

MUEO

# MOI UNIVERSITY

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

## UNIVERSITY EXAMINATIONS

### 2020/2021 ACADEMIC YEAR

#### FIRST YEAR FIRST SEMESTER EXAMINATION

#### FOR THE DEGREE OF BACHELOR OF LAWS

**COURSE CODE:** FLB 100

**COURSE TITLE:** SOCIAL FOUNDATIONS OF LAW

**DATE:** 21<sup>ST</sup> DECEMBER, 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
- Your Answers with relevant decided cases and statutory provisions

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**QUESTION 1**

Read the following extract and answer the questions that follow -

“Rafiki and Ndugu are political leaders of Nduguzanguni. They decided to form a coalition to form the next government of Nduguzanguni. They are at the very early stages of negotiating the coalition document. They are divided between forming a communist government or a liberal democratic government”

- a) You have been approached by the two to advise them on which of the two forms of government would be most ideal for Nduguzanguni society which is a very unequal society suffering from near economic collapse from decades of misrule.

*15 Marks*

- b) Following your advice in (a) above, imagine Nduguzanguni was Kenya, what philosophy of government would you advice? You don't have to restrict yourself to the two modes that Rafiki and Ndugu are exploring.

*10 Marks*

**QUESTION 2**

“Law is nothing except that it is a tool of social domination. In fact, if it were up to me, I would advocate that people would revert to the state of nature when every individual was absolutely free to do anything to protect his life and property.”

Anonymous

Discussing this statement relating it to the different philosophical approaches to the social contract theory.

*15 Marks*

**QUESTION 3**

Compare and contrast legal positivism to the natural law theory.

*15 Marks*

**QUESTION 4**

You have been invited by a Committee of Parliament to present a paper on, "*The Moral Dilemma of Law Making*." In your paper, you have been asked to briefly highlight the traditional law and morality debate and relate it to the current law and morality debates in Kenya.

*15 Marks*

**QUESTION 5**

"Affirmative action in Kenya has led to inequality and perversion of justice. We have ended up with empowered women, but no such men to match and meet them." (Anonymous)

Discuss this statement relating it to the justice and equality debate.

*15 Marks*

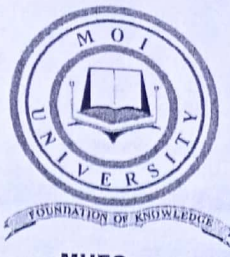
**QUESTION 6**

Marxism and feminism attempt to redefine law and human relations. Discuss these theories and how they have impacted the world.

*15 Marks*

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## **UNIVERSITY EXAMINATIONS 2020/2021 ACADEMIC YEAR FIRST YEAR FIRST SEMESTER EXAMINATION**

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

**COURSE CODE:** FLB 105

**COURSE TITLE:** CONSTITUTIONAL LAW I

**DATE:** 16<sup>TH</sup> DECEMBER, 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
- Your Answers with relevant decided cases and statutory provisions

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**QUESTION 1**

The validity of the Constitution of Namwitsula is under litigation at the Supreme Court of Namwitsula on the grounds that it was imposed by the military and was not a product of inclusionary people driven process. For some reason, a section of the military has approached you seeking a legal opinion on the power to unmake and make a constitution. They hear that you are a Professor of Constitutional Law at Ifuokadiel University in the kingdom of Namwitsula. They suspect that the power to make a constitution can be absolute and not subject to legal limitations. Revisiting the concept of constituent power, discuss whether post conflict constitutions support their hypothesis. (25 marks)

**QUESTION TWO**

Rule of law as well as Separation of powers and checks and balances remain core pillars of constitutional rule. Discuss (15 marks)

**QUESTION THREE**

Distinguish between various typologies of constitutions on the basis of function and form (15 marks)

**QUESTION FOUR**

Democracy is an idea that is least understood today. What is democracy and how does it find expressions in legal and political systems today? (15 marks)

**QUESTION FIVE**

Venture a critique on the Judgment of the Court of Appeal in IEBC & Others v David Ndii & Others on the basic structure doctrine and its applicability in Kenya. (15 marks)

**QUESTION 6**

What are the proper rules for constitutional interpretation and construction? (15 marks)



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## UNIVERSITY EXAMINATIONS 2020/2021 ACADEMIC YEAR

FIRST YEAR FIRST SEMESTER EXAMINATION

### FOR THE DEGREE OF BACHELOR OF LAWS

**COURSE CODE:**

FLB 106

**COURSE TITLE:**

LEGAL SYSTEMS & METHODS

**DATE:** 15<sup>TH</sup> DECEMBER, 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
- Your Answers with relevant decided cases and statutory provisions

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**Question One**

- (a) Distinguish the terms 'factual analysis' and 'legal analysis'?

(5 Marks)

- (b) Your client, Mary, is the mother of a ten-year-old girl, Merina. Mary took Merina on a picnic in the Maji Maenge countryside resort, in Uasin Gishu County, Kenya. They ate and drank their picnic at a manicured garden near the banks of River Sosiani. After the picnic Mary drooped off to slumberland and was awoken by Merina crying out as she had fallen into the river and cut her leg quite badly. It looks as if Merina had tripped on some rusty skateboard at the edge of the river, but it is not clear how she cut herself. Mary is worried that the water in the river did not appear to be very clean. She took the child to hospital but the doctors did not attend her for several hours. Merina remained unwell for six weeks after the incident.

- (i) List the factual issues that you would have to pursue before trying to identify the possible legal solutions.

(5 marks)

- (ii) Discuss the legally relevant elements that might be involved in finding a legal solution.

(10 marks)

- (c) There are three witnesses who saw a woman running away from the scene of an armed robbery shortly after the robbery occurred. What different factual reasons might there be for her conduct?

(5 marks)

**Question Two**

You have established a certain statutory section as being relevant to the legal solution in a case. Provide an account of the factors you should consider in determining the real value of the statutory section in your legal solution?

(15 marks)

**Question Three**

Critically examine any three defining elements of the civil law system. (15 marks)

**Question Four**

‘Linked to the old-fashioned idea that courts do not make law but merely ‘discover it’ or apply it, is the corollary that, while statutes mostly operate only prospectively, judicial decisions operate retroactively under the pretence that even an over-ruling of earlier precedent merely corrects an improper understanding of what the law has always been. Notwithstanding this fanciful Blackstonian gloss, the conventional retroactive effect of decisions has had a cautionary effect on judicial initiatives especially in areas where reliance on precedent controls human behaviour, as in the case of property dispositions and commercial practices.’

(John Fleming *The American Tort Process* Clarendon Press, Oxford 1988 p43)

Discuss (15 Marks)

**Question Five**

Where should the general rules of international law be placed in the hierarchy of the sources of law of Kenya?

(15 Marks)

**Question Six**

Analyse the criteria that must be satisfied in order for an Act of the United Kingdom to be received and applied in Kenya as a statute of general application.

(15 Marks)





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### **2020/2021 ACADEMIC YEAR**

#### **FIRST YEAR FIRST SEMESTER EXAMINATION**

#### **FOR THE DEGREE OF**

#### **BACHELOR OF LAWS**

**COURSE CODE:**

FLB 102

**COURSE TITLE:**

LEGAL RESEARCH METHODS & WRITING

**DATE:** 15<sup>TH</sup> DECEMBER, 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
- Your Answers with relevant decided cases and statutory provisions

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Question One

Horizon Ltd leased two floors of its prestigious Horizon Arcade to Chic Decors, a home furnishing enterprise, for ten years from June 1997 at a monthly rent of Kshs. 150,000. In September 2002, Chic Decors got more favorable rental terms in Unique Plaza, a newer building within the same city, about 200 metres away, vacated Horizon Arcade and stopped paying rent to Horizon Ltd. Horizon Ltd however continued to send monthly invoices. Due to a slump in property prices and rents, at the time of leaving Horizon Arcade, comparable business premises in the city was being leased at Kshs. 90,000 per month. Chic Decors' departure dismayed Horizon Ltd not only because of the loss of rental income but also because of security problems posed by the vacancy of entire two floors of a building. They therefore changed the locks of all the doors in the two floors, locked stairs leading to and from the two floors and programmed the elevator to exclude stops at these two floors.

In June 1, 2003, Horizon found a new tenant for the two floors for a term expiring at the same time as the first lease with Chic Decors. The rent payable in the new lease was Kshs. 85,000. Horizon would like to recover the following, including costs and interest, from Chic Decors;

- a) Kshs. 1, 500,000/= for the 10 months the two floors were empty;
- b) Kshs. 6,035,000/= in respect of the difference in the previous rent and the new rent till the expiry of the term.

They have approached you to represent them in trial and the facts are as noted above. Your research reveals the following two decisions from the High Court of Watana, the country where the action arose.

*Swift Electronics vs. Plaza Ltd (1995)*

**Kimeli, C.J.;** Plaza brought this action against Swift Electronics, the appellant here, for outstanding rent on a five-year lease entered into on July 1, 1990. The trial and appellate courts held Swift Electronics liable for 40 months of unpaid rent. We disagree.

The undisputed facts are as follows. On May 1, 1992, Swift failed to make its monthly rent payments and has not made any rent payments since then. Over weekend on July 4, while Swift's stores were closed, Kirita, an agent of Plaza Ltd changed the locks on the store and sent a registered letter to Swift's Managing Director, stating, "You are still obligated to pay us under our lease agreement and until you make back payments, I will not give you a key to the new lock." Swift made no payments and the store remained closed to the expiry of the lease term.

Swift claims that Plaza's changing the locks released them from its obligation to pay rent. We agree, holding that when Plaza changed the locks, that act constituted eviction. An eviction terminates a tenant's duty to pay rent for the remainder of the lease term. Thus we find Swift



liable for only the two months' rent corresponding to the period after which Swift had stopped paying but during which it was still occupying the store.

Rivers College vs. Andere (2002)

**Chantal, J.;** The college has brought this action against a residential tenant for a year's outstanding rent on a three year lease. The trial and appellate courts held that appellant's changing of the lock on appellee's apartment discharged his duty to pay rent. We disagree.

The college rented out an apartment to Andere on a three year lease. Andere was the Head of Department, Accountancy Studies. After two years, Andere took a sabbatical leave to Unical College. He left his apartment empty and left his key in the lock. Neighbors began complaining that squatters were living in Andere's apartment and thus the College changed the locks and sent Andere a letter informing him of the lock change and instructing him to contact the University estate office to obtain a new key.

Andere did not respond, but resigned from Rivers College at the end of his sabbatical leave to take a position at Unical. He refused to respond to the College's demand for back rent. We hold that under the circumstances, the landlord's changing of the lock did not constitute an eviction. The College is entitled to one years back rent.

The legal system of Watana is common law, and all laws are equally similar to Kenya's law.

With these two decisions as the only law applicable to the dispute, prepare legal submissions in favour of Horizon Ltd's claim for back rent and the difference in rental income.

(25 Marks)

**Question Two:**

You represent the state in a criminal action against a man charged with the murder of his spouse. In the course of investigations, it emerges that he had communicated to his psychologist of his intention to kill his wife. The defence lawyer has objected to admission of the evidence, arguing that it is covered by doctor-patient privilege. You come across a decision, *Kieni vs. Republic* (2000), where the court held that in child abuse cases, psychologist and patient privilege cannot be couched in doctor-patient privilege terms. This is the only case available in which the Court has considered the nature of psychologist-patient privilege.

Prepare an office memorandum to your senior to review the legal position of the state in this case.

(15 Marks)

**Question Three**



Andrew, a building caretaker, approaches you and requires an appraisal of his case. He is charged with manslaughter. A number of weeks ago, he locked the fire exit into one of the buildings which he is a caretaker. This was done with the hope of preventing burglary, following a spate of burglaries around the area. On the night he locked the fire exit, a fire broke out in the building and many residents were unable to escape because the fire exit was locked. One resident died of smoke inhalation.

Your preliminary research so far reveals one case that may be applicable to the situation. In *R vs. Christine* (1990), the accused was charged with manslaughter. She had found a discarded sword among the trash items in garbage dump. When she brought it to her friends for show, she attempted to demonstrate how it is used when she lost grasp and it flew in the air, striking her friend on the neck. Her friend was hit on the jugular and following a massive loss of blood, she died. The court noted: "We reason that the accused is guilty because a death resulted from her wanton and reckless conduct. A reasonable person standing in the shoes of the accused would recognize the risk to human life."

Draft an opinion letter to Andrew advising him on the likelihood of his conviction.

(15 Marks)

#### **Question Four**

"Advocates to any of the parties have an ethical obligation to disclose to the court all material information and law governing any matter or issue before the Court."

(Anon)

Discuss how this role may be handled when preparing arguments for presentation to the Court to facilitate it making a favourable ruling or judgment

(15 Marks)

#### **Question Five**

Comment on the following as authorities in a matter before the High Court of Kenya:

- a) A decision of the Supreme Court of Kenya on the same or similar legal issue (5 Marks)
- b) Books and journal articles (5 Marks)
- c) Internet articles (5 marks)

#### **Question Six**

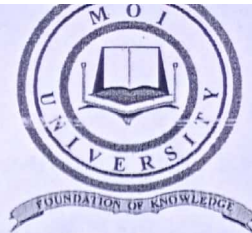
Clive, your client has approached you to prepare a draft agreement for the sale of his car, a Toyota Landcruiser saloon, Registration Number KDB 400Q to Isaac. He is selling it for Kshs. 2,000,000, with absolutely no warranties. In fact, he is selling them on an 'as is' basis. Isaac is



## FLB 102: LEGAL RESEARCH METHODS AND WRITING

to take delivery of the car immediately upon receipt by Clive of a banker's cheque for the sale price. Clive is not to deposit the cheque for at least two days, as Isaac checks out the vehicle. If Isaac is dissatisfied with the condition of the car, he must return it within two days. If he returns it, Clive is entitled to some 10% of the value of the car, payable before he hands back the cheque.

Prepare a sale agreement based on the above terms and conditions given to you. (15 Marks)



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### **2021/2022 ACADEMIC YEAR**

#### **FIRST YEAR FIRST SEMESTER EXAMINATION**

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

**COURSE CODE:** FLB 103

**COURSE TITLE:** CONTRACTS LAW I

**DATE:** 14<sup>TH</sup> DECEMBER, 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.
- ILLUSTRATE YOUR ANSWERS WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS

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**QUESTION ONE**

Advise the parties on whether there is a contract in the following scenarios:

- (a) ANNA offers to sell a painting to LYNN for Kshs.100,000. LYNN responds "I'll buy the painting at Kshs.90,000." When ANNA refuses to accept that price, LYNN sends a message which reads "I will pay the Kshs. 100,000 you had asked for" <sup>no offer withdrawn</sup> [5 marks]
- (b) JOHN receives a package containing a watch from SAA International. The package is accompanied by a note which reads "we shall consider the watch sold for Kshs 5,000 if we do not receive it back by 1<sup>st</sup> February." [5 marks]
- (c) FLO attends an auction to bid for a painting which has a reserve price. She places a bid of Kshs.100,000 but the auctioneer refuses to sell. She later finds out that the reserve price was Kshs.90,000. [5 marks]
- (d) JOHN offers to sell his car to PETER. PETER posts a letter of acceptance on 6<sup>th</sup> January. JOHN however changes his mind and posts a revocation letter which PETER receives on 10<sup>th</sup> January. [5 marks]
- (e) ANNA offers to sell to MARA a painting valued at Kshs. 20,000. Meanwhile, MARA who has secretly been admiring the painting posts a letter in which she offers to buy ANNA's painting at Kshs. 20,000. They both post their letters on 25<sup>th</sup> January. [5 marks]

**QUESTION TWO**

"Agreements such as these are outside the realm of contracts altogether. The common law does not regulate the form of agreements between spouses. Their promises are not sealed with seals and sealing wax. The consideration that really obtains for them is that natural love and affection which counts for so little in these cold Courts. The terms may be repudiated, varied or renewed as performance proceeds or as disagreements develop, and the principles of the common law as to exoneration and discharge and accord and satisfaction are such as find no place in the domestic code. The parties themselves are advocates, judges, Courts, sheriff's officer and reporter. In respect of these promises each house is a domain into which the King's writ does not seek to run, and to which his officers do not seek to be admitted."

*Atkin J in Balfour v Balfour* (1919) 2 KB 571

With the aid of the above assertion, explain the requirement of intention to create legal relations as it applies to domestic or social agreements and commercial agreements. (15 marks)

**QUESTION THREE**

Explain the rule in Pinnel's case and its effect on the doctrine of consideration. (15 marks).

**QUESTION FOUR**

"A remarkable trend in modern contract law is the relaxation of the requirement of certainty of terms. Modern legislation and courts are willing to enforce contracts even where many terms are missing... But once the courts relax the certainty requirement, they themselves must find a way to fill the gaps in the binding arrangements."

*Shumei Lu Gap- Filling and Freedom of Contract*

Explain how courts fill gaps in contracts.



### QUESTION FIVE

Explain the difference between:

- (a) A unilateral offer and a bilateral offer (5 marks)
- (b) A condition and a warranty (5 marks)
- (c) Express terms and implied terms (5 marks)

### QUESTION SIX

Discuss the considerations that a court will make in deciding whether an exclusion or limitation clause forms part of a contract. (15 marks)





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## UNIVERSITY EXAMINATIONS 2020/2021 ACADEMIC YEAR FIRST YEAR FIRST SEMESTER EXAMINATION

### FOR THE DEGREE OF BACHELOR OF LAWS

**COURSE CODE:** FLB 101

**COURSE TITLE:** CRIMINAL LAW I

**DATE:** 17<sup>TH</sup> DECEMBER, 2021

**TIME:** 9.00 P.A.M. – 12.00 NOON

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### 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

Filo, a third year student at Annex Law School, has just turned 18 and he starts experimenting with sex and drugs. One day, Filo invites Mehlo-die, his girlfriend, to his hostel room at Sugunanga in the hope that he 'will finally be lucky'. Filo takes a large quantity of a drug known as 'Sugu Special' and when Mehlo-die arrives, he starts to make certain sexual advances towards her. As a result of the drug, Filo suddenly starts having hallucinations and believes that he is being attacked by snakes. He then takes his pocket knife and wildly stabs a blurred image in front of him. It suddenly transpires that Filo actually stabbed and killed Mehlo-die. Filo is charged with murder.

Assess his criminal liability in the above instance while explaining what is meant by the *actus reus* and *mens rea*. You must also set out the elements of criminal liability. (25 Marks)

### Question 2

After a heated argument over the affection of a girl they both met at Club Timba, Emmah hacked Marvo with a machette but the latter was able to ward it off with his hand, causing upon him a two-inch wound on his right palm. Emmah was not able to hack Marvo further because three policemen who were on foot patrol arrived and threatened to shoot him if he did not drop his machette. Emmah was accordingly charged by the police at the prosecutor's office for attempted murder. A month later, while the preliminary investigation was in progress, Marvo was rushed to the hospital because of symptoms of tetanus infection on the two-inch wound inflicted by Emmah. Marvo died the following day. Can Emmah be charged with murder for the death of Marvo? Explain. (15 Marks)

### Question 3

While the crew of a cruise ship prepared to raise anchor at Sosiani River, Izzy, evidently impatient with the progress of work, began to use abusive language against the men. Joni, one of the members of the crew, protested saying that they could work best if they were not insulted. Izzy took Joni's attitude as a display of insubordination and, rising in a rage, moved towards Joni wielding a big knife and threatening to stab him. At the instant when Izzy was only a few feet



from Joni, the latter, apparently believing himself to be in great and immediate peril, threw himself into the water, disappeared beneath the surface, and drowned.

Can Izzy be held to be criminally liable for the death of Joni? Give reasons for your answer.

**(15 Marks)**

#### **Question 4**

It is appreciated that criminal law is the study of crime and appropriate punishment. In light of the foregoing, critically examine the various roles of criminal law in society.

**(15 Marks)**

#### **Question 5**

Deno has just completed his criminal law examination. He decides to reward himself by going to Black Ball which incidentally had a water-themed park with rides such as the super tube. He has heard that this theme park has one of the highest super tube rides in the Eldoret, called the Long Drop Ride. This is an opportunity he cannot miss! What Deno does not know is that the owners of Black Ball have not been doing maintenance to fix the Long Drop Ride. The maintenance of the rides is the responsibility of Nabi-Bina. Due to lack of maintenance, bolts keeping the tubes attached together become loose. As a result, instead of going down the Long Drop Ride, the tubes become detached and Deno falls through the super tube head first. As a result of severe head trauma, Deno is declared dead on arrival at the hospital.

Assess the criminal liability of Black Ball owners.

**(15 Marks)**

#### **Question 6**

“The starting point is that punishment is something that requires strong justification. For the state to deprive a citizen of his or her liberty by detaining him or her in prison is a huge invasion of a citizen’s basic rights and requires the best of reasons.” J.G. Murphy (1994).

Critically discuss the justifications for punishment and their limitations.

**(15 Marks)**



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### **2020/2021 ACADEMIC YEAR**

#### **FIRST YEAR FIRST SEMESTER EXAMINATION**

#### **FOR THE DEGREE OF**

### **BACHELOR OF LAWS**

**COURSE CODE:** FLB 104

**COURSE TITLE:** TORTS I

**DATE:** 20<sup>TH</sup> DECEMBER, 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
- Your Answers with relevant decided cases and statutory provisions

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**QUESTION ONE**

(a) "The law of tort is constantly evolving and, it is this very character of the law, coupled with the power of common law courts to create law that has made tort to remain relevant to this day."

With the above statement in mind, discuss how the evolution of the law of tort in England has affected the nature of the law of tort in Kenya. [15 marks]

(b) Section 3(1) of the *Judicature Act* provides in part as follows:

(1) The jurisdiction of the High Court, the Court of Appeal and of all subordinate courts shall be exercised in conformity with—

(a) the Constitution;

(b) subject thereto, all other written laws, including the Acts of Parliament of the United Kingdom cited in Part I of the Schedule to this Act, modified in accordance with Part II of that Schedule;

(c) subject thereto and so far as those written laws do not extend or apply, the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 12th August, 1897, and the procedure and practice observed in courts of justice in England at that date:

Provided that the said common law, doctrines of equity and statutes of general application shall apply so far only as the circumstances of Kenya and its inhabitants permit and subject to such qualifications as those circumstances may render necessary.

Discuss the import of s 3(1)(c) the proviso thereto in relation to the role of that a court in Kenya should play while determining a tort dispute. [10 marks]

**QUESTION TWO**

Evaluate the accuracy of the contention that "tort law is a separate and distinct branch of law that has no relationship with other legal obligations", (anonymous) [15 marks]

**QUESTION THREE**

(a) With reference to decided cases critically evaluate the concepts of *damnum sine injuria* and *injuria sine damno*. [8 marks]

(b) In your view and giving reasons for your answer, is tort law is a law of general rather than of particular liability? [7 marks]

**QUESTION FOUR**

Stephen D. Sugarman, *Doing Away with Tort Law* 73 Cal. L. Rev. 557 1985 has argued that tort law should be abolished. With this in mind, assess whether his objections to the law of tort are justified or not.. [15 marks]

### QUESTION FIVE

Critically evaluate the taxonomy of defences in the law of tort. [15 marks]

### QUESTION SIX

"Whether tort performs one function or the other, or whether it is deterrent or corrective is not critically important. What is significant is for the state to perform its part of the bargain, under the social contract, and provide a system that will enable citizens to remedy wrongs committed against them by their fellow citizens as such." (Anonymous)

With the above statement in mind critically evaluate the nature and functions of the law tort. [15 marks]