Tariq Ali Mughal

27

Write on both sides of the paper

Questions 5

Do not write in
either margin

a) Breaches of the rules of court etiquette and the proper conduct by the parties.

i) Bernard's conduct of addressing the court breached the rules of etiquette. In standing up and addressing the court without ~~without~~ using the term 'Your Honour' ~~and~~ ^{and} steady Lord he did not show respect to the court. (J)

ii) By examining Jane without giving Jennifer a chance to first examine the witness in examination-in-chief he acted in contravention of his duty to the opposing counsel. Since he knew that ~~to~~ Jennifer was a new advocate, he should have informed her of the fact that she should ~~or~~ examine the witness first! (J)

iii) Improper conduct by Bernard while referring to Jennifer. Bernard's remarks concerning the objection raised by Jennifer were improper and violated the court rules of court etiquette. He should have been respectful. (J)

iv) Bernard walking around while asking Jane questions. An advocate is ~~not~~ supposed to be ~~steady~~ and ~~to~~ face the witness while ~~he~~ she is asking questions in examination. (J)

v) Bernard's action of calling Agnes to the stand despite objection by Jennifer. (J)

In calling a witness to take the stand, Bernard violated the rules of etiquette. First, he should not have been let the court rule of Jennifer's Jennifer's objection. An advocate is supposed to treat his ~~advers~~ the opposing counsel with respect. (J) 4

(a) Bernard breached the rules of etiquette by disregarding the procedure of the court. An advocate is supposed to address the court with dignity and to have due regard to the rules of the court. After the court had settled down, Bernard should have waited asked for the court's permission before calling Jane as a witness. Similarly, he should have risen gently and addressed the court in a respectable manner.

(b) Issues of contempt of court and possible legal consequences.

Bernard's actions concerning the case are in contempt of court in a number of ways.

First, by publishing the opinion piece in one of the local dailies containing judicial officer, Bernard is in contempt of court. This is indirect contempt because the actions were done outside the court. The courts have the power to punish for court committed outside the court. Bernard can therefore be imprisoned or fined.

Second, Bernard is in contempt of court by disobeying a clear and unambiguous order of the court which he had knowledge of. This concerns the releasing of the child to Bill. He should have advised his client to release the child to Bill. By disobeying a court order, Bernard is in contempt of court which he can be imprisoned or fined. The court can also impose both penalties.

Third, by making derogatory remarks before the

Write on both sides of the paper

Questions 5

Do not write in
either margin

court, Bernard is in contempt. This is contempt in the face of the court or contempt facie curiae. The remarks made concerning young and pretty advocates are derogatory. The court can order that Bernard be imprisoned or fined as their amounts to criminal contempt.

Fourth, by conducting himself in total disregard of the rules of the court, Bernard is in contempt of the court. His actions are improper especially on the fact that he does not call a witness despite objections by the other counsel. The consequence is that the court can order for his imprisonment or order that he be fined.

Fifth, by not giving the court a chance to rule on the objection raised by Jane, Jennifer, Bernard disrespected to court. and This disrespect is also seen in his improper address to the court in that. The consequence is that the court has the power to order for his imprisonment or to fine him.

John S P O Marks

2

Do not write in
either margin

Questions

Write on both sides of the paper

- (a) Questions that I will ask in examination-in-chief.
- (i) Good morning. Can you please state your name? ✓
- (ii) When did you become an employee of the defendant? ✓
- (iii) In what position were you employed? ✓
- (iv) What was your monthly salary? ✓
- (v) What were the terms of your contract of employment? ✓
- (vi) Why was your contract of employment terminated? ✓
- (vii) When did you receive the notice to show cause? ✓
- (viii) When was the notice to show cause dated? ✓
- (ix) How did you learn of the disciplinary proceedings?
- (x) Why did you not attend the disciplinary hearing?
- (xi) What made you not to take leave during the period of your employment?
- (xii) How has the termination of your employment affected you?
- (xiii) What do you seek from this court?

- (b) Circumstances which I will be allowed to ask leading questions during examination-in-chief.

- (i) Leading questions are allowed on introductory matters - In this case, I will be allowed to ask leading questions on matters that are introductory.
- (ii) Leading questions are allowed in undisputed facts.

Where the facts are undisputed, I can be allowed to ask leading questions.

- (iii) Leading questions are allowed to be asked in where the opposing counsel does not object to the

Write on both sides of the paper

Questions /

Do not write in
either margin

leading questions being asked.

(iv) With the leave of the court, I can be allowed to ask leading questions.

(c) Discuss whether leading questions would be appropriate when James is cross-examined by the opposing counsel.

Leading questions are questions that suggest an answer the person asking the question wants to receive. In cross-examination, leading questions are allowed. They are therefore an ~~tool~~ important tool for the opposing counsel.

First leading questions are used to adduce information that is unfavourable to the other party's case. By asking a leading question, the opposing counsel tries to bring out the inconsistencies in the witness' testimony.

Second, leading questions are appropriate in cross-examination because they enable the opposing counsel to get the information that he/she desires from the witness. By asking a witness a leading question, the opposing counsel is able to extract information that is favourable to his/her case.

Third, leading questions enable the opposing counsel to control the cross-examination. This is because the counsel is able to restrict the witness to the question asked. This cuts short on time as the witness does not spend time retelling their story.

Do not write in
either margin

Questions

Write on both sides of the paper

Fourth, leading questions would be appropriate in cross-examination in that they would make it easier to cross-examine witness and to adduce favourable evidence without the witness having to tell the story.

(d) Circumstances under which I will need to re-examine James.

(i) Where new matters were raised in cross-examination if James in cross-examination raised new matters, then I would re-examine him on those matters.

(ii) To clarify information

I would re-examine James where there is a need to clarify information. This is especially in a case where the cross-examination revealed inconsistencies in his testimony.

(iii) I would need to re-examine James where the cross-examination has done damage to my case. During the re-examination, I would seek to bring out testimony that is favourable to the case I am advancing.

Total ~~Ques~~ 10 Marks

WORST PERFORMED

046794

Officer	Initials
Checker	CJW
Data Entry	CT
1 st Verification	KJM



COUNCIL OF LEGAL EDUCATION
EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

UNIT CODE: **A T P I D 4** SUBJECT/UNIT **TRIAL ADVOCACY**

REGISTRATION NUMBER:

DATE: **29TH JUNE 2021**

INSTRUCTIONS TO CANDIDATES

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1	2	J-O	02			
2	0		00	PJ		
3	0		01	PS		
4	0		00			
5	2		02			
TOTAL MARKS	4		05			

+ James, kindly confirm to the Court that

1. James have you ever worked or been an employee of the ABC Milk Processing Company?
2. For which period of time ~~and~~ at a salary of how much were you employed?
3. What led to the termination of your employment ~~and~~ how were you informed of it, basing on your answer?
4. How did you respond to your notification ~~and~~ within what period of time were you given to give such response?
5. Inform this honorable court if ~~such~~ such period was sufficient ~~and~~ give the basis upon which you deem it insufficient.
6. James, Kindly inform the court if you deem the requisite notice to appear before the the disciplining hearing, as you have informed us, in order, ~~and~~ whether you appeared?
7. Basing on your responses, inform this honorable court whether there were any expenses that you incurred?
8. James, we kindly request that you give a breakdown of the incurred expenses ~~and~~ the basis upon which you justify them.

DT

9. James kindly indicate to us that the monies amounting to Kshs 105,000 are due to the failure of issuance of a 3 month prior notice to your termination on the basis of your salary.
10. Confirm that you are further claiming an amount of Kshs 420,000 for wrongfully termination as per the law.
11. Further Confirm to this honourable court that you hereby seek Kshs 1,500,000 for general damages caused upon the infringement of your Constitutional rights.
12. Is it true that you are claiming costs of this suit?

61

REGISTRATION NUMBER:

Write on both sides of the paper

Questions I (b)

Do not write in
either margin.

Being that the damages claimed are special damages with exact figures amounting to the costs incurred, the plaintiff's advocate is allowed to have done prior calculations during the pre-trial stage and come up with the exact figures. Therefore during examination in chief all there need to be is a confirmation of the figures and not calculation from scratch.

Had they been purely general damages no precise figure is placed on the costs and expenses or loss suffered, it thence is a one on one with the defendant and the Court to see what amount is settled at.

James has exact salary summations in lieu of notice which legally is three months prior the termination under the Employment Act. Further yet, there has been failure to submit his statutory deductions for one year. This deductions become a burden on James regardless of who or how they were amounted to the current figure. His advocate must then demand the monies as they are.

The opposing counsel lacks similar standing since they may use it against him; however this is a double-edged sword; they may as well seek to confirm how he arrived at the figures. The defence is the determinant.

The opposing counsel may not be allowed but yet allowed for justice and impartiality. The opposing side may arrive at a ~~convincing~~ summary dismissal which is equally legal and in order and further yet we negligence on James' part to appear even after notice. He was a risk and may have misappropriating funds in allure of his salary thus the lack of statutory deductions. Thus dismiss the claims.

However its double-edged because should the company be in agreement of its failure to give notice and amongst the other claims and seek mitigating factors to reduce the amounts, then they may only have a right to know how the figures were at. Thereafter seek to have the general damages reduced and not much then.

The framing of the question and the objection more so being the defence is a great determinant so that the parties may as the employer take given them the position or stand to take.

170

REGISTRATION NUMBER:

Write on both sides of the paper

Questions 1 (d)

Do not write in
either margin

The company having taken a defense of summary dismissal for instance, James then will have to confirm on the nitty gritty of the claims of misappropriation of the company's funds. The reasons and circumstance upon which such claims arose and duration.

His failure for attending the hearing ~~yet~~ yet he had earlier or prior notice though not the requisite 3 months. He should have done all he could since he had been informed that he was leaving the company anyway.

His reason for failure to raise alarm for one year of the company's failure to submit his statutory deductions.

His failure to follow up on the matter after receiving the notice that way personally delivered to him, with claims of misappropriation of funds.

80

Under the Evidence Act section 55 there is all privileged evidence. Initially it was intended to perform illegal acts as to make use of illegally acquired money to acquire land that is on a road reserve.

An advocate and persons working with him or he ought to have such information and keep it to themselves ~~very~~ knowingly that it would harm another.

On the other hand now both know the nature of the issue and this releases the advocate of having not to act or be party of such a matter, but it should not be an excuse to proceed with illegal activities.

Since ~~Peter~~ ^{Peter} knows about the reparation and is not angered or does not feel short-changed then you may take up the matter. ~~Peter~~ Paul now will be a matter to push so as to attain the funds of which equally Peter is well aware of the initial source and the government now know so the advocate is not ~~providing~~ ^{providing} any illegal activities.

The parties disclosed the information themselves hence there is no privilege and yet again all parties involved including the government are well in light of the proceeding.

In addition having a background of the happenings the advocate may claim ~~any~~ ^{any} part of the law.

To Paul as an advocate one ought to inform him of the patent and latent dangers. This shall be after performing a proper search at the registry seeking to know the proper ownership of the land, the cadastral map, the boundaries and at the registry, any developments intended shall and ought to be shown. Further more, the advocate ought to do a site seeing to determine where the land is situated. The advocate should get independent surveyors and valuers so that the vendor may determine the value of the land upon repossession, whether it is worth it. Having been informed of the reason for sale then Paul is to be guided whether he willingly intends to acquire land that is to be possessed and whether there is value for monies spent or if he would rather not proceed with the transaction on the basis of failure to inform him of the ongoing as an illegal act since the XYZ firm was well aware of the ongoing and the advocate as well.

BD

The XYZ firm ought to have the power of Attorney in this case bc it general or special to ensure that Peter gets value for his property. Both parties are in the know how of the ongoing and above all the government knows about the NIS money and has now frozen it. With the power of Attorney, it is upon the firm to seek that their client's assigned duties see the light of day and are completed.

The firm should do all they can to have the land sold but they also have a duty to Paul to reveal him all the latent and patent defects. They should have proper documentation from Peter and ensure a legally certified transfer of the land to Paul.

Whether the money has been transferred frozen ought not be their burden but the buyers issue.

The Advocate or firm with the force of Attorney only seeks to see that the relevant powers were instituted the duties have been accomplished more so for specific powers.

ABD

The families may use mediation which is an Alternative Dispute Resolution (ADR), where they both come together and discuss their issues before a mediator. This does not have to be through the Court Annexed Mediator. It

The parties may file suit and seek to have mediation through Court Annexed mediators or the Courts may suggest for a mediation. Thus having gone through the court process though not entirely a mediator comes in.

The parties may go through the entire court process and which is deemed to take longer than Alternative Dispute Resolution methods inclusive of Arbitration.

71

The gravity of the matter and the duration of the grievance

The chances of reconciliation and the willingness of the parties involved.

The nature and depth of damage caused between the parties.

The number of parties involved and the chances of reconciliation amongst each or the higher percentage.

The societal customs, with the Constitution having supremacy, of those involved.

The influential risks amongst the parties and the avoidance of recurrence after the mode to be chosen.

However above all the evidence should always come from the clients / parties as was in the matter of *Faith Musingi v Alphonse Musingi* thus it is upon the parties to determine which mode they are most comfortable with and the advocate is only a legal representative. He acts as an officer of the Court representing the clients in a manner as to acquire justice in accordance with the law.

The security and safety of the society at large is equally involved despite the decision made even at certain levels of crimes eg murder

Preliminary objections are brought up on the basis of law and already there is an ongoing case against Zablon on the same matter (~~res judicata~~) that was not pursued, hence dismissed. A matter cannot be heard twice on the same basis.

The parties due to the legal transfer that was registered lack the capacity to file suit against Zablon more so than the siblings' wives due to the order of consanguinity. The registered transferee was final and legal.

The parties further lack the legal capacity to file suit against Zablon since they do not come in as siblings nor do they come in as part of the 6th degree of consanguinity this is in reference to the wives.

They failed to contest the registered transfer when the father registered the same, they therefore lack any legal capacity to file suit.

DD

Zablon might have influence the father and therefore the transfer was not out of his own consent but coercion.

The transfer was not done in a manner that the father well understood what he was doing as he was ill. He was of unsound mind then and lacked the required capacity due to lack of memory, and was not in total knowledge of his actions. Thus question the transfer.

SD

4

4 (c)

In the matter of the above mentioned, I hereby represent the opposing party of the claims herein.

I hereby stand before the court and promise to adduce evidence that will and shall prove to you that all and any claims that have been made by the claimants are untrue and unjust under the laws of Kenya.

SD

4 (d)

It is with great pleasure that the opposing party wishes to put this matter to finality as per the judgment of this honorable court.

SD

Rules of etiquette demand that while a matter is ongoing with the parties in or out of court, there should be no interruptions as such, no noise or unnecessary movements that will interfere with the proceedings. The courts should not be discriminatory and neither should the attendants, as such, gossiping about "pretty advocates" is totally out of order. Court etiquette calls for court attendance with dignity and authority of the Court retained in all ways and means so that each member in attendance should not use any other to in any way interfere with the ongoings or he himself interfere with the proceedings of the Court. These should be at all times followed to the letter the procedures of the pleadings, objections or any other commentaries that one is legally allowed to use in a Court room. Use of insults or terms that raise shame to officers or attendants of a court of law causes the court to lack its dignity. Equally commentaries on ongoing matters makes such matter held in the court lack meaning and the court loses its authority. Nobody is allowed to make any comments on ongoing matters until such are decided upon. This gives the court the due regard entitled as a means of resolving matters and seeing justice to all.

Q2

Contempt of Court can either be in a Court rooms or outside Court rooms this was the case in Wangari Mathai vs. R, where there was contempt outside court rooms.

In this case it has been both inside and outside. The Magistrate already was involved in conflict of interest at a personal level as seen in the case of Kapan Stratten vs. L.P.Z. When ever arises in office (magistrate) of Court ought to recuse himself / herself. This is so as to ensure that no party is discriminated against. Bernard also should have undergone a criminal contempt of Court act whereby he should have been tried for the accusations that he made and the mutter bread.

Bernard is well in order to self representation but he may not be in order in the manner in which he does it, there are laid out procedure of which one states that he or she shall represent himself and walking around the court makes it lose its dignity and authority as a place of Court officer and not any other attendant. Witnesses as well ought not be present with whom will then represent in court, this causes a great conflict of interest and it is mandatory that Bill and Jenje seize representation since they also have been witnesses.

Bernard is impersonating an advocate and that ought be, if he represents himself then he remains behind the dock and proceeds there are procedures and limitations

