



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS

SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2021/2022
(FEBRUARY - JUNE, 2022)

LLBK 212: LAW OF EVIDENCE I

STREAM: LLBK 2 S1

TIME: 2 HOURS

DAY: MONDAY, 12:00 – 2:00 P.M.

DATE: 23/05/2022

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

1. Majivuno was a very successful young man, in spite of him having come from a very humble background. He went to Kiabonyoru Primary School and there after matriculate to Kisii High School. He was among the brightest students in the school, hence, he scored good grades which enabled him to join Kisii University. At the university he kept his tempo of good performance. This earned him respect among his peers and lecturers. He completed his course, as he graduated with a first class in law. He proceeded with his post graduate diploma at Kenya School of Law. He performed exceptionally well by breaking the best academic record held at the school for years, by being the first student to score over 80% in every subject out of the nine subjects. He was therefrom admitted as an advocate. This were many years ago.

2. He started his law practice in Nairobi. His lawyering skills and wit, earned him briefs from prominent people within the republic of Kenya and East Africa. He could make good money as he wisely invested in all economic sectors. His generosity earned him friends and enemies in equal measure. He could attend all sorts of functions as well as fundraise for various institutions. Indeed, he was very philanthropic.
3. Nevertheless, one day he was from a wedding banquet, where he had been invited by his friend, and these were many years before he attained the fame. At the wedding banquet, he was assigned a young succulent lady with sparkling eyes. When they were practicing the pattern of matching, he accidentally stepped on the toes of the young lady. The matching was being done on a carpeted floor; barefooted.
4. The sparkling eyes of the lady met his eyes and in him he felt without feeling as he was very sorry of what had happened. However, the lady calmed him down and played it cool. This attracted Majivuno as the same sunk into his heart.
5. That night Majivuno could not sleep. The pictures of the incident kept playing as he wriggled and giggled in the lonely bed.
6. It took a week that they were to go for further practice. He was dying to meet Nyanchera. When he met her, he carefully forged a conversation and stealthily divulged his sleepless night thoughts.
7. When it was Nyanchera's turn to respond; it was the same story. It is from there the conversation went deeper and deeper up and until they exchanged contacts and agreed to meet the following day at Motemomwamu Restaurant which is in the out skirts of Kisii Town.
8. At Motemomwamu Restaurant, Majivuno had prepared the previous night of the pickup lines. He was hesitant to pop in the question but finally he gathered courage as he spilled the beans. It could appear from Nyanchera by her conduct that she was anticipating for the same. She decided to pick up the beans. The rest is history.
9. On the 12/4/1998, while they were on their way home, Majivuno could boast of his 10 year- experience in driving. He could sometimes get carried away and leave the steering unattended as he got into deep conversation with Nyanchera Omwansa. He was of course an excellent driver. None will miss to enjoy the lift when granted. He was spinning the car at a high speed. However, when they reached Kiabiraa, which is a bit bushy, with no much traffic jam, Majivuno slowly but steadily stretched his hand and touched Nyanchera. Nyanchera was yearning for more, the conversation became intense that Majivuno was so much submerged into the conversation and instead of braking, his right foot confusedly was on the accelerator pedal. Lo and behold, the car was now flying, unfortunately, it lost control, swerved off the road as it hit a young boy seated at the upper

bank of the road thus inflicting fatal injuries. There were no persons at the sight. Majivuno being a kind hearted person picked the boy and took him to hospital. He was admitted. After a fortnight, he succumbed to the injuries. He later learnt his name to be Ochomba. Nyanchera had slight injuries, she was treated and allowed to go home.

10. The very day at about 5:00Pm Majivuno reported the matter at Jogoo Police Station. The police officers went to the scene. At the scene Omari who is a police constable drew the sketch map and the point of impact. He used the nearest electric pole as his constant point. He recorded the statements of Nyanchera Omweri and Nyanchera Omwansa as eye witnesses. Nyanchera Omweri's statement was that he only saw the car swerve to the upper part of the banking and knock the boy seated thereon. He also recorded the statement of Majivuno. Majivuno was released on police cash bail. He went back home and was asked to attend court on the following Monday.
11. At the court, charges of causing death by careless driving were read and explained to Majivuno in English language which he understands. He denied the charges and a plea of not guilty was entered. Thereafter a pre-trial hearing was conducted. Majivuno was given three witness statements, charge sheet, postmortem report, motor vehicle inspection report, police diary, police abstract and p3form. He was granted a bond of Ksh 200000 with one surety of similar amount and/or an alternative cash bail of Ksh 100000/-. The matter was therefrom set down for hearings six months down the lane.
12. After he seemingly recovered from the shock, he met with Nyanchera. They were really very sorry for what had happened. They embraced each other for a long time, the love which had sprouted in them culminated in a marriage before the lapse of six months. On the sixth month, Majivuno went for his first hearing with his newly married wife-Nyanchera. However, the case did not take off due to an application for adjournment by the prosecution on the basis that the investigation officer was indisposed.
13. Nyanchera had previously made arrangement to meet the family of the deceased boy. They were very sorry of having cut short the life of the young man who was very promising in the future. The family appeared to be economically unsound. She took up the matter by taking care of all burial expenses as well as doing that which is humanly possible to the bereaved family. The parents of the deceased appreciated them. Since that time, they were grooved together by the unfortunate happening. They picked one of the siblings, that is, Ochomba is only brother, provided for him till he completed his studies.

When the case was adjourned Majivuno felt the heat and decided to hire the services of an advocate.

From the above hypothetical scenario answer the following questions:

1. Frame the highly likely issues to be determined by court **(5 marks)**
2. What are the facts the court will consider to determine in each of the above issues? **(15 marks)**
3. Majivuno approached you to be his counsel. Outline the defence strategies to counter the prosecution case. **(10 marks)**

QUESTION TWO

John Kirui is working with one of the companies run by Kisii University. The rules and regulations of the company are that, if a worker gets injured while in the course of his duties, s/he must be treated at a medical Centre. This facility is well equipped by the Kisii University. The treatment notes are to remain within the medical facility. John Kirui had a terrible industrial accident. He was rushed to the medical Centre. He was treated but his right leg was crushed beyond reconstruction. He was thus, taken to theatre where his right leg was amputated at the Knee joint. When he was discharged from Hospital, he was advised to purchase some medicines from a nearby chemist as such medicine was not obtainable at the Medical Centre. It is therefrom he requested for the photocopies of the original document. Which the nurse reluctantly did for him as it was against the rules and regulations of the said Institution.

At his home, his son who is pursuing a master of laws degree informed him of his right to get redress and/or compensation by filing his claim in a small claim court which was so recently inaugurated by the **C.J Martha Koome** in Kisii law court. He further assured him that he shall get the case finalized within three months as the small court claims was super expeditious comparatively with the mainstream courts whose disposal of matters is as of the snail pace. The father agreed to institute a claim for compensation as advised. He instructed a lawyer. His lawyer prepared the pleadings, got the necessary documents and witness statements. He filed suit, got the summons from court and served the Company at its Head office. The summons and documents were brought to attention of the legal department at Kisii University. Therefrom an advocate was instructed to defend the Company.

All the preliminaries as well as the pre-trial hearing was conducted. Therefrom the court issued the pre-trial order, by setting the matter down for hearing. During the viva voce evidence, John Kirui testified very well but when he wanted to produce the photocopies of his treatment notes/discharge summary. Defendant's advocate raised an objection. The court sustained the objection by not allowing John Kirui to produce the photocopies of the discharge summary.

Question.

- (a) Explain the reasons as to why the court sustained the objection in reference to the production of documents in court? **5 Marks**
- (b) Illustrate from the view point of evidence law, the steps John Kirui's advocate could have taken to defeat the objection produce a photocopy of the discharge summary? **5 Marks**
- (c) The general rule of proving documents in court is by primary evidence. Discuss the limitations of this rule with the help of case laws.

(10 Marks)

QUESTION THREE

“Oral evidence must in all cases be direct evidence.” Section 63(1) of Evidence Act. This leads to the conclusion that the court has no discretion nor the parties, to consent to the production of hearsay evidence, that is to say, as a general rule hearsay evidence is not admissible. However, this rule must be accepted with great caution. With the help of case laws discuss the rationale of the caution.

(20 Marks)

QUESTION FOUR

In the law of evidence, certain categories of people enjoy the chance of privilege when the issue of adduction of evidence comes to play. With the help of case laws and provisions of the law, explain the categories.

(20 Marks)

QUESTION FIVE

“Estoppel is based on the principle that it would be most inequitable and unjust that if one person, by representation, or by conduct amounting to a representation, has induced another to act as he would otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it.”

Discuss the scope of estoppel in respect to the position of law, that, no cause of action arises upon estoppel itself.

(20 Marks)