

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 104: TRIAL ADVOCACY

THURSDAY 1ST DECEMBER, 2016

DURATION: 3 HOURS

Instructions to Candidates

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

On 6/06/2015, John started operating a mobile money shop offering services for deposit and withdrawal of funds to his customers. On 10/06/2015 a customer came to deposit money at his shop. After tendering the sum of Kshs.1,000 to John for him to deposit the money in his account, the hawk-eyed customer closely watched John entering the Personal Identification Number (PIN) to his mobile money operating account and noted it somewhere.

As soon as John finished the deposit transaction, the customer snatched his mobile phone, ran to a waiting vehicle and sped off. Aware of the risks involved, John ran to his friend in a nearby shop and using his friend's mobile phone, called a customer care representative (CCR) for Yates Telecoms, the mobile service provider.

John reported the incident to the customer care representative and requested for all transactions on his mobile money account to be blocked. However, the customer care representative told John that he has to state the name of the customer who sped off with his phone. John did not know the name of the customer since he sped off before he could take down his details. The CCR declined to block John's account.

In the meantime, the rogue customer withdrew all the funds from John's account. Neither John's mobile phone nor the customer were traced again. John has instituted a suit in court against Yates Telecoms for negligence on its part claiming the sum of Kshs.300,000/- which was withdrawn from his account, general damages and costs of the suit.

You were recently hired as an Associate in the Litigation Department of Hardknocks Associates, the firm representing John in the matter.

- (a) Prepare a case theory for John's case. **(16 marks)**
- (b) Draft four (4) questions, excluding questions as to John's identity you will ask him during examination-in-chief at the hearing. **(4 marks)**

QUESTION TWO

Julius, an Advocate of the High Court was meant to attend court in a particular matter. Unfortunately he forgot completely about it as he had left his diary at the office. At 10 a.m. he was called by his client who wanted to know whether the matter was proceeding and if indeed he would be attending court.

Not wanting to lose out on the brief, he quickly borrowed a coat and a tie from a colleague. The coat did not fit very well and was quite flowery. As he arrived at the court, he was out of breath and could not tell whether his matter had been addressed or not. He moved to the advocate's bench and enquired whether the matter had been called out from a colleague. Even before he could get an answer, the court clerk read out his case and he stood up and without even allowing the advocate for the other party who was senior to him to speak mumbled out some incomprehensible sentences. The magistrate noticing that the advocate was frustrated was gracious enough to allow the parties to take another date.

Focusing on the conduct of Julius, address the court etiquette concerns that arise for a practicing advocate. **(10 marks)**