



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

LLBK 216: CIVIL PROCEDURE AND PRACTICE I

STREAM: LLBK Y2 S1

TIME: 2 HOURS

DAY: TUESDAY, 9:00 – 11:00 A.M.

DATE: 20/12/2022

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

On 19th July 2020, Mary Momanyi aged 14 years old then, of P.O. Box 532-40200 Kisii was lawfully travelling as a passenger aboard Motor Vehicle Registration Number KTVB 5321K (tuk-tuk) belonging to Peter Gesimba of P.O. Box 134-40500 Nyamira, along the Kisii-Kilgoris road having paid a sum of Kshs 500/= as fare. Peter failed to keep a proper lookout, failed to drive the said motor vehicle in a safe manner, failed to safely control the motor vehicle, failed to apply the brakes on the motor vehicle or at all, and drove at a speed which was excessive in the circumstances that he caused the said motor vehicle to overturn.

As a result of the said accident Mary sustained multiple abrasions on the head (scalp) and bruises on the right upper limb (chest area). She was treated and discharged. Her hospital bill of Kshs 12,450/= was paid by her mother Jerusha Momanyi. A P3 form was filled and a medical report was prepared which indicated that Mary suffered minor soft tissue injuries namely; blunt object injury to the head, neck, limbs thorax and abdomen and did not suffer any permanent disability. Her mother paid a sum of Kshs 5,000/= for the medical report. She also paid a sum of Kshs 500/= to obtain a copy of the records for the motor vehicle.

Your are an intern at the law firm of MKN LLP, situate at Top Building, Hill Road, P.O. Box 2656-40200 Kisii. Tel; 0204757577, Email:

mknllp@gmail.com. The managing partner in charge of litigation has referred Jerusha and Mary to you so that you can attend them.

Jerusha, hands over to you the receipts for Kshs 500/= paid as fare, Kshs12,450/= paid as hospital expenses, 5,000/= paid for medical report and Kshs 500, paid for the search. They are seeking your advise on the steps they should take to ensure that Mary is compensated for the injuries she sustained

- a) Advise Jerusha and Mary the issues you would you consider before filing any pleadings. (5 marks)
- b) Draft appropriate pleadings for filing in court. (25 marks)

QUESTION TWO

- a) Sometime in the year 1980 Joseph Lekolol filed a suit at the Magistrate's court at Kisii seeking to enforce a contract of sale of all that parcel of land known as Kisii/Nyamataro Block 3/465 against Grace Moitalel .The suit was dismissed because the trial magistrate observed that the suit being a contract, was meant to expire after 6 years and dismissed the suit for being time barred and filed out of with the right of appeal. No appeal was proffered against that decision.

In 1983, Grace's husband filed a suit in the High court seeking the eviction of Joseph from the suit land. In his defence Joseph counter claimed adverse possession claiming prescriptive rights to the land due to the operation of the doctrine of effluxion of time, which claims were dismissed in 1993 for want of prosecution. Grace's husband died during the pendency of the suit and letters of representation were taken Grace

Joseph again filed another suit in 1998 seeking to enforce the contract of sale. He however died in 2001 and his son obtained grant of representation in his place. Grace has filed an application to have the suit struck out.

Joseph is confused and does not know how to respond to the application and has approached you for advice.

- Analyse the legal issues raised by the above facts and advise Joseph appropriately. (10 marks)
- b) Discuss the object and purpose of pleadings in a trial. (5 marks)
 - c) Discuss how the courts apply the principles that a party must satisfy before being granted an injunction. (5 marks)

QUESTION THREE

- a) Johnson (K) Limited had a business relationship/agreement with Deekay Limited dating back to the year 2018 in which it was agreed that the Deekay Limited would distribute Johnson (K) Limited's goods. On diverse dates between 29th November 2019 and 10th March 2020, Johnson (K) Limited delivered goods valued at Kshs 62,621,254.95 to the Deekay Limited but Deekay Limited did not pay for the said goods thus precipitating the filing of a suit.

Johnson (K) Limited filed a suit against Deekay Limited and contemporaneously with the filing of the suit it filed an application seeking summary judgment against Deekay Limited. Upon being served with summons to enter appearance, the defendant filed a defence which was accompanied by a counter claim and set off.

- i. Advise Johnson (K) Limited on the merits or otherwise of the application for summary judgment (5 marks)
 - ii. Explain the difference between a counterclaim and a set-off. (5 marks)
- b) Discuss the principles that a court will consider whether to grant an application to amend pleadings. (5 marks)
- c) Explain the circumstances under which a defendant can join a party to a suit and the rules governing such a joinder. (5 marks)

QUESTION FOUR

- a) With the aid of decided cases, discuss the overriding objective of the Civil procedure Act and the Rules made thereunder and the duty of the court and parties in furthering that objective. (10 marks)
- b) Discuss the consequences of non-appearance and default of defence. (5 marks)
- c) "Every suit shall be instituted in court of lowest grade competent to try it"
Explain. (5 marks)

QUESTION FIVE

Write explanatory note on any **FOUR** of the following: -

- a) Procedure of filing suits by Minors.
- b) Amendments introduced in 2020 in relation to service of summons to enter appearance. (5 marks)
- c) Jurisdiction of Magistrate courts in Land matters and employment and labour relation matters. (5 marks)

- d) Rules governing drafting affidavits. (5 marks)
- e) Death of a Plaintiff. (5 marks)
- f) Rules governing close of pleadings (5 marks)