



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

AND

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAM

JULY- AUGUST 2017

**RLLB 208: LAW OF EVIDENCE II**

**Examiner:** Caroline Lichuma

**INSTRUCTIONS**

1. This is the final examination in Law of Evidence II. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Please answer **ALL THREE QUESTIONS**.
3. This examination has 6 pages, including this one.
4. Time allocated for this examination is **THREE** (3) hours. You must stop writing when time is called.
5. An extra **15 MINUTES** will be given for reading through the questions.
6. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
7. This is a **CLOSED BOOK** examination. This means you are not permitted to bring ANY hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
8. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

### **QUESTION ONE (30 Marks)**

Esther Wangare and her brother Erastus Njiri are walking home from their secondary school late at night. They are attacked. Erastus Njiri, the brother is seriously injured and his sister Esther is beaten and raped. Esther tried to defend herself and scratched the attacker in the process. Before the incident Esther Wangare had received several threats from an unknown person. One of the last threats was a handwritten note which detailed exactly how the writer of the note intended to beat and rape Esther Wangare in order to teach her a lesson for telling the school administration that some students were bringing drugs onto the school premises.

Erastus Njiri and Esther Wangare report the attack immediately, and both give detailed statements to the police. Blood, semen and skin scrapings are recovered from Esther Wangare. They give a description of the attacker to the police as a young male of about 20 years old, wearing a blue jersey and a pair of jeans. Esther Wangare reports a distinctive scar on his belly. Gideon Kagwe is picked up in the vicinity of the attack by the police. He matches the description given by Esther Wangare and Erastus Njiri, and is also a student at the same secondary school. Esther and Erastus identify Gideon as the attacker at an identification parade held at Langata Police Station.

Gideon Kagwe has a previous record for assault and rape. He is charged with assault and rape. After the identification parade, Gideon is kept in custody. He makes a full oral confession to the police officer who had apprehended him on the night in question. He did not have the benefit of the advice of a lawyer.

- a) The prosecution wish to bring an expert to testify about the blood, semen and skin scrapings found on Esther Wangare. Analyse the requirements which must be met for such evidence to be admissible and elaborate upon whether the prosecution must disclose its intention before the trial? **(4 Marks)**
  
- b) Gideon Kagwe intends to argue that he was forced to provide a blood sample against his will. Critically explain whether this evidence will be admissible or not **(6 Marks)**

- c) With reference to the Evidence (Out of Court Confession) Rules, 2009, critically explain any **SIX** conditions that must be met for Gideon Kagwe's confession to be admissible? **(12 Marks)**
- d) Assume it is established that some of the prosecution's evidence was obtained in violation of Gideon Kagwe's constitutional rights to dignity and privacy. Expound upon the evidentiary rules that would support exclusion of this evidence. **(2 Marks)**
- e) The prosecution plan to use the evidence of the handwritten threat to Esther Wangare as further evidence against Gideon Kagwe. Critically analyze the different ways through which handwriting evidence may be proven in a court of law. **(6 Marks)**

**QUESTION TWO (20 Marks)**

- a) Timothy Musau was convicted of Robbery with Violence contrary to the Penal Code in the Senior Resident Magistrate Court at Machakos. He intends to appeal against his conviction on the basis that his constitutional rights to privacy and legal representation were violated when a search of his residential property was undertaken by the police without a search warrant and without his consent.

He asserts that he was not given an opportunity to consult with a lawyer. Once the stolen goods were located, the arresting officer, Inspector Peter Kyalo, promised Timothy Musau that they would charge him with the lesser offense of being in possession of stolen property if he told the police the whole story. Timothy Musau then gave Inspector Kyalo a full confession, stating that he had been part of a four man gang armed with knives and machetes that had broken into a nearby shop and stolen from the owner.

The state concedes that it would not have been able to secure the conviction of the accused without the admission into evidence of the stolen goods, and his confession as this was the only evidence linking him to the crime.

Assuming that you are the appellate judge provide a well-reasoned analysis as to whether the evidence of the stolen goods and the confession should be admissible in the proceedings against Timothy Musau. **(12 Marks)**

- b) Janet Masika has been arrested and is set to stand trial for infanticide contrary to section 210 of the Penal Code. The defense intends to call Dr. Getrude Muthoni to argue for the acquittal of Janet Masika on the ground that the infant in question suffered from Sudden Infant Death Syndrome, (SIDS). Based On years of research, Dr. Gertrude Muthoni intends to posit the following:

“Sudden infant death syndrome (SIDS), also known as cot death or crib death, is the sudden unexplained death of a child less than one year of age. It requires that the death remains unexplained even after a thorough autopsy and detailed death scene investigation. SIDS usually occurs during sleep. Typically death occurs between the hours of 00:00 and 09:00. There is usually no evidence of struggle and no noise produced.

The exact cause of SIDS is unknown. The requirement of a combination of factors including a specific underlying susceptibility, a specific time in development, and an environmental stressor has been proposed. These environmental stressors may include sleeping on the stomach or side, overheating, and exposure to cigarette smoke.

Because of the difficulty in SIDS cases the evidence tendered by the prosecution is not sufficient to support an action by the prosecution against Janet Masika for the offense of infanticide.”

- i. What is the general rule on the admissibility of this kind of evidence?(**2 Marks**)
- ii. Critically evaluate whether the court will accept Dr. Getrude’s testimony or not  
( **3 Marks**)

- iii. Succinctly analyze the requirements that will have to be met before the evidence proffered by Dr. Getrude is accepted by the court in the resolution of the dispute?

**(3 Marks)**

**QUESTION THREE (20 Marks)**

- a) The police, acting on a tip from an informant, have been observing Rogers Mwakazi's house for a period of over two weeks. They suspect that he has been supplying prohibited drugs and narcotic substances contrary to the Psychotropic Drugs and Narcotic Substances Act. They used a neighbor's house as an observation post.

Rogers Mwakazi has now been arrested for possession and supply of prohibited drugs. When the police went into Rogers Mwakazi's house to effect the arrest they recovered 15 kilos of cocaine which they intend to produce in court as an exhibit.

Rogers Mwakazi has retained you as his counsel. He wants you to argue that the cocaine is not admissible in evidence until the police disclose the source and the method used to obtain the information which they relied upon in order to identify him as a suspect. Advice your client on the legal position with regards to the cocaine and its admissibility in the proceedings.

**(8 Marks)**

- b) Esso Oil Company is one of the most prominent petrol companies in Kenya. Over the past couple of years mismanagement and low global petrol prices have conspired to drive the market value of Esso Oil Company shares downwards. In July 2016 the Government of Kenya decided to intervene in order to offer financial assistance. After a series of high level closed door negotiations attended by the Cabinet Secretaries for the National Treasury as well as the Energy and Gas Sector, and other high ranking government officials, it was agreed that the Central Bank of Kenya would buy 60% of the total shareholding of Esso Oil Company at Sh. 5 per share, rather than at the then prevailing market price of Sh. 12 per share.

This influx of capital, together with better management as well as improved global oil prices means that the market value of Esso Oil Company shares is steadily increasing.

The management of Esso Oil Company has retained you as their counsel. They want to institute proceedings against the government seeking to set aside the sale agreement. An application to the Cabinet Secretary for the National Treasury seeking disclosure of pertinent records of the high level meetings resulted in a certification that he had personally inspected the documents and regarded them as belonging to a class of documents the production of which would be injurious to the performance of government functions.

Advise Esso Oil Company on the following issues:

- i. What is the difference between a class and a content classification in withholding of documents such as the ones sought by Esso Oil Company above?(**6 Marks**)
- ii. If the ministerial certificate by the Cabinet Secretary above is challenged in a court critically evaluate the likely outcome and whether disclosure of the documents will be compelled or not **(6 Marks)**

\*\*\*\*\* **ALL THE BEST** \*\*\*\*\*