



KISII UNIVERSITY

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

DLAW 0221: CIVIL PROCEDURE II

STREAM: DLAW 2 S2

TIME: 2 HOURS

DAY: TUESDAY, 9:00 – 11:00 A.M.

DATE: 24/05/2022

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

a) Give meaning to the following terms

- | | |
|---|------------------|
| i. Domesticating a judgment. | [2 Marks] |
| ii. Garnishment. | [2 Marks] |
| iii. Execution. | [2 Marks] |
| iv. Supplementary proceedings. | [2 Marks] |
| v. Post-judgement interrogatory. | [2 Marks] |

b) One of the crucial parts in judicial service is Judgment writing and delivery, and the most important part of judgment writing is the **ratio decided**, where the judge or magistrate has to decide the case and give reasons for that decision. A judgment is, therefore, a reason-giving process, where a judge puts

into words the rationale behind his or her decision. It assesses the judge's or magistrate's articulation skills in the judgment written. The process involves a thorough understanding of the facts of the case, knowledge of the law and court practices, the ability to make a fair decision that is good in law, and finally to deliver it reasonably. A judge or magistrate can either adopt a chronological approach or a thematic approach to conclude his judgment writing. Either way, logical sequencing of the trial is necessary as far as a good judgment is concerned. In lieu of the above statement, discuss the outline of a judgment and how it should proceed during the writing process. **[20 Marks]**

QUESTION TWO

- a) State and explain three factors that make a judgment valid and three factors that render a judgment null and void. **[6 Marks]**
- b) Discuss four main things that a judgment addresses. **[8 Marks]**
- c) Explain what's security for costs and the two documents to accompany the application under Order 26. **[6 Marks]**

QUESTION THREE

Your firm, Tunaweza, has been instructed to take up the case of Mlalamishi who is aggrieved by his neighbour's interferences. As an Advocate armed with firm instructions from your client, Mlalamishi, you have reached out to the neighbour, written a demand letter but the issue has not been resolved. You have the instructions from your client to commence legal action against this neighbour. The case has been scheduled for a pretrial conference. But despite all efforts for both parties at the pre-trial conference, it's evident that the case was not going to settle. The case has now been dated for a full trial in two months. You've just joined Tunaweza firm and as a new associate, you have been tasked by your senior associate to take up the matter in the preliminary trial preparation, taking into account that good trial work is based on thorough preparations.

- a. List down some of the things that you need to include in your Trial Preparation Checklist before the date of trial. **[10 Marks]**
- b. Secondly, preparing your litigation team for trial is crucial to success at trial. With this background in mind, draft a guideline for your witness' trial testimony. **(10 Marks)**

QUESTION FOUR

Chacha sued Kimune in the High Court of Kenya at Migori, vide Civil suit No. 28 of 2020. This was after Kimune refused to pay money amounting to Sh16,000,000/: to Chacha. On 5th March 2020, His Lordship, Samuel Mwita passed judgment against Kimune for a sum of Sh16,000,000/: (Sixteen Million Kenya Shillings) as special damages and also awarded Chacha the cost of Sh5,000,000/: (Five Million Kenya Shillings).

You're the Advocate for Chacha and upon serving Kimune with the Decree, you realize Kimune does not have any money to pay Chacha. However, Kimune has a debtor called Maroa who owes him a sum of Sh23,000,000/: (Twenty Three Million Kenya Shillings). Maroa is a rich man who owns several businesses within and outside Migori County.

- a. Using relevant examples, explain the procedure you would use to obtain money for your client. **[15 Marks]**
- b. LIST down the documents you will use in Court and explain why. **[5 Marks]**

QUESTION FIVE

Write explanatory notes on any FOUR of the following.

- a) Application for Judicial Review. **[5 Marks]**
- b) Revision and Appointment of Receivers. **[5 Marks]**
- c) Appeals from Orders. **[5 Marks]**
- d) Payment into Court and Tender. **[5 Marks]**
- e) Commission and References. **[5 Marks]**
- f) Special Powers of Court Registrars. **[5 Marks]**
- g) Arrest and Attachment before Judgement. **[5 Marks]**
- h) Pauper Appeals. **[5 Marks]**