

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES

**ATP 100: CIVIL LITIGATION**

MONDAY 12<sup>TH</sup> NOVEMBER, 2012

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. Professor Well Known wrote and published the fast-selling book entitled Principles and Party Hoppers. In that book the author writes, among other things that: Mr. Siasa ya Kurukaruka is the most shameless party hopper, who is available for hire by any party with the least following. A very sensitive man with an extremely thin skin, Siasa Ya Kurukaruka has read that statement about him, at page 300 of the book. He is told by his friend Tomlin Wafula that he would never be associated with him again because of this revelation in the book. Your famous firm of Limondo, Ndururu & Co. Advocates practising at Serenity Towers, Sixth Floor, Open Street Nairobi, is approached by Siasa Ya Kurukaruka, and he instructs you to file a suit against the author, and his publishers, Messrs Muroba Moni Book Co. Ltd, to stop further publication and damages for ruining his political ambitions by destroying his standing in society, as he is portrayed as a man of no principles. He expects damages awarded to be not less than Shs.100,000,000 if not in billions. Prepare a plaint which you will file after you will have received all the right documents which you require.

**(15 marks)**

2. a) Karanja Ole Patel walks into your office where you practice as Marie Josse & Co. Advocates and relates to you a long story which in short is to the effect that his neighbor, Patrick Modise regularly burns rubbish on his compound and the fumes drift over into Karanja's compound. These fumes have become a health hazard to Karanja and his family. He instructs you to take legal action to stop the emission of these dangerous fumes from Patrick's premises. You advise him that you will definitely do something about the issue, including going to court, if need be. After Karanja leaves your office you start reflecting on the matters which might require further interview with your client and which are relevant to the decision to go to court.

Give a detailed outline of the various issues to be considered as you undertake to represent Karanja.

**(7 marks)**

- b) You are a newly appointed Resident Magistrate at the Chief Magistrate's Courts at Garissa. That court is overwhelmed by civil claims about camel ownership. One such case has been fixed for hearing before your court. You are presiding over that case and the parties including their advocate are present and ready for trial. Set out the procedure for the conduct of the hearing of that civil case up to the point when you adjourn to consider your judgement upon conclusion of the hearing.

**(8 marks)**

3. You are acting for a defendant. Your assistant, a newly admitted advocate, has drafted, filed and served the following statement of defence: