



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A MAIN EXAMINATION

AUGUST – DECEMBER 2018 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 202: EVIDENCE I

P.O. Box 62157
00200 Nairobi - KENYA
Telephone: 891601-6
Fax: 254-20-891084
E-mail: academics@cuea.edu

Date: DECEMBER 2018

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

- Q1. Joan resides at Galleria in a flat with several residential units within Posh estate of Tajiri. On the night of 10th and 11th October 2018 a public holiday, Joan while sleeping in her house she was awakened by a commotion in Maurine's house next door. Amid the commotion Maurine's voice is heard saying stop why are you doing this to me? it is followed by shooting. Subsequently, Joan heard Maurine's voice shout 'I am dying, Patrick, why have you done this to me. Everything goes silent until the following morning when Joan wakes up with the bad news that Maurine died the previous night and that the cause of the death was strangulation and shooting. The neighbors gathered around the house and were discussing in low tones about the state of insecurity in the Tajiri area. Joan hears a gentleman by the name Albert tell some residents that Maurine was last seen drinking with her ex-boyfriend Patrick, that they were trying to make amends. That recently Maurine had joined one of the top paying companies in town, and so she was heard telling the ex-boyfriend to drink to his feel money is not a problem. That the two were in company of Haraka Undertaker. Further, that Maurine kept telling Patrick that she had been paid and the kind of money she received could not be consumed, even if it was to be eaten by their children and great grandchildren without working! It is further rumored that the cause of their differences is that the two were involved in a love triangle. Joan is a witness in the subsequent case against a suspect by the name Haraka Undertaker. Discuss the admissibility of each of the above statements of facts that Joan intends to tell the police. **(30 marks)**
- Q2. 'In all countries where common wealth country holds sway, it is unnecessary to prove by evidence all facts necessary to show substantive rights and

liabilities.....’

Discuss the above statement in light of the Kenyan law of evidence

(20 marks)

Q3. Jeska Brown Fatima is a wife to Alishabaab Mdosi. The husband has been arrested by the Kenyan Anti Terrorism police unit in connection with the latest terror attack on Jamii Wadosi village. She is required to testify against the husband. With the aid of case law and provisions of the law, advise the parties herein on their duties and obligations based on the principle of privilege under the law of evidence. **(20marks)**

Q4. ‘Where one set of facts has been proved, on the basis of this prove, the Courts are empowered to presume the other set of facts.’ To be in existence or true.

Citing relevant case law and provision of the law discuss the above principle of evidence law in Kenya. **(20 marks)**

Q5. In light of accused person’s right to remain silent, Critically, examine the judge’s obiter in R vs Priscilla Kanario&4 others (2008) eKLR, ‘..... that it is what I have stated regarding the burden of proof created under sec 111 of the Evidence Act that there must be some form of rebuttal by the suspect regarding the charges laid against him...’ **(20 marks)**

END