

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 101: CRIMINAL LITIGATION

TUESDAY 6TH 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

Police have long suspected that Hamid Hamil was a member of Al Shabab, a terrorist group operating from Kenya and Somalia. Hamid travelled to Somalia for a period of six months and returned to Kenya on 1st August 2015. Police suspect that while in Somalia, Hamid received training on weapons and combat.

Upon his return, police tracked him down to a mosque in Lamu where he was delivering a lecture to the youth after prayers on one Friday. Police raided the mosque on suspicion that Hamid was in the process of radicalizing the youth and probably recruiting them into Al Shabab. Violent clashes ensued and several people were arrested and bundled into police lorries. Local media has confirmed through photos that Hamid is one of those who were arrested.

Hamid's family travelled to Lamu from Nairobi the following day to check on him after hearing the news of his arrest. They checked at Lamu Police Station where those arrested had been detained but police informed them that he had not been booked there. He was also not among those who had been arraigned in court that morning. Efforts to know his whereabouts proved futile as the police refused to disclose his whereabouts.

The family has written to the Inspector General of Police and the Director of Public Prosecutions but have not received a response.

Malkia Hamil, the distraught mother of Hamid has now instructed you to take up the matter.

Draft the necessary documents for filing in court.

(20 marks)

QUESTION TWO

Young Dagame, aged 15 was initially charged with murder which was reduced to manslaughter. He pleaded guilty and was convicted. In the course of mitigation, it emerged that his family and that of the deceased had settled the matter by way of payment of "blood money" and other cultural ornaments.

The deceased family received 40 heads of cattle. The father to the deceased has written to court to have the accused person discharged.

The court directed that a victim impact assessment report be prepared. The report confirmed that the families are fully reconciled through compensation and traditional rituals and there would be no retaliation.

- (a) Locate the place of victim's impact assessment in law.
- (b) Identify the options for the court in Dagame's case.

(5 marks)

(5 marks)

QUESTION THREE

Over the past few weeks, there have been clashes between the police and members of a separatist group by the name of "Mali Yetu" who are agitating for autonomy of the Paku region which is to the north eastern side of Kenya bordering South Sudan. There are reported incidents

of looting and arson within Paku Town which has been at the Centre of the clashes. Police have arrested several protesters whom they intend to charge with offences against public order, stealing and arson.

Tomasu is one of those arrested on suspicion of arson. Tomasu has been previously convicted of minor offences but has not been convicted of a felony like the one he is facing. He is said to have family connections in the neighbouring Republic of South Sudan. However, he has not jumped bail previously. He is currently out on bail in an unrelated public disorder case. He stays within Paku Township with his wife and one year old son. He works as a casual labourer in a construction company and he is the sole breadwinner for the family.

Tomasu has instructed you to represent him at his arraignment and to make a bail application on his behalf.

Advise him on the prospects of his bail application.

(10 marks)

✓ QUESTION FOUR

Kagwiria and her husband Kinyua were attacked by some unknown men on 12/5/2010 at 4 p.m. Kagwiria sustained multiple injuries which led to the amputation of her right hand. Kinyua received several cuts on the head. Both were left for dead. Nothing was stolen from them and the motive for the attack remains unknown.

Chief Inspector Gatobu of Marimanti Police Station rushed them to hospital. When they were able to speak, he took down their statements. They both described one of the assailants as being of medium height and built, with a tattoo on the right forearm and a large scar on the forehead. He was also said to be of dark complexion.

A few months later, Kinyua succumbed to his injuries.

On 14/12/2012, the police arrests Njamba Njeru for being drunk and disorderly. Chief Inspector Gatobu notices he has a tattoo on the right forearm and a scar on the forehead. He needs to keep Njamba for a few days to conduct investigations. Marimanti Law Courts is manned by a Senior Resident Magistrate. The nearest High Court is 200 kms away.

- (a) Identify the options available to Chief Inspector Gatobu within the confines of the law. (4 marks)
- (b) Explain how an identification parade would be conducted in this case. (6 marks)

✓ QUESTION FIVE

- (a) Explain the powers of revision conferred upon the High Court in criminal proceedings. (4 marks)
- (b) Discuss the object and principles governing the exercise of power of revision. (6 marks)

QUESTION SIX

“Sentencing is an important task in the matters of crime... What sentence would meet the ends of justice depends on the facts and circumstances of each case...”

(per Supreme Court of India in M.P -v- Bablu Natt [2009]2 S.C.C. 272 para.12.
cited with approval in R.-v- Paul Mwango [2016]eKLR

(a) In light of the above statement, discuss the principles governing sentencing in Kenya.
(6 marks)

(b) Identify the circumstances under which the Court of Appeal will interfere with the sentence imposed by the High Court acting in its original jurisdiction and as an appellate court, and when the High Court will interfere with the sentence imposed by the lower court.
(4 marks)

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