



**SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2022/2023
(SEPTEMBER-DECEMBER, 2022)**

LLBK 212: LAW OF EVIDENCE

STREAM: LLBK Y2 S1

TIME: 2 HOURS

DAY: FRIDAY, 9:00 – 11:00 A.M.

DATE: 23/12/2022

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

John Kirui is working with one of the companies run by Kisii University. The rules and regulations of the company are that, if a worker gets injured while in the course of his duties, she/he must be treated at a medical Centre. This facility is well equipped by the Kisii University. The treatment notes are to remain within the medical facility. John Kirui had a terrible industrial accident. He was rushed to the medical Centre. He was treated but his right leg was crushed beyond reconstruction. He was thus, taken to theatre where his right leg was amputated at the Knee joint. When he was discharged from Hospital, he was advised to purchase some medicines from a nearby chemist as such medicine was not obtainable at the Medical Centre. It is therefrom he requested for the photocopies of the original document. Which the nurse reluctantly did for him as it was against the rules and regulations of the said Institution.

At his home, his son who is pursuing a master of laws degree informed him of his right to get redress and/or compensation by filing his claim in a small claim court which was so recently inaugurated by the **C.J Martha Koome** in Kisii law court. He further assured him that he shall get the case finalized within three

months as the small court claims was super expeditious comparatively with the mainstream courts whose disposal of matters is as of the snail pace. The father agreed to institute a claim for compensation as advised. He instructed a lawyer. His lawyer prepared the pleadings, got the necessary documents and witness statements. He filed a suit, got the summons from court and served the Company at its Head office. The summons and documents were brought to attention of the legal department at Kisii University. Therefrom an advocate was instructed to defend the Company.

All the preliminaries as well as the pre-trial hearing was conducted. Therefrom the court issued the pre-trial order, by setting the matter down for hearing. During the viva voce evidence, John Kirui testified very well but when he wanted to produce the photo copies of his treatment notes/discharge summary. Defendant's advocate raised an objection. The court sustained the objection by not allowing John Kirui to produce the photocopies of the discharge summary.

- (a) Explain the reasons as to why the court sustained the objection in reference to the production of documents in court? (8 marks)
- (b) Illustrate from the view point of evidence law, the steps John Kirui's advocate could have taken to defeat the objection to produce a photocopy of the discharge summary? (8Marks)
- (c) The general rule of proving documents in court is by primary evidence. Discuss the limitations of this rule with the help of case laws. (14 Marks)

QUESTION TWO

- a) Nokes in categorizing the items of real evidence, he includes demeanour or conduct of a witness. Evaluate the importance of such category and as to When, is it applicable? (6 marks)
- (b) State and explain any other four categories of evidence. (14 Marks)

QUESTION THREE

“The electronic evidence has inherent fallibility which has been noted severally such as its incompatibility with the best evidence and hearsay rules.”

Give a detailed discourse on the statement by citing various case laws and sections from the Evidence Act where applicable. (20 marks)

QUESTION FOUR

The admission and or non-admission of evidence is the subjective duty of the court. Critically analyze the improper admission or rejection of evidence by a trial court. (20 marks)

QUESTION FIVE

The Supreme Court restates in the presidential election petition (Raila 2022) as follows:

“Though the legal and evidential burden of establishing the facts and contentions which will support a party’s case is static and remains constant through a trial with the plaintiff, however, depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence were introduced.”

- a) Explain in detail the difference between the legal burden and the evidential burden of proof. (8 marks)
- b) With illustrations give a detailed discourse of the various standards of proof. (12 marks)