

COUNCIL OF LEGAL EDUCATION.



**EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.**

ATP 101: CRIMINAL LITIGATION.

TUESDAY 28TH 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

Mr. Ragnar is a political activist who hails from Ziwani County where he has declared interest in unseating the current Governor, Major (Rtd) Ecbert who he accuses of mismanagement of the affairs of the County. Major (Rtd) Ecbert, who previously served as the Inspector General of Police is known not to take kindly those who oppose him and is said to still hold a lot of influence within the police ranks. Infact, he influenced the posting of the Ziwani County Police Chief Mr. Masu, who is his son-in-law.

Mr. Masu has severally ordered the arrest of Mr. Ragnar on trumped up allegations ranging from holding illegal gatherings to assaulting law enforcement officers but he has never been arraigned in court for any of those charges. Mr. Ragnar believes that his arrests are meant to intimidate him to drop his ambitions.

On 20th February 2017 while Mr. Ragnar was away in Nairobi with his family, violent protests erupted in Ziwani County outside the Governor's office by county employees who claim several months of unpaid salaries. While still in Nairobi, Mr. Ragnar is informed that the Ziwani County police led by Mr. Masu have launched a manhunt for him accusing him of being behind the protests. Several of his supporters were also arrested on the day of the protests and have not been produced in court for more than 2 days. Mr. Ragnar is apprehensive that the threatened arrest is politically motivated and is likely to infringe his rights. He now instructs you to take up the matter in order to protect his rights.

Draft the necessary document(s) for filing in court.

(20 marks)

QUESTION TWO

On 1st February, 2017 Mr. Tyrion Lannister was arraigned before the Chief Magistrate's court at County Law Courts charged with the offence of "attempting to commit a felony contrary to section 389 of the Penal Code" under Count One, and under count two of: "Being idle and disorderly contrary to section 182(d) of the Penal Code.

The court proceedings indicate that Mr. Lannister pleaded guilty to both counts and was convicted upon his own plea and sentenced to ten years imprisonment. On the first count, the particulars of the charge were recorded as follows:

"That on 25th January 2017 at Kinoo Shopping Centre while armed with a machete, Mr. Lannister attempted to commit a felony."

On the second count, the court did not record the particulars of the charge but noted. "Particulars as per charge sheet." Mr. Lannister now intends to appeal both the conviction and sentence.

(a) Advise him on the viable grounds of appeal citing relevant authorities. (5 marks)

(b) Draft the appeal. (5 marks)

QUESTION THREE

While walking home from work at around 5 p.m. on 30th January 2017, Mr. and Mrs. Spectre were accosted by three people who were armed with guns. Mr. and Mrs. Spectre were able to identify one of them as Karis, a local “boda boda” rider whose services they had used before. The other two were a bald headed short and plump man who had a slight limp as he walked and a tall light-skinned lady who spoke with an “American” accent.

The three assailants demanded that Mr. and Mrs. Spectre take them to their home where they stole electronics, money and jewelry all valued at Kshs.1,000,000. The matter was reported at Kona Baridi Police station and the police commenced investigations.

Mr. and Mrs. Spectre have now been informed that a man and a woman matching the descriptions of the assailants have been arrested while trying to rob a shop in Kona Mbaya Town. Chief Inspector of Police Mr. Sumuni has further informed them that they will be required to go to the police station to identify the suspects.

Advise Mr. and Mrs. Spectre on how an Identification Parade will be conducted for the identification of the suspects. (10 marks)

QUESTION FOUR

Mr. Pablo Escobar is a suspected “drug lord” who is wanted by the Republic of Merigo (a Commonwealth Country) to face narcotics related charges which include trafficking and possession of narcotic drugs. Mr. Escobar belongs to the Tigra minority group who have been declared through an Executive Order signed by the President of the Republic of Merigo, as “terrorists” who will be “detained without trial” upon capture.

The Attorney General of the Republic of Kenya where Mr. Escobar is currently residing, has asked you to prepare a legal opinion on the request for arrest and surrender of Mr. Escobar which has been sent by Merigo noting to outline the process. Advise him. (10 marks)

QUESTION FIVE

You have been retained by the family of Ahad, a 10 year old victim of a suspected gang related homicide, to represent them in a criminal trial before the High Court against two members of the “wakili kwanza” gang for the death of Ahad.

The family has sought to know your role and extent of participation as their counsel in this case. Advise them. (10 marks)

QUESTION SIX

Mr. Vohra was convicted of the offence of murder contrary to section 203 as read together with section 204 of the Penal Code and sentenced to suffer death. His appeal against the said verdict was dismissed by the Court of Appeal in a judgement rendered on 10th January 2017. He did not contemplate a further appeal to the Supreme Court as he could not meet the requirements of Article 163(4) of the Constitution.

Mr. Vohra has now received information that Mr. Beyei who he allegedly killed, is alive and woke up from a coma that was occasioned by an accident he was involved in before he was allegedly killed. It is now apparent that the body of the deceased that was burnt beyond recognition by a fire started by Mr. Vohra as per the High Court judgement was not that of Mr. Beyei. Mr. Beyei has since returned to his family where celebrations have been held for the “miracle”.

You have been retained by Mr. Vohra to advise him on the available remedy and his chances of success. Advise him. **(10 marks)**

.....
END