

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION

TO THE ROLL OF ADVOCATES

ATP 100: CIVIL LITIGATION

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MONDAY 14TH NOVEMBER, 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer question **ONE** and any other three (3) questions
- (b) All questions carry 15 marks each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. Mr. Odhiambo Martin owns land Title Number Kisumu/Municipality/2001. He intends to sell the land parcel to Onyino Alston. The two parties approach you Olufwafwa Jacob of Olufwafwa and Associates Advocates to act for both of them in the transaction. After exhausting the due diligence expected of you, you prepare an agreement for sale which is duly signed by both parties. The purchaser pays to you Kshs.100, 000 being 10% of the purchase price to hold pending conclusion of the transaction. The time set for conclusion of the transaction is 100 days. 120 days later, during which time you have never heard from either of the parties, Onyino Alston comes to your chambers alleging that Odhiambo has refused to facilitate the conclusion of the transaction. He informs you that he wants his money back. You call Odhiambo Martin who informs you that it is Onyino who failed to pay the balance of the purchase price and since it is not his (Odhiambo's) fault, he is entitled to the Kshs.100, 000. You do not know who to believe and who to give the money in your custody. You decide to prepare an appropriate application for the court to give guidance in the matter. Prepare the application that would unravel this conundrum for you.
- (15 marks)**
2. You act for a defendant in a matter that has reached the trial stage. Mr. Maxwell Ondago, Counsel for the Plaintiff is taking his first witness through the examination-in-Chief. He poses the following questions to his witness. State, with reasons, whether you would object to any of the questions. Each question must be handled independently.
- (i) What is the registration number of the car that knocked you?
 - (ii) You were on the left side of the road by the time you were knocked, weren't you?
 - (iii) Is it your case that the driver of the motor vehicle was driving very fast?
 - (iv) What was the speed and how far from you was the car by the time the driver began breaking?
 - (v) What rumours did you hear on the state of sobriety of the driver at the time of the accident?
 - (vi) You are aware that this driver has been convicted for reckless and dangerous driving in other unrelated incidents, aren't you?
 - (vii) What injuries, if at all, did you suffer as a result of the accident?
- (15 marks)**
3. As an owner of an established law firm in town, you admit five students on the pupillage programme annually. As a firm policy, you train your students at the firm's boardroom on various aspects of the law relating to litigation. This coming Friday, your theme of discussion is "Methods of Disposal/Termination of Suits without Trial and the Principles Guiding Each Method." Let us read your detailed presentation notes.
- (15 marks)**
4. Steve Kinuthia sued Kithunzi Ltd in a personal accident claim. The trial took place before you, Haki Mheshimiwa, the Chief Magistrate at Taita Law Courts. According to Steve, he was riding his bicycle along the Maembe-Machungwa road when the driver of motor vehicle registration number KAB 2744W, who was trying to overtake a tractor, collided with his bicycle throwing him off the road. He was lucky to survive with a fracture at the arm. The area where the driver was over-taking was a blind corner with a big sign reading "no over-taking." The said motor vehicle KAB 2744W had writings in black ink "Kithunzi Ltd, P. O. Box 31 Eldoret." Steve did not conduct any search on the ownership of the vehicle since, according to him, the ownership was

self-evident from the inscriptions on the motor vehicle. According to Kithunzi Ltd, they are not liable for the accident since they were not the owners of the motor vehicle on the date of the accident. They had sold the motor vehicle to one Kennedy Wakulo three months before the accident and a transfer had immediately been done and registered in the name of the said Wakulo. They produced a search from the Registrar of Motor Vehicles confirming this position.

As a magistrate well-schooled in the essential contents of a judgement, write your judgement in this matter. Unnecessary verbosity is discouraged.

(15 marks)

5. You are a junior associate in the firm of Makutwa & Co. Advocates. When you joined the firm, a number of cases in which your firm was on record were pending with no action taken. Some of these files were brought to your desk to study them and take necessary action. One of the cases relates to your client James Likabo. He sued one Anyanzwa Johnstone claiming Kshs.250, 000. This claim arose from the cost incurred in repairing his motor vehicle registration number KBC 001 A after it collided with motor vehicle registration number KBE 200 Y owned by the defendant. Mr. Anyanzwa's lawyers Sijali & Co. Advocates entered appearance and soon thereafter the sole proprietor of the firm Mr. Sijali, left for holiday in Alaska. No defence has been filed for six months. Write an opinion to your managing partner on the way forward in the matter. How different would your opinion be had James Likabo been pursuing general damages for pain and suffering suffered following the accident?

(15 marks)

6. After six years of court battle, you have obtained a judgement and extracted the consequential decree for your client Mtu Macho. Mtu Macho had sued Jirani Mbaya who had buried the remains of his dead dogs on Mtu Macho's land. The court ordered Jirani Mbaya to pay Mtu Macho Kshs..... being general damages for trespass. In addition, the court ordered Jirani Mbaya to exhume and take away from Mtu Macho's land all the remains of the dogs within fourteen (14) days of the judgement. Thirty days later, Jirani Mbaya has neither paid the money nor exhumed the remains. He works at the Kenya School of Law with a monthly salary of Kshs.25,000. His salary is paid through a bank whose details were sneaked to your client by a very unethical member of staff after some bribe. Nonetheless, his account balance is Kshs.60, 000. He owns motor vehicle registration number KAW 222 V. You desire to execute the decree against Jirani Mbaya. As a policy of your firm, you normally render an opinion to your client before taking any action. Prepare an opinion to your client on the various methods of execution available to you in this matter.

(15 marks)