

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.

ATP 104: TRIAL ADVOCACY

WEDNESDAY 26TH OCTOBER, 2022.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains SIX (6) 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

Ms. Stenton and a group of 4 friends (Andy, Martin, Dorothy and Liz) had completed their Master Degree programme from the University of Pretoria. Ms. Stenton finished top of her class and had received a job offer from Oracle Limited. Her starting salary was USD 2,500 per month. To celebrate this achievement, Ms. Stenton invited her 4 friends for a holiday in Kenya. They contracted Boon Adventures Limited ("BAL"), a tours and travel company based in Nairobi, to organize their trip. Upon arrival at Jomo Kenyatta International Airport, they were received by Mr. Kasimu, BAL's representative. He drove them to Naivasha Flamingo Lodge (owned by Maisha Enterprises Limited) where they were to stay for 5 days.

On arrival, Mr. Amini gave Ms. Stenton's group a briefing on the main activities and attractions available at the Lodge. He mentioned to them that they should not walk outside their cottages at night when unaccompanied as there were wild animals that wander into the Lodge's compound. They should call the Lodge's reception for a guard to accompany them. They were also informed that they should only walk on designated paths.

That evening, at around 8:30pm, after Ms. Stenton and her group of friends had had dinner in the main restaurant, they walked to their cottages accompanied by a guard. Ms. Stenton and Mr. Andy walked slower than the rest of the group and were left behind. They were having an animated discussion about climate change that had led to Lake Naivasha waters breaking their banks into the Lodge. Ms. Stenton noticed some movement in the bushes nearby. She moved closer to find out what was causing the movement. She noticed a baby hippopotamus. Out of excitement, she took out her mobile phone and started taking pictures. Suddenly, she heard Mr. Andy shouting at her to run! However, before she could react, she was attacked by the mother hippopotamus and trampled upon.

Andy ran to his cottage to call for help. It took 30 minutes for an ambulance to get to the scene. The Lodge's representatives looked helplessly as Ms. Stenton writhed in pain. They had no first aid kit or bandages to help reduce the bleeding. Upon arrival at the hospital, Ms. Stenton was pronounced dead. The postmortem report by Dr. Arusha, showed that the cause of death was due to blunt force trauma and excessive bleeding.

The firm of Unknown and Co Advocates has been retained by Ms. Stenton's parents, Mr. and Mrs. Smith to pursue a claim arising from the death of their daughter. You have been working in the firm of Unknown and Co Advocates and have been asked to handle the brief.

- a) Draft a case analysis in this context. (10 marks)

- b) Draft the opening statement you would make at the start of the trial. (5 marks)
- c) Assuming you represent the Lodge in the suit filed by Mr. and Mrs. Smith, draft five (5) key questions you would ask Mr. Andy in cross examination. Assume that introductory questions have already been put to Mr. Andy. (5 marks)

QUESTION TWO

Absalom approaches you immediately you are admitted as an advocate of the High Court of Kenya seeking to retain you in a claim he has against Soft Africa Ltd. a software vending company for which he has been providing web designing services.

- a) You have invited Absalom to your office so that you can carry out a client interview. Explain three (3) core component that you will include in the client interview to make it most effective. (3 Marks)
- b) In the course of the interview, it emerged that Absalom had designed three websites for law reporting for which he had raised an invoice of Ksh. 1,500,000/- that had remained unpaid for about 2 years. Absalom had sent out two reminder letters, but there had been no response. At one time, he went to the Offices of Soft Africa Ltd. in Nairobi, where Alexander, the manager, offered to pay him Ksh. 1,000,000/- as part of the outstanding debt, but Absalom declined the offer. Since then, he has tried to contact Alexander by telephone, but has been unable to reach him as Alexander refuses to pick his phone calls.
With the documents supplied to you by Absalom including his witness statement at hand, you have now filed a suit at the Resident Magistrate Court at Mlimani and the matter is coming up for hearing. Chat out your examination-in-chief of Absalom as your first witness that would adduce all the relevant evidence necessary to prove his claim. (5 Marks)
- c) Explain why it is not always necessary to carry out re-examination and elaborate the circumstances that would lead you to carry out re-examination after the advocate of Soft Africa Ltd. has conducted his cross-examination. (2 Marks)

QUESTION THREE

Upon being admitted to the bar, you joined the firm of AML LLP. The firm of AML LLP has been handling an arbitration dispute on behalf of the GDK, a State Corporation in Kenya. The Claimant in the arbitration dispute is Universal Limited, represented by the firm of Okub & Co Advocates. Universal Limited is incorporated in the Seychelles and has only been in Kenya to implement the tender won from GDK for the construction of

roads in Makueni County. For this reason, Universal Limited's main assets are not in Kenya.

Upon conclusion of the arbitration proceedings, the Sole Arbitrator, Mr. Tom delivered his Final Award on 25th July 2022. Upon collection of the Final Award, you note that the Claimant has been awarded USD 17.5 Million together with interest at the rate of 12% from the date of the Final Award to the date of payment in full. The Claimant has also been awarded costs of the arbitration proceedings. In the course of reviewing the Final Award, you note that the Sole Arbitrator dealt with and dismissed a Counterclaim and proceeded to award costs of the dismissed Counterclaim to the Claimant. When you peruse the Statement of Defence filed by AML LLP, there was no Counterclaim pleaded. You have also noted that the Sole Arbitrator made an award of USD 1.2 Million on a claim that was not within the scope of the arbitration agreement or the pleadings by the parties. The parties had agreed to reserve a right of appeal on points of law against the Award pursuant to Section 39(4) of the Arbitration Act.

GDK's Corporation Secretary calls you in a panic stating that Universal Limited has obtained a decree arising from the Final Award and is in the process of execution to recover the fruits of the Final Award. In this regard, Universal Limited has obtained a garnishee order nisi whose effect is to freeze all GDK's bank accounts. The Corporation Secretary informs you that the effect of the freezing of GDK's bank accounts is that GDK will be unable to pay salaries of its more than 1000 members of staff or meet its recurrent obligations.

GDK's Corporation Secretary has given you instructions to move to the court to stay the execution pending appeal. The application has been filed.

Draft Skeleton Arguments for filing in court in support of an application for stay of execution pending appeal. (10 marks)

QUESTION FOUR

By an Originating Summons filed at the High Court by the Ethics and Anticorruption Commission (EACC) pursuant to section 55 of the Anti-Corruption and Economic Crimes Act, 2003(ACECA), Frank, a former legal officer of the Kenya Medical Supplies Authority (KEMSA) has been accused of possessing illegally acquired and unexplained assets, which the EACC wants forfeited to the state. The Court has placed a temporary injunction on the property prohibiting any transfers by Frank of properties under his possession until the matter is finally determined.

Frank approaches Martin, who previously worked at KEMSA as a legal officer and is now a partner at Extra-Legal Advocates, to represent him. Extra-Legal Advocates has a

number of matters that it is handling on behalf the EACC at the High Court, though none of them is being addressed personally by Martin.

From their previous interactions at KEMSA and the discussions within members of the law firm, Martin knows that Frank had amassed a lot of wealth when he served as the chief accountant at KEMSA and would, therefore, be a good client to the firm. Moreover, in the course of their engagement, and as the suit progresses, Martin discovers that Frank has been secretly transferring some of the property to his three brothers in order to avoid the risk of losing everything should the Court rule against him. Also, Frank has told Martin that he knows one of the three judges on the bench and has hinted that he was willing to connect Martin to him so that they "could discuss how best to deal with this matter." He has moreover instructed Martin to seek the recusal of one of the judges, whom he feels will not be favorable to his case, having previously dated the judge's wife when they were in neighboring secondary schools. Currently, the wife of that judge has filed for divorce and the matter is pending in court.

In order to make the recusal application successful, Martin writes an article in one of the dailies, suggesting that a judge who sit in the anti-corruption division is emotionally unstable because of some matrimonial issues, and during one of the hearing dates, the issue of that publication is brought up by another judge on the bench. Martin is asked to retract and apologize, but instead of doing so, he tells the Court that "the nature of their role is such that they must develop a thick skin, and in any case, what he wrote is actually true".

- a) Elaborate on the cab-rank rule as applicable in this case and discuss three (3) particular grounds that should have legally led Martin to consider not taking it up, or to recuse himself even after having accepted the brief. (6 Marks)
- b) Examine the aspects of contempt of court that have arisen in this case and how they may be dealt with under the relevant law. (4 Marks)

QUESTION FIVE

In *Quick Enterprises vs- Kenya Railways Corporation, Kisumu High Court Civil Case No. 22 of 1999*, the court held:

"When preliminary points are raised, they should be capable of disposing the matter primarily without the court having to resort to ascertaining the facts from elsewhere apart from looking at the pleadings alone."

With the help of relevant case law, analyze any five circumstances that would yield a positive affirmation of a preliminary objection. (10 Marks).

QUESTION SIX

You are a newly admitted advocate to the Kenyan bar and have been requested by the lead advocate in the firm to which you are attached to represent Alfred, a longstanding client of the firm, in a matter where he seeks to recover an insurance claim for the loss to his shop caused by fire. It comes to your attention that Alfred has had a long-term engagement with these insurers with a number of his other properties still insured by them.

- a) Write a brief advising Alfred on three alternatives he should consider for settling this dispute and highlight to him the role you will play in the process as his advocate in case he opts to pursue either of these options. (6 Marks)
- b) If this matter goes into litigation, examine the core rules of advocacy that will guide you in the assignment as an advocate. (4 Marks)

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

UNIT CODE: A T P 1 0 4 SUBJECT/UNIT .. TRIAL ADVOCACY.....

REGISTRATION NUMBER: [REDACTED] DATE: 26th Oct 2022

INSTRUCTIONS TO CANDIDATES

- 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.
- Do not write your name anywhere in this booklet.
- Attempt each question on a fresh page of the booklet.
- If an additional booklet is used, it MUST be fastened at the END of this booklet.
- Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
- Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
5	8	AOD	8	TK		
4	9	AOD	9			
6	9	AODV	9			
2	10	AODV	10			
1	20	AOD	20			
/	/	/				
/	/	/				
TOTAL MARKS	56	VL	56			

Write on both sides of the paper

Questions 8.5.

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either margin

A preliminary objection is one of the type of objections that can be raised. It is mostly raised at the onset of trial or at the time of filing pleading. When it is raised, a judge should not proceed with the substantive matter of the case before dispensing off with such objection.

A defendant intending to raise a preliminary objection should first raise it in the statement of defence. Where it is after filing of pleading then the parties should file a notice of preliminary objection and serve it upon the other party.

When raising a P.O., party should state clearly specific law he relied on.

In the case of Matchless Biscuits, it was held that a P.O. should only be raised on a point of law. This would be on circumstances such as,

Jurisdiction - The case of Lillian's Motor vessel v Caffex Oil. It was pointed out that Jurisdiction is everything without which a court must drop its trial. Where a party raises a preliminary objection on jurisdiction, then the court should drop everything else on the matter and determine this first. This is because any decision it makes and its power to not have jurisdiction would be voided.

Limitation of time - The law has provided specific timelines within which a party can bring their claim. Failure to abide by the timelines would thus distinguish their rights. The limitation of

Actions Act has provided that, Civil cases should be filed within 3 years of date of incident. Contracts - 6 years. Thus bringing of a case that after 5 years would be time barred and a court cannot entertain such a matter.

Ongoing case between same parties and subject matter. The law provides that a party should not propose to file a matter in different courts where parties are similar and subject matter also similar. This is to prevent courts from dealing with duplicity of matters and to prevent people from getting two different judgments where they would attempt to execute maybe only the most favourable or even both of them.

Per Judicata. This is where a party proposes to bring a case which had already been heard and determined either by the same court or a different court. This protects the defendant from having to keep going to court over same matter and also allows finality of matter.

Does not disclose a cause of action. This would be things like negligence, breach of contract, etc where a pleading doesn't disclose a cause of action, then there is no remedy in law for it. Courts can only offer remedies based on the cause of action and where there isn't one, then the court cannot hear the matter. This is provided under Order 2 Rule 15 of the Civil procedure rules.

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Questions 4

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either margin

The 'cab-rank rule' is the rule where advocates are obligated to take briefs that are presented to them. Under Article 50 of the Constitution of Kenya, every person has the right to an advocate of their choice.

Every person accused has the right & representation by the state.

Therefore, an advocate is obligated to take cases presented to him unless there are circumstances precluding.

Martin should not have taken this case because:

i) Conflict of interest - this would occur where an advocate's duty to one client would be adversely affected should he act on the new case.

Thus, being an advocate for EACC taking Frank's matter would be adversely affected by the duty he owes to his client EACC.

ii) Martin should not have taken up the matter because he might be called as a witness and might even know on a personal level the witnesses who would be called. An advocate cannot take up a matter where there is likelihood of being called as a witness. Being that they worked together when the alleged crimes were committed, there is a possibility of being a witness.

It can also be inferred that some of the witnesses would be employees of KENYA and Martin might personally know some of them. This would therefore be a conflict of interest.

3) Even though he accepted the Brief, he can recuse himself based on the ground that ~~the client has broken the law~~ + ~~the~~ ~~client~~ has broken the law.

In an Advocate-client relationship there arises a duty of Client confidentiality. This is where an advocate would not be allowed to disclose the information about the client held arose within the relationship.

5/6 There are however exceptions to this and one of those is where the client commits fraud. This occurred where Frank had been secretly transferring some of the property to his 3 brothers.

Since Martin discovered this information, he has a duty to disclose it and therefore can recuse himself from further representing Frank.

B) Contempt of court can occur in two ways:

i) Criminal contempt which occurs in circumstances such as where a person assaults, insults a judge. In this case ~~a~~ a court can on its own motion, institute

~~Relevant~~ Contempt of court proceedings. Courts like the Supreme Court of Kenya have their rules on how contempt is handled. However there's no specific when Martin says, that "...what he wrote is actually true." This can be seen as an insult to the judge.

The court can ask Martin why he should if be cited for contempt of court and based on his answer the court can demand him to prison or impose a fine on him.

The judge can recuse himself not the contempt proceedings.

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Questions

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and allow his colleague to hear and determine the matter.

Civil contempt - where party refuses to obey court orders.

- By publishing ten articles, it was contempt since advocates are under a duty to uphold the dignity of the law. In a debarred case in Kenya, a journalist made terrible remarks about a Supreme Court judge. This was tried for contempt at the Supreme Court unless he was ~~not given~~ given time or a alternative imprisonment.

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Our ref; 01671022.

Date 06/10/2022.

Your ref; TBX.

To: Kftrd.

RE: Client Brief; Alternatives for settling disputes

Negotiations:

This is where you or your representation would sit and try to find an amicable with your insurer. Being lead there has been a previous relationship / long-term engagement, this would be a good method of resolving the dispute.

Advantage; Time saving and cost effective.

My role; lead the negotiation on your behalf.

- Offer legal advice e.g. on legality of offer / deal.
- Offer guidance.

- In negotiation, parties themselves lead the negotiation making it easier to articulate their demands.

(Disadvantage; Agreement not binding.)

Mediation:

This is usually where the parties in dispute would choose a neutral third party to help them solve their dispute. This third party does not give their opinion and only helps the parties come to an understanding.

My role; - help in choosing the third party.

- Give legal advice where needed.

*

Advantages; - can choose own third party who they're comfortable with - a fast way of settling dispute

(Disadvantage; Ruling of mediator not binding.)

4

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Questions

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either margin

Arbitration. This would mostly be where there was an arbitration clause. It is where an arbitrator comes in to solve a dispute. An arbitrator can be selected by the parties or by court and should be licensed. Governed by the Arbitration Act.

My role: Advice on legalities of arbitrators decisions.

- Advice on what to expect on arbitration and if appeal can appeal.

Adv; Decision is binding on parties

Disadv; - Time consuming

- Expensive

B)

Rules of Advocacy:

i) Do not give personal opinion. This belongs to the litigants and as an advocate you should not be seen to giving own personal opinion e.g. using words like, "It is my belief that"

ii) Do not testify on behalf of other witness. The responsibility of an advocate is only questioning the witness e.g. asking questions such as what happened? as this allows the witness to testify on own behalf.

iii) Do not ask leading questions unless it is during cross-examination, or if irreputable facts are being examined in chg. This prevents multiple objections and ensures witness gives accurate information.

1) Justice should be seen. This means that an advocate should not be too friendly with the opposing side as this would look bad to the witness and even the judge.

Tell Q6 → 9Mh

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4)

- i) After welcoming the client (will);
acquiring information - this would be achieved
via effective listening and asking questions

After I have acquired the information I need,
I would ensure to explain to them and what
the law entails and what ~~would~~ happen and
then seek information from ~~Abrahao~~. This
will be by requesting for documentary
evidence to may have witnesses willing to
testify on their behalf.

The last thing is posting with information.
This would be determining our next course
of action.

o Open communication -

- b) Examination-in-chief is where the party calling
the witness gets to examine them. This has been
provided under s. 145, 146 of the Evidence Act.
It is usually the first step in examination of
witnesses and leading questions are usually not
allowed.

Questions to ask ~~abrahao~~ would be;

- What is your name?

- Can you tell this court what you do for a living?
- How do you know the Defendant?
- You have said that the Defendant asked you to
design websites for him what did you do?
- What were your terms of agreement?

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Questions

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either margin

- What happened next.
 - I would now like to show you a document.
(show invoice) What is your document?
 - What was its use?
 - Your honours marked exhibit X1 is a copy of the invoice and is bundle of documents no. 4.
 - What happened after sending out this invoice?
 - What action did you take next?
 - I would like to show you two letters here. Do you recognise them? What are they?
 - Your honours marked exhibits X2 and X3 are reminder letters sent to defendant and is bundle of documents numbers 9 and 13.
 - What did you next?
 - Did you who did you find at the offices of soft Africa?
 - What did they say?
 - What did you do next?
-
- You must first show a document + the witness before calling Q as evidence in court.
 - leading questions are allowed where you're asking an undisputable fact or with consent of parties

~~Take Q2 + give him disregard~~

/3

- Q) Is per s. 146 Evidence Act, Re-examination comes after Examination-in-chief and cross-examination. This is where the ~~poor~~ advocate ~~not~~ had called a witness come in with additional questions after adverse party question. It carried out:
- D where cross-examination had caused damage to ~~evidency~~ witness statement.
 - II Party wants to correct the damage
 - III Advocate seeking clarity on question asked during cross-exam.
 - IV If advocate for soft Africa asked a misleading question - lead I failed to object to, I can ask during re-exam.

If it is not always necessary to carry out re-exam:

- o Because sometimes the cross-exam didn't do any damage
- You might make matters worse if you don't ask the right question.

Total Q2 - 10Mins

7

Q

12

Write on both sides of the paper

Questions /

Do not write in
either marginCASE ANALYSISWhat is the matter about?

- This is about a company failing to do their duty of care i.e Negligence.
- It's also a matter about reasonable standards.

What is the law governing this issue?

- The law to be relied on would be the law of torts.

What are the elements needed to prove:Tort issue?

- That the defendant owed our client a duty of care.
- There was breach of that duty.
- The breach led to our client sustaining damages.

Facts v Conclusion

- Our good facts:
- Did not walk outside unaccompanied.
 - ~~Mr. Andy~~ ^{The guard} walked past leaving items behind.
 - Walked on designated paths.
 - Did not have first aid kit.
 - Ambulance took long.

- Our bad facts:
- Moved closer to the bushes when she saw movement.
 - Started taking pictures.
 - Was walking slowly.
 - ~~Andy~~ ^{The guard} reacted immediately.

Conclusion: From the facts, it can be seen that there was some contributory negligence from our client's side.

However, ~~Andy~~ should have been more concerned to walk visibly and behind them. Our client would probably not have sustained fatal injuries if ~~she~~ there was a first aid kit present. It would have prevented the excessive bleeding.

Witnesses and Exhibits.

- Our key witness will be Andy. This is because he was the one walking behind the deceased.
- The other 2 friends to show that girl left the deceased and her friend behind.

Exhibits.

Postmortem Report to be produced by Dr. Truelo.

The parties to the suit.

- Knowing the persons to sue is very important as it ensures that we can appropriately get the remedies we'll be seeking for.
- Being a fatal accident, Ms. Denton's parents would first have to get grants of probate or administration so they can have local standing.
- The defendants can be put at many to avoid missing out on anyone. Thus Flamingo Lodges pt Defendants, Marsha Enterprises and Day and guard as 3rd Def.

Remedies we'll be seeking.

Since their already deceased, it would be monetary damages.

- Funeral expenses
- Loss of future income
- General damages

19/10

Next week

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Questions

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5)

I am Miss Grace Kasiuki, Advocate for the Plaintiff. Your Honour, we will be seeking to show the court the fact that the deceased died due to the negligence of the Defendant and/or their agent.

Your Honour, this case is about a young woman whose life was partially and negligently cut short. Ms Tenton and her 4 friends had completed their master's degree and had decided to holiday in Kenya at Narasha Flamingo Lodge. They had arrived and gotten a briefing where they were also informed not to walk outside at night accompanied. At 8:30 pm they followed many were walking to their room in the company of a guard. This guard for unknown reasons walked fast ahead leaving the deceased behind with her friend.

Your Honour, we shall call evidence to show that the guard indeed left the deceased behind. We shall further adduce evidence to show that the company did not have a first aid kit in the compound and that this resulted in the partial ending of Ms Tenton's life.

5) 5)

The Defence will try to show that they had dispensed their duty by having the guard walk with them but we will show this court that a duty to care should be fulfilled to the highest extent.

5)

Q)

1. You did not clearly

1. The lodge ~~representative~~, Mr. Tuuli, had told you about the wild animals roaming at night, hadn't he?

2. The guard accompanying you told you to keep up ~~the~~ with.

3. When you saw ~~wild~~ around the bushes, you ~~both~~ reasonably suspected it was an animal. Did you nod?

4. True. Were you and Mr. Stanton present at the group briefing? ~~do~~ ~~that~~ you knew that it was not allowed to pet the wild animals and wander?

5. You knew that if you saw an animal wander, the first ~~do~~ was going to your room immediately.

Q)

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per

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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: 26TH OCTOBER 2022

INSTRUCTIONS TO CANDIDATES

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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 <i>Lando</i>		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
4	4	A00	4	TK		
2	8	A00	6			
5	00	VL	0			
9	03	VL	3			
1	05	VL	5			
TOTAL MARKS	18	A00	18			

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Questions QUESTION 4Do not write in
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4) Elaborate the cab-rank rule as applicable in this case and discuss grounds that should have logically led Martin to consider not taking it up or reuse himself after having taken to brief.

5/2

i) The cab-rank rule has specific requirement which have been applicable since in Common law and still is. These grounds that can be applicable in Martin's case include:

1) Martin being previously have worked for KEMSA, he is consider to be familiar with the case hence the case will not start on a fair ground. Hence he has a current interaction with the new matter which might influence its decision.

ii) In the case of R V. Kinuyanji it was established that an advocate should remain loyal and open without manipulating any assets or money from the clients. In this case, on Martin discovering that Franks has been transferring some of his property to his three sisters in order to avoid risk of losing everything should the court rule against him is a move that is questionable.

iii) Among the grounds of reversal; one should not have previous contact or contacting any of the judges or Magistrates in charge of a case. The fact that Franks confessed to Martin of knowing one of the three judges, on the Bench and has even hinted of his willingness to meet Martin and discuss the ways forward for the case/matter should influence Martin to consider not taking up the matter.

iv) Another ground for reversal is when a judge presiding over a case has personal interest or his/her family member/friends/colleagues etc. In this case, Martin has even been instructed to seek reversal of one of the judges who "might not be favourable for the case." Having previously dated the judge's wife when they were neighbouring secondary schools. And the judge's wife has filed for divorce and the matter

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matter is pending.

(i) If the judge also shall be put in a compromising situation with the matter or its outcome is a ground for recusal. In this case the judge has hinted the writer to contact Martin and discuss the way forward of the case as well as his willingness to be partial. This should lead Martin not to take up the case.

(ii) Article 50 of the Constitution of Kenya regard to fair hearing might be set state as Frank knows the judge at a personal level.

(iii) Examine the aspects of contempt of court that have arisen in this case and how they may be dealt with under the relevant laws.

(iv) The fact that Martin knows Frank from KENSA as the legal officer and knows him at a personal level and knows that Frank knows one of the judges. It is unlawful as guided by Articles 40, 48 and 50 of the Constitution of Kenya for one of the parties to know the judges in a matter that the judge is handling as it breaches the right to a fair hearing.

(v) In the case of Kaplan & Stratton V. L2 Engineering Construction Ltd; it was held that if a judge has been in any form of closeness of or been involved with any of the parties of the case he is presiding, then it is a ground to deal with under contempt of court. In this case, the judge in question's willingness to meet Martin and discuss way forward is extremely unlawful.

(vi) The fact that the judge has a previous history with Martin and having once dated the judge's wife, and that might be aspect of contempt of court because of the fact that the judge has personal influencing factors towards the particular case.

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Questions 14

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iv) The judge in this circumstance can be considered as emotionally unstable because of the ongoing divorce as well as the previous High school lover being part of the case.

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CE

b

② Write a brief advising Alfred on three alternatives we should consider for settling this dispute and the role I would play in the process.

i) I will advise Alfred to consider Alternative Dispute Resolution (ADR) whereby my role will be a Certified Professional Mediator in the process of the ADR process to come to an amicable agreement after much seeking the courts way of a civil suit.

ii)

34) Explain 3 (three) core components that you will include in the client interview to make it more effective.

(i) Eye contact with the client. This will give the client the impression that you are following keenly and that you have interest in the matter.

(ii) Avoid interrupting the client. This will allow the client to give the flow of events in each step from all the end of the narrations, relevant questions can be asked.

(iii) Have your assistant pick your calls

{ (iv) Have my assistant pick my calls. Most clients get the impression that the Advocate is not really interested in the matter when they keep constant interruptions such as calls.

29) Check out your examination in chief of Xylofon as your first witness that would adduce all the relevant necessary to prove his claim.

"Your Honour, may it please this Honourable court,
My name is Ndaku Kiloki appearing on behalf

Write on both sides of the paper

Questions 2

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either margin

of the applicant, if this Honourable court gives me latitude, I would like to proceed your Honour.
First I would like to ask:-

- i) How many writers were engaged?
- ii) Was an invoice raised?
- iii) How much was the invoice amounting to?
- iv) Was there any offer made?

I rest my case your Honour."

2) Explain why it is not necessary to carry out re-examination.

- a) The facts have already been confirmed.
- b) Most of the facts are usually confirmed in cross-examination as most of the details are usually confirmed during this process.
- c) At this point, usually the witness has explained what happened in court and has already been examined.

6 / 10

(6)

-5

Total Q5 → 0 Mks

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Questions QUESTION 5.

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With the help of relevant case laws, analyze the circumstances that would yield a positive affirmation of Preliminary objection.

In the case of Fatuma V. County Government of Kilifi it was held that the court has jurisdiction of not continuing with the matter if the Preliminary objection has been filed on a strong ground.

A Preliminary Objection can be considered in the event that it directly affects the court proceeding e.g. not putting one of the main parties to a suit. In the case of Ester Bosibori V. County Government of Kisii the case was dismissed on the basis of a preliminary objection because one of the parties to the suit was not listed.

In the case of Mauzo Establishments V. K.A.X it was held that Preliminary objections mostly raised by the respondents should be capable of dismissing the matter with no reference to the pleadings. The case was dismissed on the basis of a Preliminary Objection.

In the case of Jilvik Supermarkets Ltd V. Ripley Ltd the courts held that a Preliminary objection can be considered where the applicant is unable to confirm basic facts to a suit such as the existence of a main evidence, the case was dismissed on the basis of the Preliminary objection.

Indeed the Quick Enterprises V. Kenya Railways Corporation has set a precedent that Preliminary objections are raised they should dispose to whether on Preliminary grounds.

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Questions QUESTION 6Do not write in
either margin

A) A brief advising Alfred on the three alternatives we should consider in settling the dispute.

i) I will advise Alfred to consider Alternative Dispute Resolution (ADR) in which my role as I am a Certified Professional Mediator (PM) is to listen to the entire allegations then come up with suggestions for both parties on which is the best way to settle the matter.

ii) I will also advise Alfred that I can do a demand letter to the insurance which is another method of not taking the long method of civil suit. The demand letter will contain the issues at hand and the amount of money that Alfred should be compensated due to the loss to his shop caused by fire.

iii) I will also advise Alfred to try and directly demand for his compensation through me as his Advocate.

To: ALFRED MWENJE,
P.O BOX 188-10000,
NAIROBI KENYA

FROM: KILOKI NDUKO
16th FLOOR, OPATA TOWERS,
KIMATI STREET,
P.O Box 181-10000
NAIROBI KENYA.

PTO

Dear Sir,

RE: ALTERNATIVES TO SETTLE THE INSURANCE DISPUTE.

I would like to inform you that there are other ways in which you can consider for settling the dispute other than seeking the courts.

These ways include:-

The Alternative Dispute Resolution (ADR) which which I will foresee as I am a Certified Professional Mediator (CPM) is to listen to the entire allegations and come up with suggestions or ways of settling the matter.

I can also do a demand letter to the insurance as your Advocate elaborating the damages and the amount they sum up to which will highlight your legal rights and your right to compensation.

I can also go and directly ask for the compensation from the insurance company with which I will require a response within 14 days or file a civil suit.

QUESTION 6(a)

(a) A brief advising tipped on three alternatives we should consider for settling the dispute.

A BRIEF ADVISER

A BRIEF ON ALTERNATIVES TO SETTLING THE DISPUTE

The following are the other alternatives that should be considered and I highly recommend:

- i) Alternative Dispute Resolution (ADR) which I will foresee as I am a Certified Professional Mediator (CPM) and listen to the allegations as well as suggest applicable alternatives.
- ii) I can do a demand letter to the insurer on behalf of my client elaborating the damages and what they amount to as well as highlighting my client's legal rights as per the Constitution of India and the Insurance Act.
- iii) I can also directly ask for the compensation for my client from the insurance company following the legal procedures required.

Write on both sides of the paper

Questions 6.....

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either margin

(Q8) Duty to be loyal to the client. In the case of Kinyanjui v Republic it was held that an Advocate owes the client a duty to be loyal and honest at all times and not to try to manipulate his assets or funds.

Duty to inform the client on any information that may affect the case without any fear of prejudice.

Duty to conduct due diligence on behalf of the client. This is a professional responsibility which cannot be avoided by an Advocate for it also assists the Advocate not to be involved in any form of professional misconduct.

Total Q8 Cred 3 Mk

3

P70

P7A

- a) Draft a case analysis in this context.

A CASE ANALYSIS ON MS. STENTON

FACTS

- i) Ms. Stenton and a group of four friends (Andy, Martin, Dorothy and Liz) contacted Boom Adventures Limited that is based in Nairobi to organize a trip for them.
- ii) Mr. Amini mentioned to them ~~just~~ they should not walk outside their cottages ~~at night~~ when unaccompanied as there were wild animals that wander into the Lodge compound.
- iii) Ms. Stenton and Andy walked slower than the rest of the group and were left behind.
- iv) Ms. Stenton started taking pictures of baby hippopotamus.
- v) Andy ran to the cottage for help.
- vi) It took 30 minutes for an ambulance to get to the scene.
- vii) Ms. Stenton was pronounced dead.
- viii) The postmortem report by Dr. Anglia shows that the cause of death is due to blunt force trauma and excessive bleeding.
- ix) That Mr. and Mrs. Smith to pursue to claim arising from the death of their daughter through Unknown & Co. Advocates.

Write on both sides of the paper

Questions 1.....

Do not write in
either marginISSUES.

- i) Ms. Steerton and Mr. Andy walked slower than the rest. 2/6
- ii) The guard lost track of them (Ms. Steerton and Mr. Andy). ✓
- iii) It took 30 minutes for the ambulance to arrive. 1

RULES

- i) The Constitution of Kenya provides for right to medical attention. Everyone has this right under the constitution which is the supreme law of the land. bx
- ii) Also everyone has a right to life, and if the delay was due to negligence it is a legal wrong. bx

The Evidence Act can be used to show the main leading evidences to the matter.

CONCLUSION

The provisions of the facts as well as the issues raised should guide on the laws/rules to be used.

It should be clear on whether the liability should be placed on the company.

- i) Draft the opening statement that you would make on the start of the trial. 2/2

"My Lord, may it please this Honourable court, my name is Mwatake Kosito, Advocate representing the Claimants in this matter, your my Lord I would

like to proceed if it pleases this Honourable Court."

② Draft an opening statement at the start of trial

"My Lord, may it please the Honourable Court, my name is Kaloki Mwakilwa appearing for the Claimants in this civil matter. If it pleases, this Honourable Court, I would like to proceed my word."

③ Five key questions for Mr Andy.

i) Who is he?

ii) Who was the guard

iii) Who were you on the 11th day of Oct. 2022?

iv) Who were you with?

v) What happened / occurred in that night?

vi) Had you been informed?

vii) Who was the guard.

Total Qs 1 to 5 Mu

GJ