

**COUNCIL OF LEGAL EDUCATION.**



**EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES.**

**ATP 101: CRIMINAL LITIGATION.**

**TUESDAY 25<sup>TH</sup> JULY 2017.**

**DURATION: 3 HOURS.**

**Instructions to Candidates:**

- (a) This paper contains four (4) 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

Three armed men pounced on Joy Makena as she was driving in her Subaru Leone Reg. No. KBX 404X in traffic along Uhuru Highway on 14/7/17 at 4p.m.

It happened very fast, and Joy found herself thrown on the road pavement, injuring her left collarbone. She could only recall that two of the men spotted dreadlocks and were both light-skinned, tall and mean looking. Patel was driving behind her and witnessed the carjacking as it unfolded right in front of his eyes. The men had guns and traffic immediately began to flow again.

He parked his vehicle and picked up the shaken Makena and took her to the nearby Central Police Station. Apparently, other motorists had alerted the police and shortly after, while still at the Central Police Station, Flying Squad Officers arrived with a bullet riddled Subaru, one dead dreadlocked light-skinned tall man and another dreadlocked, light-skinned medium height man in handcuffs. They also had with them two firearms, an AK 47 assault rifle and Ceska Pistol they said they recovered from the two men. One is said to have escaped and suspected to be wounded.

- (a) You are the Prosecution Counsel based at the Milimani Law Courts. The DCIO has called you to advise on the need for an identification parade. Detail your advice. (5 marks)
- (b) Dreddy Eddy, the man arrested, is charged with robbery with violence contrary Section 296(2) of the Penal Code. He has denied the charge and told the court that he sells clothes at Ngara Market. He was minding his business when gunshots rent in the air. He is the only one who spots dreadlocks in the market. He was arrested. He maintains that this was mistaken identity. His mother wishes to stand surety for him and has a parcel of land in Molo worth Kshs.2 million.

Advise Dreddy Eddy and the mother on the prospects of bond, citing the principles governing the grant of bail and bond. (6 marks)

- (c) While Dreddy Eddy's case is ongoing, the police arrest Ziggy Zag alias "One-Eye" in another botched robbery. They believe he is the third man in the robbery of Makena.
- (i) Explain the process of enjoining Ziggy Zag into the case with Dreddy Eddy. (4 marks)
- (ii) Draw the statement of the charge and brief particulars. (5 marks)

## QUESTION TWO

Chizi Mtaani was arrested and thereafter arraigned in court and charged of assault occasioning actual bodily harm. At the time of taking plea, he stood silently in the dock, his eyes darting from one end to the other. When he eventually spoke, he mumbled profanities and demanded to be set free. He said he beat up the complainant.

- (a) You are the prosecutor. Advise the court on how to deal with the accused person. (6 marks)

- (b) The court is informed that Chizi Mtaani is actually a person of unsound mind with lucid episodes but which are far between.

Discuss the concept of “guilty but insane” and its relevance to the case of Chizi Mtaani.  
(4 marks)

### QUESTION THREE

P.M.M. was 16 years old in August 2014 and in form 2 at a School within Kathekani Village. As it was during the holidays, she left her mother’s house and went to the home of Kijana Mpole, then aged 18 years. Kijana Mpole lived with his parents although he had his own detached one-roomed hut near the gate. P.M.M. was formally introduced to Kijana’s parents as his wife. She stayed at the home for a week. Kijana’s parents and his uncles visited P.M.M’s parents in readiness for formalizing the union.

Prior to the visit by Kijana’s parents, P.M.M. had been reported as a missing person at the Haki Yetu Police Station. Her parents called the police who promptly traced her at Kijana’s hut and arrested Kijana Mpole. P.M.M. considered herself Kijana’s wife. She told the police:

“We are married, whether my parents accept it or not. We have done everything married people do. He has done nothing wrong.”

The police managed to have her examined by a doctor. The report showed a missing hymen, which, in the opinion of the doctor, denotes she has engaged in sexual intercourse.

P.M.M. recorded a statement with the police only after she was threatened she would be locked up. Eventually, Kijana Mpole was charged with the offence of defilement contrary to section 8(1) as read with section 8(4) of the Sexual Offences Act, Chapter 62A of the Laws of Kenya. The case failed to take off for two years as P.M.M. disappeared from home. Eventually, P.M.M. now 18 years, took the witness stand.

- (a) Assuming P.M.M. refuses to be sworn and in fact declines to speak or answer any questions, explain the recourse available to both the prosecution and the court.  
(3 marks)
- (b) Assuming P.M.M. agrees to testify but disowns her statement made to the police, what are the options available to the Prosecution?  
(3 marks)
- (c) Citing relevant case law, discuss the merits or otherwise of the prosecution’s case with a bearing on emerging jurisprudence.  
(4 marks)

### QUESTION FOUR

Maiko and Wazo were arrested at their home on the night of 20<sup>th</sup> February, 2017. The police without a warrant ambushed them, broke their door, searched the house, arrested them and took items that the police claimed was evidence.

Among the items taken are laptops, bank account statements and other documents. They were taken to court the following day. During the pre-trial, the prosecution indicated that they were not disclosing their list of witnesses and other substantial evidence that they were holding.

Prior to their arrest, Maiko and Wazo were both students at Maji Mazuri College taking languages. In the laptop the police found materials advocating and instructions on how to make a home bomb. The bank statements had in excess of Kshs.5 million received from all over the world. Among the documents confiscated were photos of young girls and passports.

- (a) You are the prosecution counsel in the case. Under what laws would you charge Maiko and Wazo? **(2 marks)**
- (b) What reasons would you give for withholding the evidence? **(3 marks)**
- (c) The accused has approached you to advise them on the legality of their arrest and search. Prepare a legal opinion. **(5 marks)**

#### QUESTION FIVE

During the LSK Service Week at the Shimo La Tewa Prison, you are approached by one of the inmates. He introduces himself as Hancock Mnape and he is 14 years old. He has been held at the prison for 2 months after he was found culpable in a defilement case. He looks sickly and upon enquiry he informs you that he is terminally ill since birth.

During his trial, he was committed to Industrial Area Remand Prison where he was put on isolation due to his condition. The trial started when he was 11 years and 7 months old. Despite his application for bail, it was denied on the basis that he had no permanent abond (being an orphan living in children's home) and that he was charged with a serious offence. He conducted his application/defense all by himself without witness statements and he did not cross-examine witnesses.

You are touched by his story and you want to offer legal help. Draft the necessary pleadings. **(10 marks)**

#### QUESTION SIX

Kaikai Kinoti is wanted by the law enforcement agencies in Tanzania for allegedly stealing money in excess of Tshs.18 billion from United Bank of Tanzania where he was the Managing Director. Kaikai is a Kenya citizen and upon suspension by the bank for investigations, he relocated to Kenya. The Government of Tanzanian has made a request for the extradition of Kaikai.

As a State Counsel in the Office of the Director of Public Prosecutions you have been requested to advise the Director. Prepare a legal opinion on the applicable law and the procedure. **(10 marks)**

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**END**