



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2019/2020

FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LPR 401: JURISPRUDENCE

DATE: Monday, 9th December 2019

TIME: 12.00 p.m. - 2.00 p.m.

INSTRUCTIONS:

1. Answer ALL questions
 2. Support your answer with relevant illustrations from case law, statutory provisions and any other references
 3. Your writing must be **NEAT** and **LEGIBLE**.
 4. Your answer booklet must bear your assigned **REGISTRATION NUMBER**, both on the cover and every written page therein.
 5. Do not scribble or draft answers on the inner or outer cover pages or your answer booklet.
 6. Do not write anything except your **REGISTRATION NUMBER** on this question paper.
 7. All Kenyatta university Examinations rules apply as if they were contained herein.
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QUESTION ONE

In the year 2020, the Republic of Bambuco has no written constitution, but its declaration of independence from 1970 says that Bambuco is to be established as a State based on "respect for human life and dignity, justice, fairness and due process". The society of Bambuco upholds values and customs similar to those upheld in the Kenyan society.

In April 2020, four citizens of Bambuco: Wafula, Mwikali, Njoroge and Khadija go for an exploration of a deep cave in Bambuco's mountains. Having progressed 8 kilometres into the cave, the four explorers get trapped by a landslide. Approaching starvation, they make radio contact with the rescue team. Engineers on the rescue team estimate that the rescue will take a further 10 days. After describing their situation to physicians, Wafula, Mwikali, Njoroge and Khadija are told it is unlikely that they will survive another 10 days without food. The explorers ask the physicians whether they would survive if they killed and ate one of their number. The physicians advise, reluctantly, that they would. Then the radio contact is interrupted.

INVOLVEMENT IN ANY EXAMINATION IRREGULARITY SHALL LEAD TO DISCONTINUATION

Under these circumstances, Wafula suggests to hold a lottery to determine whom of their number to kill and eat. The other explorers hesitantly agree and a lottery is held. Wafula is the lottery loser. Mwikali, Njoroge and Khadija kill Wafula and eat him.

Mwikali, Njoroge and Khadija are rescued after 12 days from Wafula's killing. The rescue operation proves extremely costly; due to the use of explosives, 3 members of the rescue team lose their lives.

After being rescued, Mwikali, Njoroge and Khadija are prosecuted for murder of Wafula. Based on section 12 of the Penal Code of the Republic of Bambuco, they are sentenced to death by the High Court of Bambuco. Section 12 reads: "Whoever shall wilfully take the life of another shall be punished by death." The Penal Code does not provide for any exception to this rule.

The convicts file a petition of error with the Bambuco Court of Appeals, where the case is assigned to a three judges bench.

- (a) Draft an amicus curiae brief for the Court of Appeals explaining the theoretical justifications for a criminal punishment and their implications for the case at issue. (9 marks)
- (b) Draft the opinions of the Court of Appeals judges whose schools of thought are based on the jurisprudential positions:
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| (1) | Judge Kamau: John Locke | (7 marks) |
| (2) | Judge Cheruto: Karl N. Llewellyn | (7 marks) |
| (3) | Judge Kwamboka: Ronald Dworkin | (7 marks) |

QUESTION TWO

One of the contributions of Professor HLA Hart to the understanding of the phenomenon known as law is to describe it as the union between primary rules and secondary rules in a legal system. One of the rules categorised as secondary rules in a legal system is what Professor HLA Hart calls the rule of recognition.

With the reference to Kenya's legal system, set out and explain the rule of recognition. (20 marks)

QUESTION THREE

The thing that most clearly differentiates the various legal feminism theories is the extent to which they regard the female body as the focal location of male oppression and female subordination.' Discuss. (20 marks)