

Kenya School of Law

ADVOCATES TRAINING PROGRAM

2015-16 ACADEMIC YEAR

Trial Advocacy

PREPARATION FOR TRIAL-CASE ANALYSIS

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OUTLINE

What does the Law provide?
Ingredients of what is sought to be proved
Facts v Conclusion
What has to be proved
How will it be proved?
Three best facts
Three worst facts
Theme
Theory

What Does the Law provide?

a) What type of case are we faced with?

- ❖ Criminal
- ❖ Civil
- ❖ Constitutional petition
- ❖ Matrimonial dispute
- ❖ Succession cause

b) Specific applicable statute law

Ingredients of what is to be proved

Ian Morley, QC in *“The Devil’s Advocate”*: “In crime everything starts and ends with the charge”.

Example:

Penal Code, Cap. 63, Murder:

Any person who of malice aforethought causes death of another person by an unlawful act or omission is guilty of murder

Ingredients

- Person
- Malice aforethought
- Cause death
- Of another person
- Unlawful act or omission

Fact v Conclusion

Fact-What can be discerned by the five senses:

(Seen, touched, heard, smelt, tasted)

Conclusion-Opinion arrived at after linking the facts

Duty to bring out facts is upon the Advocate

Duty to make conclusion is upon the trier of fact.

Fact v conclusion-Ian Morley QC

A witness gives a fact; An advocate makes a comment

A fact is descriptive; A comment is prescriptive.

A fact is detail; A comment is argument.

What has to be proved?

In our example of murder:

- ❖ There was a person(Accused) who caused the murder
- ❖ Has to be capable of committing a crime(Soundness of mind; age of criminal culpability).
- ❖ Had malicious aforethought.
- ❖ Caused death of the other person.
- ❖ There was that other person who was killed.
- ❖ The act causing death
- ❖ The omission causing death.
- ❖ Death within one year and one day.

How will be proved: Fact table-Example

1. Fact
2. Witness
3. Page /paragraph of witness statement
4. Exhibit

FACT	WITNESS	PAGE NO./PARAGRAPH	EXHIBIT
Causing death	PW 1	1	Knife
Causing Death	Pw2 Doctor	1	Post mortem report

Three best facts

Outline ALL the facts favourable for the side you represent.

If are a team, vote for the three best facts

NOTE:

- ❖ You can combine some facts.
- ❖ Some facts may be good for either side.
- ❖ The good facts for your side are the bad facts for your opponent

Three worst facts

Outline the bad facts(those that work against or weaken your case).

Vote for the best three.

Determine how to deal with them.

Can:

1. Ignore them
2. Explain them
3. Best: Turn them to your advantage.

Class Case Analysis Exercise

Carry out case analysis in

❖ Desmond Peters Case

Come up with (After lecture on Theme and Theory)

❖ Theme

❖ Theory

Take home Assignment

Carry out a case analysis in the Faith Mueni case
Divide firm into representatives of Plaintiff and
of the Defendant.

Do the fact sheet table.

Outline how you arrived at the three best facts
and three worst facts in terms of :

1. All the facts
2. The votes for the best 3 and worst 3

Q and A

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