

# COUNCIL OF LEGAL EDUCATION



## EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

### **ATP 101: CRIMINAL LITIGATION**

**TUESDAY 4<sup>TH</sup> AUGUST, 2015**

**DURATION: 3 HOURS**

#### **Instructions to Candidates**

- (a) Candidates should answer **FOUR** questions
- (b) **Question ONE is compulsory**
- (c) All questions carry 15 marks each
- (d) Marks shall be lost for illegibility

**PLEASE TURN OVER**

On 14/12/2014, Beauti Bet visited her boyfriend Alfredo at his house in Sweetview Estate. She prepared dinner and after they ate, the couple sat in the living room to watch a movie. As they enjoyed the movie, suddenly the alarm on the roof went off and just then, there was a huge bang on the main door and it fell in.

In walked four men. The time was 6 pm. Two of the men had pistols and the other two pulled out ropes. All four men shouted at them to lie down which they did. The two men with ropes proceeded to tie up Alfredo. They then lifted Beauti Bet up and all four of them went with her to Alfredos bedroom while warning her of dire consequences if she even squeaked. They took her to the bathroom and as two of the men held her down, the other two removed her clothing and raped her in turn. When they were through, they held her down as the other two, who were the ones having pistols, forced her to have oral sex with them.

They then left her on the bathroom floor bleeding and bruised weeping uncontrollably and ransacked Alfredo's bedroom. They took Kshs.75,000/- from the bedside drawer, 4 suits, 10 shirts, 6 pairs of jeans and 2 Rado watches valued at Kshs.500,000/-.

They then went to the living-room and after kicking Alfredo, took the TV make L.G., the DVD, the Bamba Decoder, and 3 paintings. They then left. Beuti dragged herself to the living room, still weeping, and untied Alfredo and he helped her dress quickly and they went out to go to hospital. They found Alfredo's car gone but Beuti's was there. They went to Kisura Police Station and then to Valley View Hospital where both were treated.

That night at about 10p.m., Sgt Mwangalifu and PC Mgeni were on mobile patrol along Mirenda Road running parallel to Kahawa Coffee Estate when they saw a vehicle overtake theirs at a high speed and hit a huge pot hole then skid off the road. Four men got out and took to their heels into the coffee plantation. The officers gave chase and PC Mgeni shot dead one of the men and after a fierce exchange of fire where two of the men were also shot in the thighs, the three surrendered. The firearms they had, two pistols, make star and ceska recovered. The moto vehicle they were in turned out to be Alfredo's and all the items stolen from his house during the robbery were found in the vehicle except the TV set make LG that was recovered in the house of the dead robbers mother at Kangaita Estate, about 20 kms from the current scene.

The robbers were Mkali, Muongo, Sura Mbaya and Mkorofi. It was Mkorofi who was shot dead. When she reported the incident, Beuti told the police that she marked the appearance of all the men but as one had a scar on the left cheek, one has a tattoo on the chest, one had a very hairy chest while one was brown. Alfredo said he was unable to mark the appearance of any of them.

The three robbers and Mkorofi's mother were arrested and the police intend to prosecute them.

- (a) Prepare the complaint by Beuti Bet. (2 marks)
- (b) Prepare the charges. (6 marks)
- (c) Advise the police on steps to take in order to carry out an identification parade. (7 marks)

2. Mama Boyi is the complainant in a case where her husband Baba Boyi is charged with assaulting her and causing grievous harm to her by fracturing her thumb. Because of the case, her husband is in custody as he cannot meet the bail terms set by the court. Mama Boyi and her four (4) children depend on Baba Boyi who is the sole bread winner and if her husband continues staying in remand custody, he will lose his clerical job at Parliament House. So Mama Boyi decides that she does not want the case to proceed on even though this is the third time Baba Boyi has beaten her. She however has discussed with him and wants to be advised on the best way to achieve this.

- (a) Name the four (4) provisions of law open to Mama Boyi (4 marks)  
(Each provision carries 1 mark)
- (b) Name the provisions that if used, would enable the police to charge Baba Boyi with the same charge in the event that Mama Boyi's wish is granted. (4 marks)
- (c) If the DPP is to be involved in ensuring that Mama Boyi's wish is granted, what process would he use? (3 marks)
- (d) Would this process (in (c) above) bar the DPP from bringing the same charge against Baba Boyi to court again? Give reasons for your answer. (4 marks)

3. Joab Arthur a most wanted robber in Kajiado Country is currently in custody. He was arrested at his Kitisuru residence while relaxing with this family. Reports gathered from interviews with Mr. King Maru, the investigating officer, indicates that on 20 August 2011 while in the company of two other persons robbed Quality Bank Ltd in Athi River Kshs.20,000,000/=. The said robbery was executed without a gun. In the underworld lingua, such an operation is called 'Bare Hand Clean Sweep.' On 06 September 2013 Mr. Joab Arthur is believed to have robbed Ngett Bank Ltd Ongata Branch Kshs.5,000,000/=. During the said robbery Mr. Arthur robbed the Custodian of the Strong Room of the said Ngett Bank Ltd Mr. Mbalamwezi Mzalendo the said amount of money at about 10.00a.m. The robbery was witnessed by Valerie Msumbu.

While leaving the scene of crime in a hurry Mr. Arthur dropped his gun, his wallet and a document titled a Strategic Plan. The document sets out various banks to be robbed within a 3 year period and suggests possible accomplices.

- a) King Maru learns that you are a lawyer and approaches you for advice on how to compile his police investigation file with respect to Ngett Bank robbery. Advise him on the contents of each sub file. (8 marks)
- b) Assuming you are instructed by the defense, discuss the contents of the defense file. (7marks)

4. On 12<sup>th</sup> September, 2014 Ms Maimuna Sethole is reported to have been involved in a domestic brawl with her boyfriend Mr. Zooma. In the ensuing melee, Ms. Sethole chopped off her boyfriend's left hand thumb. It is understood that Ms. Sithole was agitated by Mr. Zooma's persistent refusal to sign a cheque at the end of every month to pay for her rent and related bills. On several occasions, Ms. Sethole had been heard promising to teach Mr. Zooma a lesson by severing Mr. Zooma's finger that 'refuses to sign cheques'.

Ms. Sithole was arrested on 13 September 2014. She entered a plea of not guilty on 14 September 2014 when she appeared before the Nyeri Chief Magistrate. She calls on you for advice on the

procedural requirements in case the court rules that she has a case to answer, under Section 210 of the Criminal Procedure Act (Cap.75, Laws of Kenya). She intends to call only one witness, in her defence, General Muoga.

- (a) Advise on the various steps to be taken immediately after the court's ruling confirming that Ms. Sethole has a case to answer. (9 marks)
- (b) Assuming you were instructed to appear for the state, draft the necessary charges. (6 marks)
5. Hamisi Mkombozi prays at the Sanaa Mosque in Kilai County. The Imam, Mkatili is a fiery preacher who has consistently held the position that their religion is the only one and all must join it.
- On 15<sup>th</sup> June 2012, Mkombozi, a University student attended Friday prayers among many other faithfuls since Mkombozi's sermons had become popular. At the sermon on Friday, the congregation was carried away and chanted slogans against the Governor of the County. They spilled out to the road and police were called in by businessmen near the mosque. The anti-riot police squad arrived at the vicinity and they were pelted with stones as they in turn teargassed the rioters. In the melee, Mkombozi, who was trying to get away from the mosque fell down and could not get up. The police pounced on him and dragged him into the mosque. The police rounded up twenty five (25) others and bundled them in their lorry, together with Mkombozi, and they were taken to Kilai Police Station.
- When Mkombozi's father who witnessed the whole incident went to Kilai Police Station, they said Mkombozi was not there. He went to the County Police Headquarters, then to the CID and all the other police stations in the County but Mkombozi was not there. It is only when he went to Police Headquarters that he learnt that Mkombozi had been sent to the neighbouring country Maganda, on the allegation that he was a recruit of Buku Bole Terror Group that had killed 77 people in Maganda. 2 months have passed since Mkombozi's arrest.
- Mkombozi's father has instructed your firm Nawezaji & Co. Advocates to engage the legal process and get his son back.
- (a) Draft the requisite application. (10 marks)
- (b) The court has granted your application. Draft the order. (5 marks)
6. (a) Kamau, Muting'a and Ochieng are close friends. On the 20<sup>th</sup> day of May, 2014, they went on a robbery spree in Kiambu. They went to the house of Mwangi in broad daylight and stole five (5) TV sets, six (6) mobile phones, a gas cylinder and left before the househelp could spot them. However, they were not lucky as a neighbor saw them and raised alarm. Members of the public gave chase and Kamau was arrested and handed over to Kiambu Police Station. Three phones were found on him. The other gangsters fled in a speeding Subaru car. As Kamau was being booked in the police found kshs.3,000, a leather wallet and a penknife on him. The housegirl, one Nyambura later reported the matter to the police.

On the same day at around 3.00 p.m., the robbers struck at Kiambu Coffee Factory where they ordered the women to lie down. A shaking Mumbi disobeyed orders to lie down and was hit with

a panga on the head sustaining serious injuries. The robbers stole 10 computers and kshs.200,000 from the factory. On the way out they shot in the air to scare onlookers. The factory manager reported the matter to the police. One IP Mutea was assigned the case by the OCS, SSP Odhiambo to investigate. He visited the scene and drew sketch plan of two scenes. He collected documents of ownership of the items stolen. He recorded statements of the key witnesses.

During investigations, IP Mutea got some wise leads resulting in the arrest of the two remaining robbers, Mutunga and Ochieng. He used an identification parade to be conducted by IP Mutea. Both suspects were picked out by witnesses. Charges were then preferred upon them. A pistol found on Ochieng was taken for ballistic analysis. A report from a ballistic expert was received by the investigating officer.

**Required:**

Assume you are the investigating officer. Prepare a complete police file to enable the OCS decide on the way forward in this case. **(10 marks)**

(b) Inquests are an integral part of criminal justice system. Explain what reforms you would expect in this argument that inquests are prone to abuse in Kenya. **(5 marks)**

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