

COUNCIL OF LEGAL EDUCATION



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

CIVIL PROCEDURE I

TUESDAY 29TH NOVEMBER, 2011

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 marks
- (c) All other questions carry 15 marks each

PLEASE TURN OVER

QUESTION ONE

James Okang'a is a retailer trading in general merchandise in Kericho Town. Over the years, he has developed a pool of credit-worthy customers. One of his most trusted customers is Jonathan Lipule. On 01.06.2011, Jonathan took goods worth Kshs.300, 000 from James' shop. Previous dealings had it that all goods taken on credit were payable within 30 days. By September 2011, Jonathan had not paid for the goods. James came to your firm of legal practitioners for advice. You advised him that he had a claim in law against Jonathan. You even issued a letter of demand and notice of intention to sue. Today, James came back to your chamber to instruct you to prepare necessary documents to take Jonathan to court. As a former student of Civil Procedure, you know that you have to prepare a plaint. Draft a plaint for James' perusal. (For purposes of this question, the other documents that accompany the plaint are NOT necessary.)

(25 marks)

QUESTION TWO

Identify and explain the various factors that influence the choice of the appropriate court or tribunal in which to commence civil proceedings.

(15 marks)

QUESTION THREE

The purpose of an affidavit of service is to provide evidence to court that service of the process of court has indeed taken place. To achieve this objective, an affidavit at service must be sufficiently detailed. Identify the details that must be supplied in a proper affidavit service.

(15 marks)

QUESTION FOUR

The Supreme Court of Kenya is an important institution in the civil litigation process. It is vested with both original powers and appellate powers. State the powers of the Supreme Court under the Constitution of Kenya 2010 remembering to put them in the appropriate category of either original or appellate.

(15 marks)

QUESTION FIVE

Identify the various pleadings available in our regime of law governing the civil jurisdiction of the courts and in each case give an example of a cause of action in which the pleading is appropriate.

(15 marks)

QUESTION SIX

The defence is one of the documents that are often used in civil litigation. Like any other document of procedure, it is governed by rules. Highlight the rules that one must keep at the back of his mind in drafting a defence.

(15 marks)

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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

CIVIL PROCEDURE I

MONDAY 12TH NOVEMBER, 2012

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 marks
- (c) All other questions carry 15 marks each

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QUESTION ONE

a) Every pleading should have a certain format and certain information. Define and explain the format and content of a plaint. (15 marks)

b) State the documents that must accompany the following pleadings at the time of filing:

- i) The plaint
- ii) The defence & counterclaim

(10 marks)

QUESTION TWO

a) Discuss the following terms as they relate to civil procedure:

- i) Res Judicata
- ii) Sub Judice

(9 marks)

b) A defendant is required to enter an appearance in Court. What information should an appearance contain? (5 marks)

QUESTION THREE

In order to decide where to file a suit in Kenya, various factors have to be considered. Explain the factors that you would consider in arriving at the decision on where to file:

a) a suit for a wrong done to a person or to moveable property (10 marks)

b) a suit for a case concerning immovable property (5 marks)

QUESTION FOUR

a) What procedures must be followed to enable infants and persons of unsound mind to effectively sue? (8 marks)

b) Explain the meaning of the following terms:

i) Originating Summons (3 marks)

ii) Third Party Proceedings (4 marks)

QUESTION FIVE

Parties to suits can only rely on certain matters if such matters are specifically pleaded. Outline any **TEN** matters that a litigant must specifically state in his pleading if he/she is to rely on them at trial.

(15 marks)

QUESTION SIX

a) Explain the procedure of joining a new party to a suit, either as a plaintiff or as a defendant.

(10 marks)

b) Briefly explain the procedure of amending a pleading.

(5 marks)



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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

CIVIL PROCEDURE I

MONDAY 2ND DECEMBER, 2013

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each
- (d) Marks shall be lost for illegibility

PLEASE TURN OVER

QUESTION ONE

Jan was travelling as a fare paying passenger in a matatu Reg. No. KAB 134 which was being driven in Kakamega town when the same was involved in a collision with another motor vehicle registration No. KAC 206. Jan is a resident of Nairobi and had just gone to visit in Kakamega. Upon coming out of the motor vehicle he realized that it had been involved in a multiple accident with 3-other cars. He knows that Kim the owner of the matatu also lives in Nairobi. He has been able to establish the owner of KAC 206 who is Mona but he does not want to bother with the rest. He has come to you for advice as he wants to sue. Advise him on the following:

- a) Consideration to be taken as to where to file the suit and why? (10 marks)
- b) How all the parties would be brought into the suit. (15 marks)

QUESTION TWO

What are the formal requirements of pleadings as stated in order 2 rule 2 of the Civil Procedure Rules? (15 marks)

QUESTION THREE

- a) List and briefly discuss **FOUR (4)** pleadings that commence suits (8 marks)
- b) Every person has the capacity to sue and be sued. How would you file suit or sue for persons of unsound mind and minors? (7 marks)

QUESTION FOUR

Discuss the process of pleadings from the time of filling a plaint to the time of setting suit for hearing. (15 marks)

QUESTION FIVE

- a) Under what circumstances pleadings would be amended? (9 marks)
- b) How would the actual amendments be carried out? (6 marks)

QUESTION SIX

- a) What is an interlocutory proceeding? (5 marks)
- b) Under what circumstances would the court issue a temporary injunction? (10 marks)

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DIPLOMA IN LAW (PARALEGAL STUDIES)

CIVIL PROCEDURE I

25TH NOVEMBER, 2014

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions.
- (b) Question **ONE** carries **25 Marks**.
- (c) All other questions carry **15 Marks** each.

PLEASE TURN OVER

1. a) From the paragraph below list down five (5) issues that would be considered as material facts to be inserted into a plaint.

“My name is Bahati. On the 10th day of April, 2014 I was walking on the pavement along Tom Mboya Street near Development House. There were many people and it was a very hot day. As I stepped on to the road trying to cross from one side to the other a green Matatu Reg. KAX O64 Y appeared from nowhere and knocked me. It was over speeding. I broke my leg. I was rushed to Nairobi Hospital where I was treated and discharged.

(5 Marks)

- b) State five (5) legal entities that the courts would allow to file a civil suit.

(5 Marks)

- c) State the formatting requirements of pleadings.

(15 Marks)

2. a) State eight (8) instances when a party may institute interlocutory proceedings in a civil suit.

(8 Marks)

- b) Briefly discuss the issues that the court would take into consideration in granting an interlocutory injunction.

(7 Marks)

3. All persons have a right to sue. Discuss this statement with regard to filing suits by people with legal disability.

(15 Marks)

4. State the various considerations that you would have in mind when beginning a suit relating to:

- a) Movable property

(7 Marks)

- b) Breach of contract

(8 Marks)

5. a) Who is an interpleader?

(5 Marks)

- b) Briefly explain third party proceedings.

(10 Marks)

6. a) Discuss how amendments are effected on pleadings.

(7 Marks)

- b) Discuss instances when suits would be started using an originating summons.

(8 Marks)

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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

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CIVIL PROCEDURE II

TUESDAY 10TH MAY, 2011

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each

PLEASE TURN OVER

QUESTION ONE

1. The following pleadings were exchanged between Achieng' Jabuya & Co. Advocates and Kariuki Makathimo & Co. Advocates on behalf of their clients.

REPUBLIC OF KENYA
IN THE RESIDENT MAGISTRATES COURT AT NAIVASHA
CIVIL CASE NUMBER 3 OF 2011

ELIZABETH MZEE.....PLAINTIFF
VERSUS
GEORGE KIJANA.....DEFENDANT

PLAINT

- 1) The Plaintiff is a female adult Kenyan of sound mind residing and working for gain in Naivasha within the Republic of Kenya. Her address of service for purposes of this suit shall be c/o Achieng' Jaluya & Co. Advocates, Shule Plaza, Sheria Street, P.O. Box 111 – 00110 Nairobi.
- 2) The Defendant is a male adult Kenyan of sound mind residing and working for gain in Naivasha within the Republic of Kenya. Service of summons upon him shall be effected through the Plaintiff's Advocate's offices.
- 3) At all material times, the Plaintiff was the owner of motor vehicle registration number KAW 2747, while the Defendant owned motor vehicle number KBH 851P.
- 4) At all times material to this suit, the Plaintiff was driving her motor vehicle registration number KAW 2747 along the Naivasha-Maai Mahiu road when the Defendant negligently drove, managed and/or controlled his motor vehicle registration number KBH 851P causing it to collide with the Plaintiff motor vehicle.

PARTICULARS OF NEGLIGENCE

- (a) Driving in foggy weather without putting on the head lights.
 - (b) Failure to install fog lights of his car.
 - (c) Driving too fast in the circumstances.
- 5) As a result of the defendant's negligence, the Plaintiff has suffered loss and damage.
- (a) Shattered car windscreen.
 - (b) Dented bonnet.

PARTICULARS OF SPECIAL DAMAGES

(a) Cost of repairs Kshs.150,000.

Reasons wherefore, the Plaintiff prays for judgement against the Defendant for:

- (a) Special damages Kshs.150,000.
- (b) Cost of suit.
- (c) Interest on (a) above at court rates.

Dated at Naivasha this _____ day of _____ 2011
Achieng' Jaluya & Co. Advocates

REPUBLIC OF KENYA
IN THE RESIDENT MAGISTRATES COURT AT NAIVASHA
CIVIL CASE NUMBER 3 OF 2011

ELIZABETH MZEE.....PLAINTIFF

VERSUS

GEORGE KIJANA.....DEFENDANT

DEFENCE

- 1) The Defendant admits paragraphs 1 and 2 of the plaint in so far as they are merely descriptive of the parties. His address of service is c/o Kariuki Makathimo & Co. Advocates, Kenya Plaza, Makongeni Road, P.O. Box 92 Naivasha.
- 2) The Defendant denies ownership of motor vehicle registration number KBH 851P and put the Plaintiff to strict proof.
- 3) The Defendant denies the contents of paragraph 4 of the plaint entirely and puts the plaintiff to strict proof.
- 4) The Defendant denies the contents of paragraph 5 of the plaint. The Plaintiff is put to strict proof.
- 5) The Defendant avers that the Plaintiff's suit is totally defective and incurably incompetent and be struck out.

Reasons wherefore the Defendant prays that the plaintiff suit be dismissed with costs.

Dated at Naivasha this _____ day of _____ 2011
Kariuki Makathimo & Co. Advocates

In light of the above pleadings, frame the issues that should go to trial in the case.

{25 marks}

QUESTION TWO

Briefly state and explain the various modes of execution of decrees of court available in the civil process. {15 marks}

QUESTION THREE

State and explain the stages of an action in Judicial Review of Administrative action remembering to disclose the documents filed at each stage and their content. {15 marks}

QUESTION FOUR

The trial process in ordinary civil suits invariably involves the calling and examination of witnesses. Identify the various types of examination of witnesses, the purpose of each type and the rules governing each. {15 marks}

QUESTION FIVE

One of the innovations of the new Civil Procedure Rules is the introduction of the pre-trial directions conference provided for under Order 11 of the Rules. What are the things that happen at this conference? {15 marks}

QUESTION SIX

Define a Decree and briefly state and explain what it should contain. {15 marks}

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COUNCIL OF LEGAL EDUCATION



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

KENYA SCHOOL OF LAW
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CIVIL PROCEDURE II

TUESDAY 1ST FEBRUARY, 2011

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 marks
- (c) All other questions carry 15 marks each

PLEASE TURN OVER

QUESTION ONE

1. Tom Omariba is a licenced court process server. He carries out his duties on freelance basis; that is, any person desirous of the services of a process server can contact him and he would effect service at an agreed fee. The firm of Eskihoni & Company Advocates is your employer. It is situated at Shule ya Sheria Building, 2nd floor along Lang'ata South Road. The firm has, as one of its key clients, Mariaria Enterprises Limited. The said Mariaria Enterprises Limited instructed Esikhoni & Co Advocates to file suit against the Council of Legal Education, a body corporate established by statute, for breach of contract. The cause of action arose out of the rescission of a contract that Mariaria Enterprises Limited had got to paint the new lecture theatre at one of its facilities in the Karen area of Nairobi. Upon filing of suit and taking out of summons, the senior partner at the firm instructs you to contact Tom Omariba, who ordinarily resides in Nairobi and whose address is Private Bag Nairobi, to effect service of the suit papers to the Council of Legal Education. You receive the instructions on 20.01.2011 and being a diligent young advocate, you execute them immediately. Tom Omariba writes back to you a letter five days later informing you that on 20.01.2011, he had gone to the Council of Legal Education's former premises along Valley Road but was informed that the institution had moved to Karen. He had then gone back to his office. The following day, he went to Karen and luckily, while walking along Lang'ata South Road, he had seen the signboard inscribed with the words "Council of Legal Education, Kenya School of Law: ISO Certified". Armed with the Complaint and the Summons to Enter Appearance, he entered the premises at Gate Number A where the "soldier" (which you later learn was reference to the gate guard) referred him to an office of an administrator by the name Carol Marete. While at Carol Marete's office, a lady whom he found there informed him that matters of that nature were handled at Gate Number C. He proceeded to gate number C at which he knocked at the office of the Director. At the said office, he was received by a lady whose identification tag read "Linda". The said Linda showed him to the office of the Director and when he entered the said office, he found a man in his middle age who introduced himself as Professor Kulundu Bitonye, the Director and Chief Executive Officer of the Council of Legal Education. He informs you that he finally informed the said director of the purpose of his visit and tendered the papers he had to him. The director acknowledged receipt of the papers by signing on the copies that Tom Omariba retained.

Mr. Omariba requests that you prepare an affidavit of service for his signature. Prepare the affidavit of service for Mr. Omariba's signature.

{25 marks}

QUESTION TWO

- (a) What are the general rules that must be born in mind in drafting pleadings? {10 marks}
- (b) State five examples of pleadings. {5 marks}

QUESTION THREE

You are the able assistant in the firm of Njoroge & Co. Advocates. Mr. Njoroge sometimes calls upon you to generate first drafts of documents in the firm which he then perfects for signature and filing in court. Your client, Elly Odero brings to your firm the following plaint that had been served upon him:

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATES COURT AT SAWAGONGO
CIVIL CASE NUMBER 3 OF 2011

SALLY ADERO.....PLAINTIFF

VERSUS

ELLY ODERO.....DEFENDANT

PLAINT

- 1) The Plaintiff is a female adult of sound mind residing and working for gain in Awendo within the Republic of Kenya. Her address of service for purposes of this suit shall be c/o Simiyu & Co. Advocates, Kholera House, P.O. Box 3 Kwhisero.
- 2) The Defendant is a male adult of sound mind residing and working for gain in Nairobi within the Republic of Kenya. Service of summons upon him shall be effected through the Plaintiff's Advocate's offices.
- 3) Between the years 2009 and 2010, the Plaintiff and the Defendant were in an intimate relationship in which the Defendant promised to marry the Plaintiff. In the course of the relationship, the Plaintiff conceived a pregnancy which unfortunately ended in a miscarriage in October 2010.
- 4) The Defendant has since the said miscarriage refused to communicate with the Plaintiff nor to honour the promise to marry the Plaintiff.
- 5) The Plaintiff has consequently suffered loss and damage.
- 6) There is no previous suit nor are there pending proceedings between the same parties involving the same subject matter.
- 7) The cause of action arose in Sawagongo within the jurisdiction of this court.
- 8) Demand and Notice of Intention to sue have been issued but the Defendant has failed, refused and/or neglected to make good the Plaintiff's claim.

Reasons whereof, the Plaintiff prays for judgement against the Defendant for:

- (a) General damages for pregnancy compensation and breach of promise to marry.
- (b) Cost of this suit.

Dated at Nairobi this _____ day of _____ 2011
Simiyu & Co. Advocates for the Plaintiff

Elly informed Mr. Njoroge that he had credible information that the Plaintiff was a common call girl in Sawagongo & Awendo townships who extorted money from men using tactics of court cases like this one. He claims to have met the Plaintiff at a friend's party but apart from exchanging pleasantries, they had no further contact.

With these instructions, your boss instructs you to draft a defence on behalf of Elly for his approval. Prepare the Defence. {15 marks}

QUESTION FOUR

- (a) What is meant by close of pleadings? {2 marks}
- (b) What is the distinction between amendment of pleading before 'close of pleadings' and amendment after close of pleadings? {3 marks}
- (c) What are the rules governing amendment of pleadings? {10 marks}

QUESTION FIVE

- (a) What are interlocutory applications? {2 marks}
- (b) List FIVE examples of interlocutory application. {3 marks}
- (c) The City Council of Nairobi, a body corporate established as such under the Local Government Act, Chapter 265, Laws of Kenya, has issued a two day notice requiring your client to demolish a multi-million construction that your client is undertaking on his parcel of land LR No.1234 in Karen. Your client has all the approvals that are required from the Council. He thinks the Council has no rational justification for that demand. The Council has threatened that if the two days elapse before he demolishes, it will move in and demolish the structure. Your client has made frantic efforts to liaise with senior officers at the Council to explain his case in vain. He instructs you to proceed to court to challenge the intended demolition of his construction. In addition to filing the main suit, he instructs you to apply as a matter of urgency to obtain an injunction restraining the council from carrying out its threat.

Prepare the appropriate application for the interlocutory injunction. (For purposes of this question, do not prepare the pleadings for the main suit. Limit yourself to the interlocutory application) {10 marks}

QUESTION SIX

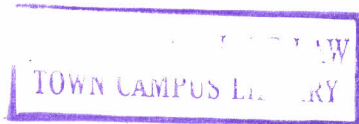
Briefly discuss the various methods of enforcing a court decree under Kenyan law. {15 marks}

-----END-----

Effect of right of abeyance & purchase
① Temporary injunction
② Amendment of pleadings
③ Interlocutory application
④ Striking out pleadings
⑤ R. 17

Temporary injunction

Court decree
①
②
③



COUNCIL OF LEGAL EDUCATION



DIPLOMA IN LAW (PARA-LEGAL STUDIES)
2ND YEAR TERM III

CIVIL PROCEDURE II

TUESDAY 2ND APRIL, 2013

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **ANY OTHER THREE** Questions
- (b) Question **ONE** carries **25 marks**
- (c) All other questions carry **15 marks** each
- (d) Marks may be lost for illegibility

PLEASE TURN OVER

QUESTION ONE

- a) Citing specific examples, explain the various ways through which civil proceedings may be instituted in the Kenyan courts. (15 marks)
- b) Outline TEN issues that are addressed by parties in the pre-trial questionnaire. (10 marks)

QUESTION TWO

- a) What is the purpose of the settlement conference and at what time does it take place? (5 marks)
- b) All suits except for those of small claims shall be accompanied by certain documents. List these documents and explain the purpose of each. (10 marks)

QUESTION THREE

- a) State the duties of an advocate during the pre-trial conference. (8 marks)
- b) Your friend Moli is an architect. She has received a witness summons to attend court in Mombasa to give evidence. She does not want to go as she believes she will be spending money and her time on issues which will not help her. She has come to you for advice. Set out your legal opinion. (7 marks)

QUESTION FOUR

- a) What is a judgement and when is it pronounced? (5 marks)
- b) What is a decree and what should it contain? (5 marks)
- c) Briefly explain the procedure to be followed where a court sends its decree to be executed by another court. (5 marks)

QUESTION FIVE

- a) What are the general powers of an appellate court in appeal matters? (5 marks)
- b) When does an appeal lie in the high court? (5 marks)
- c) State the instances when an appeal may be to the court of appeal. (5 marks)

QUESTION SIX

- a) Costs are usually awarded to parties in cases. Explain the processes through which costs may be arrived at under the Civil Procedure Rules. (5 marks)
- b) Briefly explain the various methods of enforcing a court ruling/judgement under Kenyan law. (10 marks)

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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2ND YEAR TERM III

CIVIL PROCEDURE II

WEDNESDAY 26TH MARCH 2014

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 Marks
- (c) All other questions carry 15 Marks each

PLEASE TURN OVER

1. a) Describe the three ways in which civil procedure cases are classified under the Civil Procedure Act (Cap 21, Laws of Kenya). (6 Marks)
b) State the various documents that should normally accompany a plaint at the time of filing a suit. (8 Marks)
c) What is the purpose of a case conference? (11 Marks)

2. a) Briefly discuss the contents of a settlement conference brief. (5 Marks)
b) What is the purposes of a trial conference? (10 Marks)

3. a) State the information that must be contained in every witness summons. (5 Marks)
b) Briefly discuss the correct process for services of witness summons as provided for under the Civil Procedure Act (Cap 21, Laws of Kenya). (10 Marks)

4. Write brief notes on each of the following:
a) Hearing process of the case. (8 Marks)
b) Recording of evidence during the hearing. (7 Marks)

5. a) State the contents of judgment as provided for under the Civil Procedure Act. (7 Marks)
b) What is a decree for mesne profits. (8 Marks)

6. a) When is a stay of execution granted in appeal cases? (7 Marks)
b) State the documents that the judge has to satisfy himself that are in the court file before proceeding with an appeal. (8 Marks)