



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SECOND YEAR EXAMINATION FOR THE AWARD OF
THE DIPLOMA IN LAWS
FIRST SEMESTER, 2023/2024
(AUGUST-DECEMBER, 2023)

DLAW 0211: CIVIL PROCEDURE I

STREAM: Y2 S1

TIME: 2 HOURS

DAY: MONDAY, 12:00 – 12:00 PM

DATE: 21/11/2023

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 the 1st day of May 2023, Peter Kerochi of post office box number 2222-40200 Kisii, a resident of Kisii County within the Republic of Kenya, without having a lawful excuse set on fire a motor vehicle (Toyota NZE) of registration number KBX 107P, a motorcycle FC 150 of registration number KMDK 867B and a bag of clothes valued Ksh 3.5Million property belonging to Francis Omollo of post office box number 903-40200 Kisii, at his residence Daraja Mbili in Kisii Town. Francis reported the matter at Kisii Police Station vide OB NO 123/06/09/2023. Peter was arrested and arraigned in Court and pleaded guilty on the charge of Malicious damage to property and sentenced to 10years imprisonment or pay a fine of ksh 1.5Million.

Francis has approached your law firm located at Gusii Stadium Golf House, 1st floor suite NO 3 by the name HAKI & CO. ADVOCATES and has instructed you as his advocate to file a suit against Peter for compensation of the loss he incurred as a result thereof.

- a) Draft a demand letter to Peter giving him 7 days notice to admit liability and pay to Francis Ksh 3.5Million as compensation for his loss. **(10marks)**
- b) It is now 15days since you served the demand letter to Peter and he has not responded to it, proceed and draft the necessary pleadings for filling a suit in court. Your pleadings should be limited to the plaint, and Francis's statement. **(20 marks)**

QUESTION TWO

- a) What MUST be contained in a plaint in adherence to civil procedure rules of drafting. **[10 marks]**
- b) The failure to frame issues amounts to procedure irregularity and not illegality. In the light of this contention, outline the practical importance of framing issues and consequences of failure to frame issues. **[10 marks]**

QUESTION THREE

- (a) Discuss the steps involved in initiating a suit in Court. **(10marks)**
- (b) Explain the consequences of non-appearance of a defendant in court, default of filing a defence and failure to serve a memorandum of appearance **(10marks)**

QUESTION FOUR

During the proceedings in the court various pleadings, summonses, and affidavits, lists, and orders have to be served between the parties. Service is done by the court through the court process servers or the court may direct the parties to serve each other." Briefly discuss the validity of this assertion in the light of the law and practice relating to the service of documents where the defendant is in prison. **(20marks)**

QUESTION FIVE

Write short notes on the following:

- i. Counter claim **(5marks)**
- ii. Place of suing **(5marks)**
- iii. Striking out of pleadings **(5marks)**
- iv. Summary judgment **(5marks)**