

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 100: CIVIL LITIGATION

MONDAY 20TH NOVEMBER, 2017.

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** 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

You are one of the associate advocates in Maarifa & Co. Advocates in Nairobi and you are in receipt of the following instructions from Salim Boy.

“Salim Boy is a motor vehicle dealer whose business is situate in Nakuru. He sold a motor vehicle Lexus model registration number KCA 484ZQ to one Mwanasiasa for Kshs.4,500,000. Mwanasiasa is also a businessman in Nakuru. His address for the purpose of service is P.O. Box 208 Nakuru. The sale was through an Agreement for Sale dated 1st October 2016.

Pursuant to the agreement, the motor vehicle was delivered on 7th October 2016. Despite numerous requests to pay up the whole sum of Kenya shillings 4,500,000, Mwanasiasa has refused to pay. This is despite sending a demand letter.

Salim Boy also informs you that he has several persons who can be valuable witnesses in the case. One of the witnesses is Wakili Boniface who drafted the Agreement for Sale. The other one is Binti Malkia who delivered the motor vehicle. Salim Boy has also furnished you with a copy of the Agreement for Sale of the subject motor vehicle and a demand letter.”

Draft the appropriate pleadings seeking requisite/necessary remedies in court. Draft additional documents, if any that must be filed together with the pleadings. (20 marks)

QUESTION TWO

Peter Wilkins and a group of 95 people have approached you with the following complaint:

That they have been residents of Molo Sub-county for the last 15 years. During the 2007-2008 post-election violence, they were displaced from their homes and settled at a camp near Mau Forest. Sometimes in the year 2008, the Government of Kenya through the then Ministry of Special Programmes established the Department of Mitigation and Settlement. The National Humanitarian Fund Board was established under the said Department with the objective of resettling the internally displaced persons by giving each person a sum of Kshs.35,000 and a parcel of land measuring 2½ acres.

They are accusing the Government of selectively and discriminately extending assistance to 309 people at the camp to the exclusion of the 96 people who are still at the camp. They have information that the money which was supposed to be used for their resettlement has been misapplied and as such they have remained internally displaced. It is their contention that their right to non-discrimination, dignity, freedom and security, their social and economic rights have been violated.

The functions of the Ministry of Special Programmes have now been taken over by the Ministry of Devolution and Planning of P.O. Box 350100 Nairobi. They have made efforts to follow up on their resettlement but the Government has failed to respond to their plea. They have requested you to study the matter with a view of filing appropriate pleadings seeking redress for the alleged violation of their rights. The group has appointed Peter Wilkins of P.O. Box 200 Mau Narok to be their representative.

- (a) Discuss the issues you will take into consideration before drawing any pleadings. (3 marks)
- (b) Draw appropriate pleadings indicating the nature of the reliefs you are seeking. (7 marks)

QUESTION THREE

Several plaintiffs have sued Bwanamali separately in a personal accident claim for injuries suffered. The plaintiffs were travelling as passengers in a bus owned by Bwanamali. The bus driver was blamed for the accident as the accident occurred while overtaking at a bend as a result of which it collided with an oncoming truck.

As an advocate you have been informed by your clerk that a case conference has been convened. You hurriedly peruse the subject file and note a number of things. You discover that you have several case files for claims arising out of the same accident. This is because you received instructions at different times. You also get a call from another advocate, Juma who informs you about the same case conference that is coming up and alerts you that he is representing other 5 plaintiffs who were passengers in the accident in question. You also get information that the bus was not insured and therefore any amount to be recovered should be recovered from the plaintiff himself.

Some of the plaintiffs alert you that Bwanamali is in the process of selling his other buses and his two prime properties in an attempt to defeat the ends of justice. In the present case, you hurriedly file an application to stop the sale of the properties a day prior to the case conference day. You also realize that the Defense has not had an opportunity to peruse medical reports in respect of injuries suffered by the Plaintiffs you are representing. The advocate representing Bwanamali is considering an out of court settlement for the claims.

Your clients are anxious about the case conference proceedings as they do not understand the nature of these proceedings. Write a brief advising them on the nature of the case and the directions that the court is likely to give. (10 marks)

QUESTION FOUR

Joto is a decree holder in a judgement that has been issued in his favour. A decretal amount of Kenya shillings 4,000,000 is to be paid by Wasiwasi. Joto is anxious that the judgement debtor might be unable to settle the amount but gives you these additional facts: That Wasiwasi is employed by Uzazi Bank and is a top notch manager who is paid a good salary. Wasiwasi also owns two parcels of land which are prime plots. Binti Malkia owes Wasiwasi a debt in the sum of Kshs.1,500,000/- and has no problems in repaying the debt. Joto has also been informed that Wasiwasi is in the habit of not paying his debts and does not fear court process.

Advise Joto on the various options he has in law that can help him in realizing the decretal amount of Kshs.4,000,000/-. (10 marks)

QUESTION FIVE

Your client Dr. Mugo has retained your law firm, Expeditious and Co. Advocates to act on his behalf and you are in receipt of the following instructions:

“Mugo informs you that he is a medical doctor and has just been dismissed by his employer the Medical Practitioners and Service Commission. He has several complaints concerning the manner in which he was dismissed. Dr. Mugo was not given notice of his disciplinary hearing. The alleged misconduct that was subject at the hearing was that he always preached to the patients at the hospital which conduct is prohibited by statute. Your client also states that he was not provided with any documentation relied upon by the Commission at the hearing.

Another reason that was given for his dismissal was that ‘he is a bachelor’ hence his conduct as a doctor was questionable as he could not be trusted with ‘some’ patients. Further, Dr. Mugo was not given an opportunity to defend himself as the Commission felt that the evidence at hand was overwhelming to have him dismissed. Finally, the Commission had made it clear that as a public body it had powers to hire and fire and for his case it had decided to ‘fire’ him.”

Dr. Mugo believes that he was dismissed unfairly and wants his job back. He believes the Commission is in the process of processing his final dues and documentation so as to complete the process of his dismissal.

Write a legal opinion explaining the actions to be taken, the various steps in litigation, remedies to be sought and the chances of success. **(10 marks)**

QUESTION SIX

Peter has been hospitalized for the last 2 months of a disease that makes him mentally incapacitated. He cannot make sound judgement of his affairs. He owns and manages several properties. At the time of his hospitalization, he was undertaking construction of a block of apartments. This has now stalled. His tenants do not know who should receive the rent.

Peter is single and is the son of Julia, a single mother. Julia would like to continue with the construction on behalf of his son as well as collecting rent due to him to avoid loss and wastage.

Julia has come to you for advice on whether there is any way the law would allow her to take over her son’s affairs.

Give her detailed advice and the process that should be undertaken. **(10 marks)**

End