

BAR QUESTIONS & ANSWERS AS WELL AS RELATED NOTES:

Question: What is the relationship of a banker and Customer?

The relationship of a Banker and Customer is that of creditor and debtor. See Sheldon's Practice and Law of Banking, pp 186-187.

Question: Define the Garnishee Order.

The Garnishee order is order of the Court, Obtained by judgment creditor attaching funds in the hand of third party who owes the judgment creditor money, warning the third party the garnishee not to release the money attached until directed by the court to do so. See Sheldon's Practice and Law of Banking, page 195.

(Simply: Garnishee Order is the Order of Court served on a Garnishee attaching a debt in his hands. Garnishee is a person who has been warned by a Court to pay a debt to a third party rather than to the owner).

Notes: *Banker and Customer – duty of secrecy. The guiding case on this subject is **Tounier vs. National Provincial Bank (1923)** in this case the court held that the banker's obligation secrecy regarding his Customer's affairs was a legal one arising out of contract implied in the relation of Banker and customer, but that the duty of secrecy is not absolute but is qualified. The Court cited the following qualifications as examples:*

- a). where the disclosure is under compulsion by law;*
- b). where there is a duty to public to disclose;*
- c). where there is interest of the Bank require disclosure; and*
- d). where disclosure is made by express or implied consent of customer.*

Question: What is a Composition of High Court when trying treason trial?

-The composition of a High Court when trying a treason trial is a single Judge sitting with 2 assessors. See **Salum A. Kinongile vs. Republic [1992] TLR 349 pg. 351.**

Question: What is the composition of Commercial Court?

-The composition of commercial Court is single Judge sitting with 2 assessors. However, assessors do sit with the judge at option of the parties. **N.B.** *such assessors must have the knowledge in area whose matter is before the Court.*

Question: What Law does establish Commercial Court?

-Commercial Court was established by the **High Court Registry (Amendment) Rules of 1999.**

N.B. High Court Registry Rules, 1984 establishes High Court Registry.

Question: Mention five types of cases tried by Commercial Court.

-Commercial Court tries cases concerning

1. Banking,
2. Admiralty,
3. Trade Marks,
4. Insurance; and
5. Commercial Contracts.

Refer:- Other types of cases in materials for review.

Question: What is the Composition of High Court when trying Homicide Cases in Tanzania?

The composition of High Court when trying Homicide Cases in Tanzania is single Judge sitting at least with 2 assessors. **See Section 265 of Criminal Procedure Act Cap. 20 of [R.E 2002].**

Question: What is a Composition of High Court when hearing defamation case under Newspaper Act.

The composition of High Court when hearing a defamation case under News paper Act is a single Judge sitting with at least 2 assessors. **Check Newspaper Act Act. 1976 Cap 229 [R.E 2002]. Part VI section 38 to 47**

Question: What is accelerated trial?

An accelerated trial is provided under **section 192 of the Criminal Procedure Act. 185 Cap.20 [R.E 2002].** It has some meaning as preliminary hearing by definition, accelerated trial means a procedure in criminal cases in which the court determines matters which are not in dispute as between the parties.

N.B. The purpose of accelerated trial is to speed up the criminal trials.

Question: What are cases where the Courts sit with assessors?

- Primary Courts – Magistrates in Primary Court. Court in Civil and Criminal Cases, that is, Primary Court Magistrate is required in Law to sit with assessors in all civil and criminal cases **see section 7 of Magistrate Court Act 1984 Cap. 11 [R.E 2002].**

High Court: high court judges are required to sit with assessors in the following cases;

- I) Homicide
- II) Treason
- III) Defamation
- IV) Economic crime cases

Commercial Court:

The commercial Court Judge does sit with assessors. However, parties may agree the judge to sit alone since sitting with assessors depend on whether parties do consent or not.

N.B *answer is not exhaustive see further discussion regarding RM's Court and District Court.* The Resident Magistrate with extended jurisdiction to try criminal cases triable by the High Court.

Question: Name different sentences that can be given to a person convicted of criminal offence.

Generally speaking, the type of punishment/sentence to be given to a person convicted of criminal offence in any case is determined by penalty provisions **Example: Penal Code Cap. 16.** As far as the Subordinate Court are concerned provides the following type of punishment/sentences

- *Death; RM with extended jurisdiction
- *imprisonment;
- *Corporal punishment;

- *Fine;
- *Forfeiture;
- *Payment of Compensation;
- *Order of finding security to keep peace and be good of behavior;
- *Probation;
- *Costs as per section 345 of Criminal Procedure Act. Cap 20;
- *Police supervision

Notes:- The court may impose sentence other than that provided by statute see section 27(3) of **the Penal Code Cap 16** that is a person liable to imprisonment may be summoned to pay fine instead of imprisonment.

The courts Power to sentence is provided by **section 170 of The Criminal Procedure Act Cap. 20.**

Also, the Court's power to impose Corporal punishment is limited by provisions of **the Corporal Punishment Act, Cap 17.**

Question: How Residents Magistrates' Court hear the Organized Crime Offences?

Generally offences under **the Economic and Organized Crime Control Act, 1984** Cap 200 are tried by the High Court after the DPP Consents to be tried. However Courts subordinate to the High Court may hear Organized Crime offences if two things are done; thus:

- i) DPP like in the High Court must give consent for prosecution of organized crime case per section 26 of Act No. 13 of 1984.

- ii) DPP must issue certificate conferring jurisdiction to RMs' Court to try Organized Crimes case as per section 12(3A) of Act No. 13 of 1984 as amended.

***N.B** Generally the jurisdiction to hear and determine economic crime cases is vested in high Court of Tanzania. See section 3(1) of Act No. 13 of 1984. The court sits as Economic Crimes Court per section 3(2) of the same Act. The constitution of the Economic Crimes Court is judge of the High Court and two lay members. See section 4 of the Act.*

Notice: section 26 of the Economic and organized Crime Control Act, 1984 provides for the requirements of DPP consent before instituting criminal trials in respect of criminal offences. Section 26(2) of the same Act empowers DPP by NOTICE published in the Gazette to delegate some of his powers in this referred to State Attorney by specifying Economic offences which require his personal consent and those that can be consented by some State Attorney. By Government Notice No. 191/1984 the DPP reserved to his own consent the prosecution of offences specified in Part 1 of the Schedule to the Notice and delegated to State Attorney in-charge of the Zone or Region in which the Organized offence took place. The power to consent to prosecution of offences specified under Part 11 of the Schedule to the Notice. Examples are offences under The **Wildlife Conservation Act** do fall under the Schedule to Government Notice No. 191/1984.

Question: What Court will do under the following circumstances;

a). witness take oath but refuses to give evidence.

b). Accused refuses to plea.

C). Accused retracts or repudiates his confession.

The witness who takes oaths but refuses to give evidence is known as refractory witness. If a witness having been sworn or affirmed refuses to answer any questions put on him the court will adjourn' the case for a period of not more than eight days, and may in meantime commit such person to prison, unless he soon consents to do what he is require of him see section 199(1) of Criminal Procedure Act Cap 20. Be it noted that, the court will do so if the witness offers no sufficient excuse. Against if after adjournment, the witness continuous to refuse to answer questions put to him the case will be adjourned for a period not exceeding eight days and the witness will be committed to prison as per section 199(2) of the CPA. Alternatively the court may commit such witness for contempt of court under section 114(b) of Penal Code and be liable on conviction to imprisonment for six months or a fine not exceeding (500/=) five hundred shillings.

Further discussion:- Other circumstances falling under refractory witness are in section 199 of the CPA and these are:

- i). Where a witness refuses to be sworn or affirmed; or
- ii). Where a witness refuses or neglects to produce any documents or things which he is required to produce, or
- iii). Where witness refuses to sign his depositions.

As to what writ could be applied in (i) to (iii) above, refer the above discussion i.e. **section 199(1) of the CPA** and **section**

199(2) of the same will apply or alternatively **section 114(b) of the Penal Code** may apply.

(b). If the accused refuses the plea section 228(4) CPA, 1985 will apply. The section provides that if the accused person refuses to plead, the court is required to enter a plea of no guilty. However, before entering a plea of what guilty under section 228(4) of CPA the Court is required to hold an inquiry into accused's refusal to plea or muteness in order to satisfy itself whether the accused stands mute out of malice or through the visitation of God. If it is found that the accused stands mute out of malice or refuse to plea, the Magistrate will enter a plea of not guilty' and proceed to try the charge. But where the accused does not plea to a charge or stands mute by the visitation of God, say, if he is deaf and dumb or is suffering from some decease of the mind or is so deaf that he cannot hear when the charge is read over to him such an accused person can, if he is sane, be tried if he can read or write or if intelligence can be conveyed to him by signs or symbols. See A Magistrates Manual by Justice Chipeta, page 32.

(C). if the accused retracts or repudiates his confession the court is required to ascertain its reliability and, or seek corroboration.; the court of Appeal of Tanzania in **Shihobe Seni & Another vs. Republic [1992] TLR 330** said that where confessions are repudiated then there is a need for ascertain their reliability and or seek corroboration.

But how ascertaining reliability of repudiated or retracted confession can be done? It may be done by holding trial within trial.

And how can evidence corroborating repudiated or retracted confession can be sought?

*The Court may seek the evidence corroborating repudiated or retracting confession by ordering the prosecution to call witness corroborating repudiated or retracted confession.

Question: Who are excluded when High Court conduct trial within trial?

When the High Court conducts trial within a trial assessors are excluded.

(ii). Why assessors are excluded when the High court conducts trial within trial?

Trial within trial involve only matters on point of matter of Law. It does not involve matters on point of fact that is why assessors are excluded when High Court conducts trial within trial. It would appeal also that assessors are excluded when High Court conducts trial within trial because the same may influence assessors' opinion at the inclusion of hearing the main case.

Question: What Court should do when the convict of murder is pregnant woman?

Section **197 of the Penal Code Cap 16** provide for the punishment of murder that is, death sentence. **The proviso to section 26(1) of Penal Code exonerates the pregnant woman who is a convict of murder from death sentence.** The Provision to the proviso to section 26(1) in **the Penal Code** provides that, where the Court is

satisfied that the woman convicted of an offence punishable with death is pregnant such court shall pass on her a sentence of imprisonment for life instead of a sentence of death.

Question: Explain the following:

(a). Suspended sentence

(b). Omnibus sentence

a). Suspended sentence as per **section 25(g) of the Penal Code** is that mode of punishment that resembles that of **conditional discharge**. It arises in a case where an accused person is convicted of an offence other than that specified in **Schedule VI in the Minimum Sentences Act, 1972** and no previous conviction is proved against such convicted person. If these two circumstances exist, the Court may pass a sentence of imprisonment but order that the whole or any part of it suspended for a period not exceeding 3 years on such conditions, such as costs or compensation be paid by the offender or otherwise as the court may specify in such order.

b). Omnibus sentence is a single sentence for all offences of which an accused person has been found guilty in a single trial.

Note: According to **Justice Chipeta in Magistrate's Manual pages 140 to 141**, it is wrong to pass Omnibus sentence where the accused person is convicted on two or more counts in trial because the **sentence must be passed on each count separately**.

Question: Who are exempted from death Penalty?

*the following convicts are exempted from death penalty:

- (i). Pregnant woman. See proviso to section 26(1) Penal Code.
- (ii). A person who in the opinion of the Court is under eighteen years of age as per provision of **section 26(2) of the Penal Code Cap. 16**

What is the Certificate of delay?

*The Certificate of delay is the **certificate of assurance of completeness of record of proceeding** issued by registrar of High Court under the proviso to rule. **Section 3(1) of Court Appeal Rules** to a party who wants to appeal against the decision of High Court to Court of Appeal of Tanzania.

Question: What remedy is available when party is aggrieved by the award of Arbitrator?

*Arbitration is governed by 2nd Schedule to **Civil Procedure Code, Cap 33. 1966** and the **Arbitration Ordinance, Cap 15**
R 1(i) of 2nd Schedule to CPC provides parties to any suit interviewed may agree that any matter in difference between them referred to Arbitration. The parties under this sub rule are required to apply to Court for order of reference before pronouncement of judgment.

Where the agreement to refer the matter to Arbitration should be filed?

Rule 1(1) and 17(1) of 2nd Schedule of CPC are to the effect that the

application refer the matter in difference between the parties be filed in court having jurisdiction in the matter to which agreement related.

Correct answer: the decision of an Arbitrator is final and binds on the parties and persons claiming under them respectively. See the Arbitration Ordinance Cap 15.

Who appoint Arbitrator? Rule II of 2nd Schedule to Civil Procedure Code cap. 33 requires arbitrator to be appointed in such manner as may be agreed upon by the parties. However, the Court, has power to appoint Arbitrator in certain cases falling of under **r. 5(1)(a)-(c) of 2nd Schedule to Civil Procedure Code.**

What are grounds for setting aside the award of arbitrator?

*Generally, the award become void if the arbitrator the Umpire fails to consider it after having been remitted to either of the two. But the award will only be set aside on the following grounds falling under **r.15(1)(a)-(c) of 2nd Schedule to CPC,** namely:

- a). Where the arbitrator or Umpire becomes corrupt or misconducts of himself;
- b). Where either party to arbitration fraudulently conceals any matter which is required to be disclosed to arbitrator or Umpire or either party willfully misleads or deceives the Arbitrator or Umpire; and
- c). If the award is made after the Court issued the order superseding Arbitration and proceeded with the suit or if the award is made after the expiration of the period allowed by the Court or being otherwise invalid.

What happens where an award becomes void or is set aside?

r. 15 (2) of the 2nd Schedule to Civil Procedure Code Cap.33 provides that when the award becomes void or is set aside the Court is obliged to make the order superseding the arbitration and to proceed with the suit. *Decision of an arbitrator is to award and binding not only to parties but to persons claiming under them respectively.*

And as regards to the question on the remedy available for a party aggrieved by the award of arbitration the Civil Procedure Code is silent. Since the decision of the award of arbitrator is under **r.21 (1)** pronounced by the Court which made the order of reference to arbitration to follow therefore that the party aggrieved by award of arbitrator may prefer appeal to the High Court. However after the judgment in respect of award is pronounced by the Court no appeal will be entertained from the decree except where such decree is an excess of or not in accordance with the award. See **sub rule (2) of rule 21 of the 2nd Schedule to Civil Procedure Act Cap. 33**. Also read section 74 of CPC

Question: What is probation?

Probation orders are governed by the **Probation of Offenders Act, Cap 247** of the Revised Law and Provisions of section 337 of the Criminal Procedure Act, Cap 20. Probation order is defined by section 2 of Cap. 247 to mean probation order made under the provisions of the Ordinance placing the people under the supervision of a probation officer.

Notes: Probation officer is defined under section 2 of Cap 247 to mean probation officer appointed under the provisions of section 15 of the Cap. 247. Section 3 of the Cap 247 provides that where a

Court after convicting a person of an offence other than the offence specified under the schedule to **the Minimum Sentences Act, 1972**, and it is of the opinion that having regard to youth character, antecedent, home surroundings, health or mental condition of the offender, or the nature of the offence, or any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, such Court may make probation order at its discretion.

Section 4(1) of Cap 247 provides that Probation Order must be for a period of not less than one year and not more than three years.

Question: What is approved School Order?

Approved School Order is an order committing the offender to an Approved School, this mode of punishment is only available to Children and Young Persons.

Note: section 2 of Children and Young Persons Act, Cap 13 of Revised Laws defines Approval School.

Question: What is Preliminary Objection?

It is an Objection raised by party to a case or an application on matters of Law or procedure before the hearing or determination of the main case or the application.

Question: What is Objection Proceedings?

*Objection proceedings is governed by O.XXI, r. 57 of the Civil Procedure Act, Cap. 33. Objection proceedings is a proceedings filed by a person who is not a party to a suit or not judgment debtor opposing the attachment of his property for the purpose of satisfying the decree.

Note: Where the Objection proceedings has been an unnecessarily or designedly delayed the Court cannot make investigation regarding objection proceeding. See the proviso to O. XXI. Rule 57 of the CPC. If after the investigation of the objection proceedings the court is satisfied that the property was wrongly attached, it may make the order releasing the property wholly or to such extent as it thinks fit from attachment as per rule 59, OXXI of CPC.

Question: Tell the Council three modes or Methods of Executing Money decree.

Three methods or modes of executing money decree are provided for under O.XXI, Rule 28 of CPC and these are:

- i). Detention of judgment debtor as Civil prisoner;
- ii). Attachment of judgment debtor's property; and
- iii). Sale of his property.

Question: What do you understand by the following terms:

i). Conditional discharge

ii). Concurrent Sentence and Consecutive Sentence.

The difference between the two.

Conditional discharge is governed by provisions of section 38(1) of Penal Code Cap 16. It is a discharge of person convicted of an offence by the order of the Court subject to the condition that he commits no offence during such period, not exceeding twelve months of the Order. It is Ordered by the Court if it is of the opinion that having regard to the circumstances including nature of the offence and the character of the offender it is in expedient to inflict punishment and that a Probation Order is not

appropriate.

Note: *Simply, it is the Order of the Court discharging a person convicted of an offence subject to the condition that he commits no offence during such period, not exceeding 12 months of the order.* Absolute discharge is also provided under section 38(1) of the Penal Code. It is Ordered where the person convicted of an offence is discharged by court order absolutely is without attaching condition, that he commits no offence during such period no exceeding twelve months of the Order.

Concurrent Sentence means sentences Ordered by the Court to be served together. That is sentences after the other. Concurrent sentence is ordered by the Court when offences are committed in course of the same transaction. See words of Love, J., in **Republic vs. Kassongo s/o Luhogwa, 2 TLR (R) 47.**

Note: Sentences of fine must not be ordered to run concurrently. They must always run consecutively.

(ii). Sentence of imprisonment in default of payment of fine must always be ordered to run consecutively and not concurrently. See Chipeta J. in Magistrate's Manual, page 143.

Consecutive Sentences means sentences ordered by the Court to run one after the other. Consecutive Sentence is ordered where offences committed do not form part of the same transaction.

Note also: *The difference between concurrent consecutive sentences are discussed in **Elias Joakim vs. Republic 1992 TLR 20 pg. 226.***

Question: (i). What do you understand by the term ADR?

(ii). What advantages are there in ADR?

(iii). Is ADR part of our Law or practice?

(i). The term ADR means **Alternative Dispute Resolution**. It is conducted after the Civil Suit has been instituted in Court but before commencement of hearing. It aims at resolving the dispute as between the parties to Civil Suit before hearing parties and their witness.

ii). Advantages of ADR are:

it serves costs of litigation;

it saves the time i.e. it is less time consuming; and

it promotes friendliness as between the parties.

iii). ADR is currently part of our law because it is mandatory under the Civil Procedure Code.

(as amendment of the first Schedule) Rule, 1999

Question: What is refractory witness?

*Refractory witness is governed by provisions of section 199(1) of Criminal Procedure Code.

-Refractory witness is the witness who falls under the following cases, namely:

i). A witness who without sufficient excuse refuses to be sworn or affirmed; or

ii). A witness who having been sworn or affirmed refuses to answer any question put to him; or

iii). A person who without sufficient excuse refuses or neglects to produce any document or thing which he is required by court to produce, or

iv). A person who without sufficient excuse refuses to sign his depositions.

IMPORTANT NOTICES:

VOIR DIRE EXAMINATION: It is conducted by the court where it is of the opinion that a child of tender years is incapable understanding the nature and obligation of oath. The term ***Voir Dire Examination*** means the examination the examination conducted by court in order to test a capacity of a child of tender years to understand questions put to him or her and to give rational answers. Also examination is conducted to test the capacity of a child of tender years to understand the difference between truth and false hood.

Court intervention in trial generally, it a duty of parties or their advocates to conduct their own cases in their own way and to the best of their ability. However, the court has the duty to intervene in order to discover or obtain proper proof of relevant facts. See section 176 of the Law of Evidence Act, 1967 as [R.E 2002].

BILL OF EXCHANGE:-

Bill of exchange means an unconditional order in writing, addressed by one person to another signed by one person to another, signed by person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time, a sum certain in money to or the order a specified person, or to bearer per section 3(1) of Bill of Exchange Ordinance, Cap. 215.

Check: It is a bill of exchange drawn on a banker and payable on demand see section 73 of Bill of Exchange Ordinance.

Banker: it is defined in section 2 of Bill of Exchange Ordinance to include a body of persons whether incorporated or not who carry business of banking.

AMICUS CURIAE:

Is a Latin Maxim meaning a friend of the court. Is a person who is not a party to a lawsuit but who petitions the Court or is requested by the Court to file a brief in the action because that person has strong interest in the subject matter. See Black's Law Dictionary, 7th Edition.

Question: What are five presumptions of Law?

Five presumptions of Law are;

- 1). Presumption of innocence see Article 13(6)(b) of Constitution of the United Republic of Tanzania.
- 2). Presumption of sanity see section 12 of Penal Code Cap 20 [R.E 2002]
- 3). Presumption of marriage as per section 160 of Law of Marriage Act, 1971.
- 4). Presumption as to property acquired during marriage section 60 Law of Marriage Act, 1971.
- 5). Presumption as to gift between husband and wife see section 61 of Law of Marriage Act, 1971.
- 6). Presumption of death as per section 161 of Law of Marriage Act, 1971.

Others include:

*Presumption of validity of registered marriage as per section 259 of Law of Marriage, 1971.

*Presumption that it is for the good of an infant below 7 years to be with his or her mother.

*Presumption of a male person under the age of 12 years to be incapable of having sexual intercourse. See section 15 of Penal Code Cap 20 as amended by Sexual Offences Special Provision Act, 1998 (SOSPA).

Question: (i) What is Hostile witness?

(ii) What is the value of Evidence of Hostile witness?

i). A hostile witness is the one who by his testimony, conducts, attitude or demeanor appears to be biased against the party calling him or is unwilling to tell the truth.

A hostile witness is the one who tells lies about what he obviously knows, or who deliberately changes his earlier story and from his demeanor and bearing he is clearly biased against the party calling him.

ii). When a witness has been treated as hostile, the evidence of that witness is hardly worthy of credit. The reason for treating the evidence of a hostile witness as being worth of no credit is that, such witness is unreliable. In **Alowo vs. Republic [1972] E.A.324** the Court of Appeal for East Africa said that the basis of leave to treat a witness as hostile is that the conflict between the evidence which the witness is giving and some earlier statements shows him or her to be unreliable and this makes his or her evidence negligible.

Question: (i). What is the Procedure for suing the Government?

(ii). Can you attach Government property?

(iii). Can you sue TRC.

(iii). Can the properties of TRC be attached in civil suit?

The procedure for suing the government is as follows:

- (a). One must give the notice of intention to sue the government of 90 days.
- (b). One must proceed to sue the same after the expiring of 90 days by joining the Attorney General thereto as a party
- (ii). The Government property can not be attached for satisfying the decree. It is the Registrar of Treasury who pays costs of suit to decree holder where the government is judgment debtor.
- (iii). Tanzania Railway Corporation is a Corporate Body under TRC Act, 1977, TRC can sue or be sued in its own name.
- (iv). According to section 88 of Tanzania Railway Corporation Act, decree holder cannot attach TRC Properties except the Director General shall cause to be paid out of the revenue of the Corporation such amount as may be required to satisfy execution of decree.

N.B see cases involving Tanzania Harbors Authority and University of Dar es salaam.

Question: What is Debenture?

The debenture is a security or the document offered by the company to the lender of money e.g. the Bank for the purpose of securing the loan.

Note: *Debenture is an instrument normally under seal of Company*

or Public Body issued by same as evidence of debt or as a security for loan of certain sum of money at interest.

DEFENCES IN CRIMINAL OFFENCES

Bonafide claim of Right – section 9 of Penal Code. It arises where the Act done or omitted to be done by a person in respect of property was done in exercise of an honest claim of right and without intention to defraud. If the defense is pleaded successfully the accused is not criminally responsible. He/She will be acquitted. See Hanne **Ndologa vs. Sengula Chisonela** [1992] TLR 1.

Mistake of Fact: Section 11 of Penal Code. The sanction is to the effect that a person is not criminally responsible for act or omission to any greater extent than if the real state of things had been such as he believed to exist.

Exception: see proviso to section 11 of the Penal Code.

COMPULSION: Section 17 of Penal Code. It is a defense of criminal liability. It is invoked when a person is compelled to do or omit to do the act by threats on the part of the other offender or offenders who instantly want to kill him or do him grievous bodily harm if he refuses. In order for the defense to succeed, the threat must not be of future injury.

SELF DEFENCE:

Is a defense of another and property – section 18 of the Penal Code. If they are pleaded successfully, a person will not be criminally liable.

Note: section 18B(1) of the Penal Code requires one to use force

in self defense, defense of another or property which is reasonable. Excessive force is punishable under section 18B (2) of Penal Code.

If excessive force in self defense causes death of another, the person who has caused such death will be guilty of manslaughter. See section 18 B(3). Self dense; defense of property or defense of person causing death which is not punishable in law is provided under section 18C(1)(a)-(c) of the Penal Code.

KILLING ON PROVOCATION: section 201 of the Penal Code.

The provision of section 201 of the Penal Code are to the effect that if a person causes the death of another in the heat of passion caused by sudden provocation before such passion is guilty of manslaughter. Thus, if a person pleads it successfully in offence of murder, he will be found guilty of manslaughter. Further in grave provocation on, such provocation is a mitigating factor in manslaughter cases and the court should exercise leniency. See **Valerian Sail vs. Republic** [1990] TLR 87

INTOXICATION: Section 14 of the Penal Code.

Generally, it is not a defense to any criminal charge. However the accused person can plead successfully the defense of intoxication under the following circumstances:

- i). Where the state of intoxication was caused without his consent by malicious or neglect act of another person. In this circumstance, the accused will be discharged. See section 14 (3) Penal Code.
- ii). Where the person charged was by reason of intoxication, insane, temporarily or otherwise during the commission of an act

or omission. In this circumstance the provisions of Penal Code and Criminal Procedure Act relating to insanity shall apply i.e the Court will be required to make special finding to the effect that the accused did the act or made the omission charged but reason of his insanity is not guilty of the offense. i.e special finding of guilty but insane.

INSANITY: – Section 13 Penal Code.

This defense exonerates the accused from criminal liability. In order to be pleaded successfully it must be shown that the accused did the act or omission through any disease affecting his mind to the extent of being incapable of understanding what his is doing or knowing that he ought not to do the act or make the omission. If the court is satisfied on the evidence on record that the accused did the act or omission while laboring under insanity, it is under section 219(2) of Criminal Procedure Act may lead to make special finding to the effect that the accused did the act or omission charged but by reason of his insanity is not guilty of the offence. i.e special finding of guilty but insane what court will do then – *see section 220(3)*.

Note: the defense of insanity must be raised at the time when the person is called upon to plead. *see section 219(1) of Criminal Procedure Act.*

ALIBI:- *section 194(4),(5) and (6) of Criminal Procedure Act.*

It refers to the evidence that proves that an accused person was in another place at the time of commission of an offence and so could not have committed it. In the case of **Charles Samson vs. Republic [1990] TLR 39**, the Court of Appeal of Tanzania held that

where the Court does not take cognizance whatsoever of alibi, both in summing up to the assessors and in the judgment, it amounts to mis-trial and a consequential miscarriage of justice.

NOTE: Procedure before accused relies on alibi in his defense:

- i). he or she must give a notice to court and prosecution of intention to rely on defense of alibi before hearing of the case. See section 194(4) of Criminal Procedure Act.
- ii). Where notice before hearing of the case of the intention to rely on alibi is not given, then the accused is required to furnish the prosecution with the particulars of alibi at any time before the close of prosecution case.

Question: i). What is dying declaration?

Is the statement made by the person who is dead stating the cause and circumstances or transaction leading to his death. It is made at a time the deceased loses all hope of recover.

ii). How does dying declaration differ from evidence?

Dying declaration is under **section 34(a) of the Evidence Act** admissible whereas hearsay evidence is inadmissible because does not conform to section 61 and 62 of the Evidence Act. Discussing the evidentially value of dying declaration the Court of Appeal of Tanzania in **Damian Ferdinand Kiula & Charles vs. Republic [1992] TLR 16** said that dying declaration can be relied upon to support conviction if it is very authentic.

Question: What is /are Condition for invoking provocation?

The Court of Appeal of Tanzania in *Damian Kiula & Charles vs. Republic* [1992] TLR 16 held that for the defense of provocation to stick, it must pass objectives test of whether an ordinary man in the community to which the accused belongs would have been provoked in the circumstances. The Court said further that the best judges to determine the question of whether an ordinary man in the community could be provoked, are assessors for they are the ordinary persons of the community to which the accused belongs.

Question: Does the Opinion of Assessors bind judges in murder cases?

i). The opinion of assessors does not bind the judge. The judge can disagree with the unanimous views of the assessors. However, the trial judge is required to give reason for so disagreeing. See views of judges of Court of Appeal of Tanzania in ***Abdalah Bazamiye & others vs. Republic [1990] TLR 42 pg 45.**

ii). What happens if assessors are not given opportunity to put questions to witness:

*Assessors' full involvement in the trial is an essential part of the process, its omission is fatal, and renders the trial annulity as per Lordships' views in *Abdallah Bazamiye & Others vs. Republic* [1990] TLR 42

iii). Why the trial is rendered an nullity If the assessors are not given opportunity to put questions?

The duty of assessors is to aid the trial judge in accordance with section 265 of Criminal Procedure Act and section 177 of the Evidence Act allows the assessors to put questions.

Question: What is the difference between repudiated and retracted Confession?

*Repudiated is a denied confession i.e accused denies to have made the confession at all.

Retracted confession is the one in which accused avoids to have made certain statement i.e accused alleges that what is said by the prosecution is not exactly what he said or meant or is the one in which accused agrees to have made in the statement but says that he made it by inducement, threat or promise.

ii). What is evidentially value of repudiated or retracted confession?

Repudiated or retracted confession may support conviction if the court is fully satisfied in all circumstances of the case that either of the two is true. **See Tuwamoi vs. Uganda [1967] E.A at pg 91.** However as a matter of prudence conviction founded on repudiated or retracted confession is required to be corroborated. See the decision of Court of Appeal of Tanzania in **J. Mwakatoka vs. Republic [1990] TLR 17 and Ali Salehe Msuta vs. Republic [1980] TLR 1.**

Question: What is a submission of no case to answer?

What effect does it have when raised in a criminal cases?

(i). A submission of no case to answer is the submission made by the defending party to a case that the plaintiff's or presentation's case has not been made out sufficiently to require him make the

defense. The effect of raising it in criminal case is that, the court must make a ruling on it and if the court finds that there is no case to answer, the case will be dismissed and accused acquitted. But where it is found that there is a case to answer, the accused will be required to make the defense.

(ii). Can the accused appeal on the ruling for a case to answer?

Yes, the ruling for case to answer is subject to appeal.

(iii). What is the effect of the accused person refuses to make defense when prima a facie case has been established against him?

Section 231(1) of Criminal Procedure Act provides that the Court is entitled to draw an adverse inference against the accused person who refuses to make defense when a prima facie case has been established against him. The section also requires the Court as well as the prosecution to comment on the failure by the accused to give evidence.

(iv). Can a finding of no case to answer be raised in a civil case?

Yes, a finding of no case to answer can be raised in a civil case. See case **Vye vs. Vye [1969] 12 ALL. E.R.29** where J. Baker said; the submission of no case to answer be made at close of complainant's case. Also see **Ramsden vs. Ramsden [1954] 2 ALL E.R. 625** where Lord Merriman said that it is proper the submission of no case to answer to be made after hearing both sides especially in matrimonial cases.

QUESTION: Can a Court found conviction solely on circumstantial evidence?

Yes a Court can found conviction solely relying on circumstantial evidence if such evidence is clearly good enough and reliable. See the decision of the court of Appeal of Tanzania in **Protas John Kitongole & Another vs. Republic [1992] TLR 51.**

QUESTION: What remedy is available of a party aggrieved with decision of single judge of the Court of Appeal?

The party aggrieved with a decision single judge of the Court of Appeal is required to take the matter on reference before the same court of Appeal. The composition of the Court on reference is three justices of appeal. See Article 123 of the Constitution of United Republic of Tanzania.

QUESTION: Outline the procedure for applying for prerogative orders?

The procedure for applying prerogative orders are:

i). To make application for leave to apply for prerogative orders in the High Court.

Why? This enables the court to determine whether or not a prima facie case has been made out for the intended application.

ii). If leave is granted then application for prerogative orders is made.

Note: Prerogative orders are governed by The **law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance Cap. 360** as amended by Act No. 55/1968 and Act No. 27/199.

Prerogative orders are discretionary remedy, That is Court will refuse to issue the orders if there is another convenient and feasible remedy within the reach of applicant. See **Abadio vs. Dowki Ltd [1990] TLR 113 & Morris Onyango vs. The Senior**

**Investigating Officer Custom Department Mbeya Cr. Application
No. 25/1981.**

QUESTION: What do Courts do if the plaintiff does not disclose cause of action?

The courts have the alternatives, namely:

- i). To order amendment of the plaintiff; or
- ii). To strike the plaintiff. See *J. B Shirima & others: Express Bus Services vs. Humphrey Meena t/a Comfort Bus Service* [1992] TLR 290.

QUESTION: What are conditions for grant of Petition for probate?

Under a petition for grant of probate to succeed there must be a will. See **section 24(1) of the Probate and Administration Act, Cap, 352** provides that;

24(1) "Probate may be granted only to an executor appointed by the will" and

Rule 33 of the Probate Rules requires, inter alia that;

- a). The last will of the deceased and all codicils thereto shall accompany the petition for grant of probate. Discussing the two provisions the Court of Appeal of Tanzania in *Hansund Ghikas vs. Ludiuma G. Ghikas* [1992] TLR 288 said at pg 259 thus;

" the reading of both provisions makes it abundantly clear that the petition for, and grant of probate presuppose the existence of a will"

Note: The term codicils means instruction that is added later to a will, usually to charge part of it.

Qst: (i). Can you narrate the procedure for appeal from the decision of High Court on its Original jurisdiction to the Court of Appeal?

(ii). Is notice to the respondent to be done in specific time?

(iii). When does the letter for notice to appeal to the Court of Appeal not necessary?

(iv). What is the essence of the said letter?

(v). Does that letter be copied to any anybody and what is the consequences on the failure to copy the letter to the respondent?

(vi). Is there any difference between the procedure on appealing to the Court of Appeal when the High Court is exercising its original jurisdiction and when exercising its appellate jurisdiction?

(i) The procedure of appealing from the decision of High Court on its original jurisdiction to the Court of Appeal is:

(a). To lodge notice of appeal within 14 days to the High Court and serve copies of such notice on all parties who seem to be directly affected by the appeal before or within seven days. As per Rule 77(1) of the Court Appeal Rules.

(b). To apply by the letter for record of proceedings to the High court within 30 days of the decision against which it is desired to appeal and to serve copy of that letter to those directly affected by appeal. As per Rule 83(2) of **the Court of Appeal Rules.**

(c). Lastly, is to institute the appeal by lodging in the registry within 60 days after a notice of appeal a memorandum of appeal, the record of appeal, the prescribed fees and

security for costs of the appeal. Per Rule 83(1) of **the Court of Appeal Rules**.

- (ii) Yes, the notice of intention to appeal or the notice of appeal should be served upon the respondent(s) before or within seven days.
- (iii) The letter for notice to appeal to the Court of Appeal is not necessary when after rights of parties have been pronounced in the course of delivering the judgment and orders made thereof, the aggrieved party or his counsel expresses intention to appeal and the same is recorded by the court in the judgment.
- (iv) The essence of the letter for notice of appeal is to enable the person on whom it is served, at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or appeal on the ground that no appeal lies or that some essential step in proceeding has not been taken or has not been taken within prescribed time. See Rule 82 of the Court of Appeal Rules, 1979.
- (v) Failure to serve copy of the notice of appeal to the other is failure to take an essential step in the proceedings as required by Rule 77(1) of Court of Appeal Rules, 1979, thus notice of appeal is required to be struck out.

Note: *Failure by the applicant to serve to other a copy of letter in which he applied for copy of proceedings as required by Rule. 83(2) of Court of Appeal Rules, 1979, deny applicant right to be covered by the exception in Rule 83(2) of the Court of Appeal Rules 1979. That is, time consumed for*

preparation and delivery of copy of proceedings to applicant won't be excluded.

- (vi) The deference of procedure on appealing to the Court of Appeal is when the High Court is exercising its original jurisdiction and when exercising its appellate jurisdiction is that; when the matter/case originates from primary Court, the High Court must issue a certificate showing that the matter does involve a point of law. Such certificate is given on application by the party wishing to appeal. And when the matter/case originates for District or RM's Court, the party who wants to appeal should apply for leave of High Court to appeal to Court of Appeal.

QUESTION: What are offences that are not bailable in law?

Offences that are not bailable in law are covered under section 148(5)(a) of the Criminal Procedure Act, Cap 20 [R.E2002] and these offences are:

(i) Murder (ii)

Treason

(iii) Armed robbery,

(iv) Defilement

(v) Illicitly trafficking in drugs against the Drugs and Prevention of Illicit Traffic in Drug Act, 1995. Under the Act unbailable offences are not all. See exception- where the offence with which the person in charged involves actual money or property whose value exceeds ten million shillings. See exception.

QUESTION: (i). What do you understand by:-

(a). Libel

(b). Slender

(ii) What are defences available in defamation?

(iii). What slender is actionable parse?

(i) **(a).** Libel refers defamatory statement that are published in permanent form i.e. In writing or printed words or pictures. It is actionable without proves of special damage. Is also crime.

(b). Slender refers to defamatory statements that are not in permanent form e.g spoken words or gestures. It is a tort and not a crime. It is not actionable without prove of special damage.

(ii). the defences available for defamation are:-

Fair comment

N.B. Words must have been a comment,
Words must be fair,
Words must relate to public interest.

Justification:

NB. Defamatory statement must be true; no need to prove that statement were literarily true. See case Hoare vs. Jessol [1965] E.A.C.A 218.

Privilege:

NB. Absolute Privilege is a complete defence and no proceedings can be found in statement absolutely privileged.

Qualified Privilege:

Is a partial defense. Defendant must show that he enjoyed qualified privilege, e.g. Fair and accurate report. Published in news papers or broadcasted.

(iii) What slender is actionable parse?

Slender is actionable parse in any of the following circumstances:

- (a). where there is an imputation of criminal offence punishable by imprisonment; or
- (b). where there is imputation of infectious deceases and the people start de associating with a person defamed; or
- (c). Where there is imputation of adultery, Lesbianism or unchastity of a woman or girl, and
- (d). where there is imputation of unfitness, dishonest or incompetence in any office, profession, Sealing, trade or business held or carried on by the Plaintiff.

N.B. These four exceptions to the general rule that slender is actionable parse were discussed by Samata, J., in **Rudolf Chavula vs. Mohamed Athumani [1982] TLR.100** and Lugakingira Ag. J., in **Leanard Senare vs. Nyaki [1976] LRT n.21** where he said that, defamatory imputation one's professional calling, however humble are actionable parse and special damages need not be proved.

QUESTION: What is the difference between Libel and Slender:

Differences:

- (i). **Libel** is are defamatory statements in permanent form e.g writing printed words or pictures while **Slender** are defamatory statement not in permanent form e.g spoken words or gestures.
- (ii). **Libel** is actionable parse i.e there is no need to prove damages while **Slender** is not actionable parse.
- (iii). **Libel** is a crime and tort while **Slender** is not crime it is tort.
- (iv). In **Libel** there is no need to prove special damage while in **Slender** there is need to prove special damage.

N.B Who may sue in defamation?

Usually natural person do sue in defamation. However partners in firm may sue on behalf of the firm when it suffers damage following defamation. Also trading company may sue.

QUESTION: What Court has jurisdiction to determine a petition for divorce?

Jurisdiction of Courts in matrimonial proceedings is governed by **section 76 of the Law of Marriage Act, 1971** vests concurrent Original jurisdiction to determine matrimonial proceeding in the High Courts, RM's Courts and Primary Courts.

QUESTION:

(i). Mention 3 relationships which are termed to be prohibited.

Prohibited relationships are provided in section 14 of Law of Marriage Act, 1971. These are:

- 1). When a person marries his/her grand parent, parent, child or grandchild, sister or brother, great uncle or aunt, aunt or uncle, niece or nephew. Per section 14(1).
 - 2). When a person marries grand parent, parent, child or grandchild or his/her spouse as provided in section 14(2) of the Law of Marriage Act, 1971.
 - 3). When a person marries former spouse of his/her grandparent, parent, child or grandchild per section 14(3).
- N.B.** when a person marries a person whom he or she adopted or by whom or she was adopted per section 14(4).

(ii). What is the effect of the marriage under prohibited relationship?

The effect of marriage under the prohibited relationship is provided for under section 38(1)(b) of Law of Marriage Act, 1971, says that marriage contracted under prohibited relationship is void. It is nullity.

(iii).What is the difference between void and voidable marriage?

The difference between void and voidable marriage is as follows: Void marriage is marriage which is nullity e.g one in which parties thereto are within prohibited relationships whereas voidable marriage is that marriage which is valid until and unless it is annulled by a decree of the Court e.g where at the time of marriage either party to the marriage is incapable of consummating it. **See section 39(a)(i) of Law of Marriage Act, 1971.**

QUESTION: How can a marriage come to an end?

The marriage comes to an end when a decree of divorce is granted by court after been satisfied that the marriage has broken down irreparably, see section 110(1)(a) of Law of Marriage Act, 1971.

QUESTION: What factors does the Court take into consideration whether to dissolve a marriage or not?

Factors taken into consideration by the court to dissolve the marriage or not are governed by section 107 of the Law Marriage Act, 1971, section 107(i) of Law of Marriage Act require the Court

to have regard to the conduct and circumstance of the parties especially

(a). Petitioners own wrong doing, if any.
Here petition for divorce cannot succeed save for special reason.

(b). Customs of community to which parties belong.

Other factors to be considered are;

(c). Adultery, especially when committed more than once or adulterous association is continued despite protest.

(d). Sexual pervasion on part of the respondent,

(e). Cruelty, mental or physical inflicted by respondent on petitioner or the children, if any of marriage.

(d). Willful neglect on the part of respondent,

(e). Willful desertion by respondent of at least three years,

(f). Voluntary separation, or separation by a decree of Court, where it has continued for at least three years.

(g). imprisonment of respondent for life or for a time not less than five years regard been length and nature of offence for which it was imposed,

(h). Mental illness of the respondent where at least two factors, one of which is qualified or is experienced by psychiatry have certified that they entertained no hope of cure or recovery,

(i). Change of religion by the respondent where both parties followed the same faith at the time of marriage and where according to the laws of that faith change of religion is a ground for dissolution of marriage or dissolves marriage.

QUESTION: What factors does the Court take into consideration in custody of children?

The factors considered by the court before making order for custody of children are provided for under section 125(2) of the

Law of Marriage Act, 1971, and these are:

- (a). Welfare of each independent infant child, court is not bound to place or all children in custody of one person, and
- (b). Wishes of the parents/child, and
- (c). Wishes of the infant/child where he/she is of age to express independent opinion, and
- (d). Customs of the community to which parties belong.

QUESTION: What factors does the Court take into consideration in maintenance of spouses?

Factors taken into consideration by the Court in maintenance of spouses are governed by provision of section 115(i)(a) to (f) of Law of Marriage Act, 1971, thus

- (a). Where the man refuses or neglects to provide for his wife or his former wife as required section 63 of Law of Marriage Act,
- (b). Where a husband deserts his wife so long and the desertion is continuing,
- (c). Where there is matrimonial proceeding,
- (d). When the court is granting or subsequent to grant a decree or separation or divorce,
- (e). When in case of parties marriage in Islamic form, the woman is in customary period of addat following the date on which divorce takes or is deemed to have taken effect,
- (f). If after a decree declaring a wife presumed to be dead she is found to be alive.

Note: *The above factors in maintenance of spouse are considered when the husband has means to earn livelihood by reason of good health, mental or physical fitness; thus where the husband is incapacitated wholly or partially from earning a livelihood by*

reason of mental or physical injury or ill health, the court shall order the woman after having regard to her means to maintain her husband as per section 115(2) of Law of Marriage Act, 1971. Again it will be noted that; the court cannot make the order for maintenance of spouses where the marriage is dissolved unless the court for special reason so direct. See provision of section 115(i) of the Law of Marriage Act, 1971.

QUESTION: (i). What are the prohibited relation in Law?

Prohibited relation in law are provided for under section 14(1) to (4) of the Law of Marriage Act, 1971, they are relations which the parties thereto are not allowed to marry.

(ii). Can you tell the Council the procedure for dissolving the marriage under the Law of Marriage Act, 1971?

The procedure in dissolving the marriage under the Law of Marriage Act, 19971 is as follows:

- * The spouses are required under section 101 of the Law of Marriage Act, to refer the dispute to the Conciliatory Board save in circumstances falling under section 101(a) to (f).
- * If the Board fails to resolve the dispute to the satisfaction of the parties it is required under section 104 (5) to issue certificate setting out its findings.
- * After the certificate by the Board is issued, petition for decree of divorce accompanied by the certificate issued more than 6 months must be filed in the Court of competent jurisdiction.

(iii). What do you understand by presumption of marriage?

Presumption of marriage is governed by section 160 of the Law of Marriage Act, 1971. It is invoked where a man and a woman have lived together for two years or upwards in such circumstances as to have acquired the reputation of being a husband and wife.

Note: John Kirakwe vs. Iddi Siko [1989] TLR 215 discusses elements of presumption of marriage and Harubushi Safe vs. Amina Rajabu [1986] TLR 221 discusses the effect of rebutting presumption of marriage also see section 160 (2) of the Law of Marriage Act.

(iv). Tell the Council what do understand in respect of custody of children after the dissolution of marriage?

Custody of children after dissolution of marriage refers to a situation whereby the children or issues of marriage are by court order placed in custody of their mother or father or where it is undesirable to place them in custody of either parent the infant be entrusted to either parent, or any other relative of the infant or of any association the objects of which include child welfare.

Question: What factors are taken by Court into consideration in division of Matrimonial properties?

Factors taken into consideration in division of matrimonial properties are provided for in section 114(2) of the Law of Marriage Act, 1971. In exercising its power of ordering the division of matrimonial assets/properties, the Court is required to have regard to;

- (a). Customs of the community to which parties belong.
- (b). Extent of the contribution made by each party in money, property or work towards acquiring of the assets/properties,

(c). Any debts owing by either party which were contracted for their joint benefit, and

(d). The needs of the infants children if any of the marriage.

Question: What is the difference between attempted rape and indecent assault?

Attempted rape is governed by provision of section 132 of the **Penal Code Act, as amended by Sexual Offences Special Provision Act,1998**, where the **Indecent assault** is governed by provision of section 135 of the Penal Code as amended by the same.

Attempted rape refers to an attempt accompanied with an intention to procure prohibited sexual intercourse with a girl or a woman whereas **Indecent Assault** refers to sexual attack accompanied by acts of indecency. Indecent assault under the Penal Code as amended by SOSPA may be committed by words or sounds, gestures or exhibits.

Question: (i). What is the punishment for the offence of rape?

The punishment for the offence of rape is provided under the Penal Code as amended by SOSPA. The same law provides that the punishment for the offence of rape is life imprisonment or imprisonment for a term not less than 30 years with corporal punishment, payment of fine and compensation.

N.B. *compensation is paid to a victim of rape.*

(ii) What is Punishment for the rape when offender is 18 years old or under 18 years?

The punishment is provided for under section 131 (2) of the Penal Code as amended by SOSPA. The punishment for the offence of rape when the offender is 18 years old or under 18 years is as follows:

(a). When the convict of **rape** is the first offender he will be given corporal punishment.

(b). When the convict of **rape** is second time offender, he will be sentenced for 12 months with corporal punishment; and

(c). When the convict of rape is a 3rd time and he **recidivist** offender he will be sentenced for life. (Life imprisonment)

(iii). If the offence is committed to a girl under ten years, what is the punishment?

Section 131(3) of the Penal Code as amended by SOSPA whoever commits an offence to a girl under the age of 10 years should on conviction be sentenced to life imprisonment.

Question: (i). What do you understand by Sexual Offences Special Provisions Act. (SOSPA)

SOSPA is the law enacted by the Parliament of the United Republic of Tanzania for the purpose of amending several written laws in making special provisions in these laws in regard to sexual and other related offences so as to further and to safeguard the person integrity, dignity and liberty, security of women and children.

(ii). Who are the persons intended to be covered under the Sexual Offences Special Provisions Act, 1998?

The persons intended to be covered under the Sexual Offences Special Provisions Act, 1998 are women and children. See Preamble to SOSPA.

(iii). Mention the new offences created under the Sexual Offences Special Provisions Act, 1998?

The new offences created under the Sexual Offences Special Provisions Act, 1998 are:

1. Gang rape,
2. Sexual assaults on persons,
3. Act of gross indecency between persons,
4. Sexual exploitation of children,
5. Grave sexual abuse,
6. Sexual harassment,
7. Trafficking of persons,
8. Cruelty to children.

Or: Which sexual offences proceedings are supposed to be conducted in camera?

Section 186(3) of the Criminal Procedure Act, 1985 as amended by **The Sexual Offences Special Provisions Act, 1998** (SOSPA) is to the effect that the evidence of all witnesses in sexual offences must be received by in camera. Note: section 186(3) stresses that the evidence and the witnesses involved in sexual offences should not be published by or in any news papers or other media.

(iv). What do you understand by term in camera?

The term in camera refers to conducting trials without the press or the public being present. e.g. conducting trial in Judge's or Magistrate's private chamber.

Question: What constitute rape which was not there previously?

Section 130(2) and (3) of the Penal Code as amended by SOSPA provides new circumstances that constitute the offence of rape.

These are:

*When person has a canal knowledge of a girl or a woman whose consent has been obtained when she was of unsound mind of state of intoxication.

*When a person has canal knowledge of girl who under the age of 18 years

* When a person has canal knowledge of his separated wife without her consent. * When a person in position of authority takes advantage of his official position rapes a girl or a woman.

* When a person being on management or the staff of remand home or other place of custody takes advantage of his position and rapes in a woman inmate of remand home, place of custody or institution;

* When a person being on management or staff of hospital takes an advantage of his position and rapes a girl or woman.

* When a tradition healer takes an advantage of his position and rapes a girl or a woman who is his client for healing purposes.

* When a religious leader and takes an advantage of his position and rape a girl or a woman.

Question: (i). Can you tell the council the Procedure of suing the Government?

The procedure of suing the government is provided under section 6 of **the Government Proceeding Act**:

- * To issue 90 days notice of intention to sue the government and serve copy of the same to Attorney General.
- * To institute the suit against the government and make the Attorney General the party thereto after the expiry of 90 days notice.

(ii). What is the Procedure for suing the Local Government?

In suing the Local Government; there two Authorities namely:

1. Urban; and
2. District Authorities. As far as the procedure in suing Urban Authorities is concerned section 97(1) of the Law of the Local Government (Urban Authorities) Act, 1982, Act no 8/1982; provides that:

- * The plaintiff must give the Urban Authority written notice of intention to sue of at least one month and such notice is required under section 97 (2) of Act no. 8 of 1982 to state cause of action, name and place of abode of plaintiff and relief claimed; and
- * To proceed filing the suit after the expiry of a period of at least one month.

And as regard District Authority, section 183(1) of the Local Government (District Authorities) Act, no. 7 of 1982 provides the following procedures in suing District Authority:

- * the Plaintiff should issue a written notice of intention to sue the District Authority of at least one month. Notice should include cause of action name and place of abode of the Plaintiff and relief claimed.

*Then to commence a suit against the District Authority after expiry of period of notice.

Note: *Section 97 of Act No.8 1982 and section 183 of Act no.7 of 1982 require written notice of intention to sue Urban Authority or District Authority to served on the chairman or the chief Executive of the either Authority at his/her principal office.*

Question: What is adjournment sine die?

What happens to the suit adjournment sine die?

Adjournment sine die refers to adjournment of the suit or case or matter without fixing next date or day in which the same shall come before the court. When the suit is adjourned sine die, it remains stayed until such time when the order adjourning it sine die is set aside by the court.

Note: *Sine die is a latin maxim meaning without date or a day. It is a latin maxim meaning let him go without a date or day.*

Question: What is a diesnon?

Dies non (juridicus) means days on which no legal business can be transacted e.g. Sunday and Friday, Christmas day. | Rule 2 of the Court of Appeal Rules, 1979 defines ***Dies Non to mean a Sunday or public holiday and includes any other day or which the Registry is closed.***

Question: What do you understand by the term *Suo moto*?

Suo moto is a latin maxim meaning on its own motion. It is the power of court to determine matters of legal importance and of

which it is required to take its judicial notice without being moved by the parties to the case.

What is Pende Lite?

It is a latin maxim meaning litigation pending before the court. It means while the litigation is pending after the action has been filed and commenced and before it has been finally determined.

Question: What do you understand by the committal Proceedings?

Committal proceeding is defined in section 2 of Criminal Procedure Act, Cap 20. It means proceedings held by a subordinate court with a view to the committal of an accused to the High Court. It is governed by provision of sections 243,244 and 245 of Criminal Procedure Act. It is held when a person is charged with an offence not triable by courts subordinates to the High Court. In committal proceedings the Magistrate reads over and explains to the accused the charges, but such accused is not required to plead no make any reply to the charges. After reading over and explaining to the accused the charge(s) the Magistrate is required to tell the accused that this is not your trial and then such accused will be committed in a remand prison or on bail, as the case may be. When investigation is complete a police officer or public will send statement of witnesses together with police case file to DPP who if no satisfied may enter *nolle prosequere* or if satisfied he will draw an information that will be filed in the High Court.

Question: What do you understand from the following defenses?

- (i). Self defence,
- (ii). Bonafide Claim of right
- (iii). Provocation .

Under what cases can these defences be raised?

1. Self defence is a defence in criminal law governed by the provision of section 18 of the Penal Code. Section 18A(1)(a) empowers the person to defend himself/herself against any unlawful assault or act of violence to the body. However in exercising the right of self defence section 186(1) of Penal Code requires a person to use reasonable force as may be necessary for the defence.
2. Bonafide Claim Right: is a criminal defence that exonerates the accused person from criminal liability. It is governed by section 9 of the Penal Code. It is invoked when the act done or omitted to be done by the person with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.
3. Provocation is a defense to criminal liability which if pleaded successful the court is required to exercise leniency. It is governed by the provision of section 201 and 202 of the Penal Code. It is invoked when the person assaults the other person after the latter provokes the former to such extents as to be deprived of his or her power of self control. The provocative act must be capable of provoking the ordinary man in the community to which the accused belongs. See section 202 paragraph 6 and **Damian Ferdnand Kiula and Charles vs Republic [1992] TLR. 16**

Question: How can hand writing be proved in the Court?

The hand writing of a person can be proved in the Court by:

- * Hand writing expert as per section 47 of the Evidence Act, or
- * A person acquainted or conversant with handwriting of disputing author. section 49(1) of The Evidence Act.

Note: in **Joseph Mapema vs. Republic [1986] TLR 148** Msumi, J., held at pg 152 that; for the purpose of enabling the court to decide the author of any piece of handwriting in dispute, the opinion of a person who is conversant with the handwriting of the disputing author is as good as, if not sometimes better than that of handwriting expert.

Question: When does a person loose his citizenship in Tanzania?

A person can loose citizenship in Tanzania under the Tanzania citizen Act, act no. 6 of 1995 in the following cases:

(a). When a Tanzanian citizen by birth of full age and capacity renounces a Tanzanian citizenship under section 13(1) of the Act.

(b). When the Minister responsible for Citizenship matters deprives any person other than citizen by birth of his citizenship after exercising certain rights in other foreign country. i.e exclusive rights exercised only by citizen of that foreign country. See section 14 of the Tanzania citizen Act.

(c). When Minister responsible for citizenship deprives a citizenship by naturalization of his citizenship after obtaining certificate of naturalization by means of fraud, false representation or concealment of any material fact; or that citizen becomes disloyal to the country, or when in any war involving the country such a citizen sides in any way with an enemy etc. as per

section 15 of the Tanzania citizen Act.

(d). When a citizen of Tanzania by naturalization is deprive of his/her citizenship elsewhere i.e his home country on the ground which in the opinion of a Minister for Home Affairs are similar to those specified under section 15(1) and (2) of the Tanzania citizen Act.

Question: Tell the Council the stages in criminal trials at High Court?

The stages in criminal trials in the High Court are:

- (a). To determine matters not in dispute by holding a Preliminary Hearing.
- (b). To open prosecution case after P. H.
- (c). To make a ruling as whether there is a case to answer.
- (d). If there is a case to answer to open a defense case.
- (e). To allow the making of final submission if so desired by the Court
- (f). The Judge to make a sum up of the case to the assessors.

Question: (i). what is procedure for suing Tanzania Hobours Authority T.H.A?

The procedure for suing Tanzania Hobours Authority is provided for under section 67 of Tanzania Hobours Aurtherity no. 12 of 1977. The procedure is

- * To serve one month notice of intention to sue THA to the Director General.
- * To institute the suit within 12 months next after the act complained of e.g neglect or default.

(ii) What is procedure for suing Tanzania Railways Corporation?

The procedure for suing Tanzania Railways Corporation is provided for under section 87 of Tanzania Railways Corporation no. 11 of 1977.

- * To serve one month notice of intention to sue TRC to the Director General.

- * To institute the suit within 12 months next after the act complained of e.g neglect or default.

Question:

(i) Explain on what you understand by the term Review?

Review is governed by the provision of section 78 and Order XLII of Civil Procedure Code. It is an act of a Court to reconsider its own decision or order. It is applied for by the party who considers himself aggrieved by a decree or order from which appeal is allowed but from which no appeal as been preferred; or it can be applied for, the party who considers himself aggrieved by a decree or order which no appeal is allowed.

Note: Grounds for Review are:

- * Upon discovery of new and important matter or evidence which after the exercise of due diligence was not within knowledge of the party or could not be produced by him at the time when decree was passed or order made, or

- * Upon discovery of some mistake or error apparent on the face of record, or

- * For any sufficient reason.

(ii). What is limitation period for Review?

The limitation period for applying for Review is governed by 1st Schedule to **the Law of Limitation Act**, no. 10 of 1971, Part III at item No.3 describes period within which to apply for Review of Decree, Judgment or Order is 30 days.

(iii) Can a Review done *suo moto*?

No, Review can not be done *suo moto* it is done on application of the aggrieved party.

(iv).. What do you understand by the term Revision?

Revision is governed by the provisions of **section 79 of Civil Procedure Act**. It is the act of Superior Court to exercise its supervisory powers over Subordinate Courts for instance: The High Court has power under section 79 of the CPC to call for the record of any case which has been decided by any Court subordinate to it and in which no appeal lies thereto. The High Court can do so on its own motion or on application by any aggrieved party.

Note: Grounds for Revision under section 79(1)(a) to (c) are:

- (a). If subordinate Court exercise jurisdiction not vested in it by law; or
- (b).If subordinate Court fails to exercise jurisdiction vested in it; or
- (c). If in exercise of its jurisdiction the Court act illegally or with material irregularity.

Question: What do you understand by objective and subjective part of evidence:

Subjective part of the evidence is the evidence which when considered by more than one person different conclusion can be drawn as to its credibility, **while**;

Objective part of evidence is the evidence which is weight, that is, more than one person can draw the same conclusion.

Note: Subjective Part of evidence is evidence that introduces the existence of a fact in issue. Whereas, **Objective part** of evidence is the evidence that proves existence of a fact in issue.

Question: In Probate proceedings, after a caveat is filed how do the proceedings proceed?

Proceedings subsequently to the filling of caveat are governed by section 59 of the Probate and Administration Ordinance, 1961, Act No. 35/1961. Proceedings shall not be taken on petition for probate or letters of administration after caveat is filed against either of the two. A person who petitioned for grant of Probate or letters of administration will be required to apply for the issue of citation to caveator calling upon him to state within a specified time whether he supports the grant of probate or letters of administration to the petitioner and if, he does not, require him to enter an appearance to the petition. If the caveator enters appearance, the court shall proceed with the petition in accordance with the provision of section 52(b) of the Act. i.e. the proceedings shall be dealt with as if it is a suit that is, petitioner will be plaintiff and the person opposing proceedings will be defendant.

(i). What is Summary Procedure?

Summary procedure is governed by the provisions of order XXXV of Civil Procedure Act. It is the procedure intending to empower a plaintiff with liquidated claim i.e. a claim for specific amount of money to obtain judgment without an unnecessary delay. Under summary procedure, the defendant has no automatic right to appear and defend his/her case. If the defendant wants to defend summary procedure suit, he must apply for leave to so defend. The leave will only be granted if the application for leave discloses that there is triable issue or stable and arguable case.

Note: summary procedure suit may be instituted under any of the circumstances falling under Order XXXV, Rule 1, (a) to (f) and these are:

- a). Suit upon bill of exchange or promissory notes;
- b). Suits for recovery of income tax;
- c). Suits arising out mortgage, whether legal or equitable;
- d). Suits by TANESCO for recovery of meter rents, charges for supply of electricity etc.
- e). Suits for recovery of rent, interest or other debt due to Republic, Government authority; and
- f). Suits for recovery of immovable property not protected under Rent Restriction Act, and suits for the recovery of rent; *mesne profits* or damages for unlawful occupation in respect of such immovable property, building or premises.

(ii). What is third party notice?

Third party notice is governed by **Order 1 rr.14-23 of the Civil Procedure Act**. The third party procedure is the procedure under which a party who is not an original party to the proceedings is brought into the suit by defendant on the ground that in case the

defendant is found liable, such third party will have to contribute or indemnify the defendant. Third party notice is applied for by the defendant. In order the same to be applied for, the defendant must make sure that he claims contribution or indemnity from third party. Again, the claim for contribution or indemnity from third party should be in respect of the defendant's liability to the plaintiff; that is, third party will be properly joined if the wrongful act arises from the same cause of action as that of plaintiff against the defendant.

(iii). What is interpleader suit?

Interpleader Suit is governed by section 63 and Order XXXIII of the Civil Procedure Act. Interpleader suit is a suit in which a person who has no interest in the subject matter of dispute other than claims for his charges or costs, institutes a suit for the purpose of enabling the court to determine the rightful claimer as between more than one claimer. Interpleader suit is commenced by filing a plaint. Such Plaint must disclose facts showing that the plaintiff has no any interest in the subject matter save for charges or costs, it must also show that the defendants have competing claims among themselves severally and the same must also show that there is no collusion between plaintiff and any of the defendants. N.B. Interpleader order is issued at the discretion of the Court. See **Sargeant vs. Gautama [1967] EA 338.**

(iv). What is representative suit?

Representative Suit is governed by O.1 rr.8 of Civil Procedure Act. It is instituted when there are numerous persons having the same interest in one suit. The person or persons who want to sue or be

sued or defend the suit on behalf of or for the benefit of all persons having some interest in the suit, should apply for leave to institute *Representative Suit*. That is to say, under **O.1 rr.8** representative suit cannot be entertained unless and until leave for instituting the same is granted by the court.

(v). What is the procedure for filing summary suit?

Procedure for filing Summary Suit is governed by the provision of **O. XXXV rr. 2 and 7 of the Civil Procedure Act**. The procedure for filing summary procedure suits is the same as the procedures in suits instituted in the ordinary manner. **O. XXXV, rr.2**. However, requires summary procedure suits to be instituted by presenting the plaint in the usual form but endorsed “Order XXXV: Summary Procedure”

Question: What is the disciplinary Procedure against a Judge of High Court and the Judge of Court of Appeal?

The disciplinary procedure against the judge of High Court is provided for under Article 110 of the United Republic of Tanzania Constitution, 1977. The procedure is as follows: firstly, the president will under Article 110(6)(a) of the Constitution appoint a Commission of Inquiry head by chairman and at least two members. The chairman and at least half of the members must be judges of the High Court or Court of Appeal from any Commonwealth Country.

Secondly, the commission will inquire into the matter and prepare a report in which it will advise the president to remove the judge

from office or not. See Article 110(6)(b) of the Constitution.

Thirdly, if the commission advises the president that the judge be removed from office, then such judge will be removed from office by president. See Article 110(7) of the Constitution.

And the disciplinary procedure against the judge of Court of Appeal is provided for under Article 120(5) of the Constitution of the United Republic of Tanzania, 1977. The disciplinary procedure against the Judge of Court of Appeal is as the same as that against the Judges of the High Court.

Question: What is quorum of Court of Appeal of Tanzania or when can we say the court is proper?

The Court of Appeal properly is constituted when at least 3 judges of Court of Appeal preside over the matter. This is per Article 122(1) of Tanzania Constitution.

Note: decision is based on majority opinion. See Article 122(2) of Tanzania Constitution – according to Article 118(1) of Tanzania constitution, the full bench of Court of Appeal is at least 5 Justices of Appeal.

Question: What is remedy of the party aggrieved by the decision of single justice of Appeal?

According to article 123 of the Constitution of the United Republic of Tanzania, 1977 a person aggrieved by the decision of single justice of appeal will refer the matter to Court of Appeal where it will be heard and determined. Normally, it will be heard and determined by 3 justice of Appeal.

Note: According to Article 123 of the Tanzania Constitution, a

single justice of appeal has no power to determine the appeal preferred to Tanzania Court of Appeal.

Question: Define Coroner?

Is an official with the duty of inquiring into the manner of death of any person who is slain or dies in suspicious circumstances, or in prison.

See Osborn's Concise Law Dictionary 6th Edition. In other words, a coroner is the official who discovers the manner of sudden, suspicious or violent death by holding an inquest.

Question: What is Inquest?

It is an official inquiry held by a Coroner to find out the cause of death which has happened unnaturally. According to Osborn's Concise Law Dictionary, 6th Edition, the term Inquest means an Inquiry held by Coroner as to the death of a person who has been slain, or has died suddenly, in prison, or under suspicious circumstances.

Question: Tell the Council the meaning of:

(i). Insurance agent?

The term Insurance Agent is defined in section 3 of the Insurance Act, 1996, Act no. 18/1996 to mean a person who solicits applications for insurance, collects money s by way of premium and may issue insurance cover on behalf of Registered Insurer in accordance with his Agency agreement.

(ii). Insurance Broker?

The term Insurance Broker is defined in section 3 of the Insurance Act, 1996. Insurance Broker is a person or Limited Company whose job is to transact insurance business e.g. to bring together person seeking insurance of reinsurance of risks, carry out work preparatory to the conclusion of contracts of insurance or reinsurance and in event of claim, may assist in administration and performance of contract.

Note: Insurance Broker works with complete freedom and is not an Agent of the Insurer.

Question: What do you understand by the following?

(i). Confession

Confession is statement made by person charged with crime admitting to be guilty. It is an admission of guilty made to another by a person charged with a crime. It is admissible in court only if free and voluntary i.e. if it is not forthcoming because of any inducement, or threat held out by a person in authority. It must not be made under hope of reward (other than spiritual) or fear of punishment in related to the proceedings. The onus of proof that confession was voluntary is in the Republic. See DPP vs. Lin[1975] 3 WLR 419.

(ii). Admission

Admission refers statement, oral, written or inferred from conduct, made by or on behalf of a party to a suit and admissible in evidence, if relevant, as against his interest. Admission is either formal or informal.

Note: Formal admission for purpose of trial may be made on pleadings e.g. where a contract and breach are admitted. Informal

admission may be made before or during the proceedings. In criminal proceedings admission may be by plea of guilty, by a statement of facts by the accused, or in the form of a confession. **Note also that:** Admission are governed by Part II of the Evidence Act, 1967 whereas confession are governed by Part III of the Evidence Act, 1967.

Question: What do you understand by:

(i). General damages

General damages are damages that are compensatory in nature intended to take care of Plaintiff's loss of reputation as well as act as salarium for mental pain and suffering. See *Haji Associates Co.Ltd & Another vs. John Mlundwa* [1986] 107. General damages are that kind of damages which the law presumes to follow from the wrong complained of, and which there for need not be set out in the plaintiff's pleadings. e.g in case of personal injury resulting from negligent act, general damages may be recovered for pain and suffering injury to health and personal inconvenience. **See Osborn's Concise Law Dictionary.** 6th Edition pgs 156-157.

(ii). Special Damages

Special damages are that kind of damage that are not presumed by law. They must be expressly pleaded and proved.

(iii). Punitive Damages

Punitive damages are awarded not only by way of compensation, but no punishment to offender. They are exemplary or vindictive awarded not merely as pecuniary compensation for the loss

actually sustained by the Plaintiff but also as a kind of punishment of the Defence with view of discouraging similar wrong in future.

See Angela **Mpanduji vs. Ancilla Kilinda**[1985] TLR 16

(iv). Mitigation of Damages

Mitigation of damages refers to steps taken by Plaintiff in order to reduce damages. The defendant can not be liable for acts which the plaintiff failed to take steps to mitigate.

Note: Generally, it is the duty of the party whose legal rights have been infringed to act reasonably in mitigation of damages.

(v). Duplicity.

Duplicity means that the charge is double. A charge is said to be duplex where it contains two distinct offences in single count. e.g a charge alleging the commission of burglary and house breaking.

Question: what do you understand by the following terms? (

i). Corroborated Evidence.

Corroborated evidence is the evidence which is confirmed or supported by another piece of evidence.

(ii). Corroborating Evidence

Corroborating evidence is the evidence that confirms or supports another piece of evidence.

Note: Evidence supposed to be corroborated should be sufficient,

satisfactory and credible. See **Azizi Abdallah vs. Republic [1991]**
TLR 71

(iii). Nominal Damages

Nominal damages are damages that are of tritling amount awarded contemptuously or for the mere invasion of right without damage. See Osborn's Law Dictionary 6th Edition pg. 109.

Note: *Nominal damages are damages for less sum of money awarded when legal right has been infringed but no substantial loss has been caused.*

(iv). Contributory Negligence

Contributory negligence means the failure by the plaintiff to meet the standard of care required of him to conform with his safety. It is the failure by plaintiff to take care of his own safety. That is to say the plaintiff himself contributes towards the commission of the wrong done by defendant to him.

(v). Remoteness of Damages

Remoteness of damage refers damage which results from an act of the defendant, but which cannot be said to be caused by him. The Plaintiff is not entitled to recover compensation when the damage caused to him by defendant's act is too remote.

Question: Can you tell the Council what do you understand by the following terms:

(i). Strictly Liability

Strictly Liability is the liability without fault. That is where a man acts at his own peril and is responsible for accidental harm, independently of the existence of either wrongful intent or negligence. In criminal law, it is the liability without *mens rea*. **e.g. in liability for the escape of dangerous things.**

(ii). Vicarious Liability

Vicarious liability is the liability of the master for the torts committed by his servant in the course of his employment.

(iii). Occupies Liability

Occupies liability is the duty of the occupier of premises towards the one who lawfully visits his premises. The liability of the occupier is not only limited to premises, that is, liability extends to occupiers of vehicle. In Tanzania, occupiers liability is governed by Occupiers Liabilities Act, 1968.

(iv). Corroboration

Corroboration is an independent piece of evidence which implicates a person accused of a crime by connecting him with it. It is the evidence which confirms in some material particular not only that the crime has been committed, but also that the accused committed it.

(i). Can you tell the Council the ingredients of valid Contract?

Ingredients of valid contract are provided for section 10 of Law of Contract Act, Cap 433, these are:

*free consent;

- *Competency or capacity to contract;
- *Lawful consideration and lawful object.

(ii). What are the remedies for the breach of contract?

The remedies for breach of contract are:

Damages - here a party is compensated for loss suffered owing to breach of contract.

Restitution – here innocent party claims back his performance or its reasonable value.

Specific Performance – here the court orders Defendant to do according to terms of contract.

Rescission – the Plaintiff may seek to rescind the Contract.

Quantam Meruit – Payment of so much as the party doing the work deserves.

Apart from **specific performances** another specific relief is **injunction**.

(iii). What is misrepresentation?

Misrepresentation is defined in section 18(a)-(c) of Law of Contract Act. It is misstatement of a fact(s) material to the contract. It is a statement or conduct which conveys a false or wrong impression.

Question:

(i). What is the difference between primary and secondary evidence?

The difference between primary and secondary evidence is that: **Primary Evidence** is defined in section 64(4) of Evidence Act. It means document itself produced for inspection by court. Primary evidence must be generally be produced in court.

Secondary Evidence is defined in section 65 of the Evidence Act; it is a copy of original document. Secondary evidence is only produced in court in exceptional circumstances.

(ii). How do you distinguish between secondary from primary evidence?

Secondary evidence may be distinguished from Primary Evidence by inspecting or checking Secondary Evidence against Primary Evidence.

(iii). Under what circumstances secondary evidence is admissible in evidence?

Secondary evidence is admissible in circumstances provided for under section 67 of the Law of Evidence Act, 1967 and these are:

- *When original document appears to be in possession of power of a person when the document is sought to be adduced against;
- *When existence, condition or contents of original document are admitted in writing by person against whom it is proved or by his representative in interest;
- *When original document has been destroyed or lost or when or when it cannot be produced in reasonable time; when original document is of such a nature as not to be easily movable;

*When the original is public document within the meaning of section 83 of the Law of Evidence Act.

*When the original document is of which certified copy is permitted by The Law of Evidence Act or any written law to be produced in evidence; and

*When original when original consist of numerous accounts or other documents that cannot be conveniently examined in Court, and fact to be proved is the general results of whole collection.

Question: Can you tell the Council what is extradition and what is the law which governs extradition?

Extradition means the delivery up of a person who has committed a crime in one country by the authorities of another country in which he has taken refuge, to the authorities of the country where the crime was committed. Extradition proceedings cannot be taken against the criminal unless an extradition treaty has been concluded with the foreign state concerned.

*In Tanzania extradition is governed by **the Extradition Act, 1965**

Question: Briefly explain the following:

(i) A trustee in Bankruptcy

A trustee in bankruptcy is a person in who the property of a bankrupt is vested in trust for the creditors. His duty is to discover, realize and distribute it among the creditors. He is also required to examine the bankrupt's property, accounts etc, to investigate profits made by the creditors, and to admit, reject or reduce them according to circumstances.

(ii).A receiver

A receiver is a person appointed by the court on interlocutory application, to receive the rents and profits of real estate, or to get in personal property affected by proceedings in lieu of the person then having the control of property and to protect such property until the right of parties have been ascertained.

(iii). A détente

A détente means lessening of international tension. It is an improvement in the relationship between two or more countries which have been unfriendly towards each other in the past.

Question: Define the following;

(i). Rules of Natural justice

Rule of natural justice refer to rules and procedure required to be followed by any person or body charged with the duty of adjudicating upon disputes or determining the rights of others e.g Government Department.

Note: *the chief rules are to act fairly, in good faith, without bias, and in judicial temper; to give each party opportunity to be heard and to avoid hearing one side behind the back of the other.*

(ii). Prerogative Orders:

Prerogative orders are the orders granted by superior Courts for the purpose of preventing inferior courts or public Officials or Public Bodies from exceeding the limits of their legitimate sphere of action, or of compelling them to exercise their functions in accordance with the law.

(iii). Human Rights:

Human Rights means, rights and freedom to which every human being is entitled. Some human rights are so fundamental that they form part of natural law. Most of them however, do form part of treaty law.

What is the doctrine of recent possession?

The doctrine of recent possession means that where a person is found with a property recently reported; stolen, that person may be held to have stolen it. The possessor of the property recently reported stolen is regarded either as the actual thief or a guilty receiver.

Note: *The doctrine of recent possession is not provided for in the Penal Code Act, Cap. 16. It was developed by our Courts under section 114 of the Indian Evidence Act, 1872 now section 122 of the Evidence Act, 1967.*

Question: what do you understand by:

(i). Bail

Bail is the release by the police or court of an accused person held in legal custody while awaiting trial or appeal against criminal conviction. Bail is always granted upon fulfilling certain conditions e.g. executing the bond with sureties.

Note: Bail is the release of accused person pending trial or appeal.

(ii). Identifying witness

Identification witness is the witness who proves the identity of a thing or person accused of committing a crime.

(iii). Transferred Malice

Transferred Malice refers to a situation whereby a person intends to commit a crime against one person but in fact commits the same crime against another person.

Question: (i). Can you tell us the essential elements of a valid will.

The essential elements of a valid will are:

- *Testator must have testamentary capacity when the will is made;
- *Will must be witnessed and attested by witness;
- *The will must be signed at the foot by testator; and
- *The will must direct the manner in which the properties are to be distributed to the beneficiaries.

(ii). Can a person amend a will after he made it?

The will can be amended after being made; it can be amended by executing codicils or duly executed alteration.

Question: What do you understand by;

(i). Extended Jurisdiction

Extended jurisdiction is governed by the provisions of **sections 173- 176 of the Criminal Procedure Act**. Extended jurisdiction refers the powers conferred on Resident Magistrate, by the Minister for Legal Affairs to try category of cases ordinarily tried by the High Court. See also section 45 of Magistrate Court Act.

(ii). Committal Proceedings:

Committal proceedings are governed by the provisions of sections 243-263 of **the Criminal Procedure Act**. Committal Proceedings is defined by section 2 of the Criminal Procedure Act to mean proceedings held by subordinate court with a view to the committal of an accused person to the High Court according to section 244 of the CPA. Committal Proceedings may be necessitated by two factors, namely that the offence charged is not triable by Subordinate Courts or the DPP is of the opinion and advises the court accordingly that, the offence charged is not suitable to be determined in the subordinate court upon summary trial.

Question: Can you tell the Council the powers of DPP and mention under what Law the powers are found?

The powers of DPP are governed by the provision of section **90(1)(a)-(c) of the Criminal Procedure Act, also read article 59B of the Constitution of the United Republic of Tanzania, 1977 and section 2 of the Office of the Attorney General Discharge of Duties Act, no. 4/2005** and these are:

- (a). To institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person;
- (b). To take over and continue any such criminal proceedings that have been instituted or undertaken by any other person or authority; and
- (c). To discontinue any such criminal proceedings instituted or undertaken by him or any other authority or person.

Question: What do you understand by the following:

(i). Deed Poll?

Deed Poll refers a deed to which there is only one party. For example, one declaring change of name. It is a unilateral deed.

(ii). Power of Attorney.

Power of Attorney refers a formal instrument by which one person empowers or authorizes another to represent him, or act in his stead for certain purpose.

Caveat:

Caveat means let him beware. It is a notice that is filed in the offices of Registry or Court to prevent a certain step being taken without previous notice to the person entering the caveat (who is called the caveator) e.g a person having or claiming an interest in the deceased estate may enter a caveat to object the grant of probate or letters of administration.

Question: What is an Injunction in law and what Law governs injunction?

Injunction is a remedy in the form of Court Order or Decree by which a party to an action is required to do, or refrain from doing a particular thing. Injunctions are either restrictive (preventive) or mandatory (compulsive). As regards, time, injunction are either interlocutory (interim) or perpetual.

NB: Perpetual injunction is granted after the plaintiff has

established his right and there is say, continuing breach by defendant whereas interlocutory injunction may be granted pending the outcome of the main hearing of the case. Injunction is governed by **the Civil Procedure Act R.E 2002** under the provision of Order XXXVII.

Question: (i). Would you mention five legislation connected to Labour matter:

Five legislation connected to labour matters are:

- *The employment Act; Cap. 366
- *Security of Employment Act, 1964
- *Industrial Court Act, 1967
- *Severance Allowance Act, 1962
- *The Workmen's Compensation Ordinance, Cap. 263.

Note: *The new Labour Laws which have repealed and replaced former laws are **the Labour Relations Act, 2004**; and **the Labour Institution Act, 2004***

(ii). Tell us which organ deals with Labour disputes.

The organ which deals with labour disputes is known as Industrial Court.

(iii). Is the decision of the Industrial Court appealable?

Section 27(1)c) of the Industrial Court Act, 1993 provides that every award and decision of Court is final and shall not be liable to challenged, reviewed or called in question by any other court. However, according to the same provisions matters on grounds of

lack of jurisdiction by the Industrial Court are required to be referred to High Court and the same should be heard and determined by full bench of High Court.

Question: Can you tell the Council what is attachment before judgment and what is the Law governing attachment before Judgment?

Attachment before judgment is the order of the Court requiring the defendant to furnish security in such sum of money as may be specified by the Court or property or sum of money equivalent to value of property. Attachment before the Judgment is ordered when it appears that the defendant is about to dispose or to remove the whole or any part of his property from the local limits of jurisdiction of the Court.

Attachment before Judgment is governed by Order. XXXVI rr.6 - 13 of **the Civil Procedure Act.**

Question: Briefly tell the Council what the following mean under Company:

(I). Equity Shares

Equity shares refers to shares whose share holders are not entitled to be paid fixed amount of interest.

(ii). Share certificate.

Share Certificate is an instrument under the Seal of the Company; certifying that the person therein named is entitled to a certain number of shares. In other words; share certificate is a document

issued by the company evidencing that a named person is the company member and stating the number of shares registered in his name and the extent to which they are paid up. Share Certificate is not negotiable.

NB: Share Warrant is a Certificate under the Seal of the Company.

Question: (i). What is the status of the opinion of the assessors in Homicide cases?

In homicide cases the judge can disagree with unanimous views or opinion of the assessors. However, he is required to give reasons for so disagreeing. See **Abdalah Bazamiye & others vs. Republic [1990]TLR 42**, pg 45 decide by Court of Appeal.

(ii). Cases where the Court sits with assessor.

Primary Court Magistrate sits with assessors in Civil and Criminal cases per section 74(1) of the MCA, 1984.

RM's & District Courts:

Where Rules of Customary or Islamic law is in issue or relevant the courts may and when directed by an appropriate judicial authority sit with an assessor or assessors, see section 7(3) of the Magistrate Court Act. RM's Court sits with assessors when determines cases under the **Economic and Organized Crime Control Act, 1984**.

High Court.

High Court sits with assessors in Homicide cases, Economic crime cases, treason and defamation cases under the **News Paper Act, 1976**. *Section 265 of CPA says that all trials i.e criminal cases*

should be with aid of assessors whose member must be two or more as the court think fit.

Commercial Court:

The court sits with assessors in all cases.

Industrial Court:

The court does sit with assessors in all cases

*Section 39 of Act no. 2 of 2002 provides that the appeals to High court Land Division be heard by Single Judge sitting with two assessors. See also the **High Court Registries (Amendment) Rules, 2001.***

Question: What is the Procedure for registering foreign Company in Tanzania?

The procedure for registering foreign company in Tanzania is governed by the provisions of section 320A and 321 of Cap. 212 and these are:

(i). The Company must apply for and obtain approval of registrar to establish a place of business in the country.

(ii). The company must within one month after establishing business in Tanzania deliver to the registrar the following:

- * A certified copy of the charter, statutes or Memorandum & Articles of Association or other instrument constituting or defining the constitution of the Company and if the same are not in English, a certified translation thereof;
- * Full address of registered or principal office of the Company.
- * A list of directors and their particulars as required by Cap 212.

*The names and address of person(s) residing in Tanzania authorized to accept process of Notices on amount of shares.

Question: (i). Can you tell the distinction between Official Receiver and Receiver Manager?

Official Receiver is the officer appointed by the court to act in Bankruptcy and in the winding up of Companies. According to section 178(1) of Cap. 212, official receiver in matters relating to winding up of companies by Court means the officer appointed for bankruptcy purposes.

*And **Receiver Manager** is the person who is appointed to manage the business of the company which is no longer carrying on business profitably.

(ii). Who is a Liquidator?

A liquidator is a person appointed by the court to carry out the winding up of company. See **section 182 – 195 of Cap. 212.**

NB. His duties are: To realize the property of the company,

* To pay debts; and

* To distributed surplus of any, to members of the company.

(iii). Under what circumstances the law of Bankruptcy applies to Public Corporation?

The Law of Bankruptcy apply to Public Corporation under the following circumstances.

(iv). Can law of Bankruptcy apply to a Company?

Yes, Bankruptcy Law i.e Bankruptcy Act, Cap. 25 can apply to a Company.

Question: (i). What happens if the Plaintiff is absent on the day the case is called for hearing?

When the plaintiff is absent on the day the case is called for hearing, the case shall be dismissed for want of prosecution. But where the defendant admits the claim, or a part thereof, the court shall pass a decree against him upon such admission of the claim and where the admission is in respect of the part of claim, the court dismiss the suit so far as it relates to the reminder. See **O. IX r. 8 of Civil Procedure Act.**

(ii). What happens if both the Plaintiff and Defendant are absent on the day the case is called for hearing?

Where both the Plaintiff and Defendant are absent on the day the case is called for hearing the court may make an order that suit be dismissed. See **O. IX r. 3 of Civil Procedure Act.**

(iii). What happens if both the Defendant is absent on the day the case is called for hearing?

The procedure to be followed when the Defendant is absent on the day the case is called for hearing is governed by the provisions of **O. IX, r. 6(1) of Civil Procedure Act.**

The procedure is:

*If the suit is before High Court and it is proved that the defendant was duly served, the court may proceed ex-parte.

*If the suit is before the courts subordinate to High Court.

*where the summons issued was a summons to file defence and it is proved that the summons was dully served, the court may proceed ex-parte;

*And if the summons issued was summons to appear and it is proved that the summons was dully served, the court may enter judgment for plaintiff.

(iv). What happens if the appellant on a civil appeal is absent?

Where the appellant on Civil appeal is absent on the day the appeal is called on for hearing, the Court may make an order that the appeal be dismissed per **O. XXXIX, r. 17(1) of Civil Procedure Act.**

Note: Where the appellant appears and the respondent does not appear the appeal may be heard ex-parte per **O.XXXIX, r. 17(2) of the Civil Procedure Act.**

(v). What happens if the respondent in criminal appeal is dead?

Where the respondent in criminal appeal dies the appeal abates. However, the appeal from a sentence of fine does abate as per **section 371 of the Criminal Procedure Act.**

Question: What does the following phrases mean?

(a). A holder in due course

Holder in due course is the one who has taken a bill of exchange in good faith and for value, before it was overdue and without notice of previous dishonor or of any defect in the title of the person who negotiated or transferred the bill.

NB: The holder in due course holds the bill free from any defect title of prior parties and may enforce payment against all parties liable on the bill. A bank which has allowed customer to draw against unendorsed, un-cleared cheques is a holder in due course. See case of *Midland Bank vs. Harris* [1963] 1 WLR 1021.

(b). Insurable Interest.

Insurable interest is an interest in the subject matter of a contract of insurance that provides the person insured with the right to enforce the contract.

NB: An insurable interest, example, ownership of goods insured distinguishes a contract of insurance from wager or Bet.

(c). Insurance Broker.

An Insurance Broker is defined under section **3 of the Insurance Act, 1996, Act no. 18/1996**. The phrase Insurance Broker means a person who negotiates Insurance Contracts with Insurance Company on a commission basis and usually handles claims on its clients' behalf.

(d). Financial Institution.

Financial Institution is defined under **section 3 of Banking and Financial Institutions Act, 1991 repealed and replaced 2006**, to mean any person authorized by or under the Act to engage in banking business not involving the receipt of money or current account subject to withdrawal by cheque.

*See Bank: Bank is defined by **section 3 of the same Act** to mean Financial Institution authorized to receive money or current account subject to withdraw by cheque.*

Question: What is Proclamation for sale?

Proclamation for sale is the document drawn up by the court for the purpose of sale of property by **public auction**. Proclamation for sale is required to state time and place of sale, and specify as clearly as possible the property to be sold;

*The rent (if any) payable in respect of property;

*Any encumbrance to which the property is liable;

*The amount for the recovery of which the sales is ordered; and

*Every other thing which the court considers material for purchaser to know in order to judge the nature and value of the property.

Proclamation for sale is governed by **sections 65 and 66 of the Criminal Procedure Act**.

Question: Can you tell the Council what do you understand by the following:

(a). Certificate of Urgency

A certificate of Urgency is the document drawn up by the applicant on oath that accompanies the applicant on oath that the application supported by association stating that the matter which is the subject of application is of extreme urgency.

Note: *it is certificate brought in court on **top of application (Chamber Surmons), (Affidavit)** telling the court that the matter is one of the urgency nature to be held and determined within the shortest possible time.*

(b). Certificate of Incorporation

Certificate of Incorporation is a certificate issued by the registrar of companies after registration of a company certifying that the company is incorporated. In case of Ltd Company, certificate of incorporation certifies that the company members have limited liabilities.

(c). Certificate of Compliance

Certificate of compliance is the certificate issued by registrar of companies to the foreign company after it complies with registration requirements provided for under **section 321 of the Companies Act, Cap. 212.**

(d). Certificate of Registration

Certificate of Registration is the certificate issued by relevant authority after compliance with the requirements for a particular registration purpose.

(e). *Res judicata*

Res judicata is governed by **section 9 of Civil Procedure Act.** It is a principle that provides that when a matter has been finally and adjudicated upon by a Court of competent jurisdiction it should not be reopened or challenged by the original parties or their successors in interest. It does not preclude an appeal or a challenge to the jurisdiction of the court.

Note: its justification is the need for the finality of litigation.

Question: Can you distinguish the following terms:

(i). Corporate Liability

Corporate liability is the liability of the corporation for acts or omission of its employees committed in the course of their employment.

(ii). Product Liability:

Product liability is the liability of manufacturer and other persons for defective products. One may sue in contract for breach of the contract in falling to supply products conforming to the contract or he may maintain an action in tort for the damage caused by defect products.

(iii). Business Liability:

Business liability is the liability for a breach of Obligation or duties arising in the course of a business or from the occupation of business premises. One may sue in contract or tort.

Note: *Liability may extend to include the activities of Government Departments or Local Authority or Public Authority.*

Question

(i). What is the difference between a Company Ltd by shares and a Company Limited by guarantees?

The difference between the company **Ltd by shares** and a company **Limited by guarantee** is governed by the provisions of section 3(2) of the Company Act, Cap. 212. The company limited by shares is the one which liability of its members is limited by the memorandum to such amount, if any of unpaid shares held by them; whereas the company limited by guarantee is the one which has the liability of its members limited by the memorandum to such amount as the members may respectively

thereby undertake to contribute to the assets of the company in the event of being wound up.

(ii). What is a public corporation?

A public corporation is a corporation in which the government or its agent holds majority of shares or is a sole share holder.

Normally a corporation is established to perform a public function of commercial nature.

(iii). What is the difference between a Company limited by shares and Partnership?

The difference between the company limited by shares and Partnership is as follows:

i). Partnership is governed by Part X of Law of Contract Act, Cap. 433 it is defined in section 190(1) of LCO to mean the relationship that subsists between persons carrying on business in common with the view of profit. The relationship of partnership arises from contract and not from status, per section 191 (1) of LCO. Example of Partnership is a firm of Legal Practitioners;

while;

the Company limited by shares is governed by Cap. 212.

ii). **Partnership is not legal person**, but can sue or be sued on its own name

while,

a **Company limited by shares is a legal person** separate from its members; it can sue or be sued in its name.

iii). The minimum number of partners is 2 while the maximum number is 20,

while;

in Public Company has no maximum number of members. **Maximum** number of members in Private Company is 50 and minimum of 7 for the Public Corporation and 2 members for Private company.

(iv). What do you understand by Partnership?

Partnership is not formed by registration of document unless business name is used. It may be formed by express or implied agreement, oral or written or even by imputation of the law

while;

Company is formed by registration of memorandum and articles of association as well as other documents, if required.

(v). Liability of partnership is unlimited i.e in cases of default, creditors have personal claim against them jointly and severally

while;

Liability of Company members is limited e.g to amount of unpaid shares in limited company, creditors have no claim against members.

(vi). Powers in Partnership are regulated freely by agreement and are not deemed to be known by third Parties. Powers are altered freely by agreement thus; the doctrine of *ultra vires* is inapplicable.

While;

Power in the Company are strictly regulated by memorandum and article of association that are deemed to be known to third parties dealing with the company contracts made by company beyond its powers and objects are *ultra vires*

(vii). Unless, otherwise agreed, death, bankruptcy or insanity of a partner **terminates partnership,**

while;

in Company the company **does not die with death,** bankruptcy or insanity of its member. Shares pass to appropriate representative.

(viii). Each partner has the right to participate in management of Partnership

while;

in Company Members delegate the management of the company to directors.

(ix). Partnership is not required in law to keep book of accounts

while;

the company must keep proper books of accounts.

(x). Partnership is **not taxable entity.** Each partner is taxed individually at his own personal tax rate or his share of all firm income whether distributed or not

while;

The company is a **taxable entity.** Dividend received by members of the company are also taxed.

Note:

1. Unlimited Company is the one whose members are liable to contribute to the debts of the company to the full extent of their property(ies)

2. A private company is one which:

- *restrict the right to transfer its shares
- *Limits the number of its members to 50; and
- *Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

Question: How can the life of a company come to an end?

The company comes an end when it is wound up by order of a Court (High Court) according to section 157(1) of Cap 212, the company's wound up can be undertaken by the **Court** or **Voluntary** or subject to supervision of the court. The circumstances which the company can wound up by the court are provided for under section 167(a)-(f) e.g where the company does not commence its business within a year from its incorporation. The circumstances for **voluntary** wound up are provided in section 221 (1)(a)-(c) i.e where fixed duration of existence of the company expires.

The winding up supervised by the court is governed by section 252. It happens where the company passes resolution for voluntary winding up and the court is of the opinion that the wound up of the company be supervised by it.

Question (i). What laws regulates succession and inheritance in the country?

The laws that regulating succession and inheritance in the country are:

1. The Indian succession Act, 1865;
2. The Probate and Administration of Estates Cap.352;
3. The Administration of Small Estates Ordinance, Cap. 30;
4. Succession (Non Christian Asiatics) Ordinance, Cap 112

5. Local Customary Law Declaration Order, 1963, GN No. 279/1963
6. Indian Law Application Ordinance.
7. Primary Courts Administration of Estates Rules, GN. No. 45/1971 read together with Schedule to Magistrate Court Act, 1984.

(ii). When do you petition for Probate; and when do you petition for letters of administration?

One applies for Probate when the deceased person leaves a will appointing the applicant to be an executor; **whereas** one applies for letters of administration when the deceased person dies intestate.

Question: (i). What do you understand by security for costs?

Security for costs refers the sum payable by a plaintiff to a civil action as a condition of being permitted to continue with the action. Security for costs are ordered at the discretion of the court. They are not always ordered against the defendant. Security for costs may be ordered in the following circumstances:

1. When the Plaintiff is ordinarily resident out of the area of jurisdiction of Court.
2. When the Plaintiff is suing on behalf of someone who will be unable to pay the defendant costs of the suit if ordered;
3. When the Plaintiff address is dishonestly not stated or incorrectly stated on the writ or originating process; and
4. Where the Plaintiff has changed his address during the course of proceedings in order to erode the consequences of litigation.

(ii). What laws governs security for costs?

Security for costs are governed by Court of Appeal Rules, 1979 and Order XXV of Civil Procedure Act

(iii). What do you understand by extra territorial jurisdiction?

Extra territorial jurisdiction is governed by the provisions of section 6 of Penal Code. It refers to the power conferred on our Courts to try offences committed by Tanzanians outside the country or in aircraft registered in Tanzania.

(iv). Can you tell the Council what does taxation mean?

Taxation means the procedure of determining the bill of costs.

(v). Can a party appeal on the decision of Taxing Master.

One does not appeal against the decision of Taxing Master but he will refer the matter to single judge of High Court.

Question: (i). Can you mention the law which regulate the limitation period in filling Civil action in Tanzania?

*The Law of Limitation Act, 1971 No.10/1971

*the customary Law (Limitation of Proceedings) Rules, 1964 GN No. 311/1964

**(ii). What is the Pecuniary Jurisdiction of different Courts in Tanzania?
Pecuniary jurisdiction of the following Courts:**

Primary Court:

3 millions for movable property; and
5 millions for immovable property.

RM's/District Court:

100 millions for movable property; and
150 for immovable property

NB: The Magistrate Act as amended by written Laws
(Miscellaneous Amendments) Act, 2002

High Court/ Court of Appeal:

Have no maximum pecuniary jurisdiction.

Question: (i). What does a foreign Company get from the Registrar after complying with requirement?

When a foreign company complies with the requirement the registrar issues to that company a Certificate of Compliance.

(ii). What does a Local Company get from the Registrar having complied with the requirements?

When the local company complies with the requirements it gets a Certificate of Registration from the Registrar.

(iii). What do you understand by voluntary liquidation and involuntary liquidation?

Voluntary liquidation is a winding up procedure in which a company passes a resolution for voluntary winding up. It is governed by section 221 of Cap 212.

Involuntary liquidation is mode of winding up a company which is made compulsorily. It is not voluntary and it is made by the Court.

The circumstances when the company can be involuntarily wound up is governed by the provisions of **section 167** e.g where a company reduces the number of members below that stipulated in Cap. 212

(iv). What do you understand by debenture instrument?

Debenture Instruments is an instrument usually under seal issued by a company or public body as evidence of a debt or as security for a loan of a fixed sum of money, at interest. The instrument contains a promise to pay the amount mentioned in it, and is usually called debenture on the face of it. Debenture includes Debenture stocks, Bonds and any other securities of a company whether constituting a charge on the assets of the company or not per section 2(1) of Cap 212

Question: tell the Council the Law governing the following?

- (i). Partnership;**
- (ii). Mortgage;**
- (iii). Agency;**
- (iv). Citizenship;**
- (v). Accomplice;**
- (vi). Testamentary Disposition;**
- (vii). Dissolution of Marriage;**
- (viii). Banking;**
- (ix). Share trade;**
- (x). Insurance;**
- (xi). ICTR;**
- (xii). Bail Pending Appeal**

- (i). **Partnership** is governed by Part X of the Law of Contract Act; Cap 433.
- (ii). **Mortgage** is governed by the Land Act, 1999 No. 4/1999; and Part VI of the Land Registration Act, Cap. 334.
- (iii). **Agency** is governed by Part IX of Law of Contract Act, Cap. 433.
- (iv). **Citizenship** is governed by the Tanzanian Citizenship Act; 1995.
- (v). **Accomplice** is governed by section 22 of the Penal Code, Cap 16 of the Laws Revised.
- (vi). **Testamentary Disposition** is governed by The Local Customary Law Declaration Order, 1963 and 1964.
- (vii). **Dissolution of Marriage** is governed by The Law of Marriage Act, No. 5 of 1971
- (viii). **Banking** is governed by The Bank of Tanzania Act, 1995 and The Banking and Financial Institutions Act, 1991.
- (ix). **Share Trade** is governed by The Capital Market and Securities Act, 1994.
- (x). **Insurance** is governed by the Insurance Act, 1996.
- (xi). **International Criminal Tribunal for Rwanda** is governed by
- (xii). **Bail Pending Appeal** is governed by section 368 of the Criminal Procedure Act, No. 9/1985 [R.E 2002]

Question:**(i). What is the difference between Joint Tenancy and Tenancy in Common?**

Joint Tenancy is the one in which two or more persons own the land with identical interests in the whole of it. Under the joint tenancy the right of survivorship applies i.e. the ownership of entire interest in the property passes automatically on the death of one joint tenant to the survivors. The last survivor becomes the sole and absolute owner. And as regards to tenancy in common, there is equitable ownership of land by two or more persons in equal or unequal undivided shares. Under this tenancy, each co-owner may sell or dispose of his share by will. There is no right of survivorship i.e. a share does not pass automatically on the death of tenant in common to survivor(s).

NB: Joint tenancy arises when the following four conditions exist:

i). Each joint tenant must be entitled to possession at the same time.

ii). The estate or interest each has in land must be identical i.e. each joint tenant is entitled to the whole of property and has no exclusive entitlement to any separate part of it.

iii). Each joint tenant has the same title to the land i.e. their ownership must be traced from the same instrument, such as a conveyance to 'A' and 'B' as joint tenants.

iv). Each joint tenant's interest must vest at and subsist for the same time.

(ii). What is the difference between a Private Company and Public Company? What is the major difference in respect of shares?

The difference between a Private Company and Public Company is that;

i). The Articles of Private Company restrict the right to transfer its shares;

ii). The Articles Limits the number of its members to 50, and

iii). The Articles prohibits any invitation to the public to subscribe for shares or debentures of the company whereas the Articles of Public Company do not. ***See section 27(1)(a)-(c) of Cap. 212***

The major difference in respect of shares between **Private and Public Companies** is

(iii). What do you understand by Specified Corporations?

Specified Corporation is defined by the provisions of section 3 of Public Corporation Act No. 2 of 1992, as amended by Act No. 161 of 1993 to mean a Public Corporation declared to be Specified Public Corporation. After the Public Corporation is declared as Specified Public Corporation, it is required to be restructured by Presidential Parastatal Sector Reform Commission Established by section 21 of the Act No. 16 of 1993.

NB: Restructuring in relation to specified Public Corporation or Specified Government minority shares means any form of restructuring as a result of which ownership, structure or control of that specified public corporation or specified government minority shares is altered. See section 2 of The Public Corporations (Amendment) Act; 1993.

(iv). What is the procedure in suing Specified Corporation?

The procedure in suing specified corporation is as follows:

- i). To apply for leave in the High Court to sue Specified Public Corporation; and
- ii). If leave is granted, a person is required to sue the same and making PCRC a party thereto.

(v). Can you tell the Council where one can find the Power of District Registrar of the High Court?

The powers of District Registrar of High Court is found in the Law establishing High Court Registries i.e. the High Court Registries Rules, 1961.

(vi). Can you mention two Legislations which govern commercial transactions in Tanzania.

One of two legislation that govern Commercial transactions in Tanzania are:

- i). The Law of Contract Cap, 433
- ii). The Banking and Financial Institution Act, 1991 as amended 2006. **NB:** The term Commercial Law has broad meaning. It is the law of business contracts, bankruptcy, Patents, Trades Marks, designs, Companies, Partnerships, Exports and Import of Merchandise, Affreightment, Insurance, Banking, Mercantile Agency and usages. See Osborn's Concise Law Dictionary, 6th Edition, page 80.

What do the following mean:

i). A default judgment;

Default judgment is the judgment made *ex parte*. It is a judgment which is made after the defendant fails to file his defence or make his defence.

ii). Notice of Motion.

Notice of motions is the procedure by which an applicant moves the court so as to determine certain matter(s), example: notice of motion may be filed under **Rule 8 of Court of Appeal Rules** seeking leave to appeal out of time.

Question: What is the procedure for suing a Military Officer?

i). The procedure for suing a military officer is governed by Order XXVII of the Civil Procedure Act.

ii). According to Order XXVII r. 1(1) of CPC the military officer may defend the suit in person, i.e. he may be sued and defend his case.

iii). But he can not obtain leave of absence for the purpose of defending his suit; Order XXVII, r.1(1) empowers him to authorize any other person to defend the suit in his stead. iv). The authority appointing that other person to defend the suit on behalf of the military officer must be in writing and must be signed by the said military officer in presence of his Commanding Officer. Such Commanding Officer must also countersign the authority before been filed in court per Order XXVII. R. (1)(2) of the CPC.

iv). Upon the authority being filed in court, the person authorized to defend the suit on behalf of military officer, will defend the suit

in person in the manner as the military officer could do if present. He may appoint the advocate to defend the suit per Order XXVII. r.(1)(3) of the Civil Procedure Act.

- NB:** 1. The above procedure applies where the military Officer is suing
2. Military men are governed by Military Law and Code of Discipline.

Question:

(i). When may a Complaint be rejected?

The complaint may be rejected in the cases provided for under Order VII, r. 11 of the Civil Procedure Code; thus,

- i). Where the Complaint does not disclose a cause of action;
- ii). Where the relief claimed is undervalued and the Plaintiff on being required by the Court to correct the valuation within a specified time fails to do so; and
- iii). Where it appears from the Complaint that the suit is barred by any law.

(ii). When may a suit be dismissed?

The circumstances in which the suit may be dismissed are governed by the provisions of **Order IX rr, 2, 3, 5 and 8** of the Civil Procedure Act; and these are:

- i). Where summons has not been served upon the defendant due to Plaintiff's failure to pay money required for service of summons. See **Order IX. r.2**
- ii). Where neither party appears when the suit is called on for hearing. See **Order IX r.3;**

iii). Where summons required to be served on the defendant is returned and the Plaintiff fails for three months to apply for fresh summons. See **Order. IX r. 5(1)**

iv). Where the defendant only appears and the Plaintiff does not appear when the suit is called on for hearing.

iii). When may an appeal be summarily rejected?

The circumstance in which the appeal may be summarily rejected is governed by the provision of Order XXXIX. r. 10 of the Civil Procedure Code. According to the aforementioned provisions, the court is obliged to reject the appeal, where the appellant fails within specified time as ordered by Court to furnish security for the costs of appeal, or of the original suit or of both.

Question: When may the Court require the furnishing of security for costs?

The Court require the furnishing of security for costs in any of the following circumstances:

i). Where the appellant is residing out of Tanzania and is not possessed of any sufficient immovable property within Tanzania per Order XXXIX, r. 10 (1) of the Civil Procedure Act;

ii). Where the party is suing on behalf of someone who will be unable to pay the defendant's costs if ordered to do so;

iii). Where the defendant address is dishonestly not stated or incorrectly stated on the Pleading; or

iv). Where the Plaintiff changes his address during the course of proceedings in order to erode the consequences of the litigation.

What do the following mean in our law?

(i). Judicial Notice;

Judicial Notice is the means by which the Court takes as proven certain matters without hearing the evidence. Matters which the Court does take judicial Notice are; those which are so notorious or clearly established that formal evidence of their existence is not required. Again the court does take its Judicial Notes matters of common knowledge and everyday life.

(ii). Dock Brief;

Is governed by section 3 of the Legal Aid (Criminal Proceedings) Act, No. 21 of 1969. It arises when the indigent accused person is offered free legal aid by an advocate assigned to him by the registrar of the High Court. The advocate is required to prepare and conduct accused's defence or appeal.

Question: Can you explain to the Council which laws establish the following:

(i). The High Court of Tanzania;

The High Court of Tanzania is established under Article 108 of the Constitution United Republic of Tanzania 1977, as amended time to time.

(ii). The Court of Appeal of Tanzania;

The Court of Appeal of Tanzania is established under Article 117 of the Constitution United Republic of Tanzania 1977, as amended time to time.

NB; see the 13th amendment of the above Constitution issued in 2000

Question: What is remedy available to a party when application for leave to appeal has been rejected by the High Court?

- i). Where the High Court refuses to issue Certificate that a point of law is involved in matters originating from Primary Court the aggrieved party may bring the matter by way of appeal to the Court of Appeal. See the exposition of Court of Appeal in **Omari Yusuf vs. Mwajuma Yusuf & Another [1983] TLR 29**
- ii). where the matter originates from District or RM's Court and the High Court rejects to grant leave to appeal the aggrieved party may bring the matter to the Court of Appeal by way of appeal challenging the order refusing to grant leave.

Question: What remedy available on person whose property is wrongly attached in execution of a decree?

Where one's property is attached two avenues are available for him, namely:

- i). To file objection proceedings and or
- ii). To bypass objection proceedings and resort to suit to recover his wrongly attached property.

NB: The two avenues were given by Munyera, J., in **Omoke Oloo vs. Werema Magira [1983] TLR 144.**

Human Rights Commission is established under **Article 129** of the Constitution of the United Republic of Tanzania, 1977 as amended time to time.

The office of Registrar of Political Parties is established under **the Political Parties Act, 1992**.

The Court of Appeal is established Under **Article 117** of the Constitution of the United Republic of Tanzania, 1977.

Question: Can you mention five Common Law Reports which are used in our Courts:

The five Common Law Reports includes:

- i). Queen's Bench;
- ii). King's Bench;
- iii). All England Reports;
- iv). Appeal Cases;
- v). Weekly Law Reports;

and others are:

Chancery Division;

Chancery etc;

Times Law Report

Question: Tell the council the law governing the following:

(a). In Electoral Property

(b). Prerogative Orders

Prerogative Orders are governed by Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance, Cap. 360.

(c). Possession of Cannabis

Possession of Cannabis is governed by Drugs and Prevention of Illicit Trafficking in Drugs Act, 1995.

(d). Money Laundry.

Money laundering is governed by the provisions of section 71 of **the Proceeds of Crime Act, No. 25 of 1991** amended in 1995.

Question: what happens if an accused person i.e. convicted on the following offences:

(i). Murder;

If the accused person is convicted of murder he shall suffer death by hanging. Per section 26 of the Penal Code.

(ii). When the convict of murder is under seventeen years;

According to section 26(2) of the Penal Code the sentence of death cannot be pronounced against a convict of murder who is under 18 years. The Court is required to sentence such convict to be detained during the president's pleasure. **How?** The Minister for Legal Affairs will be informed by the Court and it is he who will decide where to detain the convict.

(iii). A pregnant woman is convicted of murder;

According to the proviso of section 197 of the Penal Code the Court can not sentence a pregnant woman convicted of murder to be hanged to death. It is required after satisfying itself that the convict of murder is pregnant to sentence her for life imprisonment.

(iv). Manslaughter;

According to section 198 of the Penal Code a person convicted of manslaughter is liable for life imprisonment. However, the Court may pass a lesser sentence than life imprisonment per section 27 (2) of Penal Code.

(v). Armed Robbery;

According to section 286 of the Penal Code, a person convicted of armed robbery is liable to be sentenced for life imprisonment with or without corporal punishment.

Question: Please mention four Legislation which liberalize the economy of Tanzania.

The four legislation that liberalize the economy in Tanzania are:

- (i). The Tanzania Investment Act, No. 26 of 1997;
- (ii). The Public Corporations Act, 1992 as amended by Act No. 16/1993;
- (iii). The Banking and Financial Institution Act, 1991.
- (iv). The Foreign Exchange Act, 1992.

Others include;

- (v). The Capital Market and Security Act, 1994; and
- (vi). The fair Trade Practices Act, 1994.

Question:

(i). What do you understand by Oral Will as opposed to Written Will ?

Oral Will refers to declaration made by the deceased person orally on how his assets should be disposed. Oral Will is required to be witnessed by four people, two of them must be the relatives of testator. Written Will is the testamentary declaration by testator

which is in writing. Written Will is required to be witnessed by two witnesses.

(ii). What is judgment in Rem?

Judgment in Rem means judgment pronounced upon status of a particular thing or matter. It is pronounced when the proceedings are instituted against something or subject matter whose status or conditions is to be determined by court. It is binding upon all persons in so far as their interests in the property are concerned.

Question:

(i). Tell the Council the Offences which ought to be prosecuted after the consent of DPP?

Offences which ought to be prosecuted after the consent of DPP are Economic Crime offences; Incest by males, Witch craft, offences committed by foreigners within territorial waters, Incest by females, watching or besetting, intimidation, terrorism, foreign enlistment.

(ii). Tell the council the consequences of the trial conducted and finalized without the consent of DPP? When such consent was required?

The consequences of the trial conducted and finalized without the consent of DPP when such consent was required is that the proceedings and judgment will be a nullity.

(iii). What do you understand by no case to answer?

No case to answer is governed by section 230 of CPA. Is a ruling given by the court to dismiss the charge and acquit the accused person if at closure of prosecution case in support of the charge, the court is of the opinion that the prosecution has failed to make out the case against the accused person sufficiently to require him make a defence.

Question:

(i). What Factors may vitiate a valid contract?

The validity of the contract may be vitiated under the following factors:

- (a). where the element of agreement is impaired by mistake, misrepresentation or duress or undue influence;
- (b). Where either the party to the contract has no full contractual capacity;
- (c). Where the contract is illegal;
- (d). Where the contract partially or wholly is void under a statute;
- (e). Where the contract is against public policy.

NB: Consequences in case a valid contract is vitiated by any of the above factor elements on the circumstances example:

- * Contract may be void i.e. it is absolutely a nullity.
- * Voidable i.e. the contract gives rise to legal consequences but may be set aside or rescinded.
- * Illegal i.e. one upon which no action can be taken except in very special circumstances.
- * An unenforceable i.e. the contract is good but one upon which a

Plaintiff may not bring an action at law because of the absence of written evidence when it is required or because of some defect in contractual capacity of defendant.

(ii). What is reference?

Reference is governed by section 77 of the Civil Procedure Act. It is a procedure by which subordinate Courts may state the case and refer it to the High Court for its opinion and determination. Also, it is the remedy available to the party aggrieved by the decision to refer the matter to the court, for being heard and determined e.g. a person aggrieved by decision of single Justice of Appeal may refer the matter to three justice of Appeal for hearing and determined of the same.

Note: instead of: **I do hearby Appeal it goes I do hearby Make a reference to the Hon. Three justice of Appeal”** A single of Justice of appeal to determine a matter occurs where there is an interim matter to be decided.

Question: Can you tell the Council what do you understand by the following terms and Phrases:

(i). Res Ipsa Loquitur;

Res ipsa loquitur is the Latin maxim meaning the thing speaks for itself. The maxim applies whenever it is so improbable that such an accident would have happened without negligence of the defendant that a reasonable court could find without further evidence that it was so caused. The maxim throws on the defendant the burden to disapprove his negligence. See **Swam vs. Salisbury Construction Co. [1968] 1 WLR 204**

(ii). Res gestae rule;

Res gestae rule is a rule of evidence denoting rule of relevance in which facts surrounding or accompanying or so connected with facts in issue are admissible.

(iii). Volent non fit injuria:

Volent non fit injuria is a latin maxim meaning no wrong is done to one who consents. It is voluntary assumption of risk. No act is actionable as a tort at the suit of any person who has expressly or implied assented to it. No one can enforce a right which he has voluntarily waived or abandoned. The maxim applies to e.g. intentional acts which would otherwise be tortuous e.g taking part in boxing match.

Question: Can you define Public Nuisance as compared to Private Nuisance?

Public Nuisance refers an activity or state of affairs affecting health, safety, comfort or property of general public or a section of general Public. Public nuisance is basically a crime. In Tanzania it is punishable under section 170 of the Penal Code as well as Township Rules, Cap 101. However, one may sue in tort, if it is proved that he has suffered more than the other members of the Public.

Private Nuisance refers an activity or state of affairs that interferes with the use or enjoyment of land or rights over land. Private Nuisance is a tort that protects occupiers of land from damages to the land, buildings, vegetation or from unreasonable interference with their comfort or inconvenience by excessive

noise, dust, fumes, smells etc. etc.

NB: the main remedies are

(i) Damages;

(ii) Injunction.

Question: (i). How can a contract be discharged?

The contract can be discharged in only of the following ways: Obligation unless clearly stated. There are however, exceptions to this rule, e.g. if after frustration, any attempted performance would amount to something quite different from what must have been contemplated by the parties when they made their contract then both parties are discharged from their obligation of further performance.

Frustration: Generally, frustration does not discharge contractual. In Tanzania the doctrine of frustration is provided for under section 56(2) of Law of Contract Act. And the effect of the doctrine of frustration for under section 65 read together with proviso of Law of Contract Act.

Performance: Performance must be complete. Contractual obligation is discharged by complete performance of the undertaking.

Agreement: Discharge by agreement is on the principle that a thing may be destroyed in the same manner in which it is constituted that being so, a contractual obligation may be discharged by agreement.

Acceptance of Breach: When the contract is breached, the innocent party may sue for damages and in certain circumstances, he may treat the contract as repudiated by the party in breach and refuse further performance. That is breach by the party and may enable the other party to become discharged from further liability. Be noted that, a

contract is not discharged by breach of unless the innocent party elects to treat the breach as a repudiation of contract.

(ii). Where is a caveat filed to prevent the transfer of land?

The Caveat for the prevention of transfer of Land is filed in the Land Registry Office i.e. in the Office of Registrar of Titles.

(iii). What should a court do if the witness refuses to answer the question put to him in course of proceedings?

In criminal case(s) if the witness refuses to answer the question put to him in course of proceedings; the court may, if it is of the view that there is no sufficient excuse for such refusal, adjourn the case for a period not exceeding eight days, and may commit such witness to prison unless he sooner consents to do what is required of him. See section 119(1) of Criminal Procedure Act. As far as refusal to answer question put to the witness in civil proceedings is concerned, Order XVIII of the Civil Procedure Act that governs examination of witnesses is silent. It would appear, however that, the court may make such order in relation to suit as it thinks fit. Section 158(3) of the Evidence Act, 1967 empowers the court to draw from the witness's refusal to answer the question, the inference that the answer, if given would be unfavourable.

NB: *In criminal cases the court will adjourn the case for a period not exceeding 8 days and in meantime commit the witness to prison. In civil matters, the court may pronounce judgment against such witness or make such order in relation to the suit as it deems*

fit as per section 199(1) of the Criminal Procedure Act and Order XVI, Rule 20 of Civil Procedure Act respectively.

Question: What happens if the witness gives evidence which is contrary to that of a party calling him?

The witness may give evidence which is contrary to the party calling him, but yet, such evidence may be quite fair and truthful. However, if it appears that the witness called by a party is not telling the truth and from his demeanor and bearing, he is clearly biased against the party calling him, the following procedure can be taken:

- i). The party calling the witness is required to apply to the court to be permitted to treat the witness as hostile witness;
- ii). The witness is entitled to be given opportunity of explaining the alleged inconsistencies between his evidence and his earlier statement why sometimes it happens that apparent inconsistencies are capable of a quite satisfactory explanation; and lastly,
- iii). The court will determine whether the witness has shown himself so hostile or adverse as to justify the exercise of its discretion to permit the witness to be cross-examined.

Question: Can you define the following to the Council:

(i). Representative Suit.

Representative suit is governed by **Order 1 rule 8 of the Civil Procedure Act**. It means an action brought by against one or more persons with the leave of the Court as representative(s) of large group of people or numerous people who have same interest in the suit.

(ii). Pecuniary Jurisdiction of the Courts.

Pecuniary Jurisdiction of the Court refers the monetary value of the subject matter of a suit which the court has power to adjudicate upon.

(iii). Judicial Immunity:

Judicial Immunity refers the exemption of a Judge or Magistrate from Civil or Criminal liability for acts done in the exercise of his judicial capacity. **Section 16 of the Penal Code Act**; exempts judicial officers from criminal liability for acts or omission done bonafide in course of duties.

Note: *The judicial officer has absolute immunity in respect of all words or actions while acting within his jurisdiction. The immunity also extends to the acts done without jurisdiction provided that they were done in good faith.*

(iv). The Immunity of an Advocate:

The immunity of the Advocate refers the exemption of the advocate from Civil or Criminal liability for acts done in respect of all cases he is conducting. The immunity also extends to words spoken by him in court proceedings.

Question: Can you tell the Council the Court which is the Court of First Instance in the following offences are:

(a). Murder:

The High Court of Tanzania.

(b). Robbery:

RM's/District Courts & Primary Court.

(c). Incest by man:

The High Court of Tanzania & /District Courts

(d). Libel:

The High Court of Tanzania and depends on the Pecuniary Jurisdiction.
District Courts.

(e). Military Offences; Martial Courts.

QUESTION: What do the following mean in Company Law?

(a). Defunct Company:

The defunct company refers the company which has ceased or is no longer conducting its business.

(b). Due diligent Search: ***?**

Question: (i). What do you understand by Differed Shares?

Differed Shares (founders shares) are company shares which are of nominal value but that entitle the shareholders to take the whole or proportion of the profits after a fixed dividend has been paid on shares.

(ii). What do you understand by Share Warrant?

Share Warrant is the document issued by a company certifying that the bearer is entitled to the shares specified in it, unlike share

certificate which is negotiable.

Note: *A share warrant is document under seal issued by company certifying that the bearer of it, is entitled to certain amount of full paid up shares.*

(iii). What is a call in Company Law?

A call is a demand by a company under the terms of articles of association or an ordinary resolution requiring company members to pay up fully or in part the nominal value of their shares.

Note: *Unless the articles provide otherwise, calls must be made equally upon all shareholders of the same class. Calls should be distinguished from installments, which become due upon a date predetermined at the time the shares were issued.*

(iv). What do you understand by Forfeiture of Share?

Forfeiture of Shares refers an act of surrendering the shares for nonpayment of calls i.e. any shares in which a call has been made but not paid and notice to pay has been served with no response can be forfeited.

Note: *Shares may be forfeited by resolution of Board of directors. When shares have been forfeited, shareholder is informed and asked to return share certificate. The company may resell shares returned.*

Question: What factors should a party take into consideration before filing a suit?

Before filing a suit one should take into consideration the following:

- i). Value of the subject matter;
- ii). Place of suing;
- iii). Jurisdiction;
- iv). Cause of action;
- v). Limitation of time.

Note: *Before suing the Plaintiff should consider the following:*

- a). Whether he has a cause of action;*
- b). Necessary party(ies) to sue;*
- c). Reliefs claimed;*
- d). Place of suing; and*
- e). Pecuniary jurisdiction of court.*

Question: Can you site five laws that deals with Limitation period?

There are two laws that deal with the limitation period and these are:

- 1). The Law of Limitation Act, No. 10/1971; and
- 2). The Customary Law (Limitation of Proceedings) Rules 1964, (GN No. 311/1964)

Others are:

- 3). The Court of Appeal Rule 1979;
- 4). The Magistrate Court Act; 1984;
- 5). The Civil Procedure Act.

Question: (i). How does the life of a partnership Company come to an end?

The partnership comes to an end under the following circumstances:

- i). Where it is dissolved by notice or expiry of specified time of partnership; per section 212 of Law of Company Act;
- ii). Where it is dissolved by death of a partner, bankruptcy of a partner or charge section 213 of the Law of Company Act.
- iii). Where the business of Partnership becomes illegal as per section 214 of LCO.
- iv). Where the Partnership is dissolved by Court; *example*,
 - a). when a partner becomes of unsound mind,
 - b). where partner can not perform his part of partnership; and
 - c). where a partner willfully and persistently breaches contract of partnership agreement.

(ii) What do you understand by sedition?

Sedition is statements made orally or in writing that are likely to incite ordinary people to public disorder or insurrection.

Question: What is a procedure for Appealing against a Decision, Order or Act of Registrar of Titles:

The procedure for appealing against a decision or Order or Act of Registrar of Titles is governed by provision of section 102 of Land Registration Act. Cap; 334 the procedure is

- i). A notice of intention to appeal must be given to both the High Court and Registrar within one month from the date of a decision or order or act appealed against; and
- ii). Then, appeal by of petition must be lodged in the High Court

within 3 months from the date of decision, order, or acts appealed against.

Question: Can a case be brought up against the President of the United Republic of Tanzania?

- i). According to Article 46(1) of the Constitution of the United Republic of Tanzania 1977, as amended time to time, the president has absolute immunity as against criminal charges. That is no criminal case can be brought against him while is in office.
- ii). In Civil matters, the president can be sued. Article 46(2) of the same Constitution provides that the president can only be sued for acts done or omitted to be done by him if at least 30 days notice is served to him stating the nature of claim, cause of action, name and address of the complainant and relief claimed. Under 42(2) the president can be sued for what he did before being a president or what he has done while holding tenure of office.

Question: Tell the council what will happen under the following?

(i). If the Plaintiff dies before his or her case is determined?

Generally where the Plaintiff or Defendant dies, the death can not cause the suit to abate. If the rights to sue survives per Order XXII Rule 1 of Civil Procedure Act; thus

- i). If the Plaintiff dies before his or her case is determined the court is required on application made in that behalf; cause the legal representative of the deceased Plaintiff to be made a party and shall proceed with the suit. See Order XXII Rule 3(1), But where within the time limited by law no application is made by legal representative of the deceased Plaintiff, the suit shall abate

so far as the deceased Plaintiff is concerned, and on application of the defendant, the court may award to him the costs which may have incurred in defending the suit, to be recovered from the estates of the deceased plaintiff per Order XXII rule 3(2) of the Civil Procedure Act.

(ii). If a Defendant dies before his or her case is determined?

A court is required on application made in that behalf to cause the legal representative of a deceased plaintiff to be made a party and shall proceed with the suit. see Order XXII Rule 4(1) of the Civil Procedure Act. But where within the time limited by law no application is made under Order XXII Rule 4(1) the suit shall abate as against the defendant. See Order XXII Rule 4(3) of the Civil Procedure Act.

(iii). If a respondent who is not the DPP in the criminal case dies?

If a respondent who is not the DPP in the criminal case dies, the appeal shall abate, see section 386 of the Criminal Procedure Act, 1985.

Note: Also that; according section 371 of CPA every appeal from a Subordinate Court shall finally abate on the death of appellant. However according to the same provisions appeal from a sentence of a fine does not abate on the death of appellant.

(iv). If a petitioner in Matrimonial petition dies?

If a petitioner in Matrimonial petition dies the petition is overtaken by events

Question: Can site two laws which govern the remuneration of Advocates?

The two laws that governs the remuneration of Advocates are

- i). Advocates' Remuneration and Taxation of Costs Rules 1991 GN. No. 515/1991
- ii). Rule 9 of the 3rd Schedule of the Court of Appeal 1979.

Question: (i). How do you distinguish between Secondary evidence from Primary Evidence?

Secondary evidence can be distinguished from primary evidence by examining or inspecting the documents i.e. documents produced before the court.

Note: *Primary evidence is admissible in evidence while secondary evidence is generally inadmissible in evidence except in circumstances provided in section 67(1) of the Evidence Act, 1967.*

ii). What do you understand by two bodies?

a). Advocate Committee

Is the Body which is established under Advocate Act Cap 342. It is composed of 3 members namely;

- 1). Justice of High Court appointed by the Chief Justice as a Chairperson;
- 2). Attorney General or his representative or DPP; and
- 3). One Practicing Advocate nominated by Tanganyika Law Society. It duty is to entertain application for removing an advocate from the Roll or entertain complain against an advocate and determine such application or complains.

b). Council for Legal Education?

Council for Legal Education is the body established under the Advocates Act Cap. 341, it is composed of 5 members namely:

- 1). The Chief Justice or his representative;
- 2). Attorney General or his representative;
- 3). Dean Faculty of Law of University of Dar es salaam or his representative; and
- 4). 2 practicing Advocates nominated by Tanganyika Law Society. Member holds tenure of not less than 3 years which is renewable. It is charged with the duty of general supervision and control of legal education in Tanzania.

Question: Tell the Council the Law governing;

(i). Testamentary Disposition?

Testamentary disposition is governed by Local Customary law declaration Order 1963 and 1964

(ii). Share Trade:

Share Trade is governed by Capital Market and Securities Act, 1994

Question: What effect if the accused person refuses to make defence when a Prima Facie case has been established against him?

The effect of failure by the accused person to make a defence after a *prima facie* case is made against him, is governed by the provision of section 231(3) of Criminal Procedure Act, that is; the court will be entitled to make adverse inference against the accused person and the court as well as the prosecution shall be

permitted to comment on the failure by the accused to give evidence.