



MUEO

# **MOI UNIVERSITY**

OFFICE OF THE DEPUTY VICE CHANCELLOR  
(ACADEMICS, RESEARCH & EXTENSION)

## **UNIVERSITY EXAMINATIONS**

### **2019/2020 ACADEMIC YEAR**

### **SECOND YEAR SECOND SEMESTER EXAMINATION**

## **FOR THE DEGREE OF BACHELOR OF LAWS**

**COURSE CODE:** FLB 207

**COURSE TITLE:** ADMINISTRATIVE LAW

**DATE:** 11<sup>TH</sup> FEBRUARY, 2021 **TIME:** 2.00 P.M. – 5.00 P.M.

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### **INSTRUCTION TO CANDIDATES**

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
- ILLUSTRATE YOUR ANSWERS WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

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**QUESTION 1**

The Uasin Gishu County government is empowered by section 3 of the Uasin Gishu Street Traders Act to grant licences to street traders and withdraw them for, inter alia, misconduct. It has been the custom of the County government to grant hearings to consider the case against proposed revocation of licences, provided that a written request is received within 14 days of the decision being announced.

Under the Cautious Party, previously in control of the County government, such licences were granted sparingly. The Enterprise Party, now in power, has announced that in six months' time, 50 new licences are to be granted over a six-week period.

The following events occur.

Doreen, a current licence-holder, is disgruntled by the decision to grant new licences, fearing such a massive increase in competition; she requests a hearing from the County government. She receives a letter in reply stating that, normally, only revocation of a licence gives rise to a hearing and that, in any event, unprecedentedly low County government funds forbid a hearing.

Vic and William receive notification that their licences are to be revoked for misconduct, subject to their right to put their case against the revocation. William is given a fair chance to state his case at a meeting of the Licensing Board. However, he recognises one of the five members of the Board, Bert, as the former husband of Alison; Alison recently left Bert for William in an episode that generated much publicity. The Board orders revocation. After the hearings are over, it emerges for the first time that Bert covertly encouraged Alison to have the affair with William so that he could divorce her and marry his secret, long-standing mistress, with whom he is now blissfully happy.

Vic is unhappy because it was only at his hearing that he was told full details of the case against him: that there was evidence that specific products sold from his stall were unsafe. Previously he had only been told that his licence was being revoked 'on health and safety grounds'. The Board orders revocation. Vic is indignant because he claims he has detailed evidence of the safety of his products, which he could have raised in evidence in the hearing, had he known the true grounds of the County government's case.

Jane applies for a licence to run a stall but is refused. She is indignant, because the County government has provided no reasons for the refusal.

Taking into account the legal issues arising from the above set of facts, advise Doreen, Vic, William, and Jane as to whether they have a case against the Uasin Gishu County government under the terms of the Fair Administrative Actions Act, 2015? **(25 Marks)**



**QUESTION 2**

Bright Future Investments Ltd made certain investments on behalf of clients, following consultation with the Kenya Revenue Authority (KRA) concerning whether the proceeds of the investments would be regarded by KRA as taxable or not. KRA gave Bright Future the assurance that the proceeds of the investments would be non-taxable. Subsequently, KRA sought to recover tax on the proceeds of the investments, without having indicated to Bright Future that its attitude had changed from the assurance given earlier. Bright Future comes to you for advice. The company specifically asks if it possible to seek a court order requiring KRA to comply with its initial assurance not to tax the proceeds of the investments in question. Advise Bright Future. (15 marks)

**QUESTION 3**

In terms of the Uasin Gishu Physical Planning Act, sub-counties are responsible for drawing up town-planning schemes for their areas of jurisdiction. These schemes zone different areas for different functions – for example, residential, commercial, industrial, etc. If a person wishes to build a structure (house/office block/factory etc) within such a zone, the authorisation of the sub-county in question is required, provided that the building in question is appropriate for the zone in question. Should somebody wish to erect a building in an area where there would be conflict with the scheme (for example, an office block in a residential area), the authorisation of the County Executive of Local Government and Housing (LGH) is required before the sub-county can give consent for the building development in question. The County Executive purports to delegate his powers in respect of granting this authorisation to the Wareng Sub-County Council. The Act is silent as to the ability of the County Executive to delegate his/her powers. Is this delegation lawful? Discuss, setting out all relevant authority. (15 marks)

**QUESTION 4**

In *Cortec Mining Kenya Limited v Cabinet Secretary, Attorney General & 8 others*, Civil Application 119 of 2015 the Court of Appeal held thus:

“Can this court grant an order of injunction in a judicial review matter such as this one? For starters, to grant an injunction would amount to giving a relief or remedy that was not even sought in the High Court in the first place.

The High Court could only grant these three prerogative orders. It could not in the judicial review under Section 8 of the Law Reform Act grant an order of injunction such as is sought in the motion before us for the simple reason that injunction is not authorized by and falls outside the amplitude of the reliefs available under Section 8 of the Law Reform Act. An injunction is also not exclusively within the amplitude of public law remedies. But even more compelling is the fact that subsection (3) of Section 3 of the Appellate Jurisdiction Act requires this court –

*"in the hearing of an appeal in exercise of the jurisdiction conferred by the said Act to apply the law applicable to the case in the High Court."*

It is plain to see that in judicial review, the Court is concerned with public law remedies. An injunction is a private law remedy, and it can also serve as a public law remedy. However, in the context of judicial review, it is not available either in the High Court or in this Court on appeal under the Law Reform Act...

In the instant case, the High Court was not legally empowered to grant the remedy of injunction. The law governing judicial review as set out in Section 8 of the Law Reform Act did not then as now permit the Court to grant an injunction. It is as plain as daylight that, an order of injunction which the High Court was not by law empowered to grant is not available on appeal from this Court."

Examine the cogency of this holding by the Court of Appeal while explaining the scope of remedies that can be granted by court in the enforcement of the right to fair administrative actions  
(15 marks)

**QUESTION 5**

'In a number of respects, the Ombudsman system has proved more effective as a means of providing redress for the citizen mistreated by government authorities than have judicial and parliamentary remedies.' Anonymous

Discuss whether the cited observations reflect the reality in Kenya taking into account the Commission on Administrative Justice Act.  
(15 Marks)

**QUESTION 6**

The Cabinet Secretary, State Department of Livestock, Ministry of Agriculture, Livestock, Fisheries and Irrigation through a Legal Notice 50 of 2019 published on 26<sup>th</sup> January 2019 in Kenya Gazette Vol. CXX-No. 11 gazetted the Hide Skin and Leather Trade (Cess) Rules imposing cess on processed hides, skins, and leather before they are cleared for export.

Mr. Kenfrey Korando who is dealer in hides and leather approaches you for advice on whether he can challenge the new Hide Skin and Leather Trade (Cess) Rules and have the Rules annulled. He contends that the Rules violate the Statutory Instruments Act and the Constitution.

Proffer a Legal Opinion to Mr. Korando outlining the legal requirements that must be complied with by an agency of the government or a state (public) officer, before making valid delegated legislations (statutory instruments).  
(15 Marks)





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## **UNIVERSITY EXAMINATIONS 2019/2020 ACADEMIC YEAR SECOND YEAR SECOND SEMESTER EXAMINATION**

### **FOR THE DEGREE OF BACHELOR OF LAWS**

**COURSE CODE:** FLB 208

**COURSE TITLE:** PROPERTY LAW II

**DATE:** 10<sup>TH</sup> FEBRUARY, 2021 **TIME:** 9.00 A.M. – 12.00 NOON

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### **INSTRUCTION TO CANDIDATES**

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
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## FLB 208: PROPERTY LAW II (PROPRIETARY RIGHTS AND TRANSACTIONS)

- ♦ ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS. ILLUSTRATE YOUR ANSWERS WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

### QUESTION ONE

Hasola Wili Barro is desirous of purchasing Title Number Lamu/Manda Block I/200 in situate in Manda, Lamu County, an agricultural area, adjacent to the Manda Airstrip, the Indian Ocean, and an ongoing construction of a Standard Gauge Railway to serve the airport. The property measures 50.003 hectares or thereabouts and is registered in the name of Mwana Halisi, a Muslim polygamist with two wives, who has a forest plantation in the land, and two bungalows spread across the land for each of the wives. The land was inherited by Mwana Halisi in 1975 from his father, Baba Halisi, who had initially been registered under the repealed Registered Land Act-Cap 300 as a proprietor to hold the title on behalf of the family. Mwana Halisi also carries out commercial farming on his land and often gets loans secured on the title to finance the same. There has been rumours that part of the land may have been grabbed from the Kenya Airports Authority and has been subject to the inquiry into land irregularities carried out by the *Ndungu* Commission and that Mwana Halisi, may have encroached into the Ocean front. Hasola Wili Barro has been advised that you are the ideal Conveyancing lawyer to handle the intended purchase for him and that he would pay handsomely to ensure you safeguard his interests given the high stakes.

In view of the foregoing, set out the various stages of conveyancing that the transaction will go through, noting to identify the measures you will take to safeguard the interests of your client, as well as the applicable conveyancing instruments and their legal basis.

(25 marks)

### QUESTION TWO

Interrogate the requirement or otherwise of spousal consent in a conveyancing transaction, as regards land held jointly or in common by spouses and on the other hand by non-spouses, noting to analyse the legal basis.

(15 marks)

### QUESTION THREE

Your law firm was recently enrolled in the panel of external lawyers for Progressive Bank, a mortgage finance bank. The bank has sent you instructions in respect of an offer to finance Ms Bibi Yai a sum of KES 50,000,000 to purchase a leasehold title issued under the repealed Government Lands Act, known as L.R No. 300/200 situate in the Hurlingham area in the Nairobi area, measuring nought decimal three four hectares (0.34 ha) or thereabouts. On the land is erected town houses sharing the common title and fully occupied by tenants. The title is contained in a Grant of 999 years issued pursuant to an allotment of 1975 by the then Commissioner of Lands of behalf of the President of the Republic of Kenya.



## **FLB 208: PROPERTY LAW II (PROPRIETARY RIGHTS AND TRANSACTIONS)**

As a lawyer for the bank, explain the role you will play as an Advocate for the bank, the steps you will take to safeguard the interest of your client, noting to identify the various conveyancing instruments that will be required in the transaction. **(15 marks)**

### **QUESTION FOUR**

Evaluate the concept of electronic conveyancing, the obtaining status in Kenya and legal basis as to the same. **(15 marks)**

### **QUESTION FIVE**

You have been taken as a legal intern in a law firm in City of Nairobi town, and the first brief allocated to you is in respect of drawing a Conveyancing instrument for the transfer of land in Lavington in the Nairobi area, registered under the Government Lands Act CAP 280 (repealed).

Define and proceed to draw the testimonium, execution and attestation clauses of the applicable Conveyance instrument. **(15 marks)**

### **QUESTION SIX**

Discuss the various remedies available in conveyancing in Kenya, their legal basis as well as their suitability or applicability. **(15 marks)**



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### **FOR THE DEGREE OF BACHELOR OF LAWS**

**COURSE CODE:** FLB 209

**COURSE TITLE:** LAW OF SUCCESSION

**DATE:** 12<sup>TH</sup> FEBRUARY, 2021 **TIME:** 9.00 A.M. - 12.00 NOON

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### **INSTRUCTION TO CANDIDATES**

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### QUESTION 1

Mzee Matata's friend, Mkosefu, died six months ago, and since his demise his widow, children, parents and siblings have been fighting for control of his large estate. Mzee Matata does not want such an occurrence to happen to his family when he dies. He therefore, wishes to leave a will which shall not be challenged, and has decided to seek legal advice from you, his lawyer of 15 years.

Write an in depth advisory to Mzee Matata, with the aid of statutory provisions under the Law of Succession Act (Cap. 160, Laws of Kenya) and case law, the following:

- (a) requirements and formalities of valid wills; and (15 Marks)
- (b) what happens if Mzee Matata had acquired more property and does not include them in the will. (10 marks)

### QUESTION 2

Mrs. Jo whose husband Major Bo, of the Kenya Navy, died on the 4<sup>th</sup> of June 2020 after suffering a COVID—19 infection has discovered while going through her late husband's bags, a written will which though had been executed by her deceased husband, there was no attestation. She has approached a law firm where you intern, Maoni Mingi Advocates. Upon reviewing the client, it has become apparent that Major Bo had an extra marital affair with Ms. Yeng with whom he had sired two children.

Advise Mrs. Jo on her rights. (15 Marks)

### QUESTION 3

Citing relevant case law, discuss the legal position of 'the other woman' as envisaged by Section 3(5) of the Law of Succession Act, Cap 160. (15 Marks)

### QUESTION 4

Write short notes on the following:

- a. Donatio Mortis Causa (5 Marks)
- b. Grant *durante aetate minore* (5 Marks)
- c. Testamentary freedom (5 Marks)

**QUESTION 5**

Osasuna died intestate two months ago survived by his two sons, Eibar and Vigo. Osasuna's tenants have now refused to pay rent to the sons for three houses situated along Sugunanga Road, Eldoret claiming that they were never introduced to the young men by the deceased.

Eibar and Vigo have come to you for legal advice. Advise them on the relevant grant(s) that will enable them collect rent or take legal action if the tenants persist in their refusal to pay.

**(15 Marks)**

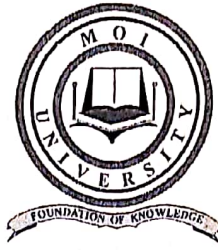
**QUESTION 6**

'A personal representative is considered as more than a mere administrator of a deceased's property entrusted to him.'

Discuss the above statement while explaining the powers and duties of personal representatives as enshrined in law.

**(15 Marks)**





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## **UNIVERSITY EXAMINATIONS 2019/2020 ACADEMIC YEAR SECOND YEAR SECOND SEMESTER EXAMINATION**

### **FOR THE DEGREE OF BACHELOR OF LAWS**

**COURSE CODE:** FLB 210

**COURSE TITLE:** LABOUR LAW

**DATE:** 9<sup>TH</sup> FEBRUARY, 2021 **TIME:** 2.00 P.M. – 5.00 P.M.

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#### **INSTRUCTION TO CANDIDATES**

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**QUESTION ONE**

Mr James is the senior most software programmer and analyst at Next Level Communications (K) Ltd, an International private company, where he has worked in its Nairobi Office branch since 2016 under the supervision of Mr John, his immediate Manager. The Organization is a fairly large organization employing over 100 people in the Nairobi branch. The organization has well established and documented systems for employer/employee relations, procedures and processes, which are given to the new employee upon signing of employment contract. Additionally, being a registered company in Kenya the labour laws apply to Next level Communications (NLC) as well.

James and his four junior colleagues in the Software Department have since January 2021 found themselves under a lot of pressure of work due to what they consider unreasonably instructions by the Manager James, that they work 16 hours a day instead of the contractual 8hrs a day, arguing that they have to make up for time lost in 2020 due to the Corona pandemic. All this is done without prior notice or compensation despite the organization having a framework for both. The fellow workers requested Mr John to make their case before the manager, and in the event the manager cannot or is unwilling to listen to and address their concerns, to request that the same be escalated to the next person in the chain for resolution as per their processes for grievance handling and work rules and related.

Despite James best efforts both verbally and documented over the past 2 weeks, the Manager has resisted any attempts to resolve the matter and has become very hostile especially towards Mr. James who he sees as a troublemaker. Frustrated Mr James has decided to escalate the matter formally, to their union representative directly, as provided in the work rules, without further reference to the Manager, and especially in view of the fact that the work rules require such matters to be resolved or escalated within 7 days of bringing the matter to the attention of the Manager.

The Union made formal communications with the Manager, detailing the dispute and requiring the manager to follow laid down procedures to resolve the dispute within acceptable time or to escalate the matter if he is unable to deal. The Union also reminded the manager of his obligations under the labour laws and has given him 7 days within which to resolve the matter or the union proceeds to escalate to the overall organization manager.

Upon receiving the communication from the Union, Mr John became very upset and angry and called Mr James and his four colleagues, shouting at them and in particular



bitterly accusing Mr James of trying to undermine his authority failure to cooperate and malice. Mr James tried to defend himself and his colleagues on the basis of the laid down procedures and law, but Mr John remained adamant and angrily told Mr James "How dare you challenge me. You have no right to speak to me unless asked to, you are an instigator, a bad worker and a fool who wants to take my job. You are fired. Go away". Upon which Mr James only was escorted out the premises and since then no one has responded to his letters or allowed him back to the office. All attempts by the Union representatives to address the issue has been ignored by the management.

The Union and Mr James have come to you with a view to seeking legal advice and redress based on his contract of employment that has a clear procedure for termination of employment amongst others aspects implied by the labour laws of Kenya. Mr James contention is that the organizational procedures were not followed in his purported termination and that the Manager and organization was unreasonable, unjust and unfair in the manner the matter was addressed.

The Union has sought your services as a well known labour lawyer with a view to getting

- a) A legal opinion on the relevant aspects of laws as applied to the current facts
- b) Advise James and the Union on the next proposed cause of action in view of the facts and the law
- c) An assessment of the chances of success if the matter is taken before the **Employment Court**

Task: advice your clients using relevant statutory and case law

(25 Marks)

## QUESTION TWO

Read the facts provided and give legal advice to your client based on the relevant statutory provisions and case law

- a) Jane is a very well qualified Nursery school teacher with 10 years of work experience. In 2018 she resigned her job to get married and raise her now 2years old son. She has now decided that her child is old enough for her to seek formal employment once again in 2021. As her qualifications are excellent she has been invited for a number of interviews where she is confident that she performed well. Despite her performance for some reason she has not been able to secure

employment. Her most recent interview was at Blue Lagoon Nursery school in Nakuru, where she had positive sense that she performed well. However she was a bit surprised because the panel of 2 men and 2 women seemed to be very interested in her child, husband, personal life and its management more than her qualifications and capabilities but she did not think much of it. On the day she was to get feedback on the job, an anonymous caller from the Blue Lagoon Nursery school informed her that though she was the best candidate, the management was reluctant to employ her because she had a small child and family responsibilities

Jane is very upset with the turn of events and has decided to seek your advice and legal services (5 marks)

- b) Junior Sikh is a 10 year old boy who recently moved to Kenya, where his father has secured a new job, from India with his family who profess the Sikh Religion. Among the Sikhs it is compulsory to wear head turbans as part of their religious/cultural obligations. Juniors parents have attempted to enroll him in the nearest school to their residence for convenience, but he were denied admission on the basis that he has refused to remove his turban which is the basis for admission as it is against school policy

Junior's parents are angry and frustrated and have decided to sue the school and are now seeking your advice and action (5 marks)

- c) Mary is a newly employed lab technician in a school where all the other technicians are men and do not seem to appreciate female colleagues. She is the first woman to work as am technician since the establishment of the big school that employs over 100 people, 10 years ago. She has noticed that her fellow workers seem to be on a campaign to make life impossible for her and make sexually explicit advances and comments to her. Life has become very uncomfortable and it is clear that they do not want her there. All attempts to approach the management with a view to resolve the matter have been downplayed and generally ignored by the largely male dominated management. Mary is no longer able to withstand the situation and has decided to resign.

However she has come to you before resigning seeking advice on whether she can sue the co-workers and the employer for the treatment she underwent, and how best to approach the matter (5 Marks)



**QUESTION THREE**

"It is of fundamental importance to clarify whether one is an employee or self employed as entitlement to protection of labour law depends on ones status"

In view of the above statement; evaluate the following tests, with the aid of case law

a) Economic Reality Test (5 marks)

b) Mutuality of Obligations Test (5 Marks)

c) "In the Construction of Implied terms of employment courts are increasingly shunning subjective test and moving towards objective test" **Discuss**

(5 marks)

**QUESTION FOUR**

a) The Collective Agreement is considered one of the express terms of a contract of employment.

Elaborate with the aid of case law how at common law collective agreements have been incorporated into the contract of employment (8 Marks)

b) Both the employer and employee have certain rights and duties in the employment relationship. Discuss the obligations relating to **Stress** and **Duty to Cooperate**

(7 Marks)

**QUESTION FIVE**

a) The Labour Relations Act 2007 provides for dispute resolution in Part V111 sections 62- 70. **Discuss** (7 Marks)

b) Distinguish between a protected and unprotected strike under Kenya labour laws, and explain three situations/actions that may be may lead to civil liability during strikes (8 marks)

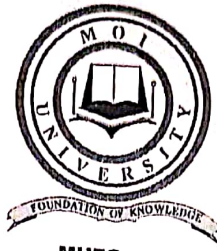
**QUESTION SIX**

Write short notes on ANY THREE (3) of the following:

a) Discrimination on basis of Disability under the law [5 Marks]



- b) Salaries and Remuneration Commission Act [5 Marks]
- c) The Labour Institutions Act [5 Marks]
- d) Child labour law [5 Marks]
- e) Labour law Institutions in Kenya [5 Marks]



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## UNIVERSITY EXAMINATIONS 2019/2020 ACADEMIC YEAR SECOND YEAR SECOND SEMESTER EXAMINATION

### FOR THE DEGREE OF BACHELOR OF LAWS

**COURSE CODE:** FLB 212

**COURSE TITLE:** EVIDENCE LAW II: PROCEDURE AND PRACTICE

**DATE:** 8<sup>TH</sup> FEBRUARY, 2021 **TIME:** 9.00 A.M. – 12.00 NOON

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### **INSTRUCTION TO CANDIDATES**

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### QUESTION 1

Jacob is given a television set by his father Josephat. For record purposes, Josephat takes his son Jacob to an advocate's office where a piece of writing in the following terms is made:

Now this deed of gift witnesseth as here under:

- a) Josephat, in consideration of his natural love and affection gives to Jacob absolutely, his Sanyo television set model XYZ Serial Number KV-20-1302 (Hereinafter called "the said television").
- b) Jacob hereby accepts the said television.

In witness whereof the parties have hereunto subscribed their hands the day herein above written:

SIGNED by the SAID Josephat

In the presence of:

Kashandago Kadochi

Advocate

} Josephat's signature appears here

Signed by the said Jacob

In the presence of:

Kashandago Kadochi

Advocate

} Jacob's Signature appears here.

Advise Jacob on whether the Court can accept the oral evidence of his friend who had read the document before it got lost to establish its existence and contents.

What would your advise to Jacob be, if his father were to deny that he had executed the agreement and that the same had not been attested as required by law?

[25 Marks]

### QUESTION 2

"If a man is charged with forgery, cross-examination as to his convictions for cruelty to animals can have no purpose but prejudice" Anon Discuss.

[15 marks]

### QUESTION 3

"In the law on confessions, certain basic rules must be adhered to, otherwise a confession so taken from a suspect or accused person is rendered inadmissible in judicial proceedings". Anon

Discuss this statement in light of the judicial decisions and statutory law.

[15 marks]



**QUESTION 4**

The Evidence Act Cap 80, Laws of Kenya, recognises that the contents of a document may be proved either by primary or secondary evidence. Discuss the circumstances in which primary evidence must be given and those in which secondary evidence may be admissible. [15 marks]

**QUESTION 5**

Jim and Walker, who are acquaintances of Wakili, an Advocate of the High Court of Kenya, meet him in a pub and inform him of their intention to rob Bakileys Bank, Nyweri. Wakili, who was a little bit tipsy at the time, dismissed them with a hearty laugh. To his surprise, the next morning, the *Annex Standard* and the *Annex Nation* newspapers reported a well-planned and co-ordinated robbery of Kshs. 10 Million at Bakileys Bank, Nyweri. The physical descriptions fit Jim and Walker. Four days later, the two were arrested and charged with the offence of robbery with violence.

Nyeti, Jim's brother, approaches Wakili seeking legal representation for the two. Wakili visits the two in custody, and both admit to him that they indeed committed the crime. At the start of the trial, the prosecution seeks to have Wakili step down as counsel for the accused, since they intend to call him as a witness.

Discuss the soundness of the prosecution's application.

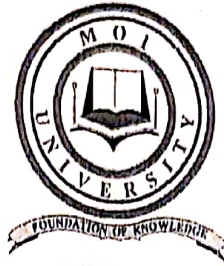
[15 marks]

**QUESTION 6**

"I will permit questions to be put to the witness as to any improper conduct of which he may have been guilty for the purpose of trying his credit; but when the questions are irrelevant to the issues on record, you cannot call witnesses to contradict the answers (they) give" Per Lawrence J in *Harris v. Tipper* (1811) 2 Camp 637 638.

With the above observation in mind, discuss the admissibility of this kind of evidence in criminal trials in Kenya.

[15 marks]



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## **UNIVERSITY EXAMINATIONS** **2019/2020 ACADEMIC YEAR** **SECOND YEAR SECOND SEMESTER EXAMINATION**

### **FOR THE DEGREE OF** **BACHELOR OF LAWS**

**COURSE CODE:** FLB 213

**COURSE TITLE:** LAW OF DEVOLVED GOVERNANCE

**DATE:** 15<sup>TH</sup> FEBRUARY, 2021 **TIME:** 2.00 P.M. – 5.00 P.M.

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### **INSTRUCTION TO CANDIDATES**

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**QUESTION ONE**

In the year 2012 the devolved system of government in Kenya was thrown into a fiscal crisis arising out of disagreements between the National Assembly and the Senate over the enactment of the Division of Revenue Act for that financial year. This forced the Council of Governors to file a case in the Supreme Court for an Advisory Opinion regarding the correct interpretation of various constitutional provisions. A major complaint raised by the county governments is the undue delay in the disbursements of the equitable share to the county governments. Sometimes the disbursements delay for periods of up to 90 days. The Council of Governors is of the view that these delays are a back door way through which the National Treasury is securing stoppage of transfer of funds to the county governments in total disregard of the provisions and requirements of Article 225 of the Constitution. You have been appointed by the Council of Governors as a constitutional and devolution expert to examine Article 225 of the Constitution and prepare for them a comprehensive expert advisory opinion about the circumstances and procedures under which stoppage of transfer of funds to county governments can be lawfully secured.

Prepare your Advisory Opinion.

**[25 marks]**

**QUESTION TWO**

It has been correctly argued that devolution of political power, responsibilities and resources plays a central role in the architecture and design of the Kenyan constitution of 2010. It is even said that devolution forms part of the basic structure of the constitution.

Drawing lessons from comparative experiences, explain the meaning and rationale of the concept of the basic structure of the constitution; its origin and historical development; and its application in Kenya, indicating why devolution should be regarded as part of such basic structure.

**QUESTION THREE**

**[15 marks]**

Although the Constitution of Kenya 2010 establishes two levels of government—the national and county, the constitution also empowers county governments to decentralize their functions and the provision of their services to the extent that it is efficient and practicable to do so.

Critically examine the constitutional and legal provisions governing further decentralization by county governments.

**[15 marks]**

**QUESTION FOUR**

The Constitution of Kenya 2010 establishes a cooperative system of devolved government that requires the national and county governments to conduct their mutual relations on the basis of consultation and cooperation. Because of this Article 189(3) makes it clear that “in any dispute



between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation". On the basis of this provision the Kenyan courts have sought to refer almost every case filed in court that raises matters of devolution to alternative dispute resolution, on grounds that such cases are intergovernmental disputes that must not be resolved in court.

Critically examine the nature of the constitutional obligation not to settle intergovernmental disputes through litigation and identify the exceptional circumstances under which the courts must determine the cases without referring them to alternative dispute resolution mechanisms.

**[15 marks]**

#### **QUESTION FIVE**

The Kenya constitution draws a distinction between original functions and powers, and secondary functions and powers. Explain the distinction between the two sets of functions and powers and critically examine the constitutional provisions that confer on and envisage for county governments both original and secondary functions and powers.

**[15 marks]**

#### **QUESTION SIX**

Article 96(2) limits the legislative power of the Senate to "participating in the law-making power of Parliament by considering, debating and approving Bills concerning counties" only. With lessons drawn from comparative jurisprudence, critically examine the constitutional provisions governing the determination of whether or not a Bill concerns counties.

**[15 Marks]**

Prepare your presentation.