



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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SPECIAL/SUPPLEMENTARY EXAMINATION

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MAY – AUGUST 2021

Ext 1022/23/25

FACULTY OF LAW

REGULAR PROGRAMME

CLS 221: LAW OF EVIDENCE II

Date: AUGUST 2021

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any other TWO Questions

QUESTION 1.

Madiba is a budding 23year old Kenyan male who has successfully won a green card and is elated to finally travel to America which he considers to be a turning point in his life. He hopes to join the US Marines and settle there for good. He leaves Kenya hurriedly on the 23rd of July 1992and keeps communication lives open with various family members and more particularly with Nana with whom he has twin baby boys. However he stops communicating around the month of September 1994. All efforts to trace him are futile, nobody has seen him at the barracks nor at the University where he has enrolled for a law degree. His emails remain unread and his landline is actually dead.. This new turn of events forces Nana into depression since she cannot fend for the now school going babies. One thing leads to another and she decides to give in to Madiba younger brother Kwame who says he is ready to marry her and take care of the twins. They soon get married and are blessed with three other children. Their lives are suddenly thrown into panic after they receive court summons through the area chief asking them to appear before a court in NAIROBI on charges of child theft and also to submit the twins now aged 15 years for DNA testing to ascertain their paternity. Madiba

has now resurfaced and is the complainant In the matter. You have been approached by Mr & Mrs Kwame who seek your opinion on the aforesaid legal issues. Apply appropriate case law and statute to give them a viable response.

(a) Pin point the Evidentiary issues arising on the face of the record. (5 Marks)

(b) Elaborate on the provisions of Section 118 KENYA EVIDENCE ACT regarding a person who has not been heard from for a period of 7 or more years by people who ought to have heard from him/her but have not. (12 Marks)

(c) How will Nanas decision to get married to Kwame affect the upcoming legal proceedings (6 Marks)

(d) Apply Presumption of Legitimacy to advice Kwame on the legal status of his children with Nana. (7 Marks)

Q. 2. "The Competence and Compellability of witnesses within the greater Eastern Africa Regional Courts has never been in dispute. Indeed all witnesses are competent..... Discuss this statement in light of the following:

(i) The evidence of a co- accused (10 Marks)

(ii) The evidence of an accomplice (10 Marks)

Q. 3. Write short notes on ANY FOUR (4) of the following.

(a) Re- examination of witnesses (5 Marks)

(b) Similar Fact Evidence (5 Marks)

(c) Corroboration of Police Dogs (5Marks)

(d) Age, health and emotional state of a witness (5 Marks)

(e) Facts judicially noticed (5 Marks)

(f) Confessions (5 Marks)

Q. 4. In a recent high profile trial held at High Court of Malengo, a copy of a DNA report from an international private clinic is sought be produced as an exhibit by the Prosecution side. The accused is charged with the offence of rape and also that of killing one Carol a 6th year medical student at University of Malengo. The mandatory

sentence for both counts if convicted is death by hanging. The lead Counsel from the defence team is however adamant that the said document ought to have emanated from the MALENGO GOVERNMENT CHEMIST for it to see the light of day since the photographs from the scene marked as exhibit 68- 95 together with the post-mortem report marked exhibit 113 all emanate from state agencies. The whole city is keen to hear the outcome of this particular trial as the accused doubles up as an upcoming area MP in the coming elections who seems to have an extraordinarily large following.

(i) Table your opinion in point form regarding whether or not the document aforementioned should be admitted in evidence. (7 Marks)

(ii) If your answer to (i) above is in the affirmative, what will be the state of the exhibits marked 68-95 and 113 . If in the negative please give plausible reasons backed by case law and or statute. (7 Marks)

(iii) Discuss the role played by public and private documents in such high profile cases whose possibility of several appeals is possible. (6 Marks)

Q. 5. The general rule under section 63 KENYA EVIDENCE ACT CAP 80 is that “ HEARSAY EVIDENCE IS NOT ADMISSIBLE” be it vide express or implied assertions in any court and the rationale for this is well understood due to the absurdities it causes except in eleven (11) unique circumstances. Pin – point five (5) and validate your answer to this question by application of case law. A response devoid of precedent will not be marked. **TOTAL 20 MARKS**

END