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COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

REGISTRATION NUMBER:

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VENUE: Co-operative University ☐ Kenya School of Law ☐ KNEC ☐

ATP103: LEGAL WRITING & DRAFTING

Examination Series: November 2024

Date: 21st November 2024

Time: 09:00AM-12:00PM

Duration: 3 hours

Instructions to Candidates:

- Enter your registration number and tick the exam venue in the space provided.
- Answer **FIVE (5)** questions, including question **ONE** which is **COMPULSORY**.
- Question **ONE** contains **20 Marks**. All other questions carry **10 Marks** each.
- Attempt each question in the space provided. Additional space is provided at the back of the booklet.
- Answers **MUST** be supported by relevant statutory provisions and case law where required.
- Do not write your name in the booklet.
- Ensure your handwriting is **LEGIBLE**.

FOR EXAMINER'S USE ONLY

| Question Number | Examiner | | Internal Moderator | | External Moderator | | Quality Assurer | |
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QUESTION ONE

- A. Article 27 of the Constitution provides for equality and freedom from discrimination. Specifically, Article 27(8) requires the State to take legislative and other measures to implement the principle that no more than two-thirds of the members of elective or appointive bodies shall be of the same gender. Despite this directive and court decisions which have declared Parliament unconstitutionally constituted by failing to comply with the two-thirds gender principle, Parliament has never complied with the requirement. Further, Parliament has on several occasions unsuccessfully attempted to pass legislation to realize the principle.

Maendeleo Yetu, a civil society organization believes that it is possible to realize the principle by amending the Constitution. They propose that the National Assembly be divided into two equal halves and each half be specifically reserved for either gender on rotational basis. The proposal is based on the fact that women in Kenya account for more than fifty percent (50%) but their representation in Parliament has never been more than thirty percent (30%) since independence.

It is further asserted that the proposal will not require the election of the forty-seven women representatives and nominations intended to realize the principle. This will in turn drastically reduce the cost of running the legislature and dignify representation of women by being directly elected.

The following are extracts of constitutional provisions which provide for the composition of Parliament.

97. (1) *The National Assembly consists of -*

- (a) two-hundred and ninety members, each elected by the registered voters of a single member constituency;*
- (b) forty-seven women, each elected by the registered voters of the counties, each county constituting a single member constituency;*
- (c) twelve members nominated by parliamentary political parties according to their proportion of members in the National Assembly in accordance with Article 90, to represent special interests including the youth, persons with disabilities and workers; and*
- (d) the speaker, who is an ex officio member.*

(2) Nothing in this Article shall be construed as excluding any person from contesting an election under clause (1).

The manner of dividing and reserving the seats for either gender shall be specifically provided for in the Tenth Schedule. Without concerning yourself with the enacting formula, commencement, consequential amendments and the details to be provided in the schedule, draft the requisite legislative proposal to effect the proposal by Maendeleo Yetu.

(10 Marks)



B. Mwenye Mali is the sole shareholder and director of Biashara Limited whose address is P.O Box 3334, Nairobi, Kenya. The volume of business has increased significantly and Mwenye Mali is contemplating ceding some of his powers to his son, Mwana Mali. Mwana Mali is currently the chief executive officer of the company.

Mwenye Mali and Mwana Mali have approached you to assist them to facilitate their proposal. They inform you that they have agreed that Mwana Mali shall be responsible for signing all documents relating to the company. Such an arrangement is intended to remain in force until it is terminated.

Prepare the necessary document. (7 Marks)

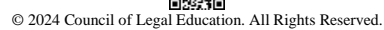
C. Rewrite the following sentences using the appropriate conjunction.

- i. The advocate attended the Law Society of Kenya Annual Conference sessions on 20th August, 2024. The advocate had a court matter on 20th August, 2024. (1 Mark)
- ii. John has written numerous law books and article. John’s latest book is on legislative drafting. (1 Mark)
- iii. The court made an order for stay of the orders of the High Court. The appellant had made an application for stay of the orders of the High Court. (1 Mark)

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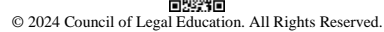
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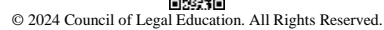
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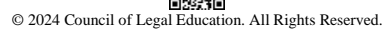
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QUESTION TWO

Study the following excerpt from Section 33 of the Political Parties Act, No. 11 of 2011-

33. Establishment of the Office of Registrar

- (1) There is established the Office of the Registrar of Political Parties which shall be a body corporate with perpetual succession and a seal and which shall be capable of suing and being sued in its corporate name.*
- (2) The Registrar shall be deputized by three Assistant Registrars, not more than two of whom shall be of the same gender.*
- (3) The office of the Registrar shall be a State office within the meaning of Article 260 of the Constitution.*
- (4) The Office of the Registrar may engage such staff, experts or consultants as are necessary for the proper and effective discharge of its functions under this Act and any other written law.*
- (5) The Office of the Registrar shall be an independent and shall not be subject to the directions or control of any person or authority.*
- (6) ...*
- (9) The Registrar and Assistant Registrars shall serve for a non-renewable term of six years and shall not be eligible for re-appointment.*

Since the enactment of the Political Parties Act, the Office of the Registrar has faced numerous challenges and has been accused of not being truly independent as envisaged in the law. Consequently, it has been proposed that for the Office to be truly independent, there is need to establish it as a Commission consisting of not more than seven members.

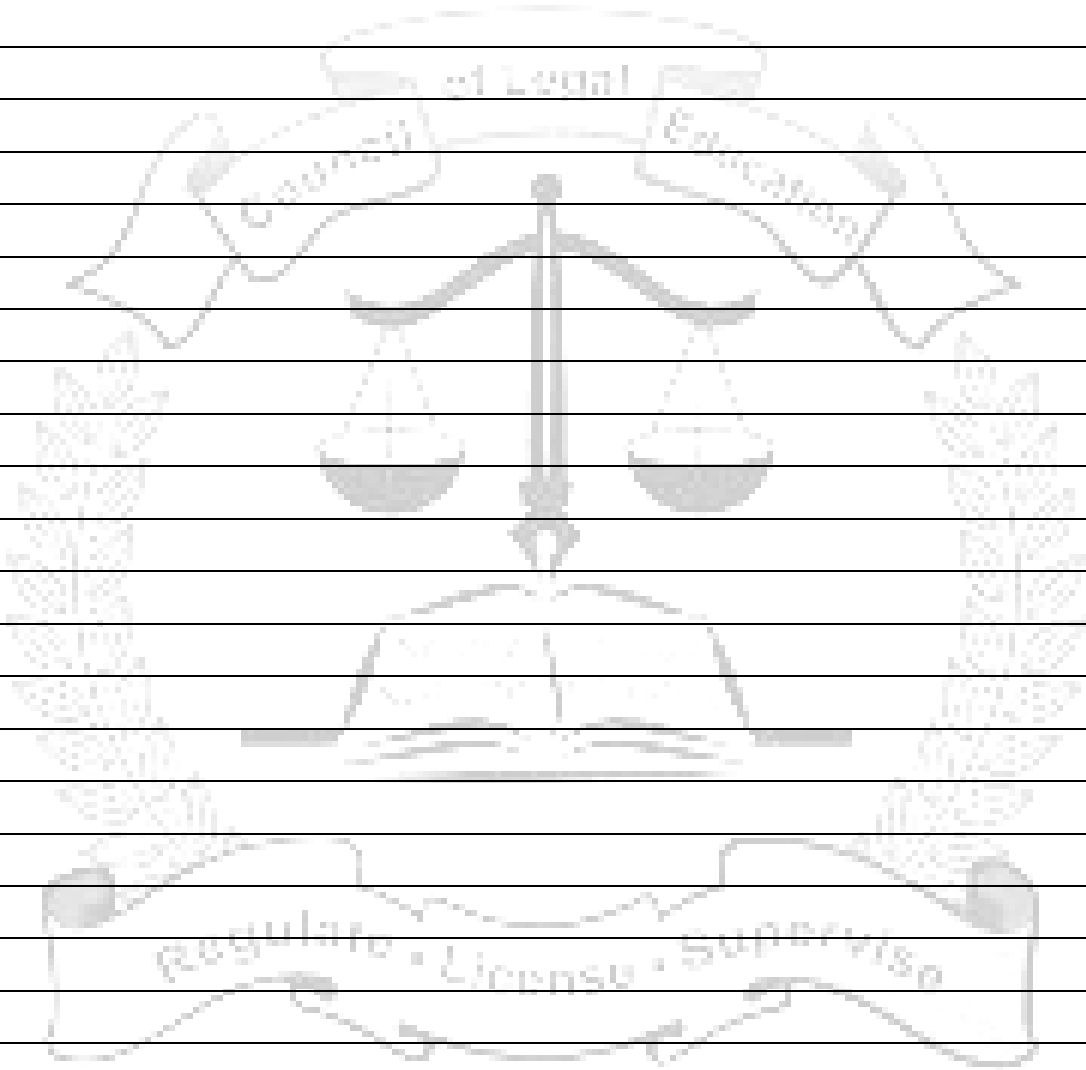
The current Registrar and Assistant Registrars have served for a term of four years. It has been agreed that once the Commission is established, the Registrar and Assistant Registrars shall be deemed to have been appointed as Commissioners from the date they were appointed. Additionally, the staff including experts and consultants appointed or contracted by the Office shall become staff of the Commission.

Further, the Office has properties, liabilities, issued certificates and is a party to numerous cases, amongst other undertakings.

Draft the necessary clauses to provide for the Registrar, Assistant Registrars, staff of the Office and properties, liabilities, certificates issued and other undertakings of the Office. (10 Marks)



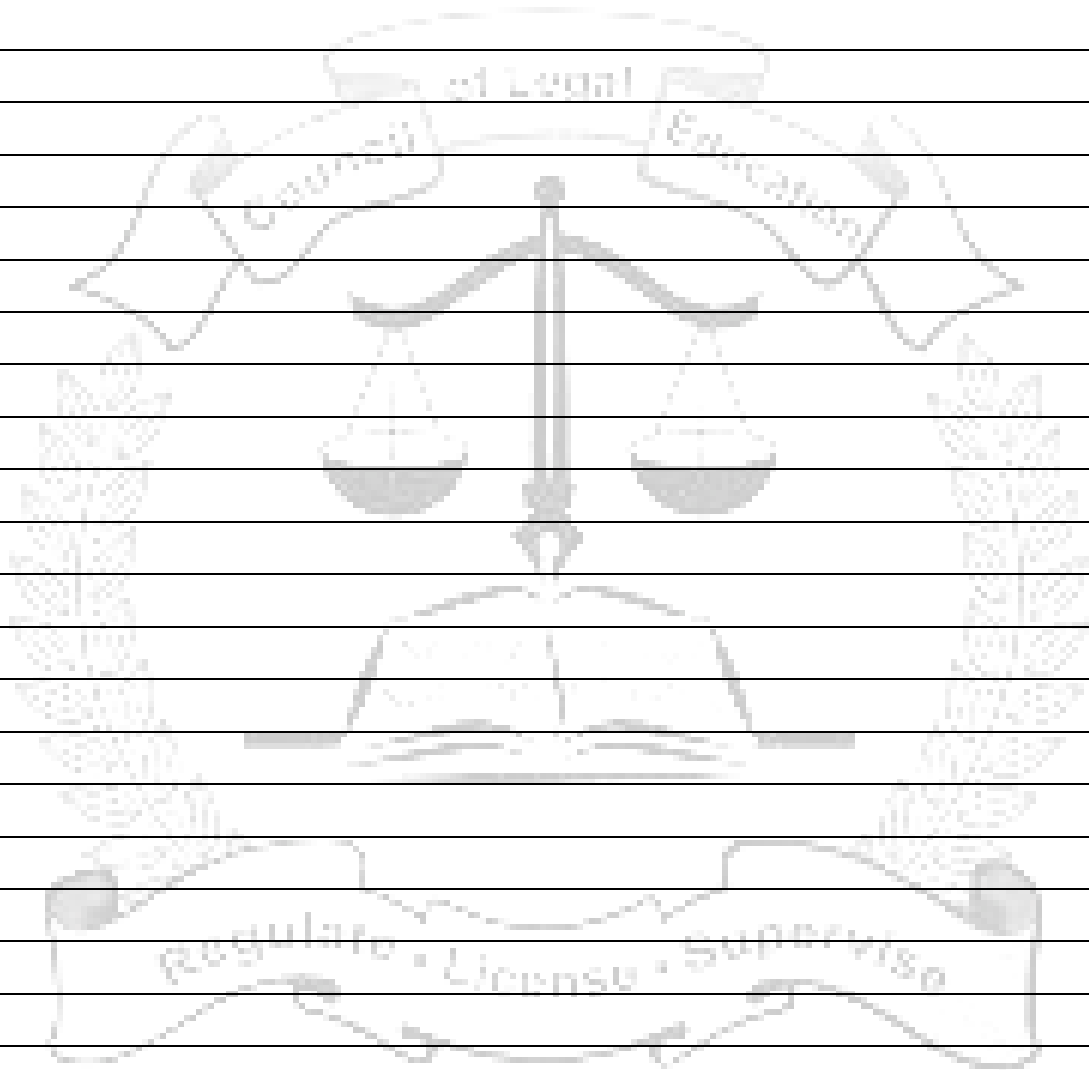
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QUESTION THREE

Your client, Nuru Crypto Solutions Inc. (“N-Crypto”), develops and supports a cryptocurrency management software known as the N-Vault System (the “Product”) in Kenya. N-Crypto delivers support under the terms of its standard contract template. The company releases updated versions of the Product approximately every six to twelve months. It now wishes to revise the language in its standard contract template to encourage customers to upgrade to newer versions of the Product more frequently.

Currently, the contract template contains the following provision:

18. Product Versions Supported. N-Crypto will provide Support Services for the most current version of the Product and the three previous versions.

N-Crypto has requested the following changes to Section 18:

- i. Revise the provision so that N-Crypto will provide Support Services for only the most current version and one previous version of the Product, rather than the most current version and three previous versions.
- ii. Include a clause that allows N-Crypto to terminate Support Services if the Customer is using a version of the Product that is neither the most current version nor the version immediately preceding it.
- iii. Add a provision to allow N-Crypto to agree to provide support for an older version of the Product for one year upon the customer’s request, with the customer paying a surcharge equal to 5% of the customer’s current annual Support Services Fee. The provision should make it clear that N-Crypto is not obligated to provide support for the older version.

In light of the foregoing:

A. Draft a revised Section 18 of the standard contract template reflecting the requested changes. (6 Marks)

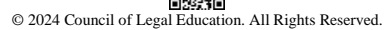
B. Reword each of the following phrases using plain language:

- I. IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have by their proper and duly authorized officers duly executed and delivered these presents as of the day and year first written above. (1 Mark)
- II. For good and valuable consideration received, the parties hereto mutually agree as provided by the terms, conditions, promises, and covenants contained herein and set forth below. (1 Mark)
- III. This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of Kenya, including all matters of construction, validity, and performance. (1 Mark)
- IV. Terms not defined herein, or used herein, shall have the meaning given them in Exhibit A attached hereto. (1 Mark)

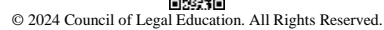


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QUESTION FOUR

The sentences below have various issues related to biasness, wordiness and long sentences. Correct the mistakes by re-writing the sentence.

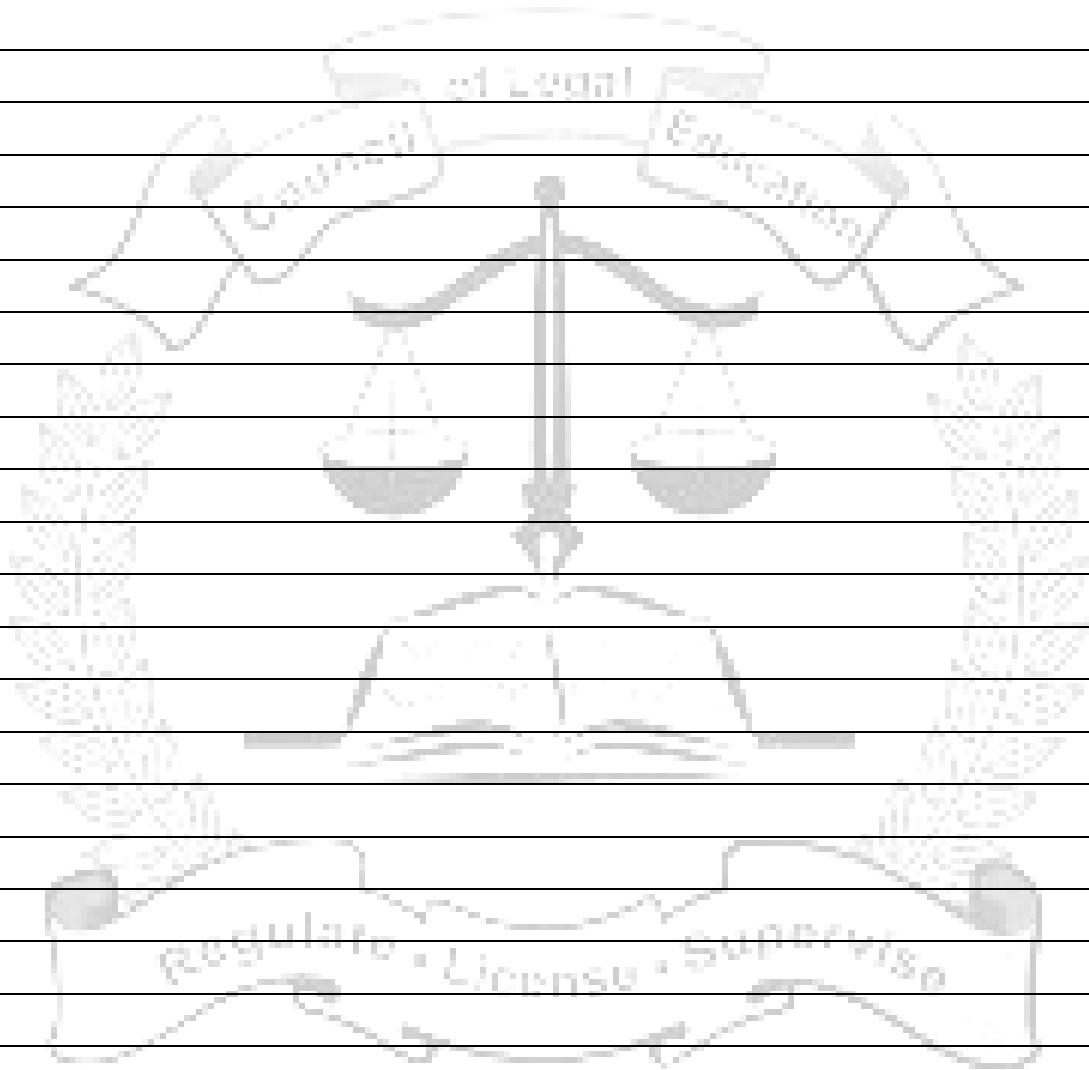
- i. The study demonstrated significant flaws in the current legal framework. The recommended reforms were not implemented, resulting in continued inefficiencies. (2 Marks)
- ii. The supreme court’s decision marks a turning point in constitutional law. The subsequent rulings will likely reflect this new interpretation. (2 Marks)
- iii. The first part of the analysis focused on the legislative history. The next section examines the judicial interpretations that have shaped its application. (2 Marks)
- iv. There has been much debate about the effectiveness of intentional sanctions. They are considered by many experts to be a necessary tool in global governance. (2 Marks)
- v. The legal precedent established by this case cannot be ignored. The policy implications are profound. (2 Marks)

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QUESTION FIVE

Section 71(2)(m) of the Forest Conservation and Management Act (Cap. 385) gives the Cabinet Secretary for Environment, Climate Change and Forestry, on the recommendation of the Kenya Forest Service Board, the power to make regulations to provide for circumstances in which forest concessions may be applied for, granted, varied, or cancelled and the manner in which a person to whom a forest concession may exercise a right or privilege upon him/her by the concession.

As a legal assistant working in the Office of the Director General of the Kenya Forest Service (Service), the Director General of the Service has requested you to prepare draft Regulations to allow the Service to give forest concessions for commercial forestry to private investors in Kenya under section 71(2)(m) of the Forest Conservation and Management Act. The new Regulations should revoke the current Regulations that were enacted in 2018.

The Director General indicated that the draft Regulations should capture the following aspects:

- i. Purpose and objects of the Regulations.
- ii. The power of the service to identify the land for a forest concession.
- iii. The Cabinet Secretary be empowered to gazette the land for a forest concession and develop guidelines and standards for the implementation of the Regulations.
- iv. The role of a private party, which includes submitting quarterly reports to the Service and complying with relevant laws and regulations be included.
- v. The size of land be categorized into small, medium and large sizes.
- vi. The minimum and maximum duration for the forest concession be 10 years and 30 years respectively.
- vii. The forest concession be renewable once, but for a period not exceeding the initial term.
- viii. Payment of annual concession fees be equivalent to one percent of the value of the land.
- ix. The Service be expected to keep a register of all forest concessions entered into under the Regulations.
- x. An offence for the contravention of the provisions of the Regulations punishable under section 64 of the Forest Conservation and Management Act be provided.

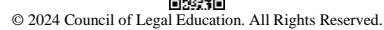
Prepare the draft Regulations.

(10 marks)

[illegible]

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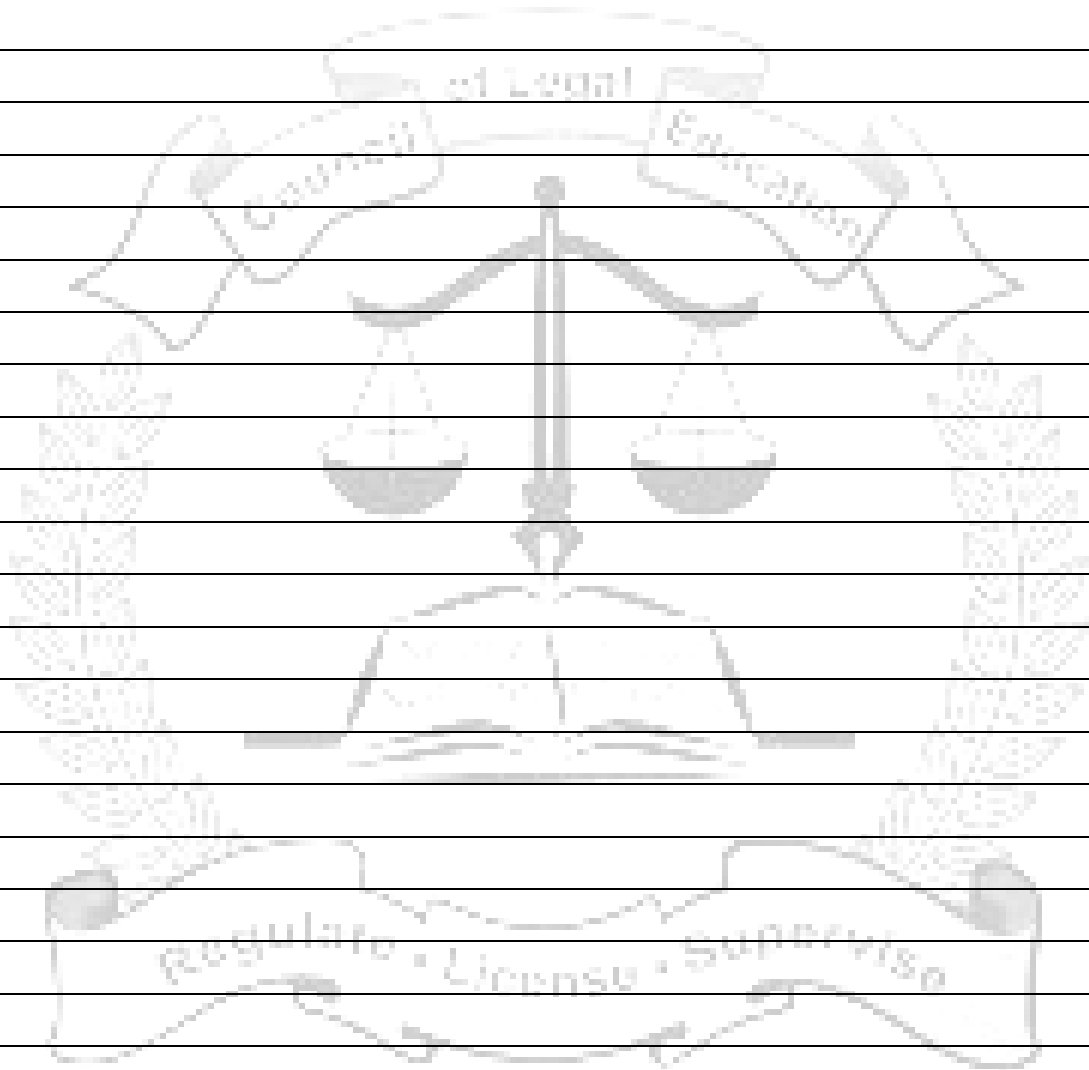
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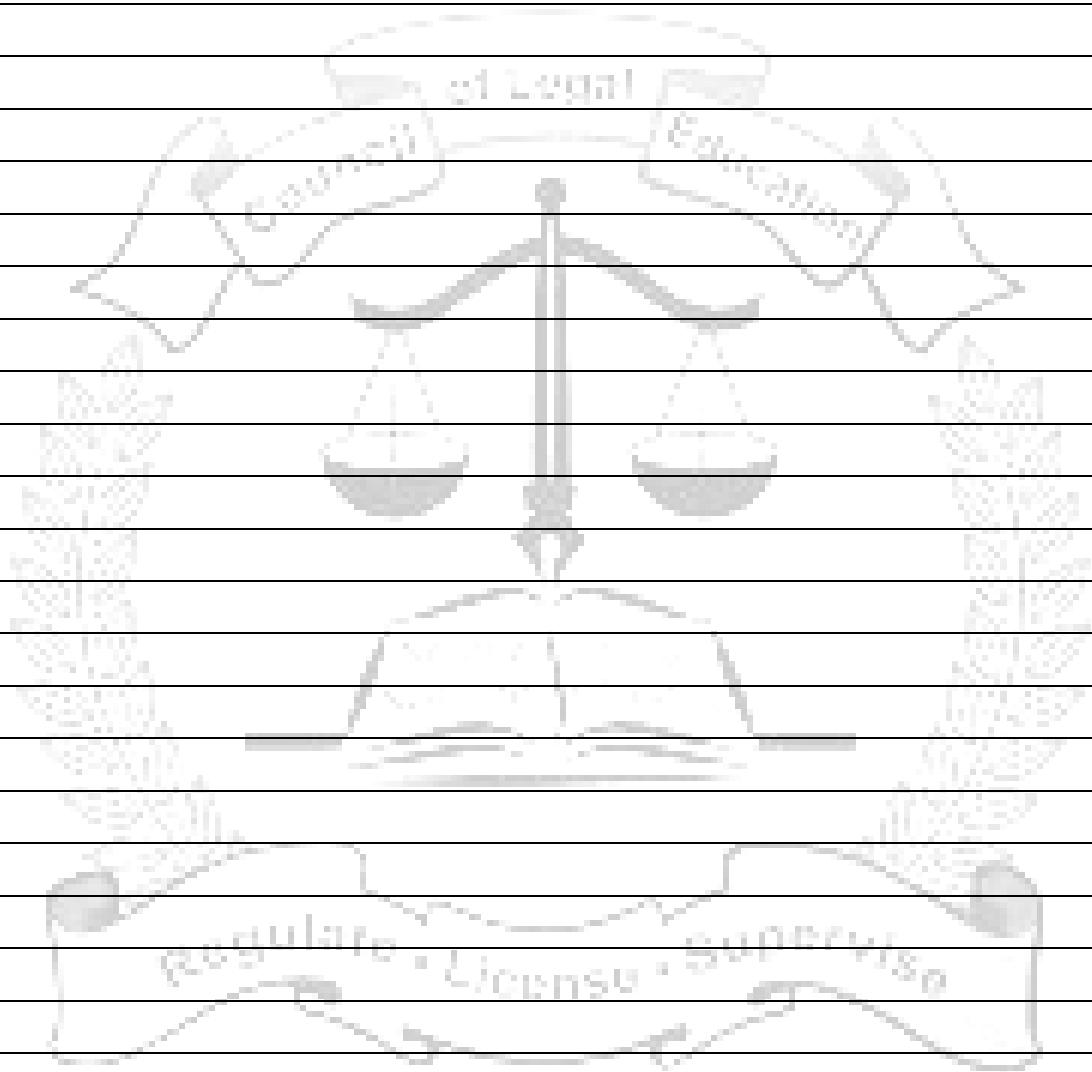


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QUESTION SIX

Kaskazini Kusini, a 64-year-old farmer residing in Kenya, has decided to change his name to Kaskazini Mashariki. The reason for this change is that he recently discovered that his old name, “Kaskazini Kusini” (which means “south” in Swahili), was leading people to believe he was from the southern part of Kenya. After years of getting unsolicited advice on how to grow crops better suited to southern climates, Kaskazini decided it was time to clear the confusion. He now wishes to embrace the name “Mashariki” (which means “East” in Swahili) to proudly represent the region where he actually resides to avoid further misunderstandings.

Kaskazini has approached you, the sole legal practitioner at Hatuna Jina & Co. Advocates, for assistance. Draft the appropriate legal instrument that would enable him change his name.

(10 Marks)

[illegible]

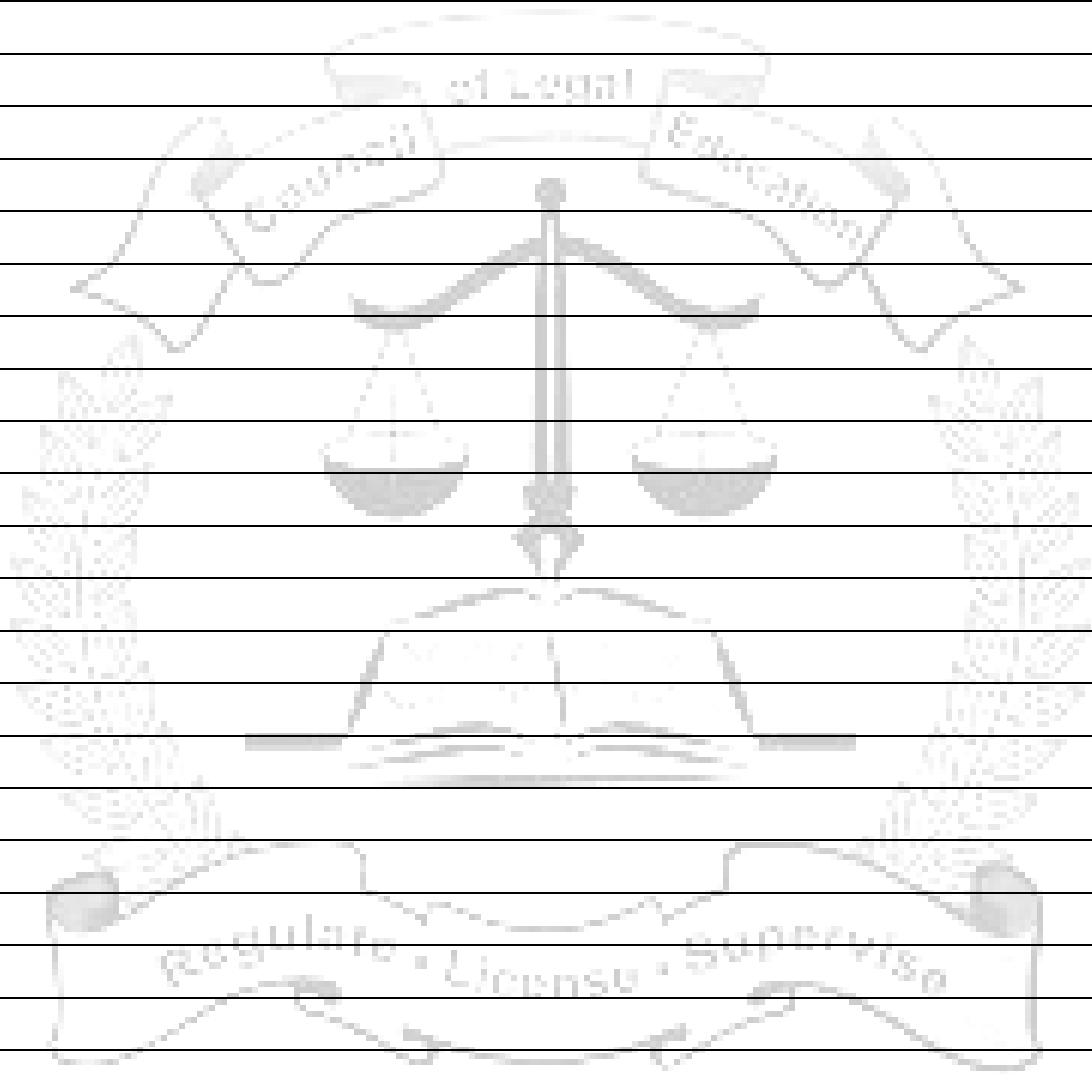
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