



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2020/2021

FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LPR 200: CRIMINAL PROCEDURE

DATE: THURSDAY, 12TH JUNE, 2021

TIME: 9.00 A.M. - 11.00 A.M.

INSTRUCTIONS

1. ALL QUESTIONS ARE COMPULSORY
2. Note that penalties accrue for failure to answer Question One
3. Support your answer with illustrations from relevant case laws, statutory provisions and any other applicable references wherever necessary.
4. Write neatly and legibly.
5. Your answer script must bear your student's registration number.
6. Do not scribble or draft answers on the inner or outer cover pages of your answer booklet.
7. Do not write anything except your registration number on this question paper.

Kwa Njuma Estate residents have in the past two months complained to the Police and the Local Administration of rising mugging cases particularly between 7.00 p.m. - 9.30 p.m. On 15th January, 2021 at around 8:25pm, Muulite and his best friend Fuliza were walking within the estate when they were accosted by five men riding on two motorcycles and brandishing AK 47 guns. The men demanded from the two to hand over their mobile phones, wallets and a Kshs. 90,000 gold ring that Fuliza was wearing. The men then jumped on their motorcycles and drove off.

Two persons who were at the nearby shop saw the whole incident unfolding. They immediately informed three police officers who were on patrol at the estate. The two motorcycles registration numbers were also given to the officers. As the officers continued patrolling, they saw the motorcycles passing by. The officers immediately shot in the air and demanded that they stop their motorcycles. They stopped and surrendered their guns, two mobile phones, two wallets and Kshs. 90,000 gold ring. The officers arrested them and took them to Zunza Police Station. The five men whose names were Kano, Binwa, Fanil, Nuro and Rito were later remanded in cells, Muulite and his friend Fuliza were thereafter requested to record statement.

The five suspects have been charged with two counts of robbery with violence Contract¹ to Section 296(2) of the *Penal Code*, Cap. 63.

You have been engaged by the five men as their lead Counsel to conduct their defence. They have asked you to advise them on the conduct of proceedings when they are arraigned in Court. Advise them on:

- (a) Whether they can be granted bail/bond and what the Court will take into account in granting or denying them bond/bail. (10 marks)
 - (b) The sentencing process if they are finally convicted. (10 marks)
 - (c) Their rights as accused persons. (10 marks)
2. On 12th January, 2021 your client, Mr. Njoroge Mwasis was presented before the Magistrate at Kibera Law Courts for being involved in a matter relating to theft contrary to Section 275 of the *Penal Code*, Cap 63. He also faced an alternative charge of handling stolen property contrary to Section 322(2) of the Code. The charge sheet produced read as follows:

Statement of offence: Stealing contrary to Section 275 of the *Penal Code*, Cap 63

Particulars of the offence: On 8th January, 2021 at Matassia Estate, Nairobi jointly with two others not before Court stole and /or handled a Toshiba Laptop,. Make ET 577 CO5 the sole property of one Mr. Vanesh Kim.

ALTERNATIVE CHARGE

Statement of offence: Handling stolen property contrary to Section 322(2) of the *Penal Code*, Cap 63

Particulars of the offence: On 8th January, 2021 at Matassia Estate, Nairobi jointly with two others not before Court you handled a Toshiba Laptop, make ET 577 CO5 knowing or having reason to believe that the same was a stolen property.

The prosecution, before closing its case, has called three key witnesses who prima facie leads convincing evidence implicating your client in handling stolen property. You are then called to make submissions under Section 210 of the Criminal procedure Code, Cap 75. Your client, who has worked as a Clerk at Teleka Law Firm for 22 years but resigned two years ago recalls arguing with his boss about the concept of duplicity of charges. He immediately whispers to

you that the charges read against him before the Magistrate seem to be duplex in nature and it is significant that you should strongly submit against them.

With the aid of statutory provisions and case law, prepare your client's submissions to address the following key points:

- (a) The rationale behind the rule against duplicity. (5 marks)
 - (b) The circumstances necessitating drawing of alternative charges by the prosecution. (5 marks)
 - (c) The exceptions to the general rule of duplicity? (10 marks)
3. With the aid of relevant case laws, examine the law and process relating to recording of pleas in the criminal justice system in Kenya. (20marks)