

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 100: CIVIL LITIGATION

THURSDAY 17TH JUNE 2021.

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 (5)** 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

- (a) As an associate in the firm of Emali & Co. Advocates having been retained by Trumbal Kerry the plaintiff has asked you to seek the court's intervention against Malaika Mwema for failure of delivery of Motor Vehicles KTZ 132 Z and KZB 146 B. The High Court in Milimani, Nairobi had delivered a ruling against Malaika Mwema for delivery of the vehicles on 1st April 2019. Trumbal Kerry is afraid that Malaika Mwema is in the process of disposing off the motor vehicles. Trumbal Kerry wants Malaika Mwema to be committed to jail.

Draft the application together with an affidavit in support of the same

(10 marks)

- (b) 1. An application by way of Notice of Motion dated 10th July 2018 has been filed in the Land Court by the plaintiff Billy Estate Limited.
2. The order sought under Prayer 2 is restraining the defendant from closing an access road passing through Timber/Timber/70 under Section 140 of the Land Act.
3. The grounds upon which the application is based on are:-
a) Billy Estate limited is a management company for the estate called Billy Estate erected on Timber/Timber/70;
b) The respondent is the owner of Timber/Timber/70;
c) The owners have been accessing the road through the respondent's property since 2013;
d) The respondent has threatened to close the access road.
4. The respondent approved the application by a Replying Affidavit sworn on 15th August 2018
5. The respondent contends that the estate is not landlocked as it seems there was an access road which was blocked by a private developer.
6. Negotiations between the parties have failed.

Draft a ruling on the legal issues raised and the merits or demerits of the case

(10 marks)

QUESTION TWO

Willy Willis sued Ken Kambo in the High Court seeking payment of Ksh. 35,280,000. In a judgement delivered on 14th December 2018, the Court dismissed his claim with costs. Being dissatisfied with the said decision, he instructed his advocates on 10th January 2019 to file an appeal against the judgement. The advocate filed the Notice of Appeal on 30th January 2019 and applied for typed proceedings on 11th February 2019. He served both the Notice of Appeal and the letter requesting for proceedings on the defendant's advocates on 14th February 2019.

His advocate filed the Record of Appeal on 12th March 2019 and served it on the respondent's advocate on 15th March 2019. On 18th April 2019, the respondent's advocate filed an application seeking to strike the Notice of Appeal and the Record of Appeal and served it on the appellant's advocate on 30th April 2019. The application has not yet been fixed for hearing and Willy has not filed his response.

Willy has approached you and instructed you to immediately take over the conduct of the appeal from his advocates and to prepare a Replying Affidavit opposing the application. He has also requested you to study the record and identify if it contains any anomalies and the steps he needs to take to rectify them.

- a) Advise Willy on how he can successfully oppose the application **(2 marks)**

- b) (i) Examine the facts and identify if there are any anomalies in relation to the execution of the instructions to file the appeal. **(4 marks)**

- (ii) Advise Willy on the nature of the application he needs to file in order to rectify the anomalies you have identified and the conditions which he must satisfy before the court can grant the application. (4 marks)

QUESTION THREE

Paul Jones filed Machakos ELC No. 23 of 2013 against Thomas Williams seeking a declaration that he was the absolute proprietor of all that parcel of land known as Machakos Block 1/220 and an Order of eviction of the defendant. The suit was fixed for hearing on 29th June 2015 but was dismissed for non-attendance of the plaintiff.

On 11th July 2015, Paul filed an application seeking to set aside the Order of dismissal. The application was heard and was dismissed on 29th May 2016. Paul filed a Notice of Appeal dated 10th June 2016 intending to appeal against the whole of the said ruling but took no further steps.

On the advice of his advocates, Paul filed another suit being Machakos ELC No. 42 of 2016 seeking the same remedies he had sought in the previous suit. Thomas opposed the suit by way of a Defence filed in court on 13th January 2017. Paul is uncertain whether his advocate gave him the right advice and requires a detailed legal opinion on the issues raised so that he can make an informed decision.

Analyse the legal issues raised by the facts and write a concise opinion on the merits, if any, of the pending suit. (10 marks)

QUESTION FOUR

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

FAST TRACK CIVIL SUIT NO. 10 OF 2020

ALL GRAINS LIMITED PLAINTIFF

VERSUS

JACKSON BELLS..... DEFENDANT

PLAINT

1. The Plaintiff is a limited liability company registered under the Laws of Kenya and having its registered offices at Nairobi and its address of service for the purpose of this suit is care of Wakili Mwema & Co. Advocates, Mogonda House, 2nd Floor, Kuja Road, P O Box 78910 - 00200 Nairobi, Tel: 2547010002222 email: wakilimwema@gmail.com.
2. The Defendant is an adult of sound mind, residing at Nairobi and his address of service for the purpose of this suit is P O Box 12345 -00100 Nairobi (Service of Summons to be effected through the Plaintiff's advocates offices).
3. The Plaintiff is the registered proprietor of the leasehold interest contained in all those parcels of land known as L.R. No. 22750 and L.R. No. 22751 each measuring 0.20 of a hectare.
4. On or about the 13th day of February 2007, the Defendant without any right trespassed onto all those parcels of land known as L.R. No. 22750 and L.R. No. 22751 and erected two semi-permanent structures thereon.

5. On or about the 1st day of March 2020, the Plaintiff's agent attempted to enter the two parcels of land with an intention of erecting a perimeter wall but the defendant hired youths who were around with crude weapons who chased away the agents.
6. The Plaintiff avers that as a result of the said trespass, it has suffered loss and damage.
7. The Plaintiff's claim against the Defendant is for a permanent injunction restraining the Defendant either by himself, his servants, agents, or otherwise howsoever from entering, continuing to trespass, wasting, remaining on or in any way dealing with all those parcels of land known as L.R. 22750 and L.R. 22751 and a declaration that the Plaintiff is the registered proprietor of all those parcels of land known as L.R. No. 22750 and L.R No. 22751, mesne profits, damages for trespass, vacant possession and costs of the suit.
8. The Plaintiff avers that there is no suit pending between itself and the Defendant and that there are no previous proceedings pending in any court between the Plaintiff and the Defendant and that the cause of action herein relates to the Plaintiff.
9. Despite Demand and Notice of Intention to sue having been given, the Defendant has refused to give vacant possession.
10. The cause of action arose at Nairobi and the suit properties are valued at Kshs. 25,000,000 hence this court has jurisdiction to hear this suit.

REASONS WHEREFORE the Plaintiff prays for judgement against the Defendant and orders for: -

- a) A declaration that the Plaintiff is the registered proprietor of all those parcels of land known as L.R. 22750 and L.R. 22751.
- b) A permanent injunction restraining the Defendant either by himself, his servants, agents or otherwise howsoever from entering, continuing to trespass, wasting, remaining on or dealing with all those parcels of land known as L.R. 22750 and L.R. 22751 in any manner prejudicial to the Plaintiff.
- c) Vacant possession, in default eviction.
- d) Mesne profits.
- e) General damages for trespass.
- f) Costs of the suit.

DATED at Nairobi this 10th day of March 2020.

WAKILI MWEMA & CO
ADVOCATES FOR THE PLAINTIFF

DRAWN & FILED BY:

WAKILI MWEMA & CO. ADVOCATES
MAGONDA HOUSE, 2ND FLOOR, KUJA OAD
P O Box 78910 - 00200
NAIROBI
TEL: 2547010002222
EMAIL: wakilimwema@gmail.com

TO BE SERVED UPON

JACKSON BELLS
P O BOX 12345 - 00100
NAIROBI

You are an associate in the firm of Happy & Happy Advocates, Glory House 1st Floor, P O Box 4567 - 00100 Nairobi Tel: 254023345633 email: happy@gmail.com which has been instructed to respond to the claim. Jackson has given you the following information:

- The Plaintiff is the registered proprietor of L.R. No 22750.
- Gloria Grain of P.O Box 3789 - 00200 Nairobi is the registered proprietor of L.R. 22751.
- Jackson has been residing on the two parcels of land since the year 2007 with the knowledge of the Plaintiff and Gloria Grain but without their consent.
- He was not served with any Demand Notice.
- The Plaintiff and Gloria Grain have never occupied their suit parcels of land but attempted to forcefully enter on 1st March 2020.
- The Plaintiff and Gloria Grain destroyed his property valued at Kshs. 300,000.
- He wrote a demand letter asking the Plaintiff and Gloria Grain to stop interfering with his peaceful occupation of the suit land.

Based on the above facts and having read the plaint, draft the appropriate pleadings in response to the Plaintiff's claim. (10 marks)

QUESTION FIVE

B auctioneers has attached and sold a truck belonging to Patel. Mrs. Omari claims that the truck belonged to her. She says that the proceeds should be surrendered to her. B auctioneers does not know the person to give the proceeds.

You are an intern in the law firm of Kazimoto and have been asked to handle B auctioneer's matter.

Advise B Auctioneers on the action to take, the type of application, applicable law and conditions that must be fulfilled for one to successfully prosecute the application. (10 marks)

QUESTION SIX

A judgement has been rendered in favour of Pamela who had been involved in an accident. General damages for pain and suffering were Ksh. 100,000 and special damages were assessed at Ksh. 3000. Pamela has just discovered that Patrick, her office assistant has been holding treatment receipts in the amount of Kshs. 40,000. Such amount was not awarded in the judgement. Patrick did not know that the treatment receipts were required. Pamela is convinced that justice will not be served if she is not paid the full amount spent on treatment.

Using applicable law, advice Pamela on the avenue she can take to recover the amount, while providing grounds upon which Pamela can rely on to prosecute the application. (10 marks)

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION

TO THE ROLL OF ADVOCATES.

ATP 101: CRIMINAL LITIGATION

FRIDAY 25TH JUNE 2021.

DURATION: 3 HOURS.

Instructions to Candidates:

- This paper contains **FOUR (4)** printed pages including the cover page, with a total of **Six (6) questions**.
- Candidates **MUST** answer **FIVE (5)** questions.
- Question ONE** is compulsory and carries **20 marks**.
- All other questions carry **10 marks each**.
- Answers **MUST** be supported by relevant case law and statutory provisions where required.

PLEASE TURN OVER

QUESTION ONE

Mdosi is a senior manager with Mali Mingi Bank in Nairobi. His wife, Mrembo, is a florist within Kilimani Estate. They have two children aged two and seven years old respectively who they leave under the care of Atoti, Mrembo's distant relative. Atoti is an orphan with two siblings who are cared for by her aunt Jane. Jane secured Atoti's employment at Mrembo's house and receives all Atoti's wages. Atoti believes her aunt Jane is using the money to ensure her siblings go to school.

(1) D.m.b.f.p. - Jane

(2) Stealing - theft
Criminal responsibility
for minor
offences
16 years
old

On 4th February 2020, around 3.00 p.m. Atoti was arrested for shoplifting at Kaama Supermarket. She was found having stashed foodstuff and assorted toiletries inside her undergarments. Kaama, the supermarket owner called the police and upon interrogation, Atoti stated that she stole the items because she was hungry and had no money to pay for food stuff and toiletries. The police observed a bulge in her tummy. Atoti confirmed that she was pregnant. She also claimed to be sixteen years old, and further that Mdosi would come back home during the day when his wife was away and forcibly engage her in coitus. Atoti was certain that the gate records by Juma, the Estate gatekeeper would confirm this. Atoti learnt that her aunt Jane abandoned her siblings to loiter Munyoto market as street urchins. Kaama feels sorry for Atoti.

(3) Atoti
Year been
detained by
Mdosi

(4) Juma - witness

- Citing relevant provisions of Law, elucidate the steps the investigator will take, the people to be charged and the specific charges to be preferred. (7 marks)
- Citing relevant law or policy, explain the options available to the investigator when dealing with Kaama's complaint. (5 marks)
- Mkali is the prosecutor handling the case. Given the steps in (b) above, advise him on the pre-trial issues likely to arise. (8 marks)

(a)

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QUESTION TWO

Simba Lao was charged with the offence of stealing by servant contrary to Section 251 of the Penal Code. He was charged, convicted of the offence and sentenced to 5 years' imprisonment. The charge and conviction were based on the testimony of his workmate, Collins Mate, who reported to the police that Simba Lao had stolen a laptop. After serving a year in jail, Collins Mate went to the police station and reported that he had provided false information which led to the conviction of Simba Lao and that Simba Lao did not steal the laptop. He produced evidence of audio recordings he had with another colleague with whom they hatched a plan to incriminate Simba Lao knowing very well that Simba Lao did not steal the laptop. The police had in turn advised Collins Mate to present that evidence to Simba Lao and apologise. Simba Lao accepted the apology. Simba Lao has however instructed you to proceed and have his sentence set aside and conviction quashed in view of the new evidence from Collins Mate that he did not commit that offence of stealing by servant where he reported that he had provided false information which led to the conviction of Simba Lao.

- Draft the necessary application. (6 marks)
- Outline the guidelines with regard to mitigating factors applicable in a re-hearing sentence for the conviction of a murder charge as set out by the Supreme Court's decision in the case of *Francis Karoki Muruatetu vs. Rep. [2017]*. (4 marks)

QUESTION THREE

Panda was asleep when at around 2.00 a.m., he was awoken by shouts emanating from inside the house. His family was under attack. Panda reached for the bedside switch. As the lights shone, he was immediately hit on the head and lost consciousness. Upon recovery, he found himself at Kijabe Mission Hospital, having lost track of time. It was 3.00 a.m., two weeks later. The nurse, Mzuri spoke to him. Panda recalled he was attacked by thugs and that one, Moshi, a tout was well known to him.

Corporal
They are village mates. He had severe injuries and lapsed into a coma. Mzuri relayed this information to Corporal Ali, the investigating officer when he visited in the morning. The police quickly arrested Moshi. On interrogation, Moshi named Motomoto and Mzinga as accomplices. A manhunt ensued and the two were arrested in a slum in Nairobi.

Snatching Complice Confession admission ID Parade witness witness
On the way to the station, Mzinga decided to confess that he was a college student and that he was lured by his uncle, Motomoto into the act. He led the police to Motomoto's ex-wife's home within the slums. Police recovered electronics and a myriad of household items which Panda's wife and other villagers identified. The other villagers declined to file complaints fearing Motomoto's gang. The three were charged with robbery with violence. The case did not proceed because Panda was still in a coma. He succumbed after seven months.

- a) As a legal intern in the Office of Director of Public Prosecutions, advise the prosecutor on how to proceed with the case. (6 marks)
- b) Corporal Ali obtained from Mzinga a self-recorded statement in his own handwriting detailing his involvement and regretting his action. Motomoto's lawyer has indicated that he will challenge the production of that statement. Advise the Prosecutor on the legality of producing Mzinga's self-recorded statement as evidence in the prosecution's case. (4 marks)

QUESTION FOUR

Material evidence
Chapa Kazi, a Resident Magistrate at Kiriba Law Courts is handling a fraud matter where Jicho Pevu is the complainant and Mfilisi is the accused person. The trial has commenced with three witnesses having testified. The case was adjourned at mid-day and Chapa Kazi proceeded on to another matter where Mashuhuri, Mfilisi's lawyer is representing another client. That case is adjourned at around 5.00 p.m. On the way out, Chapa Kazi sees a stranded Kamam, Mashuhuri's pupil. He offers her a lift to the bus stage three kilometres ahead. She alights and they both find Jicho Pevu at the bus stage. He looks at them suspiciously. Two weeks later, Jicho Pevu's lawyer writes to the Chief Magistrate, Kiriba Law Courts asking Chapa Kazi to disqualify himself.

With the aid of decided cases, detail the circumstances for recusal by a presiding judicial officer, outlining options available for Chapa Kazi. (10 marks)

QUESTION FIVE

Kavita Musili has been charged with the offence of trespassing on a burial place contrary to Section 136 of the Penal Code. Following the World Health Organization and Ministry of Health, Kenya COVID 19 Protocols on avoiding gatherings and social distancing, Kavita Musili trespassed at the burial of Wayua Maweu with a view of stopping it. He was arrested and charged at Wote Law Courts. The Charge Sheet did not have the date and place of offence. Further, the Charge Sheet did not contain the particulars of the offence. He was tried, convicted and sentenced to two years' imprisonment.

- a) Explain the statutory provisions the court used to allow a charge to be prosecuted despite the omissions in the Charge Sheet. (5 marks)
- b) Based on the scenario above, prepare the necessary application to quash the charge before the trial commences. (5 marks)

X QUESTION SIX

Medeline is a Multi-National Company run by a Colombian family with Escobar, Padrino and Alberto as the directors. The company has many business concerns including print and media. In 2019, Kenya School of International Law(KSIL) advertised a five-year tender for supply of quick response code readers and stickers to be used by students as they access the school. Medeline through its Kenyan subsidiary successfully bid for the tender. It was awarded the tender partly because it had supplied similar services to other government institutions. In April 2020, students raised complaints that they were unable to access the school since the machines installed by Medeline were faulty. After internal investigations by Kenya School of International Law, it was discovered that some employees of the school had colluded with Medeline's local directors and diverted the authentic machines for a Kshs. 50 million kickback by another company in South Sudan.

The matter was referred to the Directorate of Criminal Investigations (DCI). After investigations were carried out, the DCI detectives arrested some of Kenya School of International Law's employees and some of the students who had raised concern on social media.

Charges were preferred against some of the employees of KSIL as well as the directors of Medeline, Escobar, Padrino and Alberto. The charges were filed at Milimani Law Courts and the Chief Magistrate issued a warrant of arrest against the three directors who are said to be in Colombia yet they have never been questioned by the DCI.

The directors of Medeline's local subsidiary were nowhere to be found and charges were not preferred against them and no reason was given for this.

You have been approached by the directors of Medeline who inform you that Alberto is 78 years and cannot travel to Kenya, Padrino also resigned from the company 3 years ago. Escobar takes care of Alberto on a daily basis. They also explain that they consider the decision to charge them irrational and an abuse of power by the DCI. They insist that they did not have anything to do with the disappearance of the machines at KSIL. They have instructed you to represent them indicating that they do not want to come to Kenya for trial.

Draft the appropriate pleadings.

(10 marks)

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 102: PROBATE & ADMINISTRATION

TUESDAY 22ND JUNE 2021

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 (5) 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

Reverend Belinda wrote and executed a Will on 1st March 1999. The Will partly read as follows:-

- 18/20 revocation*
1. I revoke all previous wills and testaments.
 2. I appoint my confidant Pastor Banda of P O Box 10, Mawingu as executor.
 3. My plot/2020 is to be divided into four equal portions for my children as follows:

A	B
C	X D

X - Access road to be curved out of plot D

A - Maria (Daughter)

B - Anita (Daughter)

C - Johanna (Son)

D - Family plot to be held in the joint names of all my children

4. Any other property or possession of which I may die possessed shall be sold under the supervision of my said executor and the proceeds divided equally to all my descendants.

The Will was witnessed by her two friends. She made her children aware of the Will and gave a copy to each of them and a copy to her executor. Six (6) years after executing the Will, Pastor Belinda fell seriously ill. At the time of her illness, her two daughters were out of the country for further studies leaving her with her son Johanna and his wife. One morning, Pastor Belinda suffered a mild stroke and Mrs. Johanna who was the only person with her at the time insisted that she would call the doctor only if Pastor Belinda revoked her Will and bequeathed everything to Johanna and herself. Mrs. Johanna then brought in a tape recorder and asked Pastor Belinda to make an oral Will. Pastor Belinda whilst in pain and in the hope that Mrs. Johanna would call the doctor immediately, mumbled a few words to the effect that 'I have given everything I own to Johanna and in case of anything, Johanna and his wife shall inherit my estate and property.' Pastor Belinda died a few weeks later in the hands of Johanna & his wife. The two daughters Anita and Maria travelled to attend the funeral and were not happy with Johanna as he had not informed them that their mother was seriously ill and insisted he had told them she was doing better. After the funeral, Johanna and his wife began selling the deceased's personal effects including jewellery, clothes and an old Daihatsu motor vehicle which they sold as scrap. They did not attempt to share with the daughters any of the proceeds of sale and when they approached Johanna, he indicated that everything belonged to him as he was the one who took care of the deceased in her final days and that she had changed her Will giving him and his wife everything. When they challenged him to produce a copy of her new Will, he brought the tape recorded message and asked them to listen. After listening to the recording, they were of the view that their mother must have been under a lot of pain and duress as the sentences were incoherent. However, faced with the new set of circumstances, they approached pastor Banda on the issue but he was equally confused and asked them to wait upon the Lord. The two daughters then sought legal services on the issue.

- several years* *6 years*
- executor appointed*
- influence* *influence* *influence*
- validity* *validity* *validity*
- circumstances* *circumstances* *circumstances*
- 3 months* *3 months* *3 months*
- interrogating* *interrogating* *interrogating*
- section 48* *section 48* *section 48*
- legally* *legally* *legally*
- 39*
- a) Using case law and statutory provisions, discuss the validity or otherwise of the oral Will vis-a-vis the written Will executed on 1st March 1999. (6 marks)
 - b) Name and discuss 3 methods of revoking a Will by a testator (6 marks)
 - c) In light of the above narrative;
 - i. Identify the type of grant to be applied for. (1 mark)
 - ii. Identify the forms and documents required in your application and outline the procedure up to confirmation of grant. (4 marks)
 - d) Draw a schedule of distribution of the deceased's estate in light of the above narrative. (3 marks)

QUESTION TWO +

In 1995, Josiah started a school in Umoja and it was very successful. Upon his demise in 2005, his son Michael and daughter Veronica were appointed as administrators of his vast estate which included rental properties. Before the grant was confirmed, Michael died in 2010 leaving behind two wives, Faith and Linda and six children who are all minors and two plots in Ngong Town.

Faith and Linda have applied for grant of letters of administration and the case is still pending. The children's fees are pending. They have sold one of the parcels of land to Kennedy. They also want Veronica to give them more money from rent but she has declined.

Faith and Linda have filed an application against Veronica seeking orders that she gives a true and accurate account of all the monies generated by the school and the rental properties. Secondly, they pray that they be appointed administrators to oversee the school and the rental properties. Thirdly, they pray that Veronica be stopped from collecting rent and school income.

Faith and Linda have visited the firm where you are attached as a Pupil and your Pupil Master has asked you to research on the following issues: -

- Identify the issues raised for determination and highlight the rights, if any, accruing to Faith and Linda, noting to apply the relevant law and legal precedents. (5 marks)
- Before Kennedy takes possession of the Ngong plot, Veronica approached the Firm along with Faith and Linda and offers to increase the amount for the children's fees and upkeep pending confirmation of grant of Josiah's estate. Immediately thereafter, Faith and Linda apply to court for orders restraining Kennedy from in any way intermeddling and or interfering with and entering into the Ngong property. Kennedy files a similar objection against them claiming a purchaser's rights and prays that Faith and Linda be themselves restrained from intermeddling. The judge requests you as his research assistant to prepare a well-articulated legal opinion in the matter.

Prepare the legal opinion on the matter. (5 marks)

QUESTION THREE

According to the traditions of the Wakanda tribe, it was a general rule passed on from generations that women were not entitled to own land. It was generally known that 'land had its owners and these were not women.' Thus, if a man was survived by daughters only and his wife, the deceased's brothers would take charge of the administration of the estate and if there were no brothers, the clan would select any member to be in charge. Married daughters were never considered beneficiaries of their father's estate and unmarried daughters were not entitled to own their father's land but would be shown a place to live and cultivate without any ownership or control rights. Divorced/returnee women were shunned and upon returning to their parents' home, would be shown a small strip of land to live and cultivate. The land title would always be in the name of the male figure in the family/clan. Administration of estates was applied for at the District Commissioners offices and the grant issued by the District Magistrate.

Unknown to the Wakanda people, the country came up with a new Act known as the Law of Succession Act, 1981. In spite of this new Act, the Wakanda people continued to apply their traditions as regards matters of inheritance/succession. Among the Wakanda people, there lived one Mr. Gitonga who owned a large tract of land and two town plots in the nearby shopping centre. Mr. Gitonga was blessed with 3 daughters only. He contemplated marrying another wife to bear him sons but before he could do so, he died abruptly on 1st August 1985. He was survived by his wife Josphine and 3 daughters. One daughter, Mercy was married nearby and the other two daughters Zipporah and Gladys were unmarried. Subsequently, the clan sat to discuss administration of the estate of Gitonga (deceased). They allowed his wife to continue living in the matrimonial home together with the unmarried daughters. It was decided that since Mercy was married, she was not entitled to a portion of the land. As the deceased had no brothers, the clan then appointed a cousin of the deceased, Mr. Maingi to be the administrator

of the estate. Mr. Maingi then proceeded with administration through the local administration offices and his application was sanctioned by the District Magistrate Wakanda. The estate was subsequently distributed as per the traditions of the Wakanda people.

In the meantime, Mercy was chased away by her husband and she sought refuge in her mother's house. The clan allowed her temporary occupation in her mother's house and they built for her a small mud house at the far end of her deceased father's land where returnee women are normally settled. They allowed her to cultivate a very small strip of land but not to own any land. Mercy was not comfortable but she had no option. Sometimes in November 1990, the *pro bono* lawyer's association visited the Wakanda independent church to give a talk on inheritance and property. Mercy, her sisters and mother attended the talk. They were surprised that women were actually allowed to inherit and a title could be in the name of a woman. They took the contacts of one lawyer and a week later, they were in his office seeking legal advice. Considering that they are caught in between custom and statute law;

- a) Using case law and relevant statutory provisions analyse the legal position as regards administration of the deceased's estate in the context of the narrative. In your answer, state whether the deceased's wife and daughters have a claim or not. (8 marks)
- b) Name two (2) instances where the Law of Succession Act allows for the application of African Customary Law. (2 marks)

QUESTION FOUR

Mrs. Makonde a widow died on 13th August 2017 in the city of Port Victoria. She died testate having executed a will five years before her death. Mrs. Makonde did not appoint an executor but she categorically stated how her property would be shared out. As per her will, the beneficiaries of her estate were her 5 children who were to inherit her estate in equal shares. Her Will was witnessed by her cousin and her nephew who were both adults. After her death, the children armed with the Will sought legal services as regards administration of the deceased's estate.

- a) In light of the narrative, explain the legal positon in regard to administration of the deceased's estate. (4 marks)
- b) Draft the relevant petition to be filed in light of the narrative. (6 marks)

QUESTION FIVE

Precious, an astute farmer and business lady died intestate following a tragic road accident on 20th December 2018. She was survived by her mother Mrs. Blessing Makoni and one daughter, a minor. Her farming activities included rearing goats for milk and planting various food crops. At the time of her death, the tomatoes in her farm were ready for harvesting and the potatoes in the store were set to be transported and sold in the main city market. Precious also owned some wooden structures where she collected rent by the 5th of every month. After the funeral, the mother of the deceased felt that she needed to take steps to protect the estate of the deceased. She knew that if she did not take immediate action, the food crops would get spoilt and the tenants in the wooden structures could take advantage of the deceased's absence to abscond paying rent and end up committing acts detrimental to the estate of the deceased. Mrs. Blessing Makoni has sought your services as a lawyer on the immediate action she needs to take.

- a) Using case law and statutory provisions, discuss the type of grant required. (5 marks)
- b) Draft the relevant petition on behalf of Mrs. Blessing Makoni. (4 marks)
- c) Identify the grant that would be required to institute legal proceedings on behalf of the deceased arising out of the road accident. (1 mark)

QUESTION SIX

Mr. Singh died testate on 19th August 2017. He was survived by his wife Asmara and his four children; Priti (daughter), Bimal (son), Teji (son) and Malti (daughter). As per his Will, Mr. Singh appointed Bimal as the executor. He further indicated that his estate would be shared equally among his children and his wife would only have a life interest in his immovable property. Three months after his cremation, the family sought to initiate the process of succession as per the will. However, the appointed executor Bimal was not cooperative. He indicated he would not commence the process until the other beneficiaries considered giving him a larger portion of the deceased's estate. He based his argument on the fact that Priti was single with no children, Malti was married to a rich man, Teji was single with no children yet on his part, he had a wife and a daughter who depended on him for their upkeep. He felt that his wife and daughter should benefit from the estate of the deceased and should be included as dependants. He told his siblings he would frustrate the process until they agreed to his demands and accept to give his wife and daughter reasonable provision from the estate. However, his siblings were not willing to give in to his demands and they were of the view that the deceased's will should be followed to the letter. Consequently, Priti, Teji and Malti have decided to seek legal advice on the way forward.

- executor
from 80
Should apply for
denunciation*
- Probate*
- Considering Bimal's refusal to apply for grant of administration, explain the legal position and the procedure to be followed in pursuit thereof. (6 marks)
 - Consider the argument by Bimal that his wife and daughter should be included as dependants/beneficiaries of the deceased's estate. (4 marks)

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 103: LEGAL WRITING & DRAFTING

WEDNESDAY 23RD JUNE, 2021.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **Four (4)** printed pages including the cover page, with a total of **Six questions**.
- (b) Candidates **MUST** answer **FIVE (5)** 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

In December 2019, a new Coronavirus outbreak was reported in Hubei Province, China. The new highly infectious disease was officially named Covid-19. Within weeks, the disease had rapidly spread across the world, prompting the World Health Organization (WHO) to declare the outbreak, first, as a Public Health emergency of International concern and later, as a global pandemic.

On 13th March 2020, the first case of Covid-19 was reported in Kenya. In the weeks that followed, reported cases of the disease spiked, placing severe strain on the country's Public Health system and the economy. By June 2020 however, the outbreak had been controlled, although regulating public gatherings, domestic and international movements of people and the operations of educational and business institutions had proven difficult throughout the period.

In the aftermath of the outbreak, the Kenyan Government now plans to develop a legal framework for effectively responding to similar Public Health emergencies. The proposed law would grant relevant government agencies the powers to curb the spread of infectious disease outbreaks, including placing restrictions on freedoms of movement and assembly, controlling entry into the country and regulating the operations of educational facilities and businesses. The law would also provide for offences, in addition to establishing a body corporate responsible for coordinating the control and management of infectious disease outbreaks.

Taking into account the relevant provisions of the Constitution of Kenya, 2010, prepare a Bill that would adequately align with the above objectives of the Government. **(20 marks)**

QUESTION TWO

"I am here on the invitation of the Principal of this great Bar School. She asked me to speak to you on the techniques modern drafters use;

- (a) to ensure that the documents they draft are plain English and
- (b) to organize large and complex legal documents."

"Towards (a), I have identified 5 sentences each of which contravenes a particular rule of plain English writing. Using these sentences, I will help you identify the mistakes which the original drafters made, and then show you how to re-write them to comply with plain English requirements. The sentences I have in mind are:-

- i. A judge's decision should reflect her own opinion
- ii. ~~4~~The benefits are subject to the provisions of the 2020 legislation
- iii. , The company shall alienate, transfer and convey the property
- iv. ~~3~~ Members other than the primary beneficiary may not receive these dividends
- v. ~~2~~ We invest in funds assets in short-term market securities to provide you with liquidity, protection of your investment, and high current income."

Towards (b), I will use the example of complex merger and acquisition contracts."

You are the guest lecturer in the excerpt above. Complete your lecture.

(10 marks)

QUESTION THREE

Bob Tindi is a renown social media influencer in Kenya. He is a founding member of an online community known as “Kenyans on Twitter”. He posts on and comments regularly on nearly all topical public interest issues and debates. He has thus gained a huge following in social media platforms including Twitter, Facebook and Instagram. On 16th May 2020, Bob tweeted about Honourable Joash Serekunda, a member of the National Assembly. The tweet reads as follows: - “Serekunda is a big thief who has swindled CDF. He should be rotting in jail.” The tweet was liked and retweeted by hundreds. The next day, Honourable Serekunda contacts you as you have been his lawyer for many years. He wants to file a defamation suit against Bob but wants to know the following two issues first.

- Is Bob’s tweet protected under the constitution?
- Would the fact that he is a member of the National Assembly have a bearing on his claim against Bob?
 - a) Draft a legal opinion for Honorable Serekunda. (5 marks)
 - b) Honourable Serekunda instructs you to write a letter to Bob demanding that he pulls down the tweet as it is defamatory and publicly apologise for it. Draft the letter you would prepare and send to Bob. (5 marks)

QUESTION FOUR

Mr. Mali Mingi owns L.R. No. Nairobi/Block/55/01 situated in Nairobi and measuring 0.25 acres. Mr. Tafuta Shamba is desirous of purchasing the property from Mr. Mali Mingi. Mr. Mali Mingi’s property is valued at Ksh. 4,000,000. However, after negotiations with Mr. Tafuta Shamba, they agreed to transfer the property for the sum of Ksh. 3,500,000. Mr. Tafuta Shamba agreed to pay this sum in seven monthly instalments of Ksh. 500,000 after which the property would be transferred to his name.

The parties further agreed that Mr. Tafuta Shamba may take possession of the property upon paying at least 50% of the sum due. It was also agreed that Mr. Tafuta Shamba would cater for all legal fees, statutory payments and disbursements pertaining to the transaction.

- a) Prepare a legal opinion advising Mr. Tafuta Shamba on what is required of him to acquire legal title to the property. (5 marks)
- b) Prepare a contract for the acquisition of the property by Mr. Tafuta Shamba. (5 marks)

QUESTION FIVE X

The Cabinet Secretary in the Ministry of Finance in the Country of Olan has instructed your firm to prepare regulations for the payment of fees for the registration and licensing of fish mongers.

Prepare a draft of these Regulations. The draft should consist of not more than five regulations.

Note:

- a) Section 2 of the Fisheries Act defines the term “Cabinet Secretary” as the Cabinet Secretary responsible for matters relating to fisheries.

- b) Section 16 of the Fisheries Act provides that the Fisheries Authority may impose a levy or require the payment of fees or charges for its services. However, this section limits the maximum amount chargeable to Kshs. 10,000.
- c) Section 34 of the Fisheries Act provides that the Cabinet Secretary, in consultation with the Cabinet Secretary in matters relating to Finance may make Regulations for the better implementation of the Act.

(10 marks)

QUESTION SIX

Peter and Jane married through a Mbuuni customary ceremony held on 19th December 2009. The ceremony was officiated by traditional elders at their shrine in Mbuuni. The couple have two children, Jayden and Drusilla born in August 2010 and April 2015 respectively. The family lives in Mbuuni which is in Uuni County. Peter has applied for a visa. One of the requirements for that visa is an Affidavit of Marriage. Peter has approached your office with instructions to help him draft this document.

Assuming that you have the requisite qualifications, draft the Affidavit of Marriage. (10 marks)

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 104: TRIAL ADVOCACY

TUESDAY 29TH JUNE 2021

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **FOUR (4)** printed pages including the cover page, with a total of **Six (6)** questions.
- (b) Candidates **MUST** answer **FIVE (5)** 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

In the Affidavits filed in the Employment and Labour Relations Court in a labour dispute concerning unlawful termination, it has been averred that James was employed by ABC Milk Processing Company in the Sotik Milk Plant as an accountant on 30th March 2013 at a monthly salary of Kshs. 35,000. He was terminated from employment on 30th June 2019 on the grounds of misappropriating company funds and failure to properly account for funds under his custody.

Prior to his termination, he received a show cause notice which was dated 15th June 2019 which was hand-delivered to him on 19th June 2019. On the same day, he received a phone-call from the Nairobi head office requiring him to appear for a disciplinary hearing on 22nd June 2019. James alleged that this did not give him sufficient time to prepare for his defence as well as to travel to Nairobi for the hearing. He was therefore unable to attend the hearing.

James alleges that on account of the busy schedule at his work station, he was never able to proceed for his annual leave for two consecutive years.

Moreover, the company did not submit his statutory deductions for the last one year. He thus seeks: -

- Prayers*
- Three months' salary in lieu of notice - Kshs. 105,000 ✓
 - Twelve months' salary for wrongful termination - Kshs. 420,000 ✓
 - General damages for infringement of his constitutional rights - Kshs. 1,500,000 ✓
 - Cost of the suit ✓

You are on record representing James.

- a) Draft the key questions you will ask during examination-in-chief when James takes to the stand. 7 marks
- b) Explain the circumstances under which you will be allowed to ask leading questions during your examination-in-chief. (4 marks)
- c) Discuss whether leading questions would be appropriate when James is cross-examined by the opposing counsel. (5 marks)
- d) Examine the circumstances under which you will need to re-examine James after he has been cross-examined by the opposing counsel. (4 marks)

QUESTION TWO

Two years ago, you did your pupillage at XYZ firm of advocates in Nairobi. At the time, the firm specialised in conveyancing matters and had been retained by Peter and Paul to draft a Sale Agreement for them. As a pupil under the advocate who handled the brief, you sat in a number of meetings where Peter and Paul were in attendance.

At the time, Peter was selling a two-acre parcel of land in Karen to Paul. From the consultations, it emerged that Peter was interested in selling the parcel as he suspected it was located on a road reserve. He was therefore keen to get rid of it before the Kenya Urban Roads Authority (KURA) started repossessing the road reserves for construction of roads in the area. For his part, Paul was keen to use money he had irregularly acquired from the National Youth Service (NYS) before the government took measures to recover the money from his account.

You have moved from XYZ and opened your own firm. You have also been appointed to work for the Karen Stakeholders Association as a representative in the KURA Karen Roads Construction and Rehabilitation Projects. Paul has approached you to represent him in a dispute with Peter over the conveyancing of the Karen land. Paul tells you that he received a demand letter from XYZ alleging that he has failed to pay the final instalment of the proceeds to Peter even though he is already in possession

- ~~Contract - Both~~
- ~~confidentiality - both, & having been disclosed in a previous case for one side~~
- ~~Illegal transaction / fraud~~ (in a previous case for one side)
- ~~unable to pay.~~
- ~~Competence. - Just opened a firm over you have been~~

of the land. Paul however, argues that he has received information that the land lies on a road reserve and that KURA may repossess it soon.

From a conversation with a colleague at XYZ, you have also learnt that Peter had been informed by the firm that Paul's source of income was NYS money which has now been frozen by the Government in its efforts to recover the NYS money, which has led Peter to develop cold feet.

The parties intend to have the matter filed in court for adjudication.

- Explain four (4) reasons whether you will or will not accept Paul's brief. (4 marks)
- Elaborate on the duties owed by:-
 (i) You to Paul as Paul's Advocate in this case.
 (ii) The firm of XYZ as Peter's Advocates in this case. (3 marks)
 (3 marks)

QUESTION THREE

The family of Shisia from Mumias has come to your chambers seeking advice and possible representation concerning a dispute between them and the Odongo's, their neighbours and in-laws.

They allege that Wanjala, Odongo's son, has been stealing their household items and livestock and selling them to other neighbours. They have complained to the local chief but nothing has been done. This has led to bad blood between the two families. In fact, a week ago, Wanjala was caught in the process of slaughtering one of Odongo's sheep and was thoroughly beaten by villagers. Now, Odongo claims that it is Eric, Shisia's first born son, who was the leader and is threatening retaliation. Two days ago, Shisia's grass thatched kitchen which is next to his house was burnt down at night. They suspect the Odongo's for being responsible for the arson. In fact, Alfonso, Odongo's second son, was seen buying petrol from the local petrol station earlier on the day the kitchen was burnt down.

- Explain to Shisia's family the various available avenues through which this dispute could be resolved highlighting the role you would play as their advocate should they engage you. (3 marks)
- Examine the sources of law that will guide the strategy you will adopt in advancing your client's case in case the Shisia's family retain you to represent them in the legal proceedings that ensue. (7 marks)

QUESTION FOUR

You have been retained by Zablon to represent him in a dispute involving succession to his father's land. His father Patrick, died 20 years ago. He had five offspring's; Zablon the first born, Elfas, who predeceased him, John, Peter and Jane.

Elfas' widow Anne had one son with Elfas but after Elfa's death and before her father in law died, she remarried and had two other offspring from the second marriage.

When Patrick was sick, John, Peter and Jane never visited him. Out of desperation, he transferred his land to Zablon. The transfer was registered just before he died. When Zablon's siblings heard of it, they sued Zablon and their father but never pursued the same after his death and the same was dismissed.

Last year, Zablon's siblings together with the late Elfas' wife ganged up and sued Zablon for a "share of their inheritance." The matter is coming up for hearing.

- a) You seek to make preliminary objections. Discuss any four grounds upon which such objections may be sustained. (4 marks)
- b) Examine the grounds upon which you would raise objections during the trial. (2 marks)
- c) Draft a brief opening statement that you will use during the commencement of the trial. (2 marks)
- d) Supposing the matter is heard to the end, explain why there is need to make closing arguments. (2 marks)

QUESTION FIVE

Bernard has been retained to represent Annette in a family matter concerning the custody of Peter whom Annette had with Bill before their marriage broke down leading to a legal separation.

Bernard has had a feeling that the Magistrate in the Children's Court has been biased in favour of Bill as they are from the same community. Bernard has written an opinion piece in one of the local dailies castigating judicial officers for the "emerging habit of ethnicizing family disputes to the detriment of innocent children." During the last appearance in Court, the magistrate had ordered Annette to release Peter to his father, Bill but this has not been done.

The matter is now listed for the main hearing. Bill, who was previously appearing in person has now retained Jennifer, a newly admitted advocate to represent him. There are two witnesses in court for Annette who is the Petitioner in the matter. Jane is Peter's class teacher, who in her witness statement has indicated that Peter's class performance had greatly improved in the last semester when he was staying with his mother. Agnes, Annette's house help has also been called as a witness to speak to the hospitable home environment provided.

After the court has settled down and the matter which is the first one on the cause list is called, Bernard immediately stands up and states, "we have Jane, the Petitioner's first witness ready to testify."

(3) After the oath has been administered by the court clerk, Bernard proceeds to ask Jane to introduce herself and then examines her. As he asks her to respond to some questions, he walks around the court while Jane keeps her stare gazed on him throughout.

(4) When Jane stands down, Bernard calls Agnes to the stand despite Jennifer's protest that this is improper. Before the magistrate rules on Jenifer's objection, Bernard quips, "I see at least young and pretty advocates are now joining the profession in their droves. I hope this will liven up the wheels of justice as the old system is a bit rusty on the edges." In light of these events: -

- a) Explain the particular breaches of rules of etiquette and suggest the proper conduct by the parties. (5 marks)
- b) Discuss the issues of contempt of court that arise in the circumstances and the possible legal consequences for the objectionable conduct. (5 marks)

QUESTION SIX

"The very first time I cross-examined a witness, as a direct and immediate consequence of my cross-examination of that witness, my client went to jail. It took me a long while to realise that there is something which to reassure yourself about it. No matter (how badly you do in your cross-examination), it is the client who goes to jail." Irving Younger.

Do you agree with this statement? Analyse the common errors during cross examination of a witness in a criminal trial. (10 marks)

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION

TO THE ROLL OF ADVOCATES

ATP 105: PROFESSIONAL ETHICS & PRACTICE

THURSDAY 24TH JUNE 2021

DURATION: 3 HOURS

Instructions to Candidates:

- (a) This paper contains **THREE (3)** printed pages including the cover page, with a total of **Six (6)** questions.
- (b) Candidates **MUST** answer **FIVE (5)** 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

- a) Citing relevant case law and statutory provisions, discuss an Advocate's duty to the legal profession. (10 marks)
- b) Discuss the role of the Law Society of Kenya in the enhancement of professional ethics in the legal profession in Kenya. (10 marks)

QUESTION TWO

The Law Society of Kenya, through its Senior Counsel Committee has advertised a call for applications for conferment of the rank of Senior Counsel. Mr. Newton wishes to apply and requests you to assist him prepare his application. Mr. Newton has been in practice for 10 years. Mr. Dishon had lodged a complaint against Mr. Newton which was settled after a plea of guilty was entered before the Disciplinary Tribunal and an order made for restitution of funds which had been held by Mr. Newton.

- a) What professional standards and ethical issues would you consider when preparing Mr. Newton's application? (5 marks)
- b) What advice would you give Mr. Newton? (5 marks)

QUESTION THREE

Sarah, a State Counsel, is instructed by the Director of Public Prosecutions to conduct a prosecution against Evans who is charged with the offence of robbery. Investigations are still ongoing in the case and hearing is scheduled to commence on 5th November 2021.

(Confidential)
On 2nd June 2021, Sarah engages in a chat discussion relating to this case on a WhatsApp group with other State Counsel from the Office of the Director of Public Prosecutions. In the course of discussions, she elaborates the strategy she intends to employ to ensure the accused person is convicted. Members of the WhatsApp group have urged her to ensure success at all costs.

- a) Discuss Sarah's professional and ethical responsibilities in the foregoing scenario citing relevant statutory provisions and case law. (5 Marks)
- b) The Director of Public Prosecutions has instructed you to prepare a legal opinion in response to an anonymous complaint received against Sarah's conduct in relation to her chats in the WhatsApp group. You are required to make recommendations on any actions to be taken against Sarah. (5 Marks)

QUESTION FOUR

"The role of an Advocate to provide the duty of care is first to his client". *Anonymous*

Identify and discuss two areas where disclosure and privilege are crucial and cite any limitations where applicable. (10 marks)

Purchaser's advocate

Vendor's advocate

QUESTION FIVE

- a) Ms. Maureen, an Advocate, represents the Purchaser in a Sale Agreement transaction. Ms. Maureen's client intends to Purchase a townhouse erected on all that property known as Riruta/Riruta 5/570 from Mr. Karimi, the Vendor. The Purchase Price is Kshs. 5,000,000 with 10% deposit payable on execution of the Sale Agreement. Mr. Karimi's advocate, Mr. Okello, has agreed to release the completion documents on the strength of the Purchaser's Advocate's unconditional professional undertaking to pay the balance of the Purchase Price within seven (7) days of registration of the transfer in favour of the Purchaser. Mr. Okello, the Vendor's Advocate, has requested you, a Pupil in his Law Firm to draft a suitable undertaking in terms acceptable to the Vendor. Draft the professional undertaking. (5 marks)
- b) Nine (9) days after completion of the registration of the transfer in favour of the purchaser, Ms. Maureen advocate has failed to honor her professional undertaking to the Vendor's Advocate, Mr. Okello. Highlight the professional ethics, standards and principles that have been violated by Ms. Maureen Advocate. (5 marks)

QUESTION SIX

The Constitution of Kenya 2010 Article 50(2) provides:

"Every accused person has the right to a fair trial, which includes the right to choose and be represented by an advocate and to be informed of this right promptly."

- (a) Explain whether you may or may not accept to represent an accused person in a case in which you consider the defence to be very weak and therefore slim chance of success? (5 marks)
- (b) Explain whether you may or may not reasonably accept to represent a plaintiff in a civil claim you consider very weak? (3 marks)
- (c) The Law Society of Kenya encourages Advocates to offer *pro bono* legal services to indigent clients. Explain two (2) reasons why advocates are encouraged to offer *pro bono* legal services? (2 marks)

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 106: LEGAL PRACTICE MANAGEMENT

FRIDAY 18TH JUNE 2021

DURATION: 3 HOURS

Instructions to Candidates

- This paper contains Six (6) printed pages including the cover page, with a total of Seven questions.
- Candidates MUST answer FIVE (5) questions.
- Question ONE is compulsory and carries 20 marks.
- All other questions carry 10 marks each.
- Candidates MUST answer ONE question from each of the Sections and a FIFTH question from any Section.

PLEASE TURN OVER

QUESTION ONE

- a) After preparation of the Trial Balance of KCP Ltd as at September 2019, the firm's lawyer has been provided with the following additional information for the purpose of preparation of final accounts.
- i. Due to an oversight a discount has been allowed to a credit customer on the gross invoiced amount of Kshs. 80,000 at the rate of 10%. The firm should have used a rate of 6%.
 - ii. Electricity accrued amounts to Kshs. 36,710 while insurance premiums of Kshs. 22,350 have been prepaid.
 - iii. In October 2019, the employees of the firm received a general salary increase backdated to 1 July 2019. Amounts totalling Kshs. 126,550 in salary arrears are payable to former employees who left shortly before the salary increment was announced and who have not yet been traced. It has been decided that the salary packets will be opened and cash banked until the ex-employees are traced.
 - iv. Wages due to casuals amounting to Kshs. 464,120 for services rendered in the last week of December 2019 were paid in January 2020 together with the salaries for the month of December 2019 which amounted to Kshs. 301,700.
 - v. During the year, the exterior of the warehouse was repaired and repainted at a cost of Kshs. 500,000. This amount was erroneously debited to office premises account. It is the policy of KCP Ltd to provide for depreciation on the closing balance of non-current assets and this has already been done. The annual rate of depreciation on office premises is 2% calculated on the straight-line basis.
 - vi. In December 2019, KCP Ltd had bought goods on credit from Latex Ltd for Kshs. 452,000 and has also sold goods on credit to the same company for Kshs. 163,040. These amounts were correctly posted to their respective accounts. However, these accounts are to be offset by 31 December 2019 and the remaining balance settled by cheque in January 2020.
 - vii. The provision for discounts allowed to debtors, which at present has a balance of Kshs. 229,530 needs to be reduced to Kshs. 157,400.
 - viii. Debts totalling Kshs. 64,800 are irrecoverable and should be written off. However, Kshs. 21,440 which was written off as a bad debt in the previous year has now been recovered in full but the cheque in settlement has not been banked or posted in the accounts.

Required

Prepare Journal entries including narrations necessary to record the above transactions in the book of KCP Ltd. (10 marks)

- b) Arthur & Artur advocates firm ran out of printing paper one Monday morning, at a time when the law firm had a cash flow problem. The partners had also complained that the cartridge for the printers was also finished and the print outs made the firm appear unprofessional to their clients. The accountant has regularly advised the purchasing manager to observe the re-order levels of office supplies so that they can be stocked on time.

Explain the importance of having a good inventory management to a law firm (5 marks)

- c) The employment contract is not only an economic transaction, it also has social and moral connotations. Discuss five (5) arguments in support of this view and the implications for human resource management (5 marks)

SECTION A - COMMERCIAL ACCOUNTS

QUESTION TWO

The following trial balance belong to OLF Ltd as at 31 December 2019

	Kshs. '000	Kshs. '000
Share capital (10,000 @ 20/- ordinary share	200	
Purchase and sales	1,220	2,000
Debtors and Creditors	400	140
P&L 1 January 2019		380
Sales Return	40	
Building at cost	800	
Plant at cost	1,000	
Provision for depreciation		
Building	40	
Plant	400	
Purchase returns		80
Selling expenses	140	
Bank		160
10% debentures		600
Stock 1 January 2019	300	
Provision for bad debts		20
Operating expenses	180	
Administrative expenses	140	
Suspense Account		200
	4220	4220

Additional information

1. Stock at 31 December 2019 was Kshs. 360,000.
2. Sales return of Kshs. 20,000 have been entered into the sales day book as if they were sales. When this error was discovered, the debtors accounts were corrected but the sales figure was not rectified.
3. 5000 new shares were issued during the year at Kshs. 32 per share. The proceeds have been credited to the suspense account.
4. A fully depreciated plant which cost Kshs. 200,000 was sold during the year. No other entries except bank have been made. The remaining balance on the suspense accounts after (2 & 3) above represents the sale proceeds.
5. A debtor of Kshs. 20,000 has been declared bankrupt. A general provision is required at 5% of debtors.
6. Rates of Kshs. 30,000 paid in December covering half year to 31 March 2020 have not been entered in the books.
7. Debenture interest has not been paid.
8. Depreciation on plant is at 10% on cost and building at 2% on cost.
9. The directors propose to pay a dividend of Kshs. 2 per share and transfer Kshs. 20,000 to the general reserve.
10. Corporation tax at a rate of 32.5% on profits estimated to be Kshs. 90,000.

Required

Prepare;

- i. Income statements for the year ending 31 December 2019 (5 marks)
- ii. Statement of Financial Position for the year ending 31 December 2019 (3 marks)
- iii. Suspense Account for year ending 31 December 2019 (2 marks)

QUESTION THREE

The following information relates to Spring Ltd for the period 2018 - 2019:

	30 th September 2018 Shs `000	30 th September 2019 Shs `000	30 th September 2019 Shs `000	30 th September 2019 Shs `000
Fixed assets				
Building at cost	11,040		13,800	
Acc depreciation	(2,070)	8,970	(2,415)	11,385
Plant & Equipment at cost	13,80		23,460	
Acc depreciation	(62,100)	7,590	(8,625)	14,835
Motor Vehicle at cost	4,600		5,518	
Acc depreciation	<u>(2,070)</u>	<u>2,530</u>	<u>(2,932)</u>	<u>2,586</u>
	<u>19,090</u>			<u>28,806</u>
Current Assets				
Stock in trade	4,140		5,175	
Debtors	2,070		2,519	
Cash in hand & bank	85			
	<u>7,060</u>		<u>7,695</u>	
Current Liabilities				
Creditors	1380		2070	
Taxation	1725		2070	
Dividends	1035		1035	
Bank drafts	<u>—</u>	2920	345	2174
	<u>4140</u>	<u>22010</u>	<u>5520</u>	<u>30980</u>
Financed by				
Ordinary share capital	15800		22700	
Share premium	1380		2760	
Retained profits	3450		5520	
10% debentures	1380			
	<u>22010</u>		<u>30980</u>	

The following is an extract from the Profit and Loss Appropriation Account for the year ended 30th September 2019.

Profit before taxation	6210	
Taxation for the year	<u>(2451)</u>	
	3795	
Dividends for the year		
Interim - paid	690	
Final - Proposed	<u>1035</u>	<u>1725</u>
		<u>2070</u>

Additional Information

- i. An item of plant was disposed of during the year ended 30 September 2019 for Kshs. 1,035,000. It had cost Kshs. 2,070,000 and had an accumulated depreciation of Kshs. 690,000.
- ii. The 10% debentures were redeemed at a premium of 10% during the year ended 30 September 2019.

Required

Prepare the Cash Flow Statement for the year ended 30 September 2019 in conformity with the requirements of International Accounting Standards 7. (10 marks)

SECTION B - HUMAN RESOURCE MANAGEMENT

QUESTION FOUR

To get the best out of an employee, every manager in a law firm must incorporate an extra fringe benefit supplementing an employee's salary and adherence to statutory benefits.

- a) Discuss five factors that can influence a modern law firm while designing and establishing an employee benefits programme. (5 marks)
- b) Discuss five rights of an employee granted by the Employment Act, 2007. (5 marks)

QUESTION FIVE

A modern law firm is experiencing a myriad of challenges, ranging from more demanding but less committed employees, skyrocketing labour cost due to lack of proper planning of the human resource requirements. As a student of human resource management, you are required to develop a human resource planning framework that will cater for skyrocketing labour costs.

- a) Illustrate the steps you will include in the human resource planning process to ensure the law firm has the right number of employees with the right skills. (5 marks)
- b) Explain how a human resource plan can be used to minimize redundancies in the law firm. (5 marks)

SECTION C - OFFICE PRACTICE

QUESTION SIX

Joachim has worked for the judiciary for five years. During this period, he was instrumental in the drafting of the ICT policy which would guide the automation process of the judiciary. However, three years later, the judiciary's systems of operations are largely manual. There is no internet connectivity within the judiciary's premises. He knows that the members of staff have many concerns about the impact of ICT on the judiciary's operations. For example, he once had a conversation with one employee whose main concern was how to dispose of electronic records should the need arise.

He has been requested by the board to make a presentation to all staff regarding these issues and has sought your help on what to include in the presentation.

- a) Highlight to Joachim the impact that ICT has had on the legal profession to date. (6 marks)
b) Explain the various ways of disposing of electronic records. (4 marks)

QUESTION SEVEN

Ongiri, the managing partner of Ongiri & Postage advocates called for an urgent partners' meeting one Monday morning. It had come to his knowledge that a front office member of staff left the firm because she could no longer tolerate the sexual advances she was getting from some members of staff. The firm, though small, employs 33 employees a majority of whom are lawyers and its operations are guided by several policies that underpin its application of technology, engagement with internal and external stakeholders as well as quality assurance to its clients.

During the meeting, Ongiri shared his concern of the high labour turnover of the front office personnel and also urged the partners to consider developing a sexual harassment policy to guide the behaviour of the firm's employees. Postage, one of the firm's partners, however argued that they should be discussing core matters of the firm instead of wasting time with non-core functions. The partners however agreed that the firm needs to draft the policy as soon as possible but were still not convinced on the importance of front office functions in a law firm.

- a) Explain to the firm's partners five provisions of a good sexual harassment policy. (5marks)
b) Advise the firm's partners on the importance of having a front office function. (5 marks)

QUESTION SIX

As part of her remit, Joachim has been asked to review a partnership document with her fellow A. S. Associates named Bill to advise him to what extent the document complies with the relevant legislation and to advise him of the best way forward. In particular, Joachim has been asked to advise him on the following:

- the nature of the partnership between Joachim and Bill;
- the nature of the partnership between Joachim and the other members of the firm;
- the nature of the partnership between Joachim and the firm.

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 107: CONVEYANCING

MONDAY 21ST JUNE 2021

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 (5) 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

2020
1975

55 years - Term expired - no unexpired residue

QUESTION ONE

Hamisi is an only child. His mother died 5 years ago and his father died last year. Hamisi has in his possession his parents' death certificates as well as a letter from his area chief confirming his parents' deaths as well as the fact that he is an only child. Hamisi calls on your chambers to consult and gives you the following information: -

- i. Hamisi's father owned a commercial building in Nairobi CBD popularly known as Nguvu Kazi Plaza
- ii. The property comprises shops, restaurants and offices → Sectional property or Land Rents (Hotels, Shops and Cinema) Tribunals
- iii. The title is in the name of Hamisi's deceased father
- iv. Title details are:-
 - L.R. 200725/200
 - I.R 2001856
 - Tenure is leasehold for 50 years from 1st January 1975
 - There is a Certificate of Title under the Registration of Titles Act [Cap 281] (Now repealed)
 - Land Rent is a peppercorn (if demanded)
 - Rates are payable to the Nairobi County Government.

Hamisi informs you that he has a cash purchaser for the property, one Juma, who is offering a very good price but the intending purchaser has threatened to withdraw from the sale upon learning that the property is in a deceased person's name and that it has only 5 years before the lease expires. Hamisi has brought Juma along and both now seek your advice on the following: → The unexpired residue is less than 25 years.

- a) Hamisi argues that as an only child, he has an automatic right to the property and can sell without impediment. With reference to statutory provisions, advise Hamisi and Juma (2 marks)
- b) What is the process required to transmit the property to Hamisi legally? (3 marks)
- c) Does Hamisi have any legal recourse on the fact that the lease has 5 years to expiry? What legal/statutory provisions would be of assistance to him in this regard? (3 marks)
- d) What procedure (if any) is provided in conveyancing law and practice to cure the expiry of the lease? (3 marks)
- e) Assuming that Hamisi is able to resolve the issues of transmission of the title to his name and the expiry of the lease, advice Juma on:-
 - i. The process of sale and how you will structure the sale/purchase process to protect the interests of both the vendor and purchaser in the process (4 marks)
 - ii. What are the clearances and consents that will be required from the vendor in this particular case bearing in mind the title details provided above? (3 marks)
 - iii. What are the respective tax obligations to be borne by each of the parties? (2 marks)

QUESTION TWO

Uchumi bank has approved a loan facility in favour of Pele Company Limited. The proposed security is a twin house comprised in a lease by Farmhouse Limited. It is let out to several tenants. The property is also charged in favour of Capital Bank. Uchumi Bank is hesitant to accept the proposed security.

2nd charge

- As a newly admitted advocate, advise Uchumi Bank on the practicability of taking the proposed security, the relevant approvals required for the securitization as well as the required formalities to make the security enforceable. (4 marks)
- Advice and explain to Uchumi Bank at least two (2) other securities that the Bank can request from the borrower's company. (2 marks)
- Six months after disbursement, the borrower is unable to continue remitting the monthly instalments. This is after the said property was auctioned by Capital Bank for a similar default. All the proceeds were utilized to partly pay the first lender's loan, leaving a shortfall which the bank decided to write-off. Advise Uchumi Bank on the available remedy/remedies in the circumstances and why it should settle for the same. (4 marks)

QUESTION THREE

Jabali owns a $\frac{1}{2}$ acre parcel of land in Utawala area, Nairobi. It fronts the Eastern by-pass where there has been exponential growth of Commercial enterprise and Jabali wants to establish a petrol service station on the property. Jabali informs you that he recently approached one of the major oil companies for a franchise but the legal officer of the oil company declined and without elaboration said that Jabali's title was not suitable in tenure or user. Jabali hands you the title documents where you establish:-

- Title No. is Nairobi/Utawala Block 2/1700 then registered under the Registered Lands Act [Cap 300] which has now been repealed.
- Tenure is leasehold from the Government of Kenya for a term of 50 years from 1st July 1977 and the lease has 3 years to expiry
- Annual rent is Kshs. 945 (revisable)
- The lease from the Government of Kenya in condition 5 provides that the premises shall only be used for a single dwelling house (excluding a guest house)

Jabali now seeks your advice

- What did the oil company's legal officer mean when she said that the tenure and user of the property was not suitable? (2 marks)
- With reference to statutory and legal provisions, explain in detail the processes that Jabali has to undertake to cure the problems of tenure and user. (6 marks)
- Jabali wonders why the government has to complicate land ownership by issuing leases for a limited duration and you mention that it has to do with the government wanting to retain reversionary rights.

Explain the concept of reversion with reference to leasehold tenure on government land.

(2 marks)

QUESTION FOUR

Your client Janet seeks an urgent appointment in your chambers. Upon meeting you, she informs you that she has taken interest in a property offered for sale along Waivaki Way near Kangemi where she wants to set up a Petrol Service Station and a convenience store. The same is next to a huge gated community development with over 300 households and in her assessment, the business opportunity is immense. Janet further discloses that she has negotiated a good price well below market price and that she stands to gain almost Kshs. 10 million in savings on the purchase price in addition to the investment opportunity arising. She, therefore, wants to enter into an immediate sale agreement to be signed the same day or at worst the next day and she further discloses the following information.

Finance for preliminary

- i. The owner of the property is a widow who unfortunately is currently in India undergoing treatment for an undisclosed ailment *(Co power of attorney)*
- ii. The sale is meant to finance the treatment cost and the sale agreement would be signed by the widow's son *(Power of attorney)*
- iii. As a condition for the sale, the vendor requires 50% of the purchase price, as a deposit, be wired to her account directly as soon as the son signs the sale agreement
- iv. Unless the money is paid within 3 days, the deal would be cancelled.

Please advise Janet on the following:

- a) What due diligence measures would you undertake in respect of the proposed sale? (3 marks)
- b) What legal instrument would you require from the vendor to enable the son transact on her behalf? What steps would be required to validate that instrument? (2 marks)
- c) What is your advice to Janet in respect of the condition to pay 50% of the purchase price directly to the vendor upon execution of the sale agreement? Please explain your answer. (3 marks)
- d) Before Janet leaves you call your clerk to instruct him on the urgent search required on the title but he reminds you that the land registry concerned has been ordered closed for 3 weeks for audit by the government and it will not be possible to obtain the search within the timelines contemplated by Janet. Your client cannot imagine losing this deal. What is your advice to Janet? (2 marks)

QUESTION FIVE

- a) Compare and contrast a transfer of an interest in land to a transfer of charge. What are the tax implications in both transactions? (4 marks)
- b) Patel & Jael are husband and wife. They own a property in Langata shopping centre being L.R No. 209/1010. The property is charged for a loan of Kshs. 40 million. The intended purchaser is buying the property for Kshs. 60 million through a bank loan of Kshs. 50 million.

Calculate the stamp duty payable on: - (3 marks)
 - i. The Discharge
 - ii. The Transfer
 - iii. The Charge. Show workings
- c) Unfortunately, Patel dies before the transaction is concluded. The purchaser is still willing to complete the transaction. Advise Jael on how to proceed (3 marks)

consents - Kenya Roads Authority
- KCB
- Municipalities / Local Adminstration
- TLC
- CADA
Stamp duty also per the market value

QUESTION SIX

- a) Industrial Park Limited's advocates have forwarded you a draft lease for review on behalf of your *Clients*, +
tenants. The lease is for a commercial property. Discuss at least 3 pertinent clauses that you
must ensure are in the lease document prior to execution by your client. **(6 marks)**

- b) Describe your role had you been retained by the lessor in the transaction **(4 marks)**

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 108: COMMERCIAL TRANSACTIONS

MONDAY 28TH JUNE 2021

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains Five (5) printed pages including the cover page, with a total of Six (6) questions.
- (b) Candidates MUST answer FIVE (5) 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

Mr. Biko, Ms. Lukwago and Mr. Okida are the Directors and Shareholders of Majore Investments Limited, a Private Limited Company. The company deals in real estate and construction of residential apartments for sale. The Company operates mainly in Nairobi and parts of Nakuru and Kiambu. The company was incorporated in 2010 and has successfully operated for the last eight (8) years since its incorporation. Recently, the company has experienced financial difficulties. Owing to a rise in demand in real estate in or about 2018, the Company borrowed heavily from a number of banks in order to meet the aforementioned demand. This decision was based on projections from its financial advisors that the demand for residential living space would persist in the long term. However, these projections have not been met. The expected revenue and profits from the sale of its apartments are not constant. There is no demand on the other hand and many of the Company's loans are now due. Furthermore, it can no longer pay its employees or suppliers. Mr. Biko, Ms. Lukwago and Mr. Okida are hesitant to wind up the company. They do not wish to liquidate the company or dispose off its assets piece meal in order to repay their creditors. Additionally, the Directors and Shareholders wish to retain as many of their employees as possible because some of those employees are their relatives and family friends.

- Before 2015*
- a) The Directors of the Company have approached legal experts who have advised them that the best possible solution other than liquidating the company is administration proceedings. They wish to understand the nature, features and objectives of administration proceedings. Advise them. *Principle Managing Co-Ltd vs Nakumatt (4 marks)* *Hold MS LTD* *VV*
- b) Mr. Biko, Ms. Lukwago and Mr. Okida have since settled on the idea of commencing administration proceedings. They would like to know the procedure to follow. Advise them on the way forward. *(6 marks)*
- c) Mr. Biko, Ms. Lukwago and Mr. Okida have since commenced administration proceedings. An administrator has been appointed. Mr. Biko, Ms. Lukwago and Mr. Okida have been sidelined in the management of the company. They are not happy with the decisions and directives of the administrator with regard to operations over the company. They have approached you for a preliminary discussion. They wish to understand the duties and powers of the administrator. Advise them. *(4 marks)*
- d) Mr. Biko, Ms. Lukwago and Mr. Okida have since been informed by third parties that the administrator is not qualified to act in the capacity of an administrator. They are naïve on this subject. They wish to understand the qualifications required for one to act as an administrator before they can make the appropriate decision. Advise them on those qualifications. *(6 marks)*

QUESTION TWO

- a) The law firm of Mokere, Machira and Wambugu Advocates was incorporated on 1st March 2019. It consists of Mr. Mokere, Mr. Machira and Ms. Wambugu, as partners. On 11th November 2019, while at a luncheon at Serena Hotel, Ms. Wambugu met an old friend Mr. Mwangi, an Advocate who was looking for a firm to invest in and join as a partner. Ms. Wambugu, conscious of the firm's need for ready capital, introduced Mr. Mwangi to her partners (Mr. Mokere and Mr. Machira) who were also in attendance at the luncheon. Mr. Machira and Mr. Mokere were non-committal to the idea of another partner but promised to get back to Mr. Mwangi on his proposal. In or about December 2019, Mr. Machira and Mr. Mokere took a business trip to South Africa. They left Ms. Wambugu in charge. Owing to the workload, Ms. Wambugu requested for assistance from her long-time friend, Mr. Mwangi. He accepted her request. He was given office space and has since been working at the firm. Additionally, Mr. Mwangi has since invested Kshs. 1,000,000 into the firm. On 22nd January 2020, Mr. Machira and Mr. Mokere returned from their business trip. They are dumbfounded. They have approached Ms. Wambugu and sought an explanation as to Mr. Mwangi's presence at the firm.

*Corporate partnership
general partnership
(unlimited liability)
each must act as agent
throughout
not as p
own will*

She has retorted that in their absence and in the interest of the firm, she took the executive decision to admit Mr. Mwangi as a new partner. Mr. Machira and Mr. Mokere have rushed to your offices. Advise Mr. Machira and Mr. Mokere on the legality of Mr. Mwangi's appointment. (3 marks)

- Crime*
- b) Since your discussion with Mr. Machira and Mr. Mokere, they have decided considering the sizeable investment from Mr. Mwangi to waive their concerns. On 22nd February 2020, Mr. Mwangi took instructions from Ushuru Sacco for the subdivision of L.R. No. 209/1134 into twenty-five (25) plots and subsequent transfer of the plots to nominated members. Mr. Mwangi requested for a deposit of Kshs. 5,000,000 to enable him engage a valuer and physical planner so as to commence the subdivision process. Furthermore, he requested that the aforementioned sums be deposited into his personal account at KCB for expedience. Ushuru Sacco has since complied. Mr. Mwangi is yet to notify any other partner of this development. On 20th March 2020, the firm received a letter from Ushuru Sacco requesting for a status update on their transaction. Mr. Machira received the letter and engaged Mr. Mokere and Ms. Wambugu on the same. They are unaware of this transaction. All attempts to contact Mr. Mwangi have been futile. He is currently abroad in the United Kingdom doing consultancy work. In the meantime, the CEO of Ushuru Sacco has made repeated calls regarding the alleged transaction. He is also requesting for an official receipt from the firm acknowledging receipt of Kshs. 5,000,000. The firm is in a panic; the partners have rushed to your office. They wish to know the liability and exposure they face. Advise them. (4 marks)
- c) Mr. Mwangi has since returned from his consultancy work in the United Kingdom. Following a heated discussion among the partners, it was decided that Mr. Mwangi would not remain a partner in the firm. He must go. To this end, Mr. Machira, Mr. Mokere and Ms. Wambugu would like to know the procedure to be followed to implement their resolution. Advise them on the way forward. (3 marks)
- Food
Sacco
Agency
Anthony
Wabire
unmarked
Fraudle - 13
veil of
immunity*

QUESTION THREE

Macdonald's, a renowned fast food outlet in Europe and the Americas anticipates expanding its business across the globe. In East Africa, it has identified Nairobi as a potential investment destination. The food chain's commercial lawyers are advising them that Nairobi is very competitive given the presence of other fast food giants such as KFC and Chicken Inn. Macdonald's CEO is considering two commercial contractual options to present to its Board of Directors.

- Hold talks with Chicken Inn for an acquisition deal; or
 - Enter into a franchise arrangement with interested investors.
- a) Macdonald's CEO has initiated discussions with Chicken Inn and both parties have signed a Non-Circumvention Non-Disclosure Agreement (NCNDA).
- Advise Macdonald's on four (4) key elements your due diligence would focus on. (4 marks)
- b) Distinguish between a merger and acquisition. (2 marks)
- c) The Directors eventually decide to go with the franchise arrangement option as opposed to the acquisition of Chicken Inn. Highlight the advantages of a franchise arrangement over an acquisition. (4 marks)

QUESTION FOUR

Petrogen Ltd, a company incorporated in the Isle of Man, specialises in drilling oil wells and installation of rigs. Solanika Ltd, a company incorporated in Kenya, recently discovered commercially viable quantities of oil in its Block B 37 in Turkwel. Solanika would like to enter a joint venture with Petrogen Ltd to further explore and exploit the oil resource because of Petrogen's unique 'coil' technology. However, Petrogen Ltd, must first be registered in Kenya to carry out business. They would like to be registered as a foreign company.

- a) (i) Advice Petrogen Ltd on the procedure, information and documents required to register as a foreign company in Kenya. (5 marks)
- (ii) What would the Companies Registry issue to Petrogen Ltd upon successful registration as proof of registration as a foreign company in Kenya? (1 marks)
- b) Petrogen Ltd and Salonia have agreed to enter a contractual Joint Venture (JV) to carry out drilling and exploitation services. What are the characteristics of a Contractual Joint Venture? (4 marks)

QUESTION FIVE

- a) Mr. Olero, Ms. Akinyi and Mr. Momanyi are the Directors and Shareholders of Ms-13 Wholesalers Limited, a Private Limited Company. They each hold one paid up share out of a shareholding of five shares of the Company. Ms. Akinyi and Mr. Olero are of the view that in order for the company to expand and obtain additional capital, the nature of the company needs to change. They have been advised by their legal team that a transition to a Public Limited Company would be the ideal step. They have now approached you. Advise them on:
- Three advantages of a Public Limited Company over a Private Limited Company. (3 marks)
 - The procedure they must follow to attain this change in status. (2 marks)
- b) At an ordinary meeting of the company held on 11th March 2020, an Ordinary Resolution was passed by the members present to convert the company from a private limited company to a public limited company. Mr. Momanyi was not present nor did he receive notice of the meeting. He is opposed to the idea of the company being converted into a public limited company. He wishes to avoid any complications that might follow the transition. Furthermore, he is anxious about ceding control of his company to strangers. He has attempted to engage Ms. Akinyi and Mr. Olero but no agreement has been reached. Mr. Momanyi has approached your office. He wishes to know if he can challenge the resolution passed by Ms. Akinyi and Mr. Olero to convert the Private Limited Company into a Public Limited Company. Advise him on whether he has any grounds to do so. (3 marks)
- c) Following your discussion with Mr. Momanyi, he would like to know the procedure to follow in his quest to challenge the resolution passed by Ms. Akinyi and Mr. Olero. Advise him. (2 marks)

QUESTION SIX

Mr. Emmanuel Josiah recently invested in a T-800 Model Posho Mill. His enterprise is located in a far-flung corner of the Country desperate for posho mill services. Mr. Josiah is now reaping good returns. He now wishes to expand his business and ABC Bank has agreed to loan him some money in exchange for pledging the posho mill as security.

- a) ABC Bank has approached you to draft the security agreement. Briefly explain to the bank the requirements for the creation of a security right and its right of enforcement in the event of a breach. (5 marks)
- b) Mr. Emmanuel Josiah, now the proud owner of a T-800 Posho Mill wishes to dispose of his old 'Rev-9' Posho Mill machine. Being the faithful churchgoer, Emmanuel gifts the old mill to his local church. As a dutiful taxpayer, Emmanuel would like to assess for, and pay the Capital Gains Tax (CGT) on the transfer of the machine. Advise Mr. Josiah on the applicability or otherwise of the Capital Gains Tax and whether the transaction constitutes a transfer under the relevant law. (5 marks)