



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

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

LLBK 222: LAW OF EVIDENCE II

STREAM: Y2 S2

TIME: 2 HOURS

DAY: WEDNESDAY, 8:00 – 10:00 A.M.

DATE: 27/07/2022

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) On 10th May, 2021, about 3pm, police from the Kisii OCPD's went to Jerusalem area near Kisii University to flush out SunguSungu vigilante group members from students' hostels. They had search warrants directed for use at Nyangena premises.

Whilst on patrol they saw a suspicious character in the Name of JomoMatunda enter his house hurriedly and locked himself in. Five of the officers followed him, broke his door to be let in. They found him with his wife, Cynthia and their two children, aged 8 and 14. They ransacked the house and uncovered a G3 rifle and heroin worth Ksh. 10,000,000/=. They arrested him and he was charged with the offence related to the recoveries. The police recorded statements from the wife and children. Jomo refused to record a statement.

Incensed by his actions, the police decided to arrest the wife and arraigned both of them in court over the same charges. The police wanted their case to proceed as it was but counsel objected and succeeded to have the cases run separately. The prosecution wants the two to testify against each other.

It also wants the children to testify. Discuss how the court should handle the evidence of all the intended witnesses. (15 Marks)

In 2020, the County Government of Kisii wanted rid itself of all ghost workers. It called on all its workers to authenticate their documents of employment by availing the attesting witnesses. A number of the workers thought it the Government was ill-advised and did not bother to do so. They were dismissed. They have challenged the dismissal. Advise the County Government. (7 Marks)

On about the **14th October, 2013** at around 20.15 hours, along Embu-Meru road near a place called Gwa-Kanyoni stage, **the late Alfred Mutwiri Njoka** was riding motorcycle registration No. **KMCJ 6212** as a pillion passenger. A motor vehicle registration **No. KBT 782X** pick up carrying *mira* veered off the road and knocked the motor cycle, instantly killing both the cyclist and the pillion passenger. **Ann whiller Mwende Rugendo and Njoka Baruthi** suing as legal representatives of the estate of **the late Alfred Mutwiri Njoka** brought civil action against the appellant herein for a tort of negligence due to the traffic road accident. Their main argument was the submission that the court ought to take judicial notice of the fact that vehicles carrying *mira* are dangerously driven. However, the court insisted that they ought to adduce evidence since the manner of driving of vehicles carrying *mira* is neither notorious nor documented. (<http://kenyalaw.org/caselaw/cases/view/137206>)

They come to you for advice on their intention to adduce expert opinion. Discuss with them the nature of, and instances when such evidence is adduced in court (8 Marks)

QUESTION TWO

“Witnesses who may have important evidence to give must come to court if Formally directed to do so. If they choose to ignore a summons, they are in contempt of court and can expect to be punished...” *Yusuf* (2003) 2 Cr App R 32, (16). Critique this statement. (20 Marks)

QUESTION THREE

a) In *Gari & 2 others v Republic* [1990] KLR (<http://kenyalaw.org/caselaw/cases/view/7631/>), the appellants challenged the finding of the trial magistrate in regard to when a notice to produce are issued. They also faulted the trial magistrate’s order to have the copies of documents produced in evidence examined by a Document Examiner.

Assuming you were the judge before whom the appeals were placed, discuss how you would rule and why (10 Marks)

QUESTION FOUR

a) Discuss the techniques of cross examination and the dangers of using leading questions in examination in chief. (10 Marks)

b) In *Prudential Assurance Company of Kenya Limited v Sukhwender Singh Jutney and Another, Civil Appeal No. 23 of 2005* the Court citing a passage in Odgers Construction of Deeds and Statutes (5th edn.) at p.106 emphasized that in construing the terms of a written contract;

“It is a familiar rule of law that no parol evidence is admissible to contradict, vary or alter the terms of the deed or any written instrument. The rule applies as well to deeds as to contracts in writing. Although the rule is expressed to relate to parol evidence, it does in fact apply to all forms of extrinsic evidence.”

Using appropriate case law, discuss this statement in relation to interpretation of documents in the law of evidence. (20 Marks)

QUESTION FIVE

Discuss the law regarding privilege and public policy in evidence (10 Marks)

In **Maxwell v. DPP (1935) AC, 309** it was intimated that the accused person had a shield protecting him from cross examination from previous record or antecedents unless he threw the shield away. Discuss this view in light of the provisions of the Evidence Act, Chapter 80 Laws of Kenya

(10 Marks)