



**STRATHMORE LAW SCHOOL  
MASTERS OF LAW (LL.M)  
SUPPLEMENTARY EXAMINATION  
LLM 8202: INTERNATIONAL CRIMINAL LAW PROCEDURE**

Date: Monday, 6<sup>th</sup> May 2024

Time: **3 Hours**

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**Instructions**

1. This examination consists of **FIVE** questions.
2. Answer **Question ONE (COMPULSORY)** and any other **TWO** questions
3. This is a closed-book examination.
4. You should spend a fair amount of time organizing your thoughts before starting to write.
5. Careful organization and clarity will be highly valued.
6. Please start each question on a new page.

**QUESTION 1 [30 Marks]**

Discuss the scope of, and conditions for, invoking the following grounds for excluding criminal responsibility under the Rome Statute of the International Criminal Court:

- (a) Mental disease or defect [6 Marks]
- (b) Intoxication [6 Marks]
- (c) Self defence [9 Marks]
- (d) Necessity and duress [9 Marks]

**QUESTION 2 [15 Marks]**

“Criminal processes, whether at the national or international level, are primarily about meting out justice for alleged wrongs committed by individuals. The process entered into, at least from a common law perspective, is not so much about finding the truth as it is offering evidence that proves guilt or innocence – evidence that is contested, put into question, or interpreted in different ways – to win a case. The investigative method of civil law systems is arguably more concerned about finding the truth, but the end result is the same: the case is won or lost by convincing or failing to convince a judge or jury of guilt or innocence. The “legal truth” is merely a by-product of a dispute settlement mechanism”.

Yasmin Nagvi ‘The right to truth in international law: Fact or fiction?’ (2006) 88  
*International Review of the Red Cross* 245

- (a) Describe the specific obligations imposed on the Prosecutor of the International Criminal Court under the Rome Statute to ensure that he or she is an organ of justice pursuing truth impartially. **[5 Marks]**
- (b) Describe the specific powers that the International Criminal Court may exercise under the Rome Statute to ensure that it determines the truth during a trial. **[5 Marks]**
- (c) Describe the specific safeguards or sanctions embedded in the Rome Statute to ensure that witnesses during a trial before the International Criminal Court contribute to establishing the truth. **[5 Marks]**

### **QUESTION 3 [15 Marks]**

Kadum is a country in the Eastern African. From August 2019 to January 2021, a protracted armed conflict took place between the Kadum People's Armed Forces and an organized rebel group, the Movement for the Restoration of Democracy in Kadum (MRDK). During this period, the Kadum People's Armed Forces carried out a counter-insurgency campaign in the northern region of Kadum where the rebel group operated from and exercised control. Conducted together with a government-affiliated militia known as Coalition of Patriots (CoP), the campaign involved attacks on civilians in towns and villages where murders, rapes, forcible transfers, pillaging of villages, acts of torture and other inhumane acts were rampant.

On the ground, the counter-insurgency campaign was led by Kasrime Kafaya, a senior leader of the CoP. Popularly known as "KK", he enlisted fighters, armed, funded, and provided food and other supplies to militia members under his command. Acting together with members of both the CoP and the Kadum People's Armed Forces, KK personally participated in some of the attacks against civilians.

Assume that the Prosecutor of the International Criminal Court has been investigating the situation in Kadum and is now at a point where he is considering the individual criminal responsibility of Kasrime Kafaya for crimes against humanity and war crimes committed in the northern region of Kadum. Discuss the material and mental elements of the modes of liability that the Prosecutor may consider if he makes the decision to open charges against Kasrime Kafaya.

### **QUESTION 4 [15 Marks]**

"Delegates at the drafting of both the [Rome] Statute and the Rules [of Procedure and Evidence] sought to devise a realistic system that would, on the one hand, include victims and, on the other, would not jeopardize the primary function of the [International Criminal] Court. Thus, the participatory rights found in the Statute and Rules, while broader than those existing in previously established international criminal tribunals, were deliberately made more restrictive than those found in domestic system."

Brianne McGonigle Leyh *Procedural justice? Victim participation in international criminal proceedings* (2011) p. 234.

Critically analyse the above statement with a view to:

- (a) Elaborating the meaning of a “victim” for purposes of participation in proceedings before the International Criminal Court. **[5 Marks]**
- (b) Discussing the criteria applied by the International Criminal Court in determining whether to permit a victim to participate in proceedings before it. **[5 Marks]**
- (c) Discussing the practical or procedural modalities of victim participation in proceedings before the International Criminal Court. **[5 Marks]**

**QUESTION 5 [15 Marks]**

- (a) The general admissibility standard of evidence is defined by three cardinal criteria or conditions. Discuss these conditions. **[6 Marks]**
- (b) Discuss the extent to which evidence obtained by means of a violation of the Rome Statute or internationally recognized human rights is admissible, if at all, at the International Criminal Court. **[6 Marks]**
- (c) Discuss the extent to which the International Criminal Court is bound, if at all, by national rules of evidence when deciding the admissibility of evidence collected by a state. **[3 Marks]**