



**RIARA LAW SCHOOL**

**UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE**

**AND**

**PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAMME**

**JANUARY-APRIL 2024**

**RLB 207: CRIMINAL PROCEDURE**

**INSTRUCTOR: MS. JOSEPHINE A. OYOMBE**

**INSTRUCTIONS**

1. This is the final examination in Criminal Procedure. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
1. This examination has **FIVE** questions. Please answer **Question ONE (COMPULSORY)** and any other **TWO** questions.
2. This examination has 4 pages, including this one.
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, save for clear copies of the Constitution of Kenya, which shall be supplied for the exam. 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 penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

## Question 1

Truphosa Wafula, a government nurse has been married to Brian Wafula for three years and they have a son called Wekesa. They lived together in Umoja Estate prior to Truphosa's job transfer to Vihiga Provincial Hospital. They agreed that Brian would remain in Nairobi and visit his family regularly. On the morning of 18<sup>th</sup> June 2023, Truphosa and her son Wekesa arrived at her husband's residence for a surprise visit to celebrate father's day. Brian, had not been expecting them so he had locked the door of the house and left for work without leaving the key to the house with the neighbor as he would have normally done. However, Truphosa had a spare key, so when they arrived, she opened the door and got in the house. She cleaned the house and made a meal for her family.

In the evening Brian returned home from work accompanied by his lover Empress, when they found Truphosa and Wekesa in the house. Immediately after a scuffle ensued between the two ladies. Empress grabbed Truphosa's hair and dragged her towards the door. Truphosa landed on the floor. She thereafter took a chair that was nearby and hit Empress on the head. She suffered severe injuries on the head leaving her unconscious.

Following this incident, Truphosa took off. A few days later Brian and Empress reported the incident at Makadara Police Station and Truphosa was arrested and later charged with three offences.

The charge sheet states:

**Names:**

Truphosa Wafula, Female/Adult, P. O. Box 321, Nairobi.

**Charge / statement of offence:**

House breaking c/s 306(2), Assault c/s 250 and Malicious damage to property c/s 339(1) of the Penal Code.

**Particulars of the offence:**

Truphosa Wafula on the 18<sup>th</sup> June 2023 at Umoja Estate, broke into the house of Brian Wafula and maliciously damaged his executive stool worth Kshs. 500,000/=.

In the alternative, Truphosa Wafula also assaulted Empress on the head causing her much pain and injury.

- a) Identify and analyze the flaws in the charge (10 mks)
- b) Draft the appropriate charge(s) against Zainabu Wafula. (10 mks)
- C) With reference to decided cases, discuss the following matters
  - i) Duplicity of Charges (5 mks)
  - ii) Joinder of counts (5mks)

## Question 2

Cecilia Wanjiku is a charismatic young woman with a thriving salon business within Nairobi's Kilimani estate. On 12<sup>th</sup> December 2021, Wanjiku's brother, Kamau Bazu visited Wanjiku's home looking for his sister who according to the family "had gone silent" for a number of days. After opening the door to Wanjiku's apartment at Sunville Gardens Kilimani with a spare key which he kept, Kamau Bazu found a shocking sight . Cecilia was lying in a pool of blood in the middle of the livingroom.

Kamau Bazu quickly checked the pulse and realized that Cecilia was no more. Kamau informed the caretaker who quickly called the Police. The Police arrived and began investigations to confirm the cause of death as well as identify possible suspects.

Two days later, the Police inform the public that they have arrest Indinusu Wafula in a hospital in Mai Mahiu receiving treatment for a gunshot wound. The Police connect Mr. Wafula with the murder of Cecilia Wanjiku. According to the Police, Cecilia and Wafula were intimate friends and Wafula was the last person to be seen with the victim.

Following lengthy investigations, the Police also arrest Mr. Wafula's wife , Ms Rachel Kahota who is a prolific musician in Kenya. The Police believe that Ms. Kahota played a significant role to cover up the crime committed by Mr. Wafula. According to the eye-witness statement of Mr. Obesi Okinyo who is a neighbour to Mr. Wafula and Ms. Kahota, is that the two were attempting to dispose unknown items on the night of 10<sup>th</sup> December 2021. The witness reported that the couple lit a bonfire and were seen disposing items. However, according to Ms. Kahota who denies any involvement of the crime informed the Police that she was performing at a Music show called "Mahewa" at the time which they suspect the murder occurred.

- a) You are the prosecution counsel based at Kibera High Court. The DCI has called you to advise on the need of an identification parade. Please provide a detailed advise.

**(10 marks)**

- b) You are the Defense counsel of Mr Wafula. Please provide advice to Indinusu Wafula with respect to prospects of bond, citing principles governing the grant of bail and bond.

**(10 marks)**

## Question 3

The Plea-Bargaining Guidelines and Explanatory notes were developed pursuant to Section 137A – O of the Criminal Procedure Code (CAP 75) and the Plea- Bargaining Rules gazzetted on 14<sup>th</sup> February 2018. The Guidelines are meant to guide public prosecutors, as well as other prosecutors who may be granted prosecutorial powers, in the best practices and application of the plea bargain provisions within the Kenyan context.

**Discuss these guidelines.**

**(20 marks)**

#### **Question 4**

- a.) With the help of constitutional and statutory provisions discuss the different types of warrants. **(10 marks)**
- b.) using relevant examples and case law, discuss the utility of warrants. **(10 marks)**

#### **Question 5**

Write explanatory notes on ALL the following:

- a) Equivocal and unequivocal pleas. **(10 marks)**
- b) Pretrial bail. **(10 marks)**