



COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.

ATP 101: CRIMINAL LITIGATION

MONDAY 15TH APRIL, 2024.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **FOUR (4)** printed pages including the cover page, with a total of **SIX (6)** questions.
- (b) A Candidate **MUST** answer **FIVE (5)** 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

There have been complaints of traffic police harassing motorists along Tega Uchumi Road. Officers from the Ethics and Anti-Corruption Commission (EACC) plan to execute a sting operation with the help of Donda Mdedli, a matatu conductor. He is given one specific Kshs. 200/= note, whose serial number and other details have been captured and photocopied by the EACC officers, to give as a bribe. He is also made to wear a hidden recording device for both audio and video. PC Fisadi Mkuu and PC Hongo Tele stops Donda's matatu. He immediately alights and commences conversation with both officers before handing out the Kshs. 200/= note to PC Hongo. EACC officers who had been monitoring them pounce and immediately arrest PC Fisadi. PC Hongo, a trained veteran marathoner, outruns them into a nearby thicket and disappears. He presents himself to his work station at 5pm having changed his clothes and claims to have been off duty the whole day owing to a running stomach. He is arrested by EACC officers lurking at the station having delivered PC Fisadi. The Kshs. 200/= is missing and is unlikely to be found.

- a) EACC wishes to have both PC Hongo and PC Fisadi charged. Detail the process. (7 marks)
- b) EACC retrieved their device from Donda. The conversation was captured in both audio and video. Given the circumstances of this case, provide an analysis of the admissibility of the footage. (7 marks)
- c) You have been retained as legal counsel for both Hongo and Fisadi. You learn that Donda feels insecure and unsafe to testify and has relocated to an undisclosed location. Explain the germane issues to the case against them. (6 marks)

QUESTION TWO

Mzee Mmoja was a successful farmer. Four years after his wife died, and with his three sons all grown, with families of their own and living in Nairobi, he decided to remarry. He scouted for a wife and was engaged and eventually married Jane Simbaya, a single mother of three, against the wishes of his sons. He defended Jane and fended off all attacks. He trusted her. She prepared all his meals as he went to the farm. It was no different on 10th March 2023. She packed him his food and he went to the farm. He worked and then rested to eat. He unpacked the food and after three bites, he started foaming in the mouth and collapsed. He was rushed by a neighbor to hospital. The matter was reported to the police who visited him in hospital. In his statement, he told the officers he had no reason to suspect his wife. There was no motivation on her part to have him dead. The police sent the food for examination. White pellets were discovered in the packed food which proved to be *Furadan*® a poisonous herbicide.

Mzee Moja never made it home. He died while undergoing treatment, with Jane by his side. The brothers blame her for his death. No *Furadan*® is found at their home.

You are the Prosecution Counsel seized with this case. Explain your options, with relevant citations. (10 marks)

QUESTION THREE

Nay Mtego, a famous poet and playwright known for his sarcasm has recently penned a critical article in his online blog known as *Jackal News*. In the article titled, “*Wapi Huko?*”, Mtego writes about an imaginary country, *Utopia*, where the population is languishing in poverty and high unemployment due to poor leadership. This article has unsettled the local political class in Kusadikika Municipality, where Mtego resides, who have vowed to teach Mtego a lesson. On his way back home one evening, Mtego gets information that police have been looking for him on allegations of violation of the Computer Misuse and Cybercrimes Act. The Kusadikika Municipality police commander has also been seen in the news vowing to cause the arrest of Mtego for “being used by unknown elements to destabilize peace and tranquility of Kusadikika.” Mtego is apprehensive that his rights under the Constitution of Kenya 2010 may be violated by the police acting on instructions of the political class who he has irked. He immediately goes into hiding and has reached out to you to help secure his freedom.

Prepare the appropriate application to secure his freedom. (10 Marks)

QUESTION FOUR

14 year-old Wero Muren sat for his KCPE in November 2023. His parents took him through the circumcision rite of passage for three weeks alongside his mates. This involved spending three weeks in the bush. Upon his “graduation”, he and his mates attended a party. In their drunken state, a fight ensued over some girl. As a result, Mkorofi, agemate and cousin to Wero Muren suffered a dislocated hip and fracture of the left femur. The Police were called and arrested Wero Muren and his mates. Mkorofi was rushed to hospital and was treated. He recorded his statement shortly after naming Wero Muren as the one who led the attack on him.

The parents discussed the matter at a family meeting convened for that purpose and are amenable to settlement. Wero Muren had just passed the exams and was due to join Starehe Boys Centre on full scholarship.

Wero Muren was released on cash bail by the OCS Olduga Police Station pending charge and prosecution. His family cannot afford him to lose the scholarship.

- (a) Citing relevant statutes and case law, explain the best option available for Wero Muren and his parents, detailing the specific roles played by different actors in the criminal justice sector. (7 marks)

- (b) You have learnt that Mkorofi is unwilling to have the matter settled. Explain the next steps with reference to your answer in (a) above. (3 marks)

QUESTION FIVE

On the afternoon of 1st February 2024, while Linc Mokinwa was walking home with his brother Teebag, they were suddenly accosted by three persons who had covered their faces with masks and forcibly bundled into a grey Subaru, registration number KDT100G. The persons identified themselves to the two brothers as police officers and sped off after blindfolding them. Later that evening, Teebag was dropped by the roadside near his home by the same car. He does not know what happened to his brother as they were taken to separate locations.

Upon learning of this, Linc's father, Nyagwoi Mokinwa, unsuccessfully embarks on a search for his son which takes him to all the police stations within Nairobi County. He also made a report to the police at the nearby Tawala Police station and was issued with a reference number - OB12/1/2/2024. It has been more than two weeks since this incident and the family does not know the whereabouts of Linc. Nyagwoi Mokinwa has approached you to take the necessary action in Court to compel the production of his son.

Draft the appropriate pleadings. (10 Marks)

QUESTION SIX

KDF Sgt Zubaa Deki is a driver with the Kenya Army Garrison in Garissa. His job entailed picking and dropping children of fellow staffers to school. On 2nd December 2023, while a little tipsy, and with pupils on board the Army Bus, he rams into a civilian lorry and thereafter overruns pedestrians on a walkway killing several of them on the spot. The pupils are badly injured. He escapes the scene after commandeering a motorcycle and disappears into Somalia. He is eventually arrested by the Transitional Federal Government officers who want to try him for alleged espionage and being in Somalia illegally.

Kenya and Somali Government are collaborating in the war against terrorists but Somalia does not recognize any extradition agreement including reciprocity.

- (a) Detail the options available to Kenya in the case of Sgt. Zuba citing relevant law. (6 marks)
- (b) Assuming Kenya is successful in having Sgt. Deki repatriated to stand trial, explain the trial processes awaiting him. (4 marks)