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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 ☐

ATP101: CRIMINAL LITIGATION

Examination Series: November 2024

Date: 18th 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

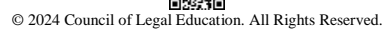
16-year-old Klindis attended a night vigil on the night of 23rd and 24th August 2024 on the eve of the burial of Guba in the deceased's Otim home, in the Moyo Slums in Kisumu Central Sub-County within Kisumu County. On her way home at about 1.30 am, after the night of dancing to *nayo nayo* and *nungo nungo songs*, she was waylaid by a group of young men comprising Cheya, Nagwala and Yela and dragged across the railway line into the *White House*, an abandoned house in the bushes, a few meters from otim's home. While Nagwala and Yela raped Klindis in turns, Cheya took off her silver necklace and 2 bangles valued at Kshs. 1,200. Cheya punched her face for being stubborn as he took off the bangles. Her screams attracted the attention of Super Abuom, the police informer who had also gone to the railway line to have a smoke. Super Abuom got to the scene and managed to arrest Yela who was still wrestling down Klindis as she struggled to push him off. Cheya and Nagwala managed to escape, but were arrested the following day after having been named by Yela as the ones who had escaped. They were arrested as they tried to sneak into the hospital ward where they intended to warn Klindis of dire consequences should she imagine to "take the matter forward." The trio wore face masks and therefore Klindis could not see them.

- (a) As the prosecution counsel, draft one (1) charge against each of Cheya, Nagwala and Yela. (6 marks)
- (b) You have been approached to represent 17-year old Yela who is willing to enter a plea agreement with the Prosecution and become a State witness. Explain at least two (2) elements of a plea agreement. (2 marks)
- (c) With the aid of decided cases, describe three (3) possible compelling reasons for the denial of bail against Cheya. (6 marks)
- (d) Citing a legislative provision and or case law, advise the police on at least 3 essential conditions for a proper identification parade in respect of Cheya and Nagwala. (6 marks)

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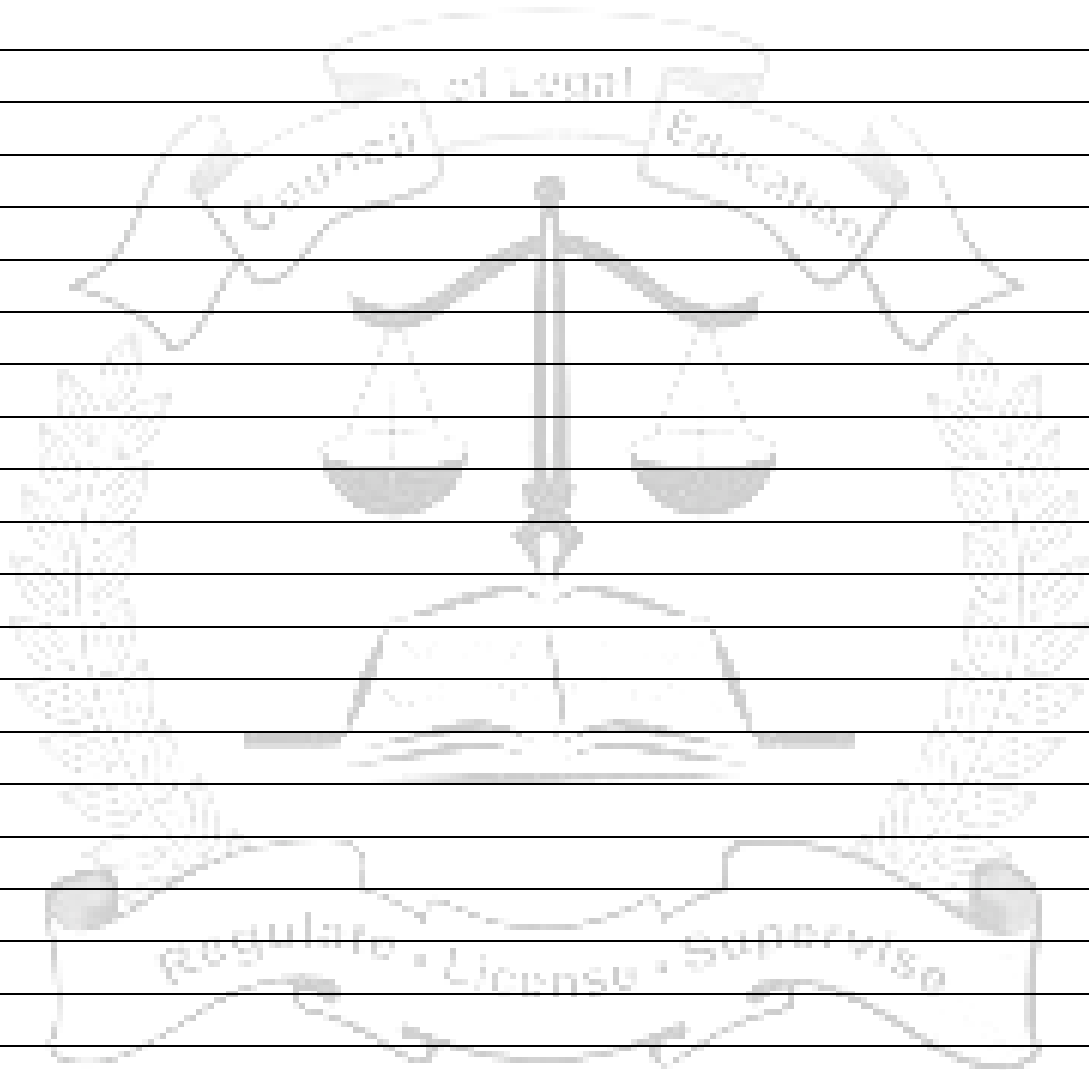
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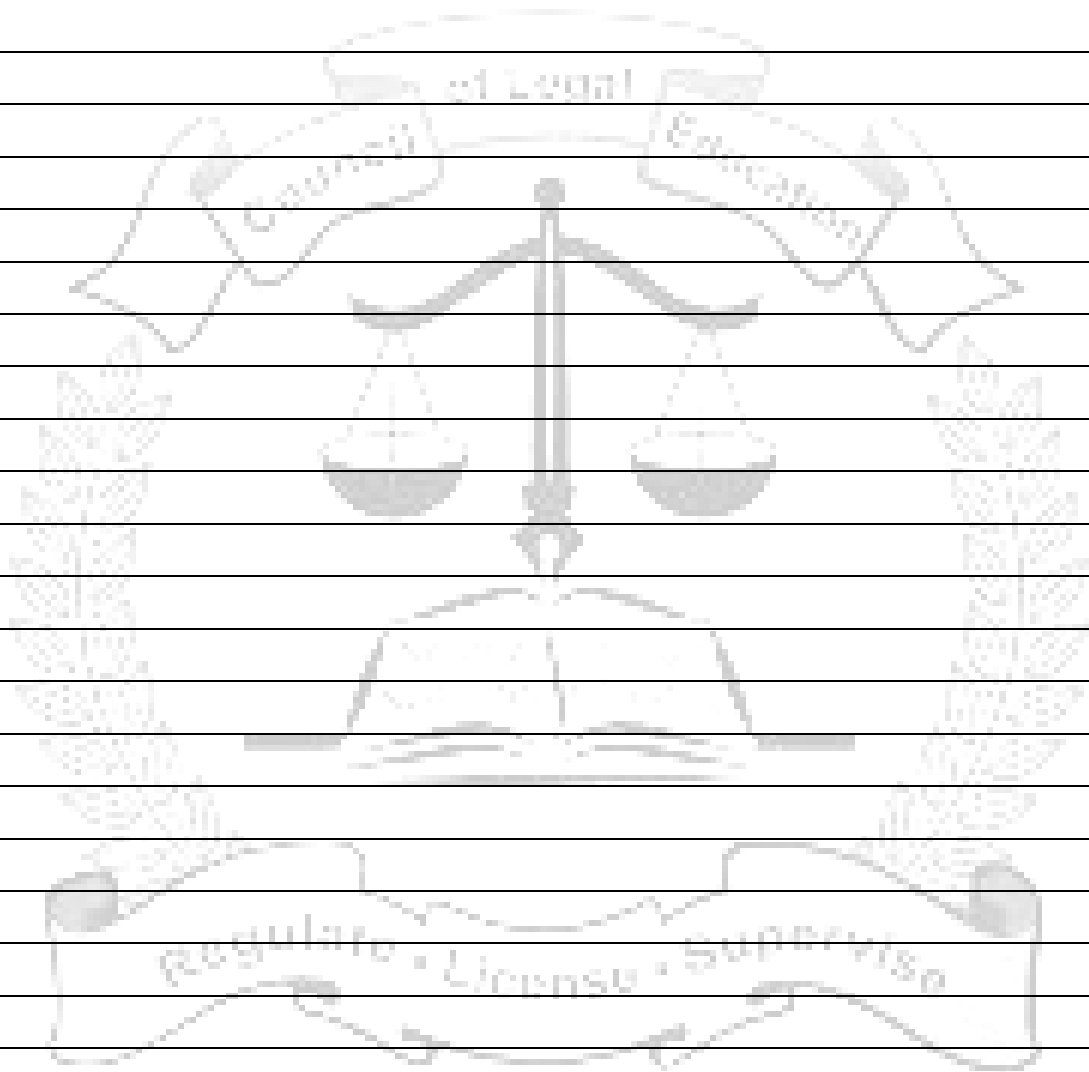
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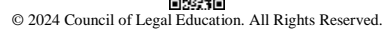
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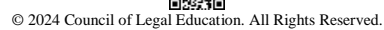


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QUESTION TWO

On the morning of 23rd July 2024, residents of Mugomoini village woke up to a bizarre incident. One of the local elders was found lying on the ground, dead in a thicket about 200 meters from his house. He had blood oozing from his mouth, but apart from that, not much seemed unusual on his body, save for what looked like bite marks which the locals concluded might have been occasioned by dog bites. There were no obvious signs of a struggle and he had his phone and national ID on him. The vegetation around where his body lay appeared slightly disturbed. Those who went to his house reported finding nothing out of the ordinary. No sign of a scuffle or suicide note were found. An open bottle of ***Triatix***, a known pesticide was found on the floor next to his bed. The man lived pretty much in solitude, having separated from his wife and none of his children came to visit him.

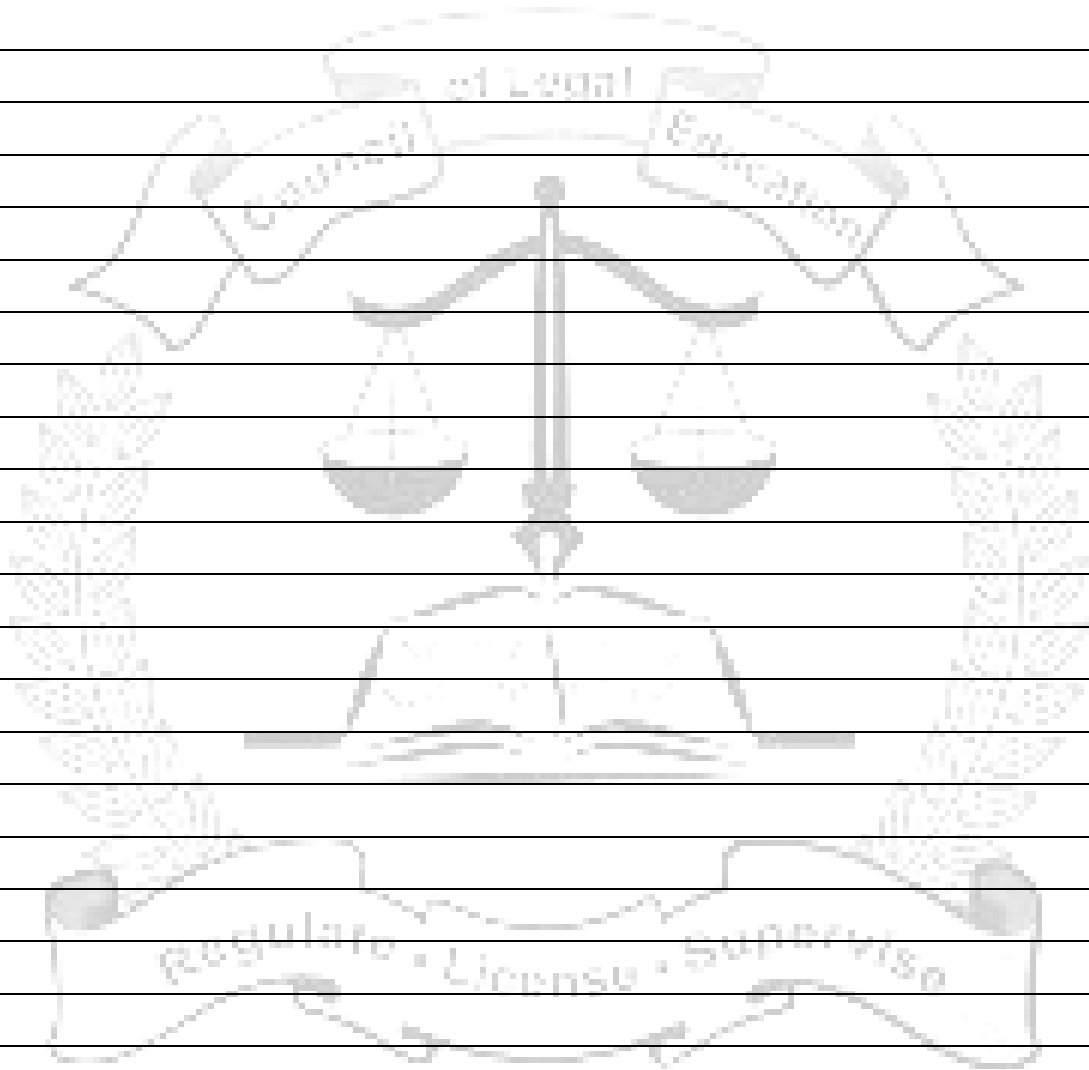
The incident has been reported at the nearby police station. Outline the legal procedure to be pursued in addressing this report. (10 marks)

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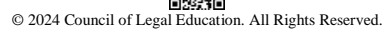
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QUESTION THREE

Ikwe Mnaija was travelling from Mumbai to Abuja via Nairobi aboard Kenya Airways Flight No. KQ 801. Customs officials and the Anti-Narcotic Unit (ANU) are alerted about a bag suspected to be ferrying heroin, a prohibited drug under the Narcotic Drugs and Psychotropic Substances (Control) Act (1994). The bag is isolated and the owner called. It belongs to Ikwe Mnaija. He is asked to open the bag. They discover a secret compartment where they find 6kgs of heroin in 30 small packages. He is arrested and presented before the JKIA Court for plea taking.

The ANU learns that Ikwe Mnaija is also wanted in Mumbai, India for trial on drug trafficking charges. He was also recently released from an Abuja court on bond for similar offence. He is due to appear in court in two weeks. Both India and Nigeria have written to Kenya requesting for surrender of the alleged notorious drug trafficker.

- (a) Lately, JKIA Nairobi has been a regular transit point for drug traffickers. Detail the options for Kenya in view of the request from both India and Nigeria. (6 marks)
- (b) Assuming plea is taken, what pre-trial issues may arise and how will they be resolved? (4 marks)

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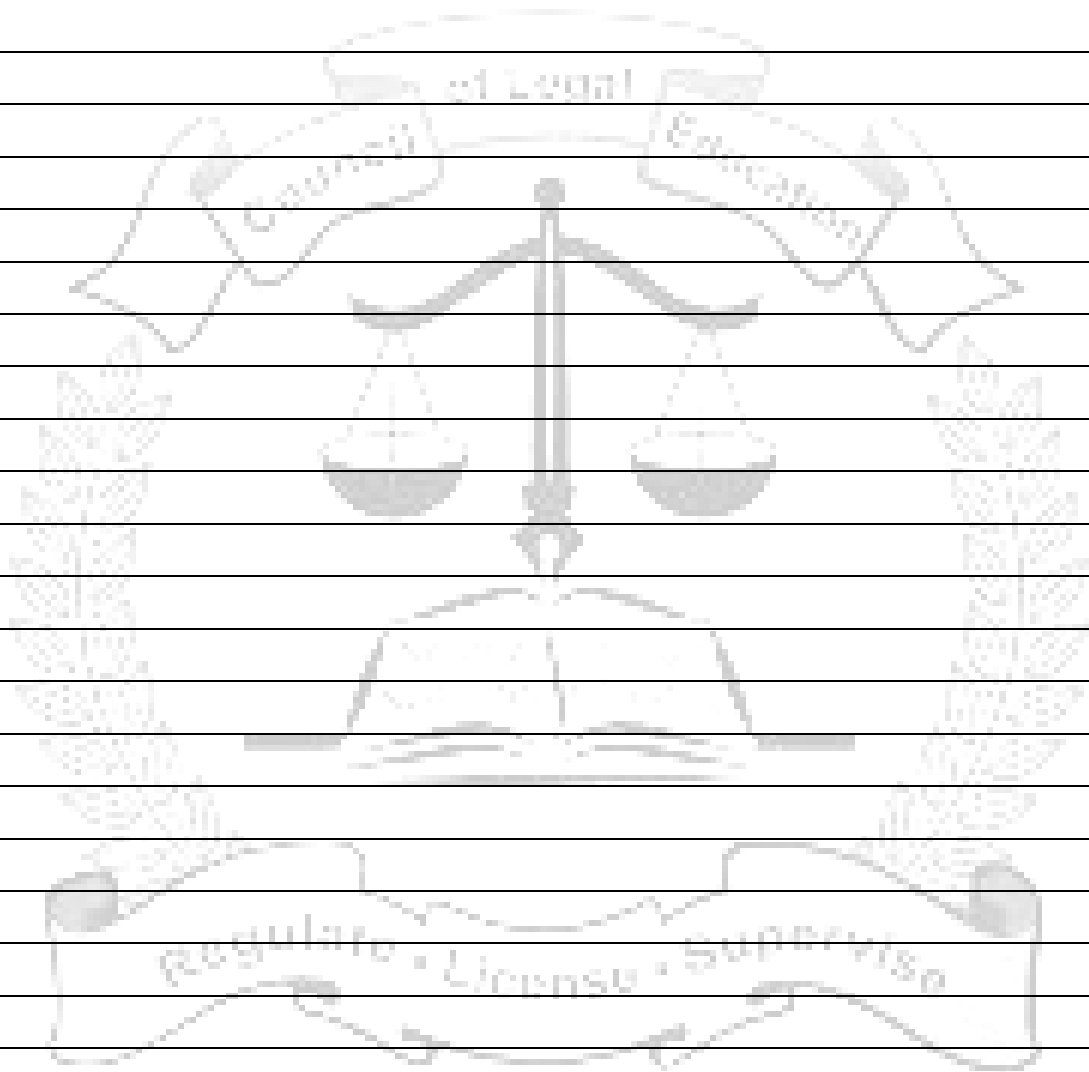
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QUESTION FOUR

- A. On 14th May 2023, Halima came back home abruptly during lunch hours only to find her 14-year-old daughter F.A. having sex with a known construction worker, Abdul, who had been contracted to work on an adjacent property. At the time, Y.A., F.A.'s younger brother, who suffers from cerebral palsy, was also in the house. When asked, he informed Halima that he had witnessed the act. However, it was unclear whether Y.A. had indeed witnessed it due to the fact that his palsy impaired his speech and it was only Halima who could understand him.

Halima was able to restrain Abdul and call for help from the neighbors, who were able to apprehend and frog march him to the nearest police station. The matter has been allocated to you as the investigating officer.

During your initial inquiry, F.A. did not deny that she had had sex with Abdul on that day. In fact, she referred to him as her boyfriend. She further stated that it was not the first time she had had sex, adding that unknown to her parents, she had been sexually active with other men since she was 12.

Medical examination confirmed that F.A.'s hymen was broken and, in the doctor's opinion, this was not a recent occurrence. The report further stated that there were no obvious signs of force or forcible penetration. F.A. seemingly corroborated this with her claim that she had previously had consensual sexual intercourse with Abdul.

Highlight the investigative steps you would take to conduct this investigation and propose what charge/s you may prefer, if at all. (5 Marks)

- B. During the pendency of the trial, F.A. delivers a baby. Abdul, knowing that F.A. had been sexually active with other men before, makes an application to court asking for a DNA test to be conducted. The court grants the orders and, two (2) weeks later, a report is filed stating that the baby's DNA does not match Abdul's. Abdul is persuaded that this is new and compelling evidence that exonerates him. He makes an application to have the case against him dismissed.

With the help of decided cases, explain how the court should treat this issue in deciding whether to continue with the case and in determining whether Abdul is innocent or guilty. (5 marks)

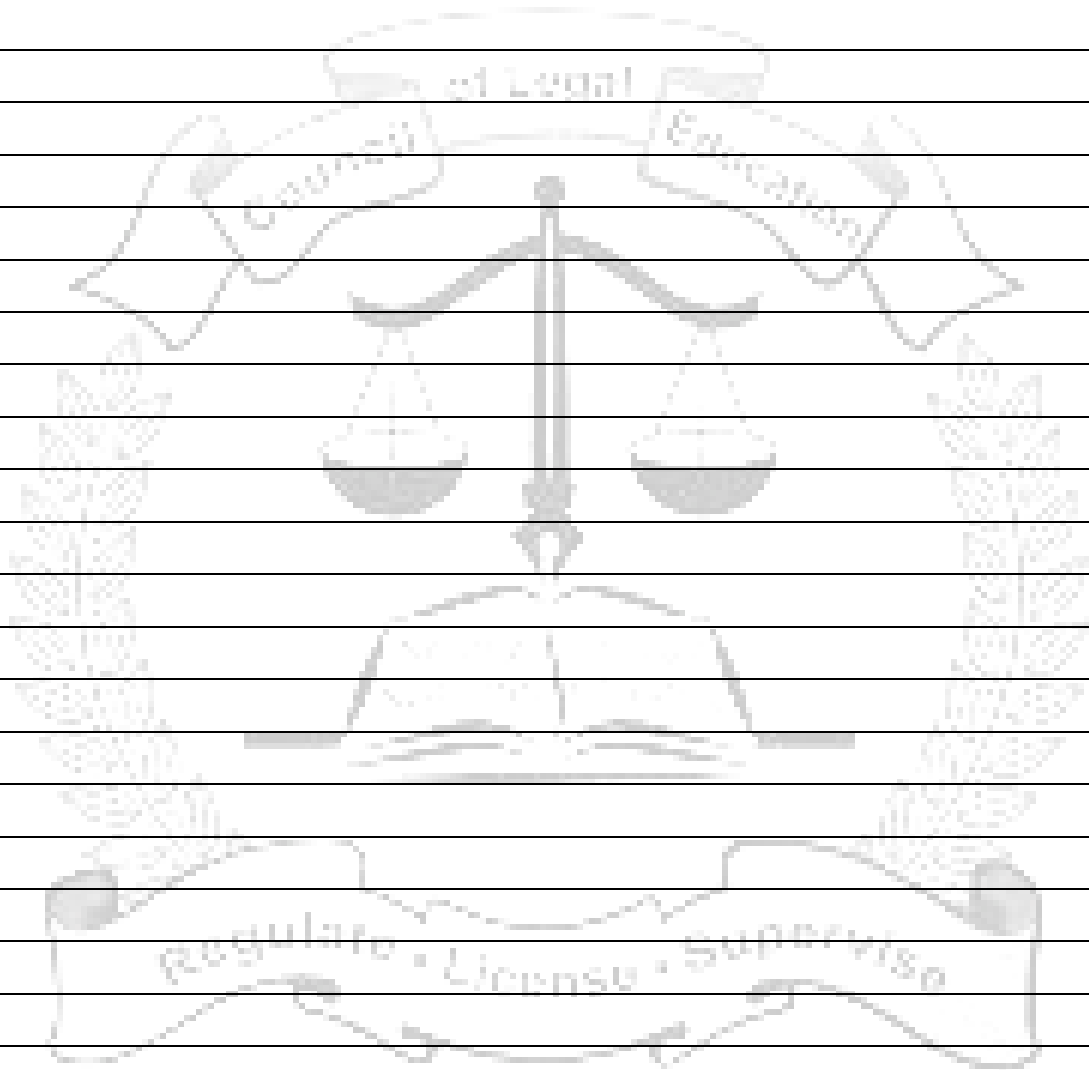
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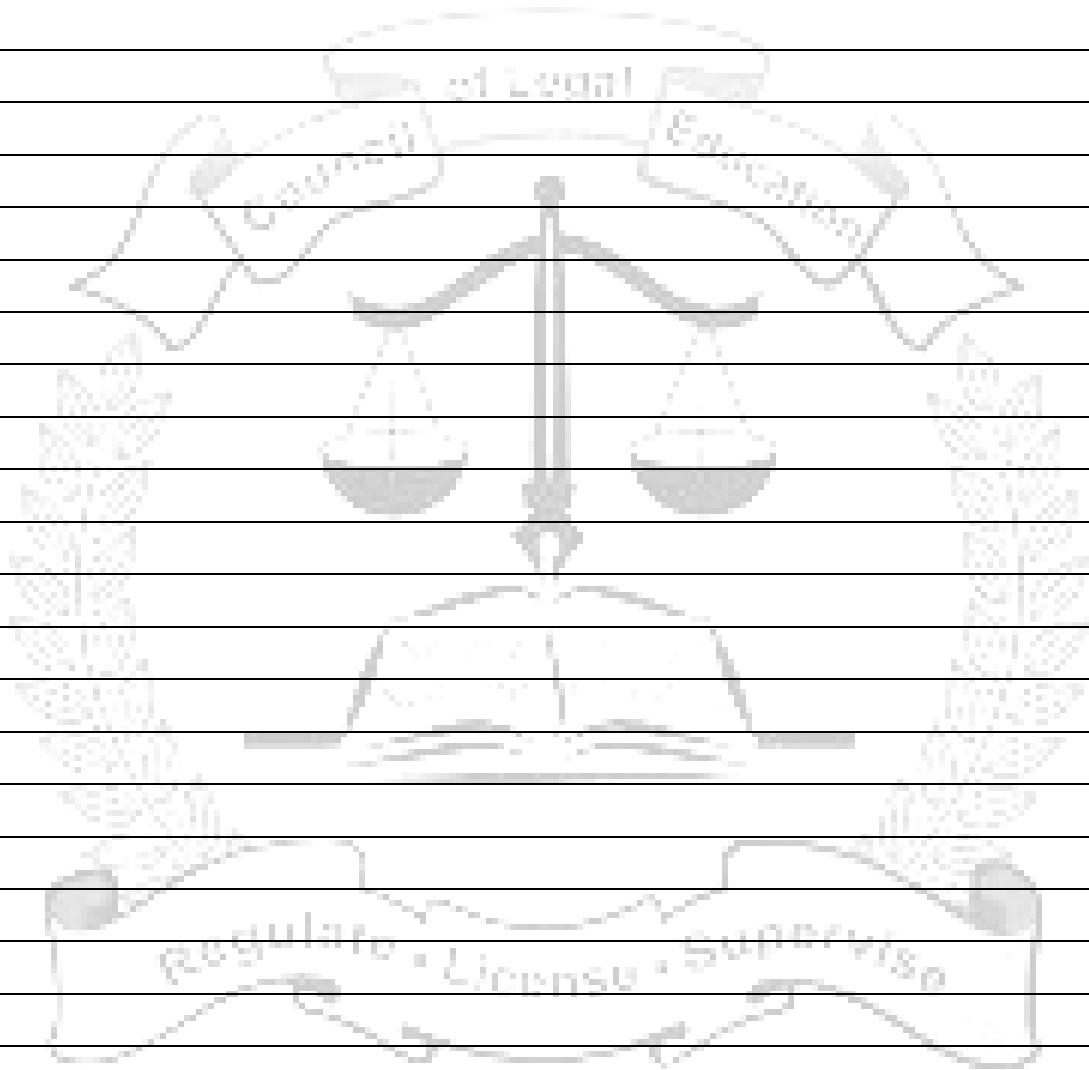
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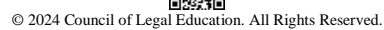
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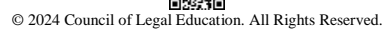
QUESTION FIVE

Mr. Jones obtained orders in the form of anticipatory bail barring the police from arresting and or detaining him in respect of his alleged possession of firearms contrary to the provisions of the Fire Arms Act, Cap 114 Laws of Kenya. Mr. Jones had earlier on had the High Court reinstate his revoked fire arm license. Despite the said orders, the Fire Arms Licensing Board once again revoked his license, upon which the Directorate of Criminal Investigations apprehended him on similar criminal allegations and presented him before court for plea taking. Mr. Jones's co-accused person appears to have physical injuries on the head and hand.

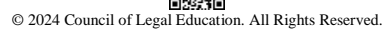
- (a) Explain two (2) interlocutory applications that you would make pending the plea. (4 Marks)
- (b) Prepare an appropriate application before the High Court to prevent the Office of the Director of Public Prosecutions (ODPP) from charging Mr. Jones with the intended charges of possession of fire arms without a license. (6 marks)

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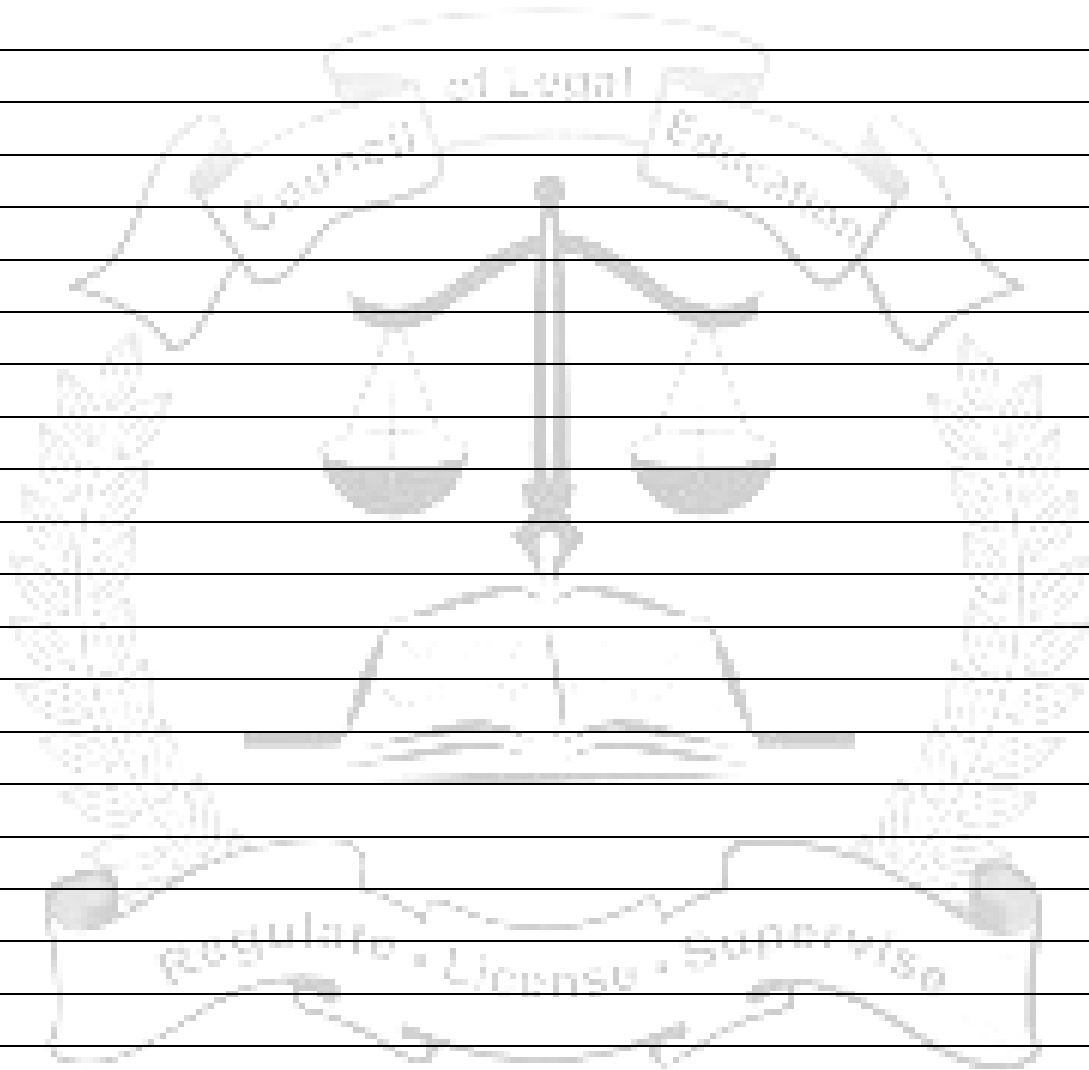
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QUESTION SIX

A section of young men and women identifying themselves as “Gen-Z” have been carrying out public protests and demonstrations across the country against bad governance seeking accountability from the government. During one such protests, a section of the group entered a leading supermarket and made away with goods valued at an estimated Kshs. 76 Million. When the police arrived, they cordoned off the supermarket and arrested many young men and women, among them Kijana Mtundu, a 17-year old homeless street boy who had been ferrying boxes of flour out of the supermarket.

Kijana Mtundu is arraigned in court where he is charged jointly with 96 others for breaking and stealing goods worth Kshs. 76 Million. He pleads guilty.

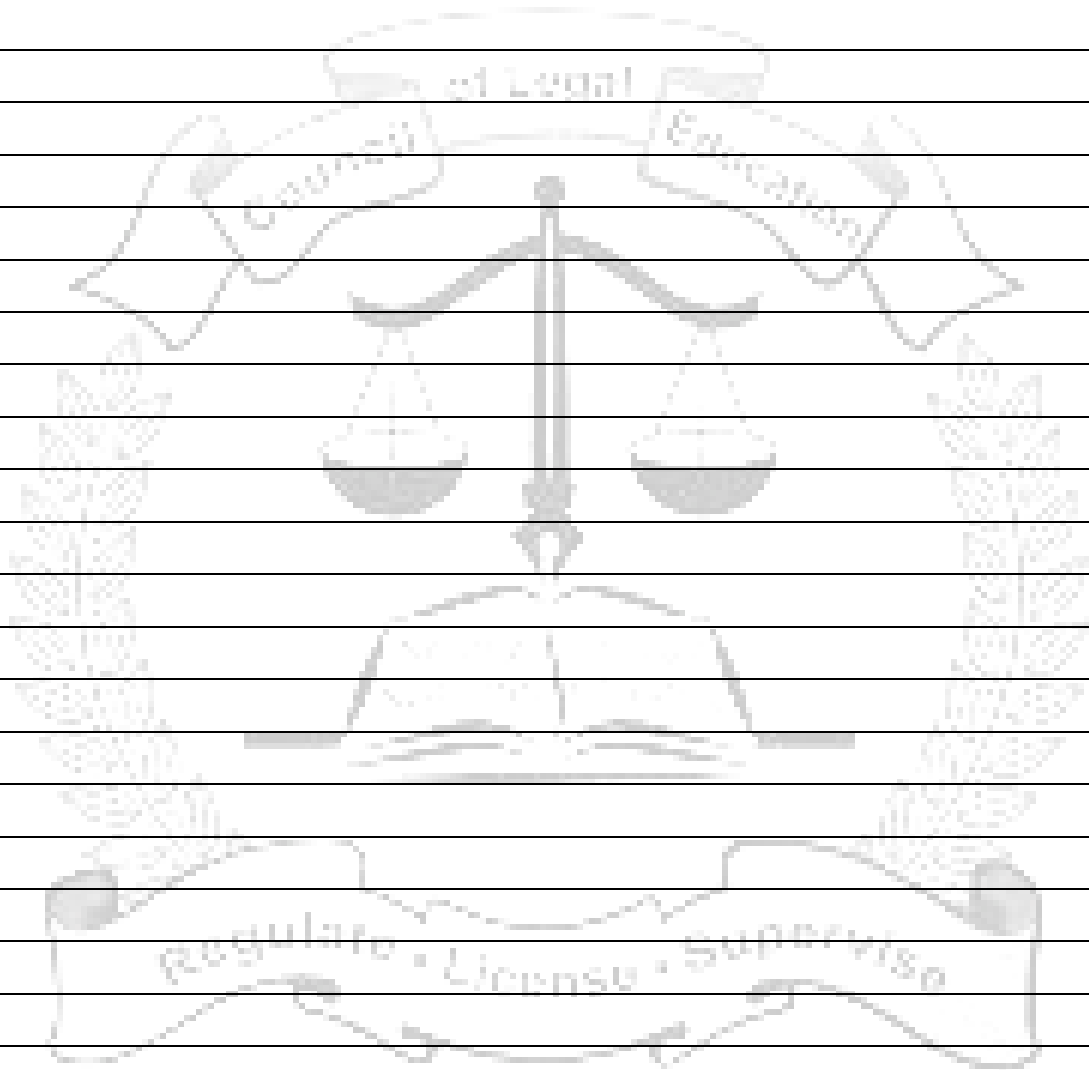
You have been retained by the Law Society of Kenya to appear for all persons charged. Advise Kijana Mtundu on his options. (10 marks)

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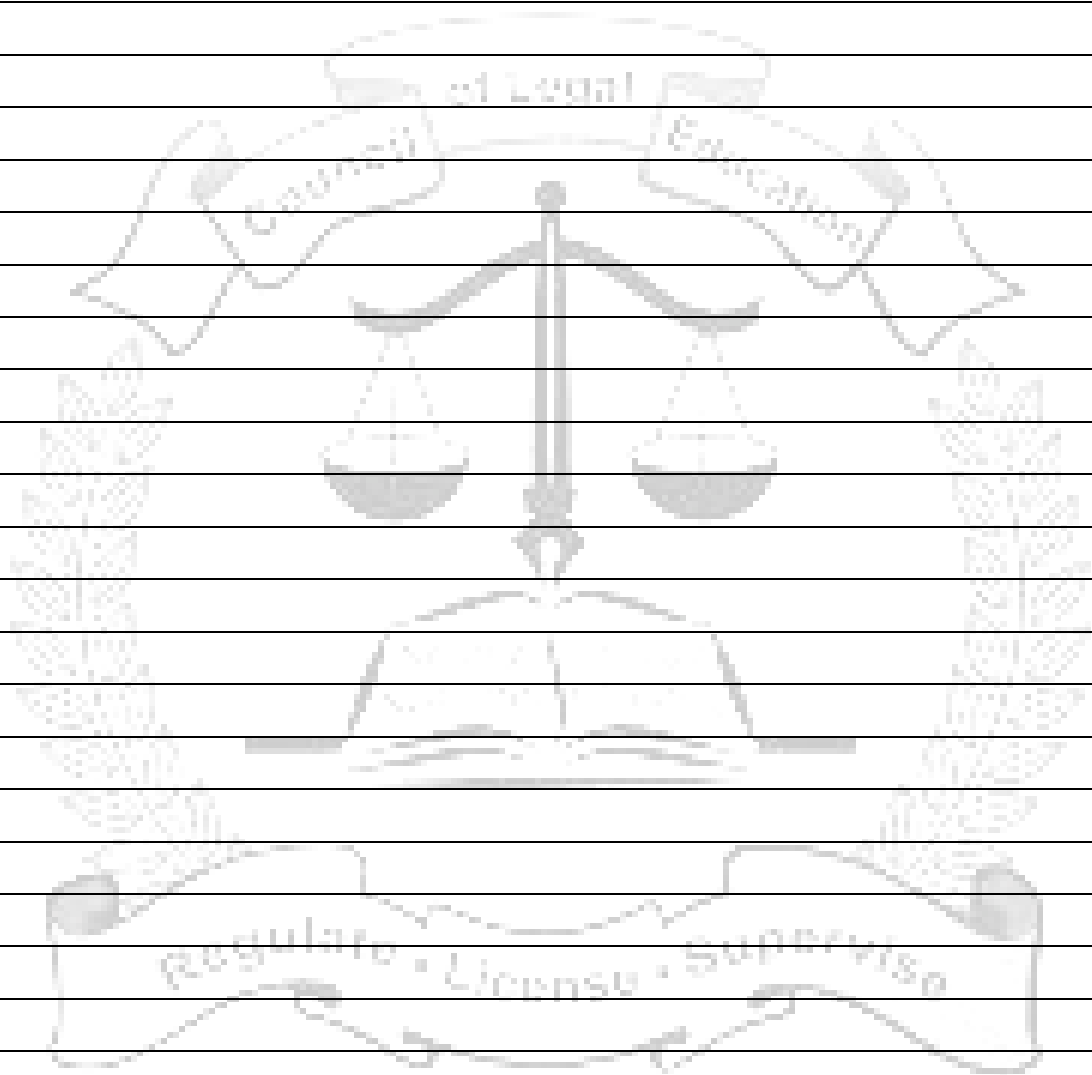
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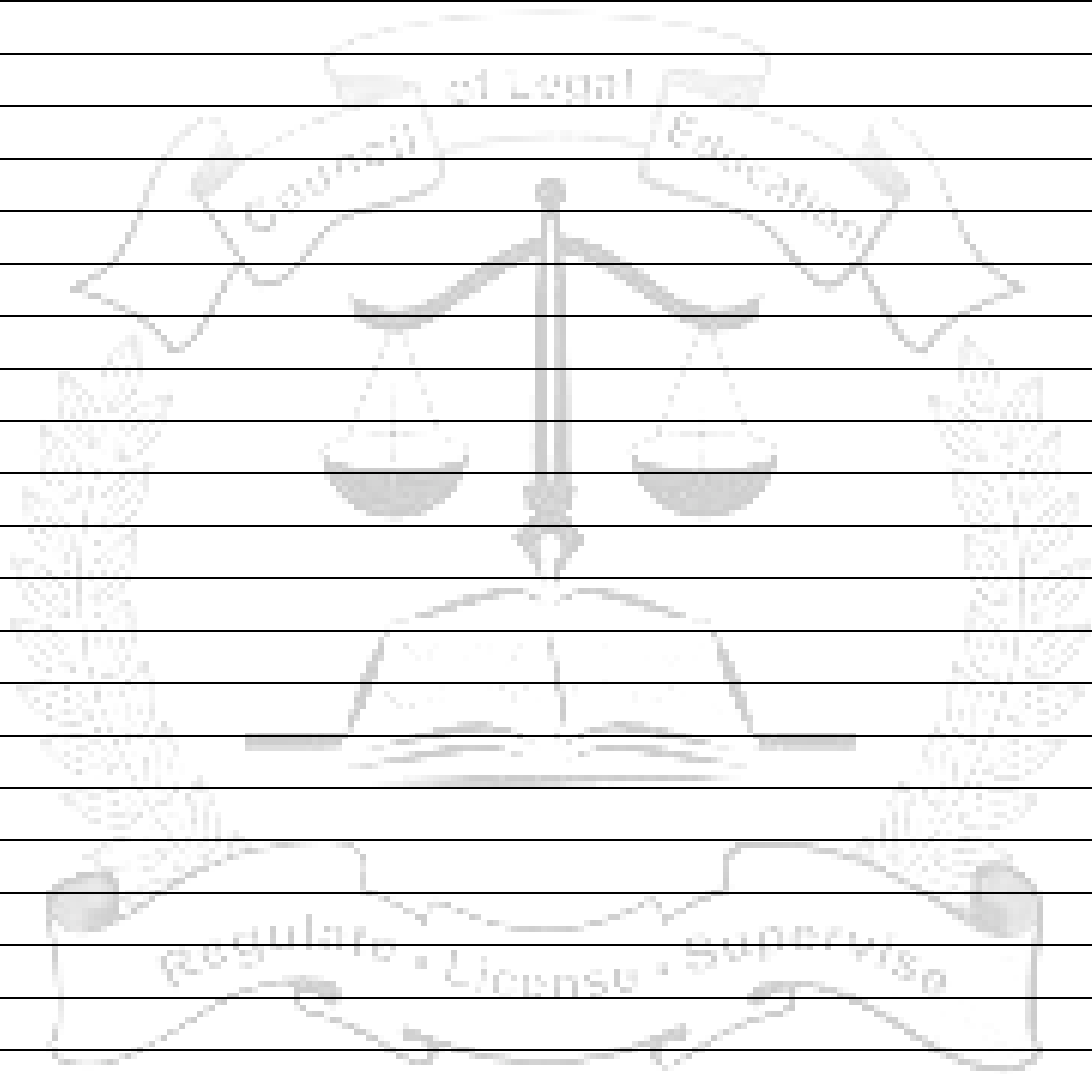
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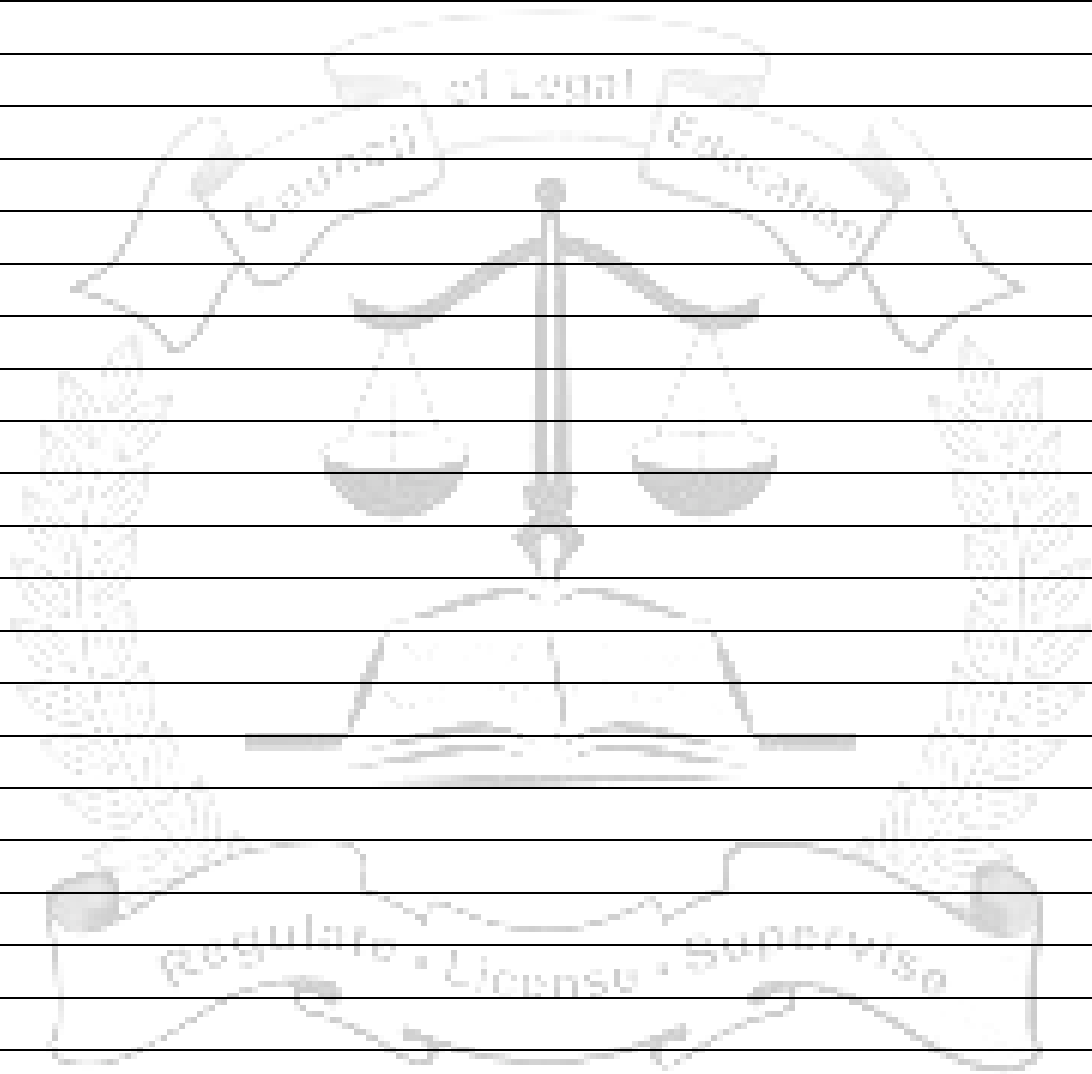
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