

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

ATP 100: CIVIL LITIGATION

MONDAY 16TH NOVEMBER, 2015

DURATION: 3 HOURS

Instructions to Candidates

- (a) Candidates MUST answer **FOUR** questions
- (b) Question ONE is compulsory**
- (c) All questions carry 15 marks each
- (d) Marks shall be lost for illegibility

PLEASE TURN OVER

1. Rankerous Lolwe employed Hawezi Kamwe as an agent to collect rent from his tenants in respect of 15 palatial residential houses in Muthaiga, Nairobi. Each tenant occupied a house on a monthly rent of Kshs.500,000/-. According to the tenancy agreement a deposit of Kshs.3 million was to be paid before occupation. All the 15 houses were fully occupied.

For some reason not disclosed, Hawezi Kamwe has not collected any rent from the tenants for 10 months. She had also not collected any down payments.

Feeling that his agent had not exercised due care and diligence, resulting in loss to him, Lolwe instructs you to file a suit against Kamwe for negligence, and claim from her sums due for rent and deposits, because any claim against the tenants had become time barred.

Your firm practices on New Sensation Plaza, 30th floor, Nairobi along Kenyatta Avenue. Hawezi Kamwe runs a debt collection business at Babekopi Emporium, Ground Floor, on Dreary Street, Machakos.

Draft an appropriate plaint for the claim.

2. Set out and describe in each item, the contents of an advocate's civil case file on any given case, from the moment a client retains an advocate for a civil claim which ended up in court, up to the time the case is called out for hearing on the merits, but before the hearing commences.
3. Tom Rashid sued Douglas Murunjiri in the High Court of Kenya, Kisii, in Civil Case No.300 of 2014, seeking to recover a sum of Kshs.10 million alleged to have been advanced to him at his request. He prayed for costs and interest. The defendant denied being indebted to the plaintiff. The case was heard and determined by Hon. Mr. Justice Speed who, in his judgement delivered on 6th October, 2015, after hearing evidence on both sides that same day, dismissed the suit.

Draft the appropriate decree.

4. Lucy Nabangala, a leading importer of high class leather goods for sale received a written order from Sylvia Omodi Dala, dated 3rd April, 2015. Lucy replied in writing giving the price quotation and enquiring whether Sylvia was willing to buy the goods at the quoted price. Her advice on the price was dated 4th April, 2015. Sylvia wrote back immediately on the same date, accepting to buy the goods at the price quoted by Lucy. Lucy supplied and delivered the required goods as evidenced by a delivery note of 5th April, 2015, and an invoice of the same date. She paid by cheque of that date for petrol to fuel the delivery vehicle. To her utter surprise Lucy received a letter dated 20th April, 2015 from Sylvia saying, among other things, that she had not received the goods, and that Lucy was in breach of the contract and should rectify the position.

By her letter of 22nd April, 2015, Lucy replied saying that delivery of the goods had been made as agreed, and that she was waiting for payment for the goods. Upon receiving this reply, Sylvia issued a demand letter requiring Lucy to supply the goods within 4 days from the date of receiving that letter dated 25th April, 2015. Not believing what she was reading Lucy wrote a letter to her closest of friends to express her shock at the turn of events. That letter, dated 26th April, 2015, was replied to by her friend's letter of the same date condemning Sylvia's conduct.