

COUNCIL OF LEGAL EDUCATION.



**EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.**

ATP 104: TRIAL ADVOCACY

TUESDAY 23RD JULY 2019.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **FIVE (5)** 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.

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QUESTION ONE

Peter has been sued by Mary for injuries caused to Mary by negligent driving. Peter claims that Mary stepped out suddenly from between two parked cars so that he could not see her at the time of the accident.

Two eye-witnesses have been called to give evidence for the plaintiff (Mary). Agnes and her seven year-old son, John, allegedly saw what happened. In her written statement, Agnes alleges that the defendant (Peter) was driving at 100 kilometres per hour and the victim was thrown about 5 metres away from the point of impact. The car driven by Peter then moved about six metres and stopped. Peter stepped out of the car. He appeared drunk and walked straight to the plaintiff who was lying on the ground unconscious. Agnes states that they observed all this from the window of their house which is about two hundred metres from the scene of the accident.

It emerges that John, who has also been called to testify goes to the same school and is a friend to Sara, Mary's daughter.

Below is part of the transcript of Agnes's examination-in-chief:

- Advocate: Tell the court why you are here.
Agnes: I wish to testify on what I saw concerning Mary's accident. I was standing by my window when a car came driving very fast. It was going about 100km per hour. It knocked down the plaintiff. The defendant then walked out of the car after it had stopped about six metres away from the spot of the accident.
- Advocate: Was it six metres or five metres away?
Agnes: About five or six metres.
- Advocate: Then what happened?
Agnes: The defendant walked towards the plaintiff.
- Advocate: Did he appear drunk?
Agnes: Yes
- Advocate: Why do you say so?
Agnes: By the way he walked and he appeared to be mumbling to himself.
- Advocate: When was this?
Agnes: 25th January 2019
- Advocate: Was it 25th or 26th?
Agnes: Sorry 26th your honor
- Advocate: What happened next?
Agnes: I called the ambulance which took the plaintiff to the hospital. The defendant followed us in his car while I drove in the ambulance.
- Advocate: Would you say that the defendant was negligent in causing the accident?
Agnes: Yes
- Advocate: What else would you wish to tell the court?
Agnes: This is not the first accident to occur at the spot. I wish they could erect bumps at this place.

- (a) Identify and discuss the rules of advocacy in examination-in-chief that the advocate has contravened. (10 marks)
- (b) Examine the ethical considerations that should be born in mind by the defendant's advocate when cross-examining John (Agnes's seven year old son). (10 marks)