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**EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES**

REGISTRATION NUMBER:

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CENTRE:  Co-operative University  JKUAT  KASNEB  Kenya School of Law

**ATP101: CRIMINAL LITIGATION**

Examination Series: November 2025

Date: 17<sup>th</sup> November 2025

Time: 09:00AM - 12:00PM

Duration: 3 hours

**Instructions to Candidates:**

- a) Enter your registration number and tick the exam Centre 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.
- 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.								
3.								
4.								
5.								
6.								
<b>Total Marks</b>								



## QUESTION ONE

On 4<sup>th</sup> June 2025, following a report by Afande Mkubwa at the Tewa Police Station in Nairobi, officers from the Serious Crimes Unit (SCU) traced and arrested Brian at his home, over 320 kilometers from the capital city. The complaint by Afande Mkubwa, was to the effect that Brian had made a post on his Facebook Account that Afande Mkubwa was incorrigibly corrupt, and that he received loots from bribes collected by traffic police officers across the country. At the time of Afande Mkubwa's complaint, the post had garnered over 100,000 likes, 70,000 comments and had been shared at least 2,000 times.

Upon arrest, the SCU officers transported Brian overnight and booked him at the Tewa Police Station, where PC Mikani and PC Kumwana were the officers on cell sentry duties for the night. It later emerged that on the night of 8<sup>th</sup> June 2025, Chief Inspector (CIP) Ruben, in a bid to please Afande Mkubwa, organized with PC Kumwana to 'teach Brian a lesson of his life for soiling the good name of Afande Mkubwa'. PC Kumwana enlisted the services of three inmates, Kagula, Jama and Labomba, who were in the cell to join him and PC Mikani to discipline Brian. PC Kumwana even smuggled a bottle of Kenya Cane 'Quota' to motivate the inmates in the exercise.

Brian died from the violence meted on him by the officers and the inmates. Investigations by the independent government authority established that he had succumbed on the night 8<sup>th</sup> June 2025 from the physical trauma inflicted upon him.

On the basis of the authority's findings, the Director of Public Prosecutions (DPP) accordingly made the decision to charge CIP Ruben, PC Mikani, PC Kumwana, Kagula, Jama and Labomba for the unlawful killing of Brian. However, Afande Mkubwa was not charged.

Unhappy with the exclusion of Afande Mkubwa from the charges, twenty Petitioners moved to the High Court seeking, inter alia, a mandatory injunction to compel the DPP to also prefer charge against Afande Mkubwa for the death of Brian, arguing that the abduction and subsequent death of Brian was initiated by the unlawful complaint by Afande Mkubwa. In the alternative, the Petitioners have sought leave to file private prosecution against Afande Mkubwa.

- (a) Comment on the question of jurisdiction with respect to the prayer for private prosecution. **(2 marks)**
- (b) Citing relevant legislative provisions and/or case law, explain at least three (3) essential conditions for the grant of leave to undertake private prosecution. **(6 marks)**
- (c) Assuming that leave for private prosecution was granted, and the Petitioners appointed you as their Private Prosecutor, draft the charge against Afande Mkubwa. **(6 marks)**
- (d) Labomba has approached the Office of the Director of Public Prosecutions through his advocates with an offer to become a witness for the State in the case against the rest of his co-accused persons. Explain three (3) essential conditions for the admissibility of the potential plea agreement, noting to cite relevant legislative provisions and or case law. **(6 marks)**



## QUESTION TWO

Ali is a member of a Nairobi-based Men's Group called, "Twaweza". The members tasked him to look for land within Nakuru and its environs that they could buy for speculation and sub-division. Pursuant to these instructions, Ali contacted his friend, Kim, a known land broker to assist him. In due course, Kim was informed by a friend, Dalali, that he had come by a parcel whose owner was seriously looking for a buyer. Dalali told Kim that a shopkeeper called Dukawala had a copy of the land title given to him by the land owner, John Mahangaiko, with the instruction to source for a buyer. This copy was used by Ali to establish the location and ownership of the parcel from the Land Registry. When Kim, Dalali and Ali accompanied by two other members of *Twaweza* visited the parcel, they found onions growing on the farm that Dalali indicated belonged to an unidentified person who had leased it.

Having liked the parcel, members of *Twaweza* approved commencement of negotiations. Ali and some representatives of group together with Kim then met Dukawala, who contacted a person he identified as Mahangaiko (the landowner), on phone. Ali and representatives of the group eventually meet with that person in Nairobi. The purchase price was settled at three million, five hundred thousand (Ksh. 3,500,000) and a deal was sealed with the exchange of documents. Ali also paid Kim, Dalali and Dukawala the brokerage fees on behalf of *Twaweza*.

Later, Ali and his team visited the land and found someone harvesting the onions. On asking him to rush the harvest so that they could start the process of subdivision, the man told them that he was an employee of John Mahangaiko, and to his knowledge, the land was not for sale. The man then called the owner, who arrived in two hours and identified himself as John Mahangaiko, a resident of Nyahururu. When the matter was reported to the police, the Directorate of Criminal Investigation (DCI) was able to track the phone details of the alleged seller, eventually leading to the arrest of Peter Mjanja, who had passed off as John Mahangaiko. Mjanja was then charged alongside Dalali and Dukawala.

The matter was initially handled by Hon. Mkali, who took the evidence of four witnesses before he was transferred to another station. Hon. Jaber then took over the case, but inadvertently failed to comply with the provisions of section 200 of the CPC (which allows the accused to choose whether to continue with the recorded evidence or seek recall of witnesses when a judicial officer ceases to hear the case). Eventually, all the three accused persons were convicted for conspiracy to defraud and each is sentenced to 3 years' imprisonment. Peter Mjanja was also convicted of several other charges including forgery and obtaining money by false pretence. Dalali and Dukawala have appealed the decision to the High Court in Nakuru.

- (a) Given the circumstances of this case, what factors will the court take into consideration in determining the appeal? (5 marks)
  
- (b) The High Court eventually decides to order a retrial in this case. What factors influence the order for a retrial? (5 marks)





## QUESTION FOUR

- A. Atur was arrested and presented before the Chief Magistrate's Court at Kisumu following a complaint by *Adiso* that *Atur* had waylaid her on her way from visiting *Nyangi*, and pointed a knife at her as he took off with her mobile phone. He was charged with the offence of robbery with violence contrary to section 295 as read with section 296 (2) of the Penal Code.

Explain possible challenges to the charge considering the jurisprudential position on the offence. **(4 marks)**

- B. Utuho Gift was attacked by security guards contracted by Quick Solutions Mining Limited located at Kanziko Sub-County, Kitui County. This happened on 2nd September 2025 at around 1600 Hours. The attackers claimed that Utuho got access to the Company's premises by jumping over the fence. The guard suspected him of the recent theft of the Company's raw limestone from the Company's stores. After the arrest, Utuho was tied with ropes around the neck and the upper and lower limbs, and then locked in the guard's changing room. This was witnessed by Junia John, an 8-year-old grade 3 pupil at Kanziko Primary School.

At 1830 Hours, the night-shift security guards reported for work. However, they refused to take over the duties without the Director of the Company, Butt Charles, being informed of the arrest and assault of Utuho by the day-shift guards. When he was informed, the Director asked the guards to share photos of the arrested suspect. A day-shift guard who had a smart phone then took and shared the suspect's pictures through WhatsApp. Shortly after, the Director instructed the guards to 'please release the suspect.'

After Utuho, who was barely conscious and could hardly walk, was untied, he staggered about 10 meters from the Company entrance and collapsed dead. Police upon investigations established the cause of death to be blunt force trauma on the head.

The two day-shift guards, Benson Jayt and Collins Edu, were arrested and have been charged with Murder contrary to section 203 as read with section 204 of the Penal Code. The Director, on the hand, had been charged with Conspiracy to commit a felony contrary to section 393 of the Penal Code, but the DPP, disallowed the charge. The Director, was the DPP's class mate at the University and at Kenya School of Law.

The family of the deceased (Utuho Gift) has come to you, as a renowned criminal advocate practicing in Kitui township, to help in pursuit of justice for their kin. Assuming Junia John has been called to record his statement at Kanziko Police station, and positively identified the two security guards, illustrate to your clients the procedure of presenting his (Junia John) evidence before the trial court. **(6 marks)**



**QUESTION FIVE**

Around 11 p.m. on 14th June 2025, John, a taxi driver registered with Uber®, received a random mobile callup from a client, Mary, who requested to be taken to her house in Ruaka. That was the last time Mary was seen alive. After three days, her body was discovered by a herdsman in Pondamali, Nakuru, next to an abandoned house. Post mortem examination revealed that she had been raped and strangled.

During police investigation, John was arrested, but maintained that he dropped the client at her destination. He was later released after data from Uber® confirmed his assertion showing that he dropped a client at Ruaka around 11:30 p.m. At the time, it was raining heavily and the CCTV camera at the apartment was not working as a result of a power blackout. The gate and the vehicles that usually parked outside the apartment were unmanned that night.

Investigations revealed that Mary had been out with Kevo, her secret lover, that day. The two had taken separate taxis to and from the venue of their outing. Kevo’s wife confirmed that had he arrived home around midnight the night of 14th June 2025. Text messages on Mary’s phone, which was recovered from her pocket, showed she had been chatting with her boyfriend, Mato, a Military Officer based in Manda, Lamu. Mary and Mato had been together since leaving High School. Their families were close and they had been due to marry in December 2025.

Records from Manda Base showed that Mato was away on Rest and Recreation in Nairobi. From the retrieved texts, it was discovered that Mato had asked Mary for the details of the taxi that was dropping her home. His last WhatsApp post read “Siwezi kubali kugongewa” (meaning in this context, I cannot accept a partner to cheat on me). His phone triangulation placed him within Eastleigh Airbase, his usual place of residence.

(a) The investigating officer has forwarded the file to the ODPP for perusal and advise. The ODPP proposes a public inquest be conducted. Explain the circumstances under which the inquest may be held and whether it is appropriate to the circumstances of this case.

**(5 Marks)**

(b) Outline the procedure of conducting an inquest.

**(5 Marks)**

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