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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 ☐

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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2.								
3.								
4.								
5.								
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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.

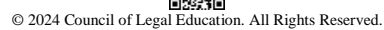
Upon the demise of Kim, a will was discovered. In that will, Kim had given, to each of his 3 wives, monetary gifts of varying amounts, and he had provided that the wives would be entitled to occupy the residences they occupied during his lifetime, for the rest of their lives, together with the motor-vehicles 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)

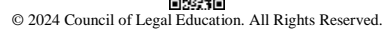
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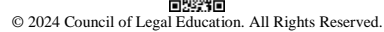
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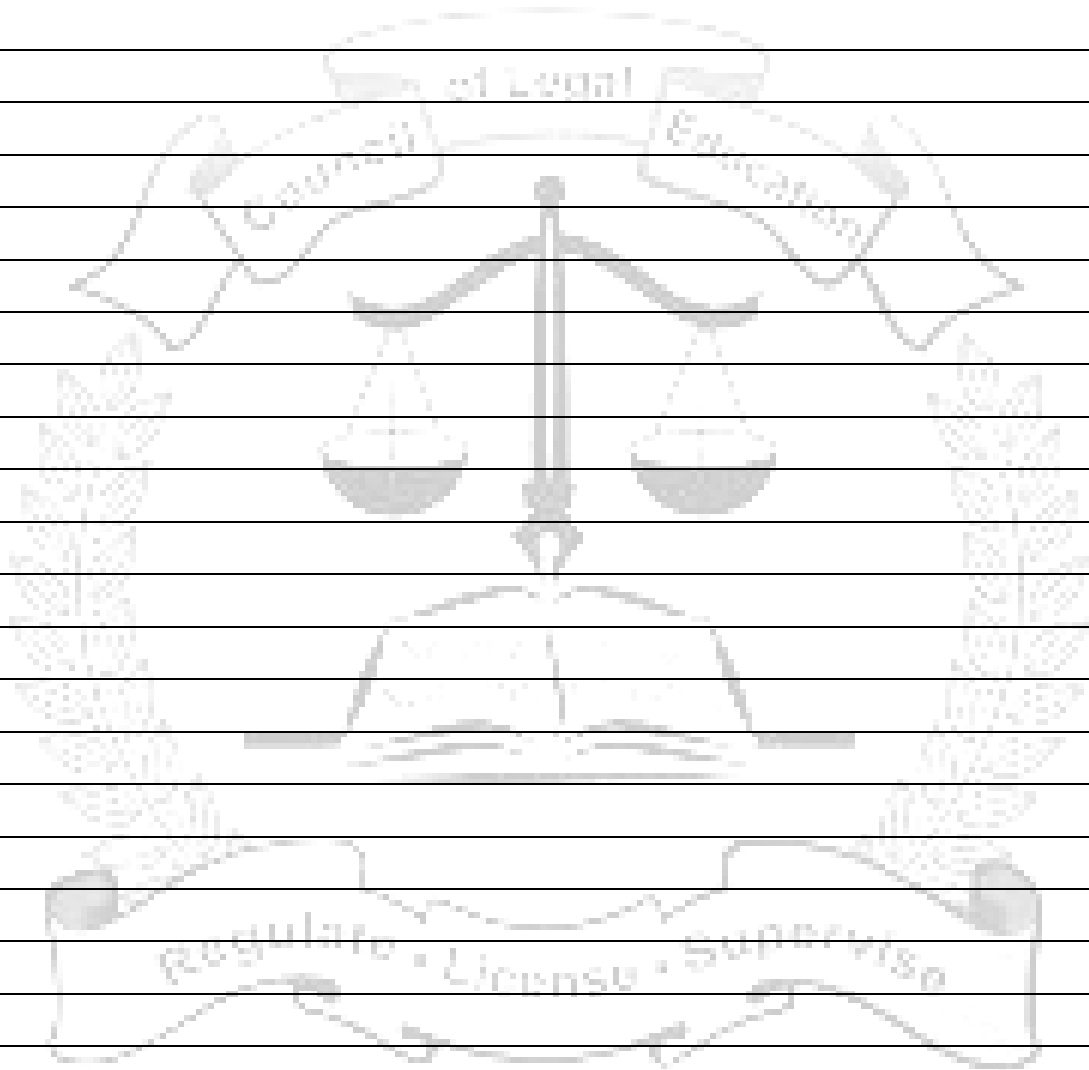
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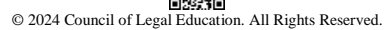
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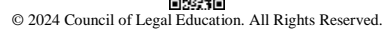
QUESTION TWO

Wakili Mkarimu is a high-flying Nairobi lawyer whose practice has thrived so much so that he has become the envy of most of his peers since their admission to the Bar. Sometime on 24th August 2024, Mkarimu was test-driving his new Rolls Royce car between Nakuru and Kericho. Unfortunately, he was involved in a fatal accident at the infamous Sachangwan black spot. There is no evidence that the deceased left a will. Meanwhile, it also emerged that his farm produce comprising of tomatoes and other perishables were wasting away even as some tenants in his rental apartments also refused to pay their rent. Meanwhile, the Law Society of Kenya has reportedly appointed one Mr. James Stephen, Advocate, and instructed him to take over and oversee all the matters over which Mkarimu had instructions to act. Mr. Stephen has moved into the late Mkarimu’s chambers and even carted away all the files and their related documents for matters that were being handled by the deceased. Mrs. Mkarimu, feeling so lost and bewildered by the sudden turn of events, has come to you for advice.

- a) Explain to Mrs. Mkarimu the process that needs to be followed in order to rescue the deceased’s estate and stop it from wasting away. (5 marks)
- b) Evaluate the legality of the Law Society of Kenya’s appointment of James Stephen to take over Mkarimu’s matters. (5 marks)

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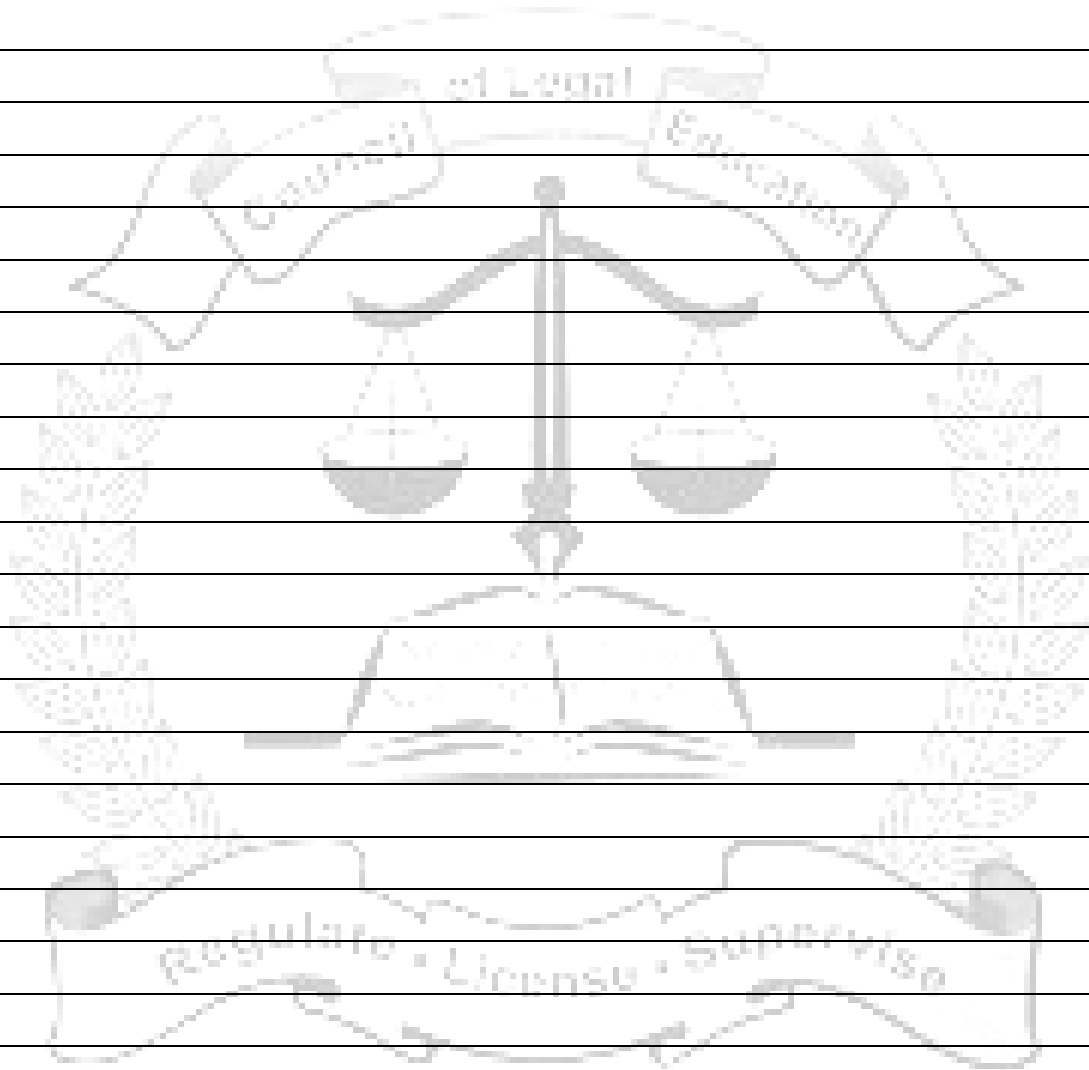
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QUESTION THREE

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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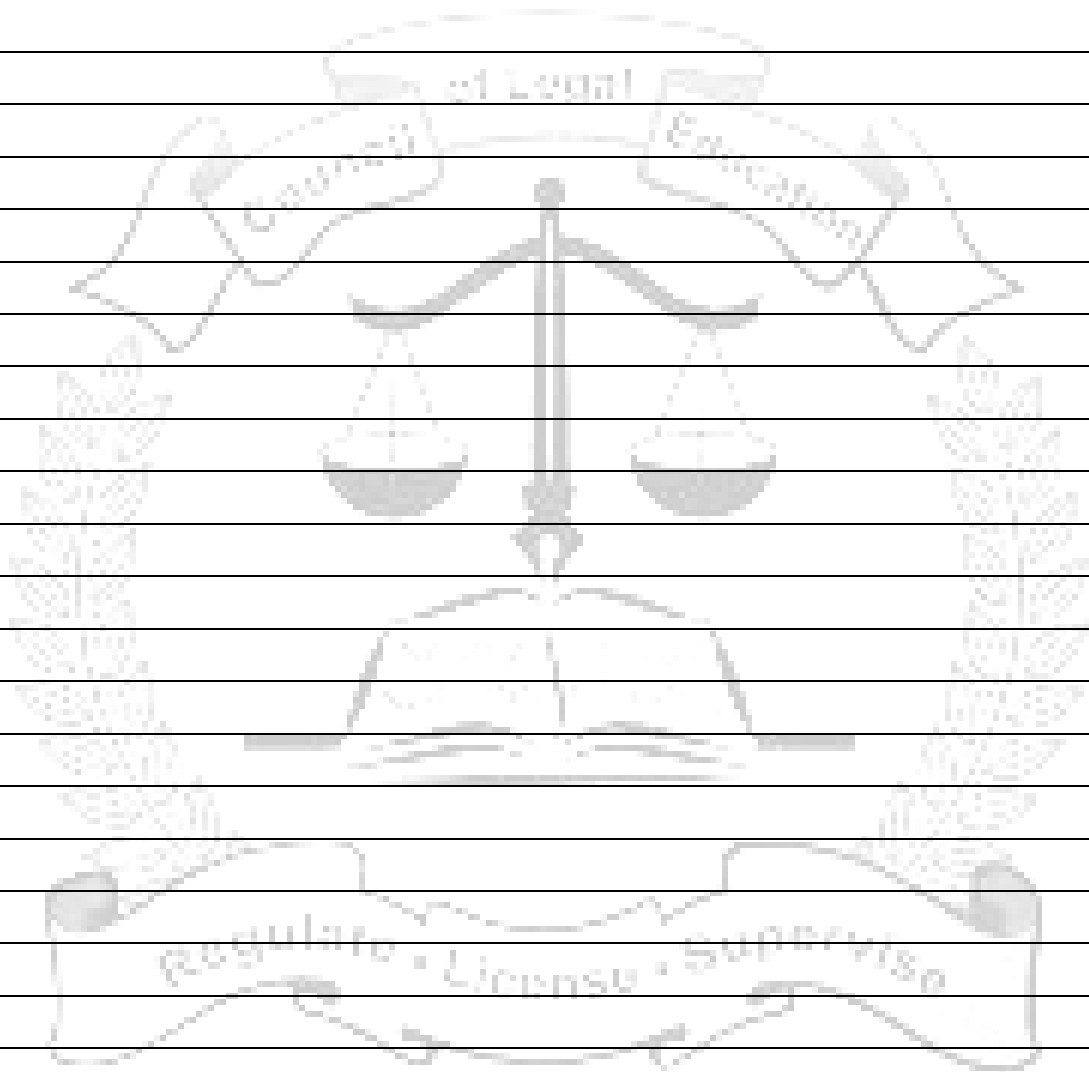
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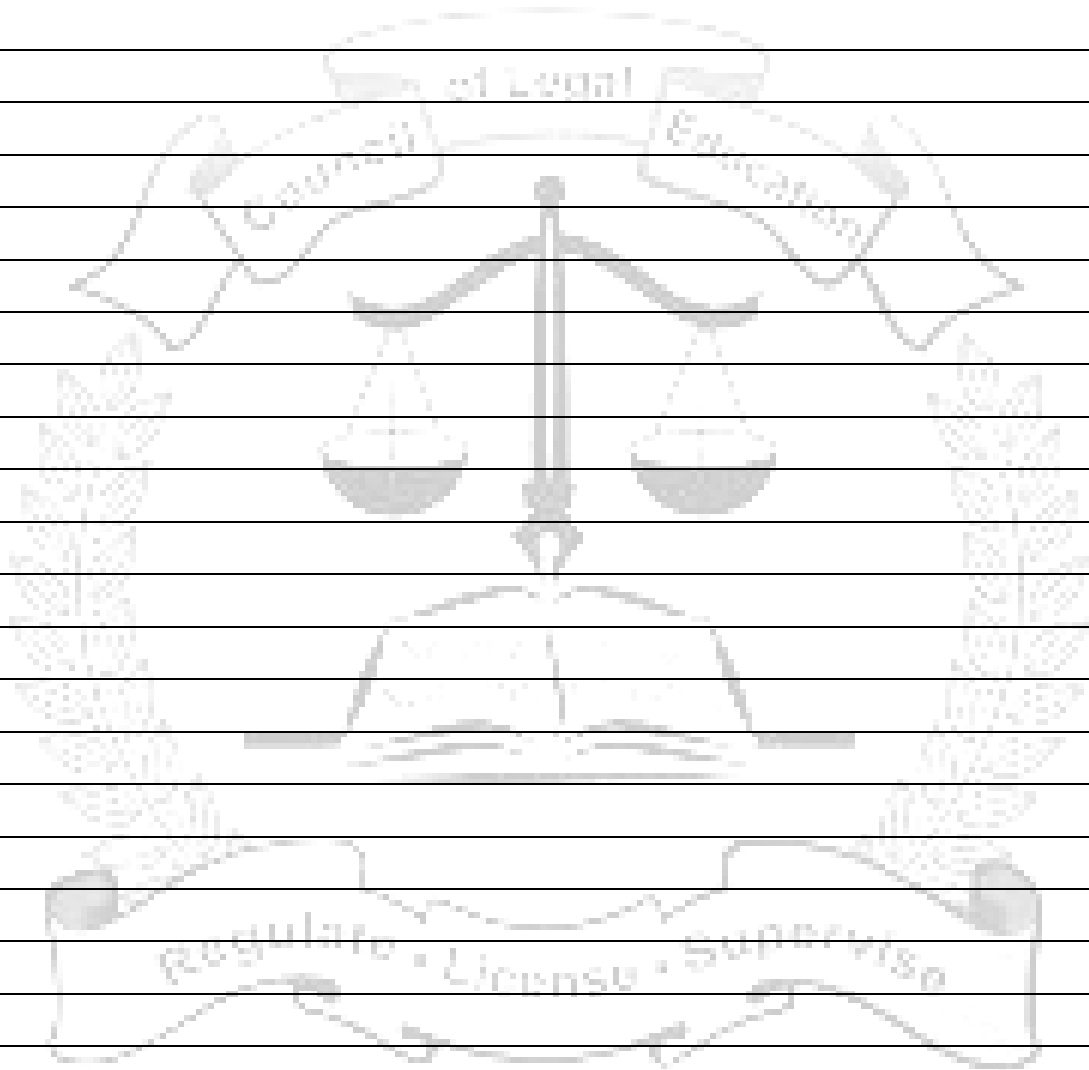
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QUESTION FOUR

Katrina is a resident of the United Kingdom (UK) where she lives with her husband Mark. They have three children John, James, and Paul who live in Kenya. Katrina falls ill and dies in a hospital in the UK. She died intestate. They own several movable assets in the UK and several other movable assets in Kenya. Mark applies for a grant of probate in the UK and their children have no objection to the same. They, however, desire that their father accounts for the manner that he administers the estate. Their mother's estate also comprises of immovable assets including two parcels of land known as Mukoma Block 2 in Nairobi, which is registered jointly in the name of Katrina and her sister Mary, and Mukoma Block 3 registered as a tenancy in common again in the name of the deceased and her sister Mary.

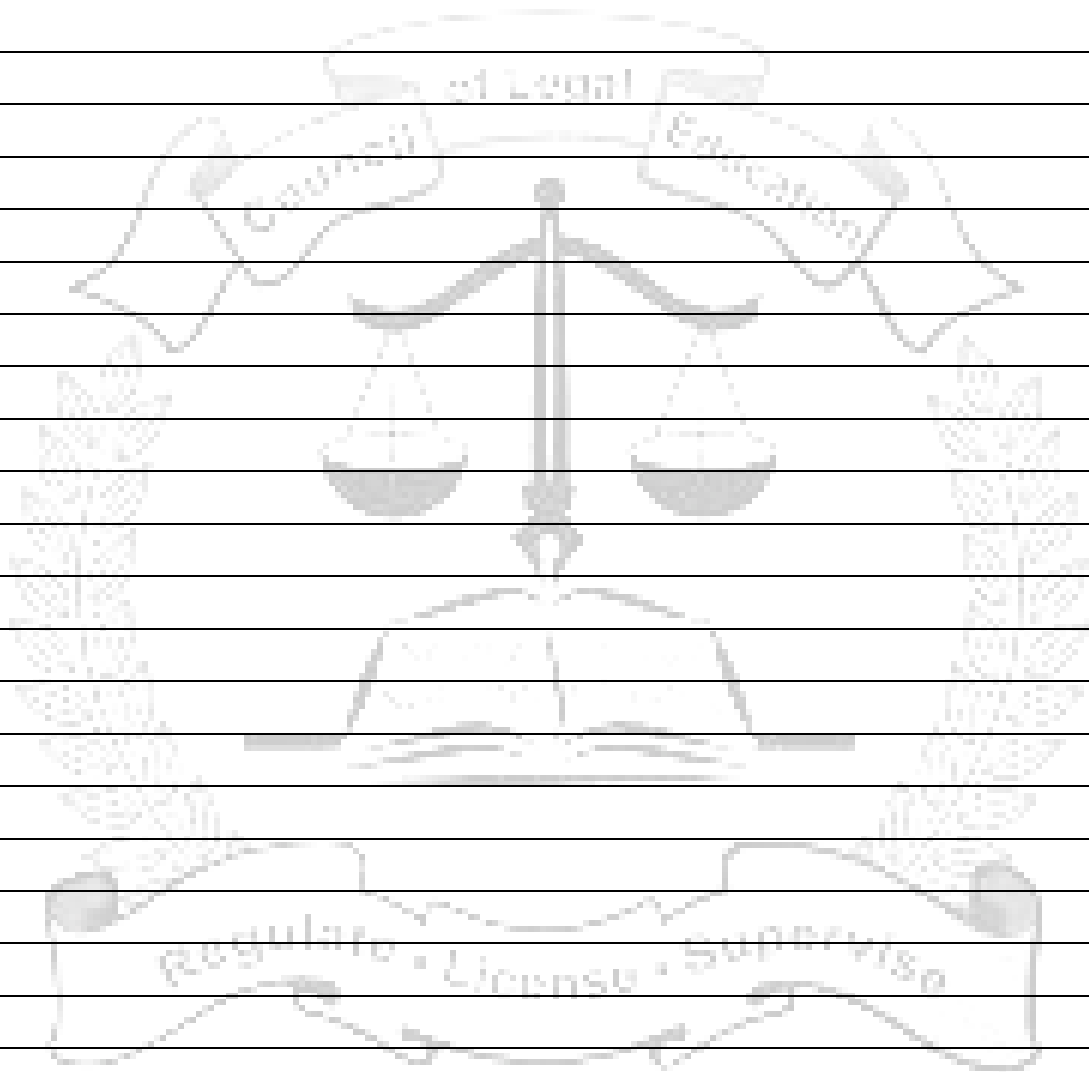
- a. Advise Mark who has sought your guidance about the estates claim on
 - i. Mukoma Block 2. (2 Marks)
 - ii. Mukoma Block 3. (2 Marks)
- b. Mark has also sought your advice on the sealing of the Commonwealth grant by the High Court at Nairobi. Discuss at least three (3) issues that the High Court in Nairobi will consider before sealing the Grant obtained in UK. (6 marks)

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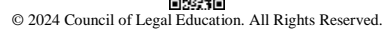
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QUESTION FIVE

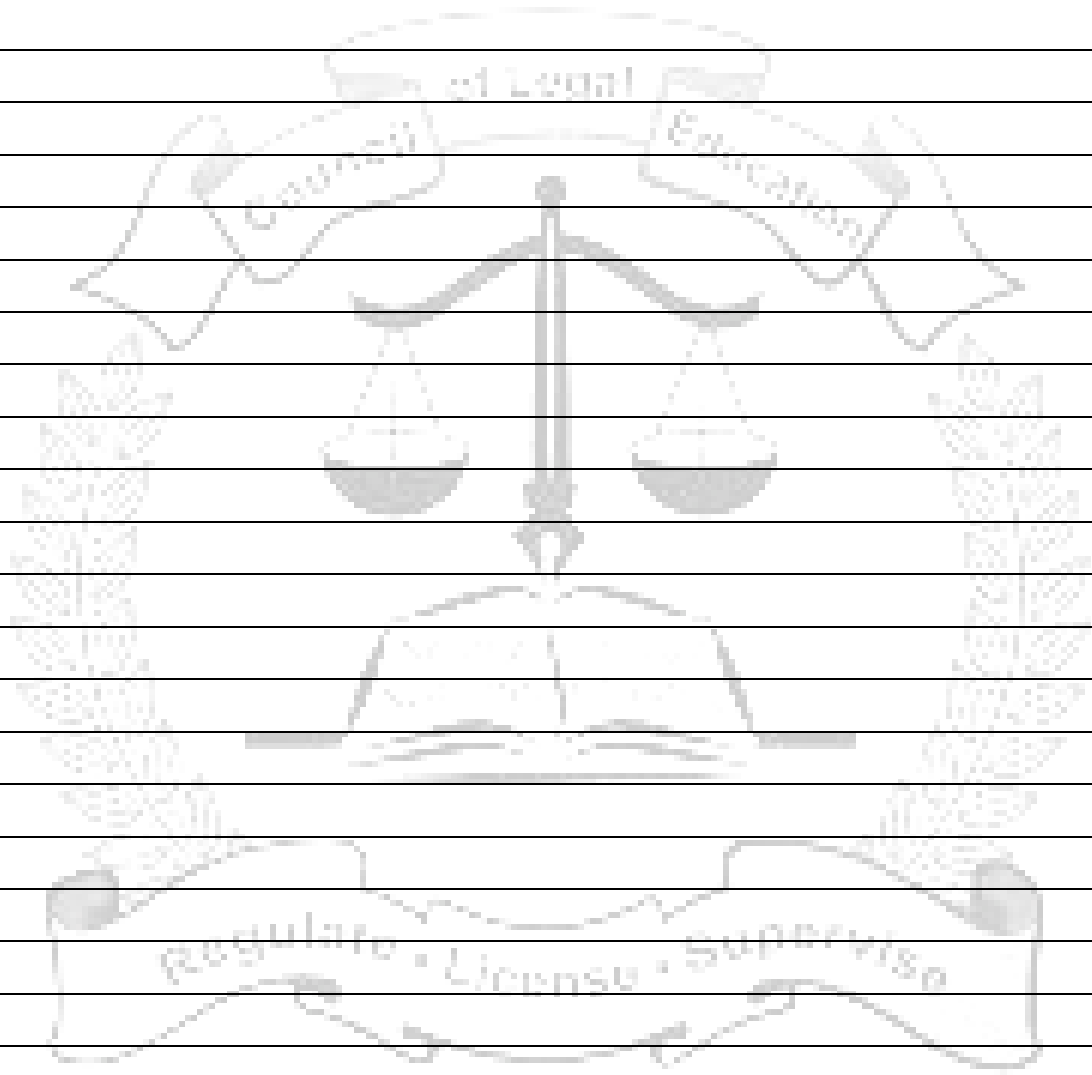
Mr. Bwana Harusi and Ms. Mwenye Heri, were two inseparable college lovebirds who were both in campus between 1996 and 2000 at the University of Lords. Upon graduation, the two moved in and started living together as husband and wife in 2002. The two were later blessed with three children, namely, Petra, Janice and Jude who were born in 2002, 2005 and 2008, respectively. In 2009, Harusi and Heri had their union formalized under the Wapaguvu customary law after the requisite dowry was paid. Sometimes on 14th September 2011, the two had their union solemnized at the Mount Sinai Church of God. Meanwhile, unknown to Ms. Heri, Mr. Harusi had, on 15th September 2010, started living together with one Ms. Solai, a former employee with whom he reportedly had a baby boy, named Ryan, who was born on 10th January 2013. However, the two always carried themselves out as a couple within the town where they lived. This relationship was kept so secretive that Ms. Heri and her children never got to know about it. One evening on 31st December 2013, as Mr. Harusi took a stroll across the family's well-manicured home lawn to bid the old year bye, he suddenly collapsed and became unconscious. He was pronounced dead upon being rushed to hospital. Solai feels very frustrated owing to the fact that no one has made efforts to take out letters of administration. She has sought your advice in regards to the way forward considering that Ryan's chances of proceeding with his education now hangs in the balance.

- a) Relying on the relevant law and judicial precedents, advise her on how to deal with the failure to take out letters of administration. (6 marks)
- b) Evaluate the legal basis, if any, of Solai's and Ryan's claims to Harusi's estate.

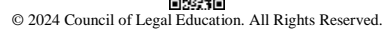
(4 marks)

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QUESTION SIX

Sam, a renowned businessman, in Nairobi died in 2020 leaving behind a widow, Jane, and three children namely Brian, James and Linda. He died intestate. Brian, the first born, was born to Sam out of a previous relationship with his first wife who is also deceased. All the children are adults save for Linda who is still a minor now aged 12 years.

Jane wants to initiate the process of application for grant of letters of administration and they had met to discuss the issue as a family. There was however a disagreement between Jane and Brian who have fallen out because Jane insisted that some of the assets of the deceased in the name of the deceased belong to her as she contributed to their acquisition and should not form part of the estate.

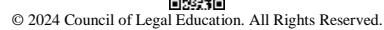
Additionally, Brian who also runs some of his fathers' businesses wants some of the liabilities of the deceased paid out of the estate, which Jane is opposed to. As a result, Brian has even moved out of the home and rented an apartment. Jane has approached you with a view to initiate the process of filing for the grant of letters of administration.

- a) Advise Jane on the process of applying for grant. (4 Marks)
- b) Explain the role of consents and whether Brian is competent to issue the same in this case. (2 Marks)
- c) After a few months, it has come to the attention of Brian that a grant has been issued to Jane who has not only left out some assets but has also misspelt others. All the creditors have not been disclosed. Advise on the potential grounds for revocation of the grant once issued. (4 marks)

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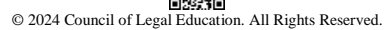
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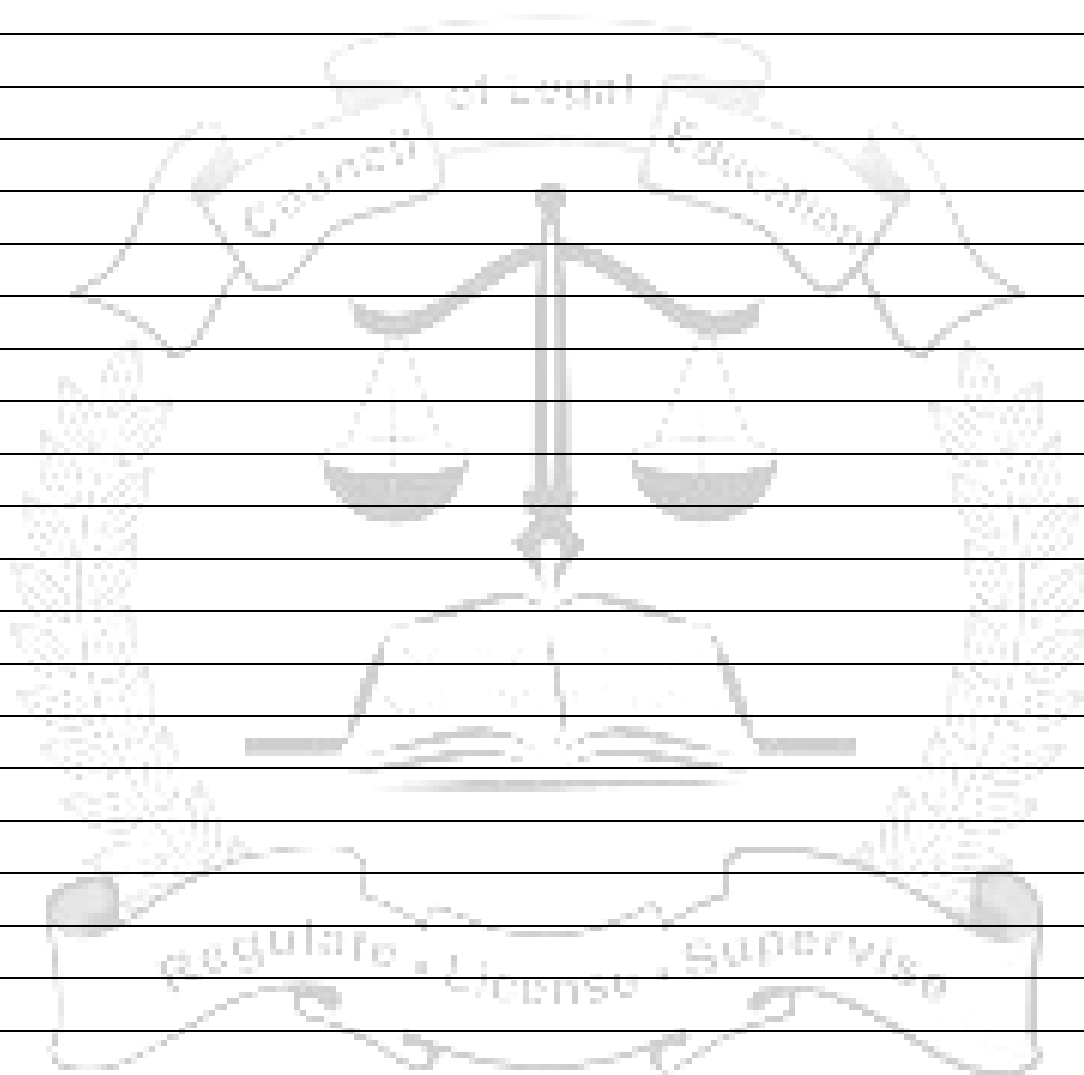
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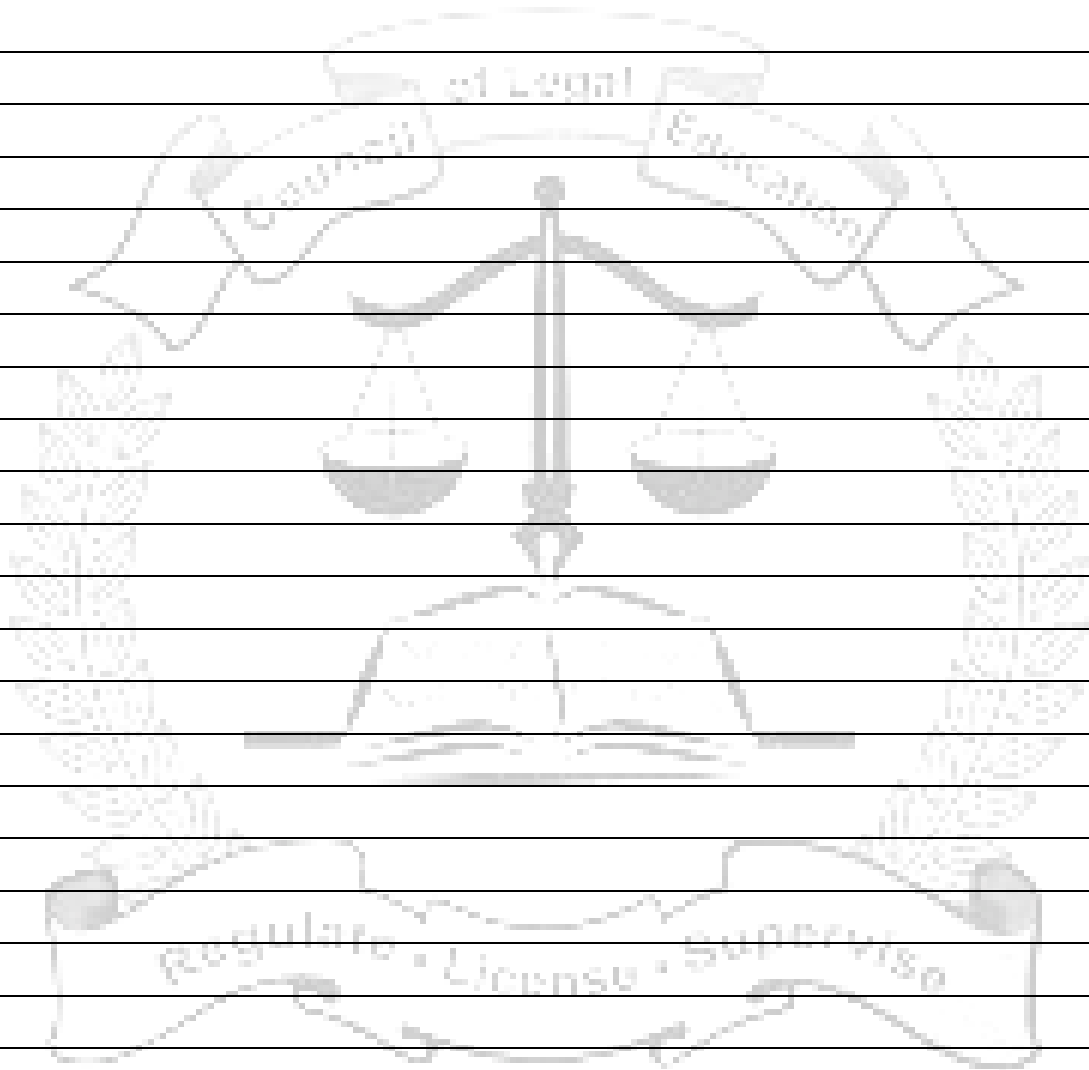
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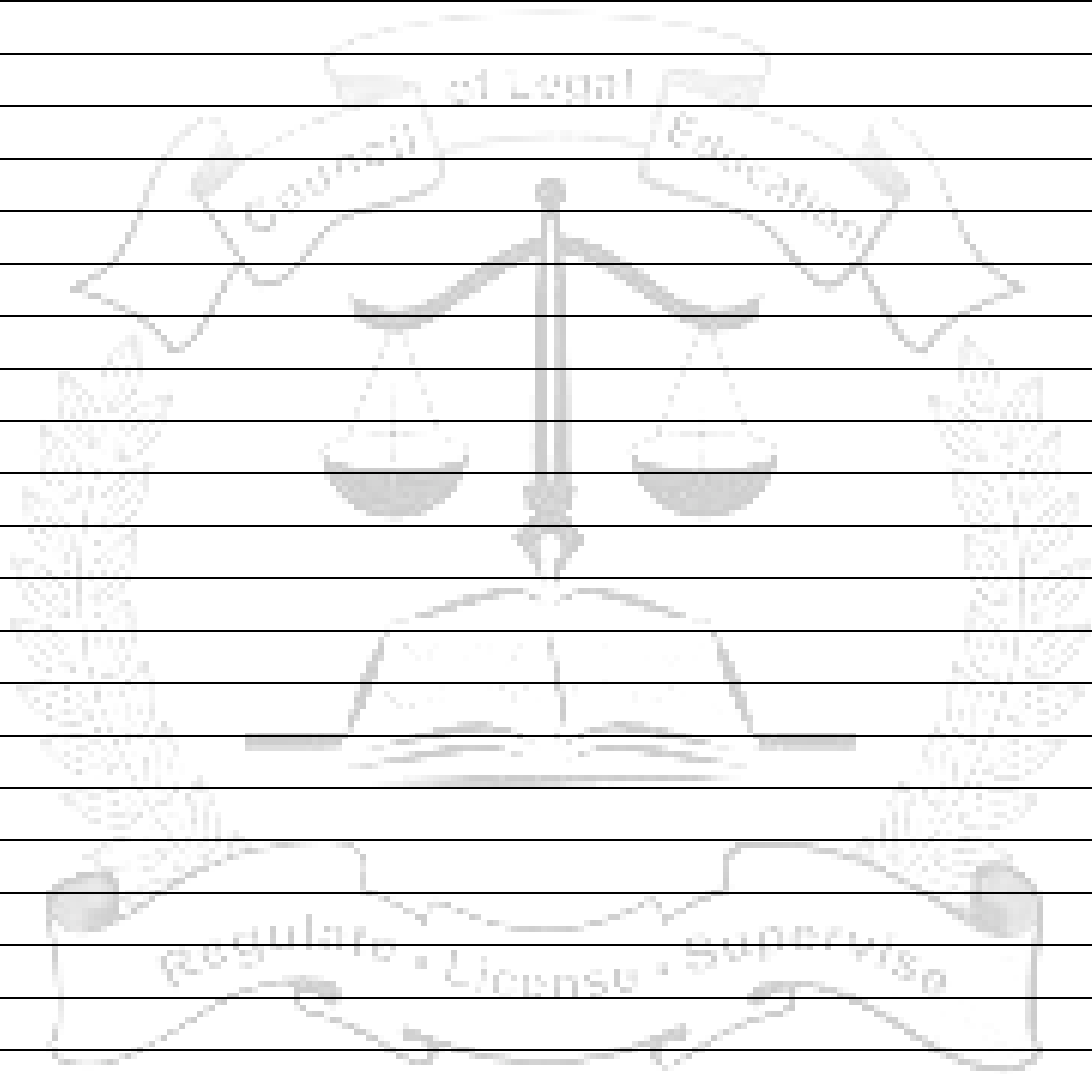
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