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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

ATP102: PROBATE & ADMINISTRATION

Examination Series: November 2024

Date: 25th 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.								
3.								
4.								
5.								
6.								
Total Marks								



QUESTION ONE

Kim died a polygamist, having married 3 times, under customary law. He had 2 sons and a daughter with his first wife; the second wife had no children; while the third wife was blessed with 4 daughters. For ten (10) years before he died, he had had an active relationship with Carol, an employee at his business, with whom he had a son, and he provided for both Carol and her son, by renting residential premises for them, and catering for their food and medical care, and the educational needs of the son. He would often spend time with them at the rented premises. He had an on-and-off girlfriend, Philgona, who was based in another town, which he used to frequently visit on business, and who he had assisted with setting up a business.

Upon the demise of Kim, a will was discovered. In that will, Kim had given, to each of his 3 wives, monetary gifts of varying amounts, and he had provided that the wives would be entitled to occupy the residences they occupied during his lifetime, for the rest of their lives, together with the motor-vehicles that they had been using during his lifetime. To his 2 sons with the first wife, he had willed all his immovable property, comprising the 3 parcels of land where the residences occupied by the 3 wives stood, 2 other parcels of land, and a parcel of land on which stood the premises from which Kim carried on business. The residue of the estate was also given to the said 2 sons. The will was silent on the 5 daughters from 2 of his wives, on Carol and her son, and on Philgona.

The said will was properly signed by Kim, in the presence of his Advocate, who had also drawn it and attested its execution by Kim. The signature by Kim had also been attested by 2 employees at the law firm of the Advocate. The will had named the 2 sons of Kim, by his first wife, as beneficiaries, and the executors of the will. They have petitioned the court for a grant of probate.

- (a) With the aid of relevant statutory provisions and case law, give a brief opinion on the validity of the said will. (5 marks)
- (b) Assuming that the said will is valid, briefly discuss the possible rights and remedies, if any, of the 5 daughters of the deceased, Carol and her son, and Philgona. (5 marks)
- (c) Assuming that the will is declared invalid:
 - i. Explain the persons who ought to be beneficiaries and administrators of the estate of Kim. (4 marks)
 - ii. Briefly explain the process that ought to be undertaken for devolution of the estate to those entitled to succeed Kim. (6 marks)

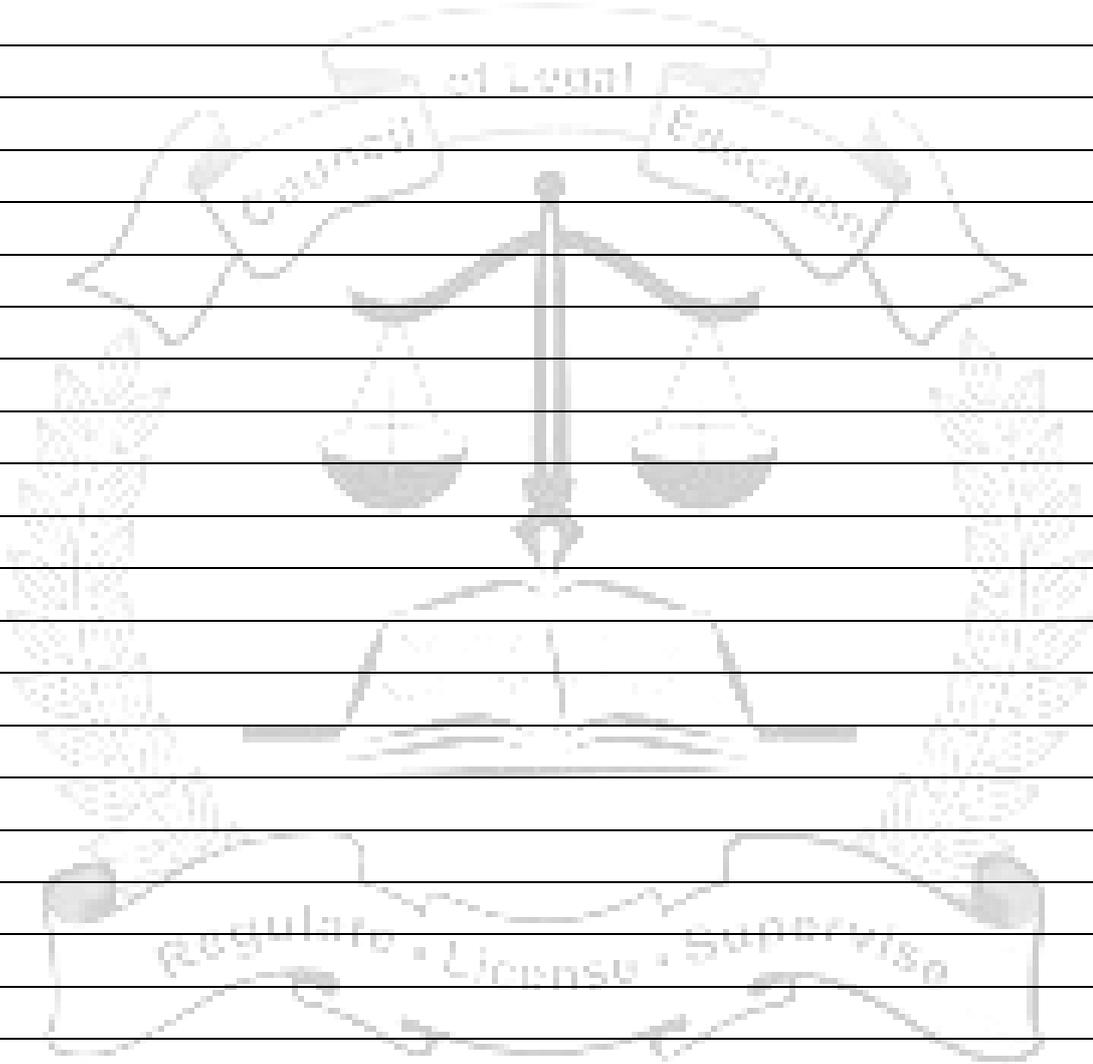
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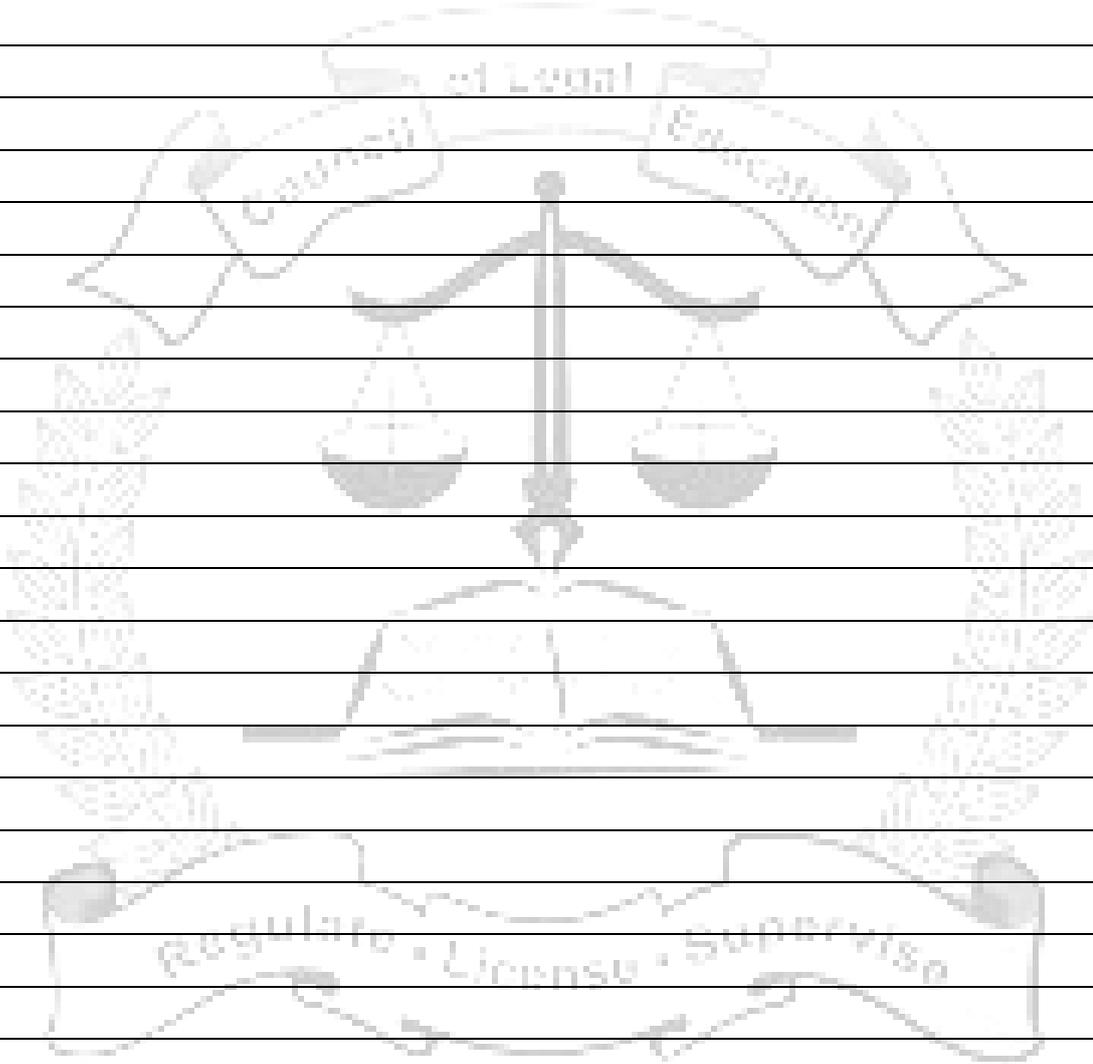
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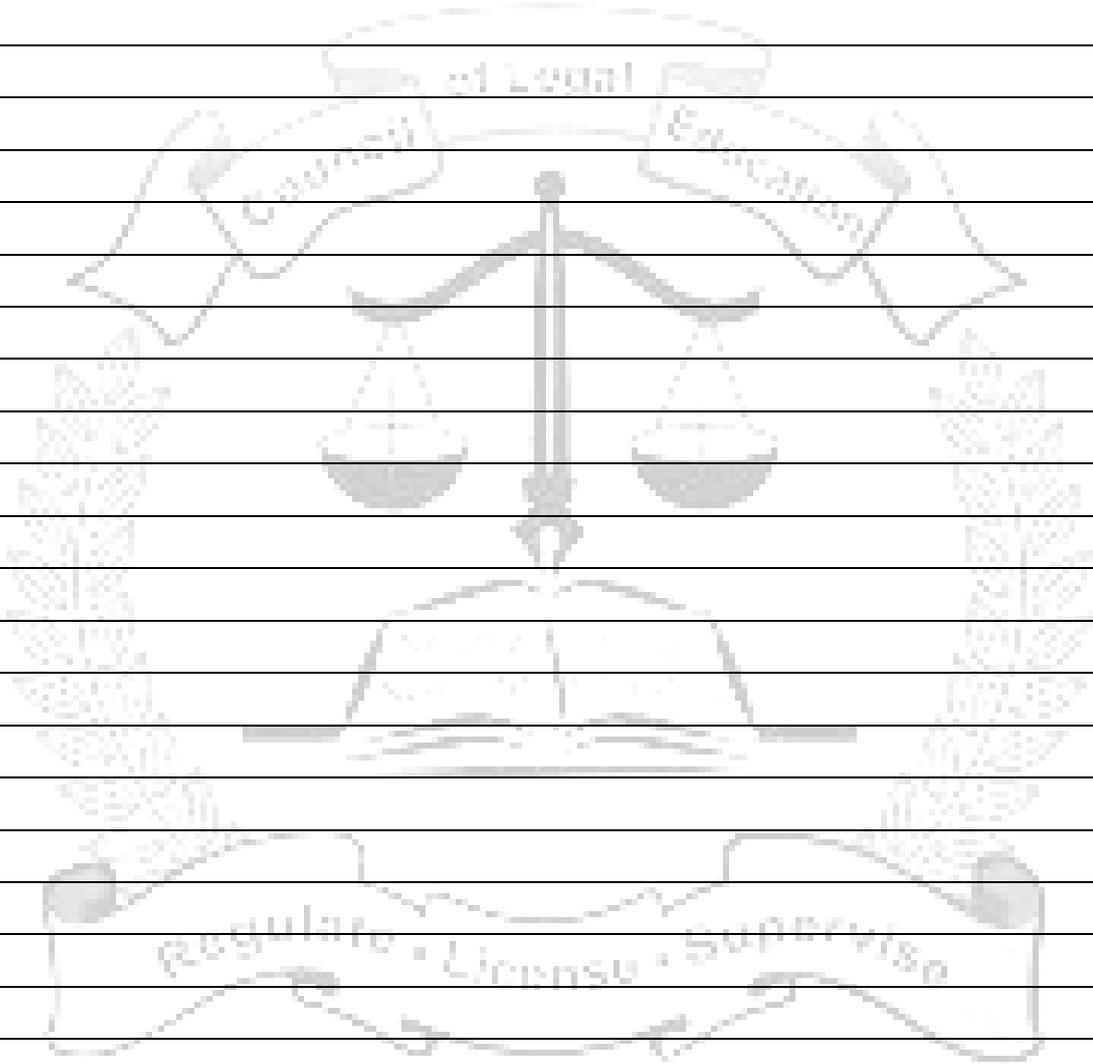
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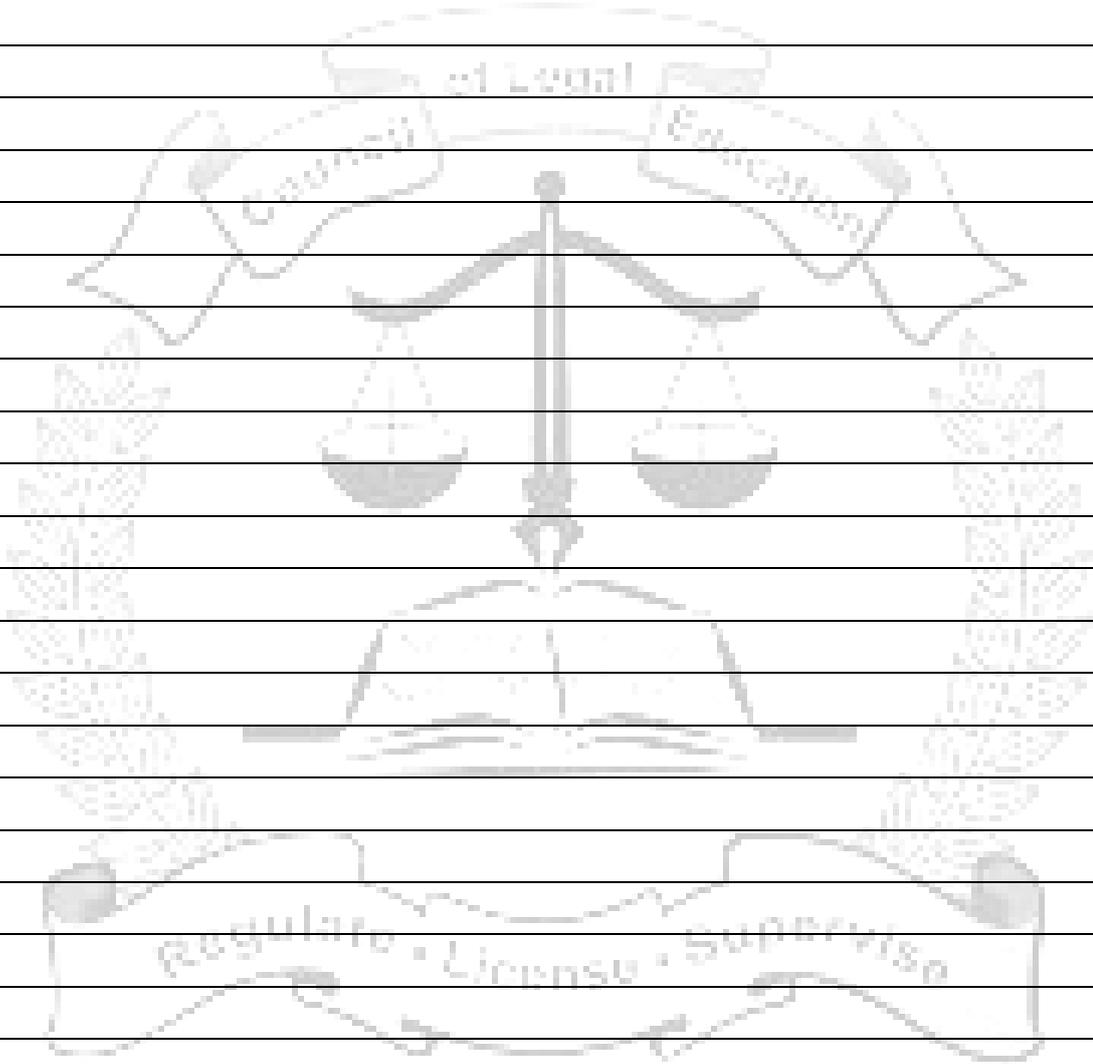
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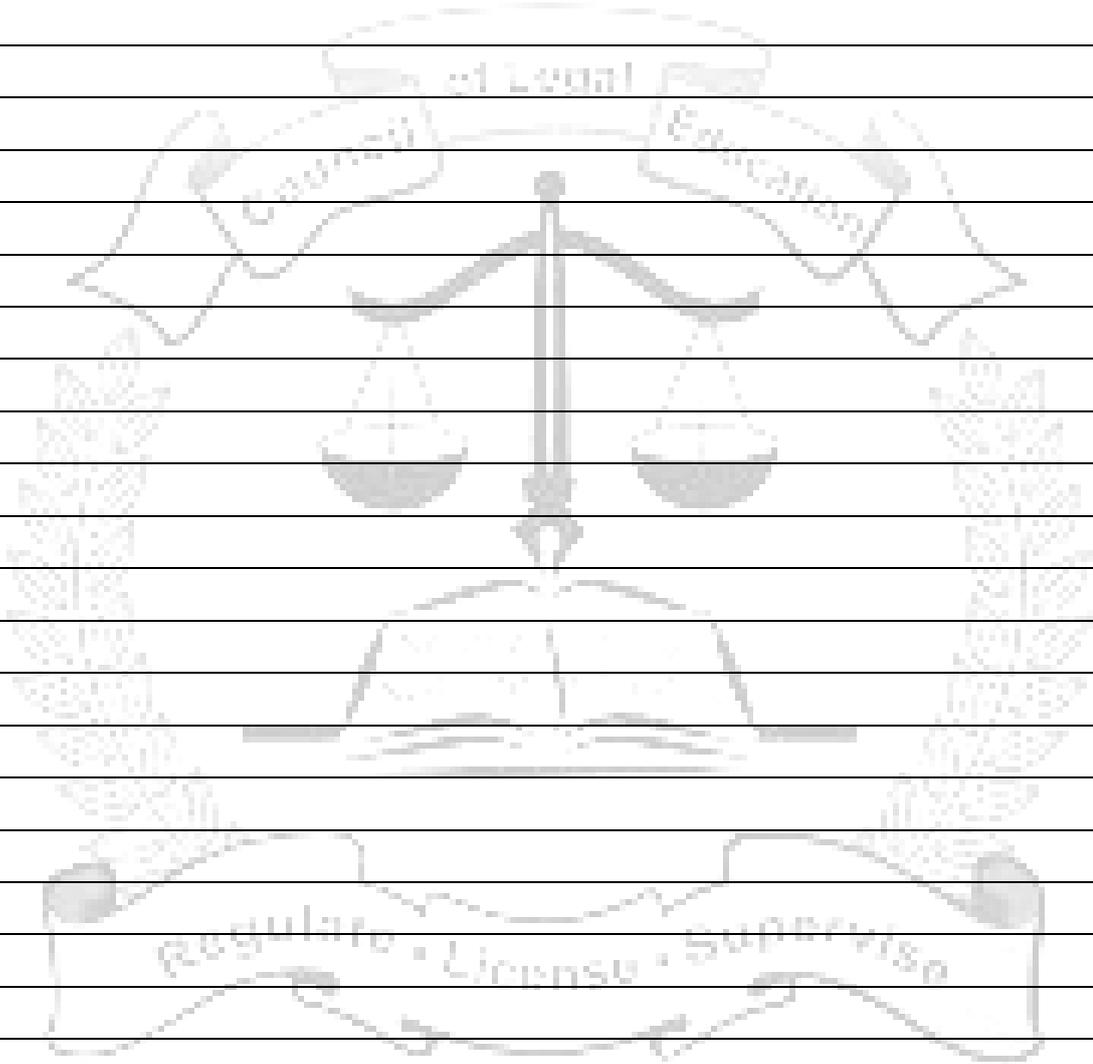
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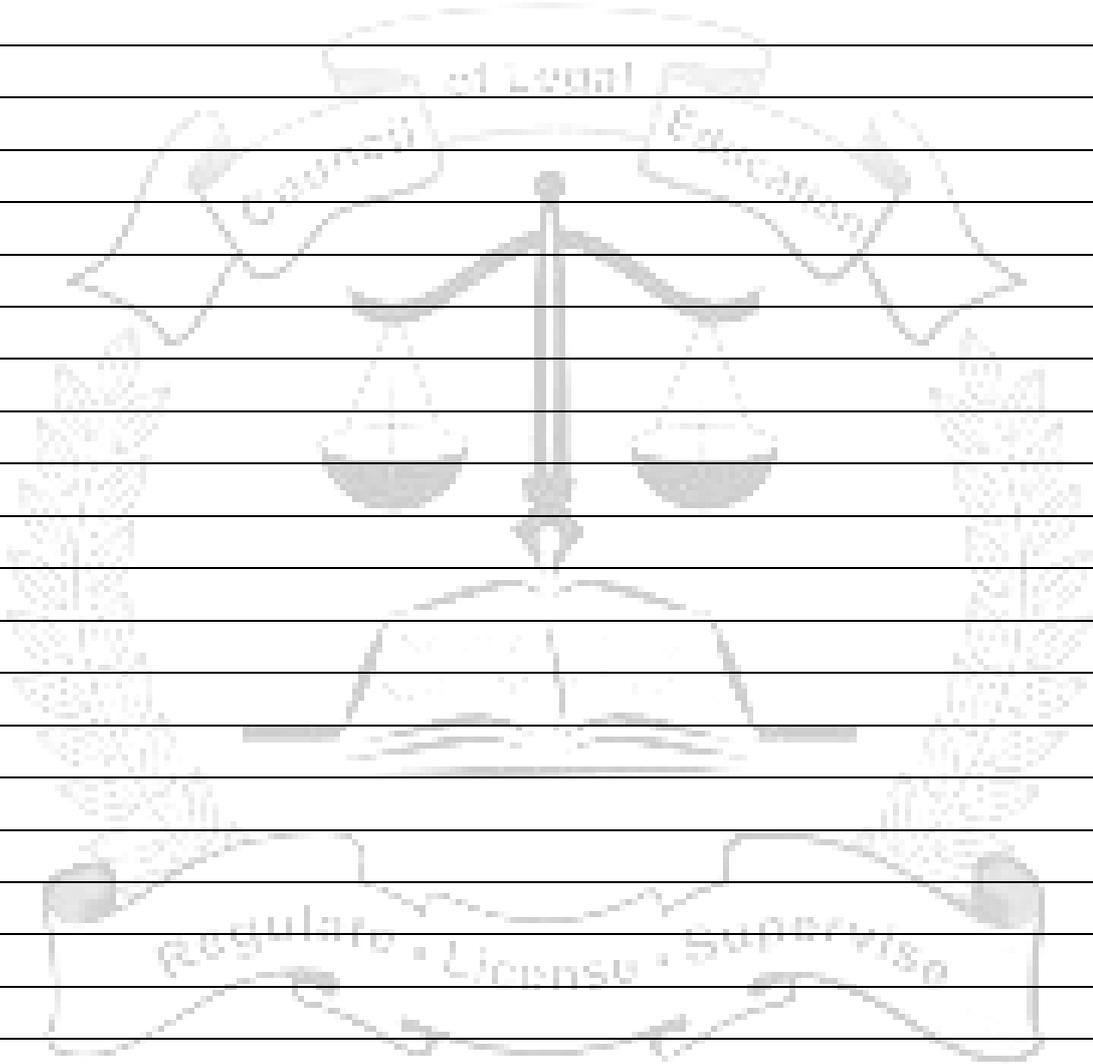
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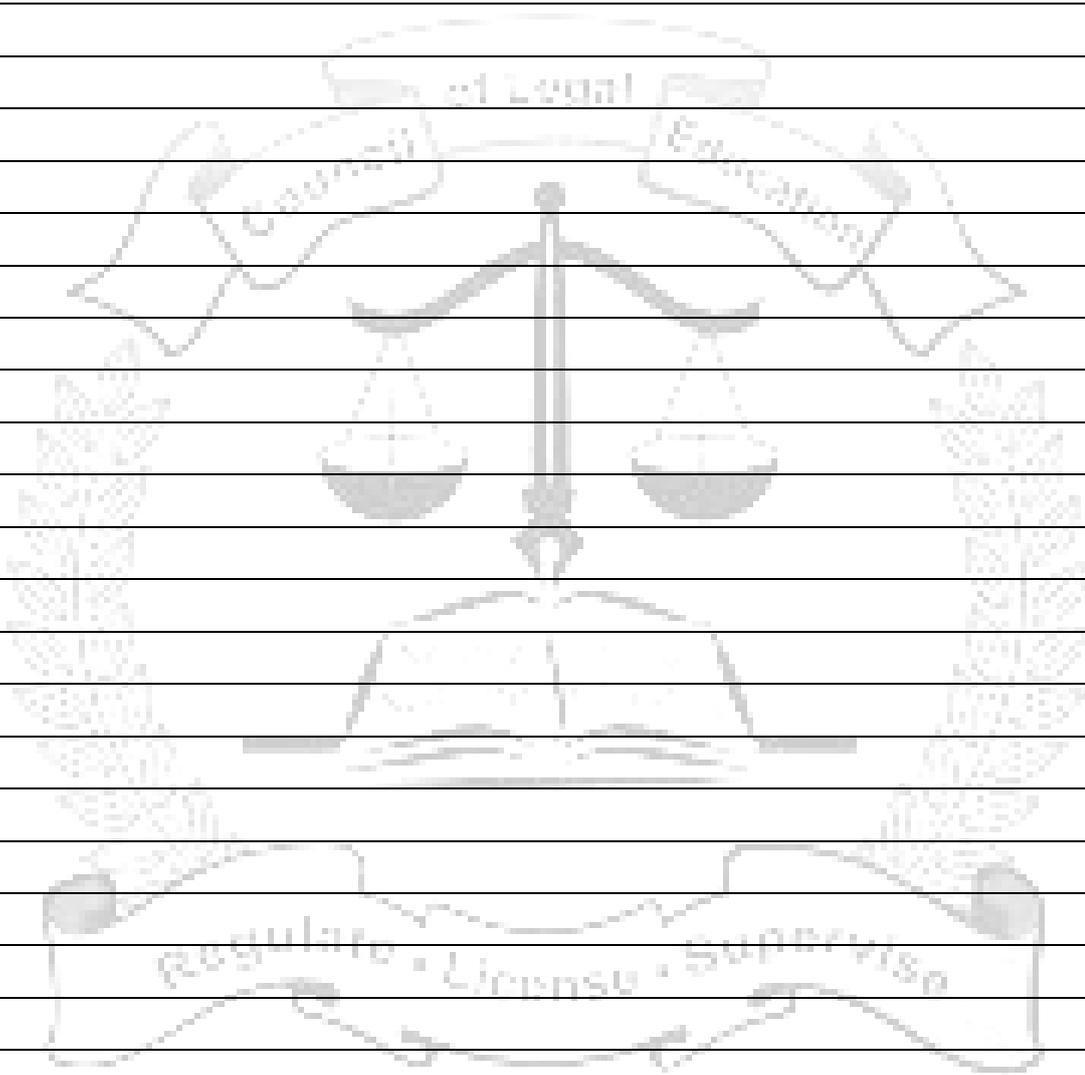
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QUESTION THREE

Babu died 3 months ago. A will was discovered in the custody of his Advocate for many years, Wakili Paulo. Babu had only 1 wife, Neema, 3 sons, Bahati, Jabali and Mshindi, and 2 daughters, Asha and Nazi. He died possessed of parcels of land, motor vehicles, shares in limited liability firms and money in a bank. He also had investments in cooperative societies and a pension scheme.

During his lifetime, Babu had transferred a parcel of land, with a house standing on it, and a motor vehicle, to Bahati, after the latter married. Bahati had also received some money from Babu, which he used to set up a thriving business. In the period before he died, Babu was not getting along well with Jabali. The latter had fallen into bad company, abused drugs and drink, which culminated in him dropping out of college. When Babu confronted him about it, Jabali became very hostile and aggressive with his father, to the point of assaulting him so badly that he had to be hospitalized for a while. Jabali was arrested, charged, prosecuted, and subsequently jailed for a time. Jabali had many run-ins with the authorities, and Babu had to bail him out many times. Jabali had, at one point, threatened to kill Babu. Mshindi is a recent graduate from law school, and he is currently preparing for his Bar examinations, while Asha is in college and Nazi in high school.

In the will, found in the custody of Wakili Paulo, Babu had appointed Neema and Mshindi as its executors, and the assets of the estate had been devolved, at varying proportions, to Neema, Mshindi, Asha and Nazi. The will made no mention of Bahati and Jabali. The 2, Bahati and Jabali, have approached the law firm, where you are the senior partner, and seek legal advice. Whereas they do not challenge the validity of the will, they complain that that they are not provided for under it.

- (a) Briefly discuss the rights, if any, that accrue to Bahati and Jabali, and the possible remedies, if any available to them. (4 marks)
- (b) Draft a simple, but appropriate, application, for pursuing the remedy or remedies that you have pinpointed, to have the court adjudicate upon and determine the rights that you have identified. (6 marks)

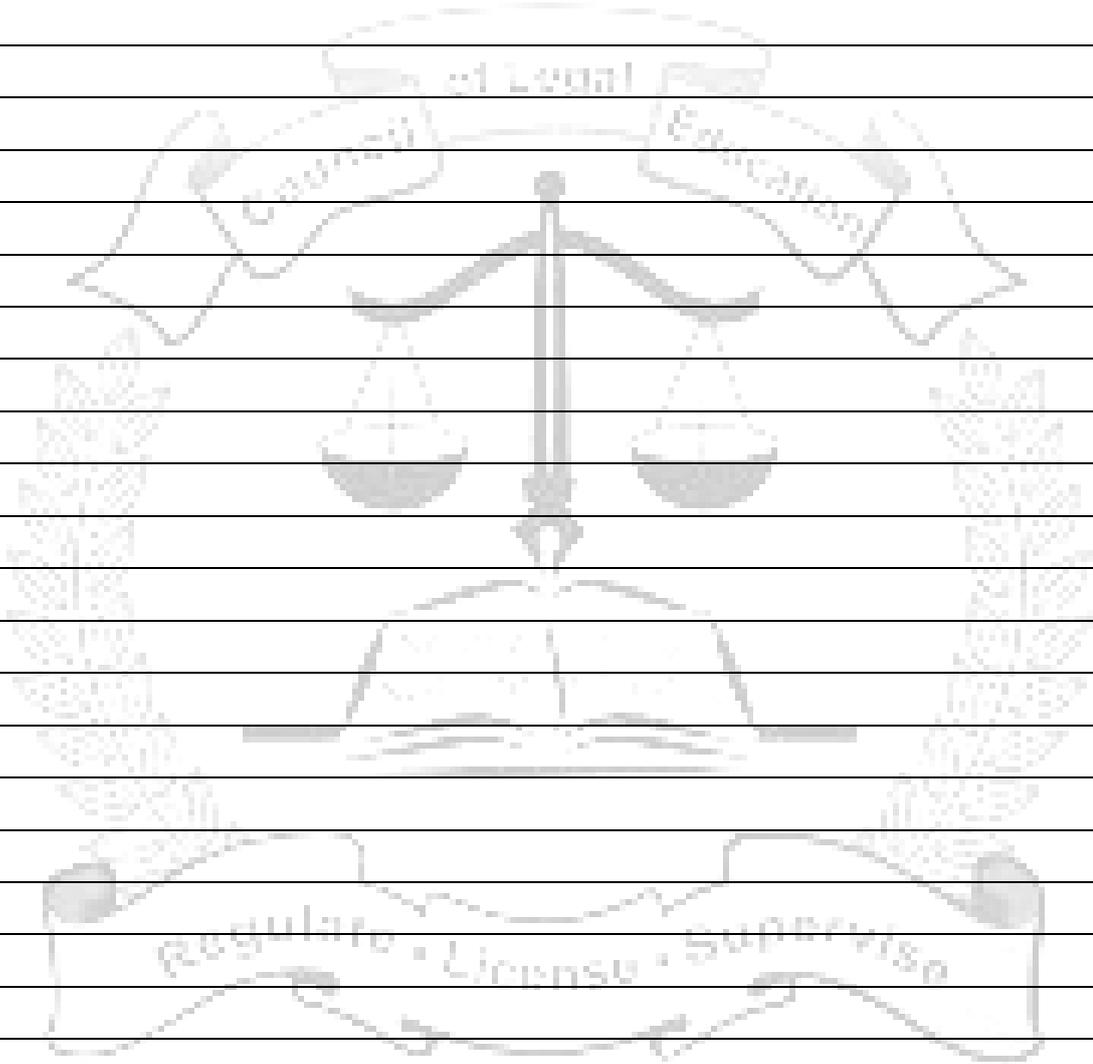
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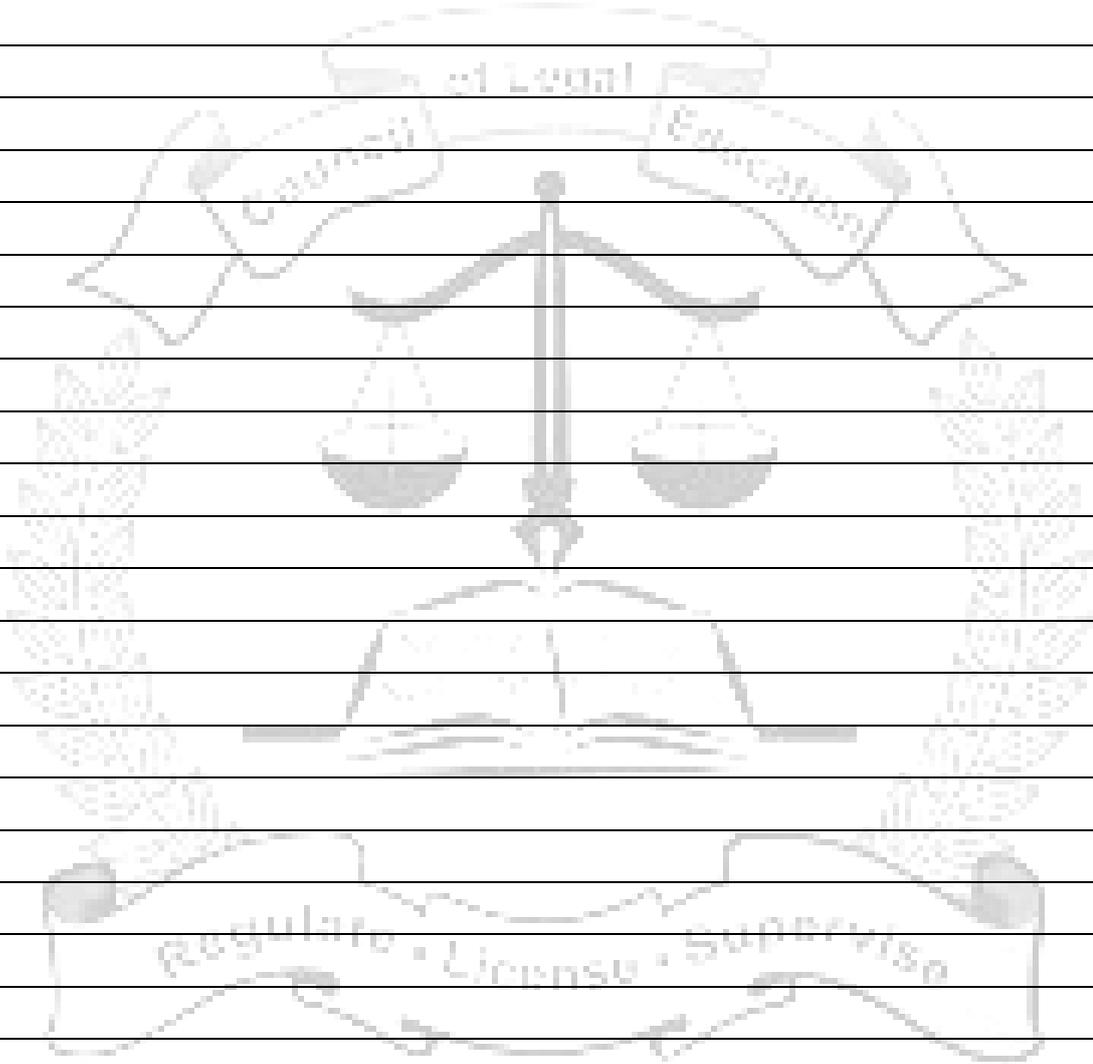
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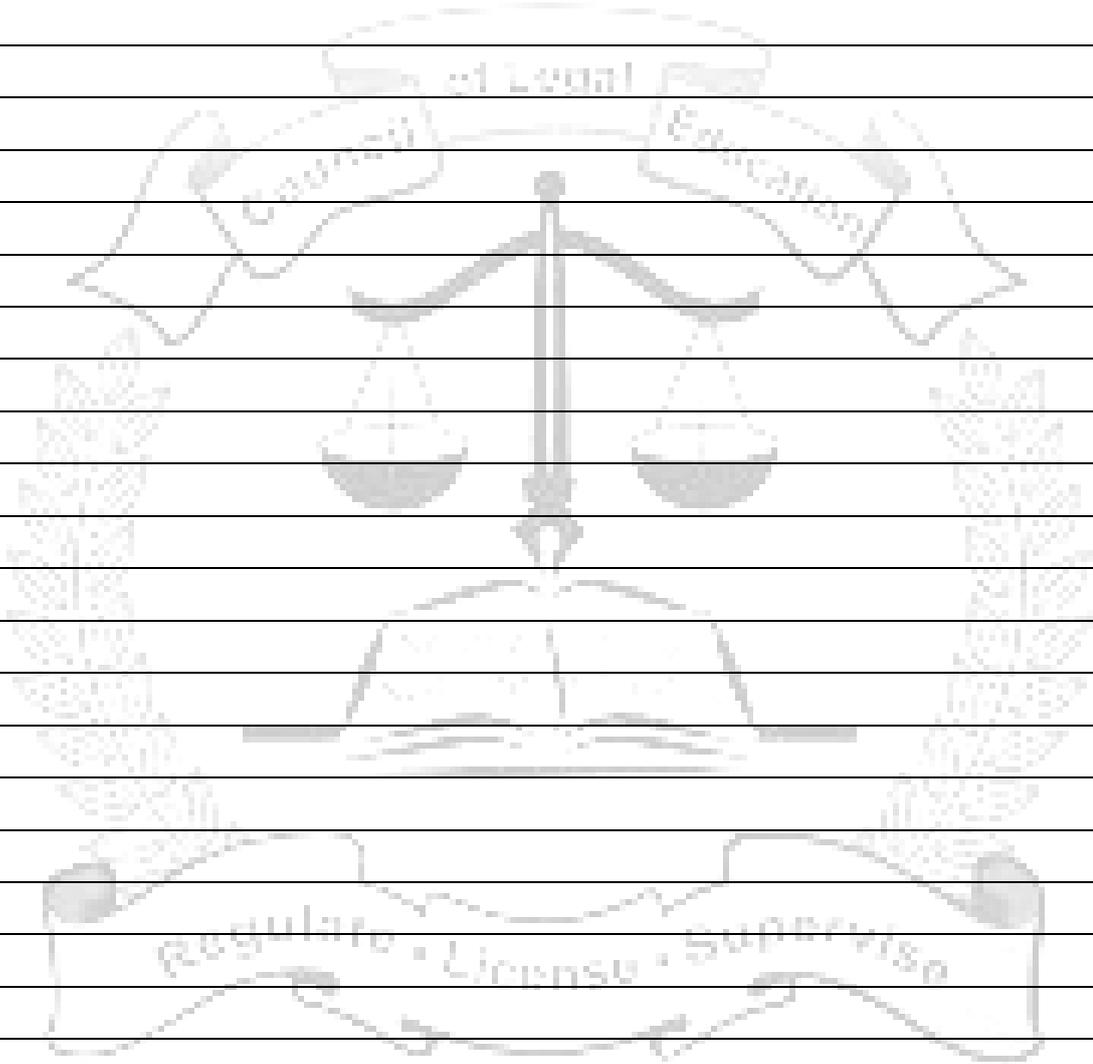
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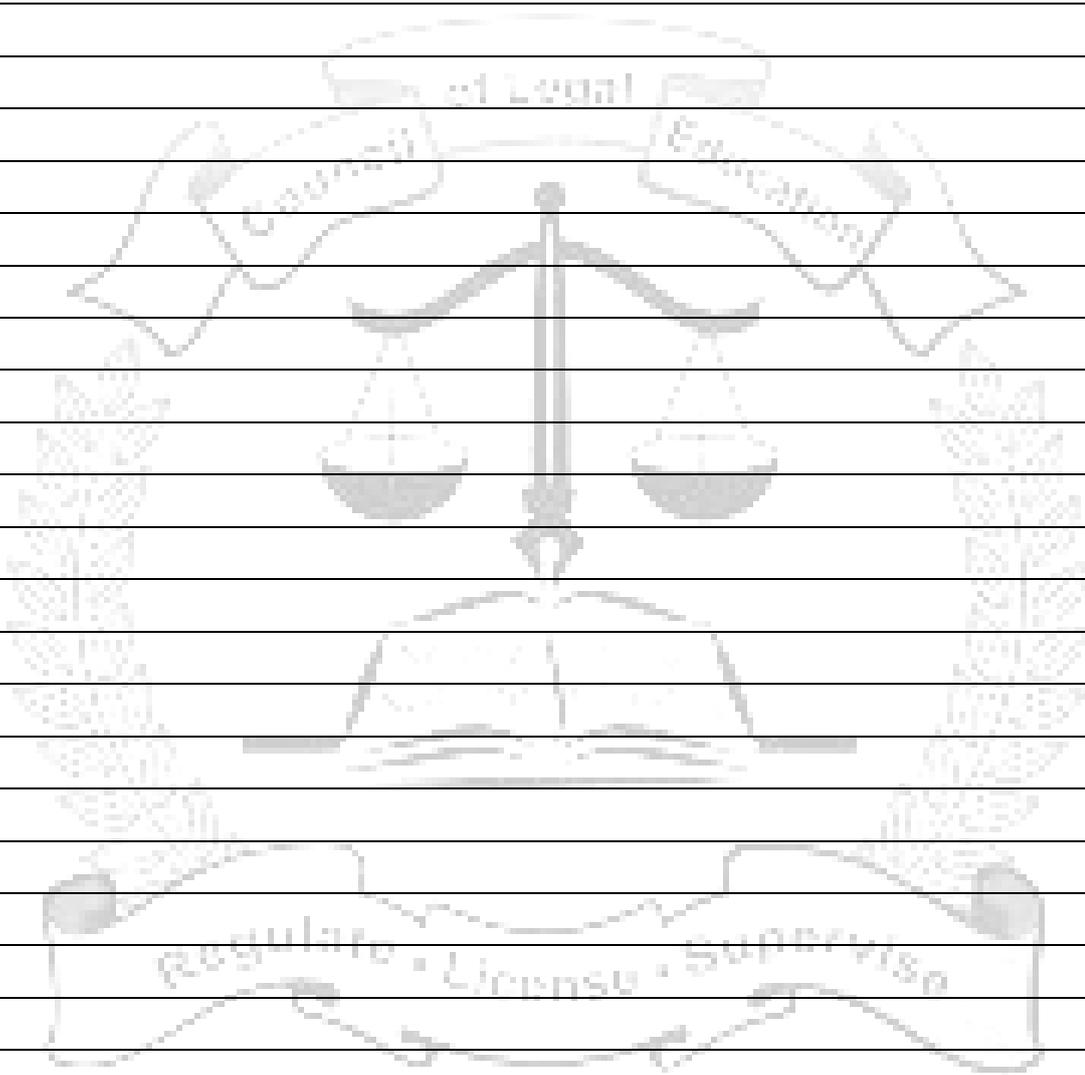
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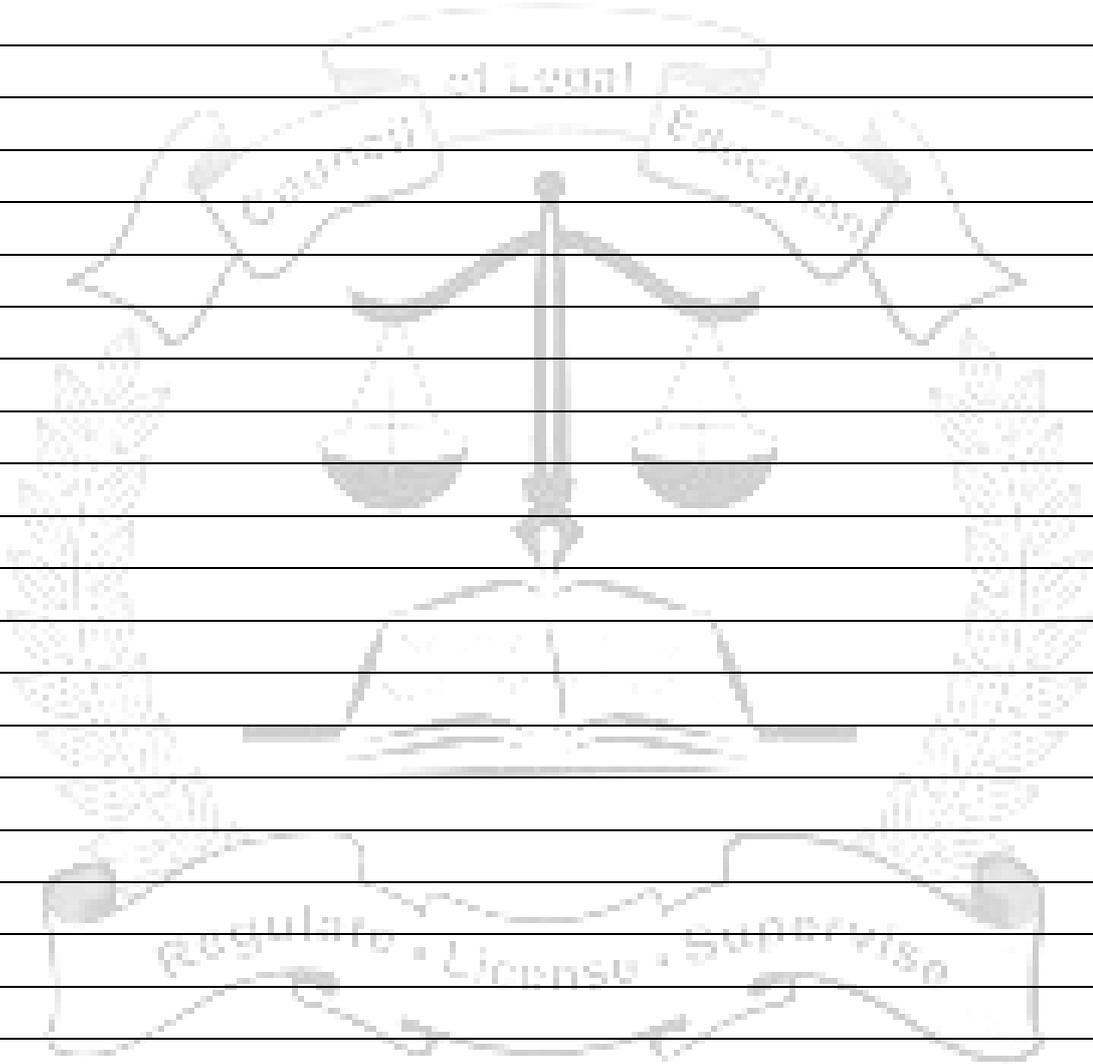
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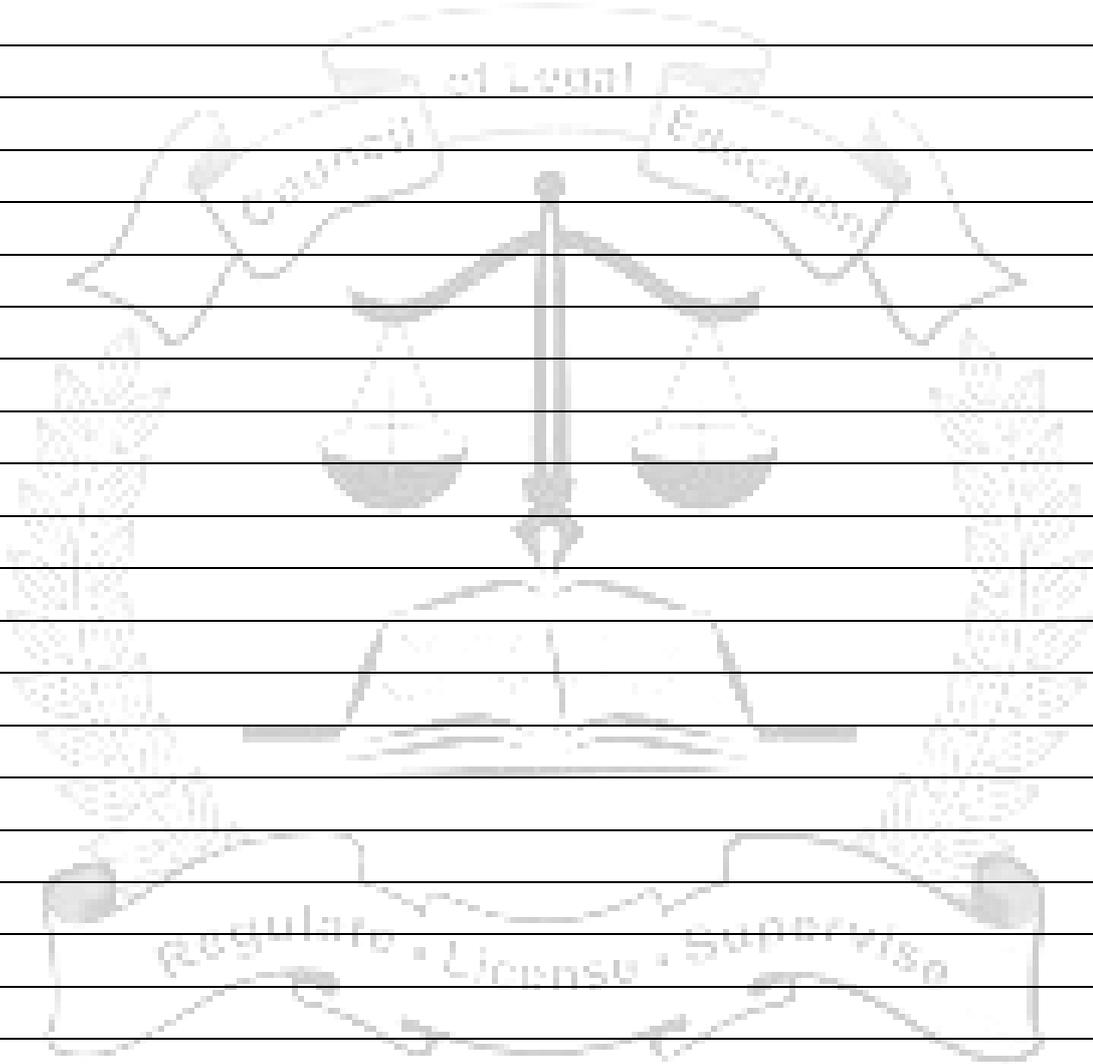
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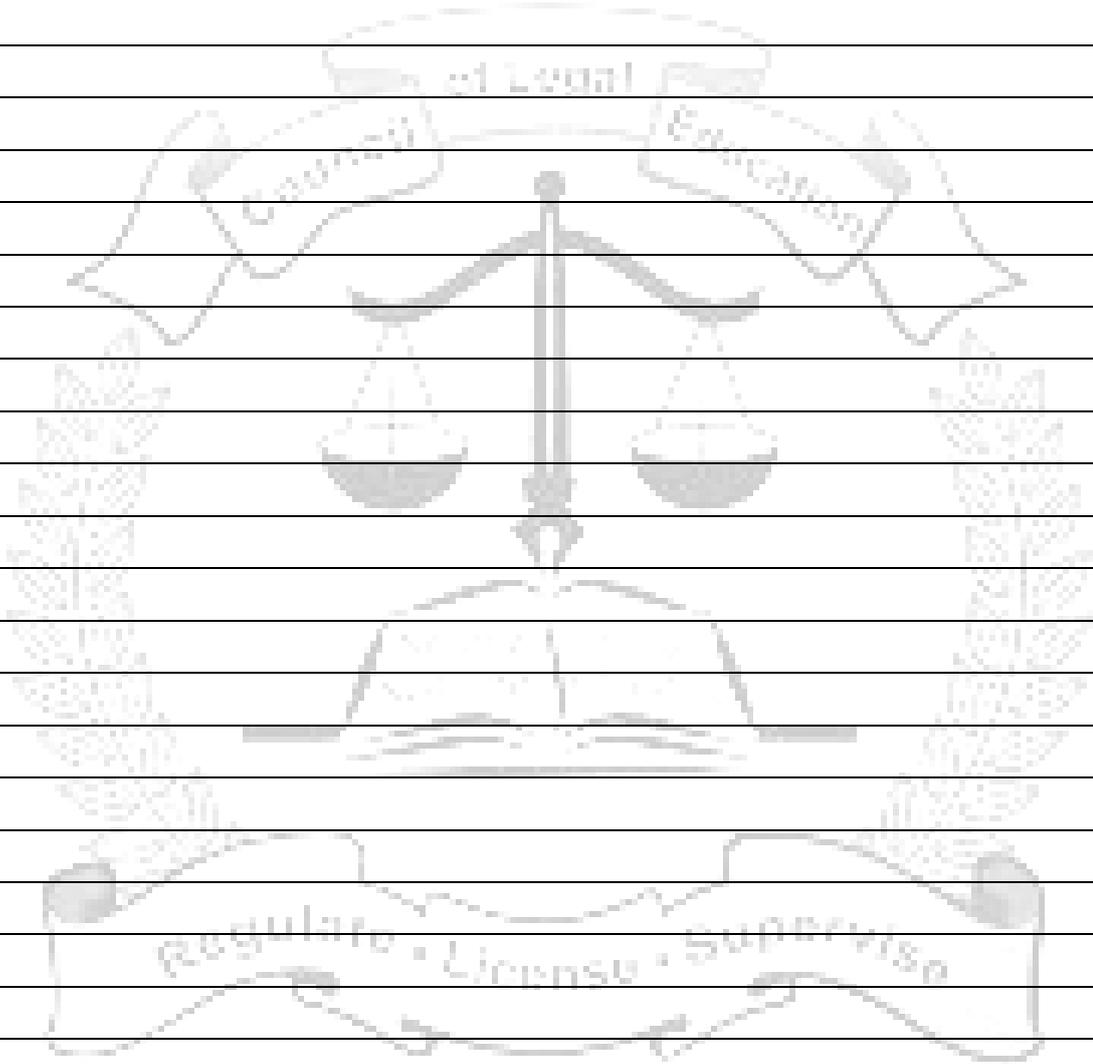
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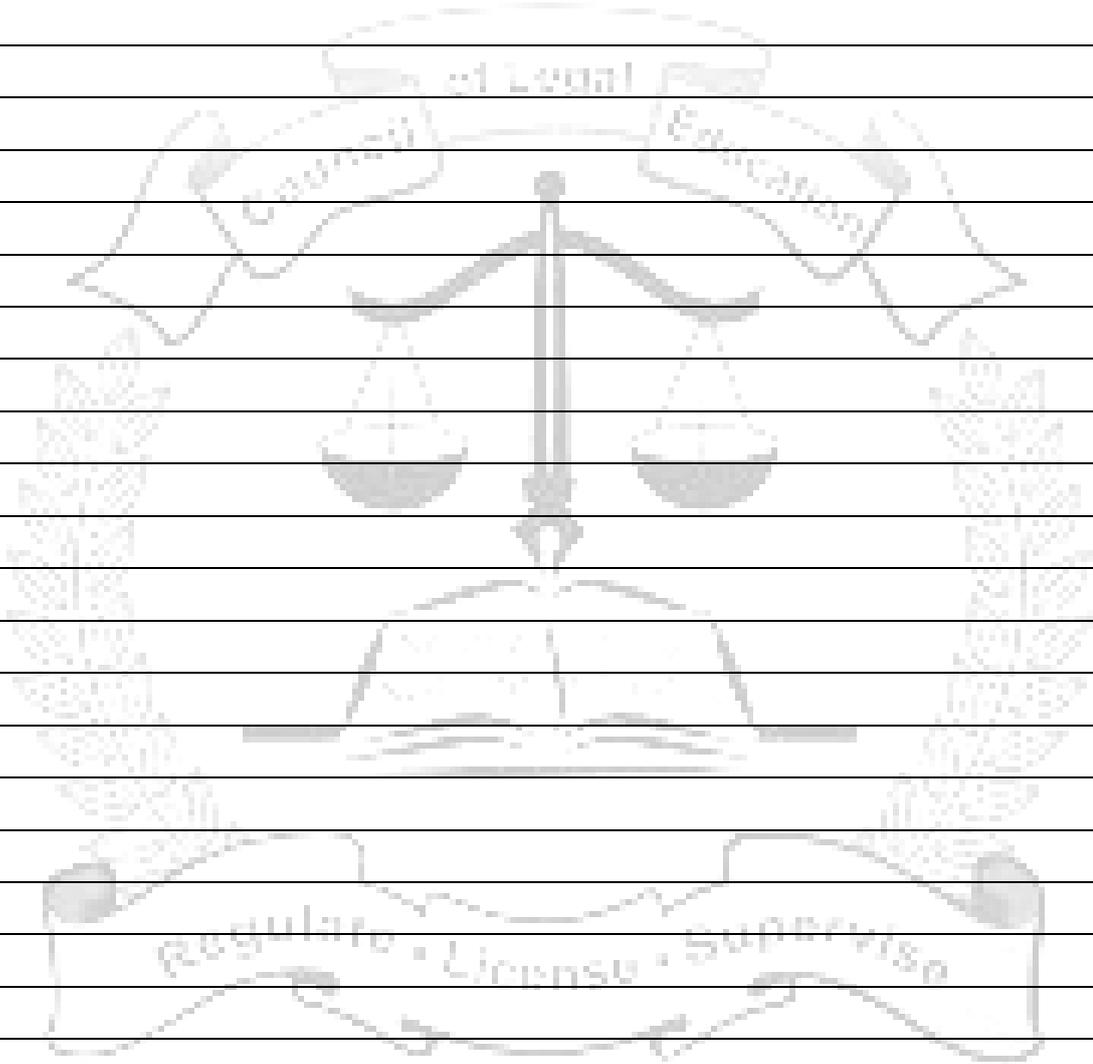
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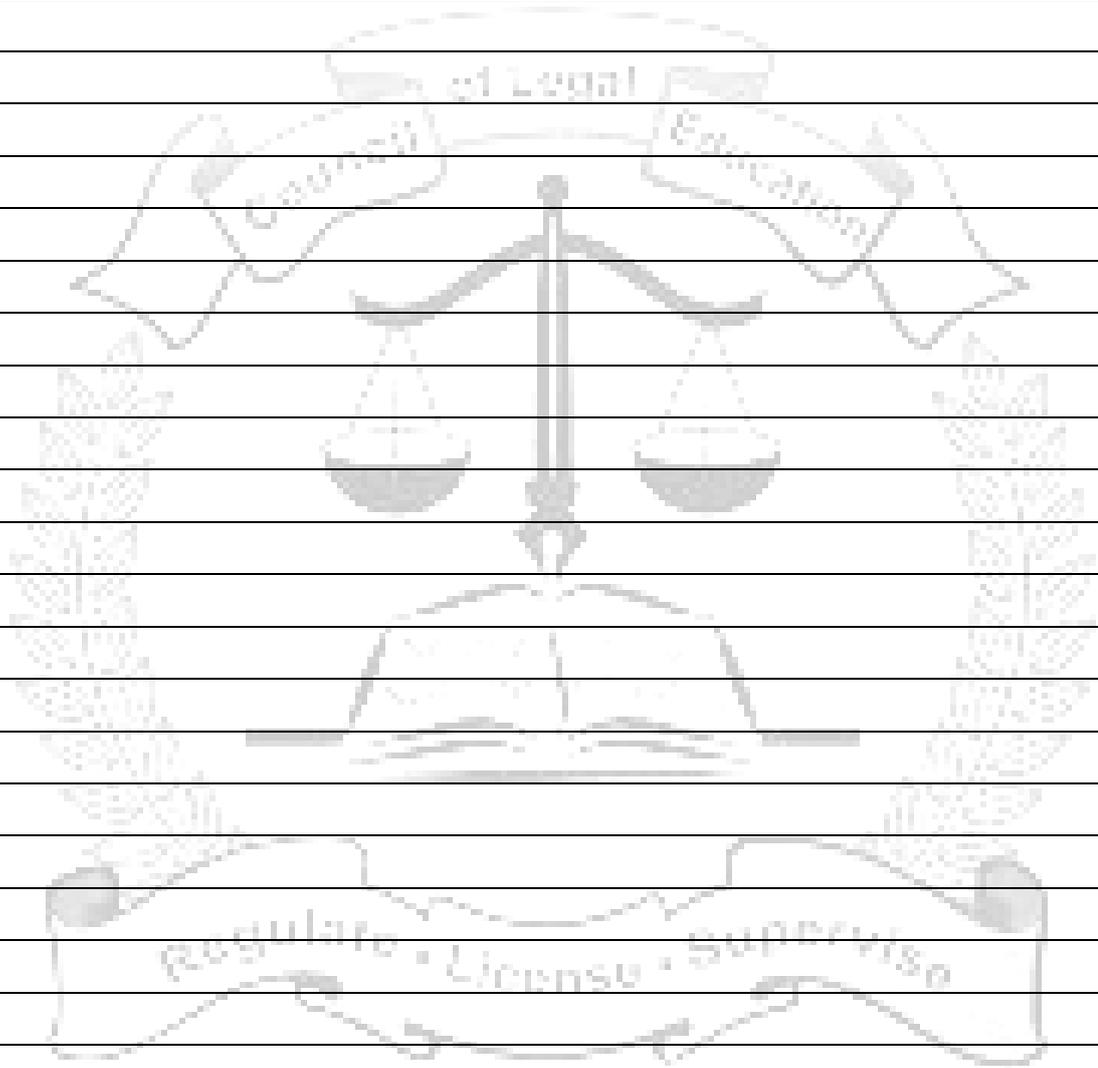
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