

# Uganda Martyrs University Nkozi

FACULTY OF LAW

## END OF SEMESTER EXAMINATIONS

PAPER  
LAW OF EVIDENCE II

DURATION  
03Hrs 30Mins : 1400Hrs – 1730Hrs

SUBMISSION DATE  
26<sup>TH</sup> MAY 2023

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 CLEAN COPIES OF A READING LIST AND EVIDENCE ACT CAP.6 LAWS OF UGANDA.
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. Question Seven 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. 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.
8. Your index Number should clearly be highlighted on all pages of your work and your work fully referenced.

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**

*Estoppel has been variously described as an evidential rule, which "when in consequence of some previous act or statement to which he is either a party or privy, the person is precluded from denying the existence of particular facts. It is a rule by which a party to litigation is stopped from asserting or denying a fact. It is a rule of exclusion making evidence of proof or disproof or relevant fact inadmissible."*

With reference to authorities, clearly discuss the application of the doctrine of estoppel in Uganda's law of evidence. (21.6 Marks)

### **QUESTION TWO**

*"We hold that evidence in corroboration, must be independent testimony which affects the accused by connecting or tending to connect him with the crime. In other words, it must be evidence which implicates him that is, which confirms in some material particular not only the evidence that crime has been committed, but also that the prisoner committed it. The test applicable to determine the nature and extent of the corroboration is thus the same whether the case falls within the rule of practice at common law, or within that class of offence for which corroboration is required by statute" as espoused in R vs. Baskerville [1916-17] All ER. Rep.38: Viscount Reading CJ at Page 43 and re-echoed/highlighted in Muhwezi Alex & Beinomugisha Hassan vs. Uganda Criminal Appeal No.21 of 2005 [2010] UGSC 12.*

Discuss the above statement with reference to the law on corroboration in Uganda. (21.6 Marks)

### **QUESTION THREE (21.6 Marks)**



I. Write explanatory notes on the following: -

- a. Confessions implicating a Co-Accused
- b. Presumptions
- c. Hostile and Refractory Witnesses

II. How would you prove the documents below while giving evidence in Court?

- a) Land Title for Block 1 Plot 100 at Nkozi
- b) The sign post of Uganda Martyrs University Nkozi.
- c) A Power of Attorney to sale land.

#### **QUESTION FOUR**

Citing the relevant authorities, discuss the law relating to admissibility of evidence of children of tender years and the procedure of receiving such evidence in court. (21.6 Marks)

#### **QUESTION FIVE**

*"I note that Judicial Notice is a doctrine and/or the process by which courts take cognizance of a matter which is so notorious or clearly established that there is no need for a party seeking for its recognition by court, to adduce formal evidence for its proof. A matter or practice is said to be notorious if it is "generally known and talked of, well or widely known, forming a part of common knowledge, universally recognized". Hon. Justice Prof. Lillian Tibatemwa-Ekirikubinza, JSC in Arim Felix Clive vs Stanbic Bank (U) Ltd (Civil Appeal 3 of 2015) [2016] UGSC 6.*

Critically discuss the above statement in the Ugandan context with support of statutory and case law authorities. (21.6 Marks)

#### **QUESTION SIX**

*"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person". Senkungu & 4 Ors v Mukasa (Civil Appeal 17 of 2014) [2017] UGSC 14.* With the aid of relevant authorities, discuss the above statement in relation to the law on the burden and standard of proof in both criminal and civil cases under the legal regime of evidence in Uganda. **(21.6 Marks)**

### **QUESTION SEVEN (35 Marks)**

Kabaliga Muguwa is charged with aggravated defilement of Geraldine Owe. The Police have lined up the following witnesses to prove the charge: -

- a. Geraldine Owe aged 11 years who was the victim of the defilement.
  - b. Magezi Bule aged 25 years a mental patient who saw Owe being defiled.
  - c. Lubwama Kasilu aged 20 years though is deaf, dumb and blind but "answers" the alarm which was raised.
  - d. Bizibu Kunonya the wife of Kabaliga Muguwa the accused.
  - e. Dr Ntulege Mukwasi who carried out a medical examination on Geraldine after the defilement.
- a) Critically discuss the cogency and admissibility of the pieces of evidence of the persons mentioned in (a-e) above.
  - b) Assuming you are the Senior State Attorney handling the file in question, in a legal MEMO to the DPP, clearly assess the competency and compellability of the above-mentioned persons.
  - c) Briefly discuss the law relating to admissibility (if admissible anyway) of the evidence of Geraldine Owe and Lubwama Kasilu and the procedure of receiving the same.
  - d) Suggest additional evidence pieces you would require to successfully prosecute the matter.