



MUEO

MOI UNIVERSITY

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

UNIVERSITY EXAMINATIONS

2021/2022 ACADEMIC YEAR

THIRD YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF

BACHELOR OF LAWS

COURSE CODE:

FLB 310

COURSE TITLE:

ADVOCACY AND CLIENT COUNSELLING

DATE: 6TH JULY, 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

THIS PAPER CONSISTS OF (4) PRINTED PAGES

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QUESTION ONE

Furn Mart is a local furniture dealer in town. Rana, one of the drivers is asked to supply school furniture to New Start Academy who were expecting the consignment in a few hours. Rana gets into the truck and heads out to deliver the consignment.

Rana is known for her propensity for speeding and her numerous prior traffic violations. Since there was no other driver in sight, Bobbi, the transport manager reluctantly gives Rana the assignment. Rana, fully aware of the numerous warnings she has been given by management due to reckless driving, drives carefully, drops off the furniture at the New Start Academy at around 4.30 p.m. Eager to get home, she speeds as much as 25 km over the speed limit on the return drive.

While rounding a curve, she loses control of the truck, which tumbles off a ramp and down a hill, crashing into Billy's eatery, a small food vending cafe and injures two waitresses i.e Anne who sustains a broken arm and Jennifer who sustains a fracture on the leg in addition to bruises and cuts. Bobbi, who was having a cup of tea at the eatery, witnesses the incident and runs down the hill to help, but in doing so, he stumbled in a hole and severely sprained his ankle. Rana emerges from the truck dazed but without a scratch. The truck is completely damaged. An ambulance comes and takes Bobbi and the two waitresses to the hospital.

Billy, the owner of the eatery has come to your office, desiring to get compensation from Furn Mart. He is not keen to have the matter resolved through court as he deems it expensive and time consuming. You have decided to represent Billy's Eatery in this matter. Based on your past legal practice you know that most claims of this nature are negotiated and settled out of court.

- a. Discuss the most appropriate negotiation approach you will apply (10 Marks)
- b. During the negotiation process, Billy discovers that Rana is a known reckless driver. Out of fury, he attacks Bobbi, the transport manager of Furn Mart for knowingly allowing Rana to drive despite the fact that she is a danger to herself and everyone around her. Billy even remarks that Bobbi deserves the injuries he sustained following the accident. This leads to a loud and bitter exchange of words between Bobbi and Billy. The management of Furn Mart joins in to defend Bobbi. The meeting is now full of chaos and things seem to have gone out of control. As Billy's Eatery legal representative, discuss the steps you will apply to steer the meeting back on track. (10 marks)
- c. What would be the BATNA in case the parties fail to reach an agreement? (5 Marks)

QUESTION TWO

The main task of lawyer is the provision of justice on the basis of the truth, even if they have to cross their boundaries. They must neither break the law nor should they interfere with or break the rules of investigation. They should be trusted at all times and should always pursue the truth because nothing matters more than the truth. Should they succeed in defending the truth then they are the carriers of justice. Discuss. (15 marks)

QUESTION THREE

Counseling lies at the heart of the professional relationship between a lawyer and a client. When a client comes to a lawyer instead of an accountant, an engineer, or a psychologist, this is because the client perceives his problem to have a legal component. But most real world problems do not conform to the neat boundaries that define and divide legal problems. A proper appreciation of the lawyer's role as a legal counselor must begin with a more complete understanding of the counseling function and a good lawyer must be able to counsel clients and serve their interests beyond the confines of his technical expertise, in order to integrate legal considerations with non- legal aspects such as business, personal, political, or cultural issues surrounding the client's problems.

With this in mind describe the nature of the legal counseling process. (15 marks)

QUESTION FOUR

Given the frailty of human memory, advocates need to know how to help clients access their memories successfully. Anyone who has experienced the "tip of the tongue" phenomenon knows that having information available in memory is not the same as being able to access it on demand. Importantly, since the interviewee is the one who possesses the information, the interviewee ought to be the focus of the interview.

Using the above statement, describe how lawyers can help clients access their memories successfully. (15 Marks)

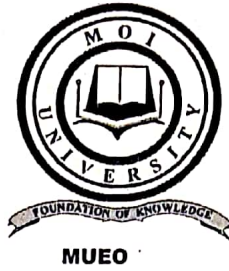
QUESTION FIVE

Write notes on the following:

- a. T- funnel questioning technique (5marks)
- b. Paradigmatic thinking (5 marks)
- c. Social psychological bargaining (5 marks)

QUESTION SIX

Reeds Restaurant has entered a contract with Gilans Groceries to supply them with fresh fruits and vegetables every morning, including fresh Tilapia from Lake Victoria, Kisumu. The Restaurant is known to have the tastiest fish in town. The contract runs smoothly with each party fulfilling their obligations. After a few months, Gilans start supplying the restaurant with bland tasting fish, not as tasty as before, leading to a massive decrease in guests. Reeds Restaurant decide to investigate on the issue and they discover that Gilans Groceries have been supplying fish from Masira Dam. The manager of Reeds Restaurant has come to you for advice. Explain to him the evolution of disputes process and whether there is a legal claim against Gilans Groceries. (15 Marks)



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UNIVERSITY EXAMINATIONS

2021/2022 ACADEMIC YEAR

THIRD YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 312

COURSE TITLE: JURISPRUDENCE LAW

DATE: 4TH JULY, 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

Read the following extract and answer the questions that follow -

"The starting point for opening the conceptual aperture is to identify the critical dimensions that generate different conceptualizations of power. (In general terms, power is the production, in and through social relations, of effects that shape the capacities of actors to determine their circumstances and fate.) The general concept of power that we employ is restricted to the production of particular kinds of effects, namely those on the capacities of actors to determine the conditions of their existence. (There is an alternative tradition that sees power as the production of any and all effects and thus as nearly synonymous with causality.) What does this alternative tradition keep in that we leave out? It includes social relations of joint action through mutual agreement and interactions in which one actor is able to convince another actor to alter voluntarily and freely its beliefs, interests, or action. Persuasion, then, is social causation but falls outside of our concept of power. So, too, do processes of collective choice that produce joint action. We believe that our circumscribed conception is preferable for two reasons. It better reflects conventional understandings insofar as most scholars interested in power are concerned not simply with how effects are produced, but rather with how these effects work to the advantage of some and the disadvantage of others. We also believe that a focus on differential effects on actor capacities is, empirically, closer to the mark in most social relations. There are moments of completely voluntary persuasion and collective choice, but they are certainly rare and, on close inspection, likely to have uneven effects.

"This definition informs our argument that conceptual distinctions of power should be represented in terms of two analytical dimensions that are at the core of the general concept: the kinds of social relations through which power works; and the specificity of social relations through which effects on actors' capacities are produced. The first dimension—kinds—refers to the polar positions of social relations of interaction and social relations of constitution. Accordingly, power is either an attribute of particular actors and their interactions or a social process of constituting what actors are as social beings, that is, their social identities and capacities. It can operate, for example, by pointing a gun and issuing commands, or in underlying social structures and systems of knowledge that advantage some and disadvantage others. The second dimension—specificity—concerns the degree to which the social relations through which power works are direct and socially specific or indirect and socially diffuse. It can operate, for example, at the very instant when the gun is brandished, or through diffuse processes embedded in international institutions that establish rules determining who gets to participate in debates and make decisions."

(Barnett M and Duvall R, "Power in International Politics" (2005) 59 International Organization 39, 42 – 43. (Emphasis the Examiner's).

- a) Critically appraise this quotation relating it to the different legal theoretical conceptions of society, law, and power relations.

15 Marks

FLB 312: JURISPRUDENCE

- b) How do the assertions in this excerpt relate to the exercise of political power in contemporary Kenyan society?

10 Marks

QUESTION TWO

"Legal positivism was a game changer. It questioned and successfully overthrew the dominant presumptions of society, law, and government. It confronted powerful institutions and succeeded to realize a government of men by men." Anonymous.

Discuss this statement highlighting the evolutionary journey of legal positivism and its legacy in contemporary legal systems.

15 Marks

QUESTION 3

H. L. A. Hart and Ronald Dworkin are two legal philosophers who have left an indelible mark in jurisprudential understanding of law, role of legal practitioners and other organs of government in realizing a civilized society. Starting with the Hart – Dworkin debate, discuss five contributions of these scholars to legal theory.

15 Marks

QUESTION 4

In *David Ndii & Others vs Attorney General & Others*, Petition No. E282 of 2020 (Consolidated), Supreme Court judgment provides a perfect example of the different philosophical persuasion of the judges. Give a detailed legal philosophical appraisal of the judgment focusing on the court's handling of the basic structure doctrine, the role of the president to initiate constitutional amendment through popular initiative, and whether a sitting president may be sued in a court of law.

15 Marks

QUESTION 5

"Justice, like happiness is a phantom. An ideal unsettled and transient. While it is worthwhile obsessing about, many societies have realized the futility of its pursuit, settling instead for negotiated coexistence. The Kenyan judiciary would do well to accept the same conclusion and seek it in resolving the cases before it." Anonymous.

Discuss this statement in light of John Rawls's 'Theory of Justice.'

15 Marks

QUESTION 6

"There is more to law than the elements of posited legal instruments. Law properly so called has the 'impurities' of morals, culture, religion, and norms. It is impossible to remove these 'impurities' and still have a functional legal system." Anonymous.

Discuss this statement relating it to Hans Kelsen's 'Pure Theory of Law' and Lon Fuller's, 'Morality of Law.'

15 Marks



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2019/2020 ACADEMIC YEAR

THIRD YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF

BACHELOR OF LAWS

COURSE CODE: FLB 318

COURSE TITLE: INSOLVENCY LAW

DATE: 17TH FEBRUARY, 2021 **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 1

According to The East African Newspaper issue of 10th September, 2020 Tuskys owes one of its creditors, Syndicate Agencies Limited, approximately Kshs. 0.3 billion. The creditor is a loss control and risk management company, has filed a petition claiming that Tuskys has failed to settle a Ksh30.8 million (\$308, 000) debt that has accumulated over three years. Tuskys hired Syndicate Agencies on November 10, 2017, to beef up security and help cut losses from shoplifting and theft by employees. The creditor also brought in personnel to view CCTV feeds in Tuskys' branches, conduct shop patrols, double-checkers, individuals to inspect staff as they entered and exited work, and system controllers.

Initially, the contract was to run for two years and terminate in November, 2019, but the parties agreed to extend the deal to May 2020.

The company filed a claim on August 12 and explained that it has done a thorough search and established that there is no cash in any of the Tuskys' bank accounts and that no financial institution holds money on behalf of Tuskys. It invited other creditors to join in the suit.

Using relevant provisions of law and reference to decided case law-

- i. Explain whether Tuskys has surpassed the debt limit that allows for institution of insolvency action. **(3 marks)**
- ii. The creditor, Syndicate Agencies Limited alleges to have conducted a 'thorough search' at banks and 'other places' which revealed that the debtor has no monies to satisfy its debt. As the legal advisor of the syndicate, explain the procedure prescribed by the Insolvency Act and Regulations on the necessary documents to be drafted and served upon the debtor. **(5 marks)**
- iii. Briefly explain to your clients, Syndicate Agencies Limited the likely remedies and alternatives that Tuskys Supermarkets Limited may be having so that they know how to 'retaliate'. **(8 marks)**
- iv. Your clients have also invited 'other creditors' to join in the suit. Discuss the procedure for inclusion of creditors once the debtor is placed under management. **(5 marks)**
- v. In the event that Tuskys had instead initiated the insolvency proceedings, give other reasons which may lead to the commencement of such proceedings and who has the capacity to file a petition of such magnitude? **(4 marks)**

QUESTION 2

"Dari Limited, a firm linked to Jubilee Party Secretary-General Raphael Tuju has been placed under *receivership* over a Sh1.6 billion bank loan in a suit that saw the High Court stop the auction of the politician's Karen property. Justice Grace Nzioka on Monday allowed receiver managers to run Tuju's firm, Dari Limited, arguing it was not possible for the receivers and directors of the firm to run the company together.

East African Development Bank (EADB) had appointed Muniu Thoithi and George Weru as receiver managers on December 23, 2019 to manage Dari Ltd in Karen over the unpaid loan, but Mr Tuju opposed the move. He argued that the takeover was a bid to frustrate his plan of repaying the debt."

Business Daily, Tue 03 March, 2020.

- a. Discuss the difference between receivership and winding-up of a company.
(3 marks)
- b. The Receiver managers wanted to auction Mr. Tuju's palatial home in Karen but were estopped by the High Court. Discuss the reasons surrounding such a decision and also state what property may not be auctioned as provided for by the Insolvency Act
(8 marks)
- c. Discuss the insolvency principles emerging from these set of facts with the aid or decided case law.
(4 marks)

QUESTION 3

In August 2018 the High Court Nairobi ordered the Muthangari Police to arrest former Lugari Member of Parliament, MP, Cyrus Jirongo over unpaid debts. Cyrus Jirongo, is said to have become a billionaire by the age of 30 but is now bankrupt.

Under the umbrella of Youth for KANU 1992 (YK '92), the former MP is on record as having dished out cash during KANU campaigns. Back then, the largest denomination in the country was Sh200 note and the new Sh500 was nicknamed 'Jirongo.' "I was a billionaire by the age of 30. YK never made me, it destroyed me financially," Jirongo admitted in an interview.

Besides having development projects such as Saika Estate, Hazina Estate in South B and Kemri Estate on Mbagathi Road, the 'wealthy' Jirongo was associated with companies such as Sololo outlets and Cyper.

Discuss the three approaches through which formal personal insolvency may be conducted as against Mr. Jirongo by his creditors being keen to explain the differences and the most preferable approach in the circumstances.

(12 marks)

From this set of facts, identify and explain bankruptcy offences committed by Mr. Cyrus Jirongo.

(3 marks)

QUESTION 4

"This is the second time, the bankrupt is trying to have either absolved or discharged from the orders of bankruptcy. He would by now be a free person. In the first application filed on 22nd July, 1992, he filed an application similar to the current one. It was not supported by a certificate from the official receiver; it had not been advertised and a report had not been filed as it was fixed for hearing one day after filing. It was naturally refused as the document did not ask for discharge." - Hon. G.P. Mbiti in **Paul Joseph Ngei v Official Receiver [1992] eKLR**

With the help of decided cases and provisions of law describe the various ways through which an adjudged bankrupt may petition for discharge from bankruptcy.

(15 marks)

QUESTION 5

In *Re Gideon Mwiti Irea*, 2008 eKLR the petitioner's creditors filed an application seeking to set aside the debtor's Petition for two reasons. First, perjury and non-disclosure of his true financial positions and Secondly, there was a subsisting similar order in Bankruptcy cause No. 132 of 2003.

In response to each ground raised discuss the following questions:

- Detail at least 6 bankruptcy offences that an adjudged bankrupt may commit and the likely punishment meted out against the bankrupt

(10 marks)

- Under the current Insolvency Act, an individual may be adjudged bankrupt for a second time such as Mr. Mwiti. Explain how this may occur giving an indication of approximately how long an individual may remain an undischarged bankrupt.

(5 marks)

QUESTION 6

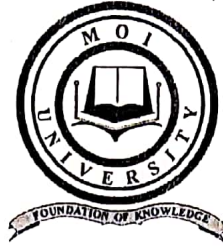
The overall design of The Insolvency Act is to give a distressed Debtor a second chance. Where the Debtor is a natural person, Part 11 of The Insolvency Act provides for

Alternatives to Bankruptcy. One such alternative is for a Debtor to seek an *Interim Order* so as to make a proposal to his/her Creditors for a Composition in satisfaction of the debts or a Scheme of Arrangement of its financial affairs. This remedy is provided in section 305 of The Insolvency Act.

Discuss-

- a. Other alternatives available to the Debtor that may afford him/her a second chance.
(4 marks)
- b. The proposal to a debtor's creditors must satisfy certain essential matters before it is presented before the insolvency practitioner/s. Explain at least four items and their relevance that must be included.
(6 marks)
- c. Describe the limitations to powers and duties of the insolvency practitioner.
(5 marks)

-THE END-



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2021/2022 ACADEMIC YEAR

THIRD YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF

BACHELOR OF LAWS

COURSE CODE:

FLB 314

COURSE TITLE:

ENVIRONMENTAL AND NATURAL
RESOURCES LAW

DATE: 28TH JUNE, 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

The Ogiek are some of Africa's remaining forest dwellers. From time immemorial, they have, lived in Kenya's Mau Forest, and are custodians of the environment on which they depend on for their livelihood. They survive mainly on roots and wild fruits, traditional beekeeping and game hunting. Theirs is a unique life well adapted to the forest. In fact, the term 'Ogiek' means 'caretaker of all plants and wild animals'. However, since colonial times the Ogiek have been subjected to arbitrary forced evictions from their ancestral land.

Owing to these evictions, they approached the African Court of Human and People's Rights for protection from evictions and reparations in the form of damages and having their land repatriated to them. Their claim is that their rights over their traditionally owned lands have been systematically denied and ignored. That the government allocated land to third parties and permitted substantial logging to take place without sharing any of the benefits with the Ogiek. That the eviction of the Ogiek from their ancestral land and the refusal to allow them access to their spiritual home prevented the Ogiek from practising their traditional cultural and religious practices. And that the culmination of all these actions resulted in preventing the Ogiek from practising their traditional hunter-gatherer way of life, thus threatening their very existence.

The government, on the other hand, argued that it has taken reasonable steps at the national and the international levels to ensure that the cultural rights of indigenous peoples in Kenya are promoted, protected and fulfilled, and referred to its ratification of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as constitutional provisions. The government further stated that it has the responsibility to ensure a balance between cultural rights and environmental conservation and that Ogiek and other indigenous people's cultural rights may include activities such as hunting or fishing which could have a negative impact on the environment.

- a) Define indigenous peoples and state two other examples of indigenous peoples in Kenya
[5 Marks]
- b) Using Kenyan examples, discuss ways in which indigenous peoples' cultural practices result into environmental conservation
[10 Marks]
- c) Provide possible statutory reforms that Kenya should undertake to prevent the dilution of the indigenous peoples' cultural practices, while at the same time ensuring the conservation of the environment
[10 Marks]

QUESTION TWO

Rivers Zambezi, the Congo River, the Nile, the Cunene River, and the Kawango River among others are some of the international watercourses in Africa, governed by the International Water Courses Convention. Using illustrations as appropriate analyse how any five principles on the allocation of international watercourses have been applied in Africa.

[15 Marks]

QUESTION THREE

a) United Nations Environmental Programme (UNEP) defines Environmental Impact Assessment (EIA) as a tool used to identify the environmental, social and economic impacts of a project prior to decision making. UNEP has proposed several stages EIA undergoes. Identify and explain these stages.

[10 Marks]

b) Differentiate between EIA and Environmental Audit. [5 Marks]

QUESTION FOUR

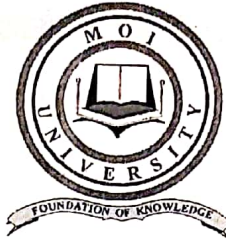
The Environmental Management and Coordination (Noise and Excessive vibration pollution) (control) Regulations 2009 define noise pollution and recommends measures to be taken against noise and vibrations in the environment. Moreover, the Environment (impact assessment and audit) (Amendment) Regulations 2019 requires that any low medium risk project submits to the authority a summary project report for assessment of the project if it will have adverse environmental effects, including projects carried on water bodies. In light of the above, discuss steps and measures taken by the Kenyan government in reducing and controlling water noise pollution.

[15 marks]

QUESTION FIVE

The National Environment Management Authority (NEMA) is mandated with the responsibility of formulating the National Environmental Action Plan every six years, which is reviewed after every three years. Furthermore, NEMA undertakes monitoring of compliance with Environmental Action Plans. This duty is further complimented by the National Environment Tribunal (NET) in the event that a party chooses to challenge some of NEMA's decisions in this regard. Discuss the guiding principles followed by the NET in adjudicating matters of compliance with national and county environmental action plans.

[15 Marks]



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

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 311

COURSE TITLE: PROFESSIONAL ETHICS AND
RESPONSIBILITY

DATE: 16TH FEBRUARY, 2021 **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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QUESTION 1

The Attorney General of the Orange Republic has proposed to the parliament of the country to enact several legislations regulating legal practice in the country. Among the legislations is one that proposes to allow Government agencies to have access to Advocates client accounts, emails exchanged between advocates and their clients and social media chats between advocates and their clients. The other legislation requires advocates to report any suspicious transaction that their clients undertake with them.

The Attorney General of Orange Republic has requested the Law Society of Orange Republic to make submissions on the proposed legislations. The Chairman of the Law Society of Orange Republic has contracted you as a legal consultant to prepare for them the submissions to be presented to the Attorney General.

Borrowing from your knowledge on the Kenyan law in regard to the proposed legislations in the Orange Republic, prepare submissions for the Law Society of Orange Republic.

[25 Marks].

QUESTION 2

A number of young lawyers are disillusioned with the going ons in the Law Society of Kenya. They strongly feel that the requirement that all advocates must be members of the Law Society of Kenya is unconstitutional. They are of the view that time has come when every advocate must decide whether to be a member of the Law Society of Kenya or not. In other words membership to the Law Society of Kenya should be voluntary. They also feel that in the year 2021 they should not pay any levies to the Law Society of Kenya. Fifty young lawyers have come to your office seeking your views and professional advise whether if they file a constitutional petition challenging the mandatory requirement of Advocates being members of the Law Society of Kenya they are likely to succeed. Prepare a legal opinion for them.

[15 Marks].

QUESTION 3

Together we stand is a non Governmental organization based in Uganda. The Government of Uganda has given them a consultancy to help the Government of Uganda to come up with a proper regulatory system of the legal profession in Uganda. Together we stand has contacted you and requested you to prepare for them an advisory on the regulation of the

FLB 311 PROFESSIONAL ETHICS AND RESPONSIBILITY

legal profession in Kenya and how efficient it is to enable them borrow some of the best practices from Kenya. Prepare the legal advisory. [15 Marks].

QUESTION 4

Discuss the Law Society of Kenya Regulations on Marketing and advertisement of legal services in Kenya and how effective they are. [15 Marks].

QUESTION 5

Discuss each of the following:-

- a) An advocate's duty to the court. [5 Marks].
- b) Professional undertaking. [5 Marks].
- c) Conflict of interest. [5 marks].

QUESTION 6

The Law Society of Newtonia has come up with regulations on advocates dressing while in court. One of the Regulations bars female advocates from wearing miniskirts and putting on fancy hair styles. Majuma is a newly admitted female advocate. She believes that matters of dressing in court should be left to one's conscience and that one's dressing should be their choice.

Majuma intends to file a constitutional petition challenging the dress code regulations by the Law Society of Newtonia. She has requested you to give her a legal opinion on the Law Society of Kenya dress code and whether her intended constitutional petition has any merits. [15 Marks].



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

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 312

COURSE TITLE: JURISPRUDENCE

DATE: 15TH FEBRUARY, 2021 **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 1

The law has different meanings to many people. Attempt your own definition of law.
(25 marks).

QUESTION 2

Positivism is a rigid understanding of the law. Anonymous
To what extent is this statement an understanding of jurisprudence? (15 marks).

QUESTION 3

Write short notes on

- A) Law and enforcement of morals (5marks).
- B) Precedent as a law making process (5marks).
- C) Feminist ideas about law (5marks).

QUESTION 4

What is the relevance of analytical jurisprudence to the Kenyan legal system?
(15 marks).

QUESTION 5

What is the import of article 10 of the Constitution of Kenya 2010 into modern legal theory about governance?
(15 marks)

QUESTION 6

Explain the salient features of natural law.
(15 marks)



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

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 314

COURSE TITLE: ENVIRONMENTAL AND NATURAL
RESOURCES LAW

DATE: 11TH FEBRUARY, 2021 **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 1

After graduating from law school, you join an environmental advocacy group dedicated to protecting disadvantaged communities from environmental hazards and toxins. Your first client is a neighborhood association whose members include homeowners in Kwasasi, a predominantly Bajun community located in Lamu County.

They are extremely upset because LamChem, a large chemical company, has announced plans to build an entirely new large chemical production facility on an abandoned property at the Lamu Channel.

LamChem's new facility lies within one kilometer from the neighborhood, and the facility's property line abuts a new high school whose students are drawn almost entirely from Kwasasi.

LamChem's new facility will produce artificial rubber, and these rubber products will use feedstocks that include benzene and other organic compounds. Once constructed, the facility will likely include reactor towers that will discharge volatile organic compounds through pipes to a large flare at the facility. Some fumes, including nitrous oxides, will simply escape into the air as fugitive emissions.

The facility will draw water from the Lamu Channel, use it in its production process, and then discharge the water back into the Lamu Channel along with some production effluent. Last, the facility will generate a significant amount of rubber that will not meet strict purity requirements for some customers (e.g., medical devices). LamChem plans to either sell the rubber as scrap to other rubber producers with less demanding clients, or will simply burn the rubber on-site for energy recovery.

Last, the proposed production site sits next to the Lamu Channel. As a result, the land is frequently wet and marshy, and storm water runoff from the site flows directly into the Lamu Channel. The area has a sizable biological community growing onsite. Some of the plants include mangroves and other marshy plants, and migratory birds use the site as a roosting spot during migrations. Some of those birds are listed as either threatened or, in one case, endangered.

- a. One of the residents believes passionately that LamChem's new facility violates her rights against environmental injustice. Explain what rights the Kwasasi residents might have to pursue legal and administrative remedies for environmental justice in this situation, and the difficulties those environmental justice claims would face. **[10 Marks]**
- b. Aside from environmental justice issues, list the potential challenges under the environmental statutes and regulations that the Kwasasi residents might raise to the construction and operation of LamChem's new facility. **[5 Marks]**

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- c. Weeks after your meeting with the Kwasasi residents, you get a call from your best friend from law school. She is now the new in-house environmental counsel at LamChem, and she has received a letter from the Kwasasi residents. After running through the potential challenges that you helped the residents prepare, your friend amiably warns you that the residents have no chance of succeeding. For each of the challenges that you listed above

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(aside from environmental justice issues), offer the strongest defenses that LamChem can offer to each claim. [10 Marks]

[25 Marks]

QUESTION 2

In recent years, countries have increasingly paid attention to problems associated with microplastics in the marine environment. Each year, more than 8 million tonnes of plastic ends up in the oceans where it seriously affects marine wildlife, fisheries and tourism. Up to 80 per cent of all litter in the oceans is made of plastic. According to some estimates, at the current rate we are dumping items such as plastic bottles, bags and cups after a single use, by 2050 oceans will carry more plastic than fish and an estimated 99 per cent of seabirds will have ingested plastic. It is feared that microplastics may accumulate in living organisms and have significant toxic effects.

However, significant scientific uncertainty remains as to the specific harmful effects. In February of 2017, UN Environment launched a global campaign to eliminate major sources of marine litter by the year 2022. This was followed up at the third session of the United Nations Environment Assembly of the United Nations Environment Programme (UNEA-3), held in Nairobi from 4 to 6 December 2017.

At the Assembly, countries adopted a Resolution on Marine Litter and Microplastics. Paragraph 10 of the Resolution stated that the Assembly:

Decides to convene meetings of, subject to the availability of resources, an Ad Hoc Open-Ended Expert Group, to further examine the barriers to, and options for, combating marine plastic litter and microplastics from all sources, especially land-based sources, and:

- a) requests the Executive Director to provide the secretariat for this work, decides that the Ad Hoc Open Ended Expert Group will be informed by and build on inter alia relevant resolutions, decisions, and reports by the United Nations Environment Programme, other organizations, Member States, and stakeholders as appropriate,
- b) decides that the Ad Hoc Open Ended Expert Group will include experts with the relevant technical expertise from all Member States, representation from international and regional conventions and organizations and relevant stakeholders,
- c. decides that the Ad Hoc Open Ended Expert Group will have the initial Programme of Work:

i) explore all barriers to combating marine litter and microplastics, including challenges related to resources in developing countries, identify the range of national, regional and international response options, including actions and innovative approaches, and voluntary and legally binding governance strategies and approaches;

ii) identify environmental, social and economic costs and benefits of different response options;

iii) examine the feasibility and effectiveness of different response options; identify potential options for continued work for consideration by the United Nations Environment Assembly,

d. requests the Executive Director to provide a progress update on the Programme of Work, including on the results of the meeting(s) at UNEA-4,

e. decides to determine at UNEA-4 on the future direction, timing, and expected outcomes of the work;

You work as legal adviser at UN Environment. The Executive Director asks you to take a close look at paragraph 10(c)(ii) of the resolution with a view to identifying and systematizing possible international response options with a focus on legally binding governance strategies and approaches. You shall submit a written report on the issue.

[15 Marks]

QUESTION 3

A species of frogs that had never before been observed was identified during the preparations of a major hydropower development project in Utopia, a small least developed country. The planning of the project was complete and some initial construction had already taken place. It soon became clear that it would be impossible to complete the project without destroying the frog's only known habitat. Utopia is party to the Convention on Biological Diversity (CBD).

Environmental non-governmental organizations argued that allowing the project to proceed would be in violation of Utopia's obligations under the CBD to conserve the species. They also argued that those funding the project should withdraw their funding. The project funders, which included a regional development bank and a group of multinational enterprises, argued that they were unable to withdraw from the project at this late stage without suffering very significant loss, and that it would be up to Utopia to cancel the project and cover at least a reasonable part of the expenses that had they had incurred.

You work as legal advisor to the Ministry of the Environment in Utopia. Your superior asks you to prepare a memorandum where you discuss which legal obligations Utopia has under the CBD to conserve the frog species against extinction. In particular, the authorities want to know whether and under what conditions the frog can be removed from its current habitat. The authorities also

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want you to consider whether, according to the CBD, the funders of the project have obligations not to fund projects that will lead to extinction of the frog species. [15 Marks]

QUESTION 4

Discuss the relationship between the sovereign right of states to exploit their own natural resources and the responsibility of states to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. [15 Marks]

QUESTION 5

Discuss:

- a) The efforts Kenya has taken to combat climate change; [5 Marks]
- b) The major criticisms about Sustainability; and [5 Marks]
- c) The importance of environmental justice issues when it comes to environmental policies and what measures Kenya has taken to ensure their implementation. [5 Marks]

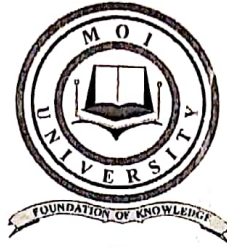
[15 Marks]

QUESTION 6

Discuss:

- a) The principles of movement of transboundary waste under the Bamako Convention and Basel Convention; [5 Marks]
- b) The fault and due principle in environmental law; and [5 Marks]
- c) The differences in meanings of 'environmental impact assessment' and 'environmental audit'. [5 Marks]

[15 Marks]



MUEO

MOI UNIVERSITY

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

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

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 310

COURSE TITLE: ADVOCACY AND CLIENT COUNSELLING

DATE: 10TH FEBRUARY, 2021 **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.

THIS PAPER CONSISTS OF (4) PRINTED PAGES

PLEASE TURN OVER

QUESTION ONE

Mambo, a human resource officer in Ferer Corp, a construction company was instructed by Mr Williams, the regional manager to employ three casual workers to clean up waste and rubble at a construction site in the outskirts of town. Mambo recruited and employed the three casual workers as instructed. The regional manager informed the casual workers that they would each be paid Ksh 500 for the work. Once the task was complete, Mr Williams instructed Mambo to obtain Ksh1500 from the cashier.

However, Mambo requested for Ksh 1800 from the cashier asking the cashier to mark the extra Ksh 300 as an advance payment of his salary, which was due in a few days. He asked the cashier to deduct it from his salary before payment. The casual employees were paid and released. As Mr Williams passed by the cashier's office to sign the payment voucher of Ksh 1500, the cashier informed him that Ksh1800 had been released and not Ksh1500. When confronted about the missing Ksh300, Mambo explained that the Ksh 300 was a little advance taken from his salary and it would be deducted once salary was paid. The Cashier confirmed Mambo's explanation that they had entered some form of arrangement but Mr William was not convinced, and believed the cashier was covering up for Mambo.

Mambo has been dismissed for dishonesty and has come to your office seeking legal assistance, claiming that the amount he was accused for dishonesty was not substantial to have him dismissed according to the company regulations. He argues it was a wrongful dismissal because he had not been issued any prior written warning as required. He explains that he has been a faithful employee for over ten years and has never been engaged in any form of misconduct. He further claims that since the money was going to be paid back by deducting the amount from his salary, it did not constitute any form of dishonesty. He desires to be granted a fair hearing by his employer so that he can apologise and subsequently retain his job.

You are in communication with the Management of Ferer Corp. They have been very cooperative and have agreed to come to your office to settle the matter with Mambo in the next two weeks.

- a. With reasons, identify the most appropriate negotiation approach you will apply (10 Marks)
- b. As the legal representative for Mambo, discuss the steps you will need to take in order to prepare for the meeting. (10 marks)

- c. What would be the BATNA in case the parties fail to reach an agreement? (5 Marks)

QUESTION TWO

The main task of lawyer is the provision of justice on the basis of the truth, even if they have to cross their boundaries and they must not break the law nor should interfere with or break the rules of investigation. They should be trusted at all times and should always pursue the truth because nothing matters more than the truth and if they succeed in defending the truth then they are the carriers of justice. Discuss.

(15 marks)

QUESTION THREE

"The defense lawyer must defend his client whether he is innocent or guilty. Defense counsel need not furnish any witness to the police or reveal any confidences of his client or furnish any other information to help the prosecution's case.... Our interest in not convicting the innocent permits counsel to put the state to its proof"

Justice White in United States V. Wade (1967) 388 U.S 218 256-58

In light of the above excerpt and with reference to relevant statutory provisions, critically discuss the ethical issues a criminal lawyer needs to consider when his client admits to him that he is guilty

(15 marks)

QUESTION FOUR

Every time a lawyer communicates with a client, they are creating an interaction. Although many lawyers believe they interact effectively with their clients, research shows a disconnect between the ways lawyers communicate with the clients and how these clients actually prefer to communicate. According to the 2018 Legal Trends Report, 55% of clients desire to interact more in person with the lawyers, but 98% of lawyers think their clients dislike in person meetings and prefer online and phone communication. Bearing in mind that clients have different perceptions and personalities, How would you as a lawyer ensure there is a healthy

flow of communication between you and your client?
(15 Marks)

QUESTION FIVE

Zubira and Jumbe are residents of Maweni. It is a small town with one main supermarket, Vangus supermarket. Zubira was shopping a few months ago. As she approached the grocery section, she slipped on some oil which was oozing from a broken jar. She twisted her ankle and sprained her arm. The Manager called an ambulance and she was rushed to hospital for treatment. Zubira came to your law firm with the intention to have Vangus supermarket compensate her for medical expenses and for her pain and suffering. You have contacted the manager and he has accepted to pay all medical expenses and for pain and suffering.

About 10 minutes after Zubira slipped, Jumbe rounded the same grocery corner, slipped and fell in the same oil, breaking his ankle. He screamed for help. The Manager called an ambulance, and Jumbe was rushed to the hospital. His ankle was put in a cast. Several weeks later, Jumbe approached your law firm seeking compensation for medical expenses and pain and suffering. You contacted the manager and the supermarket agreed to pay for the medical expenses but would offer nothing more.

Discuss your response in each situation within the context of the evolution of disputes theory.

(15 marks)

QUESTION SIX

Counseling lies at the heart of the professional relationship between lawyer and client. When a client comes to a lawyer instead of, an accountant, an engineer, or a psychologist, this is because the client perceives his problem to have a legal component. But most real world problems do not conform to the neat boundaries that define and divide legal problems. A proper appreciation of the lawyer's role as a legal counselor must begin with a more complete understanding of the counseling function and a good lawyer must be able to counsel clients and serve their interests beyond the confines of his technical expertise, in order to integrate legal considerations with non- legal aspects such as business, personal, political, or cultural issues surrounding the client's problems.

Describe the nature of the legal counseling process.

(15 marks)



MUEO

MOI UNIVERSITY

OFFICE OF THE DEPUTY VICE CHANCELLOR
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UNIVERSITY EXAMINATIONS

2021/2022 ACADEMIC YEAR

THIRD YEAR SECOND SEMESTER EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE: FLB 319

COURSE TITLE: INTERNATIONAL HUMANITARIAN LAW

DATE: 27TH JUNE, 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

THIS PAPER CONSISTS OF (3) PRINTED PAGES

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QUESTION ONE

State A and B are neighboring States separated by sea. The two States have enjoyed cordial relations since their independence in the early 1960s despite a dispute over JINGO Island in the shared sea. In a historic election conducted in State B, a new President was elected whose foremost campaign promise was to "reclaim JINGO Island." As a result, State B has deployed its troops to the disputed Island and declared war on State A. State A swiftly responds by launching military attacks against State B.

In one operation, State A sent two military aircraft towards a densely populated area of JINGO Island. Their mission was to attack a bridge on the island, which State B forces used to transport troops towards strategic areas of the island. When the planes approached the bridge, the pilots saw two armored trucks approaching the bridge from the west, while one truck with a red cross on a white background painted on the roof was on the bridge, heading slowly westwards. They also saw that a number of individuals, around 40, in civilian clothing were standing on the bridge, and they assumed that most of the civilians would be killed if they bombed the bridge. The pilots contacted their headquarters, who responded that the bridge was a legitimate military target of imperative importance, and that it had to be destroyed. They were told that the civilians should not be there in the first place, and that the civilians had to be viewed as voluntary human shields that could not de-legitimise the target. They were also told that State B probably painted red crosses on military trucks to spare them from attack, and that the pilots should not worry about the cross. The two pilots then bombed the bridge without further warning, killing all civilians on the bridge and destroying the truck with the Red Cross. The two military trucks west of the bridge were not harmed.

Both State A and State B are Contracting Parties to the four Geneva Conventions and their Additional Protocols.

In view of the above, discuss the legal implication of bombing the bridge.

[25 Marks]

QUESTION TWO

On 2 July 2008, Colombian forces disguised as an international humanitarian mission rescued 15 hostages from the *Fuerzas Armadas Revolucionarias de Colombia* "FARC" guerilla group, its opponent in a decades-long conflict. Those forces also captured two guerrillas, including the commander who had been responsible for the hostages. It was discovered that at least one of the Colombian soldiers participating in the operation wore the emblem of the International Committee of the Red Cross.

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Discuss the legal implications of the actions of the Colombian forces and assess whether they could be justifiable.

[15 Marks]

QUESTION THREE

Discuss the contribution of the *ad hoc* tribunals, the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia (ICTR & ICTY), and the International Criminal Court (ICC) in the repression of breaches of International Humanitarian Law.

[15 Marks]

QUESTION FOUR

Discuss the requirements that need to be fulfilled for a civilian to be considered as directly participating in hostilities, and the consequences of such participation?

[15 Marks]

QUESTION FIVE

In the ongoing Russia-Ukraine conflict, Russian forces have captured a number of Ukrainian soldiers. On the way to bringing them to a prison of war (POW) camp, they realize that three of the captives are former US Marines who had volunteered to join the Ukrainian soldiers at the invitation of Ukrainian President (Volodymyr Zelensky) as part of the Foreign Legion to assist his armed forces defending against the Russian invasion. The POW camp commander asks you, as her legal advisor, how these volunteers should be classified, and if there are any treaty obligations related to their treatment. Write a legal opinion responding to the Camp Commander's questions.

[15 Marks]

QUESTION SIX

States are constantly engaged in developing new means and methods of warfare as well as new technologies to conduct hostilities as envisaged in Article 36 of Additional Protocol I to the Geneva Conventions of 1949. Discuss the importance of regulating the use of weapons in international humanitarian law.

[15 Marks]