

COUNCIL OF LEGAL EDUCATION.



EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES.

**ATP 101: CRIMINAL LITIGATION**

FRIDAY 23<sup>RD</sup> NOVEMBER, 2018.

DURATION: 3 HOURS.

**Instructions to Candidates:**

- (a) This paper contains **FIVE (5) 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

Bristles Company Limited entered into an agreement with Dazzles Limited for purchase of land LR No.12345. The Directors of both companies verbally requested Toluni Advocate to draft a Sale Agreement. A deposit of 7 million Kenya Shillings was paid to Bristles Company Limited. The balance was Kshs.2 million payable in 90 days. Subsequently Toluni Advocate was requested to draft a transfer deed by the parties.

Meanwhile Directors of Leam Company Limited were interested in the same land L.R. No.12345. The Directors of Leam paid Bristles Company Limited Kshs.2 million through Toluni Advocate client account. This was done by a cheque drawn in favour of one of the Directors of Bristles Company Limited.

Toluni Advocate went for a conference in Kotzi County about 300 km away from his office. He stayed there for three (3) months. On return he finds that detectives from Criminal Investigations are looking for him and he is required to record a statement. He proceeds to Capital Centre, the CID Headquarters. While at the Centre he is shown a transfer deed with photos of Leam Company Directors. The transfer deed has the ID Numbers and the revenue collection Personal Identification Numbers of Dazzles Limited appearing as the purchasers. The clerk who filled the documents cannot be found since he went missing two months ago.

On further inquiry he has been informed that the Directors of Bristles Company Limited denied having signed the transfer deed and that their signatures were forged. A forensic document examiner has presented a report indicating that the signatures of Bristles Company Limited were forged. The signature and stamp of Toluni Advocate has been used to sign against the forged signature of Director of Bristles Company Ltd. One of the Directors of Bristles Company Limited has stated that the company never received the balance purchase price of 2 million from Leam Company Limited. They have admitted that they only entered into a sale transaction with Dazzles Limited.

After conducting a search, Toluni Advocate realized that the land is registered in the names of Leam Company Limited. The file was forwarded by the Criminal Investigations Department (CID) to the Director of Public Prosecutions for advise. The CID have recommended that Toluni Advocate be charged with the offences of:

1. Forgery
2. Obtaining registration by false pretenses
3. Conspiracy to defraud

Toluni Advocate has learnt that the police are waiting to arrest him on Friday.

- (a) Advise Toluni Advocate on the legal steps he can take to protect his rights as an advocate. **(5 marks)**
- (b) Draft the relevant application. **(10 marks)**
- (c) Assuming you are a prosecutor acting on this file, what advice and recommendations would you give to the police. **(5 marks)**

## QUESTION TWO

Cary Argos was employed as a security guard by Willow Security Firm. Cary was assigned to guard the house of Claris Wright, an Australian who lives in Kilimane. On the night of 4<sup>th</sup> July 2017 Claris came home late after long day at work. Cary opened the gate for her and she drove in. Immediately, five armed men entered the house of Claris, ordered everyone apart from Cary to lie on the ground. They entered all the rooms, ransacked every part of the house and took away valuables worth 20 million shillings. They drove away with the car belonging to Claris being driven by Cary who was ordered to drive. They also ordered Claris to sit at the back of her car as Cary drove through town and dropped off Claris in a bushy part of Kawangwary. Cary drove away with the armed men and no one was hurt. Claris reported the matter to a nearby police post and was escorted back home by the police. Investigations commenced.

A few months later Cary is arrested near the border of South Sudan carrying a big bag containing his clothes and personal effects. He was brought to Nairobi for further interrogation.

While at the station, Cary informs the police that he was a victim of the robbery and that he was also abandoned in Nakury near Moli forest. He says that he went to his rural home because he was fearing for his life. He says that the thugs said they would kill him if he reported to the police.

Meanwhile two other suspects were also arrested. Don was found in possession of the motor vehicle. He says he bought it from a car bazaar in Mombasy. Kev was also arrested in possession of a mobile phone, a watch and jewelry belonging to Claris. Kev was trying to sell the watch to Pet the husband to Claris who reported to the police and the arrest was made. Don and Kev have 3 other similar cases pending before other Courts.

The police have established that Cary was previously arrested and charged for being drunk and disorderly and attempted robbery. He was sentenced to serve 3 years on probation. Claris has informed the police that she wants to forgive Cary and get back her car and stolen items. On DPP's advice, the three were charged with offence of robbery with violence contrary to Section 296(2) of the Penal Code. Don and Kev were both charged with the alternative charge of handling stolen property contrary to Section 322 of the Penal Code.

The family of Cary has approached you to represent him.

- (a) Advise Cary on the law and all factors the court considers before granting bail pending trial. **(6 marks)**
- (b) Assuming all the three are convicted, Cary for the offence of robbery with violence and Don and Kev for handling stolen property, advise the family of Cary on the sentencing procedure for all the three. **(4 marks)**

## QUESTION THREE

Hansen and Kuyt were charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. The Court granted them bond of Kshs.2 million each with a surety of similar amount. They have been in custody for two years now.

Hansen's mother Abi learnt of the arrest. She has a title deed for their land in Nairobi which is their matrimonial home. However, she lost her identity card and passport and

only has a driving licence. Because of her faith she believes that one should not swear using a bible. Before Hansen was arrested she had not heard from him for two years. Abi is a business woman who is in and out of the country every 3 months. She is contemplating taking a loan facility using the land in Nairobi.

Meanwhile the Court heard prosecution evidence and placed the two accused persons on their defence. Thereafter Abi desires to stand surety for Hansen so that he can attend the burial of his great grandmother. Abi has approached you to represent her.

- (a) Advise Abi on her suitability as a surety and the obligation and consequences of being a surety. **(7 marks)**
- (b) Assuming Hansen absconds and cannot be traced at all, advise Kuyt on the fate of his case. **(3 marks)**

#### QUESTION FOUR

Joachim and Solomon are Rangers with the Kenya Wildlife Service. Both work at Soilo Ranch known for its Rhinos. These animals are prone to attacks by poachers who are armed and dangerous. On 19/1/2014, while with their colleagues on patrol within the ranch around midnight when they heard gunshots from deep inside the ranch. They set up several ambush points along possible escape routes of the persons they suspected to be poachers, who from the gunshots, they suspected were armed and dangerous.

Joachim and Solomon were together when around 2 a.m. they saw three men approaching on foot. One was carrying a G-3 rifle. The three defied orders to stop. The rangers fired killing two instantly. The third man escaped. They recovered a G-3 rifle and 44 rounds of ammunition. They also recovered three swords and a sleeping bag. The police were called to the scene and immediately identified the dead man carrying the G-3 rifle as a police officer Constable Mang'aa.

- (a) The two rangers Joachim and Solomon recorded statements detailing the circumstances leading to the shooting of the two.

Outline the options available to the Office of the Director of Public Prosecutions on this matter. **(5 marks)**

- (b) The Director of Public Prosecutions has decided to charge the rangers with the murder of Constable Mang'aa and the other man.

Advise the two rangers on their options citing relevant provisions of the law. **(5 marks)**

#### QUESTION FIVE

The Officer Commanding Police Division (OCPD) Lang'ata Police Division is concerned with the high number of cases that had been lost on the basis of errors on the evidence of identification. He has invited you to give a presentation to his officers at the station on the rules of identification.

- (a) Prepare your presentation. **(5 marks)**

- (b) He also wants to know how the courts would address evidence of identification obtained at night. Advise him. **(5 marks)**

### QUESTION SIX

Njambi was arraigned before Kibera Law Courts on a charge of grievous harm. When the charge was read over to her, she replied:

“It is time, I dealt with Mwangi”

The court entered a plea of guilty. The details of the case were read over to her and she confirmed that: “Yes, the facts are all correct”

She was convicted on her own plea of guilty. She offered mitigation saying she was remorseful. She was sentenced to serve 5 years imprisonment. She has appealed to the High Court on both conviction and sentence on the ground that the plea entered was not unequivocal.

- (a) Outline the legal principles applied in plea taking in criminal cases. **(4 marks)**
- (b) Citing relevant case law, discuss the merits or otherwise of Njambi’s appeal. **(3 marks)**
- (c) Discuss the circumstances in which an appellate court may review or interfere with the conviction and sentence from a plea of guilty. **(3 marks)**

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