CONTENTS

red

	rtace		XIII
	ole of Cases		xvii
Tab	ole of Statutes		xxi
F. 8	Post of the Course of Tanana		1
1	Basic techniques of advocacy		1
	Strategy		2
	Order of proceedings		3
	Summary of order of proceedings		4
	Written advocacy		8
	Pleadings in civil cases		8
	Affidavits/witness statements	A 0	9
	Agreed statement of facts (criminal)	y gi äs	9
	Short minutes of order) il	10
	Written submissions		10
	Uniform Civil Procedure Rules		11
	Written submissions Uniform Civil Procedure Rules Tactics The number of witnesses Which witness not to call Prima facie case		11
	The number of witnesses		11
	Which witness not to call		12
	Prima facie case		13
	Courtroom technology		14
	AVL applications		14
	Tactical considerations for AVL applications		15
	General techniques		15
	Notes		16
	Manner and manners		16
	Voice		17
	Command of language		17
	Confidence		17
	Persistence		18
	Mileage		18
2	Preparation and case analysis		19
	Introduction		20
	The mechanics of preparation		21
	The tools of preparation	ni, Tu kilji	21
	Organisation of the brief		22
	Marking the brief		22
	Trial notebooks		22
	The law and authorities		23

vii

Chronologies		The checklist, or 'ready reckoner'	24		Manner	59
Chronologies		Identifying the issues	24		Remain in control	60
Witness and exhibit summaries		. 0	25		Style	61
Conferences			25		Lead like a layperson	62
Preparing witnesses						63
Advice on evidence 28 How to recognise a leading question 77 Case analysis 30 Avoiding leading question 77 Performance preparation 33 Witnesses in trouble 79 Nervous witness 77 Nopening 34 Losing the place 77 Introduction 35 Dening 15 Avoiding leading questions 77 Intellegy attributes of an opening statement 36 Calling on a subpoema to produce 88 The key attributes of an opening statement 36 Calling on a subpoema to produce 88 The key attributes of an opening statement 36 Calling on a subpoema to produce 88 The key attributes of an opening statement 37 Do not open the case broadly 37 Logicality 39 Do not open high 38 Introduction 88 Introduction 88 Logicality 40 Constructive cross-examination 98 Vocass-examination 99 Opening for the defendant 40 Criminal 41 Criminal 41 Criminal 41 Constructive cross-examination 99 Copening for the defendant 40 Duties of counsel 42 Repetition 99 Treparation for performance 42 Modem vitness preparation 44 Lagal limits of coanination 45 Introduction 46 The aim of evidence-in-chief 48 Modelen witness preparation 49 Modem witness preparation 49 Modem witness preparation 50 Code of witnesses 51 Monor exceptions 99 Modem witness preparation 50 Leagal finance of coanination 50 Leagal finance of coanination 50 Leagal statements 55 Legal limits of examination 50 The rules against stepleschment 56 The rules against stepleschment 56 The rules against stepleschment 56 The rules against stepleschment 57 The rules against stepleschment 57 Contract 10 Witness preparation 60 Affidurits 57 Contract 10 Con						
Case analysis						
Performance preparation 33 Wilnesses in trouble Nervous witness 77						73
Nervous witness		•				
Introduction		Performance preparation	33			76
Introduction			2.4			
Clarity and conciseness The key attributes of an opening statement Open the case broadly Open the evidence, not the argument Open the evidence, not that of your opponent Use of aids in opening Circuinal Cir	3					
The key attributes of an opening statement						
Open the case broadly 37		Clarity and conciseness				83
Brevily Logicality Logicality Do not open high Do not open high Do not open high Open the evidence, not the argument Open your case, not that of your opponent Use of aids in opening Opening for the defendant Criminal Civil Duties of counsel Preparation for performance Examination Introduction Horduction Ho						
Logicality Do not open high Open the evidence, not the argument Open the evidence, not that of your opponent Use of aids in opening Opening for the defendant Criminal Civil Duties of counsel Preparation for performance 42 Preparation for performance 42 Preparation Introduction 43 Alternative explanation Modern witness preparation Modern witness preparation Modern witnesses Legal limits of examination Leading questions Rationale Exemptions to non-leading questions Recheiting or prior consistent statements Ferbacierus of Affidavits Witness statements Fexamination Fields of destruction					Good character witnesses	84
Do not open high Open the evidence, not the argument Open your case, not that of your opponent Use of aids in opening Open ing or the defendant Use of aids in opening Opening for the defendant Criminal Criminal Civil Affirmative cross-examination Open your case, not hat of your opponent Use of aids in opening Opening for the defendant Criminal Criminal Affirmative cross-examination Open your case, not hat of your opponent Affirmative cross-examination Open your case, not hat of your opponent Open your case, not hat of your opponent Affirmative cross-examination Open your case, not hat of your opponent Open your case, not hat of your cross-examination Open					Constantion	017
Open the evidence, not the argument 39 Aims of cross-examination 98 Open your case, not that of your opponent 39 No cross-examination 99 Open your case, not that of your opponent 39 No cross-examination 99 Opening for the defendant 40 Constructive cross-examination 99 Opening for the defendant 41 Case analysis and theory 99 Opening for the defendant 41 Affirmative cross-examination 99 Opening for the defendant 41 Affirmative cross-examination 99 Opening for the defendant 42 Repetition 99 Opening for the defendant 42 Repetition 99 Opening for performance 42 Notice of counsel 42 Repetition 99 Opening for performance 42 Notice of counsel 43 Affirmative cross-examination 99 Opening for performance 44 Affirmative cross-examination 99 Opening for performance 44 Affirmative cross-examination 99 Opening for performance 45 Advancing case theory 99 Opening for performance 46 Advancing case theory 99 Opening for performance 99 Opening f				5		
Open your case, not that of your opponent 39 No cross-examination 90 Use of aids in opening 40 Constructive cross-examination 90 Opening for the defendant 40 Destructive cross-examination 90 Opening for the defendant 41 Case analysis and theory 92 Opening for the defendant 41 Affirmative cross-examination 90 Opening for the defendant 42 Repetition 90 Opening for preformance 42 Omitted topic 90 Openited 90						
Use of aids in opening 40 Constructive cross-examination 97 Opening for the defendant 40 Destructive cross-examination 97 Opening for the defendant 41 Case analysis and theory 97 Opening for the defendant 41 Affirmative cross-examination 98 Opening for the defendant 41 Affirmative cross-examination 98 Opening for counsel 42 Repetition 98 Opening for performance 42 Omitted topic 99 Opening for performance 42 Omitted topic 99 Opening for performance 43 Opening for performance 44 Alternative explanations 98 Opening for performance 45 Opening for performance 46 Opening for the deposition of the curate's egg 99 Opening for the defendant 99 Opening for the deposition 99 Opening for the defendant 99 Opening fo					The state of the s	
Opening for the defendant 40 Destructive cross-examination 92 Criminal 41 Case analysis and theory 92 Civil 41 Affirmative cross-examination 95 Duties of counsel 42 Repetition 95 Duties of counsel 42 Repetition 95 Duties of counsel 42 Repetition 95 Duties of counsel 42 Omitted topic 95 Duties of counsel 42 Omitted topic 95 Duties of counsel 44 Alternative explanations 95 Duties of counsel 44 Alternative explanations 95 Duties of counsel 46 The curate's egg 95 Duties of counsel 46 The curate's egg 95 Duties of counsel 48 Duties preparation 49 Legal framework 95 Duties preparation 49 Duties preparation 49 Duties of examination 40 Duties of				1	The state of the s	
Criminal 41 Case analysis and theory 62 Civil 41 Affirmative cross-examination 95 Civil Afternative explanations 95 Civil Affirmative explana						
Civil 41 Affirmative cross-examination 99 Duties of counsel 42 Repetition 99 Preparation for performance 42 Omitted topic 99 Introduction 44 Alternative explanations 99 The aim of evidence-in-chief 48 Advancing case theory 99 Witness preparation 49 Legal framework 99 Modern witness preparation 50 Relevance 99 Modern witnesses 51 Minor exceptions 99 Creating questions 53 The extent of cross-examination 99 Rationale 54 Unfair cross-examination 99 Rationale 55 Ethical restrictions 100 The rule against impeachment 56 Putting divergences in evidence to the witness 100 Affidavits Witness statements 58 Control 116 Examination from proof 58 Fields of destruction 116 Examination from proof						
Duties of counsel 42 Repetition 99 Preparation for performance 42 Omitted topic Misleading context 99 Introduction 46 The curate's egg 99 Witness preparation 49 Legal framework Relevance 99 Witness preparation 50 Who may be cross-examined 99 Order of witnesses 51 Misleading context 99 Legal limits of examination 53 The extent of cross-examination 99 Rationale Exceptions to non-leading questions 55 Ethical restrictions 100 Exceptions to non-leading questions 57 Style 6 Affidavits Witness statements 58 Content 100 Content of examination 57 Content 100 Content of examination 58 Style 59 Control 101 Content 101 Con				N. M.		92
Preparation for performance 42 Omitted topic Misleading context 92 Misleading context 93 Misleading context 95 Misleading context 96 Alternative explanations 97 The curate's egg 196 The aim of evidence-in-chief 48 Advancing case theory 97 Modern witness preparation 97 Modern witness preparation 97 Order of witnesses 97 Legal limits of examination 97 Leading questions 97 Rationale 198 Rationale 199 Exceptions to non-leading questions 150 The rule against impeachment 150 The rule against self-serving or prior consistent statements 151 Affidavits 157 General techniques 158 Fields of destruction 115 Examination from proof 115 Misleading context Misleading context 97 Misleading context 97 Advancing context 98 Advancing case theory 97 Mownay be cross-examined 97 Who may be cross-examined 97 Who may be cross-examined 97 Who may be cross-examination 97 Legal framework 199 Relevance 199 Who may be cross-examined 199 Unfor exceptions 199 Collateral issues 199 Collateral issues 199 Collateral issues 199 Content 190 Content 190 Control 115 Examination from proof 115 Examination from proof 115 Examination from proof 116 Examination from proof 116 Examination from proof 117 Examination from proof 117 Examination from proof 118 Examin				30		93
Misleading context Alternative explanations Introduction Advancing case theory Witness preparation Order of witnesses Legal limits of examination Leading questions Rationale Exceptions to non-leading questions The rule against impeachment The rule against impeachment The rules against self-serving or prior consistent statements Techniques of examination Afficiavits Witness statements Examination from proof Misleading context Alternative explanations 99 Advancing case theory Legal framework Relevance 99 Who may be cross-examined 99 Who may be cross-examined 99 Minor exceptions 99 Collateral issues 99 Collateral issues 99 Rationale 100 Exceptions to non-leading questions 55 Ethical restrictions 101 The rule against impeachment 56 Putting divergences in evidence to the witness 102 General techniques 104 Style Content 105 Content 106 Control 116 Examination from proof 117 Examination from proof 118 Examination from proof 118 Examination from proof 118 Fields of destruction 118		Duties of counsel	4			93
4Examination44Alternative explanations98Introduction46The curate's egg98The aim of evidence-in-chief48Advancing case theory96Witness preparation49Legal framework97Modern witness preparation50Who may be cross-examined97Order of witnesses51Minor exceptions97Legal limits of examination53The extent of cross-examination97Leading questions53Collateral issues98Rationale54Unfair cross-examination100Exceptions to non-leading questions55Ethical restrictions101The rule against impeachment56Putting divergences in evidence to the witness102The rules against self-serving or prior consistent statements57General techniques102Techniques of examination57Style104Afficiavits57Content108Witness statements58Control116Examination from proof58Fields of destruction116		Preparation for performance	42			94
Introduction 46 The curate's egg 96 The aim of evidence-in-chief 48 Advancing case theory 96 Witness preparation 49 Legal framework 89 Modern witness preparation 50 Who may be cross-examined 97 Order of witnesses 51 Minor exceptions 97 Legal limits of examination 53 The extent of cross-examination 97 Leading questions 53 Collateral issues 98 Rationale 54 Unfair cross-examination 100 Exceptions to non-leading questions 55 Ethical restrictions 100 The rule against impeachment 56 Putting divergences in evidence to the witness 100 Techniques of examination 57 Style 104 Affidavits 57 Content 105 Witness statements 58 Control 115 Examination from proof 58 Fields of destruction 115			3			
The aim of evidence-in-chief Witness preparation Modern witness preparation Modern witness preparation For the aim of evidence-in-chief Witness preparation Modern witness preparation For the aim of evidence-in-chief Witness preparation Modern witness preparation For the aim of evidence-in-chief Witness preparation For the aim of evidence-in-chief Witness preparation For the extent of cross-examined Minor exceptions Minor exceptions Minor exceptions The extent of cross-examination For the aim of evidence in-chief Witness examination For the extent of cross-examination Minor exceptions The	4	1	14			
Witness preparation 49 Relevance 97 Modern witness preparation 50 Who may be cross-examined 97 Corder of witnesses 51 Minor exceptions 97 Legal limits of examination 53 The extent of cross-examination 97 Leading questions 53 Collateral issues 98 Rationale 54 Unfair cross-examination 100 Exceptions to non-leading questions 55 Ethical restrictions 100 The rule against impeachment 56 Putting divergences in evidence to the witness 100 The rules against self-serving or prior consistent statements 57 General techniques Techniques of examination 57 Affidavits 57 Content 100 Witness statements 58 Control 110 Examination from proof 58 Fields of destruction 111		The state of the s	\ 46			
Modern witness preparation 50 Who may be cross-examined 97 Order of witnesses 51 Minor exceptions 97 Legal limits of examination 53 The extent of cross-examination 97 Leading questions 53 Collateral issues 98 Rationale 54 Unfair cross-examination 100 Exceptions to non-leading questions 55 Ethical restrictions 101 The rule against impeachment 56 Putting divergences in evidence to the witness 102 The rules against self-serving or prior consistent statements 57 General techniques 104 Affidavits 57 Content 105 Witness statements 58 Control 115 Examination from proof 58 Fields of destruction 115 Examination from proof 18		The aim of evidence-in-chief	48			
Modern witness preparation 50 Who may be cross-examined 97 Order of witnesses 51 Minor exceptions 97 Legal limits of examination 53 The extent of cross-examination 97 Leading questions 53 Collateral issues 98 Rationale 54 Unfair cross-examination 100 Exceptions to non-leading questions 55 Ethical restrictions 101 The rule against impeachment 56 Putting divergences in evidence to the witness 102 The rules against self-serving or prior consistent statements 57 General techniques 104 Affidavits 57 Content 105 Witness statements 58 Control 115 Examination from proof 58 Fields of destruction 115		Witness preparation	49			
Order of witnesses 51 Minor exceptions 97 Legal limits of examination 53 The extent of cross-examination 97 Leading questions 53 Collateral issues 98 Rationale 54 Unfair cross-examination 100 Exceptions to non-leading questions 55 Ethical restrictions 107 The rule against impeachment 56 Putting divergences in evidence to the witness 107 The rules against self-serving or prior consistent statements 57 General techniques 109 Techniques of examination 57 Style 109 Affidavits 57 Content 108 Witness statements 58 Control 110 Examination from proof 58 Fields of destruction 115		Modern witness preparation	50			
Legal limits of examination53The extent of cross-examination97Leading questions53Collateral issues98Rationale54Unfair cross-examination100Exceptions to non-leading questions55Ethical restrictions101The rule against impeachment56Putting divergences in evidence to the witness102The rules against self-serving or prior consistent statements57General techniques102Techniques of examination57Style102Affidavits57Content108Witness statements58Control116Examination from proof58Fields of destruction115			51			
Leading questions Rationale Exceptions to non-leading questions The rule against impeachment The rules against self-serving or prior consistent statements Techniques of examination Affidavits Witness statements Examination from proof 53 Collateral issues Unfair cross-examination Ethical restrictions 100 Ethical restrictions 101 Futting divergences in evidence to the witness 102 General techniques 57 Style Content Content 108 Fields of destruction 118			53			
Rationale 54 Unfair cross-examination 100 Exceptions to non-leading questions 55 Ethical restrictions 100 The rule against impeachment 56 Putting divergences in evidence to the witness 100 The rules against self-serving or prior consistent statements 57 General techniques 100 Techniques of examination 57 Style 100 Affidavits 57 Content 100 Witness statements 58 Control 110 Examination from proof 58 Fields of destruction 110			1202			
Exceptions to non-leading questions 55 Ethical restrictions 102 The rule against impeachment 56 Putting divergences in evidence to the witness 102 The rules against self-serving or prior consistent statements 57 General techniques 104 Techniques of examination 57 Style 104 Affidavits 57 Content 108 Witness statements 58 Control 118 Examination from proof 58 Fields of destruction 118						
The rule against impeachment 56 Putting divergences in evidence to the witness 102. The rules against self-serving or prior consistent statements 57 General techniques 102. Techniques of examination 57 Style 102. Affidavits 57 Content 103. Witness statements 58 Control 113. Examination from proof 58 Fields of destruction 115.			55			
The rules against self-serving or prior consistent statements 57 General techniques 104 Techniques of examination 57 Style 104 Affidavits 57 Content 108 Witness statements 58 Control 110 Examination from proof 58 Fields of destruction 115			56	100		
Techniques of examination57Style104Affidavits57Content108Witness statements58Control116Examination from proof58Fields of destruction115			57	100		
Affidavits 57 Content 108 Witness statements 58 Control 110 Examination from proof 58 Fields of destruction 115			57	100	Company and the Company of the Compa	
Witness statements 58 Control 110 Examination from proof 58 Fields of destruction 115		ADMAND	57	70		108
Examination from proof 58 Fields of destruction 115			58			110
The state of desidents.		Examination from proof	58	1		
		contragation of the attention wild all the attention of t			Challenge	115

vi

	7500000 0000000000000000000000000000000	117		When to object	171
	Hostility	121			171
	Prior inconsistent conduct	123	0.41	What is objectionable? Objections to the question	171
	Bad character, prior convictions and reputation	125		Objections to the question Objections as to the evidence (or answer)	172
	Attacking the qualifications of an expert				172
	Particular techniques	127		Objectionable questions	172
	Introduction	127		Leading questions	172
	Confrontation or attack	127		General or unspecific questions	173
	Probing	129		Unintelligible questions	173
	Insinuation	135		Duplicitous questions	173
	Undermining	137		Argumentative questions	173
	Leading on	137		Questions which call for a conclusion by a witness	173
	Creating an absurdity	138		Oppressive questions	173
	Closing the gates	139		Irrelevant questions	174
	The deadly sins of cross-examination	140		Questions which assume facts not in evidence	174
	Rushing in	141		Erroneous questions	174
	Beating around the bush	142		Speculative questions	
	Big noting	143		Objections to the evidence	175
	Looking for trouble	143		Privilege	175
	Going for the jugular	144		Hearsay	175
	Going fishing	145		Unesponsive or volunteered answers	175
	Dropping your guard	146	00	Prejudice	176
	Going over the top	146	\sim	Opinion evidence	176
	Worrying about the next question	147		The best evidence rule	176
	Going back for your hat	147	20 y	Parol evidence rule	176 177
	Slanging the witness	148		Improper re-examination	177
	Jumping the gun	148	C P	Proving exhibits	
	Being willing to wound but afraid to strike	148	40	Objection to matter contained in speeches	177
	Cross-examination on documents	149	7	Improper or unethical objections	178
6	Re-examination, rebuttal and reply	154	8	Closing address	179
	Re-examination defined	155		Introduction	180
	Right to re-examine and its limits	155		The object of the closing address	180
	Object of re-examination	155		The structure and parameters of address	180
	Scope of re-examination	162		The introduction	182
	How to re-examine	163		The statement	182
		164		The proof	183
	Rebuttal and reply	164		The peroration or summary	183
	CIVII Cases	164		The importance of the address	183
	Criminal cases			An example analysed	184
	Recent invention			Statement	185
	Preparation for re-examination	166		Proof	186
	Tactics of re-examination	167		Style	186
	Don't mend holes, mend fences	167		General techniques	187
				Some rules for final address	188
7	Objections	169		Address the issues	188
	Whether to object	170		AMMICOS INC ISSUES	100

6

	Address the facts, good and bad		189
	Address the evidence		189
	Avoid the law wherever possible		190
	Keep it short		191
	Do not read		192
	The logical address		192
	What you do not say		193
9	Appeals		195
	Introduction		196
	Preparation		197
	Notice of appeal		199
	Written submissions		200
			203
	What to argue		205
	Presentation		205
	The beginning		207
	Questions from the bench		208
	Flexibility and tact		208
	Flexibility		209
	Tact		209
	Watch the bench		210
	Expedition		210
	Pre-emptive argument		210
10	Etiquette and ethics		211
10	Rules of conduct		212
			212
	Formal rules of etiquette		213
	Behaviour		213
	Dress and personal appearance		214
	At the bar table		214
	Stay behind the bar table or party table Do not approach the witness box		214
	Dress the court — do not leave the judge in a	n empty court	215
	Courtesy to other counsel		215
	The judge's chambers		216
	Behaviour in court		216
	Interruptions		217
	Language		217
	Beginning		217
	'Learned' friend		217
	Addressing the bench		218
	Never address a judge in the second person		218
	Catchphrases		218
	Argue to, not with, the judge		219
	Semantic abominations		220

	Citation of case law	221
	Citing other judges	222
	Ethical principles	222
	Dealing with self-represented litigants	223
11	Elements	225
12	Sample cross examinations	232
	Introduction	233
	Oscar Wilde cross-examined by Carson	233
	W A Cadbury cross-examined by Carson	244
	W S Gilbert cross-examined by Carson	245
	Vaquier cross-examined by Hastings	246
	Richard Seary cross-examined by Adams	248
	Sir Robert Askin cross-examined by Evatt	254
13	Extra-curial advocacy	259
	Introduction	260
	Tribunals generally	260
	Mediations	261
3	Arbitrations	261
P	Inquests	. 262
	Site hearings	263
Bib	oliography	265
Inc	dex	267