



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A

MAIN EXAMINATION

JANUARY – APRIL 2014 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 207: CIVIL PROCEDURE II

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Date: APRIL 2014

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

- Q1. a) Citing relevant rules and case law, discuss the various steps to be taken before the trial of a civil suit. **(15 marks)**
- b) With the aid of case law, discuss the essential elements of a judgment. **(10 marks)**
- c) Discuss the various effective ways of cross examining an expert witness. **(5 marks)**
- Q2. Motema Pembe Orchestra band produced a song titled “Fundamentoos” four months ago. It has dominated the air waves as a great hit. The sales are incredibly high and spreading across the East African region. Music pirates incorporated in River Road, Nairobi have copied that song and are selling it on recorded CDs and cheap audio cassettes. If left unchecked, the continued selling of these cheap and offending gadgets will ruin the original producers of the song. Alarmed by this turn of events, Motema Pembe orchestra Band come and instruct you to put an end to the piracy of their song, and remove the offending CDs and audio cassettes still stocked in the stores of music pirates incorporated, using the judicial process. You have filed a suit to address these concerns and to obtain the

desired remedies. This suit will take time to be decided. In the meantime your client's interest will continue to be in grave jeopardy.

Required:

Discuss the protective measure you will ask the court to take as the trial is awaited, outlining governing principles. **(20 marks)**

- Q3. At the conclusion of the hearing of a civil suit in which Kazushi was the plaintiff claiming Ksh. 6,000,000 against the defendant John Matatizo, the plaintiff prevailed, and the sum claimed was awarded as prayed in the plaint. Dissatisfied by this decision, Matatizo wishes to appeal against it. The decision was of the High Court of Kenya at Kakamega. Matatizo approaches the law firm of Messrs Wakili Shupavu & Co. Advocates and gives instruction to file an appeal to the court of Appeal, to seek the reversal of the decision of the High Court of Kenya. Your senior Advocate instructs you to prepare for his consideration, a brief as to what is required to file an appeal to the court of Appeal, and what to file in that court.

Required:

Explain the procedure and the documents required in instituting the civil appeal. **(20 marks)**

- Q4. Discuss the principles applicable in an application for review of a judgment or ruling of the court, supporting your answer with relevant rules and case law. **(20 marks)**
- Q5. Discuss the objectives and the type of questions permissible in each of the following processes in a civil trial.
- a) Examination – in – chief. **(7 marks)**
 - b) Cross – examination **(7 marks)**
 - c) Re-examination **(6 marks)**

END