



# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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

AUGUST – DECEMBER 2018 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 203: CIVIL PROCEDURE AND PRACTICE

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Date: DECEMBER 2018

Duration: 2 Hours

**INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions**

**Marks will be awarded for effective use of case law and the Civil Procedure Act.**

**You may use a clean copy of the Civil Procedure Act**

- Q1. a) Discuss the philosophy, purpose and object of our Civil Procedure Law  
(6 marks)
- b) Nathaniel is a law student at the CUEA Faculty of Law. Nathaniel has forgotten what he was taught about the overriding Objective in our Civil Procedure Act. Explain to Nathaniel how the Overriding Objective gives effect to the Philosophy, purpose and object of our Civil Procedure Rules (6 Marks)
- c) After listening to the lesson on the Overriding Objective and the effect of article 159 of the Constitution of Kenya 2010,, Preston is of the opinion that there is no need to master the rules of procedure as Explain to Preston why the Overriding Objective is not to be taken as a licencee to disregard the rules of procedure (8 Marks)
- d) Loretta Marete wants to file a suit against Valery Muthoni. The suit arises out of a contract for the sale of goods. The value of the goods is Ksh 49,999/=. Loretta Lives in Machakos. Valery lives in Nairobi. The goods were sold in Mombasa and delivered to Linda's shop in Kiambu. The contract was drafted signed and executed in Thika. Draft a Complaint on behalf of Loretta (10 Marks)

Q2. a) Flora has asked you about the different types of defenses that can be filed.  
Cuea/ACD/EXM/AUGUST – DECEMBER 2018/LAWPage 1

Help Flora distinguish between five different types of defenses **(10 Marks)**

- b) Refer to the narrative I Question 1(d). Linda has instructed you to file a defence. She denies the claim on the basis that she has paid for the goods. As an alternative defence Linda claims she also paid Loretta for Ksh 30,000/= on account of moneys paid for some other goods purchased but not delivered and would want that amount to be applied in settling Loretta's Claim. Draft the defence **(10 Marks)**

Q3. Refer to the narrative I Question 1(d) and 2(b). Linda was served with summons to enter appearance. The summons was turned over to her advocates who failed to enter appearance within the time prescribed in the summons. Consequently, a judgement was entered in default of appearance and defence. The advocates plead that the failure to enter appearance was due to an oversight on the part of the advocate assigned to prepare and file the appearance and defence.

- a) Explain to the Linda what type of judgement can be entered against the her in the circumstances of such a case **(2 marks)**
- b) Explain to the Linda what remedy she has in law to deal with the default judgement given that she is still keen to defend the case. **(3 marks)**
- c) Draft the appropriate application (**without an accompanying affidavit**) that the Linda's advocates can file to be given an opportunity to enter appearance and file defence out of time **(15 Marks)**

Q4. Refer to the narrative I Question 1(d) and 2(b). Linda's advocates have file a defence. Loretta is unhappy with the defence filed. Loretta says that no payment has been made as alleged by Linda. He also argues that the allegation she was paid Ksh 30,000 by Linda is false, misleading as no such money was paid to her. She wants the defence filed struck out.

- a) Prepare an appropriate application to strike out the defence (**without the accompanying affidavit**) **(10 Marks)**
- b) Discuss the principles the court will use in deciding whether or not to strike out the defence **(10 Marks)**

Q5. a) List the four common law rules of pleadings **(4 Marks)**

b) Fridah would like to file an application for an interlocutory injunction. Explain to Fridah the principles followed by the courts in granting an order of interlocutory injunction. Cite a case that set those principles **(4 Marks)**

- c) Write short notes on **EITHER** the Settlement Conference **OR** Case Conference **OR** Trial Conference under Order 11 under the following sub-headings
- i) Purpose **(5 Marks)**
  - ii) Timelines **(2Marks)**
  - iii) Responsibility or duties of the parties and the court **(3 Marks)**
  - iv) Output **(2 Marks)**

**\*END\***