

Uganda Martyrs University Nkozi

FACULTY OF LAW

END OF SEMESTER EXAMINATIONS

PAPER
LAW OF EVIDENCE I

DURATION
03Hrs 30Mins

SUBMISSION DATE
26TH MAY 2023 : 0930Hrs – 1300Hrs

STUDY SESSION
LLB II

INSTRUCTIONS:

1. Hiring of Mercenaries and Consultation with practitioners or any other personnel is illegal and will lead to automatic disqualification of the Candidate.
2. This is a **PARTIALLY OPEN BOOK AND TOTALLY CLOSED MOUTH EXAMINATION**. Candidates are ONLY allowed access to clean copies of statutes and PERSONAL handwritten notes.
3. Read the **QUESTIONS** carefully and the **INSTRUCTIONS** on the EXAM SCRIPT before attempting to answer any question.
4. Attempt **FOUR (04) QUESTIONS** in all and always start answering each question on a fresh page. Questions No. 1 is compulsory.
5. Pay attention to grammatical aspects and proper punctuation.
6. Your work **MUST** be referenced and with all references e.g. cases, textbooks in bold, capitalized and underlined). The references (cases, statutory provisions, textbooks, etc) used in a particular number **MUST** be listed at the end of each number.
7. Your index Number should clearly be highlighted on all pages of your work and your work fully referenced.
8. No exit/ break will be allowed of any candidate before expiry of a minimum of 1hour and 30 Minutes from the commencement of the examination.

9. Write clearly in **BLUE** or **BLACK** ink and always cite relevant examples and cases where applicable.
10. All rules, laws, guidelines and regulations relating to conduct of examinations in Uganda Martyrs University Nkozi and Higher Institutions of learning **SHALL** apply.

QUESTION ONE

- 1 On the 11th of January 2023, at about 2200hrs, **Kasolo**, a local musician was travelling back to his home in Kyamulibwa when he was stopped by three men who ordered him to get out of the car and handover the keys. When **Kasolo** resisted, he was shot three times in the head in full view of his two sons, **Kapale** and **Mweso** aged 8 and 13 yrs respectively. The assailants then ran away without taking anything.
- 6 On the following day after the tip off by **Muwanga** who stays in the vicinity of the failed carjacking, the police stormed a garage at **Kasokoso** where they recovered a gun and several bunches of keys. A few hours later, **Kidomole**, one of the mechanics in the garage was arrested by Police and on the way to Kyamulibwa Police Station, after being kicked and beaten by the Counter Terrorism officers who helped in the arrest, he admitted having participated in the failed carjacking but said he was unarmed and had nothing to do with the killing. He also later stated to **IP Kagato** that it was his friends **Kabode** and **Kabazi** who carried the guns which they later hid at **Kakaungulu's** home in Mpigi.
- 14 Upon reaching **Kakungulu's** home, a sub-machine gun and an AK47 rifle were obtained and examined by Corporal Onesmus who confirmed that it was the murder weapon. Onesmus has worked with the Police for three years two of which he worked as a traffic officer. He however, recently returned from Egypt where he attended a three weeks course in ballistics.
- 19 **Kabode** and **Kabazi** have also been arrested and brought to the police station. The deceased's son **Kapale** states that he remembers one of the assailants who had a tattoo of a dragon on the back of his neck. Indeed, **Kabode** has the tattoo except that it is on the right side of his neck. **Kapale** however states that since it was at night and he was under fear, he was not able to identify the other assailant. On his part, **Munyazi** states that he did not recognize anyone as he had hidden himself between the driver's seat and the back seat. He however remembers hearing the sound of three bullets.
- 26 **Kabanda**, **Kasolo's** manager states that the deceased had a long-standing dispute over a music recording deal that **Kasolo** took 4 years ago from another local musician, **Kagodo**. It also transpires that **Kagodo** and **Kakungulu**, one of the accused persons are half brothers who share the same mother.
- 30 **Kagodo** was on 20th February arrested at the home of **Kabwa**, a witch doctor in Kakamenga Village, Rakai District. **Kabwa** tipped off the police that a popular musician had gone to seek medicine to exorcise the spirits of another local musician who had recently died. At the time of his arrest, **Kagodo** was found half naked, standing on a crocodile skin behind **Kabwa's** house with a photograph of the late **Kasolo** behind which were written the words, "I have finished you. But let the spirits be kind to me. Let

your fame be mine from today onwards." Kagodo states that at the time of Kasolo's death, he was conducting a music show in Juba and got the bad news of Kasolo's death on his return.

With the help of relevant authorities, discuss the value of the above pieces of evidence. (40 Marks)

QUESTION TWO

"Where an accused person objects to the admissibility of the confession on grounds that it was not made voluntarily, the court must hold a trial within a trial to determine if the confession was or was not caused by any violence, force, threat, inducement or promise to cause an untrue confession to be made. In such trial within a trial, as in any criminal trial, the onus of proof is on the prosecution to prove that the confession was made voluntarily." Walugembe vs. Uganda SCCA No. 39 of 2003.

With reference to authorities, clearly discuss the law and rules of recording confessions in Uganda. **(20 Marks)**

QUESTION THREE

Opinion evidence is said to be inadmissible in courts of law, though everyone is entitled to their own opinions this doesn't make them experts on the subject they base their opinions. To this end one has to prove to court that they qualify to have their opinions admitted as opinions of experts.

Discuss the grounds for admissibility of such evidence. (20 Marks)

QUESTION FOUR

His Worship Muvandimwe of Kagwensonyi Grade One Magistrate while presiding over a case involving two prominent politicians Hon Kisangwa and Hon Nabenda rejected to admit evidence their camps had recorded using mobile phones and ipad devices arguing that such evidence is not trustworthy as it can be easily manipulated to say whatever the person seeking to rely on it desires to say.

Advise on the admissibility or otherwise of electronic evidence in Uganda and the weight to be attached to electronic evidence if needed admissible. (20 Marks)

QUESTION FIVE

The questions to be asked before admission of canine evidence are many.

Does the odour 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 odours 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 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 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 (as he was then) in Uganda vs. Muheirwe Chris & Kyomugisha Jovia, Mbarara HCT-05-CR-CV-0011-2012

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

QUESTION SIX (20 Marks)

Write short notes on these below;

- a. Similar facts evidence
- b. Motive, Preparation and Conduct in evidence
- c. Hearsay evidence
- d. A confession to a person in Authority
- e. Admissibility of statements made in the ordinary course of business.

QUESTION SEVEN

Assume you have been appointed the State Attorney stationed at Nkozi Chief Magistrates Court and a Police Officer, Malwa Muyini has been sent by the officer in charge of Criminal Investigations Department to advise him on how to organize an identification parade. What would you include in your legal brief? (20 Marks)

.....WISH YOU GOOD LUCK.....