



REPUBLIC OF KENYA  
COUNCIL OF LEGAL EDUCATION



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1 <sup>st</sup> Verifier	
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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

### ATP104: TRIAL ADVOCACY

Examination Series: November 2025

Date: 18<sup>th</sup> November 2025

Time: 09:00AM - 12:00PM

Duration: 3 hours

#### Instructions to Candidates:

- Enter your registration number and tick the exam Centre in the space provided.
- Answer **FIVE (5)** questions, including question **ONE**, which is **COMPULSORY**.
- Question **ONE** carries **20 Marks**. All other questions carry **10 Marks** each.
- Attempt each question in the space provided.
- 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.								
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## QUESTION ONE

Tana International Sugar Company Limited (TISCOL), a sugar manufacturing company, entered into a sublease with the Cabinet Secretary for the Treasury (CST). The sublease is dated 10<sup>th</sup> November 2007. Through the sublease, the CST leased to TISCOL 20,000 acres (being L.R. No. 26554) of land in Tana County for purposes of sugarcane farming, milling and associated activities. TISCOL claims that the CST failed in its obligations under the sublease to grant vacant possession of the entire leased parcel of land. The land is occupied at several locations by squatters, which affected the implementation of TISCOL's business plan. In the year 2009, some of the squatters obtained conservatory orders in *Petition No. 22 of 2009* restraining TISCOL from conducting any farming or other activities on the portion of land that they occupied pending the hearing and determination of the Petition. The conservatory orders remained in place for 7 years until TISCOL applied to have them set aside.

This, TISCOL says, caused a failure of its business model, leading to increased costs over and above what had been projected. TISCOL says that its financial model was predicated upon the availability of the entire parcel of land, and the inability to access the entire parcel of land led to increased project costs, including additional loans and equity injections by its shareholders. As a consequence, TISCOL claims USD 200 million, being the additional expenses incurred over and above what had been projected in the business model. TISCOL filed its suit in the High Court on 11<sup>th</sup> November 2021.

CST denies liability and has argued that TISCOL was granted vacant possession immediately after the sublease was signed. This, CST argues, explains why there is no correspondence from TISCOL in the first 3 years since 2007 complaining about squatters on the land. CST further argues that TISCOL has failed in its obligations under the sublease by failing to secure the land by fencing it to keep away squatters. CST has also alleged that TISCOL forfeited the sublease due to its failure to pay rents as and when they fell due. It was only after demand for the rents was made that TISCOL settled the outstanding dues. CST also argues that it was not privy to the TISCOL business model for it to be made liable for any losses or increased costs incurred by TISCOL.

### Relevant Lease Excerpts:

Clause 7(a) "The Lessor shall ensure that the Lessee shall peaceably and quietly possess and enjoy the land without any interruption or disturbance from the Lessor or any person claiming under or in trust for the Lessor."

Clause 8(a) "The Lessee shall, at its own expense, maintain and repair all fences, boundaries and other structures on the land to prevent unauthorized access or encroachment."

Clause 10(a) "The Property is leased on an "As-is-Where-is" basis.

### Excerpt from Mr. Tomlinson's Witness Statement

"The government assured us that the land would be free from squatters and that we would have full access to the 20,000 acres. I had conversations with the CST and he gave me that assurance on several occasions. In fact, even after we took possession of the land, we continued to have the conversation with CST to have the National Land Commission (NLC) allocate us alternative land. He assured me that he would direct the NLC to make the allocation of the land. It is on the basis



of these repeated assurances that TISCOL feels that the CST has breached the terms of the sublease. We relied on the terms of the sublease as well as the discussions I held with CST to make further investments on the property with the hope that the land access issue would be resolved. Unfortunately, it was not resolved by the CST. I am aware that there is internal correspondence between CST and the Chairman of the NLC where the issue of allocation of additional land to TISCOL was discussed and there were assurances that we would be given that land”

Excerpts of Examination in Chief of Mr. Tomlinson

Plaintiff’s Counsel: “Mr. Tomlinson, you have stated in your witness statement that the CST admitted to you that the government was looking for alternative land to allocate to TISCOL. Is it not true that you are aware of correspondence between the CST and the NLC Chairman discussing the allocation of alternative land to TISCOL?”

Mr. Tomlinson: “Yes sir.”

Plaintiff’s Counsel: “And you can confirm that you obtained this information from a contact who previously worked at the NLC?”

Mr. Tomlinson: “Yes sir.”

- a) You have been retained by the CST to represent it in this dispute.
  - i. Prepare a Case Brief. (7 marks)
  - ii. Prepare cross examination questions to be put to Mr. Tomlinson on whether there was an obligation by CST to grant TISCOL vacant possession and whether this obligation was breached. (4 marks)
  
- b) You represent TISCOL in the dispute.
  - i. Identify any trial objections you would raise and their legal basis. (3 marks)
  - ii. During the course of preparing for the hearing, you establish that the NLC contact whom Mr. Tomlinson alluded to in his witness statement is Mr. Turnkey, an advocate in your firm. Identify the considerations that you should take into account as you advise your client on whether to introduce the piece of evidence obtained through Mr. Turnkey. (4 marks)
  - iii. Prepare your response to an objection raised that the cause of action is time barred. (2 marks)







## QUESTION FOUR

Ufanisi Millers Limited (“Ufanisi”), a flour milling company based in Thika, operated with a single large steam engine. In June 2024, the crankshaft of the steam engine broke down, forcing the mill to halt operations. Ufanisi engaged Swift Couriers Limited (“Swift”) to transport the broken-down shaft to an engineering workshop in Nakuru town for repairs.

Due to logistical challenges, Swift delayed the delivery of the shaft by ten days. As a result, Ufanisi claims it was unable to operate the mill for that period. The failure to operate the mill for that period is said to have led to substantial losses in flour production and supply contracts. Ufanisi has sued Swift for breach of contract, seeking damages for loss of profits for the ten-day shut down. Swift counters that they were never informed that the mill’s operations depended solely on the return of the crankshaft. Swift also claims that the claim for lost profits is too remote to be recoverable.

Ufanisi intends to call Ms. Ustadi as an expert witness. Ms. Ustadi is an industrial engineer and production expert. Her report concludes that the mill’s steam engine could not operate without the crankshaft; that during the ten-day delay, Ufanisi would reasonably have lost KES 15 million in production value. The report also adds that a mill of comparable size as that owned by Ufanisi generally keep spare crank shafts to mitigate on down time.

- a) Explain some techniques that you might use to address adverse evidence given by your witness during examination in chief? (2 Marks)
- b) You have been appointed to represent Ufanisi in the trial. Prepare five (5) questions you would put to Ms. Ustadi in examination in chief (assume that the introductory questions have been asked). (5 marks)
- c) Identify three key pieces of evidence you will require Ms. Ustadi to produce in court. (3 marks)

REGISTRATION NUMBER

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