

COUNCIL OF LEGAL EDUCATION.



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

ATP 101: CRIMINAL LITIGATION

FRIDAY 19TH JULY, 2019.

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

Mairungi was charged with the offence of incest before Lumbani Chief Magistrate's Court. He was accused of defiling his 9-year old niece JMM. During the trial, his sister Anna, JMM's mother was the first to testify. Thereafter, the court took JMM's evidence. It transpired that JMM suffered from a mental disorder with impaired speech. The trial court nonetheless took her evidence through her mother Anna who appeared to have a way to communicate with her.

JMM testified that she was alone at home when the crime was committed. She informed her mother three days later. A doctor confirmed that she had indeed been defiled and had contracted an unspecified infection.

Mairungi was placed on his defence and all he said was that he did not commit the alleged offence. He was in custody and unrepresented. The court delivered judgement and convicted him. After mitigation where he maintained his innocence, he was sentenced to life imprisonment and sent to Miti Maximum Prison.

At Miti, he meets Fundi Jela, a fellow convict and veteran. He narrates his case. Mairungi insists he was away in Isiolo on business on the alleged date of the offence. He spent the night at Bomen Hotel and has found his receipt. He claims he was framed by his sister so as to be disinherited from their parent's vast estate. Anna could not have spoken to JMM. JMM has never spoken in her life. Mairungi is referred to you to appeal the judgement. He wants to testify on the basis of the new evidence.

- (a) Advise him on the possible grounds of appeal and his options. (5 marks)
- (b) Citing relevant provisions of law, elaborate JMM's competency as a witness, and the legal process on the use of an intermediary when taking evidence. (5 marks)
- (c) Discuss the process before the High Court when taking additional evidence. (5 marks)
- (d) The judgement was delivered by the Hon. S.M. Kazi, C.M. on 4th December 2018. Draw the draft appeal document. (5 marks)

QUESTION TWO

Students of Chuo Kikuu University woke up to news that "Comrade X" their astute, flamboyant and eloquent leader had died. Information trickled in that he could have been killed over business rivalry for the control of the student cafeteria. The students went on strike, barricaded roads, and disrupted activities at Mjengo Mingi City. The police responded and dispersed them.

In the process, many people were caught up in the ensuing melee. The police arrested 17 young men and women. They were all charged jointly with taking part in an illegal assembly. They all pleaded guilty. During mitigation, the court was informed that six of them were aged below 18 years, three were actually students at a day school adjacent to the University. They were still in uniform. One of the young men was in fact a teller at the bank opposite the University, and yet another was a waiter at a popular food joint within the campus.

- (a) Discuss the next steps with respect to the plea taken. (3 marks)
- (b) Assuming the court proceeds to sentencing, explain the sentencing options available, citing relevant laws. (7 marks)