



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2011/2012

SECOND SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LPR 203: THE LAW OF EVIDENCE II

DATE: TUESDAY, 10TH APRIL 2012

TIME: 12.00 P.M. – 2.00 P.M.

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INSTRUCTIONS:

1. Please answer **QUESTION ONE** and ANY **OTHER TWO** questions.
2. Please note that penalties accrue for failure to answer question One.
3. Support your answer with illustrations from relevant case law, statutory provisions, and any other relevant references.
4. Write neatly and legibly.
5. Your answer script must bear student registration number and serial numbers of the question you attempted to answer.

QUESTION ONE

Hilda is accused of and charged with malicious damage to property. The prosecution case is that she curved out and painted a slogan on the wall of a local factory farm, which is engaged in chicken rearing. Hilda considered that the employees of the factory treated the chickens with cruelty. There has been a spate of such desecrations and the police had set up a watch in a neighboring house and identified Hilda as the offender. She was arrested and

taken to the police station and offered advice, which she rejected. Hilda suspected that the surveillance took place and requested for identification parade to be conducted, but the police refused, saying that she was sufficiently and positively identified already. Subsequently she refused to give any evidence and answer any questions during the trial but wished to cross-examine the prosecution witness about the quality of his observations in order to contest the identification. Hilda's residence has been secretly searched, though there was a valid warrant for such a search. Upon the search the police discovered several pots of paint identical in colors to those used on the wall slogans.

The police wish to call Hilda's estranged husband Gerald as a witness. He still lives in the same house as Hilda and had made a statement to the police that Hilda came in very late on the night in question and that her hands were covered with paint.

He is called at the trial for the prosecution but refuses to give any evidence.

There is medical evidence to the effect that Hilda is in any case unfit to stand the trial because she suffers from a mental instability and the defense are considering whether to plead the same.

The defense has discovered that the police had secretly recorded a conversation held between Hilda and her sister relating to the same occurrence while in police custody.

Identify and discuss evidential issues involved.

(30MARKS)

QUESTION TWO

The English law and American Law have opposing principles on admission of improperly obtained evidence. Other jurisdictions operate on the "middle ground" between the two extremes. Discuss.

(20MARKS)

QUESTION THREE

- a) Evaluate and explain what is meant by primary and secondary evidence. Indicate the circumstances in which primary evidence must be given and those in which secondary evidence may be admitted.

(10 MARKS)

- b) In the case of Bank of Australia v. Palmer (1897) AC 540 @ 545 Lord Morris stated:

“... Parol evidence cannot be received to contradict , vary , add to or subtract from the forms of a written contract or the terms in which the parties have deliberately agreed to record any part of the contract”

Discuss.

(10MARKS)

QUESTION FOUR

With the aid of decided cases discuss the impact of evidence of character in criminal cases.

(20MARKS)

QUESTION FIVE

Write FOUR explanatory notes on:

- a) Any five Exceptions to the rule against hearsay;
(5 MARKS)
- b) Confessions and defendant's right of silence;
(5 MARKS)
- c) Exclusion of extrinsic evidence by documentary evidence;
(5 MARKS)
- d) Rejection of improperly admitted evidence;
(5 MARKS)
- e) Three main types of evidence of handwriting.
(5 MARKS)
- f) Oath, affirmation and unsworn evidence.
(5 MARKS)