



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SPECIAL EXAMINATIONS
SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DIPLOMA IN LAWS
FIRST SEMESTER, 2021/2022
(FEBRUARY - JUNE, 2022)

DLAW 0211: CIVIL PROCEDURE I

STREAM: Y2 S1

TIME: 2 HOURS

DAY: WEDNESDAY, 8:00 – 10:00 A.M.

DATE: 20/07/2022

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 each of the following FIVE (5) essential elements of a civil suit. [10 marks]
- I. Cause of Action
 - II. Subject Matter
 - III. Proper Pleadings
 - IV. Parties to a Suit
 - V. Relief
- b) Asha was seriously injured when traveling as a front passenger in a car driven by Juma, which was involved in a head-on collision with a car

driven by Adam. Asha contemplates filing a suit for damages. Both vehicles were insured by National Insurance Corporation Ltd. In his reply to the demand note, Juma denies liability and blames Adam. In his defence, Adam denies liability alleging his vehicle skidded on a wet road and further alleges Asha was contributorily negligent in not wearing a seat belt. Asha has already lost earning of Shs.100,000 a month over the last month and is unlikely to return to work for at least 10 months. She has used up all her savings and is rapidly sinking into debt.

Advise Asha on, whom to sue and the principles that will be applied.

[20 marks]

QUESTION TWO

- a) Joinder of parties and representative suit are similar and dissimilar. Discuss. [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

You are an advocate for the defendant in a suit in the High Court of Kenya, ELC Division at Kisii Law Courts for the recovery of possession of the land. Discuss what course or courses of action you would take in the following alternatives. [20 marks]

- a) The plaintiff has obtained an ex-parte temporary injunction to restrain the defendant from entering or remaining the land in dispute.
- b) The plaintiff's defense to counterclaim contains solely evasive denials.

- c) On the date fixed for mediation, the plaintiff and his advocate are absent.
- d) On the date fixed for hearing of the suit, the defendant is admitted at the Kisii Orthopaedic Institute.

QUESTIONFOUR

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.** [20 marks]

QUESTION FIVE

Discuss the circumstances under which a court of law will make the following four orders. [20 marks]

- i. Amendment of pleadings
- ii. Discovery and Inspection
- iii. Striking out of pleadings
- iv. Summary judgment