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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

JKUAT

ATP100: CIVIL LITIGATION

Examination Series: April 2025

Date: 10th April 2025

Time: 09:00AM-12:00PM

Duration: 3 hours

Instructions to Candidates:

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

FOR EXAMINER'S USE ONLY

Question Number	Examiner		Internal Moderator		External Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials	Mark	Initials
1.								
2.								
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QUESTION ONE

On 12th August 2024, Ruba Kay, the director of Hurry Enterprises Limited came to the Law Firm of Jeyz Advocates, where you serve as an associate, to seek legal advice. He came with Summons to Enter Appearance served on the company on 11th August 2024. He also had a Plaint which had been filed at Nyeri High Court. The suit was filed by Mnyeri Boda, a resident of Chaka, Nyeri County, through the firm of Wakili Law Advocates. The company had been named as a Defendant in the suit. A perusal of the Plaint discloses the following facts:

- i. On 5th March 2024 Mnyeri Boda entered into a Sale Agreement with Hurry Enterprises Limited whereby Mnyeri Boda agreed to sell his 10 acres parcel of land to Hurry Enterprises Limited for a sum of Kshs. 10,000,000/=.
- ii. As set out in the Sale Agreement, Hurry Enterprises Limited would pay a deposit of Kshs. 2,000,000/= upon execution of the Sale Agreement and the balance of the purchase price within 90 days.
- iii. Mnyeri Boda would hand over vacant possession of the land to Hurry Enterprises Limited upon receipt of the full purchase price.

In the suit, Mnyeri Boda claims that Upon execution of the Sale Agreement Hurry Enterprises Limited paid the deposit as agreed. He further averred that 90 days have since lapsed but Hurry Enterprises Limited has failed to pay the balance of the purchase price. He therefore seeks specific performance and payment of the balance of the purchase price with interest from the date of execution of the sale agreement.

Upon taking instructions from Ruba Kay, the following facts have come to light;

- i. Soon after execution of the Sale Agreement, between Mnyeri Boda and Hurry Enterprises Limited, Mnyeri Boda entered into another sale agreement with Zaba Limited who offered to purchase the same parcel of land at Kshs. 13,000,000/=.
- ii. Zaba Limited subsequently issued a demand letter to Hurry Enterprises Limited warning them against proceeding with the sale with Mnyeri Boda because upon paying a deposit of Kshs 5,000,000/=, they were granted vacant possession, and immediately commenced construction of high-end apartments.
- iii. Hurry Enterprises Limited had visited the land and confirmed that Zaba Limited had indeed taken possession of the suit property.
- iv. Upon writing to Mnyeri Boda seeking explanation regarding the turn of events, Mnyeri Boda purported to cancel the sale against Zaba Limited and quickly filed the current suit against Hurry Enterprises Limited. Evidently, Mnyeri's intention was to mislead Zaba Limited so that he could receive payment twice over the same suit property.

Hurry Enterprises Limited has instructed the Firm of Jeyz Advocates to file the necessary pleadings in response to the Plaint. The Senior Partner has requested you to handle the matter.

- a) Draft the relevant pleadings on behalf of Hurry Enterprises Limited in response to the suit. (10 Marks)
- b) Apprehensive that the Plaintiff may enter into another Sale Agreement and put the land beyond the reach of Hurry Enterprises Limited by the time the suit is heard and determined.
 - i. Discuss the immediate action that you should take to protect your client's interests. (4 Marks)
 - ii. Discuss the principles that will guide the court in determining your application.



QUESTION TWO

KK LLP obtained judgment against the County Government of Samburu in the sum of Kshs 23,489,000/= arising from services rendered to the County Government of Samburu. The County Government has refused to pay the amount due despite several demands.

KK LLP filed Nairobi Miscellaneous Civil Application No. E234 of 2024 the High Court of Kenya. By a Notice of Motion dated 19th January 2024, KK LLP sought orders that:

- i. A Garnishee Order Nisi against Kusa Commercial Bank ordering that all monies deposited, lying and being held in deposit by the Garnishee respectively to the credit of the County Government of Samburu the Judgment Debtor herein, in Account Number 27585888 be attached to satisfy the decree in the sum of Kshs 23,489,000/= being the amount in respect of which Judgment was entered in favor of KK LLP;
- ii. A Garnishee Order Nisi be issued and the same be served on the Garnishee forthwith;
- iii. the Garnishee do appear before the court to show cause why the garnishee order should not be made absolute and
- iv. that the costs of the application be borne by the Respondent/Judgment Debtor.

In support of the application KK LLP annexed *inter alia* a copy of the ruling on taxation of the advocate client bill of costs and the decree issued upon adoption of the certificate of taxation as a judgement of the court. The grounds upon which the application is premised are on the face of the application.

The file was placed before the judge who declined to grant the order nisi. He directed that the application be served for hearing on a priority basis.

The Garnishee opposed the application on the grounds inter alia that the subject account, which KK LLP sought to Garnishee was not an ordinary account belonging to and operated by the Judgment Debtor but was a revenue account used for the collection of taxes and cannot be attached through Garnishee proceedings. The application is also opposed on the ground that a garnishee order cannot be issued against a County Government.

- a) You are acting for the Garnishee. Draft submissions in opposition of the application. (5 marks)
- b) KK LLP has sought your advice on the best way of recovering the decretal sum. Write a concise legal opinion on the procedural steps to be taken to achieve the required result. (5 Marks)

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QUESTION FOUR

Ann filed a case against Enock at the Chief Magistrate’s Court in Maseno. This Maseno Chief Magistrates Court Civil Case Number E020 of 2023. The subject matter of the suit was an accident for which Ann had claimed general damages for pain and suffering and special damages for medical treatment as well as material damage.

Briefly, Ann was leisurely cycling her 1R Lavarack bicycle valued at Kshs. 800,000 along the Maseno - Luanda road when Enock lost control of his Toyota Corolla motor vehicle Registration number KBB 001C, thereby hitting Ann’s bicycle from the back. The bicycle was extensively damaged and Ann suffered soft tissue injuries and had been treated at Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu. The cost of the treatment was Kshs. 200,000.

Since there were no outlets in Kenya for repairing 1R Lavarack bicycles and the cost of sending the damaged bicycle to the manufacturers overseas to repair it far outweighed the cost of buying a new bicycle, Ann claimed in her suit Kshs. 800,000, the value of the bicycle. At the hearing, Ann adduced the import documents for the bicycle as proof of ownership and the cost of the bicycle. She also adduced treatment notes, medical reports and receipts from the hospital as proof of treatment and the attendant costs.

Judgment was delivered on 15/10/2024 over the Teams platform. The magistrate Mr. Mnyweso, Senior Resident Magistrate, informed the parties that he would read only the summary of the judgment. The award stated:

“judgment is therefore entered for the Plaintiff against the Defendant as follows: general damages for pain and suffering, Kshs. 600,000; special damages, Kshs. 200,000; total award Kshs. 800,000”. Parties were told that they would be able to download the full judgment from the portal.

Later, when Ann downloaded the judgment from the judiciary e-filing portal, she noticed that although the magistrate had properly captured the evidence she adduced on the purchase and value of the bicycle, the final award did not provide for damages for the loss of the bicycle.

Ann has opted to bring this fact to the attention of the magistrate for rectification of this mistake by way of a formal application. She approaches you to draft the necessary application that she intends to file in person for the above purposes.

Draft the necessary application together with the affidavit in support. (10 marks)

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QUESTION FIVE

Cheap Networks Limited recently entered appearance and filed a Statement of Defence in a matter pitting it against Hanifa Mwendapole as the plaintiff. The plaintiff had sought Kshs. 85,000,000/= against the defendant. The pleadings have closed. The crux of the matter is alleged fraudulent and illegal use of Hanifa's interactive voice response (also known as *voice over recording*) for advertising purposes by the defendant. Cheap Networks Limited contends that the *voice over* in question was procured by Creative Paradise Limited on their behalf as their agents. They thus faulted Hanifa for instituting the suit against them instead of suing Creative Paradise Limited, which they believe ought to be the correct defendant in the proceedings. Hanifa, on the other hand, maintains that Cheap Networks Limited is the correct defendant, because they are the beneficiaries of the *voice over*. She relies on the common law principle that an agent to a disclosed principal may not be sued, noting the relationship between the defendant and Creative Paradise Limited.

Cheap Networks Limited had originally intended to plead privity of contract, but noted that it was not in contention that they were using the *voice over* in their business and, hence that would be a weak defence. However, there is credibility in their assertion that Creative Paradise Limited was negligent in procuring the *voice over*. They noted that Creative Paradise Limited did not seek Hanifa's consent to use the *voice over*, but fraudulently misrepresented to her that the *voice over* would only be used as a test run for not more than one week. Therefore, they intend to make a claim against Creative Paradise Limited in the suit.

You are the Head of Legal Department of Cheap Networks Limited in their litigation section. You feel that a mere Statement of Defence will not protect the interest of the Company and that there is need to bring Creative Paradise Limited on board.

- a) Advise Cheap Networks Limited on the appropriate steps you will take to make a claim against Creative Paradise Limited in the suit and the grounds thereto. (6 Marks)
- b) Hanifa has changed her mind and now wants to include Creative Paradise Limited as a party. Advise Hanifa on the procedure to be followed. (4 Marks)

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QUESTION SIX

You have been representing Mla Chake in Civil Suit Number 23 of 2011 against Mali Yake at Mlima High Court. Your client was the Plaintiff. In the plaint before the court, the following reliefs were set out:

- i. *That this Honorable Court be pleased to declare that the Plaintiff is the lawful owner of the suit property, land parcel number 61 /2 situated at Matuu.*
- ii. *That this Honorable Court do issue a mandatory injunction directing the Defendant to vacate the suit property forthwith.*
- iii. *That the Defendant be ordered to pay the Plaintiff general damages for loss of user of the suit property.*
- iv. *That the costs of the suit be borne by the Defendant.*

After successful prosecution of the case, judgment was entered on 3rd February 2025 in favor of your client. The matter was heard before Hon. K. Hakim. The judgment partly reads as follows:

Having heard the parties and upon perusal of all the evidence produced in court, this court finds that the Plaintiff has proved her case on a balance of probability. The Plaintiff's case is allowed in the following terms:

- I. *A declaration is hereby issued that the plaintiff is the lawful owner of the suit property, land parcel number 61 /2 situated at Matuu.*
- II. *A mandatory injunction is hereby issued requiring the Defendant to vacate the suit property within 30 days.*
- III. *The Defendant shall pay the Plaintiff damages for loss of user hereby assessed at Kenya Shillings Two Million. The damages should be paid within 30 days.*
- IV. *The Defendant shall pay the Plaintiff the costs of the suit.*

Three months later, the Defendant has not vacated the suit property and he has not paid damages and costs as ordered by the court.

- a) Explain the immediate steps that you will take before commencement of execution proceedings. (2 Marks)
- b) Draft an appropriate decree from the above judgement. (5 Marks)
- c) Explain situations where a Notice to Show Cause must issue before a decree is executed. (3 Marks)

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