



RIARA LAW SCHOOL

UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

24TH APRIL 2024

RLB 209: CRIMINAL LAW II

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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 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

Martin is the CEO of a Real Estate company known as *Legit Developers*, which owns numerous developments in Nairobi and its suburbs. *Legit* has gained trust from clients because of its solid record of delivering quality homes within record time.

Legit faces stiff competition from a newcomer, Kababa, who recently returned from China, where he had been working for a top real estate development company after completing a Post-Graduate degree in Real Estate Development and Management.

Kababa starts a business, *Future Estates Ltd*, promising to “transform Kenya’s real estate market within the next decade”. Kababa is very ambitious and has unorthodox ways of executing new projects and marketing his business. For example, he utilises social media platforms such as X and *Future* offers competitive rent-to-own options. The rent to own option dubbed the *Real Estate for Hustlers* becomes very popular as it provides low income earners an opportunity to own houses without having to secure any mortgage financing. As a result of *Future*’s immense popularity, Martin's company slowly loses its client base, and it's at the verge of insolvency. Very unhappy with these developments and loss of clients, Martin decides that he will ‘eliminate’ Kababa. However, Martin first decides to try and have a conversation with Kababa. He calls him on phone, and when Kababa does not seem to understand what Martin’s problem was, Martin hangs up and sends Kababa a text (SMS) message promising to ‘deal’ with Kababa.

After it becomes clear that Kababa was not going to tone down his aggressive competition, Martin decides to hire hitmen, a gang known as the *Reds*—comprising of Ras and Ninja—to target Kababa. He pays them a deposit of Kshs. 100,000 and promises to pay a balance of Kshs. 150,000 upon completion of the ‘job’. Ras and Ninja promise to have Kababa dead within a week. They then spend time investigating Kababa’s whereabouts and movements and they discuss that the best idea would be to attack him in his house in Ruiru Estate.

On Sunday, April 21, 2024, Ras and Ninja sneak into Kababa's backyard. Upon noticing the duo, Kababa's dog, Bosco, begins barking loudly. Ninja shoots Bosco, killing it. Ras and Ninja then use a crowbar to break one of the windows, through which Ras enters into Kababa’s house, while Ninja stands guard. Unbeknownst to Ras and Ninja, Kababa had flown out of the country the previous day to attend a real estate conference in Kigali, Rwanda.

Inside the house, Ras notices expensive jewellery in Kababa's living room and he takes it, intending to sell it in the black market. While looking for Kababa, Ras encounters Kababa's wife, Emily, who wakes up and screams in fright. Panicked, Ras shoots Emily as he escapes out of the house through the broken window.

Upon hearing Emily's screams, neighbours rush to Emily's rescue and they take her to *New Life Hospital*, Nairobi. At the hospital, Emily is attended to by Dr. Sophia who forgets to administer a crucial combination of drugs necessary to prevent blood clots in victims of gunshots. Dr. Sophia would have been able to remember to administer this medication, had it not been for a quarrel she had with her husband, Mike, over the phone, which ruined her mood. Consequently, after Emily is discharged, she develops serious blood clots seven days later and succumbs to them.

In the meantime, Martin refuses to pay the *Reds* their Kshs.150,000 balance, insisting that they had targeted the wrong person and had failed to deliver their part of the bargain. In retaliation, Ras and Ninja ambush Martin one evening on Langata Road, forcibly taking his Mercedes G Wagon and threatening to sell it unless he settles the debt within a day. Martin reports this incident to the Langata Police Station, leading to the arrest of Ras and Ninja. However, further investigations by the Police link Martin to the *Reds* and their activities. As a result, the Police spokesperson has released a statement indicating that Martin, Ninja, Ras, Sophia and Mike will all be charged with various crimes.

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 Martin, Ninja and Ras. In your analysis, clearly identify the offence(s), 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 Sophia and Mike. **(10 marks)**

QUESTION TWO

Part A:

Since childhood, Ross Mwanda has always aspired to become a lawyer, dreaming of representing clients in court and winning cases. However, his aspirations were abruptly halted after he failed to meet the minimum score required by Kenyan law schools in his Kenya Certificate of Secondary Education (KCSE) examination. Mwanda was deeply disappointed as he had consistently scored straight As in all previous examinations and had expected nothing less than an A grade. He believes that the Education Minister, Honourable Matangi, unfairly targeted their school for "performing too well" in previous exams.

Undeterred, Mwanda resolves to "fight the system." Encouraged by friends who believed formal education was unnecessary, Mwanda decides to buy a few law books on the Amazon e-commerce platform, including *the A-Z of Legal Practice*, *Common Latin Phrases & Quotations*, and *the Black's Law Dictionary*. In addition, Mwanda avidly watches legal shows such as 'Suits' and religiously listens to legal podcasts. His objective is to familiarise himself with basic legal processes, jargon, and lawyers' mannerisms.

Very confident in his new 'street smart' path, Mwanda borrows money from his uncle to start a law firm under the name and style of "Mwanda Law," boasting "Speedy justice for Hustlers" as its slogan. He then rents an office stall in Ngara and hires a receptionist.

With the help of his friend Karis, Mwanda finds someone in Nairobi's River Road who 'manufactures' all the 'tools' needed for his law firm practice— including a certificate of registration for Mwanda Law, a First-Class Honours Bachelor of Laws degree from Riara Law School, a Post Graduate Diploma from Kenya School of Law, and a stamp bearing the words "Ross Mwanda, Senior Counsel and Commissioner of Oaths". He proudly displays the certificates in his office reception, and he uses the stamp to 'commission' affidavits for clients.

Citing relevant statutory law and authorities, evaluate the criminal liability of Mwanda. In your analysis, clearly identify the offence (s), if any, the ODPP may charge him with, and the elements the prosecution would need to prove. **(10 Marks)**

Part B:

In the months that follow, Mwanda Law succeeds immensely, and Mwanda even buys a new Prado TX after a client he represented in the Court of Appeal was very impressed with Mwanda's representation. The client, Joe Kimani, had been convicted of murder and sentenced to death, but Mwanda was able to persuade the court of appeal that the trial judge had made serious errors in her judgment and sentencing of Joe. As a result, Mwanda's grows and so does his client base. Mwanda is now considered "the best criminal lawyer in Kenya" and the Nairobi Law Weekly awards him the prestigious *Young Lawyer of the Decade* Award.

One day, however, Mwanda appears on *Hustlers TV* for a special panel discussing "the Future of Punishment and Sentencing". During the discussion, Mwanda criticises the Supreme Court's recent decisions on the constitutionality of the death sentence, claiming that "the Supreme Court bench is comprised of a bunch of idiots who lack basic knowledge of criminal law".

Angered by Mwanda's sentiments, which circulate on social media, the Office of the Chief Justice issues a statement expressing disappointment in the remarks and calls for swift action by the Law Society of Kenya (LSK), terming the remarks as "a personal attack on Justices of the Supreme Court".

Investigations by LSK's Compliance Department reveal that Mwanda is not an Advocate of the High Court, and he never even went to any law school. Consequently, Mwanda is summoned by the Directorate of Criminal Investigations (DCI) to record a statement.

At the DCI's office, Mwanda is accompanied by his friends, Sonko Mkubwa, and his Advocate, Chris Ombata. When they enter the interrogation room, Mwanda produces copies of the following documents to the investigating officer: Mwanda Law's certificates of registration, a Bachelor of Laws degree from Riaru Law School, and the Post Graduate Diploma (*described in part A above*).

Identify the offences that Mwanda may have committed based on the narrative in part (b). In your analysis, clearly identify the offence (s), if any, the ODPP may charge him with, and the elements the prosecution would need to prove. **(10 Marks)**

QUESTION THREE

As an intern at the Office of the Director of Public Prosecution, advise your supervisor on the criminal liability, if any, arising from the scenarios below and discuss the elements that the prosecution must demonstrate for the parties involved to be liable for the offence(s) you have identified:

- a) Msanii, a budding *Gengetone* music icon, was invited to perform at *Club Sugar 254* on Valentine's Day. After the performance a young female fan named Rita (18 years old) approached Msanii asking if she could join the musician at the exclusive VIP lounge at the club. Delighted by the company of his adoring fan, Msanii happily agreed. After a few hours of drinking, Msanii then suggested that he, Rita and Msanii's disc jockey, DJ King go to Msanii's house. When they get to Msanii's house, King and Msanii forcefully have sex with Rita. The following morning, Rita, who is deeply shaken, reports the incident to the Police. **(8 Marks)**

- b) OG, a celebrated Kenyan rapper, was delivering an electrifying performance on the rooftop of the 1230 club, Nairobi, which was packed with enthusiastic fans. Amidst the crowd, John, employed as a bouncer at the 1230 club, notices a large gathering of hundreds of fans congregating in the street below the rooftop. In an attempt to disperse the crowd, he hurls a beer bottle off the rooftop. The bottle strikes and injures one of the individuals, Paul, who was among the crowd listening below. **(6 Marks)**

- c) Linda drowns her 6-month-old infant in a bathtub, causing her death. Psychiatric evaluation confirms that during the act, Linda had a delusional belief that doing so was the only way to protect the infant from the fate of being condemned to hell. These delusions were a consequence of postnatal trauma. **(6 Marks)**

QUESTION FOUR

“Hon. Opiyo Wandayi has introduced before the Parliament the Penal Code (Amendment) Bill, 2023, which aims to abolish the death penalty in Kenya. When passed into law, Kenya will join twenty-six other African states, including Cape Verde, Chad, Sierra Leone, Central African Republic, Ghana and Zambia, which abolished the death penalty in law. The proposed law seeks to amend the Penal Code Cap 63.... by deleting the word ‘death’ where it appears and substituting it with ‘life imprisonment.’ As such, the death penalty as a form of punishment within Kenya’s criminal justice system will be a thing of the past, having permanently been deleted from our statute books.” (ICJ Kenya, ‘Law Seeking to Abolish Death Penalty Timely’ (October, 2023).

Upon graduated law school, you recently secured a job as a Legal & Policy Counsel at the National Assembly. The Chair, Justice and Legal Affairs Committee has approached you for an advice on the Bill.

With the aid of relevant authorities, and based on the knowledge you gained from discussions you had in the Criminal Law II course (on sentencing and punishment), critically assess the extent to which the proposed law reflects the Kenyan society's view of punishment and emerging Kenyan jurisprudence on the subject. Additionally, comment on whether enacting the Bill would advance or undermine the foundational objectives of criminal law. **(20 Marks)**

QUESTION FIVE

“Restorative processes bring those harmed by crime or conflict, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward. In criminal justice, restorative processes give victims the chance to tell offenders the real impact of their crime, to get answers to their questions, and an apology. Restorative justice holds offenders to account for what they have done, helps them understand the real impact of what they’ve done, to take responsibility and make amends” (F Kariuki, ‘Applicability of Traditional Dispute Resolution Mechanisms in Criminal Cases in Kenya’ (2015).

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