



**RIARA LAW SCHOOL**  
**UNIVERSITY OF EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE**  
**APRIL 2024**  
**LAW OF CIVIL PROCEDURE I**  
**UNIT CODE: RLB 204**  
**INSTRUCTOR: MR. WASHINGTON ODONGO OMBIS**  
**INSTRUCTIONS**

1. This is the final examination in Law of Civil Procedure I. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **SIX** questions. Please answer all questions.
3. The examination has **FOUR PAGES**, including this one.
4. Time allocated for this examination is **TWO HRS** (2) hours. You must stop writing when time is called.
5. 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.
6. 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.
7. 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.

## QUESTIONS

### Question One (30 Marks)

On the 10<sup>th</sup> day of January 2024, Ogila entered into a contract for the supply of goods with one Wayne Ongara. The subject value of the contract being Kshs. 50,000,000/= . The contract was executed and witnessed by the following:

- a) Roy Miano.
- b) Stephen Sang.
- c) Myra.

Under the contract, Ogila was to supply goods upon execution of the contract thereafter Wayne was to pay Ogila within a period of 5 days the total amount. Ogila supplied goods to Waynes warehouse which is located along Baricho road and thereafter Wayne acknowledged payment by delivering letter to Ogilas warehouse on the same day.

However, 5 days passed and Ogila failed to hear from Wayne, Ogila made numerous attempts to reach out to Wayne but to no avail.

Upon this happening Ogila decided to engage the firm of Rose Chege & Co Advocates which is located along Bruce House, 5<sup>th</sup> Floor Standard Street Nairobi, Kenya.

Considering this, and assuming you are an associate in the firm of Rose Chege & Co Advocates instructed to take charge of this matter, draft all the pleadings which would enable Ogila to ventilate his claim for breach of contract.

### Question Two (15 Marks)

*“[I] agree with their Lordships. In the instant case, and from the amendments of the Civil Procedure Rules that came about in 2020 together with the Covid – 19 Panedmic Directions as contained in Gazette No 3137 which came into operation years later than that decision, it is clear that personal or physical service is no longer a strict requirement.”- Sifuna & Sifuna Advocates v Patrick Simiyu Khaemba [2021] e KLR<sup>1</sup>*

- a) Considering the above discuss at least five (5) disadvantages of serving electronically.  
(10 Marks)

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<sup>1</sup> ELC Misc Civil Appl No 14 of 2021

b) On the 13<sup>th</sup> March 2024, Florence served the initial pleadings in the case of *Resia v Angel Kariuki* which was a matter instituted at the Thika Magistrates Courts registered as E 10 of 2024.

Assuming you act for Resia in the matter, prepare the relevant document which will be filed in court as proof of service. (5 Marks)

**Question Three (10 Marks)**

*“[T]he overriding objective in civil litigation is a policy issue which the court invokes to obviate: hardship, expense, delay and to focus on substantive justice.”* – Francis Atanasio Kithure v County Government of Meru; Ethics & Anto – Corruption Commission (Interested Party) [2021] e KLR <sup>2</sup>

Considering this, discuss at least 10 instances of the overriding objective in play in civil litigation.

**Question Four (10 Marks)**

On the 13<sup>th</sup> day of January 2023, Soi purchased land within Nairobi area **NAIROBI/ BLOCK 20/200/10**. After purchasing the same she decided to put up a 4 storey mall on the said parcel. Unknown to her on the 1<sup>st</sup> March 2024 unknown developers came and started demolishing part of the mall.

Considering this and assuming you are the advocate on record for Soi, prepare the necessary pleadings to prevent any further demolition of the mall.

**Question Five (10 Marks)**

On the 10<sup>th</sup> day of March 2024, Brian Mutua filed a plaint which was drafted and filed as follows:

**THE REPUBLIC OF KENYA**  
**IN THE CHIEF MAGISTRATE’S COURT AT LIMURU**  
**CIVIL SUIT NO. \_\_\_\_\_ OF 2023**

THEURI STORES LIMITED ..... PLAINTIFF

-VERSUS-

MORGAN CARGO LIMITED .....DEFENDANT

**PLAINT**

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<sup>2</sup> Cause No 3 of 2018

**(FAST TRACK)**

1. The Plaintiff is a Limited Liability Company duly incorporated in Kenya. Their address of service for the purpose of this suit shall be care of **M/S JOY NJANE & ASSOCIATES ADVOCATES, 4<sup>th</sup> FLOOR, CVS PLAZA KASUKU LANE, OFF LENANA ROAD, and P.O. BOX 3000 -00100, NAIROBI.**
2. The Defendant is a Limited Liability Company duly incorporated in Kenya. His address of service for purposes of this suit shall be **P.O. BOX 590000 - 00200, NAIROBI. (Service of summons to be effected through the Plaintiff's Advocate's offices.)**
3. At all material times to this suit, the Plaintiff was the legal and/or beneficial owner and/or the insured of motor vehicle registration number **KCJ 033F**.
4. At all material times to this suit, the Defendant was the legal and/or beneficial owner, the insured of motor vehicle registration number **KCP 651X**.
5. The Plaintiffs Motor Vehicle Registration Number **KCJ 033F** was insured by **M/s GA Insurance Limited** under the Insurance Policy Cover Number **P-2017-100-9002-90-25918**.
6. On or about 19<sup>th</sup> May 2020, the Plaintiffs driver was carefully and diligently driving Motor Vehicle Registration Number **KCJ 033F** along Mai Mahui Road and while approaching Lari, the Defendants driver so negligently and/or carelessly drove, managed and/or controlled his Motor Vehicle Registration **KCP 651X**, thereby causing and/or permitting the same to encroach on the plaintiffs lane causing the plaintiff to swerve to the left side to give way to your motor vehicle where you hit the plaintiffs vehicle occasioning it extensive damage and loss for which the Plaintiffs hold the Defendant liable.

**PARTICULARS OF NEGLIGENCE AGAINST THE DEFENDANT**

- a) Driving at a speed that was excessively too fast in the circumstances;
- b) *Driving too close to vehicle **KCJ 033F**;*
- c) *Causing and or permitting vehicle **KCP 651X** to encroach onto the lane of the plaintiff's vehicle;*
- d) Driving recklessly and without due care and attention to other road users, particularly motor vehicle **KCJ 033F**;
- e) Failure to apply the brakes in time or at all;
- f) Failure to stop, slow down, swerve or in any way to steer, manage or control the said motor vehicle so as to avoid the said accident;
- g) Driving a defective vehicle;
- h) Failure to exercise or to maintain any or any sufficient or adequate control of his vehicle;
- i) Failure to exercise the care and skill expected of a reasonable driver in the circumstances;
- j) Causing the said accident;
- k) Disregarding the Highway code and traffic rules;
- l) *Res Ipsa Loquitur*

7. Consequently, the Plaintiffs suffered loss and material damage as their motor vehicle registration number **KCJ 033F** was extensively damaged.

**PARTICULARS OF SPECIAL DAMAGES**

- a) Repair charges.....Kshs. 3,557,092.00
- b) Assessment fees.....Kshs. 13,110.00
- c) Tracing fees.....Kshs. 28,996.00
- d) Re-inspection fees.....Kshs. 4,560.00

**TOTAL.....Kshs.3,623,758.00**

8. The Plaintiffs file this suit against the Defendant claiming the sum for and on behalf of **M/s GA Insurance Limited** their insurer, under the doctrine of subrogation having been fully compensated in respect of the damage and loss to the motor vehicle.

9. Despite demand and notice of intention to sue having been issued, the Defendant has failed to respond rendering this suit necessary.

10. There is no pending suit and there have never been any proceedings between the parties over the same subject matter in any other court.

11. The cause of action arose in Lari area within the jurisdiction of this Honourable court.

**REASONS WHEREFORE:** The Plaintiffs pray for judgment against the Defendant and in favor of **M/s GA Insurance Limited** under its right of subrogation for: -

- a) Special damages **Kshs. 3,623,758.00/=**
- b) Interest on (a) above at court rates from the time of filling suit until payment in full.
- c) Costs of the suit plus 16% VAT thereon.
- d) Interest on (c) above from the time of judgment until payment in full.
- e)

**DATED** at **NAIROBI** this ..... day of ..... 2023

**JOY JANE & ASSOCIATES**  
**ADVOCATES FOR THE PLAINTIFFS**

**DRAWN & FILED BY: -**

JOY JANE & ASSOCIATES,  
ADVOCATES,  
CVS PLAZA, 4<sup>TH</sup> FLOOR,  
KASUKU LANE, OFF LENANA ROAD  
P.O. BOX 3000 -00100,  
**NAIROBI**

**TO BE SERVED UPON: -**  
MORGAN CARGO LIMITED  
P.O. BOX 59988-00200,  
**NAIROBI**

**Assuming:**

- a) The accident occurred in Kisumu town along Kisumu – Kakamega road.
- b) The date of accident is 19<sup>th</sup> June 2021.
- c) The correct plaintiff is MUTEI STORES LTD.
- d) The correct defendant is MUSSA CARGO LIMITED.
- e) The motor vehicle registration of the plaintiffs car is KDJ 600V.
- f) The motor vehicle registration of the defendants car is KDZ 000X.

Amend accordingly.

**Question Six (10 Marks)**

- a) Using illustrations, distinguish between:

Case conference and trial conference (5 Marks)

- b) Discuss some of the consequences of non – appearance in court. (5 Marks)