



RIARA LAW SCHOOL
UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE
RLB 209: CRIMINAL LAW II
INSTRUCTOR: Samuel Kyalo, MCI Arb.

INSTRUCTIONS

1. This is the final examination in Criminal Law II. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This 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 penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

QUESTION ONE

Following a government crackdown on illegal gangs, the infamous "3 Bros", comprised of Rambo, Rasta, and Ninja, find themselves in dire financial straits as their primary source of income, the "protection fees" collected from estate residents, dries up. Desperate to survive, they devise a plan to rob a wholesale shop called SuperMart in Riara Estate on a Friday evening.

Donning masks and armed, the gang enters the shop, immediately ordering everyone to the floor. Kombo, a retired military officer, who happened to be shopping at SuperMart, fearlessly stands up to them and refuses to comply with their demands. He boldly asks the trio to abandon their heist and warns that he could showcase his "military expertise" if they persist. Reacting impulsively, Rasta, known for his recklessness, fires a gunshot that strikes Kombo's foot. Bleeding and incapacitated, Kombo is left lying on the floor while the gang proceeds to finalise their mission, getting away with KES 167,000 in a small backpack bag.

After miraculously surviving the gunshot, Kombo is immediately taken to NH Hospital. However, upon arrival at the hospital, Emily, the nurse on duty, forgets to log Kombo's admission. She was busy chatting with her new boyfriend, Charles, which distracted her. Consequently, several hours elapse before Kombo receives the much-needed medical attention. This delay results in severe bleeding, as a consequence of which Kombo succumbs to his injuries before receiving any medical treatment.

Following an investigation by the Director of Criminal Investigations (DCI), Rambo, Rasta, Ninja, Emily and Charles are all arrested.

You are a newly employed State Counsel at the Office of the Director of Public Prosecutions (ODPP), and this case has been assigned to you to prosecute.

- a) Citing relevant statutory law and authorities, evaluate the criminal liability of Rambo, Rasta, and Ninja. In your analysis, clearly identify the offences, if any, the ODPP may charge them with, and the elements the prosecution would need to prove. **(20 Marks)**

- b) Briefly assess the criminal liability, if any, of Emily and Charles. **(10 marks)**

QUESTION TWO

One Friday evening, Martin, a third-year student at Riara University, attends a birthday party at Madaraka Estate. At the party, Martin meets Lisa, a fourth-year student at Riara Business School. Unbeknownst to Martin, Lisa is turning 18 years old next month, although she has been driving her father's car to school and has a fake National ID and driving licence. As the night progressed, everyone is very drunk and exhausted and the group decides to conclude the party.

Martin, however, decides to accompany Lisa to her apartment, which happened to be conveniently located in Madaraka Estate. Once they reached Lisa's residence, Lisa consented to engage in a sexual intercourse with Martin.

- (a) Discuss the offence (if any) that has been committed and how the offence will be proved in court (10 marks).
- (b) Would Martin have been guilty of any offence if Lisa was 20 years' old.

QUESTION THREE

Kababa, a passionate youth politician and member of a grassroots political party called *Azimio La Vijana*, is thrilled to attend the 2023 'Future Leaders Conference' organised by the National Assembly and the Commonwealth Parliamentary Association in Mombasa County. The conference is attended by prominent national leaders, including the President of the Republic. For Kababa, this event holds special significance as it presents his first-ever opportunity to interact with the President. The experience rekindles his ambition to become the President of the Republic in 2047, a dream that was briefly dampened after his unsuccessful bid to become the Member of County Assembly (MCA) for South Asembo, Siaya, in the last election.

On the day of the conference, Kababa, along with his fellow youth leaders, eagerly arrives at the conference venue in *Maji Matamu* grounds. While waiting for the event to start, Kababa spots the red seat majestically reserved for the President at the podium. Overwhelmed with excitement, Kababa sits on the seat, posing as the 'President' while his friend, Sam, captures photos of the moment as they 'manifest' Kababa's dream. While seated, Kababa then declares to Sam and others nearby, "*Msicheze! mnaangalia rais mpya sasa*" (Translated: "*Don't play! You are now looking at the president*").

Unbeknownst to Sam and Kababa, a member of the President's State House security team, Msaliti, has already arrived at the venue to conduct an inspection. The President's security team

tends to be particularly cautious about the venue arrangement for important national events due to a past incident where a Minister had a dirty shoe thrown at him as he addressed an angry crowd about the Government's 'bottom up' economic transformation initiative.

The moment Msaliti observes Kababa's actions and hears the words uttered by Kababa, he swiftly moves towards them, confiscates Sam's phone, and accuses them of committing a "high felony." Before Sam and Kababa can provide any explanation, Msaliti calls for backup, and Sam and Kababa are arrested and taken to Mariakani police station.

You have recently set up a law firm in Mombasa and quickly gained a reputation as one of the best criminal lawyers in the country. You have now been engaged to represent Sam and Kababa. Please advise your clients on the following:

- a) The offences Sam and Kababa are likely to be charged with. **(8 marks)**

- b) Evaluate the likelihood of the prosecution successfully proving liability for the offence(s) you specified in (a) above. **(12 marks)**

QUESTION FOUR

As an intern at the Office of the Director of Public Prosecution, advise your supervisor on the potential offence (s), if any, committed in the scenarios below:

Part A:

Hasira, a passionate supporter of Manchester United, is enjoying a football match at a local pub when he overhears another person, Maneno, boldly claiming that all Manchester United supporters are cowards. This statement instantly ignites Hasira's anger, and he immediately confronts Maneno, leading to a heated argument between the two football enthusiasts.

As the altercation intensifies, Hasira impulsively delivers a resounding slap to Maneno's face. In retaliation, Maneno cheekily remarks that only cowards would resort to violence to defend "bitter truths". This response further fuels Hasira's emotions, and he proceeds to deliver a series of blows and kicks to Maneno, warning him to learn respect for the 'OGs' of football. The two are separated by the club's bouncers. In the aftermath, Maneno sustains injuries from the scuffle, including a bruised cheek and a swollen lip. **(10 Marks)**

Part B:

GG Party leader incites his youth wingers to disrupt the political rally of their opponent KK party but in the mayhem three KK supporters are seriously injured and vehicles destroyed whereupon police arrest the GG party leader and all the youth wingers despite the fact that two of them had absconded. **(10 Marks)**

QUESTION FIVE

“Forgiveness by individuals, groups, and even governments affords a valuable resource in responding to wrongs. Promoting forgiveness, however, may jeopardize the predictability, reliability, and equal treatment sought by the rule of law. Efforts to amplify law's support for forgiveness could nonetheless preserve the rule of law and advance justice by attending to specific features of particular problems.” (Martha Minow, 'Forgiveness, Law, and Justice' (2015) 9 California Law Review 1615, 1644.)

With the aid of decided cases, scholarly articles, and theories discussed in class, evaluate the extent to which Kenyan criminal law embraces or promotes restorative justice as an approach to punishment. **(20 marks)**