



**FACULTY OF LAW
MASTERS OF LAW (LLM)
END OF MODULE I EXAMINATION
LLM 8003: LEGAL ETHICS**

DATE: 3RD April 2018

Time: 2 Hours

Instructions

1. This examination consists of **SIX** questions.
2. **Section A:** Answer **Question One (COMPULSORY)** and **EITHER** question Two **OR** Question Three.
3. **Section B:** Answer **Question Four (COMPULSORY)** and **EITHER** question Five **OR** Question Six.
4. Reference may be made to Chapter Six of the Constitution of Kenya, 2010.

Section A

Question One (compulsory)

Upon reading the narrative below you are required to:

- a) Describe the three parameters of determining the morality of voluntary human actions and; **(10 marks)**
- b) Apply the three parameters to assess the moral culpability of each of the parties involved (Michael, the lawyer and the judge) **(10 marks)**.

Michael has a girlfriend (Lisa) who is from a very conservative and traditional family. During their relationship he impregnated her out of wedlock. Michael never intended to marry her and as a university student he was just flirting for the sake of pleasure. Besides, he did not have any income of his own and relied heavily on his parents for sustenance. Lisa on the other hand thought that Michael was a serious boyfriend and so when she learnt of the pregnancy she informed him with great joy and assured him that she will handle her strict parents if Michael would only promise to marry her. One day, he invited her out and while at a drink up, he slipped a pill into her drink while she was on a bathroom break. The effect of the pill was labour inducement and as a result she miscarried. Later Michael explained what he had done and sought to end the relationship.

She complained to the police and Michael was arrested and charged with the crime of physical assault. Michael's lawyer was intent on winning the case at all costs because it had attracted media publicity which he hoped to ride on and get "free publicity" for his law practice. The lawyer argued that his client did not intend to harm or assault Lisa but to destroy a foetus and therefore Michael should be acquitted of any wrongdoing. In their country the law was silent on abortion.

The Judge found Michael guilty of assault (guilty as charged) and no one bothered about the unborn child that perished in the whole saga. He further imposed a very lenient sentence of solely a fine equivalent to 20 dollars yet under the law of their country the judge was at liberty to sentence someone found guilty of physical assault to at most 6 months in jail and a fine not exceeding the equivalent of 5000 dollars. This is in spite of the fact that the Prosecution had relied on precedents where in past cases, superior courts of that country had imposed higher penalties for physical assault than what the judge imposed in Michael's case. The judge never made mention of the abortion.

Question Two:

- a) Briefly explain the nature of passions/emotions/feelings. (4 marks)

- b) Define three concupiscible passions and three irascible passions (6 marks).

Question Three:

"In fashioning this judicial test, we do not exile the rationality test which is equally controlling in the examination of constitutional validity, if properly applied in terms of the means-ends analysis and the separation of powers framework". (Court of Appeal at Nairobi in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR)

In light of the above statement, discuss the key characteristics of the Rational life. (10 marks)

Section B

Question Four (compulsory question)

- a) Conceptualize the intrinsic relationship between the concepts of law and justice and explain why the ethics of law must of necessity be premised on the value/virtue of justice. (10 marks).

- b) Discuss the meaning and purport of the concepts of social justice and commutative justice and show (by way of examples or illustrations) how they affect specific aspects of legal practice. (10 marks)

Question five

Comparatively analyse the parameters for the just wage as enunciated by ethical disciplines (moral philosophy) and the legal criteria for the minimum wage provided by the laws of Kenya. (10 marks)

Question Six:

Ethics and integrity are two sides of the same coin: to achieve their ideals, systems and strategies are needed. Evaluate the effectiveness of any **three** components of the national integrity system envisaged by Chapter Six of the 2010 Constitution of Kenya. (10 marks)