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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

ATP101: CRIMINAL LITIGATION

Examination Series: April 2025

Date: 14th April 2025

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	
	Mark	Initials	Mark	Initials	Mark	Initials	Mark	Initials
1.								
2.								
3.								
4.								
5.								
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Total Marks								



QUESTION ONE

On the night of 1st August 2023, the Mochache family were enjoying their evening watching television as they usually would. Suddenly at around 9pm, the lights went off and when they peeped outside their neighbors' lights were still on. Mr. Mochache then called out to his security guard, but there was no response. In a split second, three men entered the house through the main door which was closed but not locked. The men wore balaclavas on their faces and quickly ordered everyone to lie face down. He could not see clearly but observed that one of the intruders was holding a pistol in his hand.

They ransacked the entire house picking jewelry, portable electronic devices and money from each room and its occupants. Mrs. Mochache's gold chain and wedding ring were yanked from her. One of the intruders, holding a gun kept watch, threatening that he would kill anyone who refused to cooperate. Once in a while, he would slap them. The other two were not as violent, but were packing items in bags.

Mr. Mochache's house has an alarm for a distress call with the switch located in his bedroom and another one in the security guard's room. He was unable to press the one in his room and was unsure why the security guard had not pressed his.

Thirty minutes later, the harrowing ordeal was over. The security guard was found bound and gagged on the floor. When the gag was removed, the security guard stated that he had been accosted by the same men before they entered the house. Mr. Mochache observed initially that there did not appear to be any breakage on the door or interference with the fence. He wondered how the men were able to gain access to the house. He quickly mobilized everyone and went to report the incident at the police station. The initial statements were recorded. They were asked to go home and report back the following day to record further statements.

The following day, Mr. Mochache woke to find the security guard nowhere in sight and could not be reached through his mobile phone. At 11:00hrs on the same day, the police called Mr. Mochache to tell him that they had arrested two individuals who they believed were responsible for the break in the night before. Also at the station was a young man, Tom, who has been found with an expensive looking phone, trying to peddle it on the streets. When he arrived at the station, he Mr. Mochache immediately recognized the phone as his Samsung Galaxy Fold 5. When probed, Tom stated that he was a broker and often received random, usually small electronic devices from his 'boys' with instructions to sell them in the black market.

Sometime in September the security guard was traced in Namanga. He said that the events of 1st August traumatized him and caused him to run away to seek solitude and had decided to cut ties with everyone. That was why he had stopped using his previous phone number and had acquired a new phone number. From the Mpesa records of the number, for three days, there were consecutive deposits of Kshs. 20,000 with no further transactions. The sender was subsequently identified as Alex, Tom's brother.

(a) The police compiled their investigation file and took it to the ODPP on 3rd August 2023 for review and charging. The ODPP was satisfied and gave the approval to charge.

Draft the charge(s).

(8 marks)

(b) Explain how the DPP would treat the security guard after his arrest, indicating if and how this could affect the case already filed in court against Tom and the two individuals. Support your answer with statutory provisions.

(6 marks)

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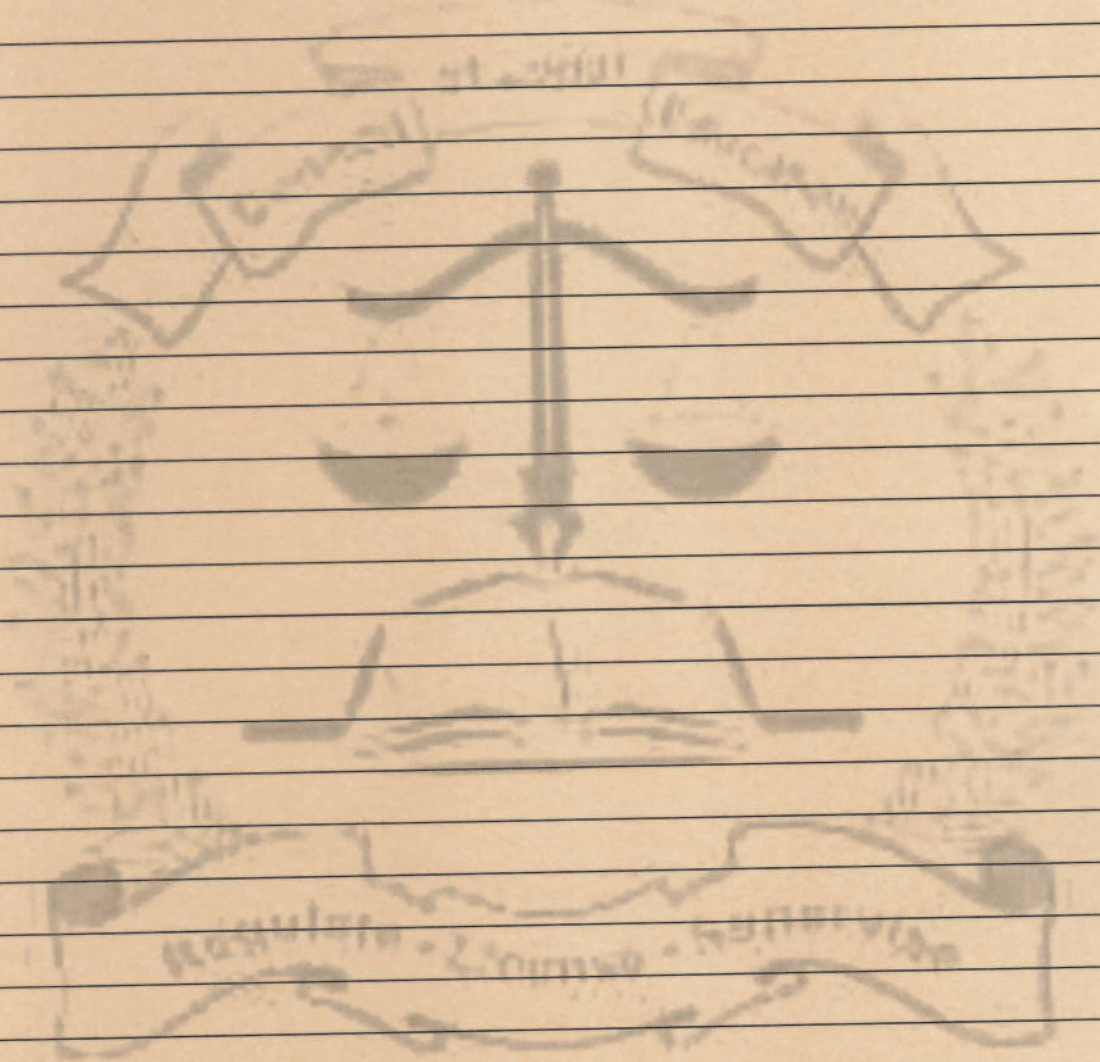


(c) The security guard has instructed you to act for him and pursue negotiations with the ODPP geared towards arriving at a plea agreement. How would you execute these instructions in the best interest of your client? (6 marks)

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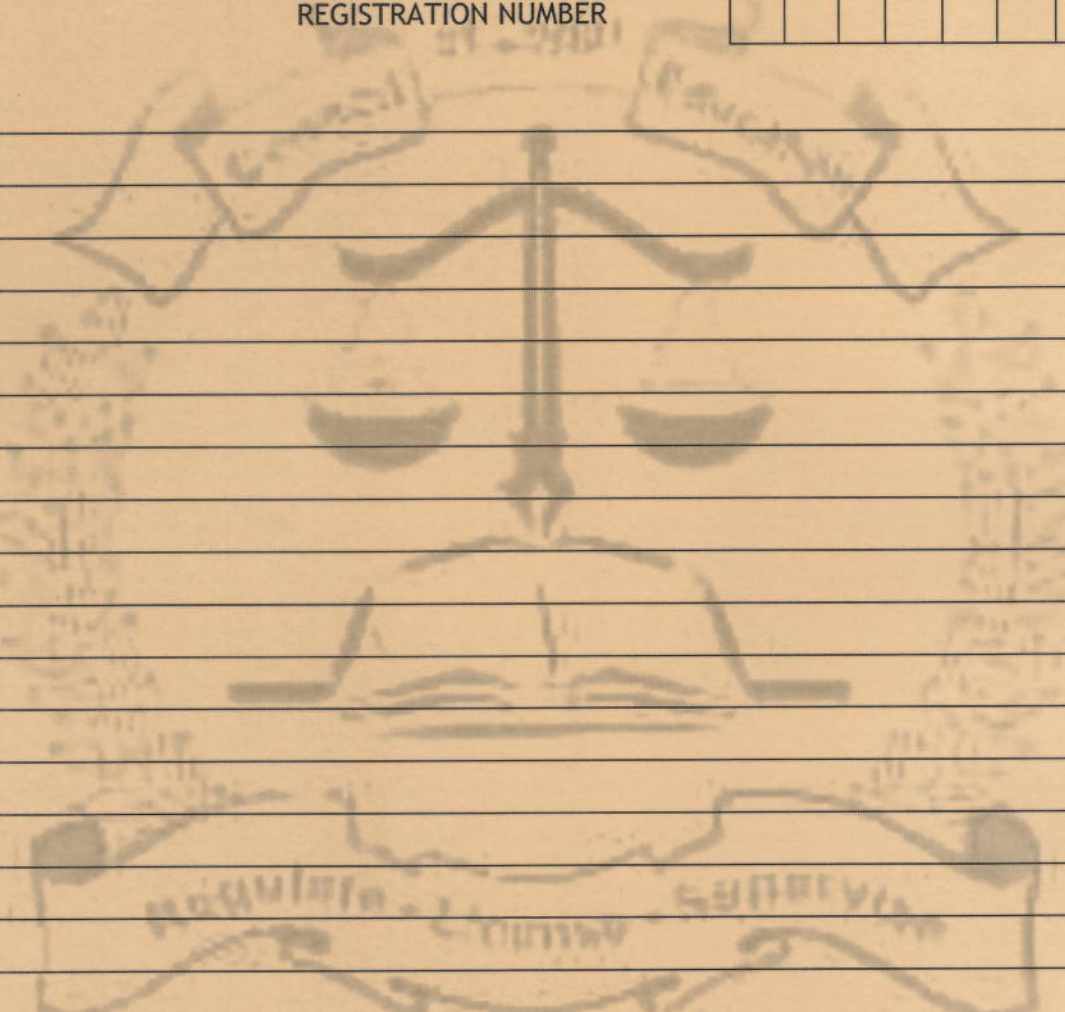
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QUESTION THREE

The Supreme Court of Kenya has settled the law on victim participation in criminal trials by setting the guiding principles to assist trial courts, when considering applications by victims or their legal representatives to participate in such trials, the manner, and extent of such participation.

- (a) Citing at least 2 legal provision and or case law, explain two (2) rights of victims during a criminal trial process in Kenya. (4 marks)
- (b) Explain at least 3 of the guiding principles in considering applications of victims to participate in criminal trials. (6 marks)

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QUESTION FIVE

Upon pleading not guilty to the charge of stealing Kshs. 10,000 by servant contrary to section 281 of the Penal Code, Cap 63 Laws of Kenya before the Chief Magistrate's Court at Milimani, Nyangule was tried and convicted of the said offence.

- (a) With the aid of legal provisions and decided cases, describe factors to consider in determination of the appropriate sentence. (3 marks)
- (b) After consideration of all the relevant factors including in (a) above, Nyangule was sentenced to serve 10 years' imprisonment. Draft the appropriate pleading to challenge the conviction and the sentence. (7 marks)

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