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EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

REGISTRATION NUMBER:

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CENTRE:  Co-operative University  JKUAT  Kenya School of Law

ATP100: CIVIL LITIGATION

Examination Series: April 2026

Date: 9<sup>th</sup> April 2026

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

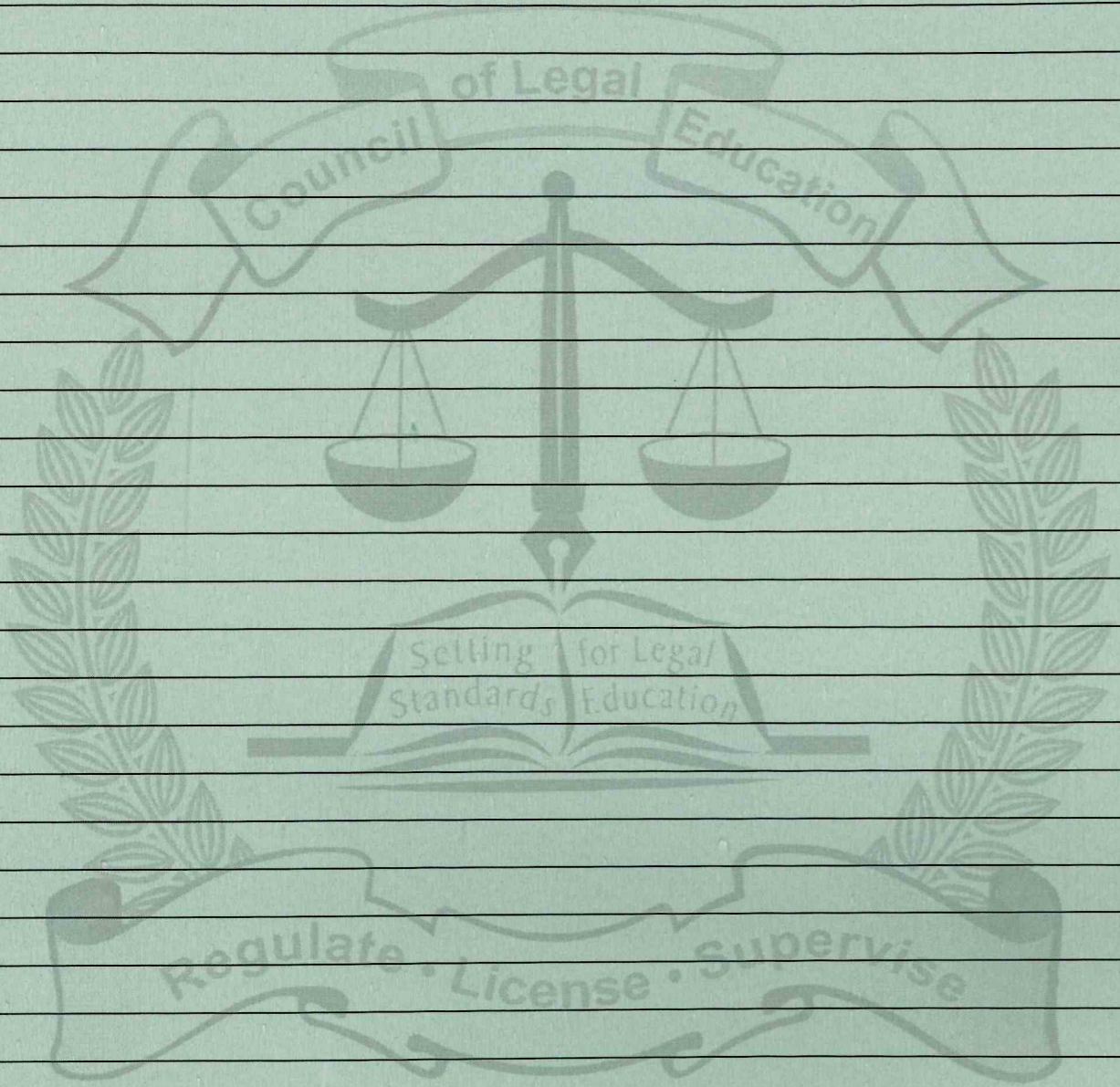
Question Number	Examiner		Internal Moderator		External Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials	Mark	Initials
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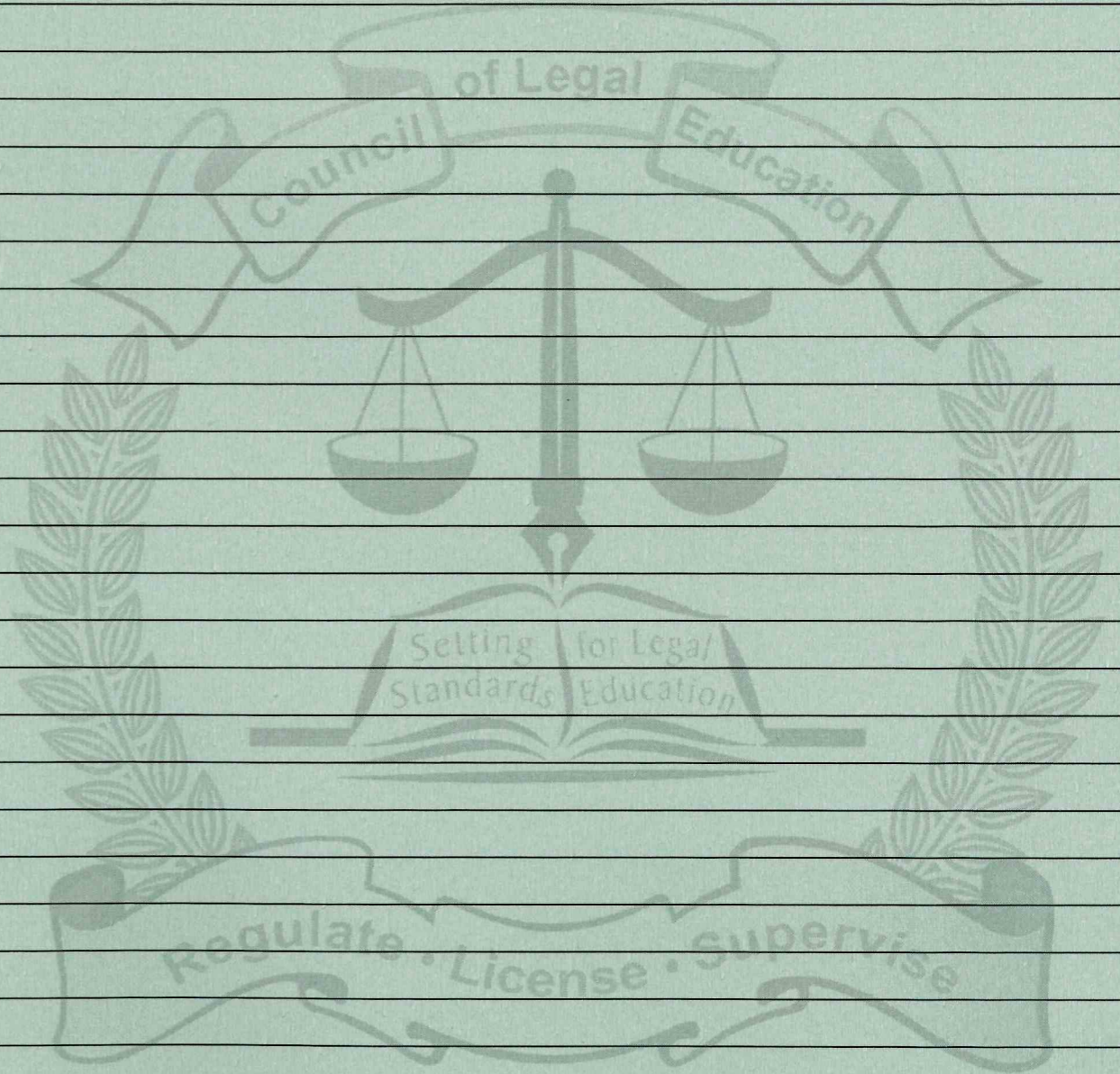
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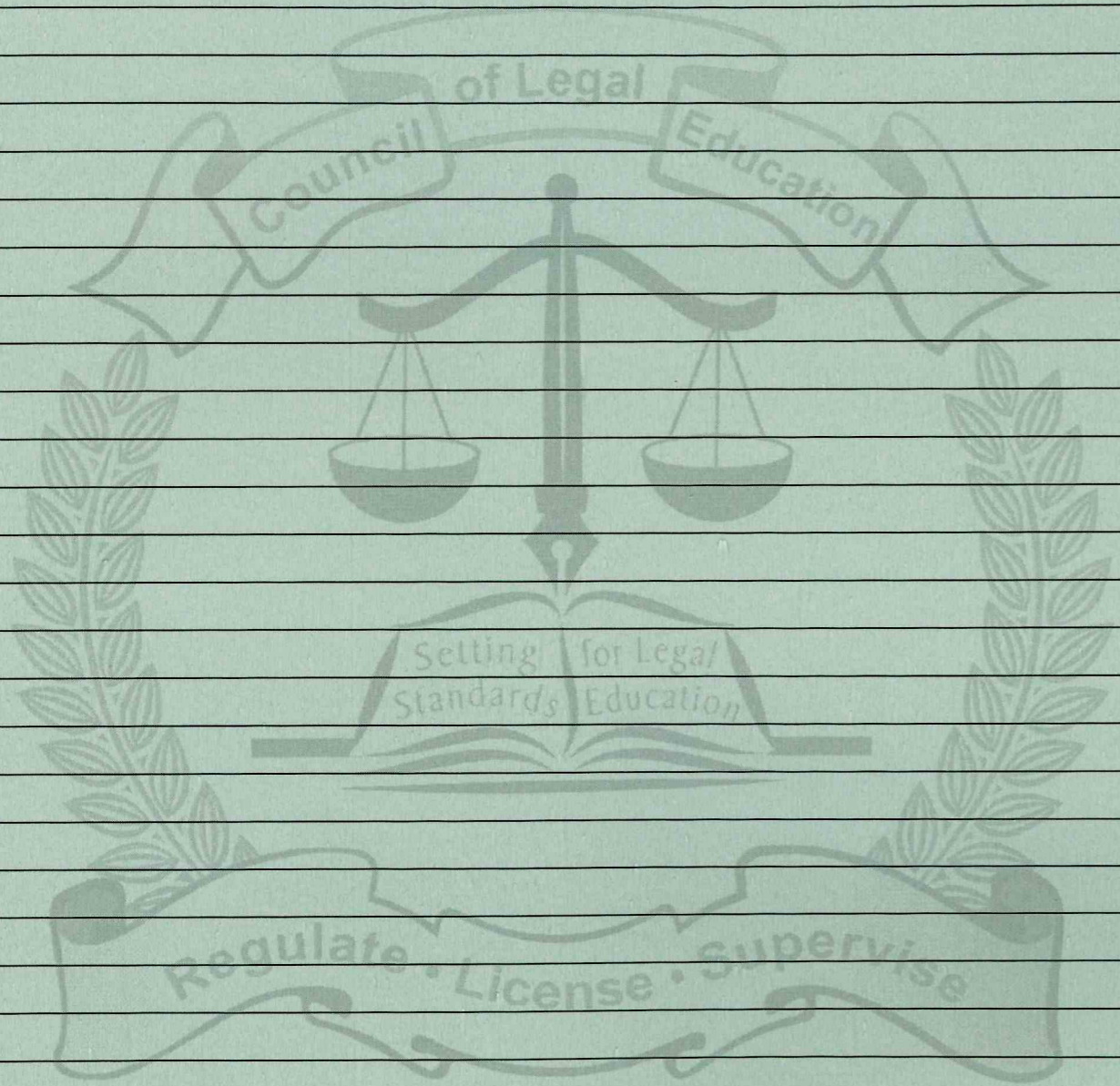
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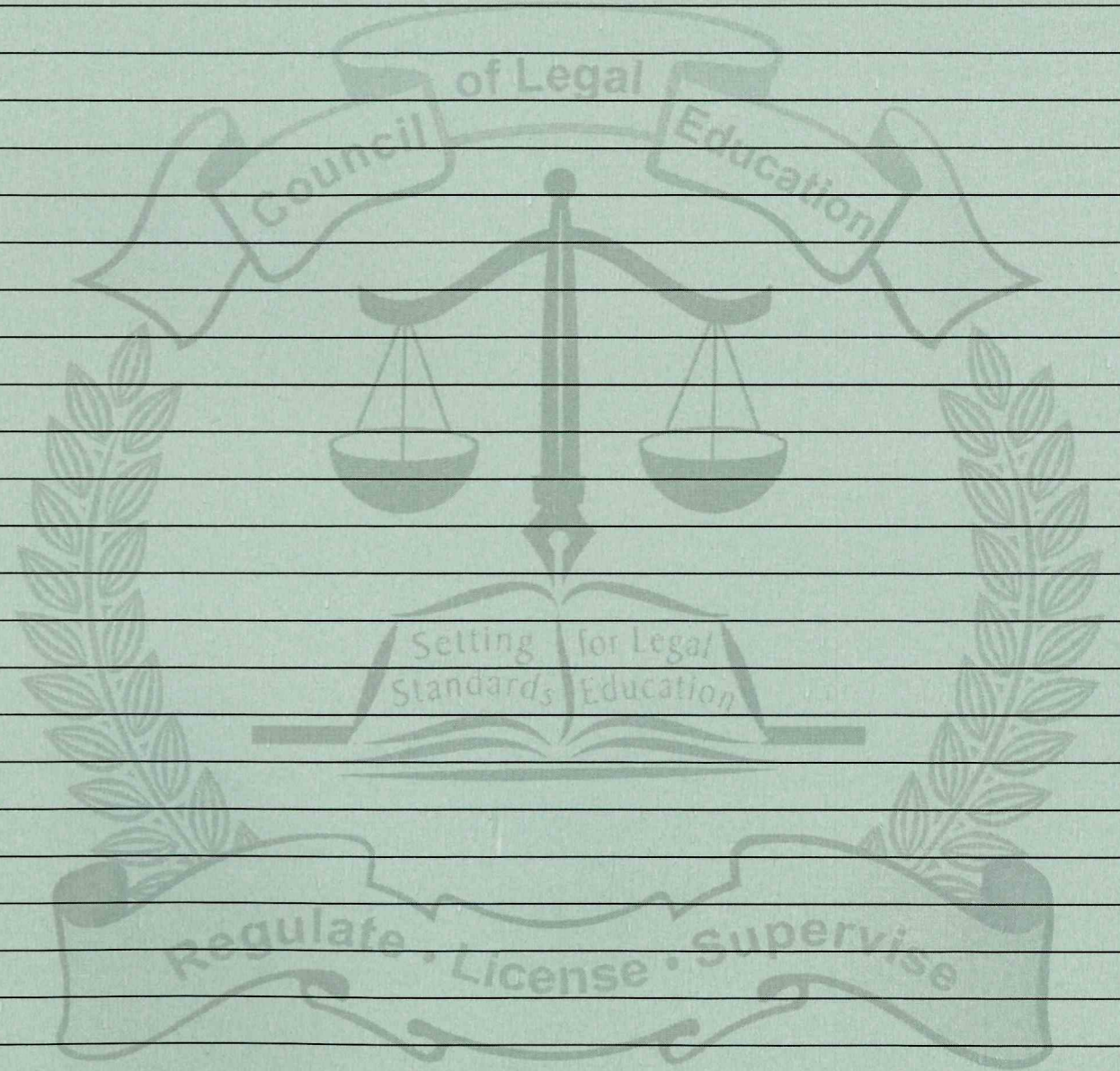
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**QUESTION TWO**

After receiving a judgment in his favour, Katia's advocate filed a party to party Bill of Costs. The subject matter of the suit before the High Court was a claim for refund of Kshs. 25,500,000/= that Katia had advanced his friend Moses. Judgment was entered in his favour together with interests and costs from the date of judgement. The costs were taxed at Kshs 15,000,000/=. Moses has approached you for legal advice because he feels that the awarded costs are too high and he will not be able to pay. Write a sound opinion to Moses advising him on:

- a) The action he should take if he is dissatisfied with the taxing officer's award and the kind of pleadings, he should file to challenge the award. **(4 Marks)**
- b) The principles that will guide the court while determining the application in (a) above. **(6 Marks)**

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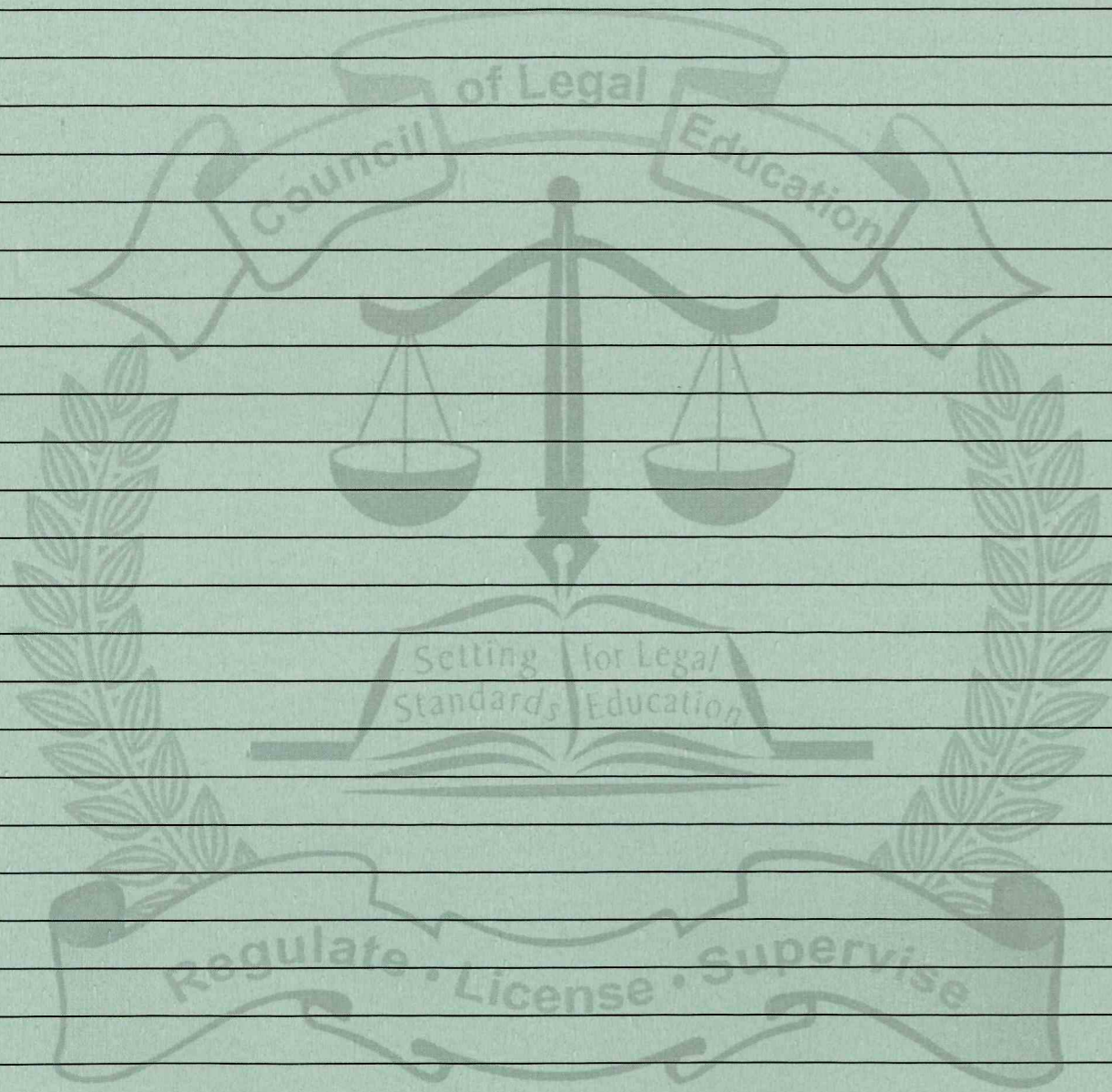
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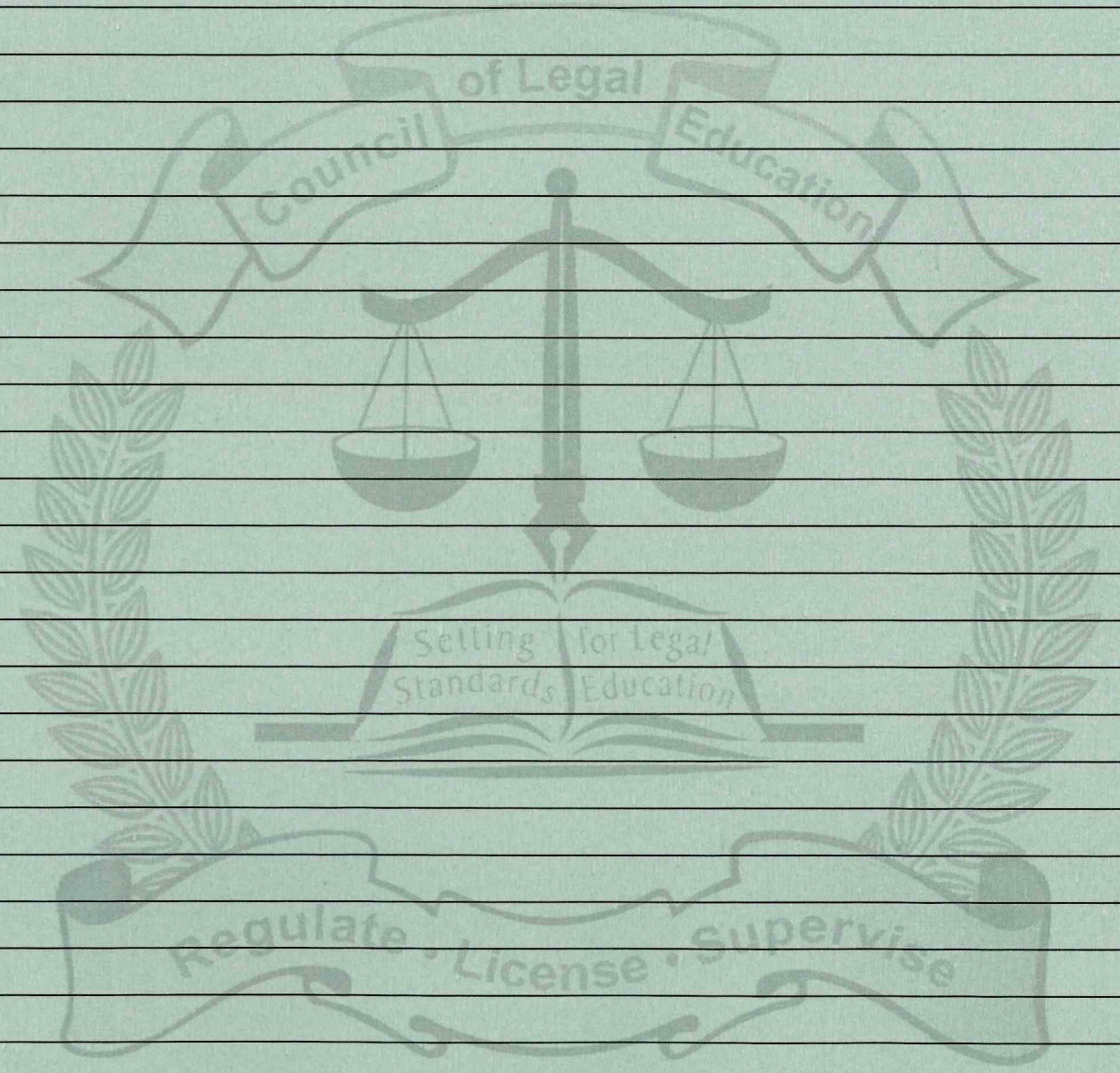
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QUESTION THREE

Hazina Bank Limited is a banking institution in the Republic of Kenya recognized as such under the Banking Act CAP 488. Among the services offered by the Bank is safe keeping of documents, including title documents to property, for its customers. Abraham was an account holder at Hazina Bank Limited. He kept three Title Deeds to various properties at the bank. The three properties are; Thika/Sango/1530, Thika/Sango/1611 and Thika/Sango/1777. Abraham died in November 2024 following a tragic road traffic accident along the Nairobi - Nakuru Highway. His two widows, Jessica and, Jennifer, took out letters of administration in respect of his estate. They jointly wrote to the bank seeking release of the three Title Deeds for purposes of their completion of administration of the Estate. As the bank was administratively processing the request by the two widows, it was served with Summons to enter appearance, a Plaint, an application for interlocutory orders and an interim injunction from Thika Chief Magistrates' Court in CMCC- ELC No. 15 of 2025.

The plaintiff in the case was one Thomas. Thomas claims to have purchased one of the properties, Thika/Sango/1777 from the deceased prior to his demise. The main suit seeks an order of specific performance compelling the widows, as estate administrators, to complete the transfer of the property to him. The suit also seeks orders that the bank be compelled to release the title deed over Thika/Sango/1777 to Thomas. The court has issued interim order restraining the bank from releasing the Title Deed over Thika/Sango/1777 to the two widows pending the hearing of the application *inter partes*. The two widows are named as the first and second Defendants respectively. The bank is named as the third defendant in the matter. Upon being served, the bank's head of legal department writes to your firm **Wakili Kurutu and Partners LLP** with very clear instructions that the bank has "no dog in this fight". It just wishes to release the title to the rightful owner, whoever that may be. The bank, therefore, instructs you to file an appropriate application to "liberate it from these squabbles".

Draft the application.

(10 marks)

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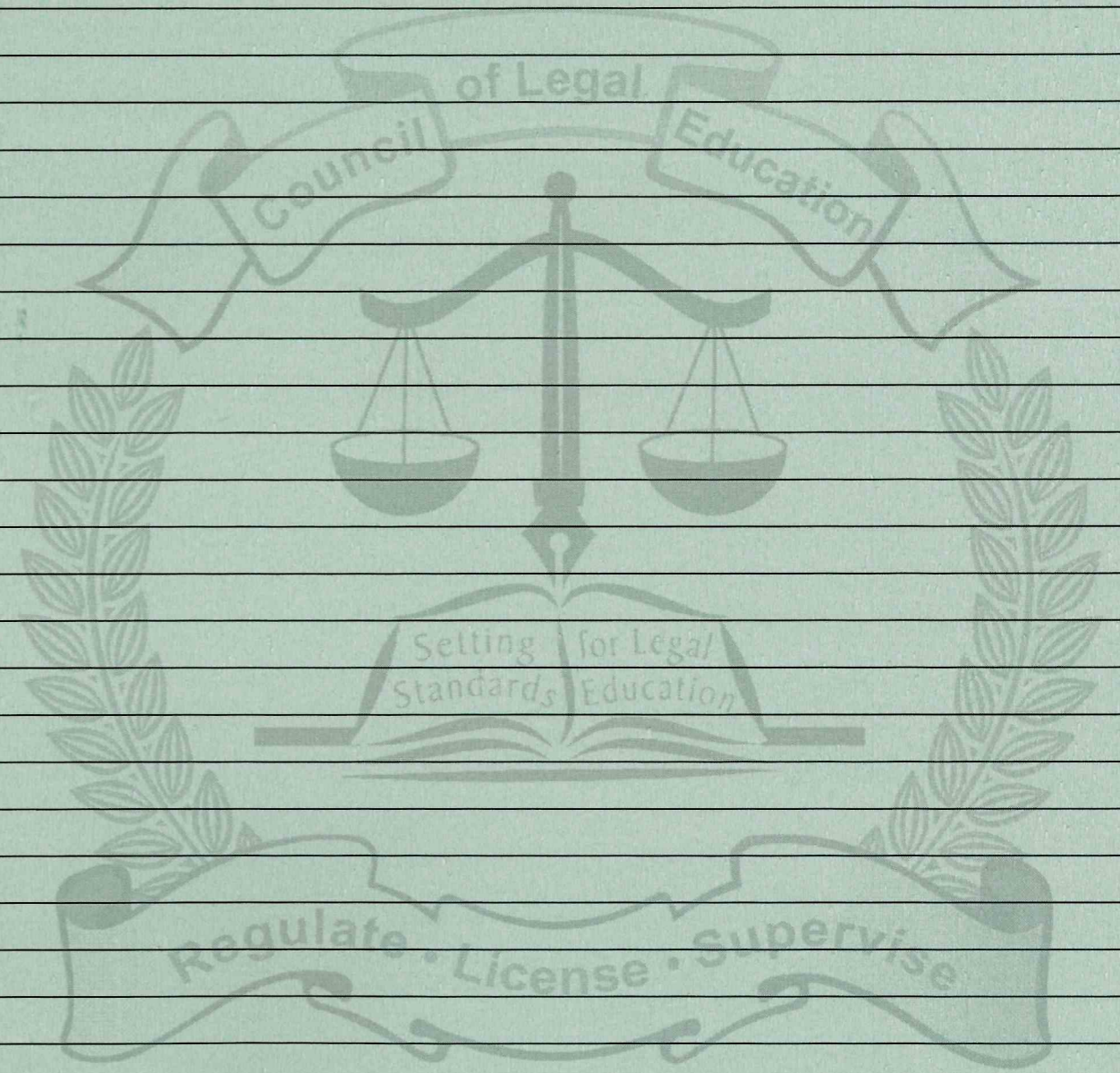
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**QUESTION FOUR**

On 23<sup>rd</sup> August 2025, Kizani Mwana's suit before the Environment and Land Court at Nairobi (*ELC Case no. 100 of 2025*) was dismissed with costs to the Defendant. Kizani had sued Albina Mshindi seeking a declaration that he is the lawful owner of the suit property number LR BLOCK 2/888. According to Kizani, he bought the suit property from Albina's late father, Mzee Ali. Unfortunately, Mzee Ali died before he could transfer the land to Kizani. After the death of Mzee Ali, Albina filed a succession cause through which she inherited the property as the sole beneficiary of the estate. Although she was aware Kizani had bought the land from her father and paid the full purchase price, she refused to transfer the land to him. When Kizani filed the suit at the ELC Court, the judge failed to take into account Kizani's evidence which included a well signed sale agreement. Kizani is aggrieved by the judge's decision and has decided to appeal. He has instructed you to lodge the appeal. You have checked the Court of Appeal calendar and noted that the Court is currently hearing appeals which were filed in the year 2022. It is therefore important for you to take urgent interim measures to preserve the suit property which is at the risk of being sold before the appeal is heard and determined.

Draft an appropriate application that you will file before the Court of Appeal to protect your client's interests in the suit. **(10 Marks)**

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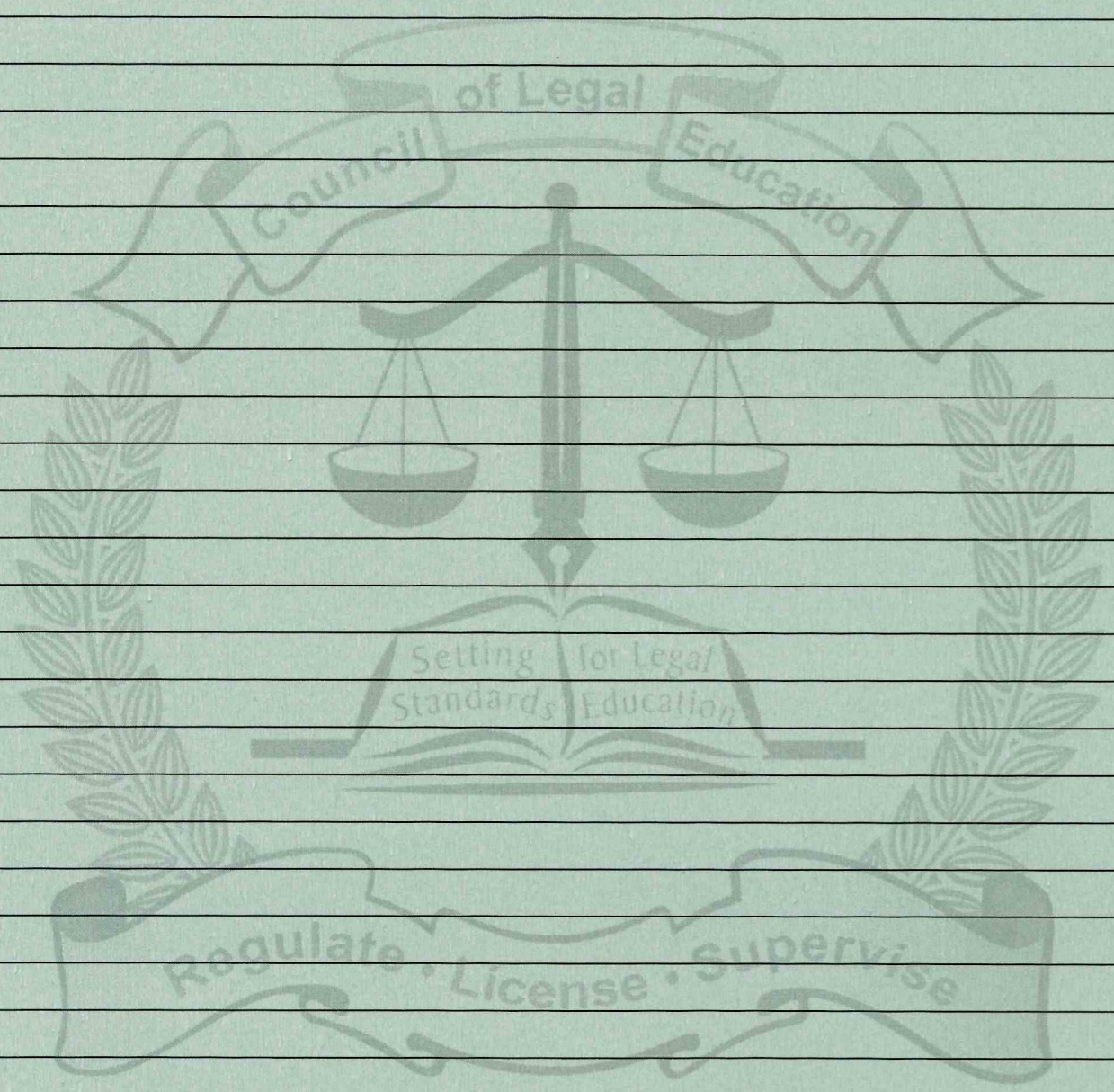
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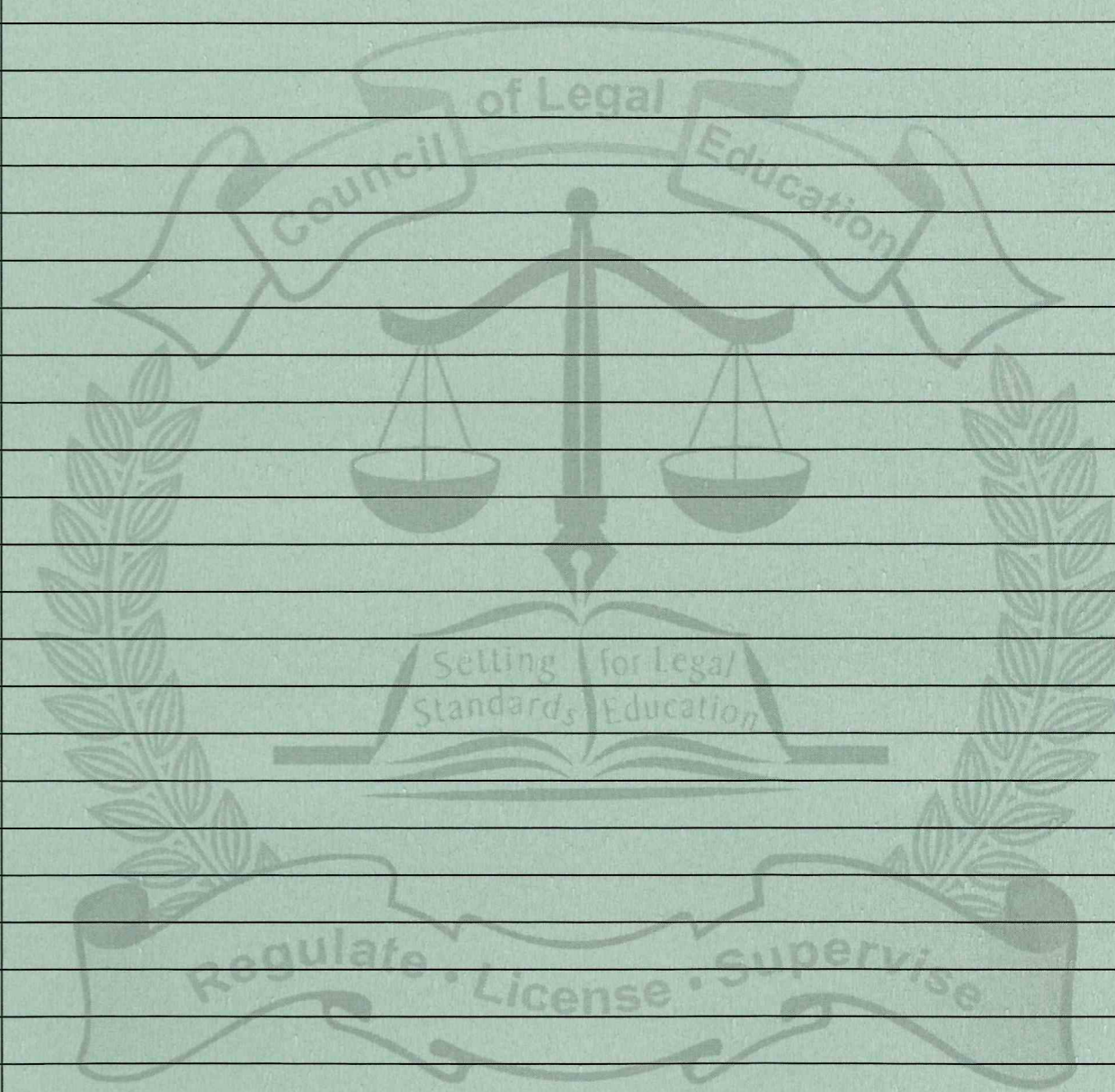
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**QUESTION FIVE**

Emilio Junior was employed by Whiteman Enterprises Limited between the year 2007 and 2025. On 5th November, 2025, Emilio received a letter from his employer terminating his employment summarily. The employer alleged that Emilio was involved in theft of business funds. While sharing his predicament with you as his advocate, Emilio informed you that over the years, the company engaged in discrimination of employees from a certain region. They were never promoted and the manager openly informed Emilio that as long as he did not come from the preferred region, he would never get a promotion, a pay rise and his employment would be terminated before he reached a certain age. You have proceeded to file a suit at the Employment and Labour Relations Court and among the reliefs you have sought is a declaration that Whiteman Enterprises Limited violated Emilio's constitutional rights by subjecting him to discrimination. You have also sought damages for violation of constitutional rights. Upon service of the petition, Whiteman Enterprises Limited has filed a notice of Preliminary Objection on the ground that the Employment and Labour Relations Court lacks jurisdiction to hear and determine matters relating to violation of constitutional rights. They have averred that it is an exclusive jurisdiction of the Constitutional Court. The court has directed the parties to file written submissions on the Notice of Preliminary Objection.

- a) Draft appropriate submissions as directed by the court. **(6 Marks)**
  
- b) Assuming Emilio had not been sacked and the perceived violation of his constitutional rights persists, identify the application that you would file in court in order to stop further violation of his rights and discuss the principle that would guide the court when hearing the application. **(4 Marks)**

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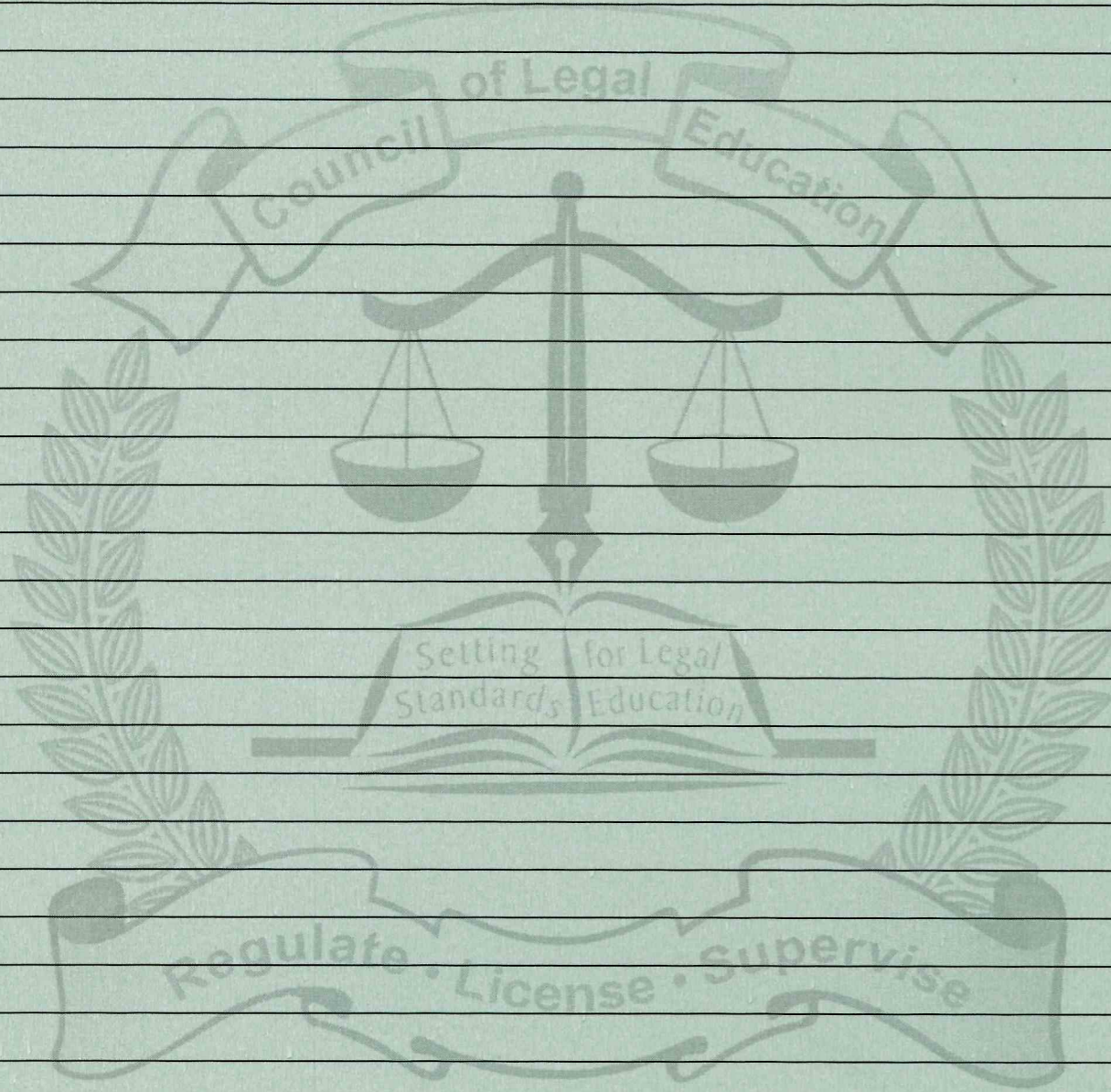
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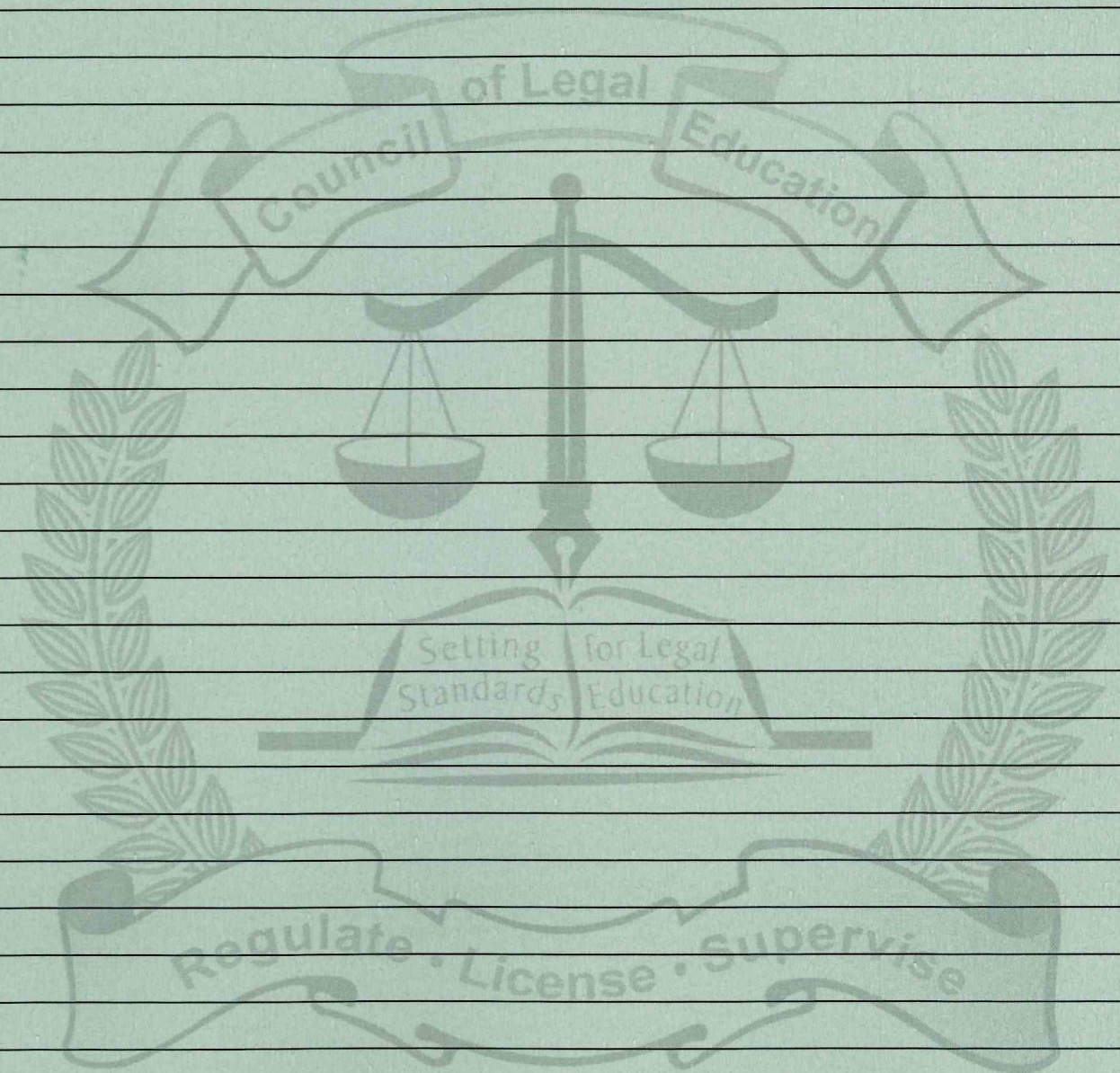
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**QUESTION SIX**

On 11<sup>th</sup> May 2025, Peter filed a case against John and James arising from a road traffic accident which occurred on 12<sup>th</sup> June 2023. Together with the plaint, he filed his list of witnesses, witness statements, list of documents and copies of the documents. John and James filed their joint defence on 17<sup>th</sup> August 2025, and served it on Peter on 20<sup>th</sup> August 2025, but did not file a list of witnesses, witness statements, list of documents and copies of the documents they intend to rely upon during the trial. Peter has filed a list of issues for determination because the parties failed to agree on the issues but John and James have not filed theirs. Peter intends to call the police officer who attended to the scene of the accident and the doctor who prepared the medical report but he is not sure if they will attend court in view of their busy schedule. Peter has not filed a witness statement of one of the witnesses. He has discovered that there are documents he intends to rely on which he did not file together with his list of documents. He has also realized that he needs to amend the plaint to correct the mistake of the registration number of one of the vehicles involved in the accident, the names of the parties, and to include a claim for special damages for the sum of money spent in repairing his vehicle. On 9<sup>th</sup> September 2025, he filed an application seeking to amend the plaint which has not been heard. Peter believes that this is a matter which is capable of being settled outside court. He has filed a case management list which reflects the above facts. He has instructed you to take over the conduct of the matter on his behalf.

- a) Based on the above facts, discuss the matters which the court will consider during the case management conference. **(5 Marks)**
- b) The application to amend the plaint has been fixed for hearing. The defendants have opposed the application on the grounds that it is an abuse of the court process. Write a legal opinion on the merits or otherwise of the application. **(5 Marks)**

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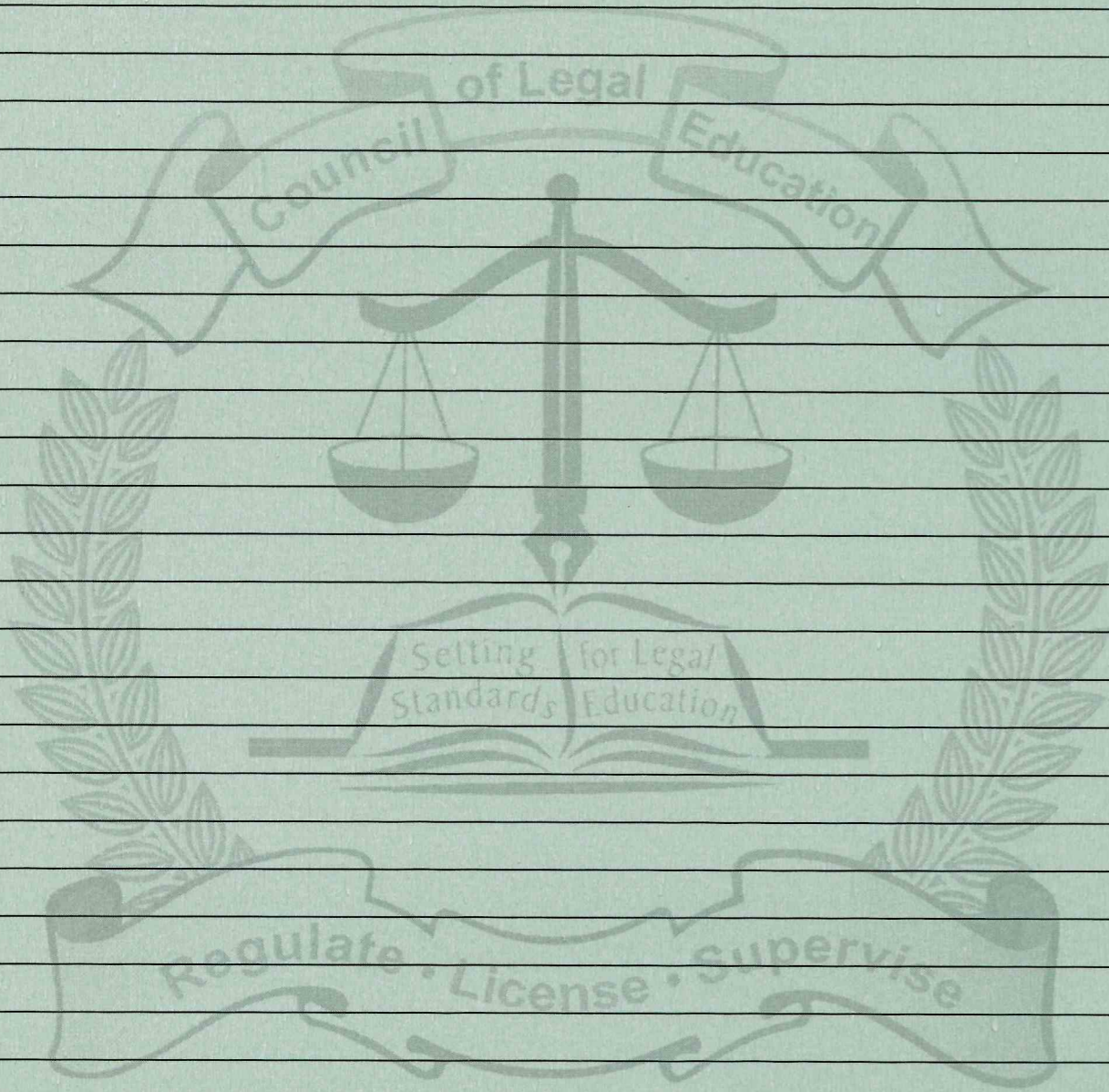
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