

THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

LEGAL METHODS, SYSTEMS AND CONSTITUTIONAL LAW – PRB 001

31ST JANUARY, 2018

DURATION: 3 HOURS

9.00 AM – 12.00 NOON

Instructions to Candidates

- (a) Answer question **ONE** and any other **THREE** questions
- (b) Each Question carries **25 Marks**.
- (c) Marks shall be lost for illegible handwriting.

PLEASE TURN OVER

Question One

The sources of law applicable in any given jurisdiction may be categorized as statutory or non-statutory.

- (a) Explain the meaning of the expression "sources of Law". (5 Marks)
- (b) Discuss FIVE statutory sources of law in Kenya. (10 Marks)
- (c) Discuss FIVE non-statutory sources of law in Kenya. (10 Marks)

Question Two

Various approaches have been used by legal philosophers in an attempt to define the term "law". Discuss FIVE schools of thought in jurisprudence used by scholars to explain the concept of law.

(25 Marks)

Question Three

In interpreting legislation, courts of law are guided by various statutory aids, judge-made rules and presumptions.

- (a) Explain FIVE aids in statutory interpretation. (10 Marks)
- (b) Explain FIVE judge made rules of statutory interpretation. (10 Marks)
- (c) Explain TWO presumptions applicable in interpreting statutes. (5 Marks)

Question Four

- (a) Citing relevant examples, distinguish between adversarial and inquisitorial Judicial systems. (10 Marks)
- (b) Indicating the proper hierarchical order, outline the courts established under the Kenyan Law. (15 Marks)

Question Five

- (a) Explain the meaning of expression "Legal System". (5 Marks)
- (b) Discuss FOUR major legal systems in the world today. (20 Marks)

Question Six

- (a) Explain the meaning of the expression "Separation of Powers", in the context of constitutional theory. (10 Marks)
- (b) Identify and discuss FIVE pillars of independence of the Judiciary. (15 Marks)

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THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

THE LAW OF CONTRACT – PRB 002

DATE: 31ST JANUARY, 2018

DURATION: 3 HOURS

2.30 P.M. TO 5.30 P.M.

Instructions to Candidates

- (a) Answer Question ONE and any other THREE questions.
- (b) Each Question carries 25 Marks.
- (c) Marks shall be lost for illegible handwriting.

PLEASE TURN OVER

Question One

- (a) Define the term offer (5 Marks)
- (b) Define the term counter offer (5 Marks)
- (c) Using relevant case law distinguish between offer and counter offer. (8 Marks)
- (d) Discuss the term frustration in relation to Contract Law. (7 Marks)

Question Two

Explain the meaning of the following concepts under the law of contract.

- (a) Damages (5 Marks)
- (b) Misrepresentation (5 Marks)
- (c) Capacity to contract (5 Marks)
- (d) Mistake (5 Marks)
- (e) *Quantum Meruit* (5 Marks)

Question Three

- (a) Using relevant examples, distinguish between an offer and an invitation to treat under Contract Law. (10 Marks)
- (b) Discuss THREE remedies available for breach of contract. (15 Marks)

Question Four

- (a) Explain the fundamental differences between void and voidable contracts. (10 Marks)
- (b) Discuss the factors that may lead to the termination of a contract under Contract Law. (15 Marks)

Question Five

A contract may be defined as a legal relationship between two or more persons who are recognized by law. Discuss with relevant examples. (25 Marks)

Question Six

Using relevant case law, discuss FIVE factors that may vitiate a contract under the Law of Contract. (25 Marks)

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THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

THE LAW OF TORTS – PRB 003

1ST FEBRUARY, 2018

DURATION: 3 HOURS

9.00 A.M. TO 12 NOON

Instructions to Candidates

- (a) Answer Question ONE and any other THREE questions.
- (b) Each Question carries 25 Marks.
- (c) Marks shall be lost for illegible handwriting.

PLEASE TURN OVER

Question One

- (a) Citing relevant examples, distinguish between a tortious action, criminal action and breach of contract. (12 Marks)
- (b) Briefly discuss the following terms in relation to tort:
- (i) Tort and crime (4 Marks)
 - (ii) Contributory negligence (3 Marks)
 - (iii) Cause of action (3 Marks)
 - (iv) Liability (3 Marks)

Question Two

- (a) Define an act of God in relation to the Tort Law. (5 Marks)
- (b) Distinguish between *Damnum sine injuria* and *injuria sine Damnum* with relevant examples. (15 Marks)
- (c) Differentiate between liquidated and unliquidated damages. (5 Marks)

Question Three

- (a) Explain the relevance of the rule in *Rylands vs Fletcher* (1868), L.R. 3.H.L. 330 [1861-73] All E.R. in relation to Noise and Excessive Vibration Pollution (Control) Regulation (2009) under the National Environmental Management Act. (10 Marks)
- (b) With aid of appropriate case law, discuss any FOUR principles which guide courts in establishing a duty of care. (15 Marks)

Question Four

Omoke is an ardent football fan of Team A. He proceeded to the City Stadium to cheer his Team A on 21st January, 2018. The teams playing on the Super League were Team A and Team D. Team A won the match with 2-1 after 90 minutes. After the 90 minutes, Omwantho was injured as a result of fracas which occurred when the fans from the two teams clashed. It is not clear exactly who threw stones but several people were injured during the pandemonium. Discuss

- (a) The tortious claims likely to arise from the event. (7 Marks)
- (b) Who is likely to be held liable. (5 Marks)
- (c) The likely defences to be raised out of such an event. (8 Marks)
- (d) Likely remedies for the torts. (5 Marks)

Question Five

- (a) Distinguish between slander and libel. (10 Marks)
- (b) Outline the general defences available to the tort of defamation. (15 Marks)

Question Six

- (a) Discuss the principle of *Res Ipsa Loquitur* and how it relates to traffic accident cases. (5 Marks)
- (b) Explain any THREE circumstances under which trespass to a person can be justified under law. (10 Marks)
- (c) Define the term conversion and differentiate it from theft. (5 Marks)
- (d) Differentiate between assault and battery. (5 Marks)

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THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

LAND LAW – PRB 004

1ST FEBRUARY, 2018

DURATION: 3 HOURS

2.30 P.M – 5.30 P.M.

Instructions to Candidates

- (a) Answer question ONE and any other THREE questions.
- (b) Each Question carries 25 Marks.
- (c) Marks shall be lost for illegible handwriting.

PLEASE TURN OVER

Question One

- (a) Distinguish between public land, private land and community land as envisaged under the Constitution of Kenya, 2010. (6 Marks)
- (b) Distinguish between a charge and a mortgage (5 Marks)
- (c) Discuss the various obligations implied by law on a tenant. (7 Marks)
- (d) Identify and discuss the various obligations implied by law on a chargor. (7 Marks)

Question Two

A lease is a contractual agreement between two parties and whose subject matter is property. Discuss the essentials of a valid lease under Kenyan Law. Cite relevant case law. (25 Marks)

Question Three

"A Financial Institution lending an individual on the strength of land as a security for payment has various remedies at its disposal upon default by the borrower." Anonymous.

Outline and discuss FOUR remedies available to a lender in case of default. (25 Marks)

Question Four

Discuss FIVE statutory interventions between 1901 and 1963 and explain their respective impact on land holding and Policy in Kenya. (25 Marks)

Question Five

"The four unities are an essential Pre-condition for the existence of joint tenancy as a form of co-ownership of property" Anonymous.

Outline and discuss each of the four unities. (25 Marks)

Question Six

- (a) Distinguish between a fixture and a chattel (5 Marks)
- (b) Explain the doctrine of fixtures and applicable exceptions. (20 Marks)

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THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

FAMILY LAW AND THE LAW OF SUCCESSION – PRB 005

2ND FEBRUARY, 2018

DURATION: 3 HOURS
9.00 A.M. – 12 NOON

Instructions to Candidates

- (a) Answer question ONE and any other three questions.
- (b) Each Question carries **25 Marks**.
- (c) Marks shall be lost for illegible handwriting.

PLEASE TURN OVER

Question One

- (a) Mr. Wilson came to Kenya a month ago as a tourist. After touring several parts of the country, he met a beautiful Kenyan girl who he wishes to marry and eventually settle in Malindi. On inquiry about the marriage laws in Kenya, a tour guide informed him that there are several marriage laws including Customary Marriage and Divorce Law.

Mr. Wilson was perturbed by what the tour guide told him and seeks clarification of the matter from a marriage and divorce advocate before finalizing his wedding arrangements.

- (i) With reference to the Marriage Act 2014, guide him on the marriage and divorce laws that exist in Kenya. **(10 Marks)**
- (ii) The persons to whom the said laws apply. **(2½ Marks)**
- (b) Mr. Mozi, a 70-year-old businessman wishes to write a Will because he believes he is about to die due to the fact that he has been having nightmares that his family have been organizing his funeral at Lengasitu Cemetery. Consequently, he has come to you for advise on the following:
- (i) Requirements and formalities of a valid Will. **(10 Marks)**
- (ii) Status of his Will if his beneficiaries sign it. **(2½ Marks)**

Question Two

With the assistance of the Constitution of Kenya, 2010, the Matrimonial Property Act 2013, and the Marriage Act 2014, discuss division of matrimonial property upon dissolution of marriage. Cite relevant case law. **(25 Marks)**

Question Three

With aid of case law, discuss the concept of parental responsibility as envisaged under the Children's Act No. 8 of 2001 and the Constitution of Kenya, 2010. **(25 Marks)**

Question Four

Citing the relevant Sections of the Law of Succession Act and the Kenya Defence Forces Act and with aid of relevant case law, unravel the mystery of privileged Wills. (25 Marks)

Question Five

Discuss the grounds of, and procedure for termination of marriage under the Marriage Act, 2015. (25 Marks)

Question Six

Write short notes on the following:

- (a) Construction and revocation of Wills (5 Marks)
- (b) *Donatio Mortis Causa* (5 Marks)
- (c) Presumption of death as a ground for dissolution of marriage. (5 Marks)
- (d) Guardianship under the Children Act and the Law of Succession. (5 Marks)
- (e) Custody of children after divorce particularly if they are below four years old. (5 Marks)

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THE KENYA SCHOOL OF LAW



PRE-BAR EXAMINATION

COMMERCIAL LAW – PRB 006

2ND FEBRUARY, 2018

DURATION: 3 HOURS
2.30 P.M. TO 5.30 P.M.

Instructions to Candidates

- (a) Answer question **ONE** and any other **THREE** questions.
- (b) Each Question carries **25 Marks**.
- (c) Marks shall be lost for illegible handwriting.

PLEASE TURN OVER

Question One

Michael is a young entrepreneur who would like to incorporate a company that imports and sells electronics. He has saved Kshs. 150,000 that he plans to use as capital. He has also received several pledges from his friends to contribute towards the venture.

- (a) Identify the types of companies Michael can incorporate as per the Companies Act, 2015. (5 Marks)
- (b) Advise Michael on the most appropriate company for his type of business highlighting the legal requirements for incorporation of the same. (20 Marks)

Question Two

- (a) Define the term "Agency Relationship". (5 Marks)
- (b) Identify and explain FIVE ways an agency relationship can be created. (20 Marks)

Question Three

- (a) Illustrate the difference between the following terms.
 - (i) Ascertained and unascertained goods (5 Marks)
 - (ii) A sale agreement and an agreement to sale. (5 Marks)
- (b) Explain FIVE Legal requirements of a sale of goods contract. (15 Marks)

Question Four

Write concise notes on the following:

- (a) *Nemo dat quod non habet* principle (5 Marks)
- (b) *Caveat Emptor* principle (5 Marks)
- (c) *The contra proferentum rule* (5 Marks)
- (d) Confidentiality Clauses (5 Marks)
- (e) Rescission of a contract (5 Marks)

Question Five

- (a) Explain FIVE requirements of a negotiable instrument. (10 Marks)
- (b) Discuss THREE recent statutory reforms that have contributed to the ease of doing business in Kenya. (15 Marks)

Question Six

- (a) Identify and explain FIVE key highlights of the Companies Act, 2015. (10 Marks)
- (b) Discuss FIVE key functions of the Board of Director in a company. (15 Marks)

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