

KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION TO
THE ROLL OF ADVOCATES

CIVIL LITIGATION - ATP 100

21ST JULY, 2014

DURATION: 3 HOURS

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) All questions carry fifteen (15) marks each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. Rigshaw Calabash Mwidaho and Rita Mwenda Smooth entered into a written agreement on June 15th 2014 whereby Rita sold 110,000 bags of cashewnuts at the total price of Kshs.60 million, which were to be delivered not later than June 30th, 2014. The payment was to be made upon delivery. Rigshaw agreed with Bingira Sashi to supply Sashi with the said quantity of cashewnuts on June 20th 2014 at the price of Kshs.70 million, and had purchased the cashewnuts from Rita for the purpose of supplying them to Bingira Sashi. This fact had been communicated to Rita at the time of entering into the contract with her. Rita has failed to deliver the cashewnuts. Rigshaw, on his part, could not purchase similar loads in the market to enable him effect delivery upon Bingira Sashi and has consequently lost the large margin in profits he would have realized upon re-sale. He has approached Rita at her business premises situated on the second floor of Dich Dich House located along Omesh Street in Nairobi to ask for delivery. Because of his frequent visits, thereafter, she has become hostile and abusive.

Rigshaw has now visited the firm of Bangi Mwingi Advocates located on the eighth floor of High Building along Clear Avenue of Nairobi where you are a pupil. He instructs the firm to write to Rita to honour the contract. The firm's letter has gone unanswered. Rigshaw thereafter, instructs the firm to sue. Your Pupil-master has instructed you to draft the necessary process for her perusal.

Carry out this instructions.

(15 arks)

2. Paragraph 5 of the plaintiff's plaint makes the following allegation:

"As a result of the collision arising from the defendant's negligent driving the plaintiff suffered personal injury and lost her personal effects; namely a handbag, mobile phone, hairpiece and false gold teeth"

Upon receiving the summons with the plaint, the defendant contends that he is not sure how to answer the allegations. He seeks the professional advice of the firm you are engaged as a pupil and pays the requisite professional fees: