

THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

FACULTY OF LAW

DEPARTMENT OF PRIVATE LAW

MAIN CAMPUS

COURSE OUTLINE

Unit Code: CLS 203
Unit Title: CIVIL PROCEDURE & PRACTICE
Credit Hours: 45
Academic Year: Mixed
Trimester: August to December 2018
Class Hours: THURSDAY 02, 00 PM-05.00 PM (KH03)
Lecturer: CHARLES B G OUMA
Hours of Consultation: WEDNESDAY 08.00 AM -01.00 PM THURSDAY 12.00 - 02.00PM
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Mission Statement:

Inspired by Jesus words; Consecrate them in the truth (Jn: 17: 17) CUEA seeks to promote scientific research, quality teaching and community service for the purpose of enhancing Christian living.

Purpose of the Course

To introduce the participants to the practices, processes and procedures of civil litigation in the Superior Courts, Subordinate Courts, forums for ADR and quasi judicial tribunals

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Course Description:

In this course, we explore the history of the law on civil procedure in Kenya to enable us put the many features of our civil litigation in a historical context, we take the participant through the civil procedure act and civil procedure rules and other statutes impacting on civil proceedings, we analyze the jurisprudence from the courts and opinion of text writer on the process and features of civil proceedings. Participants learn to identify the sources of law on civil procedure, develop the ability to use the civil procedure act and rules to perform a variety of tasks in civil proceedings, and analyze the jurisprudence and opinions of text writers on civil procedure. It is expected that the participants will develop a market ready level of understanding of the rules civil procedure and appreciate the linkages between the civil procedure rules and related procedural laws, including relevant articles in the constitution, jurisdictional statutes, evidence law and alternative disputes resolution law.

Learning Outcome

This course seeks to impart the knowledge and skills that will enable the participants to perform a broad variety of tasks in civil proceedings . In particular but without prejudice to the generality of the foregoing it seeks to enable the participants:

- i) Use the Civil Procedure Act and Rules to conduct civil proceedings
- ii) Draft pleadings
- iii) Prosecute and defend civil proceedings
- iv) Prosecute and defend civil appeals
- v) Prepare prosecute and defend selected interlocutory applications in civil proceedings

Prerequisites

- Successful completion of CUEA FOL 1.1 and 1.2

Teaching Resources

- Overhead Projector, Sound Equipment, Whiteboard and White Board Marker Pens, Flip Chart and Permanent Marker Pens, White Board Eraser.

Teaching Textbook

- Steve Ouma A Commentary on the Civil Procedure Act Cap 21, Law Africa

Recommended Text Books

1. Odunga, G.V.(2006), Digest On Civil Case Law and Procedure, Nairobi, Law Africa
2. Odunga, G.V. (2011), Supplement to Odunga's Digest on Civil Case Law and Procedure, Nairobi, Law Africa

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3. Richard Kuloba Judicial Hints on Civil Procedure Law Africa
4. Mulla , D. F Code Of Civil Procedure Eighth Edition 1926 <http://cbgoumaadvocates.co.ke/mulla-the-code-of-civil-procedure/>
5. Kinyanjui, (2000). “How our Courts Work: The Administrative Practice of Kenyan Courts”. Transafrica Press.
6. Brennan, D; Blair, W. Et al (2011) Bullen & Leake & Jacob’s Precedents of Pleadings (17thed.) S & M
7. Kuloba, R (2008), Summary Judgment, Nairobi, LawAfrica
8. Kuloba, R (1987), Principles of Injunctions, Oxford University Press

MAIN STATUTES

1. The Judicature Act, Cap 8 LoK
2. Appellate Jurisdiction Act Cap 9 LoK
3. High Court (Organization and Administration) Act 2015
4. Magistrates’ Courts Act No 15 of 2016
5. Civil Procedure Act Cap 21 LoK
6. Employment and Labour Relations Court Act 2014
7. Environment and Land Court Act 2011
8. Kadhi’s Courts Act No 14 of 1967
9. Arbitration Act 1995
10. Rent Restrictions Act Cap 294 LoK
11. Landlord and Tenant(Shops Hotels and Catering Establishments Act) Cap 301 LoK

Websites

1. <http://kenyalaw.org/kl/index.php?id=81>
2. <http://cbgoumaadvocates.co.ke/category/lessons/>

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Week	Topic	Contents	Selected Reading material	Learning Experiences	Intended Outcomes
Week 1	Introduction to Civil Procedure	1.1 What is Civil Procedure? 1.2 Historical Background 1.3 Practice in Kenya before and after 2010 1.4 Purpose, objectives and philosophy of our civil procedure rules 1.5 The Oxygen Rule- (Overriding Objective)	Teaching Module Chapter 1 Article 159 CoK 2010 Section 1A Civil Procedure Act Section 3 Civil Procedure Act Section 3 Environment and Land Court Act 2011 Section 3 Employment and Labour Relations Court Act 2014 Section 2A Appellate Jurisdiction Act <u>Gayatri Industries Ltd v Harambee Sacco Ltd NRB HCC No 166 of 2004</u> (Per Fred Ochieng J 30 TH March 2004 [2004] eKLR <u>Hunker Trading Company Limited v Elf Oil Kenya Limited</u> Civil Application 6 of 2010 Githinji, Visram, Nyamu JJ.A 24 TH March 2010 [2010] eKLR <u>Equity Bank Limited v Neptune Credit Management Limited</u> Civil Appeal 62 of 2012 Karanja Mwilu, Azangalala JJ.A 22 nd day of July, 2016. [2016] eKLR	Lecture Case Review Literature Review Plenary Discussion on the impact of the CoK 2010 and the CPR 2010	By the end of this lesson, the participant should be able to: <ul style="list-style-type: none"> • Explain the overall purpose, objectives and philosophy of Civil Procedure • Explain the paradigm shift in civil proceedings introduced by the CoK 2010 and the new Civil Procedure Rules
Week 2	Sources of Civil Procedure&	2.1 Statutes impacting on civil proceedings 2.2 Subsidiary legislation	Teaching Module Chapter 2 S Ouma P 12	Lecture Plenary discussion	By the end of this lesson, the participant should be able to:

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		2.3 The Rules Committee 2.4 Practice notes by the Chief Justice 2.5 Practice notes of the various courts			<ul style="list-style-type: none"> • Explain the sources of civil procedure law • List the various statutes that impact on civil procedure • Explain the place significance of practice notes in Civil Procedure
Week 3	Structure and jurisdiction of the courts, tribunals and quasi-judicial bodies	3.1 Structure and hierarchy of the courts 3.2 Jurisdiction of the Courts 3.3 Tribunals and quasi-judicial bodies	Teaching Module Chapter 3 S Ouma pp 16-20 and 36-43 Article 162- 169 CoK 2010 Website of the Judiciary of Kenya https://www.judiciary.go.ke/courts/ Articles 162 -169 CoK Owners of the Motor Vessel 'Lillian S' vs Caltex Oil(Kenya) Ltd [1989] KLR 1, 14 per Nyarangi JA) <u>Law Society of Kenya Nairobi Branch v Malindi Law Society & 6 others</u> Civil Appeal No. 287 of 2016 Waki, Nambuye, Musinga, Gatembu & Murgor 19 th October [2017] eKLR	Lecture Presentations on jurisdiction Case Review	By the end of this lesson, the participant should be able to: <ul style="list-style-type: none"> • Identify the various courts, tribunals and quasi judicial bodies with jurisdiction on civil matters • Determine the jurisdiction of the respective courts • Explain the hierarchy of the courts

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Week 4	Pleadings Generally	4.1 Purpose of pleadings 4.2 Objectives of pleadings 4.3 Rules of Pleadings 4.4 Types of pleadings 4.5 Formal and substantive requirements 4.6 Verification of pleadings 4.7 Binding effect of pleadings 4.8 Amendment of pleadings	Teaching Module Chapter 4 S Ouma pp 115-132 <u>Dakianga Distributors (K) Ltd v Kenya Seed Company Limited</u> CA CIVIL APPEAL NO. 168 OF 2011 (KSM) Maraga, Azangalala & Kantai, JJ. A 24 th February 2015 [2015] eKLR	Lecture Case Reviews Presentations Plenary discussion	By the end of this lesson, the participant should be able to: <ul style="list-style-type: none"> the purpose, objects and philosophy of our civil procedure rules The rules of pleading
Week 5	Parties to pleadings, Joinder, Non-Joinder and Misjoinder	5.1 Parties generally 5.2 Capacity of parties 5.3 Various types of parties and how they sue or are sued	Teaching Module Chapter 5 S Ouma pp 95-112	Lecture Plenary discussion	By the end of this lesson, the participant should be able to: <ul style="list-style-type: none"> Identify and distinguish between the various types of parties to a suit Determine who can be joined to a suit and explain the consequences of non-joinder and mis-joinder
Week 6	Plaint appearance and defence	6.1 Place of suing 6.2 Institution of suits 6.3 Formal and substantive requirements 6.4 Documents accompanying pleadings 6.5 Exchange/service of pleadings 6.6 Close of pleadings 6.7 Amendment of pleadings	Teaching Module Chapter 6 S Ouma pp 143-148 165-177 <u>Law Society of Kenya v Martin Day & 3 others</u> Civil Suit No. 457 OF 2013 [2015] eKLR <u>Ochino and Another v Okombo and 4 Others</u> [1989] KLR Court of Appeal Gachuhi , Masime and Kwach JJ.A <u>Pravinchandra Jamnadas Kakad v Lucas Oluoch Mumia</u> [2015] eKLR <u>GL Baker Ltd v Medway Building And Supplies Ltd</u> [1958] 1 WLR 1216, [1958] 3	Lecture Presentation Plenary discussion	Participants should be able to draft a plaint, memorandum of appearance and defence (and counter-claim or set-off)

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			All ER 540 <u>Phillips, Harrisons & Crosfield Ltd v Mansur B H Kassam</u> NRB HC CC NO. 1088 OF 1971 [1975] eKLR		
Week 7	Consequences of non appearance	7.1 Judgement in default of appearance 7.2 Setting aside judgement entered in default	Teaching Module Chapter 7 S Ouma pp 199-202 <u>Pithon Waweru Maina v Thuka Mugiria</u> [1983] eKLR <u>Shah v Mbogo</u> [1967] EA 116 <u>Shah vs Mbogo</u> (1974) E.A	Lecture Case review Presentation Plenary discussion	Participants should be able to draft <ul style="list-style-type: none"> • a request for judgement in default of appearance • an application to set aside a judgement entered in default
Week 8 CAT					
Week 9	Striking out of Pleadings	8.1 Principles 8.2 Procedure	Teaching Module Chapter 8 <u>Caneland Limited v Dolphin Holdings Limited & another</u> Mbaluto J 24th day of November, 1999. [1999] eKLR <u>D. T. Dobie & Company (Kenya) Ltd. vs. Joseph Mbaria Muchina & another</u> Court of Appeal, Civil Appeal No. 37 of 1978 <u>Choitram v Nazari</u> (1982-88) 1 KAR 437	Lecture Case review Presentation Plenary discussion	Participants should be able to draft an application to strike out a pleading and prepare an appropriate response thereto

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Week 10	Pre trial procedures Prosecution of Suits	10.1 Rationale for pre-trial proceedings 10.2 Application of the Rules 10.3 Events and outputs <ul style="list-style-type: none"> • Pre-trial questionnaire • Case conference • Settlement Conference Brief • Settlement conference • Trial conference 10.4 Case managers. 10.5 Consequences of non-compliance 10.6 Variability of orders and agreements in pre-trial proceedings	Teaching Module Chapter 9 S Ouma 205-215	Lecture Presentation Plenary discussion	Participant should be able to draft a <ul style="list-style-type: none"> • pre trial questionnaire • A trial conference questionnaire • A settlement conference brief • A case conference order
Week 11	Rulings, Judgements. Decreets and Orders	11.1 Formal and substantive requirements	Teaching Module Chapter 10 S Ouma pp 54-69 271-276 289-333	Lecture	Participants should be able to <ul style="list-style-type: none"> • Write a ruling/judgement • Extract a decree/Order • Draft an application for execution of decree or order

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Week 12	Appeals and Reviews	<p>12.1 Formal and substantive requirements</p> <ul style="list-style-type: none"> • Memorandum of appeal • Grounds of appeal • Records of appeal <p>12.2 Prosecution of appeals 12.3 Power of the court of appeals 12.4 Appeals to the Court of Appeal 12.5 Appeals to the supreme court</p>	Teaching Module Chapter 11 S Ouma pp455-473	Lecture Presentation Plenary discussion	Participants should be able to <ul style="list-style-type: none"> • Draft a memorandum of appeal.
Week 13	Injunctions	<p>13.1 Types of injunctions 13.2 Principles of injunctions 13.3 New developments</p>	Teaching Module Chapter 12 S Ouma pp435 – 437 <u>Giella Vs Cassman Brown and Company Limited</u> [1973] E.A358. <u>American Cyanamid Co. vs Ethicon Ltd</u> {1975} ALL ER 504	Lecture Presentation Plenary discussion	Participants should be able to draft an application for interlocutory orders of injunctions and related applications under order 40 and responses thereto
Week 14	Judicial Review	<p>14.1 What is Judicial Review? Origins 14.2 Two strands of Judicial Review 14.3 Relationship with Constitutional Law 14.4 Public Law or Private Law 14.5 Remedy 14.6 Legal Basis 14.7 The Ultra Vires Doctrine 14.8 Grounds for Review 14.9 Judicial Review is concerned with the process, not the merits 14.10 Remedies</p>	Teaching Module Chapter 13 pp 517-518 <u>Republic v Kenya Cricket Association & 2 others</u> [2006] eKLR <u>Ntaryamira v Gichuhi</u> , 2015 eKLR Odunga J Elisha Ongoya :The Changing Character of Judicial Review Jurisdiction under the Constitutional and Statutory Order in Kenya www.lsk.or.ke/Downloads/Elisha...Review.pdf	Lecture Presentation Plenary discussion	Participants should be able to draft and application for judicial review and a response thereto

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		14.11 The discretionary nature of the remedies 14.12 New terminology in England 14.13 Exclusion of judicial review 14.14 Exhaustion of remedies Procedure 14.15 Impact of the constitution of Kenya 2010			
Week 15	Other Interlocutory proceedings	15.1 Procedure	Teaching Module Chapter 14	Lecture Presentation Plenary discussion	Participants should be able to draft various applications for interlocutory orders and responses thereto
Week 16		EXAMS			

Course Delivery Methodology

Lectures will be the main delivery methodology. Handouts will be provided occasionally for core topics but students should use the prescribed books as much as possible. It must be noted that handouts are NOT SUFFICIENT and students are required to supplement handout materials. Students are also encouraged to take notes in class.

Course Assessment:

Student performance, continuous tests, assignments, term paper, end of semester examination

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Methods of Evaluation

Continuous Assessment Tests (CATs)

CAT	30%
Main Exams	70%
Total	100%

NB: Additional References to relevant cases and other essential readings will be given during the lectures.

Policy Issues

- (i) All students should attend all classes and participate actively
- (ii) If a student fails to attend more than 30% of the time allocated for class attendance in a semester, the student will not be allowed to take the final examination
- (iii) if a student fails to take the Continuous Assessment Tests he/she will not be allowed to take the final examinations
- (iv) Any student who fails to sit for his or her continuous assessment tests for good reasons must inform the course instructor who will arrange for a makeup CAT **before the end of trimester examination**
- (v) Student with special needs are encouraged to see the unit instructor and discuss their needs.
- (vi) Students repeating or upgrading the unit must inform the instructor.
- (vii) All mobile phones must be switched off during class hours.
- (viii) Laptops, ipads or tablets may be used in class

Health and Safety Issues

Students are responsible for their personal belongings while in Campus. If students notice a situation endangering their safety or the safety of other , they should immediately inform any member of staff in the campus.

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