



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

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

LLBK 313: LAW CORRUPTION AND ECONOMIC CRIMES

STREAM: Y3 S1

TIME: 2 HOURS

DAY: FRIDAY, 8:00 – 10:00 A.M.

DATE: 29/07/2022

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

As an intern attached to Anti-Corruption Court at the Eldoret Law Courts, the Judge invites you to attend proceedings on an application for forfeiture of property. Ethics and Anticorruption Commission make an application for declaration of unexplained assets. EACC submit that, the Defendant, Ng'ombe Mla Nyasi a messenger in procurement office of NHIF (earning a gross monthly salary of Kshs. 30,000/-) acquired the following assets within a period of 18 months:

- Residential house in Milimani, Kisumu- Kshs. 20, 000, 000/-
- Toyota Prado- Kshs. 8,000,000/-
- Consultancy fees for professional services offered-Kshs. 15,000,000/-
- Cash deposits in various bank accounts- Kshs. 1,000,000/-

Further, EACC produces evidence that Mr. Nyasi has been implicated in the disposal of four (4) NHIF cars (worth 1,000,000/-) that had been parked at the corporation's car yard. EACC produces evidence that Mr. Nyasi had been bribed to sell the cars to the buyer at a "very low price".

Mr. Nyasi's Advocate in making his submissions, denies any wrongdoing on the part of the Defendant and submits that his client has not committed any offence under the laws of Kenya. He contests that Mr. Nyasi has never been involved in corruption or economic crimes.

Using relevant provisions of the law and case law, draft a research brief highlighting the following issues:

- a) Identify Two (2) Statutes and explain the main provisions that will assist the court in making a full determination of the case (10 Marks)
- b) Constitutional provisions relating to corruption and economic crimes (10 Marks)
- c) Distinction between "corruption" and economic crimes (10 Marks)

QUESTION TWO

- (a) Explain four main provisions of the Bribery Act (10 marks)
- (b) Compare the application of the provisions under the Bribery Act with the UN Convention against Corruption (10 marks)

QUESTION THREE

Using relevant case law, constitutional and statutory provisions, explain the role of the Director of Public Prosecution (DPP) in the "fight against corruption" (20 marks)

QUESTION FOUR

"There has been little growth in jurisprudence under leadership and integrity, with the exception of the provisions relating to "providing false information to a person acting under the Leadership and Integrity Act". Discuss this statement in light of the decisions of *Mithika Linturi* and *Oscar Sudi* Leadership and Integrity. (20 marks)

QUESTION FIVE

"Proportionality (means that) the sentence meted out must be proportionate to the offending behavior. The punishment must not be more or less than is merited in view of the gravity of the offence...objectives of sentencing include; Retribution; deterrence; rehabilitation; restorative justice; community

protection and community denunciation of the criminal conduct (Sentencing Guidelines, 2016).

In the application for bail pending appeal in *ACEC Criminal Appeal No. 7 of 2020*, Hon. John Waluke stated that he was subjected to an “undignified, harsh and unlawful sentence which is not contemplated in a democratic society where sentences are meant to be rehabilitative”.

In your opinion, discuss the statements above giving your opinion on the proportionality of sentencing/ punishment of offences related to corruption and economic crimes and where appropriate, provide any recommendations for law reform (20 marks)