



# **KISII UNIVERSITY**

## **UNIVERSITY EXAMINATIONS** **FIRST YEAR EXAMINATION FOR THE AWARD OF THE** **DIPLOMA IN LAW** **SECOND SEMESTER, 2021/2022** **(FEBRUARY – JUNE, 2022)**

### **DLAW 0125: CRIMINAL PROCEDURE**

**STREAM: DLAW 1 S2**

**TIME: 2 HOURS**

**DAY: MONDAY, 12:00 – 2:00 P.M.**

**DATE: 30/05/2022**

---

#### **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**

Mr. Jirani Mwema and his wife Tausi live in a quiet neighborhood outside Rongai town, in the county of Kajiado. On the 12.12.2021 Mr. and Mrs. Mwema retired to bed at 9 pm after switching off all their internal lights ensuring that external lights were left on.

At about 10 pm, the Mwema's two dogs started barking loudly outside. Mr. Mwema stepped outside to ascertain what the matter was. He saw three strange men inside his compound fighting with dogs he decided to retreat but one of the men (Kalulu Juha) dashed past the dogs and caught up with Mr. Mwema. He forced Mr. Mwema to calm down the dogs and grant the pothier invaders unhindered access to the house or face grave consequences. Mr.

Mwema noticed that Kalulu Juha was armed with a pistol the second man, later identified as Simba Mkali, had a crowbar.

The invaders led Mr. Mwema from room to room ransacking the house while beating Mr. Mwema and commanding him to give up all the money and other valuables in the house. Mr. Mwema surrendered his nokia mobile phone, transistor radio, and ksh. 70,000 in cash. Mrs. Mwema also handed to the invaders all the jewellery. The whole episode lasted barely 30 minutes.

When the invaders reached the Mwema's residence on their way out, they overheard the Mwema's next door neighbour, Mr Rama Faraja, making a telephone report to the police about the invasion. As a way of revenge, the invaders decided to smash Mr Rama's gate lights before escaping. Immediately afterwards, the Mwemas and the Farajas went to report the two incidents at the Rongai Police Station. The Police launched an investigation and within one hour, three men answering to the description of the invaders were arrested and charged.

- a) State any FOUR offences the invaders committed against the Mwemas and the Farajas. **(4 Marks)**
- b) State the content of the police file **(4 marks)**
- c) When is a charge said to be duplex? **(4 marks)**
- d) Draft the requisite charges **(14 marks)**

### **QUESTION TWO**

- a). What are the rights of an accused person under the new Kenyan constitution, 2010? **(10 Marks)**
- b. What are the principles of a fair trial under the new Kenyan Constitution? **(10 Marks)**

### **QUESTION THREE**

- a) In his book, "Essentials of Criminal Procedure in Kenya" Justice Kiage Patrick states that (pg 118) that bail may be classified into three. Give and explain the THREE types of bail. **(6 marks)**
- b) Outline the principles that guide the grant or denial of bail in Kenya's criminal justice system. **(14 Marks)**

### **QUESTION FOUR**

- a) What are the rights of an accused person under the new Kenyan Constitution? **(10 marks)**
- b) What are the principles of a fair trial under the new Kenyan Constitution? **(10 marks)**

**QUESTION FIVE**

- a) What documents will constitute the prosecutions file **(5 marks)**
- b) What documents will constitute the Courts file **(10 marks)**
- c) what are the documents to be found in the defence advocate's file. **(5 marks)**