

THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

THE LAW OF TORT

27<sup>TH</sup> OCTOBER, 2016

DURATION: 3 HOURS

**Instructions to Candidates**

- (a) Answer Question ONE and any other three questions out of the following six Questions.
- (b) Each Question carries 25 Marks.
- (c) Marks shall be lost for illegible handwriting.

PLEASE TURN OVER

### Question One

Muhamishaji went to the same school as Okil many years ago. Okil was better in classwork and went on to study law and got admitted as an Advocate of the High Court of Kenya. Muhamishaji ventured into transport business and became successful, owning a fleet of trucks and rental houses in Chepshara town. Okil got a job with a parastatal body and was posted to it, branch in Chepshara. He is excited to meet his old schoolmate Mhamishaji. One afternoon he sent an office assistant to Mhamishaji's office to ask for a soft loan. Mhamishaji declines saying it will affect his business capital. That evening Okil sent a text message to Mhamishaji that stated, "You don't know what I am. Your new trucks will soon get grounded."

Three days later Okil writes to the local criminal investigations office, stating that there are reasonable grounds to believe Mhamishaji's trucks are carrying uncustomed goods. The trucks are impounded and stored in a yard for inspection. Mhamishaji is arrested and charged with attempted tax evasion and giving false information to persons employed in the public service. The criminal case drags on for three years at the end of which Muhamishaji is acquitted. One of the grounds for acquittal is that upon inspection it was found that the goods alleged to have been uncustomed were properly in transit to a neighbouring country. The magistrate in her judgment dedicates several paragraphs to criticizing the interest Okil had in the case with evidence of correspondence between him and the authorities that investigated and prosecuted the case.

- a) Discuss the aspects of malicious prosecution that arise from the above scenario. (20 marks)
- b) Who are likely to be the defendants in this case? (3 marks)
- c) State two Acts of Parliament of the Republic of Kenya which Okil by his conduct has violated. (2marks)

### Question Two

- a) Distinguish between an act and an omission. (10 marks)
- b) In what circumstances would an act of a defendant be deemed to have been involuntary? (5 marks)
- c) What consequences lie in the Law of Tort, for a tortious act or omission? (5 marks)
- d) What consequences would lie in criminal law arising from the same act or omission? (5 marks)

### Question Three

Mr. and Mrs. Sasita have an only son Mwajuma who is aged 17. He was a student at Milimani High School from form 1 to form 3. During the holidays he would tell his parents that wild animals like hyenas roam in the school's fields after 10.00 p.m. and he was apprehensive they might attack a student one day.



In one Parents Teachers Association meeting the parents proposed an electric anti-wildlife fence be erected around the dormitories but the headmaster overruled them saying the school had existed for 50 years with no incident.

One night as Mwajuma went to pick his clothes from the clothing lines after evening prep time he was attacked by a bull antelope and was gored in his right abdomen. He was in hospital for a month. Upon discharge he has been <sup>not been</sup> able to play for the school basketball team. His parents moved him to Mtaa day school and have to hire a physiotherapist to help him regain full health.

- a) Discuss what Mr. and Mrs. Sasita need to prove in an action for negligence on the part of Milimani High school. (20 marks)
- b) Outline instances when a plaintiff may rely on the principle of *res ipsa loquitur*? (5 marks)

#### Question Four

Basil Tiba is a Dental technologist who, apart from his day job at Rafiki county hospital does contractual work at Amani Mission Hospital after his day job at Rafiki County hospital. He works under a Dentist whenever he is at Amani Mission Hospital.

Amani Mission Hospital has been sued for a dental procedure that went wrong resulting in a patient's face getting disfigured. Basil Tiba insists he was not an independent contractor for Amani Mission Hospital.

- a) What factors will determine whether Basil was an independent contractor or a servant with Amani Mission Hospital? (10 marks)
- b) What is occupier's liability? (3 marks)
- c) What measures can an occupier take to avoid liability for breach of their duty as an occupier? (10 marks)
- d) What is a professional indemnity cover? (2 marks)

#### Question Five

A plaintiff suing in the Law of Tort needs to establish a link between the Defendant's conduct and the loss suffered. The injury suffered however should not be too remote a consequence of the defendant's act.

- a) Discuss the tests that determine if damage or loss suffered is remote, relative to the defendant's conduct. (20 marks)
- b) What is contributory negligence? (5 marks)

#### Question Six

- a) Distinguish between:
- i) Tort and Contract
  - ii) Tort and Criminal Law
  - iii) Damage and Damages
  - iv) Negligence and Breach of Statutory duty
  - v) Justification and fair comment
- (20 marks)
- b) Why is it that minors and persons of unsound mind cannot be sued directly in the law of Tort?
- (5 marks)

.....END.....

THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

LAND LAW

27<sup>TH</sup> OCTOBER, 2016

DURATION: 3 HOURS

**Instructions to Candidates**

- (a) Answer any **Four** Questions of the following **Six** Questions.
- (b) Each Question carries **25 Marks**.
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PLEASE TURN OVER



### Question One

Joghinder Aneriko holds title number Garsen/Kijijini Block 18/Awudo as the registered proprietor of that property. This parcel abuts another parcel owned by the county government of Tana River upon which the County Assembly is located. The county assembly now requires to expand by building a library for its members. Nevertheless, the land is not sufficient. It is now necessary to acquire Mr. Aneriko's land for purposes of constructing the said library.

The County Attorney has instructed you to prepare an opinion on the procedure to be followed in compulsorily acquiring Mr. Aneriko's aforesaid parcel of land. With the aid of constitutional and statutory provisions, advise. (25 marks)

### Question Two

State the meaning, and discuss the scope of the fee simple estate.

(25 marks)

### Question Three

Discuss the doctrine of fixtures in the law of property in land and limitations to the said doctrine.

(25 marks)

### Question Four

"Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without being noted on the register

- a) ...
- b) trusts including customary trusts "Land Registration, Act No.3 of 2012, section 28 (b)."

Discuss

(25 marks)

### Question Five

Write short notes on the following:-

- a) Profit a prendre;
- b) Easements;
- c) Charge;
- d) Restrictive Covenants

(25 marks)

### Question Six

Compare and Contrast Joint tenancy and tenancy in common as forms of concurrent ownership.

(25 marks)

.....END.....

THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

FAMILY LAW AND THE LAW OF SUCCESSION

28<sup>TH</sup> OCTOBER, 2016

DURATION: 3 HOURS

**Instructions to Candidates**

- (a) Answer **one** question from Section A and another one from Section B.
- (b) Answer **two** other questions from either section.
- (c) Each Question carries **25 Marks**.
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PLEASE TURN OVER

SECTION A

FAMILY LAW

Question One

- a) Define marriage. (5 marks)
- b) What are the requirements of a valid marriage, consortium and divorce under Customary Law. (10 marks)
- c) i) Jedida and Judo married under the Marriage Act 2014, eight months ago. At the date of their marriage Jedida thought she had married a man who was humble, supportive and ambitious, which attributes she later learnt were a cover-up for his inadequacies. He was a former four leaver who was in between jobs, while she was a university graduate with well-paying job.

After marriage he stopped working and stayed at home and has refused to look for a job. Jedida now wants to end the marriage but does not know what to do. She has come to your chambers for legal advice on how to do so. Assist her accordingly. (5 marks)

ii) Noni married Cutisi four years ago, and had a happy marriage until three months ago when he started acting violently towards Noni. On several occasions he has hurled insults at her and from time to time hit her. Noni wishes to terminate the marriage. Assist her on how to do so. (5 marks)

Question Two

With the aid of statutory provisions and case law, discuss in depth division of matrimonial property after divorce. (25 marks)

Question Three

Describe parental responsibility and what it entails under the Children Act. No.8 of 2001. (25 marks)



SECTION B

THE LAW OF SUCCESSION

**Question Four**

With the aid of statutory provisions under the Law of Succession Act (Chapter 160 of the Laws of Kenya), and case law, discuss the following:

- |                     |            |
|---------------------|------------|
| a) Written Wills    | (10 marks) |
| b) Oral Wills       | (5 marks)  |
| c) Privileged Wills | (10 marks) |

**Question Five**

Mrs. Gogo, a wealthy businesswoman died two months ago survived by two daughters and two sons. The sons were married and lived in their own properties in a different town. Upon the demise of Gogo, the two daughters went to court to apply for a grant of letters of administration in order to distribute the assets of the deceased claiming that they were the only dependants of the deceased.

The two sons have been informed by their mother's neighbours about the occurrence and as a result have come to you for legal advice. Advise them accordingly.

(25 marks)

**Question Six**

Write short notes on the following:-

- |   |            |
|---|------------|
| a) Construction and revocations of Wills                          | (10 marks) |
| b) Gift in Contemplation of death.                                | (5 marks)  |
| c) Judicial separation  | (5 marks)  |
| d) Dissolution of marriage on the ground of presumption of death. | (5 marks)  |

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(20 marks)

b) Why is it that minors and persons of unsound mind cannot be sued directly in the law of Tort?

(5 marks)

.....END.....

THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

LEGAL METHODS, SYSTEMS AND CONSTITUTIONAL LAW

26<sup>TH</sup> OCTOBER, 2016

DURATION: 3 HOURS

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PLEASE TURN OVER



### Question One

- a) Give a definition of term "Law", and discuss FIVE functions that law serves in society. (10 marks)
- b) Drawing guidance from the Constitution of Kenya, 2010, and the Judicature Act (Chapter 8, Laws of Kenya), outline the formal sources of law in Kenya. (15 marks)

### Question Two

- a) Explain THREE possible meanings of the expression "Common Law". (10 marks)
- b) Discuss the meaning of the term "equity" as understood by lawyers and explain any FIVE maxims of equity. (15 marks)

### Question Three

- a) Define the term "Constitution" and explain FIVE ways of classifying constitutions (25 marks)

### Question Four

Drawing from your knowledge of the Constitution of Kenya, 2010, discuss the following concepts, and give specific examples of their applications:

- a) Sovereignty  
b) Supremacy of the Constitution  
c) Separation of powers  
d) Independence of the Judiciary  
e) The Rule of Law (25 marks)

### Question Five

- a) Discuss FIVE advantages of legislation as a source of law. (10 marks)
- b) How do courts of law interpret statutes? (15 marks)

### Question Six

Citing relevant examples, present an analysis of the following terms commonly used in the study of legal systems:

- a) Substantive law vs procedural law  
b) Adversarial vs inquisitorial judicial systems  
c) Municipal law vs international law  
d) Public law vs private law  
e) Natural justice (25 marks)

.....END.....