

THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2nd YEAR TERM III EXAMINATION



CIVIL PROCEDURE II

26 MARCH 2019

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:

- a) State the document that should accompany the plaint at the point of filing. (5 Marks)
- b) Explain the tracking of pleadings as provided for by the Civil Procedure Act Cap 21 Laws of Kenya. (8 Marks)
- c) Briefly explain the process of filing of a plaint from the time of preparation to the time of close of pleadings. (5marks)
- d) Discuss any 7 preliminary preparations that parties have to undertake before beginning the pre-trial directions. (7marks)

Question Two:

- a) Explain the purpose of the case conference as provided for by the Civil Procedure Act Cap 21. (10 Marks)
- b) Discuss any five orders that the Court may make at the end of the case conference. (5 marks)

Question Three:

Describe the contents of a Settlement Conference brief as provided for by the Civil Procedure Act of Kenya. (15 marks)

Question Four:

- a) Explain how a witness is summoned to Court as per the Civil Procedure Act 2010. (8 Marks)
- b) State what must be specified in a witness summons. (7marks)

Question Five:

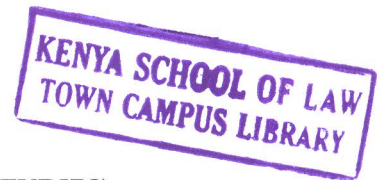
Discuss the contents of an application for execution of a decree. (15 marks)

Question Six:

- a) Explain 5 circumstances under which parties would successfully request for a stay of execution of a decree. (5 marks)
- b) State the steps that an auctioneer would take after attachment to the time of a valid sale by public auction. (10 marks)

END

THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2ND YEAR TERM III EXAMINATION

CIVIL PROCEDURE II

27TH MARCH, 2018

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

- a) Outline the documents that accompany pleadings at the time of filing. (5 marks)
- b) Explain the following concepts in relation to filing of civil cases.
- i) Small Claims (3 marks)
 - ii) Fast track (3 marks)
 - iii) Multi track (4 marks)
- c) Before filing the pre-trial questionnaire, the parties have to comply with certain requirements. State any 10 such requirements. (10 marks)

Question Two

- a) Explain the purpose of the case conference. (10 marks)
- b) Briefly discuss the contents of the settlement conference brief. (5 marks)

Question Three

Outline the procedure that the court will adopt where a witness fails to comply with summons to appear to give evidence in court. (15 marks)

Question Four

- a) Explain the process of hearing a case on the day that the matter is set for hearing after all the conferences have been dealt with. (15 marks)

Question Five

- a) Describe what should be contained in a decree. (8 marks)
- b) State the manner in which the costs of a suit are arrived at in a civil suit. (7 marks)

Question Six

- a) Outline the requirement that must appear in a written application for execution. (9 marks)
- b) Describe the process of Sale of a Property by public auction as provided under the Civil Procedure Rules 2010. (6 marks)

END



THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2ND YEAR TERM III EXAMINATION

CIVIL PROCEDURE II

28TH MARCH, 2017

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

- a) Discuss the purpose of the Case Conference as per the Civil Procedure Act 2010. (10 marks)
- b) Discuss the requirement for classification of pleadings at the time of filing to allow for expeditious disposal of cases. (11 marks)
- c) State the documents that must accompany pleadings at the time of filing. (4 marks)

Question Two

- a) What is the purpose of a trial conference? (10 marks)
- b) State the contents of the settlement conference brief. (5 marks)

Question Three

State the process of summoning witnesses for hearing. (15 marks)

Question Four

- a) Discuss the consequences to a witness who fails to comply with the witness summons. (10 marks)
- b) What does order 5 rule 2 of Civil Procedure rules say about the duration and renewal of summons. (5 marks)

Question Five

- a) Discuss how the hearing is conducted in terms of giving of statement and evidence by the witnesses and parties. (8 marks).
- b) Explain the powers given to the courts to examine witnesses immediately without waiting for the hearing of the case to begin. (7 marks)

Question Six

Discuss the contents of an application for execution. (15 marks)

END



THE KENYA SCHOOL OF LAW
DIPLOMA IN LAW (PARA-LEGAL STUDIES)
1ST YEAR TERM 3

CIVIL PROCEDURE II – DPS 209

23RD MARCH, 2016

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

- (a) Briefly discuss the preliminary procedural processes from the time of deciding to file suit, to the time of entering an appearance. (15 marks)
- (b) What is the purpose of a case conference? (10 marks)

QUESTION TWO

- a) Describe how a witness summoned to give evidence could be compensated for his time. (10 marks)
- b) What information would appear in every witness summons? (5 marks)

QUESTION THREE

- a) Discuss briefly what would appear in a judgment. (10 marks)
- b) Briefly discuss the contents of a record of appeal. (5 marks)

QUESTION FOUR

- a) Discuss the contents of a decree. (10 marks)
- b) State the issue that would be considered when dealing with a decree for *mesne* profits. (5 marks)

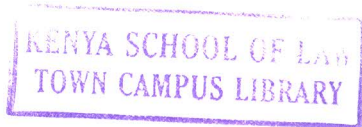
QUESTION FIVE

Discuss the contents of an application for execution. (15 marks)

QUESTION SIX

- a) List the goods of a judgment debtor which may not be subjected to execution. (10 marks)
- b) State the five powers of the High Court in disposing of an appeal. (5 marks)

THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2ND YEAR TERM III EXAMINATION

CIVIL PROCEDURE II

10TH APRIL, 2015

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:

- a) How are plaints classified under Civil Procedure Act? (5 Marks)
- b) State the purpose of a trial conference. (10 Marks)
- c) Briefly explain the process a plaint goes through from the time of drawing it to the time of close of pleadings. (10 Marks)

Question Two:

State the powers of the court during the case conference.

(15 Marks)

Question Three:

- a) Give a brief explanation on how cases are fixed for hearing. (10 Marks)
- b) Define a "judgment" (5 Marks)

Question Four:

- a) What must be contained in a decree? (10 Marks)
- b) State the various ways in which parties to a case may arrive at costs of the case. (5 Marks)

Question Five:

- a) State the modes of paying of money due under the decree. (5 Marks)
- b) Give reasons as to why a judgment-debtor may be committed to prison in execution of a decree. (10 Marks)

Question Six:

- a) Briefly state the power of an appellate court over a case before it. (5 Marks)
- b) List ten (10) issues that must appear on an application for execution. (10 Marks)

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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

2ND YEAR TERM III

CIVIL PROCEDURE II

WEDNESDAY 26TH MARCH 2014

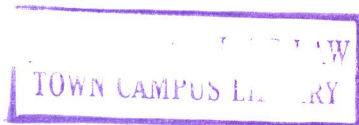
DURATION: 2 HOURS

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)



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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 summon 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)

KENYA SCHOOL OF LAW
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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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DIPLOMA IN LAW (PARA-LEGAL STUDIES)

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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 Plaint 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 Caro 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 Odera 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}
sped right at 10/10/2018
- (b) List FIVE examples of interlocutory applications. {3 marks}
*1 Temporary injunction
2 Amendment & pleadings
3 Dismissal of suit
4 Strike out pleadings
5 R. 34*
- (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-----

court decree
①
②

*Tengor
:yand*

Kenya School of Law

Civil Procedure 2 CAT

23rd February 2016 (Evening Class)

Answer any 2 questions

4. (a) What is the purpose of the case conference? (10 Marks)
(b) What should be included in the settlement conference brief? (5 Marks)
5. Briefly state the procedure of preparing of decrees. (15 marks)
6. (a) What is the procedure of recording evidence of witnesses including any questions objected to by a party? (9 Marks)
(c) Briefly state the procedure for summoning witnesses to court for hearing. (6 Marks)

Kenya School of Law
Civil Procedure 2 CAT
21st February 2017 (Evening Class)

Answer any 2 questions

1. (a) State any 10 powers of the court at the case conference. (10 Marks)
(b) Define a settlement conference brief? (5 Marks)

2. (a) What is the purpose of a trial conference (8 marks)
(b) State the preliminary preparations that parties have to undertake before the pre-trial questionnaire is filed. (7 marks)

3. Explain the issues to be considered by the court when a party summons a witness to give evidence in court. (15 marks)

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