

# KENYA SCHOOL OF LAW



## ADVOCATES TRAINING PROGRAM TRIAL ADVOCACY

### Course Work Questions-Classes E and F, 2017

#### Instructions

You will submit your course work to the Administrative Assistant, ATP in the following format:

1. Between 10 to 15 typed pages (excluding annexures, foot notes, reference pages, and introduction and cover pages).
2. Times New Roman font 12, double spacing
3. The course work will be marked out of Twenty (20) marks.
4. Each student should carry out original work and any copying or plagiarism will be penalized. Where external sources are referred to, due acknowledgement of the author or source must be made.
5. Deadline for submitting the course work: **14<sup>th</sup> July 2017.**

#### **Question 1 (F32) History of trial advocacy**

James is preparing a presentation that he is going to give to colleagues entitled, "The Historical development of trial advocacy and its guiding principles." At the end of his presentation, James will make recommendations to the Law Society of Kenya. James formally contracts you to put together a detailed opinion to aid in his presentation. Prepare the opinion, giving contextual recommendations.

#### **Question 2 (F1): The "Cab Rank" Rule.**

Mr. P works for a large firm of Advocates in town representing clients in various areas of law. A recent public opinion poll was carried out to find out how satisfied or dissatisfied the public is with Advocates of the High Court of Kenya. From studying the findings of the opinion poll, you discover that Mr. P and the firm have turned away several clients for personal, religious and or other reasons best known to them. The Law Society of Kenya Council now wants a detailed advice on what action can be taken for this kind of behavior and why.

**Question 3 (F31): Judicial officers and Conflict of Interest.**

Since the finding of *Sir Edward Coke* in *Dr. Bonham's case*, there exists unsettled controversy on the principle that no man can be a judge in their own cause. Using case examples, discuss judicial disqualification and/or recusal of a Judge in Kenya, giving reasoned views as to the way forward.

**Question 4 (F2). Dimensions and Psychology of Advocacy**

You are a team of lawyers practicing in the name and style of J & Partners and have been contracted by the office of the Honorable Chief Justice to provide training at the Kenya Judicial Training Institute. You are required to make a presentation to newly recruited Judges at a retreat in Naivasha, on the topic: “*Dimensions and Psychology of Advocacy*”.

Prepare the presentation, taking into account the different case scenarios that the Judges are likely to meet when posted to their respective stations.

**Question 5 (F30). Preparation for Trial (Pre-Trial Advocacy)**

A client, Mr William, comes to your office seeking legal advice and representation. He tells you his story as follows: His wife was killed in a road accident sometime back while she was driving a Public Service Vehicle owned by his family's company. His 14 year old son, a passenger in the vehicle, suffered serious injuries and has just been discharged from hospital. Also involved in the accident, were two other motor vehicles-one owned by the Ministry of Agriculture and the other owned by the Church of the Holy Yahweh. He blames both the vehicles from the Ministry and the Church for causing the accident.

- a) Set out ten (10) questions you would ask Mr. William during the initial client interview.
- b) Based on your interview with Mr. William, please prepare a detailed brief on stages of research and documentation that you will undertake.

**Question 6 (F3): Ethical Duties of Trial Lawyers.**

You are an Advocate at Shamalla & Company Advocates and your client Benjamin mentions to you, “I think I did it” and immediately proceed to say to you: "Ultimately, the responsibility to be ethical resides in you, as my Advocate.” Citing case law and examples outline and discuss the above with reference to:

- a) Duty to client.
- b) Duty to public.
- c) Duty towards the counterpart.
- d) Duty towards administration of justice

### **Question 7 (F29): Opening Statement**

On 1 November, 2016 at 6.00 pm, Mate went to Mnazi Restaurant at Kawangware with his friends. They spent the evening talking and enjoying a drink while playing pool. At around 10.00 pm, Mate was engaged in an informal conversation with one of the restaurant's staff, Wangui, when the restaurant's proprietor, Mr. Meza intervened and told Mate to get lost from the scene. Mate returned to his group of friends at the pool table.

At around 11.00 pm, an "Esikuti" group of singers took to the stage and several other people in the restaurant joined in the singing in a satirical manner. Mate was one of them, and he had no intention of annoying anyone present. Suddenly, Meza began to run around the restaurant all the while shouting at Mate and moved towards Mate with the view of violently ejecting him from the restaurant. Meza clipped Mate's head, grabbed a pool stick with violent force and as Meza turned to back to confront Mate once again; Mate punched out towards him and staggered towards him, smashing his face with a beer glass.

Mate has been arraigned in court and takes issue with the prosecution's case that he deliberately or recklessly caused grievous bodily harm to Meza. Mate argues that he is not guilty as he acted in self-defense and used reasonable force in the process. He also argues that Meza's action was disproportionate to his and is of the opinion that Meza's conduct was aggressive and intimidating. Thus, he argues that he was unable to retreat from the assault mounted by Meza as he was close to the pool table many people around him. Mate admits that he punched Meza, a blow that made him unconscious. He also admits that he had a beer glass but not armed to cause harm.

- (a) You are the defence lawyer for Mate in this case. Prepare an opening statement introducing your client's case.
- (b) Briefly state and elaborate key elements of the opening statement you used above in addition to those you would employ when making the statement in court

### **Question 8 (F4) Examination in Chief**

Mr. Taa had a girlfriend, Ad. Mr. Taa stands accused of murder of Ad on the night of 14<sup>th</sup> January, 2016 at 1.00 am contrary to section 203 as read with section 204 of the Penal Code. Mr Taa was arrested 60 Kilometers away from the scene of crime while on his way to another country.

A police witness, Constable Musa is presenting the testimony of an eye witness, an ex-boyfriend to Ad, DNA samples of the government chemist, post-mortem examination photos, among other exhibits. The exhibits include a multi-colored blood stained sweater allegedly belonging to the deceased, a torn white under pant, hair strand and blood stained finger nails.

The police witness testifies that these exhibits are related to the murder of Ad. The police, further relying on the evidence of the ex-boyfriend, state that Ad was last seen alive with Mr Taa on the evening of 14<sup>th</sup> January, 2016 by Ad's ex-boyfriend who had been trailing them all day. The officer further states that the ex-boyfriend's trailing of Ad and Taa was triggered by information from Ad to the ex-boyfriend that Mr Taa has been threatening her.

In his statement of defense, Mr Taa claims that he was not involved in the murder and that on the alleged night of the murder, he was away from the alleged scene. Mr. Taa further states that the government analyst has failed to provide DNA test samples, thus no records of any findings on the exhibits was presented. Mr. Taa further alludes in his statement that the police department has adjudged him guilty before arraigning him in court; that the evidence before court is incomplete, false and questionable; that the eye witness is fabricating evidence because of hatred for loss of his former girlfriend; that if the offence was committed at night then nobody could have had a clear vision thus could not have seen the alleged offender and that the Magistrate hearing the matter has been adversely implicated with misconduct and is yet to be vetted.

Mr Taa has previously been charged and convicted of rape and murder but acquitted upon appeal.

- a. You are the prosecutor in this case and Constable Musa is your witness. Kindly formulate 10 questions in-chief and explain the rationale of the questions.
- b. Do your questions conform to the style of examination-in-chief? Briefly explain

### **Question 9 (F28): Interviews and Preparation for Trial**

Discuss the subject, "Interviewing and cross-examination of a child witness".

### **Question 10 (F5): Cross Examination**

You act for the Defendant in a suit seeking damages for defamation as well as a permanent injunction to stop publication of defamatory material.

- a) Formulate fifteen (15) questions in cross-examination of the Plaintiff.
- b) Briefly state and explain the five (5) do's and five (5) don'ts in cross examination of witnesses.

### **Question 11 (F27): Case Analysis-Prosecution**

The Director of Public Prosecutions ("DPP") in the City of Hippo has appointed you as a team of lawyers to prosecute a theft case against one Desmond Peters. The Constitution, Penal Code, Criminal Procedure Code, and Evidence Act of the City of Hippo are identical to those of the Republic of Kenya.

The DPP has asked you to prepare a detailed Case analysis for the Prosecution. Proceed to prepare one using the "*City of Hippo v Desmond Peters*" case file. It should include an outline of

the strong points and weak points of the Prosecution case, a detailed tabulation of the elements of the offence, how they will be proven by what witness and which exhibits(if any), and the strategy for dealing with the weak points.

**Question 12 (F6): Theme and Theory of a Case**

Using the 2017 case file of *Faith Mueni Versus Alphonse Muoki*, prepare and discuss Theme and Theory for the Petitioner’s case.

**Question 13 (F26): Story Telling**

Gerry Spence in; *Win Your Case* at page 111, says: "If we are to be successful in presenting our cases, we must not only discover its story; we must become good storytellers as well. Every trial, every . . . argument for justice is a story. I always present my case as a story."

Discuss this statement to illustrate how presentation of a case at trial is about telling a client’s story within the limits of the Law.

**Question 14 (F7): Opening Statement**

A crisis has arisen in the Republic of Kanzoni because the Lawyers in the town were eager to apply all the skills of Trial Advocacy they learnt at Kanzoni Law School, yet the Chief Magistrate recently posted to the City has taken a hard line stance and said, “Opening statements are a waste of time; advocates should go straight to the evidence in the case”.

The Chair of the Kazoni Law Society has convened a Bar-Bench relations forum, and has given your firm a slot to present on Opening Statements; in the hope that it will help all at the forum appreciate the place of opening statements in the Trial Process. Make the presentation.

*(Note: The Constitution, Penal Code, Criminal Procedure Code, and Evidence Act of the City of Kanzoni are identical to those of the Republic of Kenya).*

**Question 15 (F25): Mediation**

Illustrate the place, process and importance of mediation as an Alternative Dispute Resolution mechanism, by discussing how Mediation has served to resolve a significant number of conflict situations in Kenya.

**Question 16 (F8): Appellate Jurisdiction**

Discuss the various opportunities for Appeal that are available in Kenya from decisions of Judicial and quasi-judicial bodies.

**Question 17 (F24): Case Analysis (Defence).**

Hippo City Centre for Legal Aid has appointed your firm to defend Desmond Peters who has been charged with theft. The hearing of the case in court has not commenced. Using the “*City of Hippo v Desmond Peters*” case file, prepare a detailed case analysis on behalf of the defence, outlining the good facts and bad facts for the defence, the strategy for the defence including how to deal with the bad facts of the case; giving a theme and theory of your client’s case.

(Note: *The Constitution, Penal Code, Criminal Procedure Code, and Evidence Act of the City of Hippo are identical to those of the Republic of Kenya*).

**Question 18 (F9): Court Etiquette**

"Lawyers should address the court as ‘your honor, 'your Lordship' and or 'Mr. Chairman' etc. Lawyers should also, present themselves in appropriate attire". Briefly discuss this statement, reflecting on all principles governing etiquette for lawyers in Kenya.

**Question 19 (F23): Alternative Dispute Resolution.**

You are Advocates practicing in the name and style of a firm based in Kenya, which is reputable for effectively handling matters using Alternative Dispute Resolution (ADR) mechanisms. You have now been contracted as an advisor to the Peace Committee which is spearheading the reconciliation and peace process following Post Election Violence and disputes in Burundi. Using illustrations, briefly explain the place, process and importance of ADR.

**Question 20 (F10): Presentation of Evidence at Trial.**

You are the Prosecutor in the case of Desmond Peters, and you have called Officer Thomas Phiri to the witness box to produce as exhibit Ms Louisa Singano's purse which he recovered during his investigations. Citing the relevant legal provisions, set out in detail the steps you would take to have the purse admitted in evidence during your trial at Makadara Magistrates Court.

**Question 21 (F22): Contempt of Court.**

"There are two broad types of contempt of Court namely; the civil and criminal. This may be Committed in the face of the Court or outside the Court. Civil contempt usually relates to violation of rights of another person, whereas criminal contempt is an offence against society" See *AG Vs Times Newspapers Limited (1974) AC 273 (HL)*. Using the Kenyan Legal framework and context, discuss in detail the concept of contempt of court.

**Question 22 (F11): Demand Letter.**

You have been approached by Mrs Julie Nzioka, who tells you that her husband walked out on her last Christmas and left her to fend for their four (4) biological children. As a part time worker, she earns only Kshs.25, 000 per month, while the household monthly outgoings stand at Kshs. 150, 000. Her estranged husband, Mr Nzioka is a successful businessman, who owns

business properties and earns on average one million shillings a month. Whenever she has asked him for help towards child maintenance, he has threatened to assault her. She is aware that he now cohabits with another woman, who is also a successful businesswoman and intends to marry her.

Draft a detailed demand letter on behalf of Mrs Julie Nzioka setting out the factual and legal basis for a maintenance claim against Mr. Nzioka.

### **Question 23 (F21): Closing Argument**

The following is a sample text of a closing argument:

"May it please the Court,

I have asked my client to leave the courtroom as I had previously asked him not to be here during the medical testimony. We listened to the Doctors explaining what a dismal future he has. He is going to be in a wheelchair, unable to walk more than a few steps because of his paralysis, a boy with no arms only grotesque mechanical claws for the rest of his life. That is a fact, and we have to accept it and base our decisions on it. Ben is only 14 years old and still has the hope-the dream of doctors inventing bionic arms, the dream of being able to ran again. I did not want to be responsible for shattering that dream by making him sit here and listen to the brutal facts; he has been sentenced to life imprisonment in a wheelchair, for a crime he didn't commit.

There has been a lot of medical and other testimony and we want to thank you for being attentive. The burden on you is a grave one, to arrive at a fair and just verdict under all the circumstances. I will take a few minutes now to review the case, as we see it. There are three main points to this law suit.

- First, we are not dealing with an ordinary product; we are dealing with electrical power lines. They carry electricity-silent and invisible, but it can blow your arms and can kill you in a split second. Electricity is a dangerous, ultra hazardous force and the Defendant electric company, should have taken precaution to prevent deadly currents from causing harm. They did not do so, so you should hold them responsible.
- Second, we are not dealing with an adult who was injured, but with a boy. Ben was 12 years old when he was crippled. Without any warning sign, he did not have the experience to know the small black wire was dangerous, so he is not contributory negligent for doing what all young boys do-playing in a field near his home and;
- The third factor, Ben's injuries are permanent.

He has been given a life sentence-without any possibility of parole or time off for good behavior-for which you should award him enough money to last him that lifetime." Briefly state and outline the meaning, statutory basis, objectives and techniques of this closing argument.

**Question 24 (F12): Objections**

With reference to Kenyan case law, define and distinguish preliminary objections from trial objections.

**Question 25 (F20): Skeleton Arguments**

Provide in detail, the purpose, structure and content of skeleton argument, citing relevant case law in Kenya and any other Commonwealth jurisdiction.

**Question 26 (F13): Conflict of Interest.**

"Conflict of interest denotes representation of client (s) whose interests are averse to those of an existing and current client of the firm. The duty of loyalty owed to a client, prohibits an Advocate from representing any other party with interests adverse to those of the current client." Discuss, citing relevant examples.

**Question 27 (F19): Duty to Uphold the Rule of Law**

In *Abraham V. Justsun (1963) 2 ALLER 401, P. 404*, Lord Denning MR, explained counsel's duties as follows: "It is an Advocate's duty to take any point which he believes to be fairly arguable, on behalf of his client. An Advocate is not to usurp the province of the Judge. He is not to determine what shall be the effect of legal argument; he is not guilty of misconduct, simply because he takes the point which the tribunal holds to be bad. He only becomes guilty of misconduct if he is dishonest, that is, if he knowingly takes a bad point and thereby deceives the court." Discuss this statement on the following in relation to the following:

- a) Fairness.
- b) Duty to obey court orders
- c) Courtesy
- d) Duty to expedite court proceedings
- e) Duty to take personal responsibility for his/her conduct.
- f) Full disclosure.

**Question 28 (F14): Places for Practice of Advocacy**

- a) Briefly identify and give details of the Court hierarchy and tribunals in Kenya.
- b) Provide a summary of the role of each Court.



**Question 29 (F18): Re Examination**

You act for the Plaintiff in a suit seeking damages for defamation as well as a permanent injunction to stop publication of defamatory material.

- a) Formulate fifteen (10) questions in re-examination of the Defendant.
- b) Briefly state and explain the five (5) do's and five (5) don'ts of re examination of witnesses

**Question 30 (F15): Preparation for Trial**

“Preparation is the key to successful trial practice. Contrary to what you may see on television, no part of trying a case is extemporaneous (made up). From opening statement, to cross-examination, to the objections you make, to your impassioned closing argument attacking the credibility of an adverse witness, everything you do and say in the courtroom is planned in advance. Any lawyer who tells you differently is simply justifying his or her own laziness:” *Byron & William Elliott; the Work of the Advocate (1888)*. Basing your answer on the above, set out how you would undertake pre-trial preparation in the case of Faith Mueni Vs. Alphonse Muoki (Class Case file-2017).

**Question 31 (F17): Negotiation.**

Using examples of decided cases, the law and the Constitution, Briefly discuss the advantages of negotiation, over litigation in Kenya.

**Question 32 (F16): Qualities of a Good Trial Lawyer.**

The pedagogy of trial advocacy is learning by doing. It entails practice of qualities that distinguish an Advocate from any other ordinary individual. Discuss.

**Question 33 (Unassigned): Appellate Advocacy.**

The cardinal rule of advocacy is to know one's audience. The fundamentals include: preparation, simplicity, precision, candor and responsiveness. Effective and persuasive advocacy requires that counsel is mindful of the differences between trial and appellate court, in particular, when drafting and presenting the case. Appraise the statement.

*Note: (First come firm to the class representative, takes this question in place of the assigned one).*