



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS
SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAW
SECOND SEMESTER, 2021/2022
(JUNE - SEPTEMBER, 2022)

LLBK 222: LAW OF EVIDENCE II

STREAM: LLBK 2 S2

TIME: 2 HOURS

DAY: TUESDAY, 9:00 – 11:00 A.M.

DATE: 13/09/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE

The Court of Appeal sitting at Malindi in the Criminal Appeal No. 24 of 2018 in the matter of **JaphetMwambireMbitha Vs Republic** referred to the case of **Johnson Muiruri Vs Republic** where the court noted as follows:

“.....itis important to set out questions and answers when deciding whether a child of tender years understands the nature of an oath so that the appellate court is able to decide whether this important matter was rightly decided.”

- What type of examination the above refers? (2 Marks)
- Explain in details the objectives of the examination (8 Marks)
- Set out the possible questions and answers which are demanded to be recorded by the trial court and its finding (20 Marks)

QUESTION TWO

“The general rule is that all witnesses to an offence are competent to give evidence and all competent witnesses are compellable.”

- a) State and explain the four essentials of a competent witness (10 marks)
- b) Discuss the shortcomings of the general rule to compellability of witnesses (10 marks)

QUESTION THREE

The Courts hold as a rule of prudence and practice that an accused person shall be warned, if in cross-examination puts questions to a witness touching his character, for this may prejudice his case or poison the mind of the court. Nonetheless it is a rule of law that evidence of bad character is inadmissible.

Discuss in detail exceptions to the said rule of law, that evidence of bad character is inadmissible. (20 Marks)

QUESTION FOUR

The court held in the most celebrated case of SM Otieno regarding the opinion evidence as follows:

“The elders who are the custodians of the African customary assisted by the intelligentsia by the church and other organizations owe to themselves and to their communities to ensure customary laws keep abreast of positive modern trends so as to make it possible for the courts to be guided by the customary laws.”

Critically analyze in detail the statement and the court’s justification regarding the opinion evidence. (20 Marks)

QUESTION FIVE

Explain in details the principles applicable in examination- in -chief, cross-examination and re- examination. (20 Marks)