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COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

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VENUE: Co-operative University Kenya School of Law KNEC

ATP104: TRIAL ADVOCACY

Examination Series: November 2024

Date: 19th 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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1.								
2.								
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QUESTION ONE

The County Assembly of Chacha County resolved to remove from office by way of impeachment their governor pursuant to Article 181 of the Constitution and Section 33 of the County Governments Act.

The charges on which the impeachment was founded included acts of gross violation of the Constitution that were explained in the sworn statements by the many witnesses that are intended to be presented before the Senate.

As a trial lawyer who has been practicing for a long time, you have had the benefit of previously defending impeachment matters successfully before the Senate. It is in the public domain that the current speaker of the senate was your pupil master and that you have in the past, represented before the Political Parties Tribunal, the Member of County Assembly (MCA) who sponsored the impeachment motion at the County Assembly.

After wide consultations *albeit* hurried, the governor has received many recommendations to prefer on you, to lead their defence before the Senate.

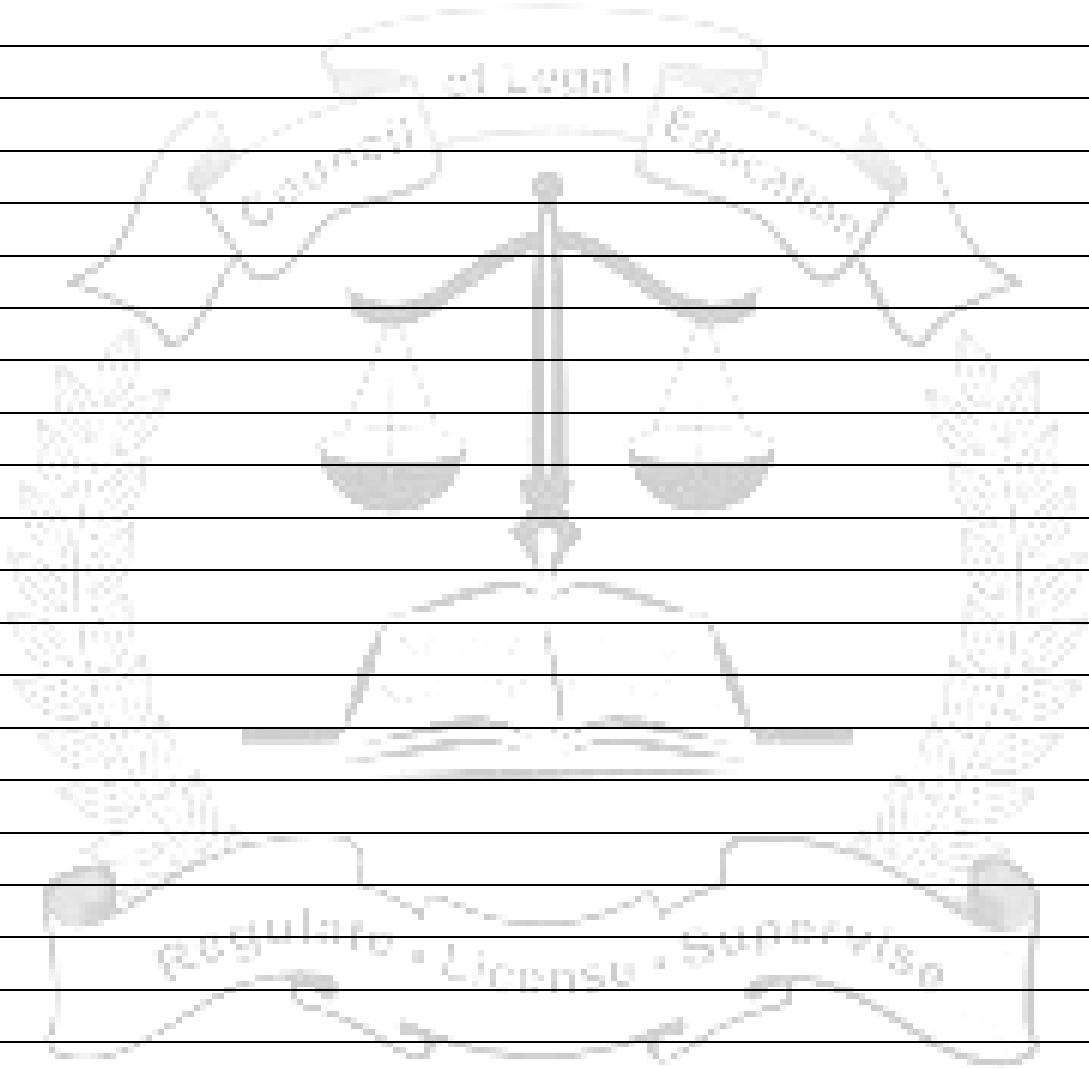
- a) Describe the qualities of a good trial lawyer that may have influenced the numerous referrals made in your favor. **(5 marks)**
- b) Due to your proximity to persons whose interests are opposed to those of your client, what obligations does the law impose on you as a lawyer to reassure the governor of your ability to effectively represent them. **(5 marks)**
- c) You are an ardent believer that the initial client interview contributes significantly to the quality of representation that a lawyer can offer their client. As a seasoned trial lawyer, what pitfalls would you advise lawyers to avoid during a client initial interview? **(5 marks)**
- d) Under what circumstances may you decline the instructions to represent the governor before the Senate. **(5 Marks)**

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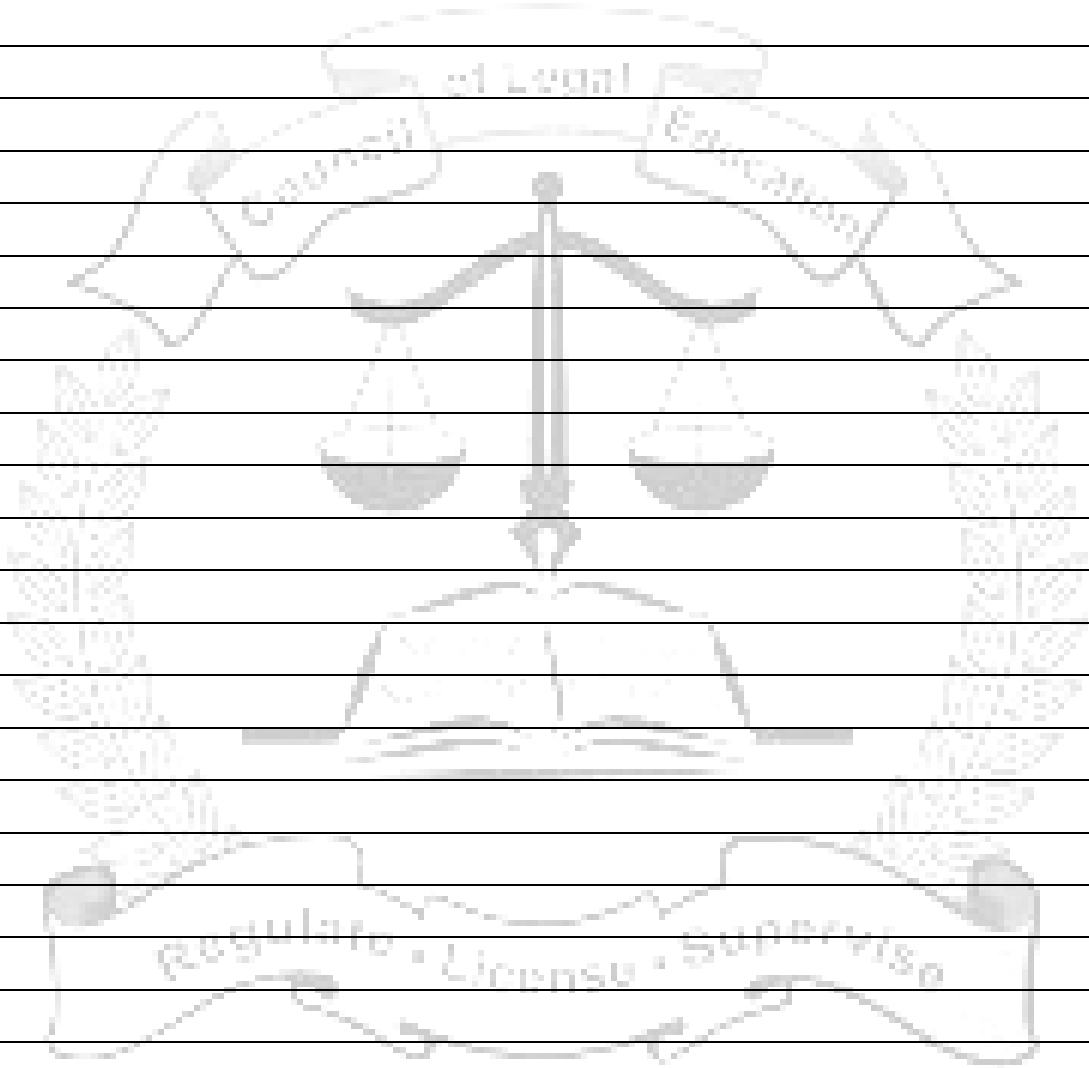
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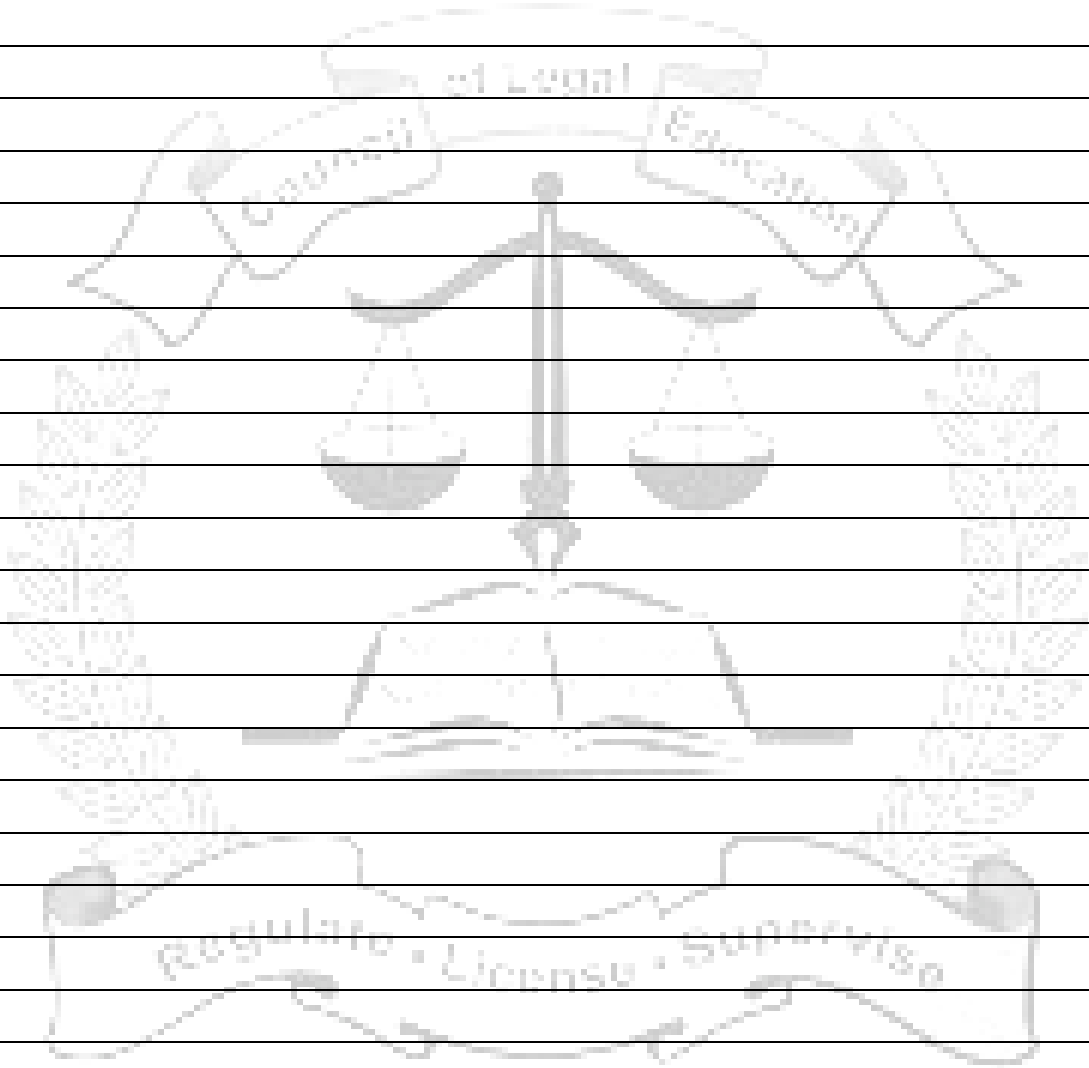
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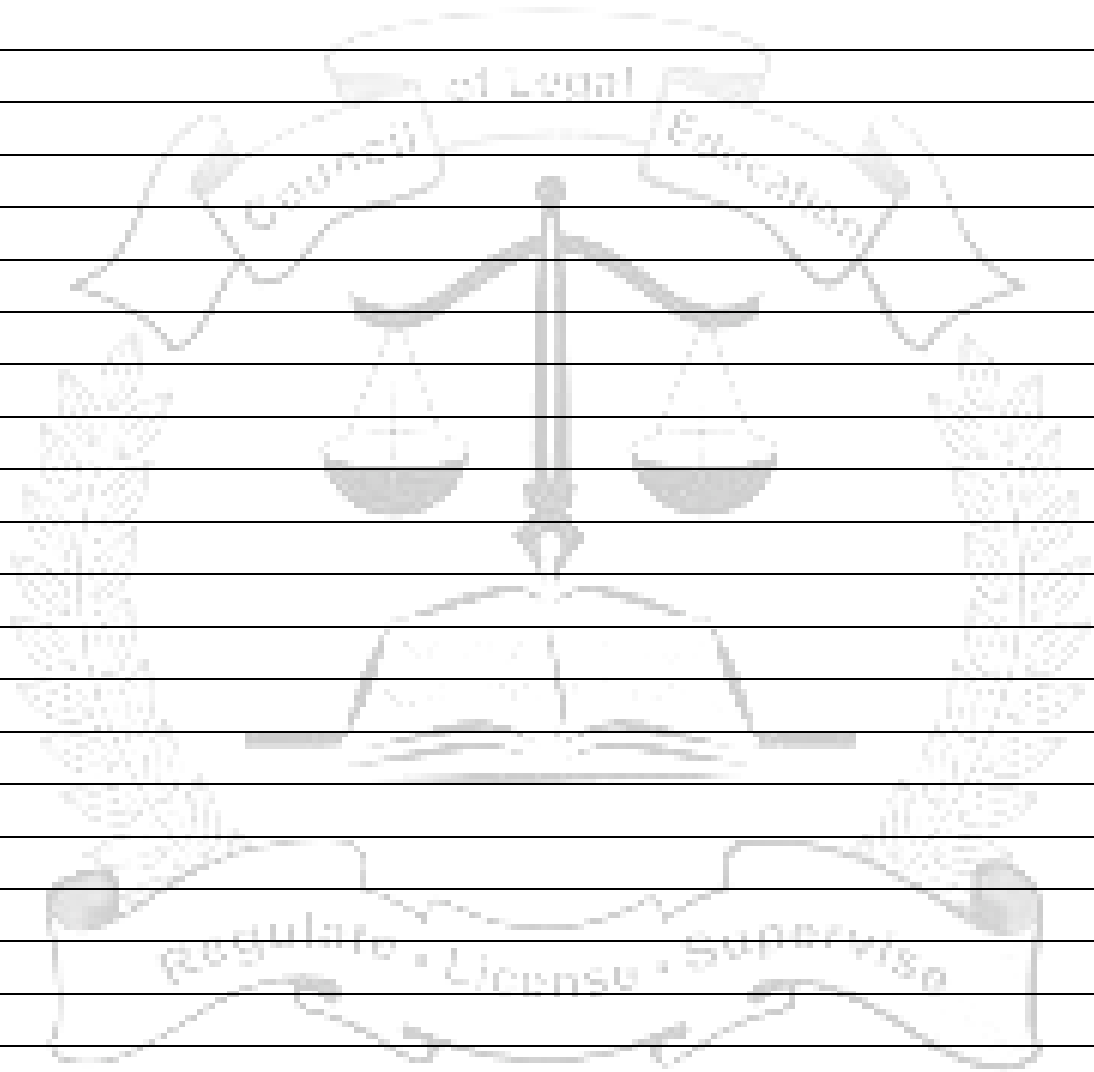
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QUESTION TWO

Miracle Herbal Remedies Limited (“**Miracle**”) is a company that manufactures and sells a product known as the “miracle Immunity Booster”, a herbal remedy that the company claims boosts the immune system and protects users from contracting serious viral infections. Miracle launches an aggressive marketing campaign through newspapers, radio and social media, claiming that users of the Miracle Immunity Booster would be protected from a highly contagious virus called “Virona”.

Miracle’s advertisement stated:

“We are so confident in our Miracle Immunity Booster that we will pay Kshs. 500,000 to anyone who contracts the Virona virus after using the product as directed for 30 days.”

To further demonstrate their confidence in the product, Miracle deposited Kshs. 10 million in a local bank “for the express purpose of fulfilling this promise.”

Alice Wonderland, a 35-year-old accountant, purchased and used the Miracle Immunity Booster as directed after reading the advertisement in a local newspaper. She followed the instructions diligently for the required 30 days, consuming the recommended dosage of the product.

Despite using the product as instructed, Alice contracted the Virona virus two weeks after completing the 30-day course of the Miracle Immunity Booster. She was hospitalized for two weeks and suffered serious financial losses due to the medical expenses and failed to report to work for several days.

Alice demanded payment of the Kshs. 500,000 from Miracle, but Miracle refused to pay, claiming that the advertisement was mere “marketing puffery” and not intended to create a binding legal obligation. Miracle also argued that Alice could not prove that she used the product correctly or that contracting the virus was not due to other factors beyond the product’s efficacy.

Using these facts, prepare:

- a) An opening statement on behalf of Miracle Herbal Remedies Limited. (5 marks)
- b) Five (5) critical cross examination questions for Alice. Assume that the introductory questions have already been put to the witness. (5 marks)

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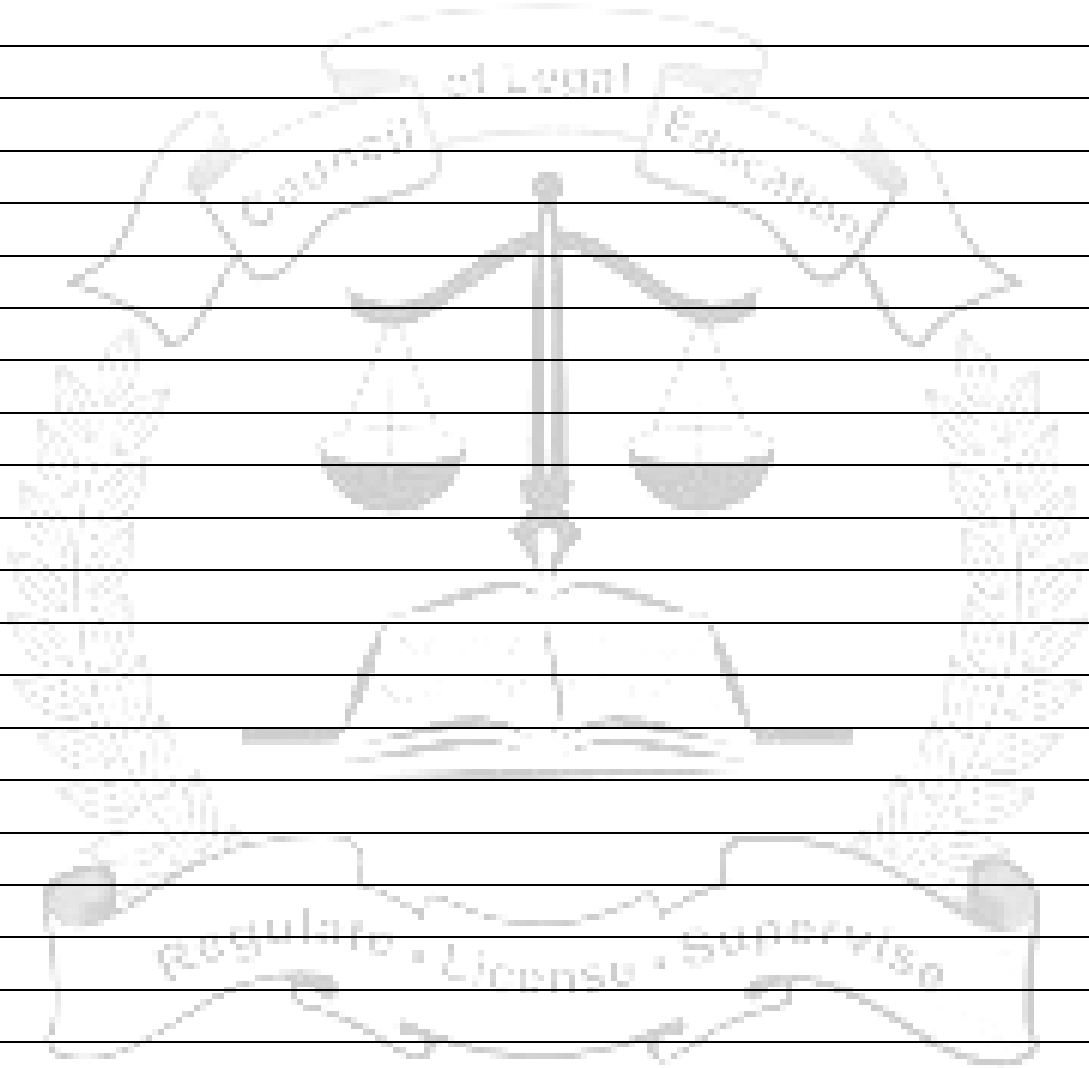
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QUESTION THREE

On the eve of her 18th birthday, Senorita was heading home from church on a Sunday afternoon. She met her village mate Francis on the way riding his motorcycle. Francis stopped to have a chat with Senorita and afterwards, Francis managed to convince her to accompany him to the local shopping Centre to run a few errands. Senorita hopped onto the motorbike and together they went to the shopping Centre. While there, they met with a male friend of Francis, who was accompanied by two young ladies. Senorita did not know any of them. Brian, the male friend of Francis invited both Francis and Senorita to what he termed as a birthday party celebration at his house. The five left and went to Brian’s rented apartment in the outskirts of the shopping Centre. They arrived at around 1500 hour. Brian served them some drinks. Before she could take her drink, Senorita visited the washrooms and came back after 5 minutes. She took her drink and after about 15 minutes, she felt dizzy and lay on the couch. Senorita woke up the following day at around 0800hrs and found herself in the company of Francis, in a totally different house from the one Brian had taken them. On waking up, she had a severe headache and her private parts were painful. Her white trouser was bloodstained, her underpants were worn inside-out, and torn on the side. She noticed what seemed like whitish fluid on the underpants and also oozing from her vagina. Confused and feeling unwell, she left and found her way home. Upon arriving, she did not want to disclose to her mother who was deeply worried about her whereabouts and what might have transpired. Upon persistent inquiry, she narrated the ordeal to her mother who took her to Kona Mbaya police station where she reported the matter. The police took Senorita to hospital. The doctor who examined her took vaginal swabs and blood samples and handed them to the investigation officer to be taken to the government chemist for analysis. The investigation officer ‘forgot’ to take the samples for analysis. Investigations were conducted and Francis was arrested and charged with the offence of gang rape contrary to section 10 of the Sexual Offences Act.

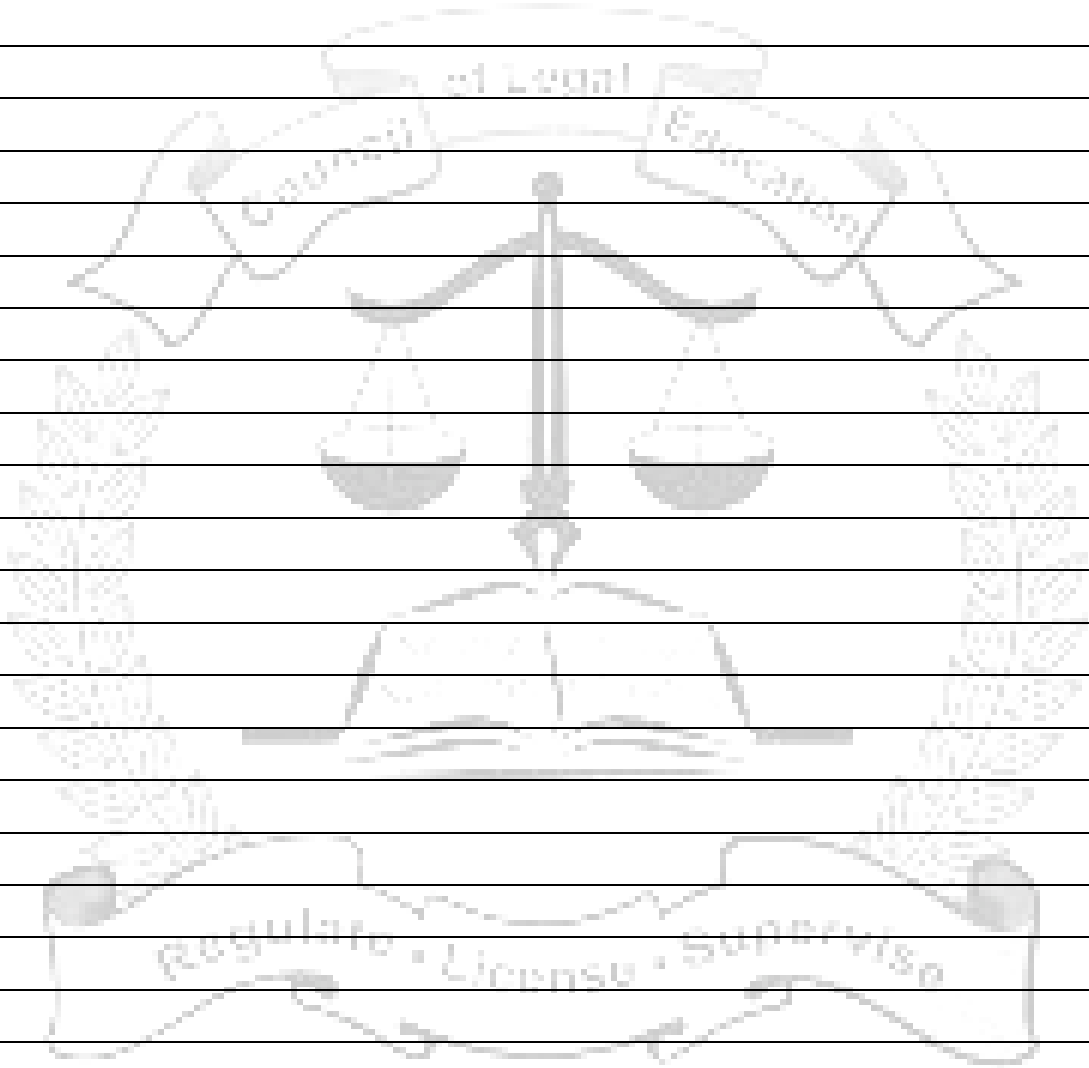
- (a) You are the prosecutor in charge of this case, what pre-trial advocacy will you conduct to ensure a watertight case against Francis? (4 marks)
- (b) You have been hired as Francis’ advocate. Develop a potential case theory using the given set of circumstances. (4 marks)
- (c) Identify two main examinations in chief questions that you would ask as the prosecutor, assuming that introductory questions have been covered already. (2 marks)

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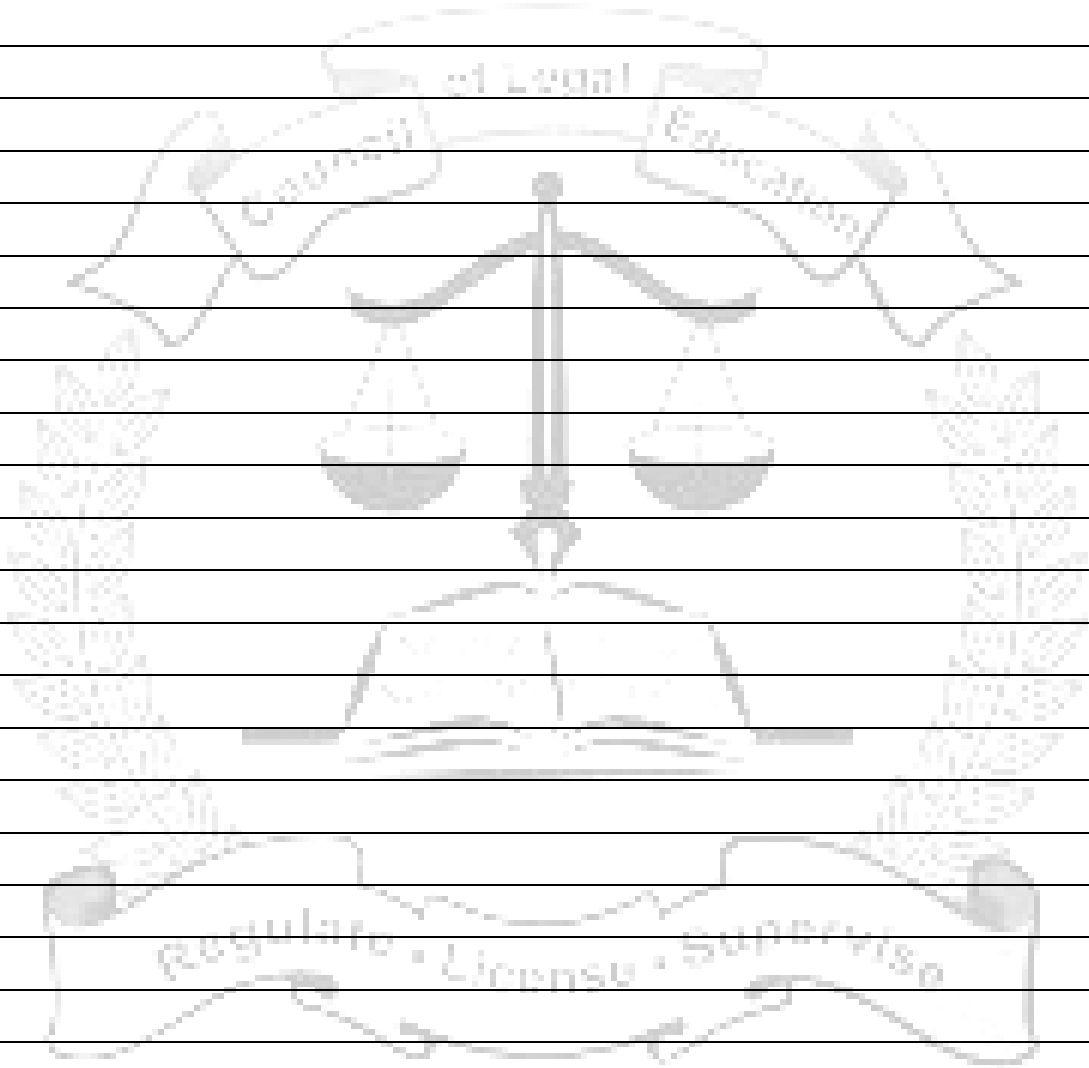
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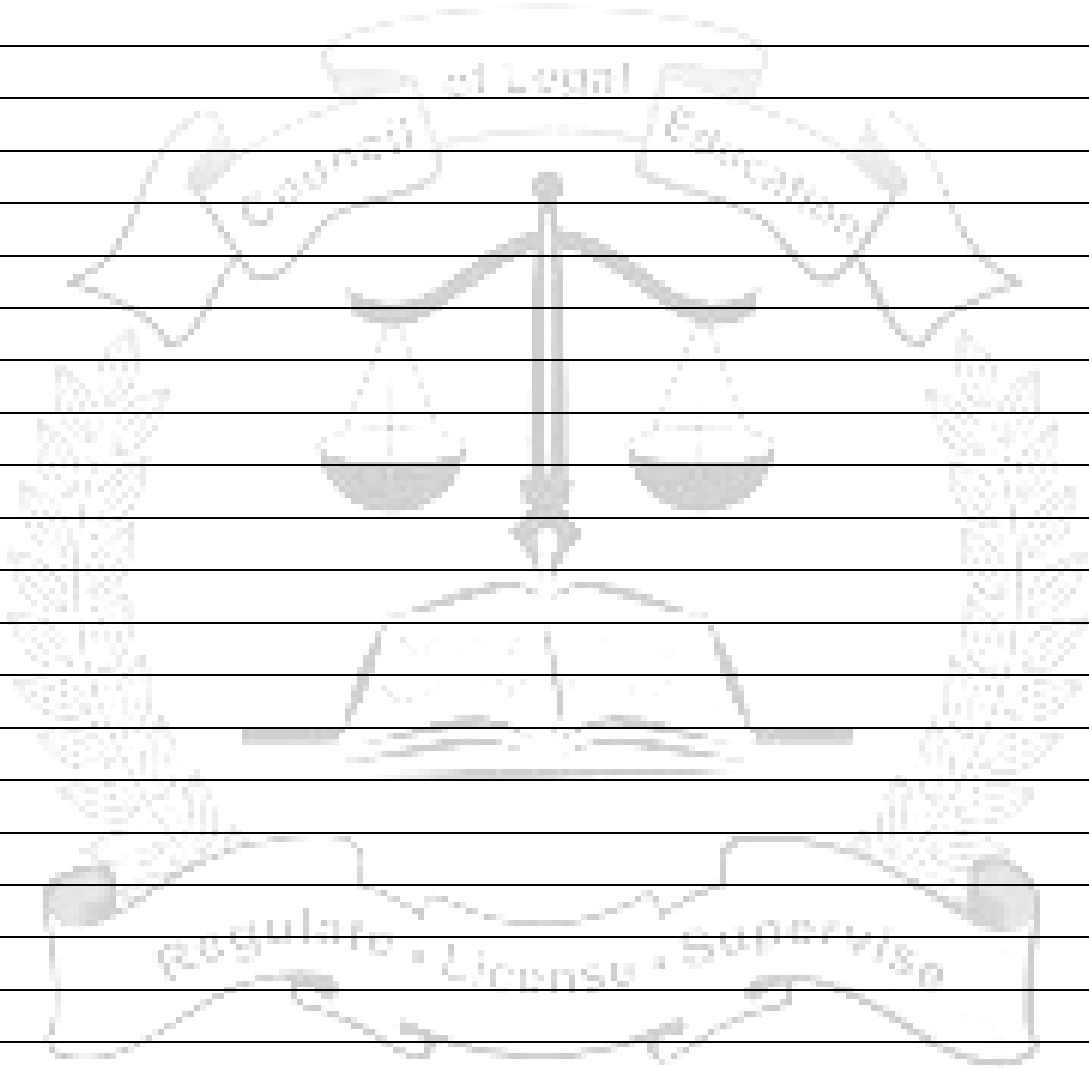
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QUESTION FIVE

KenBuild Construction Limited (KenBuild), a reputable contractor with extensive experience in infrastructure projects, entered into a contract with the Wakanda County Government to construct a modern drainage system for Wakanda town. The project was competitively tendered under the Public Procurement and Asset Disposal Act, 2015 (the Act). KenBuild was the lowest evaluated bidder. The tendered value of the contract was Kshs. 500 million. The project was to take 18 months to be completed.

The contract between KenBuild and the County Government of Wakanda contained a clause allowing variations to the limit allowed in law. Section 139 of the Act limited variations to a tendered project to a maximum of 15% of the contract value. Any variations above this amount should be re-tendered.

During the execution of the project, the County Government of Wakanda issued various instructions to KenBuild to modify the scope of works. The initial scope covered constructing the main drainage channels but the County Government later instructed KenBuild to build auxiliary channels and install advanced water filtration systems in response to public outcry over flooding and water pollution. The modifications significantly increased the scope of works.

KenBuild, in good faith, complied with the instructions and carried out the additional works. This required deployment of more resources than initially planned. By the time the project was completed, the total cost of the works had increased to Kshs. 625 million. KenBuild issued its final invoice for settlement. The County Government declined to pay the amount above the 15% permissible variation citing statutory limitation.

KenBuild initiated arbitration proceedings pursuant to the dispute resolution clause. During the arbitration, KenBuild argued that the County Government of Wakanda issued clear instructions that led to the increase in the scope of works, and that it was entitled to full compensation for the works done noting that the County Government had already taken over the project in its totality and was enjoying its benefits.

On the other hand, the County Government argued that any payment exceeding the 15% variation limit is illegal and unenforceable. The County further argued that as a professional contractor with lots of experience, KenBuild should have known better than to execute works above the 15% variation limit.

The arbitrator ruled in favour of the Wakanda County Government, upholding the defence of illegality. The arbitrator argued that while the Wakanda County Government's instructions led to the additional costs, the payment of any amount exceeding the 15% variation cap was expressly prohibited by law, and thus KenBuild could not claim the excess amount.

The parties had reserved a right of appeal against the Award on points of law under Section 39 of the Arbitration Act.

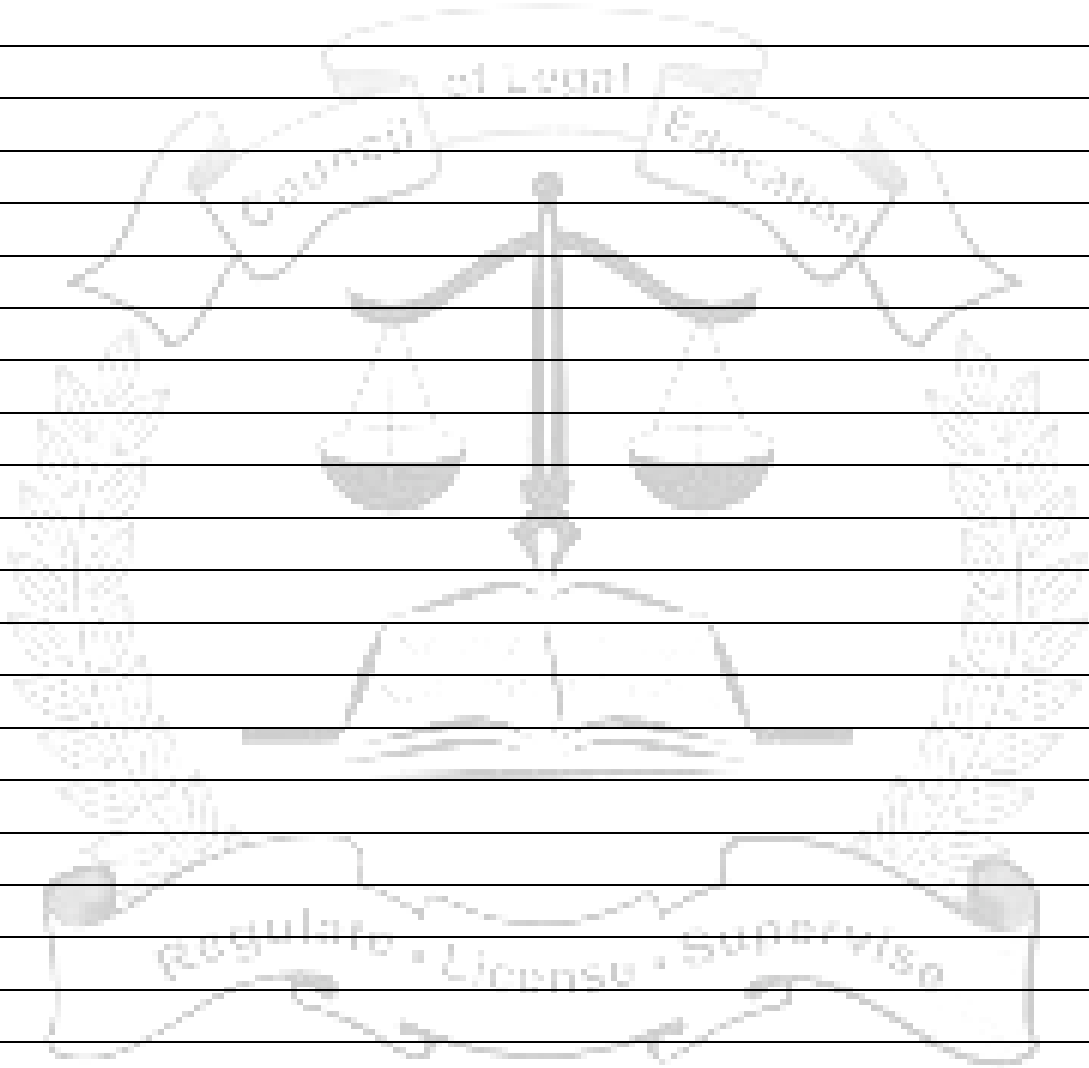
You have been instructed by KenBuild to pursue its appeal against the Award. Prepare your skeleton arguments. **(10 marks)**



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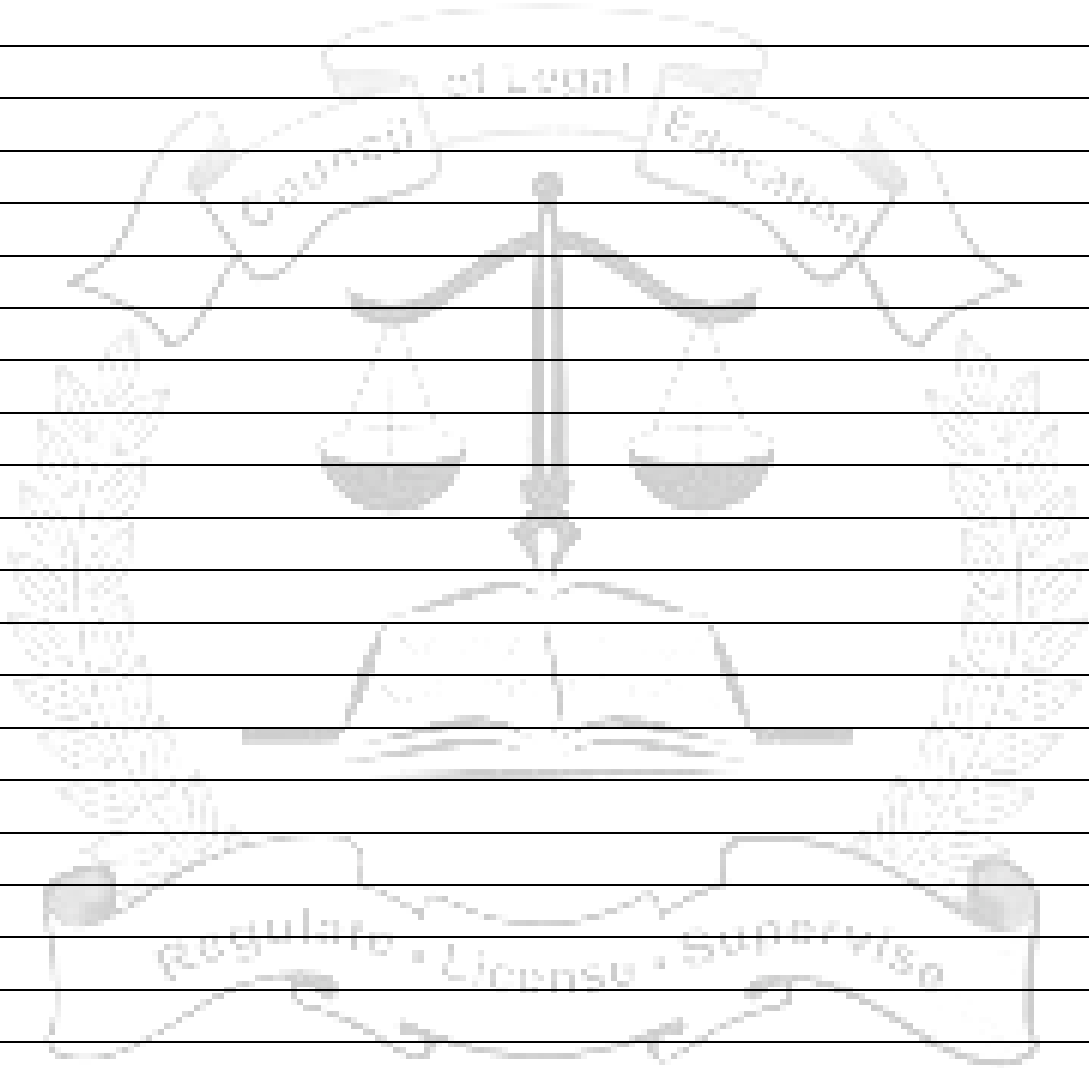
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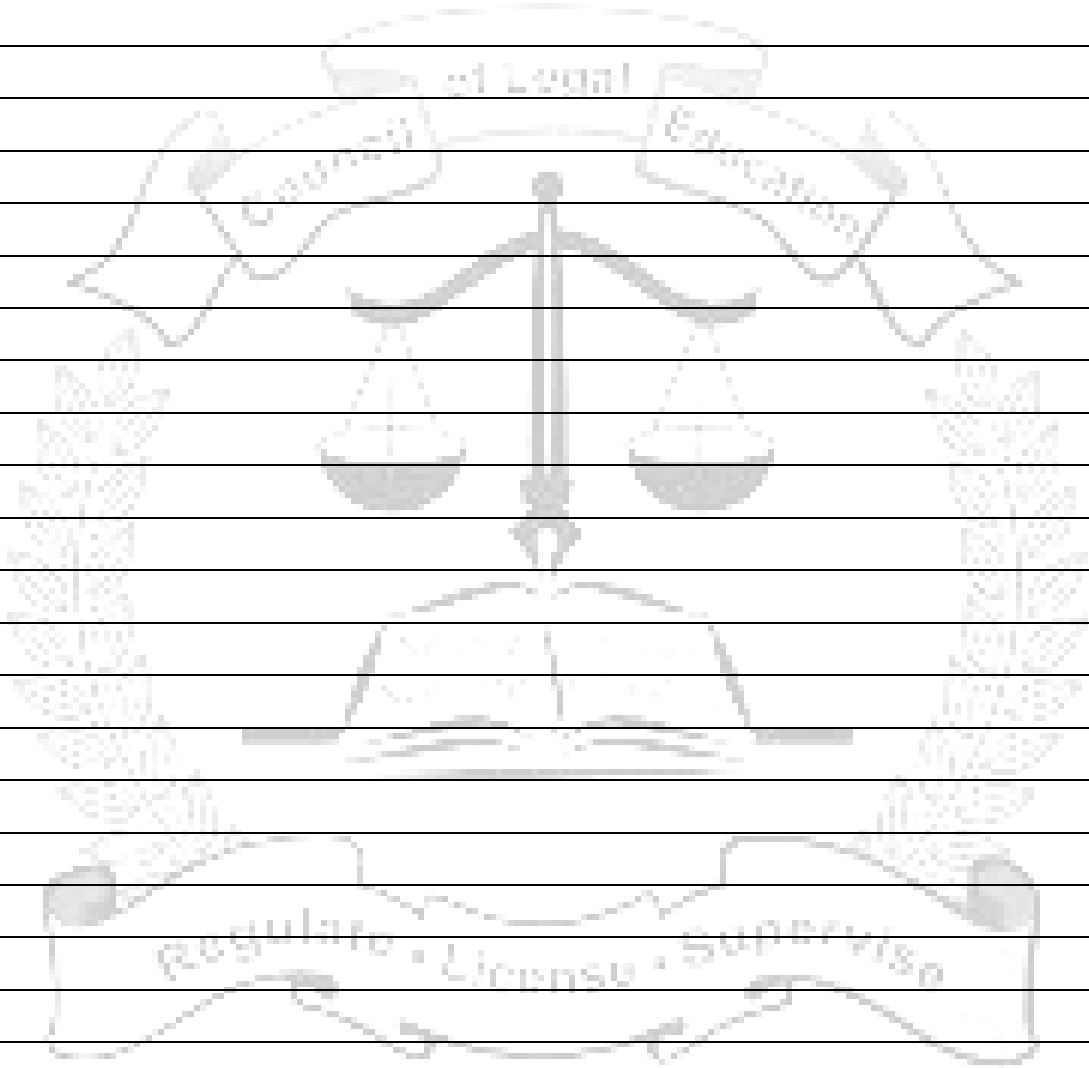
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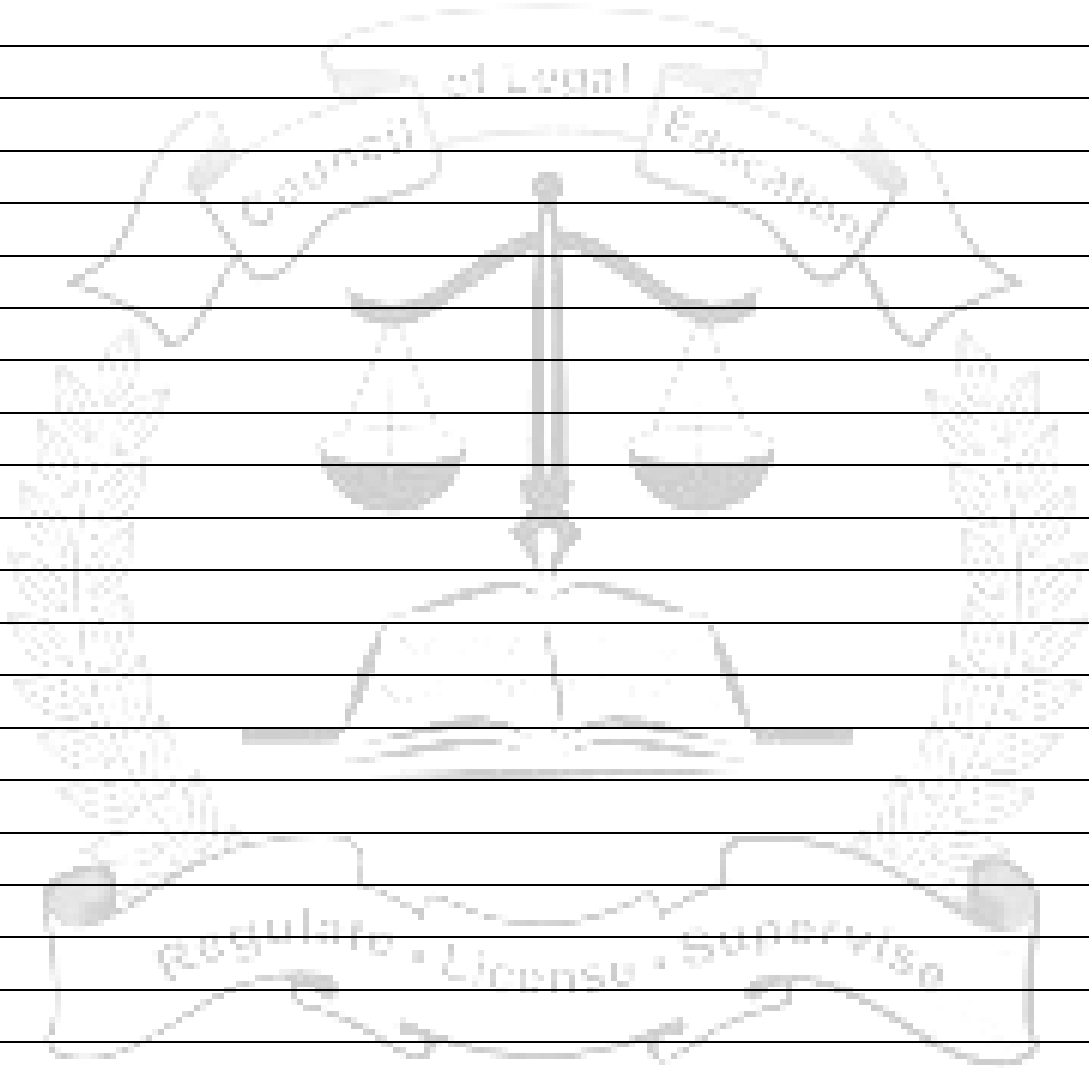
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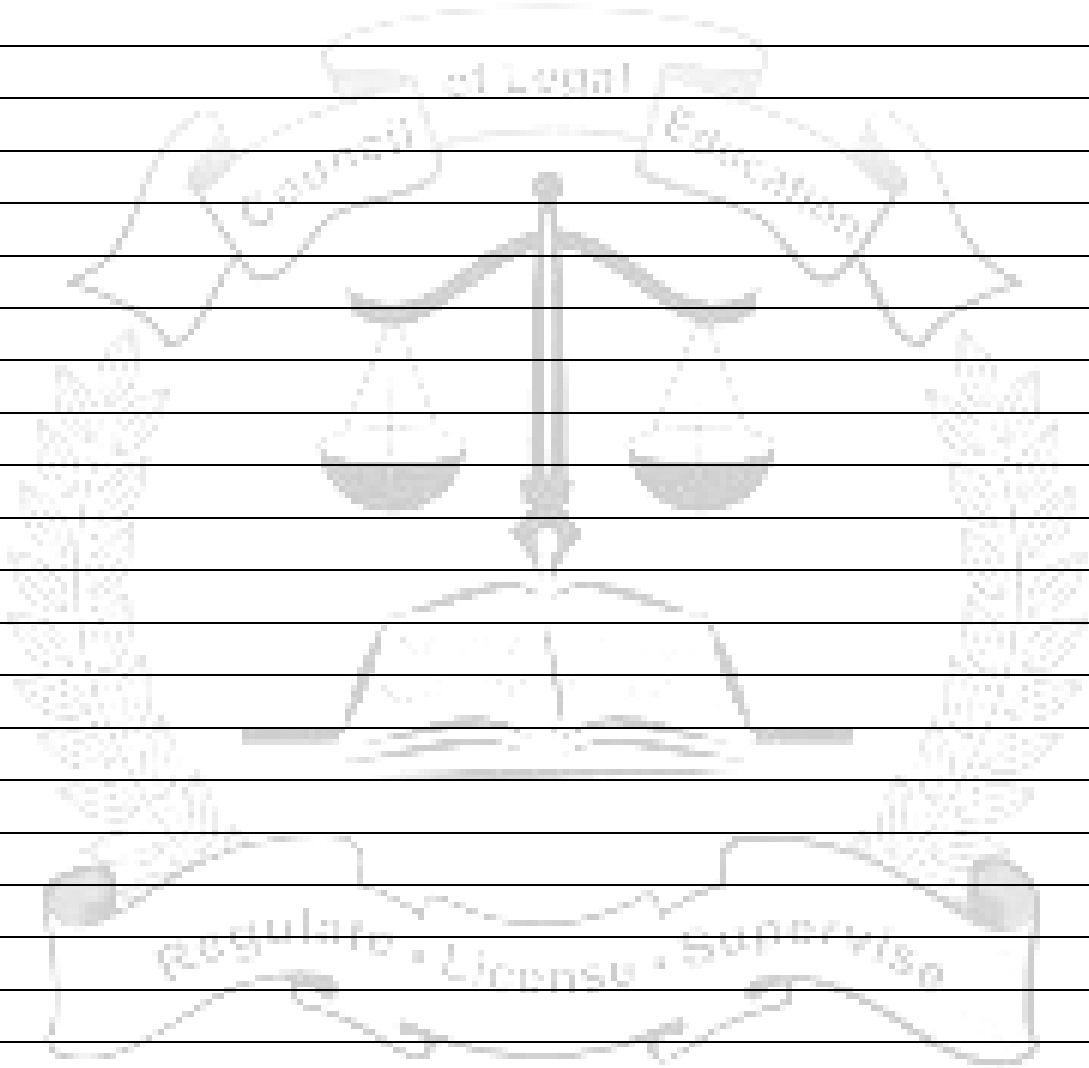
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