



# **MOI UNIVERSITY**

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

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

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

**COURSE CODE:** FLB 107

**COURSE TITLE:** CONTRACTS LAW II

**DATE:** 14<sup>TH</sup> DECEMBER, 2020 **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 ANSWER WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS.

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### QUESTION ONE

FWAYA went to shop for a phone at NEW FON Investments. He was shown a phone which the salesman described as being "top of the line just like it says on the box". When he asked to test the phone to try out its features, the salesman declined and told him that all their phones were sold straight off the assembly line and were in mint condition. On inquiring about specific features, he was told that the phone had a 64GB storage capacity, had dual sim capability and used finger print identification for added security. FWAYA paid for the phone but was very disappointed when he opened the box at home. Contrary to what the salesman had told him, its storage capacity was a mere 16GB. It had a slot for only one sim card and no finger print identification capability.

Explain to FWAYA:

- (a) The requirements for demonstrating whether or not there was a misrepresentation in this case. (15 marks)
- (b) Which type of misrepresentation this is likely to be (5 marks)
- (c) The remedies available to him. (5 marks)

### QUESTION TWO

Explain the difference between:

- (a) Void and voidable contracts (5 marks)
- (b) Anticipatory breach and breach (5 marks)
- (c) Liquidated and unliquidated damages (5 marks)

### QUESTION THREE

"No court ought to enforce an illegal contract where the illegality is brought to its notice and if the person invoking the aid of the court is himself implicated in the illegality."

Heptulla v Noor Mohammed (1984) KLR 580

Discuss the circumstances under which courts may allow parties to illegal contracts to recover.

(15 marks)

### QUESTION FOUR

Discuss the circumstances under which a minor will be required to pay for benefits received under a contract with an adult

[15 marks]

**QUESTION FIVE**

"The court will not interfere where parties have contracted on arms-length basis. However, by its equitable jurisdiction, this court will set aside any bargain which is harsh, unconscionable and oppressive, or where having agreed to certain terms and conditions, thereafter imposes additional terms upon the other party. Equity can intervene to relieve that party of such conditions."

*Kenya Commercial Finance Company Ltd v Ngeny & Another (2002) 1 KLR*

With reference to the above excerpt, and decided cases, discuss the types of unconscionability that parties may rely on to avoid their obligations under transactions which are deemed to be oppressive.

(15 marks)

**QUESTION SIX**

"...the effect of frustration is to discharge the parties from further liability under the contract, the doctrine must not therefore be lightly invoked but must be kept within very narrow limits and ought not to be extended."

*Halsbury's Laws of England, Vol. 9(1), 4<sup>th</sup> Edition at paragraph 897*

With reference to the above statement, discuss the limitations on the application of the doctrine of frustration.

(15 marks)



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

### FOR THE DEGREE OF BACHELOR OF LAWS

**COURSE CODE:** FLB 109

**COURSE TITLE:** CONSTITUTIONAL LAW II

**DATE:** 15<sup>TH</sup> DECEMBER, 2020 **TIME:** 9.00 A.M. – 12.00 NOON.

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### INSTRUCTION TO CANDIDATES

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✓ **QUESTION ONE**

The Building Bridges Initiative Committee is considering proposing some constitutional amendments relating to the independence of the judiciary. The Committee has invited you as a constitutional expert to help them understand the concept of judicial independence and how the same has been dealt with under the Constitution of Kenya 2010. The Committee has requested you to specifically focus on:

- a) The various dimensions of judicial independence under the Constitution of 2010.
- b) The factors that are considered as very important in securing judicial independence.

Prepare your paper on these issues for presentation to the Committee. [25 marks]

✓ **QUESTION TWO**

Representation of different interests is an important factor considered in the design of the composition of a legislative body. Examine the composition of the Kenyan National Assembly identifying the different interests represented and how the said representatives are elected.

[15 marks]

**QUESTION THREE**

In an effort to secure a more effective and independent judiciary the new constitution of Kenya 2010 introduced fundamental changes in the composition and functions of the Judicial Service Commission. Critically examine the constitutional provisions relating to the composition and functions of the Judicial Service Commission and identify any weakness that still exist which may require to be addressed through the constitutional amendments that are being suggested.

[15 marks]

✓ **QUESTION FOUR**

Although Article 94(1) of the constitution provides that the legislative authority of the Republic is at the national level vested in and exercised by Parliament, in order to secure checks and balances, the constitution has other provisions which provide for sharing of the legislative authority by the other arms of government and the people. Examine the various ways in which the constitution

empowers the executive, the judiciary and the people to share in the exercise of legislative authority. [15 marks]

✓ **QUESTION FIVE**

Although political parties play a fundamental role in governance, in many countries political parties are either left to operate in a constitutional no man's land or are inadequately provided for by the constitution. Critically examine the fundamental role of political parties under the Kenyan constitution of 2010 and indicate whether or not they are adequately regulated by the constitution. [15 marks]

**QUESTION SIX**

Many national government officials have expressed the erroneous view that the security functions and policing are exclusive functions of the national government. Critically examine the constitutional provisions which demonstrate that this interpretation of the constitution is incorrect and that indeed the county governments have a role to play in the security functions. [15 marks]



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### FOR THE DEGREE OF BACHELOR OF LAWS

**COURSE CODE:** FLB 110

**COURSE TITLE:** TORTS LAW II

**DATE:** 16<sup>TH</sup> DECEMBER, 2020 **TIME:** 9.00 A.M. – 12.00 NOON.

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### INSTRUCTION TO CANDIDATES

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**QUESTION ONE****PART A**

Assume that in Country X, with a legal system similar to Kenya's, the County Government (in this case County Government Y) is under a statutory obligation to provide affordable housing to the less well off in society and builds a block of flats for that purpose. Tenant B has rented a flat from County Government Y for the past five years and is a model tenant. Six months ago, Tenant C moved into the adjoining flat and has continuously played blaring music late into the night. Despite Tenant B's constant requests, Tenant C has refused to turn down the music. Tenant B wrote to County Government Y a month ago and made a formal complaint about his living conditions. County Government Y did not respond.

Discuss whether Tenant B has a cause of action against County Government Y and Tenant C.

[10 marks]

**PART B**

Further to the facts above, consider the following scenario:

A couple of weeks ago, Tenant B took matters into his own hands, having heard nothing from County Government Y. Tenant B managed to sabotage the fuse box servicing Tenant C's flat, leaving him with no electricity. In retaliation, Tenant C burst into Tenant B's flat, and grabbed Tenant B by the scruff of the neck, dragged Tenant B to Tenant C's flat and locked him outside on the balcony, some ten floors above ground level. Tenant C suffers from vertigo (a sensation of feeling off balance that is usually accompanied by serious bouts of dizziness during which a person feels like he is spinning or the world around him is spinning). Whilst there was a fire escape descending the building to the ground floor, Tenant B was unable to let go of the balcony railings and had to be rescued by the fire brigade.

Discuss the cause of action raised by this further scenario and Tenant B's chances of success.

[15 marks]

**QUESTION TWO**

Turumbe & Co Advocates, a law firm run by Zax<sup>zax's</sup> Turumbe prepared a will for Pakita, in which Pakata, was named as a beneficiary to a sum of KSh 10 million. Turumbe asked Pakata to witness the will with the result that Pakata's intended inheritance was rendered void.

Discuss the nature and extent of Zilli's tort liability to Pakata.

[15 marks]

**QUESTION THREE**



April lives in a semidetached house (i.e. a house joined to another house on one side only by a common wall). Her now deceased next door neighbour, May, was an eccentric octogenarian. May was in the habit of burying antique silverware in her back garden which April observed over the years. Early in the year 2020, June purchased May's house through a sale conducted by executors of May's will. Before she moved in, April hired a metal detector, located the buried silverware and removed it to her house.

Discuss the cause of action available to June.

[15 marks]

#### • QUESTION FOUR

Recently, Mr. A, a Governor of a County, was being driven home from the pub having attended an engagement ceremony of one of his constituent's son. Mr. A had consumed alcohol and was tipsy, so his son Mr. B drove the car. Mr. B crashed into another vehicle on the road and the Police were called to the scene, where both the occupants of the car were breath tested. Mr. A. failed the roadside breath test and was taken to the local Police Station where a second test was administered which he likewise failed.

The following day, *The Daily Sheet*, a national daily newspaper, printed the following headline on the front page of the paper: "Boozed up Governor in drunk driving crash". The article proceeded to name Mr. A, stating that he was the driver of the vehicle and that he had been arrested. The article also stated that Mr. A was to be prosecuted for the offence of driving under the influence of drink.

Mr. A was incensed by the piece and during a public televised event, he addressed the article, stating that the paper was "a dirty filthy lying scumbag". The statement has had a profound effect on newspaper sales which have dropped by 50%.

You are to advise Mr. A on what causes of action he may bring against *The Daily Sheet* and how he may be liable, if at all, to the *Daily Sheet*.

[15 marks]

#### QUESTION FIVE

Mars and Jupiter are neighbours in Eldoret, Elgon View Estate. Mars established a sanctuary in her back garden for 100 abandoned cats. The cats use Jupiter's garden as a litter tray. The female cats were in season most of the year resulting in the male cats fighting, screeching and wailing most of the night. Jupiter is elderly and is a light sleeper and was woken several times every night due to the noise. To make matters worse, each morning the cats deposited several dead rodents at her back door.

Advise Jupiter on her cause of action (barring nuisance) against Mars.

[15 marks]

• **QUESTION SIX**

“A good neighbour, according to Lord Atkins’ standards, is not necessarily a pious man, he may not inherit eternal life”, (anonymous)

Discuss

[15 marks]



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### FOR THE DEGREE OF BACHELOR OF LAWS

**COURSE CODE:** FLB 108

**COURSE TITLE:** CRIMINAL LAW II

**DATE:** 17<sup>TH</sup> DECEMBER, 2020 **TIME:** 9.00 A.M. – 12.00 NOON.

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**QUESTION ONE**

Matthew Winkler, 31, a minister was fatally wounded from a single shotgun blast, fired at close range while he lay in bed March 22, 2006. His wife Mary, who was arrested a day later, told officials that "my ugly came out."

According to prosecutors, the shooting was a deliberate, planned act. Winkler killed her husband, they argued, because she did not want him to know she had fraudulently deposited several counterfeit checks from a "Nigerian scam" in the couple's joint accounts. Bank officials testified that the day before the shooting, they had urged Winkler to bring her husband to the bank to discuss the illegal transactions.

The defendant's account was different. Winkler said her marriage was an unhappy one. Over the years, she said, her husband had threatened her with a shotgun, pushed her, shouted at her and kicked her in the face. She also said her husband forced her to dress "slutty" and have "unnatural" sex. On the morning of the shooting, Winkler testified, her husband was awakened by the cries of their 1-year-old daughter. After physically kicking her out of their bed, Winkler said, her husband walked into the daughter's room and attempted to suffocate the child, who has breathing difficulties, by pinching her nose and holding her mouth. After calming her daughter, Winkler said, she returned to the bedroom to talk to her husband. "I just wanted him to stop being so mean," she said. Winkler said she could remember holding the shotgun but could not remember pointing it at her husband or pulling the trigger. She remembered hearing a boom as "something went off."

- a. Analyze the above accounts of the homicide and discuss which forms of homicide are fairly presented by these alleged facts. (15 marks)
- b. What legal obstacles might Mary Winkler encounter if she tried to assert self defense? (10 marks)

**QUESTION TWO**

- a. Identify and discuss any three theories of punishment (6 marks)
- b. Identify and discuss any three limitations on the court's discretion in the sentencing process. (9marks)

**QUESTION THREE**

Discuss whether the limitations which the courts have placed on the availability of the defence of duress by threats support the above statement. (15 marks)



**QUESTION FOUR**

Discuss the view that the defence of intoxication strikes a fair balance between legal principle and public policy. (15 marks)

**QUESTION FIVE**

Discuss whether the rules governing insanity as a defence in criminal law are in a satisfactory condition. (15 marks)

**QUESTION SIX**

Carol and Diana decide to go out 'clubbing' for the night. They meet at Carol's house and begin the evening by drinking half a bottle of vodka. They then go out and have some more drinks in a pub and they each take an ecstasy tablet which Diana has brought with her. As they are leaving the pub, Carol takes a leather jacket from the back of a chair, mistaking it for her own very similar jacket which she has, in fact, left at home. By the time that they arrive at the club, both girls are suffering from hallucinations. When the doorman, Barry, asks them for identity, Diana, who thinks Barry is an alien who wants to transport her to another planet, pokes him in the eye with her finger and then hits him over the head with her umbrella, knocking him unconscious.

Consider the offences that Carol and Diana may have committed and whether they may have any defences available to them. (15 marks)



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

**COURSE CODE:** FLB 112

**COURSE TITLE:** ACCOUNTING AND QUANTITATIVE SKILLS FOR  
LAWYERS

**DATE:** 17<sup>TH</sup> DECEMBER, 2020 **TIME:** 2.00 P.M. – 5.00 P.M

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### **INSTRUCTION TO CANDIDATES**

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**QUESTION 1**

A trainee accountant working for a sole trader, Juma Mambo Leo had prepared the following summary of the cash book for the month of March 1999

Cash book	Sh	Sh
Opening balance	b/d 561000	Payments 4,189,000
Receipts	<u>3748000</u>	Closing balance c/d <u>120,000</u>
	<u>4309000</u>	<u>4309000</u>

Whilst checking the cash book against the bank statement you find the following discrepancies;

- (i) Bank charges of Sh 8000 shown in the bank statement have not been entered in the cash book
- (ii) The bank has debited a cheque of Sh 37000 in error in the account of Juma Mambo Leo
- (iii) Cheques totaling Sh 96000 have not been presented to the bank for payment.
- (iv) Dividends received for Sh 4200 have been credited on the bank statement but not yet recorded on Juma Mambo Leo's cash book
- (v) There were cheques received of Sh 484000 which were entered in the cash book but not yet credited by the bank.
- (vi) A cheque of Sh 17000 has been returned by the bank marked as 'refer to drawer' but no entry relating to this has been made in the books.
- (vii) The opening balance in the cash book should have been Sh 651000 and not Sh 561000
- (viii) The bank statement shows that there is an overdraft at 31st March 1999 of Sh 198000

**Required**

- (i) State and briefly explain two purposes of a bank reconciliation statement  
(4 Marks)
- (ii) Entries necessary to correct the cash book  
(10 Marks)
- (iii) A bank reconciliation statement as at 31st March 1999  
(11 Marks)

**QUESTION 2**

- a) Discuss the rules that an advocate must adhere to in advocate accounts  
(8 Marks)
- b) Explain the rights of beneficiaries with regards to trust accounts  
(7 Marks)

**QUESTION 3**

- a) What is the difference between the cash book and the petty cash book?  
(4 Marks)
- b) Enter the following transactions in a three column cash book.
  - ✓(i) Balance brought forward cash Sh 4700 bank Sh 17000
  - ✓(ii) Cash sales Sh 20000 (discount 8%)
  - ✓(iii) Cash sales Sh 42000
  - ✓(iv) Cash purchases Sh 18000 (discount 10%)
  - (v) Sales paid for by cheque of Sh 40000 after deducting a 20% discount
  - (vi) Paid Sh 50000 by cheque after deducting 20% cash discount.
  - (vii) Purchases by cheque Sh 12000

(11 Marks)

**QUESTION 4**

Explain the nature and the contents of each of the following financial statements

- a) Balance sheet (5 Marks)
- b) Income statement (5 Marks)
- c) Cashflow statement (5 Marks)

**QUESTION 5**

- a) Explain the qualities of good accounting information  
(5 Marks)
- b) Senji does not keep proper accounting records, and it is necessary to calculate her total purchases for the year ended 31 January 2003 from the following information:



Trade payables 31 January 2002 – Sh. 130,400/-

31 January 2003 - Sh.171,250/-

Payment to suppliers - Sh.888,400/-

Cost of goods taken from inventory by Senji for her personal use - Sh.1,000/-

Refunds received from suppliers - Sh. 2,400/-

Discounts received - Sh.11,200/-

**Required:**

Compute the figure for purchases for inclusion in Senji's financial statements.

**(10 Marks)**

**QUESTION 6**

Write short notes on the following

a) Importance of budgeting

**(5 Marks)**

b) Books of original entry

**(5 Marks)**

c) Two classifications of Tax giving examples in each case

**(5 Marks)**