



**KISII UNIVERSITY**  
**UNIVERSITY EXAMINATIONS**

**THIRD YEAR EXAMINATION FOR THE AWARD OF**  
**THE DEGREE OF BACHELOR OF LAWS**  
**FIRST SEMESTER, 2023/2024**  
**(AUGUST-DECEMBER, 2023)**

**LLBK 313: LAW CORRUPTION AND ECONOMIC CRIMES**

**STREAM: Y3 S1**

**TIME: 2 HOURS**

**DAY: FRIDAY, 12:00 – 2:00 PM**

**DATE: 17/11/2023**

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**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**

- a) “Corruption is a rampant economic crime affecting development negatively in developing countries”. Citing examples discuss, the causes of corruption. (10 marks)
- b) The Republic of Kenya National Cereal and Produce Board advertised two tenders, “the tenders” for the supply of 50,000 metric tons each of the Diamonium Phosphate fertilizer “the DAP fertilizer” and Calcium Ammonium Nitrate fertilizer “the CAN fertilizer” on 4th May 2023. The Advert was published on both the Standard Newspaper and the Nation Newspaper the two leading newspaper in Kenya with wide circulation. The purpose of the tenders was to ensure adequate maize harvest and food security, maize being staple food in Kenya. The maize planting season in Kenya commences in the month of August of every year. Kenya had previously experienced multiple fertilizer procurement scandals revolving around bribery, collusive tendering, bid rigging, nepotism, political patronage and other forms of misfeasance. The Kenyan Political opposition popularly known as Azimio La Umoja had dismissed the tenders as “another maize scandal” a claim that Kenyan Government dismissed as ‘vitendawili’. On 20th May 2023, after completing the technical and

financial evaluation, the Kenya National Cereal Board sent a letter to KiKwetu Ltd, the highest bidder, to the effect that it had terminated the Tenders because “several reputable firms did not submit responsive bids”. The Cereal Board also sent another letter to Ndiani Ltd the lowest bidder to the effect that it was non responsive because the tender security was valid for a period shorter than the one set out in the tender documents. The letter further stated the samples of the DAP and CAN fertilizers submitted by most of the bidders failed the organoleptic test set out in the technical evaluation criteria, because granules appeared bluish and easily disintegrated when squeezed between the technical evaluators’ fingers. This letter was evidence of bad chemical formulation of the fertilizer that most bidders proposed to supply to the National Cereal Board. On 8th July 2023, The National Cereal Board sent an email to Ndiani Ltd requesting it to ‘urgently’ submit fresh bids by email. The email stated that the National Cereal Board needed the DAP and CAN fertilizer “very urgently” because “the planting season is nigh and the clouds have gathered in the skies”. In view of the urgency, the email further stated that the exigencies of the moment did not permit the use of standard tender documents and that the bidders could only submit the fresh bids in excels spreadsheets. Unlike the other nine bidders that originally participated in the Tenders, Ndiani Ltd. was a citizen Contractor, wholly owned by Kenyan Farmers, youth, women and persons with disability from the opposition side. On 10th July 2023 Ndiani Ltd chanced upon a bill of lading and ship Manifest indicating that Kikwetu Ltd had imported 50,000 Metric tons of DAP and CAN fertilizers. These documents indicated that the National Cereal Board as the ultimate owner of the consignment and the country of origin as Mexico. The date of importation indicated as 4th May 2023. Upon further inquiry, Ndiani Ltd established that:

- i) The ship MV Hustler, had already docked at Kenyan coastal city of Mombasa,
- ii) The National Cereal Board Managing Director, Mr. Kanzu was a close relative and business associate of the directors of and shareholder at Kikwetu Ltd.

On 12th July 2023, The Kenyan Public Procurement Regulatory Authority and Ombudsman issued joint press statement to the effect that they were investigating ten local Companies and foreign companies, including Kikwetu Limited for serious breaches of country’s tax, labour, money laundering, anti-corruption and public procurement laws. On 17th July 2023, The National Cereal Board sent a letter to Ndiani Ltd stating that its offer was not the most competitive and hence unsuccessful. From this:

(b) (i) Discuss the forms of corruption exhibited

**(10 marks)**

(ii) Ndiani ltd says it cannot accept the turn of events “lying down”. Ndiani ltd plans to appeal the National Cereal Board actions and decisions before the Kenya’s Public Procurement Administrative Review Board. You are a leading Corruption and Economic crimes lawyer specializing in Public Procurement law in Kenya. According and perhaps, Ndiani has instructed you to provide a “brief and Succinct”, legal opinion on the viability of the intended appeal, highlighting the relevant legal provisions and the underlying principles and objectives of public procurement regulation and economic crimes regulation. Kindly provide the legal opinion.

**(10 marks)**

## **QUESTION TWO**

a) Discuss the challenges facing African countries government in fighting corruption.

**(10 marks)**

b) “Asset misappropriation is a major economic crime affecting performance of both public and private corporations”. Elaborate citing examples.

**(10 marks)**

## **QUESTION THREE**

Corruption and other economic crimes in the Kenya’s economic crimes framework has been identified as key contributors of illicit financial flows leading up to immense losses on resources that could be used to finance public expenditure. There are several frameworks, processes, instruments and institutions that have been developed and should further be enhanced as these issues take the center stage towards reducing the public burden of over taxation and increasing public debts. Discuss these frameworks, instruments and institutions, highlighting how they are used to combat crime, how they contribute to corruption and how they should further be enhanced to eliminate corruption.

**(20 marks)**

## **QUESTION FOUR**

a) “Article 10 and Chapter VI of the Constitution contain the most important provisions relating to the required standards for leadership and integrity” Using relevant examples, discuss his statement (10 marks)

b) Explain the two primary objects of a confiscation order as held in the case of ***Schabir Shaik & Others v State CCC 86/06 (2008) ZACC.***

**(4 marks)**

c) State any six functions of the Asset Recovery Agency in Kenya **(6 marks)**

## **QUESTION FIVE**

- a) Discuss what the laws of Kenya including the Constitution, Statutes and International law have in place to combat corruption and promote integrity within the government and public institutions. **(10 marks)**
- b) It has been argued that corruption in Kenya is largely an institutional problem rather than a cultural one, this school of thought attributes corruption to the predominance of arbitrary power and bureaucracy, especially in statutory law as opposed to the Constitutional order. Provide reasons for or against the above proposition. **(10 marks)**