



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A

P.O. Box 62157

00200 Nairobi - KENYA

MAIN EXAMINATION

Telephone: 891601-6

MAY – AUGUST 2021

Ext 1022/23/25

FACULTY OF LAW

Fax: 254-20-891084

REGULAR PROGRAMME

CLS 203: CIVIL PROCEDURE AND PRACTICE

Date: AUGUST 2021

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any other TWO Questions

QUESTION ONE

James Ndirangu, an orphaned thirteen year-old primary school pupil at Kamba Nane Primary School in Kilifi County, while on a school trip to Machakos County, died from a road accident which occurred at Kyumvi Junction off Mombasa Road after the vehicle they were travelling in lost control and rammmed into another oncoming vehicle. The driver of the vehicle the school children were travelling in was one Mr. James Kilonzo who, ordinarily resided in Kwa Vonza, Kitui County. Mr Kilonzo was later arrested for reckless driving in a Traffic Court in Machakos Town. At the time of the accident, it was however not clear who owned the vehicle, with some unconfirmed sources indicating that Mr. Kilonzo had recently bought the vehicle from its previous owners. After the burial of Master Ndirangu, his only surviving sister, 17 year-old Serah Njeri, has approached you, a renowned advocate seeking your advice on a number of issues relating to her intention to sue for the death of her brother. Citing relevant provisions of the law together with appropriate case law, advise Serah on the following issues;

- a) Given that she ordinarily stays in Nairobi, can she institute the suit in Milimani Commercial Courts, Nairobi, for her own convenience? **(4 marks)**

b) Who is/are the appropriate defendant(s) in the intended suit? **(3 marks)**

c) How can Serah identify the appropriate defendant(s) in (b) above? **(3 marks)**

d) Serah discloses to you that she does not trust all her other living relatives because she suspects they are the ones who have had a hand in the successive deaths of her parents and all her siblings. She therefore insists she is keen to institute the intended suit in her own name and capacity. Advise her on the correct legal position **(4 marks)**

e) Serah has also insisted that she does not trust most courts which she hears are too full of corrupt practices with reports of judicial officers being heavily compromised. She tells you that she only has confidence in the Supreme Court which is headed by a female Chief Justice, the Hon Lady Justice Martha Koome, whom she believes would be fair, firm and empathetic to her cause. She therefore seeks to have the intended suit filed directly in the Supreme Court. Advise her whether her intentions are legally feasible assuming that deaths arising from fatal accidents attract damages of up to Kshs 5 million, taking note to explain to her which court has jurisdiction in her intended suit **(6 marks)**

f) Explain to Serah the hierarchy of courts in Kenya and how the respective jurisdictions of these courts would be invoked in appropriate civil cases **(10 marks)**

QUESTION TWO

The principle of Res Judicata, as laid out under Section 7 of the Civil Procedure Act, Chapter 21 Laws of Kenya, serves a very useful purpose in Civil Procedure and Practice. Applying relevant case law, explain the clear conditions which have to be satisfied before a plea of res judicata can be upheld by court **(20 marks)**

QUESTION THREE

Citing the appropriate provisions of the law and applying relevant case law, identify and explain the three stages involved in the examination of a witness during a civil trial

(20 marks)

QUESTION FOUR

a) Citing relevant provisions of the law and appropriate case law, distinguish between Appeals and Reviews (10 marks)

b) Discuss the sources of civil procedure law in Kenya (10 marks)

QUESTION FIVE

Discuss the extent to which Covid-19 has affected Civil Procedure and Practice in Kenya, taking note to highlight any positive lessons learned as well as any other possible areas that may still require improvement for a more efficient practice of law during this 21st century (20 marks)

END