



MUEO

MOI UNIVERSITY

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

UNIVERSITY EXAMINATIONS 2020/2021 ACADEMIC YEAR SECOND YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 207

COURSE TITLE: ADMINISTRATIVE LAW

DATE: 18TH OCTOBER, 2021 **TIME:** 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

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

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QUESTION 1

Maimuna Mwakichiko a resident of a rural area near Eldoret. She is 65 years old, illiterate and very poor having retired as a cook at the Department of Survey of Kenya. She applied for pension (for which she qualifies in terms of the relevant legislation) to the Directorate of Pension in March 2012. In March 2019, she approaches you, an advocate, asking whether there are any steps she can take to obtain a decision, because she has heard nothing from the department. Advise her. (25 marks)

QUESTION 2

The Cabinet Secretary, State Department of Livestock, Ministry of Agriculture, Livestock, Fisheries and Irrigation through a Legal Notice 50 of 2019 published on 26th 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)

QUESTION 3

An NGO called Stop the Hilton Landfill Site has lodged an appeal to the County Executive of Agriculture and Environment for Uasin Gishu County in terms of section 43 of the County Environmental Management Act against a decision in terms of the Act by the Department of Agriculture and Environment in the County to authorise the establishment of a landfill site in Hilton area. The County Executive is the official required to decide the appeal in terms of section 43 of the Act. The NGO receives a document setting out the appeal decision, which upholds the original decision, signed by the County Executive. The NGO then obtains information to the effect that the County Executive handed the appeal over to an environmental lawyer asking him to make a recommendation on the appeal and, when the County Executive received the lawyer's recommendation, the County Executive simply ordered one of the Departmental staff to 'put the recommendation into an appropriate format' and then signed this document. Advise the NGO as to whether this decision (the County Executive's appeal decision) can be reviewed. Explain your answer. (15 marks)

QUESTION 4

Identify the circumstances in which "legitimate expectations" are created with reference to case law. (15 marks)

QUESTION 5

Wastego Ltd makes an application for a waste disposal site licence in terms of the Uasin Gishu Environmental Management: Waste Act. The Uasin Gishu Department of Environmental Affairs and Tourism, which decides on the licence applications in Uasin Gishu County, uses a guideline document entitled "Guidelines for the licensing of waste disposal sites", which has been compiled in compliance with the requirements of the Act, in order to assess applications. One month after submitting its application, Wastego Ltd receives a letter containing the following:

"We regret to inform you that your application for a waste disposal licence is unsuccessful, due to the failure to comply with the specifications in Part V.7 of the Guidelines for the licensing of waste disposal sites".

The letter from the Department contains no further information relating to these specifications, nor does it contain the relevant part of the Guidelines. The CEO of Wastego Ltd approaches you asking whether it is entitled to reasons for the decision. Advise him, providing reference to relevant authority, including decided cases.

(15 marks)

QUESTION 6

"The Commission on Administrative Justice can be described as a 'toothless bulldog' as its remedial orders/directives are not binding." Anonymous.

Taking into account the constitutional and statutory framework establishing the Commission on Administrative Justice (Ombudsman) and judicial decisions on the legal status of the remedial recommendations by the Ombudsman, discuss the cogency of the assertion in quote above.

(15 Marks)



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UNIVERSITY EXAMINATIONS

2020/2021 ACADEMIC YEAR

SECOND YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 208

COURSE TITLE: PROPERTY LAW II

DATE: 25TH OCTOBER, 2021

TIME: 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

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

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

QUESTION ONE

Mr. Mwekezaji is a leasehold owner of title registered under the Government Lands Act Cap 280 (repealed), measuring nought decimal nought three four of a hectare (0.034 ha) or thereabouts situate along Lang'ata Road in Nairobi City County, but adjacent to the Wilson Airport, a railway line and Nairobi National Park. The commencement period for the lease, as issued by the then Commissioner of Lands on behalf of the President, is 1st August 1978, for a period of 99 years at an annual rent of KES 6,000 (revisable). Mr. Mwekezaji intends to erect a block of apartments on the land, and intends to sell the said apartments together with the head title to willing buyers. However, Mr. Mwekezaji seeks to secure funding for the construction from Maendeleo Bank, which bank will use the land and development thereon as collateral for the loan advanced to Mr. Mwekezaji.

As a seasoned Conveyancer, Mr. Mwekezaji has come to your Chambers for advice on the various conveyancing stages from taking instructions to the point of the borrowing from the bank. Ensure that details touching on the sale and transfer of the respective apartments to purchasers is clearly laid down.

Advise Mr. Mwekezaji on the foregoing, noting to identify the applicable completion documents and their legal basis.
(25mks)

QUESTION TWO

Distinguish the concepts of sectional properties and subleases, noting to identify their legal basis, and their respective conveyancing instruments. (15 mks)

QUESTION THREE

You have been taken as a legal intern in a law firm in City of Nakuru, and the first brief allocated to you is in respect of drawing a Conveyancing instrument for the transfer of land in Free Area of Nakuru, registered under the Registration of Titles Act, Cap 281 (Repealed)

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

QUESTION FOUR

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

Contextualise Conveyancing as a contractual transaction, noting to highlight its basis in contract law, as well as peculiarities from the ordinary rules of contract. (15 mks)

QUESTION FIVE

Your law firm was recently enrolled in the panel of external lawyers for Asili Bank, a mortgage finance bank. The bank has sent you instructions in respect of an offer to finance the purchase of an apartment by Ms. Maridadi for a sum of KES 20,000,000, which apartment is on the second floor of a building erected on a government leasehold title registered under the Registered Land Act Cap 300 (repealed) and situate in Elgon View area in Eldoret, Uasin Gishu County. The building has 50 apartments in total, and have all been sold out.

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 mks)

QUESTION SIX

Evaluate the concept of electronic conveyancing, noting to discuss its legislative and regulatory framework, as well as the obtaining status in Kenya. (15 mks)



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UNIVERSITY EXAMINATIONS 2020/2021 ACADEMIC YEAR SECOND YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 209

COURSE TITLE: LAW OF SUCCESSION

DATE: 21ST OCTOBER, 2021

TIME: 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

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

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Question One

Lovalova died in April 2020 as a result of Covid—19. In 1998 he executed a valid will that he had drafted himself and which contained the following provisions:

"(i) I give my property 'Milimani' to my sons ^{dies} Buko, Dato, and Fila ^{Joint Tenancies} equally; (ii) I give the 10 acre plot of land that I own in Kapsoya to my brother Geri (iii) I give Kshs. 5,000,000 to each of the children of Dato and Fila who reach 18 years of age (iv) I give Kshs. 2,000,000 to all my nephews and nieces who reach 18 years of age (v) I give Kshs. 10,000,000 to my daughter Mrembo (vi) I give Kshs. 5,000,000 to my friend Kulio (vii) I give the monies held in my Absa Bank account to my cousin Yeti (viii) I give everything else that I own to my wife Noma."

Lovalova is survived by his wife Noma and his sons Dato and Fila. His son Buko died in 2011 and he is survived by his wife (they had no children). His daughter Mrembo died in 2009. At the time of his death, Lovalova had four grandchildren: Vela (Dato's daughter) aged 21; Cinda (Mrembo's daughter) aged 19; and Jala aged 16 and Loki aged 10 (Fila's sons).

Lovalova also had three nephews and nieces at the time of his death; Cindy aged 18, Mary aged 16, and Satwa aged 8. Since Lovalova's death another niece, Emon has been born. These are all Geri's children. Kulio died in 2008 and she is survived by her husband and two children. In 2009 Lovalova gave an option to purchase the 10 acre plot of land in Kapsoya to Kapsoya Real Estate Ltd. exercisable within (4 months) of his death. The Company gave notice to exercise the option during July 2020.

During 2018, Dato and Fila acting as their father's attorneys under an enduring power of attorney, closed Lovalova's Absa Bank account and some other accounts, in order to invest the proceeds in a deposit account with another bank to earn more interest. At the time they were not aware of the contents of their father's will.

Explain fully how Lovalova's estate will be distributed.

(25 Marks)

Question Two

"The Law of Succession Act, Cap 160, Laws of Kenya, was enacted in 1972, but did not come into effect until 1st July 1981. In order to discuss the success of this Act, it is necessary to look at the position in Kenya before the Act came into force, the mischief it was aimed to solve and the position after the Act became operational."

In light of the foregoing, critically discuss whether the Law of Succession Act, Cap 160 has achieved the purpose for which it was enacted.

(15 Marks)

✓ Question Three

Mla Chake, a bachelor who has just died, validly executed his homemade will in 2010. His neighbours Nani Huyo and Mimi Huyo acted as his witnesses. Mla Chake's will includes the following clauses:

"3. (i) I give my property 'Elgon View Apartment' to my brother Makwata

(ii) I give my collection of paintings to my sister Asito and [redacted]

(iii) I give my shares in Chepa plc to my friends Kicheko and Kilié equally

Kshs. 1,000,000

(iv) I give Kshs. 500,000 to my nephew Karimu [signed: nh mh]

Kshs. 500,000 [signed: mc]

(v) I give Kshs. 250,000 to my nephew Konde [signed: nh mh]

Kshs. 500,000

(vi) I give [redacted] to my niece Esha.

4. I give the residue of my estate to my sisters Gati and Asito"

All the amendments are made in Mla Chake's handwriting and are made in ink, except for the amendments to Clause 3(iii) which are made in pencil. Discuss the effect of the alterations in Clause 3 of Mla Chake's will. (15 Marks)

✓ Question Four

Write short explanatory notes on the following:

(a) *Donatio mortis causa*

(5 Marks)

(b) Net intestate estate

(5 Marks)

(c) Revival of wills

(5 Marks)

✓ Question Five

"The Law of Succession Act specifically sought to address the plight of women who found themselves in the position of the customary law widows in the cases of *Re Ruenji's Estate* (1977) KLR 21 and *Re Ogola's Estate* (1978) KLR 18. In both matters, the deceased persons had previously contracted marriage under the African Christian Marriage and Divorce Act and subsequently purported to contract marriages to other women under customary law during the subsistence of the statutory marriage. The High Court held, in both cases, that by virtue of section 37 of the Marriage Act the deceased lacked capacity to contract other marriages under any system of law, that the marriages so contracted were null and void, and that the women so married were not wives for any purpose (including succession)." W. Musyoka (2006).

In light of the foregoing, critically consider and analyze the legal position of 'the other woman' as envisaged by Section 3(5) of the Law of Succession Act, Cap 160, and whether the provision still has a place within the context of the Constitution of Kenya 2010. (15 Marks)

Question Six

A testator not only has to have the mental capacity to make a will, but also knowledge of and approval of the contents of the will.

- (a) Discuss with reference to case law the rules relating to knowledge and approval of the contents of a will. (7 Marks)
- (b) Consider the effect of mistakes in a will and explain by what means they can be rectified, illustrating your answer by reference to case law. (8 Marks)



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UNIVERSITY EXAMINATIONS
2020/2021 ACADEMIC YEAR
SECOND YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF
BACHELOR OF LAWS

COURSE CODE: FLB 210

COURSE TITLE: LABOUR LAW

DATE: 22ND OCTOBER, 2021

TIME: 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

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

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QUESTION ONE

Fair Airways is a fairly large commercial airline company in Kenya. It has been in operation since 1963 and over the course of these many years has employed very many people in different departments as well as expanding its business outside Kenya by having regional offices around the world. Up to 2017 Fair Airways has been making very good profits hence the extensive expansion within and outside Kenya. In fact in early 2018 Fairways employed 100 new staff in various positions in the Kenya offices. Fair Airways employees are represented by Civil Aviation Workers Union, and the Employer is also a member of an employer's union. In 2018-2019 the economy in Kenya has had a downturn leading to the Fairways allegedly making great losses. In 2020 the situation was made worse by the Covid pandemic leading to frequent bans in local and international travel and hence further affecting the profitability levels of the airline. As such the CEO of Fair Airways and his board had a meeting on 1st August 2021 and decided that there is an urgent need to carry out restructuring in the company that must involve terminating the contract of at least 500 workers in Kenya. They agreed that this will be the only way out of its precarious situation and if the company is to stay afloat. Further it was agreed that changes must be undertaken urgently as the situation is very dire.

Fair Airways CEO wrote to the Employee Union Representatives on 5th August 2021 informing them about the planned restructuring and that it would lead to job loss of 500 staff. The letter in fact gave a 20 day notice of the intended action and did not explain anything further. The Secretary General of the employees union was very surprised as this was the first time they were hearing about the intended restructuring. On 6th August 2021 the workers representative wrote back to the CEO requesting for an urgent meeting to discuss the overall decision and to agree on logistics on the same. On 7th August the CEO wrote back to the Union stating that there was no need to meet as in fact the list of the 500 staff had already been compiled at the discretion of the CEO and Board, and the list was attached to the letter. The Union noted that none of the recently employed 100 staff was on the list and that on the unilaterally prepared list were many union representatives, long serving and most experienced workers and many vocal employees. The Union was further shocked to realize that the intended terminal package did not comply with the statutory requirements or the Collective Bargaining Agreement registered and governing the relationship between the parties. The Collective Agreement requires information and consultation with union on such matters

You are a prominent labour law practitioner and expert and the Union has come to you urgently on 7th August 2021 as by 25th August the intended restructuring will have been finalized, and they need your professional advice on the best way forward. These are the issues as presented to you by the union representatives

1. The airline failed to give adequate notice
2. It did not give notice to individual staff
3. Airline did not consult with union

4. Airline did not agree with union on selection criteria
 5. Airline breached collective bargaining agreement
 6. Airline used excuse of restructuring to get rid of people they did not want
 7. The union wants all the 500 workers reinstated and list of 500 declared illegal
- The Union is of the view that the restructuring should be stopped until these issues are determined. The Union wants you to prepare a legal opinion very urgently for their consideration so as to determine best approach to pursue
- In view of the above and with the aid of appropriate case law prepare a legal opinion as guided below:

- a) Identify and discuss the relevant Constitutional, statutory provisions and laws as relate to the case facts
 - b) Advise the Union on the proposed legal redress and options available to the Union in the immediate and long term
 - c) Advise on the strength of their case and possibility of success of their overall case as well as appropriate remedies
- NB. Your legal opinion should be comprehensive enough to capture the arguments that you would make before the Court on the presented facts and relevant laws, as the Union has indicated that they see the matter ultimately being determined by the court as the Airline does not seem open to any further interaction in good faith (25 MARKS)

• QUESTION TWO

The Labour Relations Act, 2007 covers what is deemed to constitute:

- i) Sec 78 "Prohibited Strikes or Lockouts"
- ii) Sec 79 "Strike and lock out in compliance with Act"
- iii) Sec 80 "Strike and lockout not in compliance with Act"
- iv) Sec 81 "Essential services"
- v) Sec 79(6) "An employer is not obliged to remunerate an employee for services that an employee does not render during a protected strike or lockout"

Expound on each of the above, and with the aid of appropriate law, critically discuss the law relating to Strike and evaluate the status of the right to strike in Kenya (15 MARKS)

QUESTION THREE

- a) Elizabeth is newly graduated (2020) with a Masters degree in ICT with a specialization that is very unique that very few firms in Kenya can accommodate at the moment. Luckily, in June 2020 she applied and secured a very lucrative position as senior ICT specialist in a Kenyan firm with over 500 employees and 10 branches in Kenya that has been declared the best ICT Company for the last 5 years and secured a very competitive pay package. Elizabeth has been working in the firm's Nairobi office for over one year. She and about 20 male employees are under the supervision of a Director of ICT who is male. She is the only female employee in the department. Since Elizabeth joined the firm,

her immediate supervisor, Mr Jones has been sending her inappropriate sexually suggestive messages and pictures, as well as saying uncomfortable things to her. He recently gave her a hug and commented that she looked sexy and said "If you become my girlfriend I will promote you soon but if you refuse your days are numbered here. Where will you go? There are no jobs for you here in Kenya. Think about it. I need an answer soon"

Elizabeth has made it clear she does not appreciate the advances by her boss as well as discussing with the CEO and her fellow employees. She has even written a formal letter to the CEO who simply called her and laughed it off saying "I did not know the bar has been set so low by the young generation. We do not deal with such small normal issues of life. Go back to work and deal with it young girl"

Elizabeth is very worried and does not know what to do next. She does not want to lose her job but at the same time fears that this might happen as she will never submit to the wishes of her supervisor. She is also worried that the firm is not sensitive to such issues and does not seem to have a framework to deal with these kinds of issues at the work place

Elizabeth has come to your law firm seeking urgent legal advice and action regarding her issue.

Advise her as appropriate with the aid of case law

(8 Marks)

- b) Mary is a very well qualified 40 year old accountant who is a devout Catholic who attended catholic schools all her life. She also has worked in various catholic organizations for the past 10 years. She recently got a new job with a non catholic organization which manufactures gold and metal products. Her letter of appointment indicated that she should take time and read the work rules available in the office library. After working for 3 months one day her supervisor saw her gold cross she was wearing and called her informing her that the office has a policy that apart from wedding rings they do not allow any kind of jewels at work. Mary informed the supervisor that the gold cross has religious significance for her and was given to her by her grandmother and that she has never removed it for the past 15 years. This issue has brought her in conflict with her supervisor who has pointed that the work rules are clear on this issue. She has persisted in wearing the chain leading to her supervisor writing her a warning letter. Mary has come to your law office quite distraught seeking your opinion, because the letter has threatened her with termination if she does not comply. She holds the view that she should be allowed to practice her religion and that insisting she removes the chain is a violation of her religious rights. At the same time she does not want to lose her job.

Advise her on the relevant laws and her options as appropriate with use of case law (7 marks)

QUESTION FOUR

Write notes on any two (2) of the following:

- a) The Labour Institutions Act 2007 lighting the functions and mandate of the Institutions in the enforcement of labour laws
- b) The National Employment Authority Act 2016
- c) Part III of the Labour Relations Act 2007 on Establishment of trade unions and Employer Organisations
- d) Protection of Children under the Employment Act CAP 226 and subsidiary legislation
- e) Protection of wages in Part IV of the Employment Act sec 17-25

QUESTION FIVE

Section 5(5) of the Employment Act CAP 226 provides as follows:

“An employer shall pay his employees equal remuneration for work of equal value” and The Constitution of Kenya states: Article 41(2) (a) “Every worker has a right to fair remuneration”

With the aid of appropriate case law, identify and discuss three methods that have been established to ensure that the above statutory provisions are implemented and enforced at the policy and workplace levels (15 Marks)

QUESTION SIX

- a) The Salaries and Remuneration Commission was established by Act no 10 of 2011 and subsidiary legislation (Remuneration and Benefits of state and Public Officers Regulations, 2013.

Discuss the core provisions of the two legal instruments ensuring you focus on the functions, powers and guiding principles as well as the factors to be taken into account by SRC in their mandate (10 marks)

- b) With the aid of at least one decided case in Kenya, assess the extent to which the SRC is meeting its mandate in the Public sector (5 marks)



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UNIVERSITY EXAMINATIONS 2020/2021 ACADEMIC YEAR SECOND YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 211

COURSE TITLE: LAW OF BUSINESS ASSOCIATIONS II:
COOPERATIVES AND PARTNERSHIP LAW

DATE: 27TH OCTOBER, 2021 **TIME:** 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS.
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QUESTION 1

(a) Jane and Joan entered into a partnership agreement on 30th August 2014 to carry on the business of operating a restaurant under the name and style of "Hot Foods." The partner printed tens of letterheads and other documents bearing their firm name as well as the names of the partners. The letterheads were used to place orders for the items that the partners needed for their business. Fast forward to July 2017, Jane retired from the business and the fact of her retirement was duly notified in the Kenya Gazette. Joan continues to place orders using the old letterheads "Hot Foods" which Jane negligently failed to destroy before her retirement. Joan has defaulted in making payments to a firm that supplied the business in 2018.

- i) Advice Jane on her legal liability in relation to the payments owing to the firm that supplied to the business in 2018.

(10Marks)

- ii) Davis, one of the regular suppliers of the restaurant business, was curious to confirm whether Jane was still a partner in the firm. Davis then made a phone call to Jane to confirm the orders and Jane advised him in the following words "Our restaurant is actually in need of those items. Please go ahead with the supplies."

Would your advice to Jane be different from (a) above in respect of her liability to Davis?

(5Marks).

- (b) To what extent do the provisions of the Limited Partnerships Act Cap. 30 Laws of Kenya modify the general law relating to partnerships?

(10Marks)

QUESTION 2

Trace the evolution of cooperative movements in Kenya from the arrival of colonialism to date while highlighting government's involvement as well as the factors that stimulated the development and the extent to which those factors recognized cooperative principles of cooperation. (15Marks).

QUESTION 3

Write notes on the following:

- a) Formation and registration of cooperatives (10 Marks)
- b) Inspection and inquiry in a cooperative society (5 Marks)

QUESTION 4

Section 29 (1) of the Cooperatives Societies Act, Chapter 490 of the Laws of Kenya provides “Any two or more co-operative societies (hereinafter referred to as amalgamating societies) may, by special resolution (in this section referred to as the preliminary resolution), resolve to amalgamate as a single society (hereinafter referred to as the amalgamated society).” Discuss the procedure and the consequences of amalgamation of a cooperative society. (15 Marks).

QUESTION 5

When may the sharing of profits of a business constitute or not constitute one into a partner in a firm under which the business is carried on? (15 Marks)

QUESTION 6

- a) Explain the procedure of assigning shares or interests in a partnership, on one hand, and cooperative society, on the other (8 Marks).
- b) Highlight the procedure for dissolving a partnership (7Marks).



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UNIVERSITY EXAMINATIONS 2020/2021 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: 19TH OCTOBER, 2021 **TIME:** 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

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QUESTION 1

'The witness could only say that a record made by someone else showed that if the record was correctly made, a car had left the works bearing the three particular numbers. He could not prove that the record was correct or that the numbers which it contained were of the car when it was made.' Per Lord Reid LJ in *Myres v. DPP* (1964) 2 ALLER 881 at 884.

In the light of this statement, and with the help of the relevant judicial and statutory authorities, discuss the application of the rule against hearsay in Kenya. (25 marks)

QUESTION 2

Dr. Nancy is a General Medical Practitioner based in Nanwaki City. She has lately specialized in reproductive health issues. On 10.02.2012 she was charged at the Principal Magistrates Court at Nanwaki with the offence of procuring an illegal abortion. The prosecution called two witnesses. One of the witnesses, Jane, is a 12 year old girl. The other witness Wayne, is a deaf and dumb old man, living in Caveland, where the offence was committed. Wayne saw what happened, though he is not able to speak due to his state of health.

The file has been brought to you by the Senior State Counsel in charge of prosecutions, calling on you to advise him on the strength of this evidence. Write a memorandum on the competency and the admissibility of the evidence of these witnesses. (15 marks)

QUESTION 3

'If a prisoner by himself seeks to give evidence of his own good character for the purpose of showing that it was unlikely that he committed the offence charged, he raises, for the defence, an issue as to his bad character so that he may be cross examined as to his good character to rebut it.

In the light of this observation, discuss the circumstances under which the prosecution may adduce evidence of the accused's bad character. (15 marks)

QUESTION 4

"When the court has to form an opinion upon a point of foreign law or of science or art or as to identity or genuineness of handwriting or finger or other impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art or in questions as to identity, or genuineness of handwriting or finger impressions." As per S. 48 of the Evidence Act, Cap 80, Laws of Kenya.

In the light of this provision of the law, discuss the application of this category of evidence in Kenya's legal process. (15 marks)

QUESTION 5

Discuss the various classifications, and the application, of documentary evidence in Kenya.

(15 marks)

QUESTION 6

On 30.03.2020 at 9.30 p.m., Felix is found by two policemen lying unconscious at the 5th Avenue Annex. On closer examination, the police find that he has serious chest wounds. They rushed him to Referral Hospital, where he dies three hours later. Gavans is charged with Felix's murder. The prosecution intends to call three witnesses:

(a) Mr. Maricus, the Hospital Superintendent who will produce the post-mortem report by Dr. Mary, to the effect that Felix died due to internal bleeding caused by stab wounds.

(b) Mr. Leahman, the younger brother of the deceased, who will testify that a week before his death, Felix had told him that he, (Felix), would be going to demand the balance of the dowry due from Jakobo the husband of Pajero, his daughter, in a week's time.

(c) Inspector Maxwell who will testify that as soon as the deceased had been given pain relievers at the hospital, he asked the deceased who the author of his misfortune was, and the deceased stated that Jakobo had stabbed him thrice. The inspector will further testify that he recorded all this in writing, but the deceased died before he signed the statement.

What legal issues will arise from the prosecution's evidence and what are the likely decisions thereon by the court on each of the issues? (15 marks)



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

UNIVERSITY EXAMINATIONS **2020/2021 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: 26TH OCTOBER, 2021 **TIME:** 9.00 A.M. – 12.00 NOON.

INSTRUCTION TO CANDIDATES

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

THIS PAPER CONSISTS OF (3) PRINTED PAGES

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QUESTION 1

The history of devolved governance in Kenya is synonymous with the history of oppressive and undemocratic rule generally in the Country such that devolution is presented and indeed is one of the vehicles through which democracy, social justice, egalitarianism and equality can be realised. Revisiting the history of devolutions and its relationship with democratic struggles in Kenya, discuss the potential that devolution bears as an instrument of addressing Kenya's ill bent past and especially for securing democracy, social justice, egalitarianism and equality.

(25 marks)

• **QUESTION 2**

Discuss, what is your view-if any- is, the correct approach to the interpretation of the devolution provisions in the Constitution of Kenya 2010. Be sure to justify your answers using theoretical studies in connection with the socio-economic strata of Kenya.

(15 marks)

• **QUESTION 3**

In the interpretation and application of the Constitution, certain values, objects and principles of devolution should be borne in mind. Discuss some of these values, objects and principles and why is it important to consider them when giving meaning to the provisions of the Constitution on devolution.

(15 marks)

QUESTION 4

In exercise of their powers and performance of their functions, conflict between the national and county governments is likely to arise especially because of concurrent functions. Revising powers and functions of the national and county governments discuss the idea of conflict in powers and functions and how they should be resolved.

(15 marks)

QUESTION 5

Financing of counties is arguably the most decisive factor on success of the non-centralised system of government like the one that Kenya has adopted. Discuss the principles of financial devolution under the 2010 Constitution and explain whether they have been adhered to by implementors of devolution. (15

marks)

QUESTION 6

Describe the structures and institutions implementing and supporting devolved governance in Kenya and critically evaluate the need, if any, for reform of these structures and institutions for optimal realisation of devolution. (15

marks)