



RIARA LAW SCHOOL

UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

2ND MAY 2024

RLB 201: CRIMINAL LAW I

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INSTRUCTIONS

1. This is the final examination in Criminal Law I. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has four pages, including this first page. The paper consists of **FIVE** questions. Answer **QUESTION ONE** and **ANY OTHER TWO** questions.
3. Time allocated for this examination is **TWO (2) HOURS**. You must stop writing when time is called.
4. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
5. This is a **CLOSED BOOK** examination. This means you are not permitted to bring ANY hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
6. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalised. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

QUESTION ONE

Musa, Cain and Innocent have been employees of *Chuma Limited*, a steel manufacturing company, for close to two decades. They have also been close friends since they joined *Chuma*.

Last week, the three friends were terminated from their employment after their supervisor, Omollo, accused them of engaging in misconduct by sharing *Chuma's* secrets with the CEO of a competitor, *Patex Steel Plc*.

Aggrieved by the decision to terminate their employment, the trio decides not to seek any legal remedies against the company; instead, they plan to 'teach Omollo a lesson' by setting fire to Omollo's servant quarters, located near *Chuma's* factory in Athi River.

To execute their scheme, the trio speaks to Eve, the clerk at *Chuma's* factory, who harbours deep resentment towards Omollo, due to his history of bullying junior employees. Eve agrees to inform on Omollo's movements to help the three in their scheme. The group plans to execute their plan the following day, with Eve advising them on a 'safe' timing.

Musa, Cain, and Innocent spend the afternoon crafting a homemade petrol bomb, with the help of Sheldon, Cain's 10-year-old nephew. Despite his age, Sheldon is highly intelligent and has always been intrigued by chemistry. He has also been conducting a lot of experiments at home, and his teachers have described him as a 'genius'. Sheldon only guides Cain and his friends after Cain promises to get Sheldon a gift; but Sheldon is not aware that the petrol bomb is not aware of the petrol bomb's purpose.

The following day, Eve informs Cain that Omollo is away in Mombasa, prompting Cain to call Musa and Innocent to proceed with the plan. Musa immediately joins Cain. Innocent, on the other hand, informs Cain that he had a change of heart after speaking to his pastor, Reverend Imani Mingi. Angered by Innocent's response, Cain promises to deal with Innocent's 'drama' after "this is over". Musa and Cain then proceed with the plan, successfully setting Omollo's house ablaze. After that, the two take a bus to Musa's house in Kitengela where they find Musa's wife, Kazuri, who welcomes them and prepares them a meal. Upon learning what Musa and Cain had done, Kazuri provides them with new clothing to confuse 'enemies' who might have seen them at the scene of crime.

Meanwhile, fearing Cain's potential retaliation, Innocent reports the arson and the entire scheme to the Kenya Police Facebook page, using a pseudo Facebook account. As a result, Musa, Cain, Eve, Sheldon, Kazuri, as well as Sheldon's father, Bwana, are arrested. Innocent is also arrested after his identity is traced through the pseudo account.

You have been recently appointed a prosecution counsel at the Office of the Director of Public Prosecutions, and you have been tasked with handling this case:

- a) With reference to appropriate authorities, analyse the criminal liability, if any, of Musa, Cain, Innocent, Eve and Kazuri. In your analysis, you are not required to discuss any specific offence (s) or the elements thereof; instead, you should rely on the relevant principles discussed in the course. **(20 marks)**

- b) With reference to appropriate authorities, discuss the criminal liability, if any, of Sheldon and his father, Bwana. In your analysis, you are not required to discuss any specific offence (s) or the elements thereof; instead, you should rely on the relevant principles discussed in the course. **(10 marks)**

QUESTION TWO

“.....[T]here is need to link up customary law with the written law and more specifically, to link up African customary criminal law with the written criminal law” (T Musinga, 2016).

Citing relevant authorities, critically discuss the extent to which African Customary law could be a valid source of criminal law in Kenya, and assess the challenges that may arise from criminal courts' reliance on African Customary Law. **(20 Marks)**

QUESTION THREE

“There can be no crime large or small, without an evil mind. It is therefore a principle of our legal system, as probably it is of every other, that the essence of an offence is the [*mens rea* element], without which it cannot exist” (JP Bishop, *Criminal Law* (9th ed. 1930).

With the aid of relevant authorities, critically examine the validity of the above statement. Additionally, provide an assessment of the justifications, policy or otherwise, for imposing strict liability in Kenyan criminal law. **(20 Marks)**

QUESTION FOUR

A few weeks ago, Ras and Karis were expelled from Shamahoho Secondary School, where they had been Form Four Students. The two had been harassing a junior student named Matata by forcing Matata to sing lullabies for them during evenings.

Unhappy with what perceive as unfair treatment by the school principal, one Mr Juma, Ras and Karis hatch a plan for revenge. They approach the principal's cook, Hatari, and offer him Kshs. 2,000 to poison Mr. Juma's food with a rodenticide known as 'Red Cat'. Hatari agrees to assist the two boys.

Later that same evening, Hatari adds the 'Red Cat' into Mr. Juma's dinner. However, during the meal, Mr. Juma detects the unusual taste and stops eating the food. He subsequently experiences serious stomach aches but promptly seeks medical attention, leading to the alleviation of his symptoms within a few days. Mr. Juma does not suspect any improper food handling by Hatari.

A week later, after deep reflection, Hatari decides to confess his involvement in the poisoning scheme, hoping for Mr. Juma's forgiveness. Following the confession, Mr. Juma contacts the police, leading to the arrest of Hatari, and subsequently Ras and Karis.

a) With reference to appropriate authorities, analyse the criminal liability, if any, of Ras, Karis and Hatari. **(12 Marks)**

a) Ras, Karis and Hatari have now retained Mr. David Sijui, Advocate to represent them. Mr. Sijui intends to raise the defence of "impossibility", arguing that the alleged poisoning became impossible after Mr. Juma failed to ingest all the poisoned food. Mr. Sijui has asked you, his new legal assistant, to briefly advise him on whether this defence would be viable in this case. Please do so while discussing the relevant legal principles. **(8 Marks)**

QUESTION FIVE

Part A:

Jackie is a young activist for equality and a member of a political party known as *Azimio La Vijana*.

Between 1st to 3rd April, 2024, Jackie attending the ‘Future Leaders Conference’ organised by the World Bank at the Sarova Whitesands Beach Resort, Mombasa. She was representing *Azimio La Vijana*’s interests at the conference alongside her friend and party leader, Sonko Mkubwa. Jackie and Sonko Mkubwa returned to Nairobi on the evening of April 4, 2024, taking Jambojet Flight Number JM8000.

On getting to her house in Langata Estate, one of Jackie’s neighbours, Mr. Mzalendo, calls the Police who come to Jackie’s house and arrest her. Apparently, the Police had been looking for Jackie in connection to her alleged involvement in a violent burglary that occurred at Madaraka Estate on the night of 2nd April 2024, during which a woman had been shot dead.

Following a valid and properly conducted identification parade conducted on April 6, 2024, eye witnesses confirm that indeed, Jackie was among the perpetrators of the heinous crimes committed on 2nd April 2024. Despite Jackie’s attempts to explain that there must have been a confusion, the police have informed Jackie that she will face criminal charges.

Jackie has hired you to represent her. She asks you to advise her on the strongest defence she could raise against the potential charges. Advise her on the most applicable defence and what will need to be demonstrated for the defence you have identified to succeed. **(10 Marks)**

Part B:

“At common law, there are two aspects to the [defence of defence]—defence of person and defence of property. Defence of person is further classified into self-defence and defence of another person” W Musyoka, *Criminal Law* (2013 Law Africa Publishing Ltd), p. 125.

Citing relevant statutory law and authorities, discuss ‘self-defence’ as a general defence in criminal law. What are the requirements for a defendant to rely on ‘self-defence’? Which offences can it be used as a defence for? **(10 Marks)**