

Uganda Martyrs University Nkozi

FACULTY OF LAW

END OF SEMESTER EXAMINATIONS

**COURSE UNIT
LAW OF EVIDENCE I**

**COURSE CODE
LLB 2104**

**LEVEL
DEGREE**

**EXAMINATION DATE
19TH JANUARY 2022**

**STUDY SESSION
LLB 2**

**DURATION
03 Hrs 30 Mins**

INSTRUCTIONS:

1. Hiring of Machineries and Consultation with practitioners or any other personnel is illegal and will lead to automatic disqualification of the Candidate.

2. This is an **OPEN BOOK** Examination.
3. Read the **QUESTIONS** carefully and the **INSTRUCTIONS** on the **EXAM SCRIPT** before attempting to answer any question.
4. Attempt Four **(4) QUESTIONS** in all and always start answering each question on a fresh page. **Questions No. 1 is compulsory.**
5. Plagiarism will be highly penalized. Pay attention to grammatical issues and proper punctuation.
6. Your work **MUST** be referenced and with all references e.g. cases, textbooks in bold, capitalized and or highlited/ underlined).
7. All cases must have their full citations and the text books reference indicative of the name of Author, Year and edition of publication as well as the Full Book Title and Page of reference)
8. Ensure that you start each number on a fresh page.
9. Your index Number should clearly be highlited on all pages of your work and your work fully referenced.
10. Mobile Phones or any other form of electronic gadgets are prohibited into the examination room(s). It does not matter whether the said mobile phones and or electronic gadgets are in working modes or not.
11. In case of use of more than one booklet, please ensure that additional booklets(s) is/are attached to the first one and is/are properly labelled.
12. Uganda Martyrs University Nkozi examinations are conducted in accordance with the *Uganda Martyrs University Senate General Rules & Regulations and any other Applicable University Policies and National Laws Relating to Conduct of Examinations*. Breach of the above instructions, irregularity, or any other contravention of the examination regulations will lead to disqualification and/ or subsequent disciplinary action by Senate.

QUESTION 1:

On 4th January 2022 at about 2200hrs Ssembuzi Kagwa, Mutwe Munene, Nasolo Ssesolo and Kabazi Atema Ayawudde students at Kayisa University were walking back to Magamaga Hostel after a group discussion in preparation for the final exams, when they were intercepted. They were attacked by a group of four young men belonging to a group commonly known as "Kabazi squad". The leader of the group called "Kaso" asked them to hand over their mobile phones or he would slit their throats. The students handed in their mobile phones including: a Nokia S7 belonging to Munene, Samsung Galaxy Note 8 belonging to Kagwa, Iphone 13 belonging to Nasolo and Huawei belonging to Atema. Kagwa moved backwards in an attempt to run and secure the laptop he was carrying which he borrowed from his roommate called Banzise. Kagwa didn't want the laptop to be taken by the Kabazi Squad. However, "Kaso" ran faster than Kagwa and caught up with him. Kaso stabbed Kagwa in the shoulder and took the laptop away from him. Mutwe rushed to assist his friend Kagwa but was also stabbed in the stomach by "Kanyama" of the Kabazi Squad. Kanyama and Kaso searched the pockets of Kagwa and Mutwe for money but only found UGX 2,000/- on Mutwe and UGX 500/- coin on Kagwa which they took. "Sassi" and "Kaganga" also of the Kabazi Squad ran after Nasolo and Ayawudde who were trying to escape from the scene. Sassi winked at Black and the two started to strip Nasolo and Ayawudde of their clothing. Nasolo and Ayawudde tried to defend themselves: they screamed, kicked, bit, fought and scratched their attackers. The attack was witnessed by 2 security guards, Mugwagwa Bonny and Awunya Solomon who were hiding in the vicinity. Mugwagwa recorded the incident on his cell phone. As he was recording he got very close to a car, a yellow Mercedes Benz Formatic whose alarm went on with a sound of a siren and the kabazi squad members all ran away. Kagwa, Mutwe, Nasolo and Ayawudde reported the incident at Nkozi Police Station and gave detailed statements to the Police. Nasolo and Ayawudde were examined by a police surgeon, Dr Mukebezi Kebezi who observed blood and skin scrapings on both of them and noted indecent assault on each of their medical forms. He also looked at Kagwa and Mutwe's stab wounds and referred them to Nkozi Hospital. Kagwa and Mutwe, Nasolo and Ayawudde all described the Kabazi Squad as males between the age of 25-28 who were all wearing red t-shirts and torn jeans. Ayawudde reported a descriptive tattoo on Sassi. The Kabazi squad was picked up in the vicinity of the attack by the police and matched the description given by the students and the security guards who were interviewed after the incident. The Kabazi

squad has a reputation and criminal record of theft and robbery in that village. Each of the men made oral confessions to the police. Kaso and Sassi confessed to the Assistant Inspector of Police Mutumbi Gutambula while Kanyama and Kaganga confessed to the OC/CID Lugambo Lulungi. They did not have the benefit of the advice of lawyers.

- a. The men argue in court that it was a case of mistaken identity as it was late at night and that they were not at the specific scene at the time of the crime. They say that they have reformed from their past and are now "born again" and it was just a coincidence that they were found in the vicinity. Discuss the evidence required by the men in such circumstances and its implications for the prosecution's case.
- b. In what circumstances will the men's confessions be admissible in court.
- c. The prosecution wish to bring an expert to testify about the blood, skin scrapings and all injuries sustained by all the students. Discuss the requirements that must be met for such evidence to be admissible.
- d. The men argue that their blood samples and DNA were taken against their will and that this violates their privilege to self-incrimination. Is there any merit in this argument?
- e. Assume it is established that some of the prosecution's evidence was obtained in violation of the men's constitutional rights particularly freedom from torture and ill treatment, the right to privacy and the right to dignity. Would this evidence be admissible? **(40 Marks)**

QUESTION 2

"Every rule of procedure should have reference to one of four ends: Rectitude of decision, Celerity, Cheapness and Freedom from unnecessary impediments. Rectitude of the decision is the direct object, the three others are collateral objects. The point is to avoid the unnecessary inconvenience, known under the names of delays, vexation and expense; it being understood that by these are meant delays, vexations and expense which are unnecessary or in which the bad preponderates; that is in which, after balancing their effects, the bad is found to outweigh the good."

Per Jeremy Bentham, A Treatise on Judicial Evidence, Book I, Ch.II, P.2 (London, Messrs. Baldwin, Cradock and Joy, 1825).

To what extent does the law of evidence in Uganda reflect the values? (20 Marks)

QUESTION 3

"The questions to be asked before admission of Canine Evidence are many."

Does the odor of the suspect persist in an area after the original source is no longer present? And for how long can it persist? Can the dog distinguish between the different odors even if one smell over powers another and trace a specific scent to its source? Can a trained dog when taken to the scene of recent crime quickly track the suspect from the scene? Can the dog locate a suspect from the scene? Can the dog locate a suspect using an object or piece of cloth known to have belonged to or been in touch with the suspect? How does the dog handler communicate with the dog? How powerful is the sense of smell of a sniffer dog. Has it got a superior sense that can be relied on in criminal investigations? Because of the many questions, evidence from sniffer dogs have been both rejected and admitted depending on the circumstances of the case. But one fact which is clear is that, such evidence when admitted must be corroborated by some other evidence which gives strength to the canine evidence as presented through its handler or trainer. The prosecution must provide answers to the above questions in the affirmative before admission of police dog evidence

Per Justice Duncan Gaswaga in Uganda vs. Muheirwe Chris and Kyomugisha Jovia Mbarara HCT-05-CR-CV-0011-2012

Explain the guidelines for admissibility of such evidence and its cogency. (20 Marks)

QUESTION 4

Is that kind of evidence, extrinsic in nature, that very piece has to be clearly linked to a chain, if at all any of the links breaks, the whole evidence breaks, that no one of the links would raise a reasonable conviction or more than a mere suspicion, but the three taken together may create a conclusion of guilt with as much certainty as human affairs

can require or admit. All I have are bits of circumstances but somehow try to show the culpability of Mbuzi Ekutudde ; his mobile phone containing a text message to the deceased, a blood stained shirt found in his house, Nalumansi who was Mbuzi's wife who was living with the deceased, but I am so scared about him being set free since no one witness can give direct evidence to court of seeing Mbuzi committing the offence. Mr Kabaliga a prosecutor with the Directorate of Public Prosecution is desirous of achieving a conviction against Mbuzi Ekutudde in his upcoming criminal session scheduled before the high court at Kampala and he has fixed a meeting with you and needs your advice.

Advise him on the admissibility of the piece of Evidence he has and whether he can obtain a conviction. (20 Marks)

QUESTION 5

"Character Evidence is based on probability and thus is no evidence at all" as per Musiru Kukyiringa an LLB 3 Student at UMU Flaw. Citing proper authorities, discuss the accuracy of this statement and explain the principles underlying the law on Character Evidence in Uganda. (20 Marks)

QUESTION 6

Evaluate the relevance and admissibility of the pieces of evidence in the captioned proceedings below;

Kachungwa Kato:

I am 12 years Old. On the night of 14th December 2021 about 2100hrs my parents were watching news on "NBS Live @9" I was sleeping in my parents' house when I heard a loud bang on the door. I heard my mother scream and my father plead for mercy. I heard the other man ask my father where he had put the money and my father replied that he didn't have it. I immediately recognized his voice and the sound of broken glass. The house went silent.

Kaguwa Beredene

I am 23 years. The deceased Butwa and his wife are my neighbors. I know their son Kachungwa Kato. I also know Muguwa Muwanvu. He has been dealing in coffee with

Lubakyoya. On the afternoon of 14th December 2021, I heard Lubakyoya quarrel with Muguwa Muwanvu. He told him that "I will be back for you."

Ssentula Kapale

I am 53years old and chairperson of Musoota Village. We heard some loud sounds from the direction of Lubakyoya's house on the night of 14th December 2021. I was among the first people at the scene. Lubakyoya was bleeding heavily but was still alive. He pointed repeatedly at his photograph with Muguwa Muwanvu. I was able to follow the directions of his finger to this photograph. His wife was already dead. I asked him again who had done this to him and he again pointed at the photograph.

Ndega Ondabe

I am 34years old and a resident of Musoota. On 14th December 2021, I saw Muguwa with Binyo Bingi, a serving UPDF soldier. They went to Jokers Pub which is opposite my house but I don't know what time they left. Muguwa had one time mentioned to me that he would blow up his cousin's house since he had began cheating him in their joint coffee business. I was surprised when I heard from the Police that two grenades went off in Lubakyoya's house.

Fatima Eyetega

I am 42 years old. Lubakyoya is my secret lover. He always comes to me every night since my husband left for kyeyo 2 years ago. On 14th December 2021, he came back at around 2300hrs in the night. He was drunk. He came with a friend who had a rain coat. They then left leaving the rain coat behind. It had some glass particles. The next time I saw him was yesterday at the police station.

AIP Kabwakatono

I am a ballistics expert attached to Musoota Police Post. I examined the wreckage at the late Lubakyoya's home and found that two stick grenades had exploded in the sitting room shattering glass windows, a glass table and a television set. Two people were injured and by the time I reached the scene, they both appeared to be dead. The grenades that exploded are normally used by the army in operations. They must have been procured from the army. **(20 Marks)**

THE ENDSUCCESS