



MOI UNIVERSITY

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

UNIVERSITY EXAMINATIONS

2020/2021 ACADEMIC YEAR

SECOND YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF

BACHELOR OF LAWS

COURSE CODE: FLB 205

COURSE TITLE: FAMILY LAW

DATE: 21ST DECEMBER, 2021 **TIME:** 2.00 P.M. – 5.00 P.M

INSTRUCTION TO CANDIDATES

- Answer Question ONE (1) and Any THREE (3) Others
- Your Answers with relevant decided cases and statutory provisions

THIS PAPER CONSISTS OF (4) PRINTED PAGES

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QUESTION ONE

Musa, an accountant, and Julie, a doctor got married in the Civil registry in 2003. All was going well for the couple. With a multinational employer, Musa easily took a mortgage for a house in the upmarket Ridgeville Estate. Sadly, four years later, his contract was terminated. Five years into the marriage, Julie went for further studies in the United States of America and left him taking care of their two infant children Maya and Ryan aged four and two respectively. Musa also allowed Julie to spend Ksh 750,000/- of his savings to settle down in the U.S. It was agreed that Julie would come back to Kenya after her studies. However, Julie completed her studies and secured a well paying job in the U.S and has some lucrative investments in Kenya. She has now filed for divorce, citing adultery and cruelty. Musa is now a clerk in a small business in town, earning a tenth of his previous earnings. He now lives with his children in a one roomed servant quarter in Mahussler Estate. His Ridgeville house was auctioned when hard times set in and was unable to service the mortgage. Julie accuses Musa of cohabiting with Molly, her best friend who assists Musa takes care of the children when he is busy or held up. She also claims that Musa always attacked her physically whenever they had an argument. She asserts that she arranged for relocation to the U.S in fear for her own life. They both want full custody of the children who are turning 12 and 10 years old respectively. Musa is claiming an equal share of Julie's property arguing that it is matrimonial property and that he was a responsible husband who took care of his wife at the beginning of her career and has raised the children alone. He has denied the allegations of adultery and cruelty. Julie has never had any contact with the children since she left the country eight years ago.

Using relevant legislation and case law, Advise:

- Musa on the steps Julie needs to take in order to successfully obtain a divorce decree in Kenya; (10 Marks)
- Julie on matrimonial Property Rights; (8 marks)
- The couple on child custody law in Kenya (7 Marks)

QUESTION TWO

Matt and Leah are engaged and have planned to have a church wedding in a few months. Mr and Mrs Jumba, Matt's parents have met Leah for the first time. However Leah's family name has caused some concern to the Jumbas because the name Malombe is a family name. Mr and Mrs Jumba request to meet the Malombe family and when the families meet and get to know each other, they discover that Mr Malombe is a long lost brother to Mr Jumba, who mysteriously disappeared from home many years ago. According to their customs and practices, Matt and Leah are first cousins and cannot get married. Matt and Leah, unfazed by this discovery, insist they are in love and will get married anyway.

Advise Matt and Leahs parents on the legal position/

(15 Marks)

QUESTION THREE

"Sharing matrimonial property after a marriage hits the rocks does not have a fixed formula in the law. "It is not a matter of mathematics merely, as in the splitting of an orange in two for, as biblical Solomon found, justice does not get to be served by simply cutting up a contested object of love, ambition or desire into two equal parts. Justice Kiage, Civil Appeal 128 of 2014 PNN & ZWV (K.L.R)

Analyze this excerpt in relation to Matrimonial Property Rights in Kenya (15 Marks)

QUESTION FOUR

"Kenya remains among the few nations that uphold the values of a family. A family, as it has been internationally recognized under the 1966 International Covenant, ICCPR, is a basic fundamental unit of society entitled to the protection, assistance and support of the State. The Kenyan Constitution also refers to the family as the natural and fundamental unit of society which enjoys the recognition and protection of the State. In this regard, the Kenyan marriage laws encourage couples to attempt all reconciliation processes first and consider divorce as the last resort." (Anonymous)

Establish the veracity of this statement (15 marks)

QUESTION THREE-5

Due to the historical development of family law in Kenya, marriage exists under four different legal regimes. This multiplicity of these regimes made it difficult to apply a common standard in the regulation of a person's rights and obligations with respect to marriage and divorce.

In light of the above statement, discuss:

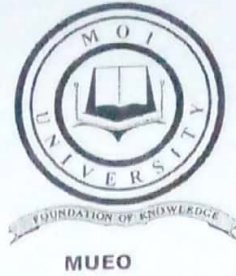
- a. The challenges posed by the said multiplicity of regimes in the regulation of marriage in Kenya (5 marks)
- b. How these challenges have been addressed in the Constitution of Kenya 2010 and the Marriage Act 2014 (10 marks)

QUESTION SIX

Section 66 (1) of the Marriage Act 2014 provides,

“A party to a marriage celebrated under Part IV may not petition the court for the separation of the parties or for the dissolution of the marriage unless three years have elapsed since the celebration of the marriage.”

Critically analyze this excerpt, with regard to the divorce process in Kenya **(15 marks)**



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UNIVERSITY EXAMINATIONS

2020/2021 ACADEMIC YEAR

SECOND YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF

BACHELOR OF LAWS

COURSE CODE: FLB 206

COURSE TITLE: HUMAN RIGHTS LAW

DATE: 21ST DECEMBER, 2021 **TIME:** 9.00 A.M. – 12.00 NOON

INSTRUCTION TO CANDIDATES

- Answer Question ONE (1) and Any THREE (3) Others
- Your Answers with relevant decided cases and statutory provisions

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QUESTION 1

The claim that human rights are claims against the society is problematic to sustain in the incipient context where extra-territorial players such as the United Nations are turning into lead actors in the human rights practice and discourse. Ultimately, there may be need to rethink the relevance of classical human rights theory in contemporary society. Discuss (25 marks)

QUESTION 2

First generation, second generation and third generation conceptions of rights are outdated and attenuates the obligation to protect certain rights such as socio-economic rights. Discuss

(15 marks)

QUESTION 3

The international human rights system is inconsequential in Kenya? Do you agree with these suppositions?

(15 marks)

QUESTION 4

Democracy without sufficient protection of democracy supporting rights is nonsense upon stilts. Discuss?

(15 marks)

QUESTION 5

The cultural appropriateness discourse remains a major assault on protection of civil rights and liberties in Kenya and in Africa as a whole. Discuss.

(15 marks)

QUESTION 6

(a) What remedies are available for violations of human rights under the 2010 Kenyan Constitution? (7 marks)

(b) Discuss the concept of limitation of rights under the Kenyan 2010 Constitution (8 marks)



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UNIVERSITY EXAMINATIONS **2021/2022 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 PARTNERSHIPS LAW

DATE: 27TH APRIL, 2022 **TIME:** 9.00 A.M. – 12.00 NOON

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 ONE

A group of sugar cane farmers in Kenya formed a cooperative movement by the name Jipange Cooperative Society and was provisionally registered and issued with a provisional certificate in that regard. Meanwhile, in the course of its operations, the Society wrote letters and ran a website without indicating that it was provisionally registered. The Society is in its ninth month of business and the management intends to undertake inquiry into the Society's operations in accordance with the Co-operatives Societies Act, No. 12 of 1997 of the Laws of Kenya. The chairperson of the Jipange committee has approached you for a legal opinion on the following issues, which he intends to share with the members:

- a) Reasons for provisional registration and the implications thereof. (10 Marks)
- b) Meaning of inquiry; the procedure, the likely consequences of the same and why the officials of the Jipange Cooperative Society should be worried about the inquiry exercise. (15 Marks)

QUESTION TWO

Section 2 of the Cooperative Societies Act defines a primary society to mean "a cooperative society whose membership is restricted to individual persons". With the aid of relevant examples, explain the nature and the benefits of a primary cooperative society to its members.

(15 Marks)

QUESTION THREE

Section 30 (1) of the Co-operatives Societies Act, No. 12 of 1997 of the Laws of Kenya provides "A cooperative society (hereinafter referred to as the existing society) may, by special resolution (in this section referred to as the preliminary resolution), resolve to divide itself into two or more cooperative societies (hereinafter referred to as the new societies)."

Discuss the procedure and the consequences of division of a cooperative society.

(15 Marks)

QUESTION FOUR

In the case of Davis V. Davis [1894] 1 Ch.d 393 by North J. who observed as follows: "*But if there are other relevant circumstances to be considered, they ought to be considered fairly together without attaching undue weight to any of them but drawing an inference from the whole. It would therefore appear that the import of paragraph (c) in Section 4 is that sharing of profits without more implies partnership. But if it is only one of several facts then all the facts must be evaluated together and no specific weight is to be given to the fact of profit sharing.*"

In view of the court's holding in the above case, discuss the sharing of profits as an indicator that a partnership exists.

(15Marks)

FLB 211: COOPERATIVES AND PARTNERSHIPS

QUESTION FIVE

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

QUESTION SIX

Write notes on the following:

- a) Creation of partnerships (5 Marks)
- b) Partnership agreements (5 Marks)
- c) Amendment of cooperative bylaws (5 Marks)



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UNIVERSITY EXAMINATIONS 2021/2022 ACADEMIC YEAR SECOND YEAR FIRST SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 203

COURSE TITLE: EVIDENCE: PROCEDURE & PRACTICE I

DATE: 14TH DECEMBER, 2021 **TIME:** 2.00 P.M. – 5.00 P.M

INSTRUCTION TO CANDIDATES

- Answer Question ONE (1) and Any THREE (3) Others
- Your Answers with relevant decided cases and statutory provisions

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QUESTION 1

On 20th January 2021, Mali, a domestic worker at Ms. Mkaru's house, was arrested for the offence of stealing by servant contrary to Section 281 of the Penal Code. The facts of the case were that two weeks before the incident, a similar robbery had occurred in which the suspect came to the homestead, picked the key from a stone adjacent to the main gate, opened the gate and proceeded to the living room, and accessed the safebox and stole the Kshs. 20,000/- being part of the pension funds for Ms. Mkaru. In this first incidence, Ms. Mkaru's German shepherd dog did not bark. Also, the incident happened between 2.00 pm to 3.00 pm, when Ms. Mkaru routinely took a nap. The first incident did not arouse Ms. Mkaru's suspicion. The incident was reported to the police, and no arrests were made. After the second incident, she found the two incidences to have a similar pattern, and she suspected that Mali might have carried out the theft. She reported the matter to the police, naming Mali as his top suspect. The police accosted Mali, and following a thorough search in his house, they found Ms. Mkaru's chain that had been stolen in the first case of theft.

The prosecution is considering adducing the stolen chain in the first robbery as evidence that Mali perpetrated the second robbery.

With the aid of case law, identify the doctrines that the prosecution will use to hold Mali criminally culpable, and the utility of the doctrines.

[15 Marks]

Following an investigation of the theft incidence at Ms. Mkaru's homestead, police discovered that Waka had joined Mali in planning and executing the robbery. Being a first-time offender, he is apprehensive of the possibility of being convicted of the theft. Therefore, he has entered into a plea bargain agreement with the prosecution and agreed to testify for the prosecution. ^{Mali} Mkaru's advocate has objected, indicating that Mali is not competent, and in any event, his evidence must be corroborated.

Discuss how the court is likely to rule on the objections raised.

[10 Marks]

QUESTION 2

Section 6 of the Evidence Act cap 80 Laws of Kenya provides as follows:

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant whether they occurred at the same time and place or at different times and places.

With the aid of case law, discuss the common law doctrine of evidence that informs the interpretation and application of this section, noting to indicate the differences between section 6 and the common law doctrine. (15 Marks)

QUESTION 3

'Even where evidence is relevant, it may be excluded if it falls foul of any of the exclusionary rules of the Kenya laws of evidence' Anon

Discuss the rationale for excluding evidence that is relevant and with reference to the Evidence Act Cap 80 Laws of Kenya, discuss the circumstance in which relevant evidence will be considered inadmissible.
(15 Marks)

QUESTION 4

- A) Discuss three standards of proof in evidence law noting to give examples of cases where they are used. [6 marks]
- B) 'Kenya adopted common law tradition and the position on legal burden of proof in criminal cases ... the Prosecution bears the legal burden of proof throughout the trial. In Kenya, a statutory provision which shifts the legal burden of proof in criminal cases is unconstitutional except in so far as it creates only evidential burden, relates to acceptable exceptions...' As per Gikonyo J in *Peter Wafula Juma & 2 others v Republic* [2014] eKLR. Critically discuss the above statement. [9 marks]

Question 5

- a) Mtetezi, a nominated Member of the County Assembly with interest in law, recently came across the concept of exclusion of evidence on the grounds of public policy in evidence law. Mtetezi has sought assistance from you in understanding this concept. Write a memorandum to Mtetezi discussing the meaning of public policy and highlighting four situations where courts exclude evidence on account of public policy. [7 marks]
- b) Waka has retained Wakili Matata, a recently admitted advocate, to defend him in a charge of robbery with violence where he has denied committing the offence. During a client meeting, Waka wrote notes to Wakili Matata on a piece of paper stamped 'confidential'. In these notes, he admits to stealing Kshs. 50,000/-, but he denies using force or threatening the complainant. Wakili Matata goes to court and meets Rada, a prosecution counsel who requests to peruse his file. Wakili Matata, confident of his defence strategy, hands over the file to Rada, unaware that the notes by Waka are in the file. Rada peruses the file and finds the notes. He clandestinely takes photos of the sheet where Waka admits to stealing Kshs. 50,000/- and returns the file to Wakili Mata. Rada prints the photos and now seeks to use them as part of his documents, especially where Wake admits to stealing Kshs. 50,000/-. Wakili Matata objects to the production and reliance of the notes on the ground that they contain privileged communication between him and his client Waka.

Discuss the likely outcome of the case.

[8 Marks]

QUESTION 6

Discuss the following:

- a) Admissions and admissions without prejudice.
b) The meaning and utility of judicial notice in Courts.

[7 marks]

[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 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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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 FIRST SEMESTER EXAMINATION

SPECIAL/SUPPLEMENTARY

FOR THE DEGREE OF

BACHELOR OF LAWS

COURSE CODE: FLB 203

COURSE TITLE: EVIDENCE LAW I

DATE: 28TH FEBRUARY, 2022 **TIME:** 2.00 P.M. - 5.00 P.M.

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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1. (a) Mr. Kazidi married his first wife and insured her life, the policy being in his favour. He made a representation to his personal doctor that his wife had epilepsy. A few months later, the first wife's dead body was found floating in the bathtub and subsequently, the insurance policy was paid out.

Mr. Kazidi subsequently married two more women, taking an insurance policy in his favour against the life of each, and each of whose dead body was subsequently found floating in the bathtub. Mr. Kazidi was arrested and charged with murdering the first wife on the basis of the subsequent deaths of the second and third wives in similar circumstances.

As a prosecutor, identify the relevant doctrine applicable in this case and discuss its utility in evidence law and the likely outcome of the present case. (15marks).

- b) In light of the murder charge, Mr. Kazidi retains Wakili Matata as his defence counsel in the murder trial. Jane, a secretary, working in Wakili Matata's office does not understand why he is representing a murderer in court. Since she has access to all files in the firm, Jane peruses Mr. Kazidi's files held in the firm with a view to sending any evidence she finds to the prosecution to ensure Mr. Kazidi is convicted. Part of the copies of documents she considers useful include notes taken down by Wakili Matata when he interviewed Mr. Kazidi in preparation for the murder trial, and letters titled 'without prejudice' written when negotiating settlement of a transaction in which he is facing fraud charges.

As the prosecutor, Jane approaches you with a folder containing copies of documents obtained from Wakili Matata's office and assures you that she is willing to testify as a prosecution witness. Advise her on the admissibility of the documents. (10 marks).

2. (a) *'Kenya adopted common law tradition and the position on legal burden of proof in criminal cases ... the prosecution bears the legal burden of proof throughout the trial. In Kenya, a statutory provision which shifts the legal burden of proof in criminal cases is unconstitutional except in so far as it creates only evidential burden, relates to acceptable exceptions...'* As per Gikonyo J in *Peter Wafula Juma & 2 others v Republic* [2014] eKLR. Discuss the above statement. (9 marks)

(b) Briefly discuss the various standards of proof in evidence law. (6 marks).

3. Mambo Internet Limited, a company duly incorporated in Kenya, sought to provide, on behalf of the government, digital-signals distribution alongside other interested participants. However, the company's application was unsuccessful, having been disqualified for failing to meet the conditions set by the Communications Commission of Kenya. Being aggrieved, the Mambo Internet Limited preferred a review before the Public Procurement Administrative Review Board, which on 19th July 2017, dismissed their application for review, and directed that the procurement process proceeds. Mambo Internet Limited elected not to appeal this decision to the High Court as provided under the Public Procurement and Disposal Act. However, rather belatedly, after two years, Mambo Internet Limited lodged a petition in the High Court claiming that, *inter alia*, the whole procurement process was flawed and further denial of the license amounted to an

infringement of its fundamental rights. In response to the Petition, the Communications Commission of Kenya has pleaded that since the issue was settled by the Public Procurement Administrative Review Board, and no appeal was lodged, the petitioner (Mambo Internet Ltd) is estopped from approaching the court by way of a petition since this would amount to a collateral challenge to the Tribunal's decision.

As a legal research attorney attached to the High Court, write a legal opinion addressing the scope of estoppel in evidence law and the applicability of the doctrine of estoppel in this matter. (15 marks).

4. In December 2010, Mr. Mwizi celebrated a Christian marriage with Ms. Mwema. Following a recent allegation of infidelity, in January 2012, Mr. Mwizi separated with his wife, Ms. Mwema. Two months after the separation, Ms. Mwema moved in to stay with Mr. Wote in his villa at Waridi estate. Mr. Wote was at the material time a bachelor. In December 2012, Mr. Wote was attacked by armed robbers who made away with his phone of make Samsung Galaxy S9. Following investigations by the police, one of the suspects Mr Mwizi, was arrested and charged with robbery with violence. One of the prosecution witnesses is Ms. Mwema. The defence has filed an objection seeking to stop Ms. Mwema from testifying as a prosecution witness on the ground that she is Mr. Mwizi's wife since they have never divorced. In her reply, Ms Mwema stated that she no longer loves Mr. Mwizi and she has since moved on, and her only husband is Mr. Wote.
 - a) Write a well-reasoned memorandum on the likely outcome of the Defence's objection. (5 marks).
 - b) Ms. Mwema is looking for witnesses to corroborate her account that indeed she is no longer married to Mr. Mwizi who she considers to be adulterious. Advise her on the rules of collaboration and the extent of its applicability in her case. (10 marks)
5. Discuss the meaning of the inclusionary doctrine of *res gestae*, its rationale, and utility in Kenya's legal system.
6. Discuss the following concepts as used in Evidence Law
 - a) Facts in issue; (5 marks)
 - b) Admissions in civil cases; and (5 marks)
 - c) Judicial Notice. (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 208

COURSE TITLE: PROPERTY LAW II

DATE: 25TH OCTOBER, 2021

TIME: 9.00 A.M. – 12.00 NOON.

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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)

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UNIVERSITY EXAMINATIONS 2021/2022 ACADEMIC YEAR SECOND YEAR FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 204

COURSE TITLE: PROPERTY LAW I

DATE: 16TH DECEMBER, 2021 TIME: 9.00 P.A.M. – 12.00 NOON

INSTRUCTION TO CANDIDATES

- Answer Question ONE (1) and Any THREE (3) Others
- Your Answers with relevant decided cases and statutory provisions

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QUESTION ONE

In *Wandsworth Board of Works v. United Telephone Co. Ltd* (1884) AER the court observed that in English common law, land did not denote the physical solum alone but everything above the surface, below and anything affixed thereon so that where a case of land is subject of a grant or is conveyed in England by way of conveyance, everything is passed which is below that portion of land down to the centre of the earth. The presiding judge in the case stated thus “*as at present advised, I entertain no doubt that an ordinary proprietor of land can cut and remove a wire placed at any height above his freehold*”.

In view of the foregoing, interrogate the concept of land as borrowed by English law from Roman law; the quantum of rights applicable to the relevant maxim, and exceptions thereon; the modification on the said maxim by English Common Law; as well as the legal framework in Kenya.

[25 marks]

QUESTION TWO

Evaluate the legal framework applicable to land in Kenya, as from the pre-colonial period through the revision of laws pursuant to the promulgation of the Constitution of Kenya 2010.

[15 marks]

QUESTION THREE ✓

“A number of legal rights or interests may exist over land, which rights or interests may be held either concurrently or consecutively by various persons...” Anonymous

Expound on the foregoing, noting to illustrate the applicable rights or interests, as well as their legal framework.

[15 marks]

QUESTION FOUR ✓

Discuss the ~~roles of~~ national government, county governments, and National Land Commission, *vis a vis*, regulation of private, community and public land in Kenya. ✓

[15 marks]

QUESTION FIVE

Mwahima, a resident of Kwale County, owns about 200 acres of land in Tsunza area of Kwale registration unit, in which land he carries out farming activities including mango and coconut plantation. The land is registered as an absolute title under the Registered Land Act Cap 300 (repealed). Recently, the Kenya National Highways Authority, through the National Land Commission is acquired a huge portion of his land for the construction of the Dongo Kundu road bypass. Mwahima is perturbed because all the while, he thought by owing an absolute title, his

title was indefeasible and could not be taken away by anyone. He has come to your chambers for legal opinion on the matter.

In light of the foregoing, advise Mwahima on legal scenario, the applicable principles and legal framework in Kenya ✓ [15 marks]

QUESTION SIX

Interrogate the concept of 'spectrum space' in the context of land law, noting to discuss the applicable legal framework in Kenya. [15 marks]

Comment

Save for the corrections suggested for Q1, the paper is well set. It is acceptable.

~~21/12/2021~~

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MOI UNIVERSITY

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

UNIVERSITY EXAMINATIONS

2021/2022 ACADEMIC YEAR

SECOND YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 210

COURSE TITLE: LABOUR LAW

DATE: 19TH APRIL, 2022 **TIME:** 9.00 A.M. – 12.00 NOON

9.20 - 12.20

INSTRUCTION TO CANDIDATES

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

THIS PAPER CONSISTS OF (4) PRINTED PAGES

PLEASE TURN OVER

QUESTION ONE

Miss Faith is a hardworking business lady. She has recently expanded her business and now has 100 employees and is anxious to ensure that all employees, as well as the employer, are well aware of the statutory rights as contained in the Employment Act 2007. You are the lawyer employed at the company to deal with issues of labour laws and rights. As part of the planned series of workshops on awareness on labour laws you have been asked by Miss Faith to make a written presentation on what are referred to as "The floor of rights". The assignment includes: explaining what the term floor of rights means, comprehensive itemization and explanation of those rights and the use of at least one case to illustrate each right, as contained in sections 26-34 of the Employment Act No. 11 of 2007. Prepare the presentation. (25 Marks)

QUESTION TWO

- a) Miss Mercy is a senior accountant at a computer company with over 100 employees in Nairobi that pays very well compared to similar companies. She works under the supervision of Mr Kazi who is responsible for recommending staff for salary increments and promotions every year after performance evaluation undertaken by him. For four months Mr Kazi has been sending Miss Mercy sexually explicit videos and texts. He has also asked her out for dates many times but Miss Mercy has clearly stated that she is not interested and he should behave professionally. Mr kazi recently called her and threatened her with termination, denial of bonuses and promotion if she does not comply. Miss Mercy has come to your law office for legal advice on the law and her rights as an employee and what she can do under the circumstances. Advise her Mercy accordingly (9 Marks)

- b) What is a probationary contract and what does section 42 of the Employment Act provide on the same? Discuss the current thinking and analysis on probationary contracts with the aid of the case filed by 7 employees against Mount Kenya University and decided by the employment Court in 2021 (6 Marks)

QUESTION THREE

- a) Fidelity was employed by Maximum Sweat Company 5 years ago as a casual working as an accounts clerk on a 3 month contract that is renewed each time for another 3 months. The firm is an accounting business and therefore the work of an accounts clerk is central to the extent that Fidelity has to work long hours to meet deadlines. He has also been the sole accounts clerk for the past 5 years. Fidelity approached his employer requesting that he be put on permanent terms but the employer became very harsh and threatened to terminate his periodic contracts.

Fidelity is quite upset because he is almost sure that the employer is exploiting the law to reap maximum sweat from Fidelity at least cost. Fidelity has come to you a prominent labour lawyer. He understands that there is something called "conversion of casual employment to term contract" He wants you to explain the same to him and advice on if it is applicable to him and how the same can be used to resolve his matter (8 marks)

- b) With the aid of case critically discuss 1(one) of the following;

- I) Summary dismissal (7 Marks)
- II) Constructive dismissal (7Marks)

QUESTION FOUR

Equality of pay is central to the concept of non discrimination at the work place. A number of approaches have been adopted by courts to determined equal pay complaints that come before them. With the aid of case law discuss the tests set out below:

- i) Like work (5 Marks)
- ii) Work rated as equivalent (5 Marks)
- iii) Work of equal value (5 Marks)

QUESTION FIVER

- a) Discuss Part VIII of the Labour Relations Act , 2007 on Recognition of Trade Unions and Collective Agreements (7 Marks)
- b) Distinguish between protected strikes and lock-outs and prohibited strikes and lockouts, and the legal effect of the distinction (8 Marks)

QUESTION SIX

Write notes on any two of following:

- a) Protection of Children Part VII sec 52-65 of Employment Act (7.5 Marks)
- b) Wages Council Sec 43-54 of The Labour Institutions Act (7.5 Marks)
- c) The National Employment Authority Act 2016 (7.5 Marks)
- d) Salaries and Remuneration Commission Act no 10 of 2011 (7.5 Marks)
- e) Establishment and Registration of Trade Unions Part III of The Labour Relations Act, 2007 (7.5 Marks)

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UNIVERSITY EXAMINATIONS **2021/2022 ACADEMIC YEAR** **SECOND YEAR SECOND SEMESTER EXAMINATION**

FOR THE DEGREE OF **BACHELOR OF LAWS**

COURSE CODE: FLB 207

COURSE TITLE: ADMINISTRATIVE LAW

DATE: 21ST APRIL, 2022 **TIME:** 9.00 A.M. – 12.00 NOON

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 ONE

Walevi Breweries (WB) is a local business enterprise engaged in the business of brewing alcohol drinks within the Republic of Kenya for consumption in the domestic market. Through a letter dated 21 November 2021, the Kenya Revenue Authority (KRA) demanded that WB pay it Kshs. 25,000,000 being tax due, accrued interest and penalties. WB did not respond to the letter and last week on 14 April 2022, KRA issued 30-day agencies notices to two of WB's bankers seeking payment of the Kshs. 25,000,000 demanded, upon expiry of the notices. In the intervening period, WB's tax agents had written to KRA requesting to be given a notice of assessment to enable their principal deal with the matter appropriately. As at the time of issuance of the agency notices to the banks, this request for an assessment notice had not been honoured.

WB feels aggrieved by this turn of events and alleges that the letter of 21 November 2021 did not satisfy the requirements of a proper tax notice. According to WB, the letter did not draw attention to the fact that it was an assessment by KRA or indicate the consequences of non-compliance. They also complain that the date of the assessment is not given. WB wishes to challenge the administrative actions of KRA and have approached you for advice.

- a) Explain the principles of administrative law that would be most appropriate for challenging the actions of KRA outlined above. [15 marks]
- b) With the aid of case law, advice WB on the judicial remedies available. [10 marks]

QUESTION TWO

Critically analyse the ground-breaking role of the celebrated decision in *Ridge v Baldwin* [1964] AC 40, in the development of the doctrine of natural justice in administrative processes. [15 marks]

QUESTION THREE

Explain the following principles of administrative law:

- a) Legality. [5 marks]
- b) Reasonableness. [5 marks]
- c) Legitimate expectations. [5 marks]

QUESTION FOUR

It has been argued that the Constitution of Kenya 2010, constitutionalises administrative law with the effect that administrative law as known to English law, and adopted and applied by Kenyan courts before 2010, has been subsumed and become part of the constitutional law of Kenya. Do you agree or disagree with this proposition? Give reasons for your answer. [15 marks]

QUESTION FIVE

With the aid of case law, discuss the importance of public participation in the administration of the environmental law regime in Kenya. [15 marks]

QUESTION SIX

Describe any three (3) forms of maladministration that the Commission on Administrative Justice handles and explain the aspects of good administration that the Commission seeks to enhance when it performs those 3 functions. [15 marks]